

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
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As Engrossed: H3/17/17 H3/22/17
A Bill

HOUSE BILL 1817

By: Representative C. Douglas

For An Act To Be Entitled

AN ACT TO CREATE THE OFFENSE OF POSSESSION OF A
FIREARM WHILE UNDER THE INFLUENCE OF ALCOHOL OR A
CONTROLLED SUBSTANCE; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE OFFENSE OF POSSESSION OF A
FIREARM WHILE UNDER THE INFLUENCE OF
ALCOHOL OR A CONTROLLED SUBSTANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 5, Chapter 73, Subchapter 1, is amended to add an additional section to read as follows:

5-73-113. Possession of a firearm while under the influence of alcohol or a controlled substance.

(a) A person commits the offense of possession of a firearm while under the influence of alcohol or a controlled substance if the person knowingly possesses a firearm while he or she is under the influence of alcohol or a controlled substance to such a degree as to render the person incapable of safely operating the firearm.

(b) Possession of a firearm while under the influence of alcohol or a controlled substance is a Class A misdemeanor.

(c) It is not an offense under this section if the person possesses the firearm while:

(1) In the person's own dwelling or place of business or on land owned, leased, or possessed by the person; or

(2) Committing an act of self-defense or in defense of another



person if a reasonable person in the person's position would fear serious physical injury or death.

(d)(1) If probable cause exists for a law enforcement officer to believe a person is in possession of a firearm while under the influence of alcohol or a controlled substance, the law enforcement officer shall request that the person submit to one (1) or more tests of the person's blood, breath, urine, or other bodily substance to determine the presence of alcohol or a controlled substance.

(2) The selection of the test or tests shall be made by the law enforcement officer.

(3) A test of a person's blood under this section to determine the alcohol concentration, controlled substance content, or other intoxicating substance content in his or her blood requires a warrant based on probable cause that the person was in possession of a firearm while under the influence of alcohol or a controlled substance.

(e)(1) If a law enforcement officer requests a person to submit to a test of blood, breath, urine, or other bodily substance under this section, the withdrawal of blood, breath, urine, or other bodily substance at the direction of the law enforcement officer may be performed only by:

(A) A person licensed to practice medicine or licensed as a physician's assistant, or a person acting under the direction of a person licensed to practice medicine or licensed as a physician's assistant;

(B) A registered nurse or a licensed practical nurse;

(C) A qualified medical technician; or

(D) A phlebotomist.

(2) A sample of the person's blood, breath, urine, or other bodily substance shall be drawn or taken in the same manner as under the Omnibus DWI or BWI Act, § 5-65-101 et seq.

(3)(A) A person's refusal to permit a sample of his or her breath, urine, or other bodily substance that is not blood to be taken under this subsection is admissible in evidence against the person at any trial on a charge arising out of the person's possession of a firearm while under the influence of alcohol or a controlled substance.

(B) Failure of a person to provide an adequate sample of breath, urine, or other bodily substance that is not blood as directed under this subsection constitutes a refusal unless the person shows that the

failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or controlled substance.

(C) In a prosecution for possession of a firearm while under the influence of alcohol or a controlled substance, if the court finds that a person refused to submit to testing when requested under this section, upon petition to the court the prosecuting attorney may recover on behalf of the state, in addition to the criminal penalties provided in this section, a civil penalty not exceeding one thousand dollars (\$1,000) for each violation.

(4)(A) In a prosecution for possession of a firearm while under the influence of alcohol or a controlled substance, evidence of the concentration of alcohol or a controlled substance in the person's blood, breath, urine, or other bodily substance may be admitted and shall give rise to the following:

(i) If the alcohol concentration is less than eight hundredths (0.08), that fact may be considered with other evidence to determine if the person was under the influence of alcohol;

(ii) If the alcohol concentration is eight hundredths (0.08) or more, it is prima facie evidence that the person was under the influence of alcohol; and

(iii) If there is present in a bodily substance of the person a narcotic, hypnotic, somnifacient, stimulant, or other controlled substance which has the capacity to render the person incapacitated, that fact may be considered to determine if the person was under the influence of a controlled substance.

(B) Subdivision (e)(4)(A) of this section does not limit the introduction of any other evidence bearing upon the question of whether or not the person was under the influence of alcohol or a controlled substance.

(C) Release of any information under this section shall be in accordance with § 12-12-312.

SECTION 2. Arkansas Code § 5-73-309, concerning requirements for a license to carry a concealed handgun, is amended to add an additional subdivision to read as follows:

(15) Has not been convicted in the last three (3) years preceding the application of possession of a firearm while under the

influence of alcohol or a controlled substance, § 5-73-113.

SECTION 3. Arkansas Code § 5-73-312(a)(1), concerning revocation of a concealed handgun license, is amended to read as follows:

(a)(1) A license to carry a concealed handgun issued under this subchapter shall be revoked if the licensee:

(A) ~~becomes~~ Becomes ineligible under the criteria set forth in § 5-73-308(a) or § 5-73-309; or

(B)(i) Is convicted of possession of a firearm while under the influence of alcohol or a controlled substance, § 5-73-113.

(ii)(a) A licensee who has his or her license revoked under this subdivision (a)(1)(B) shall have his or her enhanced endorsement to carry a concealed handgun, if applicable, revoked for three (3) years for a first offense and shall have his or her license to carry a concealed handgun permanently revoked for a second offense.

(b) A licensee who has his or her license to carry a concealed handgun permanently revoked under this subdivision (a)(1)(B)(ii) may petition a circuit court to restore his or her ability to become a licensee.

/s/C. Douglas