

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

As Engrossed: H3/17/17

# A Bill

HOUSE BILL 1817

5 By: Representative C. Douglas  
6

## For An Act To Be Entitled

8 AN ACT TO CREATE THE OFFENSE OF POSSESSION OF A  
9 FIREARM WHILE UNDER THE INFLUENCE OF ALCOHOL OR A  
10 CONTROLLED SUBSTANCE; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 TO CREATE THE OFFENSE OF POSSESSION OF A  
14 FIREARM WHILE UNDER THE INFLUENCE OF  
15 ALCOHOL OR A CONTROLLED SUBSTANCE.  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

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

23 5-73-113. Possession of a firearm while under the influence of alcohol  
24 or a controlled substance.

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

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

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

34 (2) Committing an act of defense that is legally justified, if  
35 the possession does not last longer than is immediately necessary to complete  
36 the act of defense.



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

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

5 (2) Committing an act of self-defense or in defense of another  
6 person if a reasonable person in the person's position would fear serious  
7 physical injury or death.

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

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

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

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

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

24 (C) A qualified medical technician; or

25 (D) A phlebotomist.

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

29 (3)(A) A person's refusal to permit a sample of his or her  
30 blood, breath, urine, or other bodily substance to be taken under this  
31 subsection is admissible in evidence against the person at any trial on a  
32 charge arising out of the person's possession of a firearm while under the  
33 influence of alcohol or a controlled substance.

34 (B) Failure of a person to provide an adequate sample of  
35 blood, breath, urine, or other bodily substance as directed under this  
36 subsection constitutes a refusal unless the person shows that the failure was

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

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

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

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

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

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

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

29 (C) Upon the request of a person submitting to testing of  
30 his or her blood, breath, urine, or other bodily substance under this  
31 section, a report of the results of the testing shall be made available to  
32 the person.

33  
34 SECTION 2. Arkansas Code § 5-73-312(a)(1), concerning revocation of a  
35 concealed handgun license, is amended to read as follows:

36 (a)(1) A license to carry a concealed handgun issued under this

1 subchapter shall be revoked if the licensee:

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

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

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

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

15  
16  
17 /s/C. Douglas  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36