

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

# A Bill

HOUSE BILL 1299

5 By: Representative Brown  
6

## For An Act To Be Entitled

8 AN ACT CREATING THE OFFENSE OF POSSESSION OF A  
9 HANDGUN WHILE INTOXICATED; CONCERNING THE PLACES AND  
10 LOCATIONS A CONCEALED HANDGUN LICENSEE IS PROHIBITED  
11 FROM CARRYING A CONCEALED HANDGUN; AND FOR OTHER  
12 PURPOSES.  
13  
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## Subtitle

15 CREATING THE OFFENSE OF POSSESSION OF A  
16 HANDGUN WHILE INTOXICATED; AND CONCERNING  
17 THE PLACES AND LOCATIONS A CONCEALED  
18 HANDGUN LICENSEE IS PROHIBITED FROM  
19 CARRYING A CONCEALED HANDGUN.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code § 5-73-306 is amended to read as follows:  
26 5-73-306. Prohibited places.

27 ~~No license to carry a concealed handgun issued pursuant to this~~  
28 ~~subchapter authorizes any person~~ A license to carry a concealed handgun  
29 issued under this subchapter does not permit a licensee to carry a concealed  
30 handgun into:

31 (1) ~~Any~~ A police station, sheriff's station, or Department of  
32 Arkansas State Police station;

33 (2) ~~Any~~ An Arkansas Highway Police Division of the Arkansas  
34 State Highway and Transportation Department facility;

35 (3)(A) ~~Any~~ A building of the Arkansas State Highway and  
36 Transportation Department or onto grounds adjacent to any building of the



1 Arkansas State Highway and Transportation Department.

2 (B) However, subdivision (3)(A) of this section does not  
3 apply to:

4 (i) A rest area or weigh station of the Arkansas  
5 State Highway and Transportation Department; or

6 (ii) A publicly owned and maintained parking lot  
7 that is a publicly accessible parking lot if the licensee is carrying a  
8 concealed handgun in his or her motor vehicle or has left the concealed  
9 handgun in his or her locked and unattended motor vehicle in the publicly  
10 owned and maintained parking lot;

11 (4) Any part of a detention facility, prison, or jail, including  
12 without limitation a parking lot owned, maintained, or otherwise controlled  
13 by the Department of Correction or Department of Community Correction;

14 (5) ~~Any~~ A courthouse, courthouse annex, or other building owned,  
15 leased, or regularly used by a county for conducting court proceedings or  
16 housing a county office unless:

17 (A) The licensee is either:

18 (i) Employed by the county; or

19 (ii) A countywide elected official;

20 (B) The licensee's principal place of employment is within  
21 the courthouse, the courthouse annex, or other building owned, leased, or  
22 regularly used by the county for conducting court proceedings or housing a  
23 county office; and

24 (C) The quorum court by ordinance approves a plan that  
25 allows licensees permitted under this subdivision (5) to carry a concealed  
26 handgun into the courthouse, the courthouse annex, or other building owned,  
27 leased, or regularly used by the county for conducting court proceedings or  
28 housing a county office as set out by the local security and emergency  
29 preparedness plan;

30 (6)(A) ~~Any~~ A courtroom.

31 (B) However, ~~nothing in this subchapter precludes this~~  
32 subchapter does not preclude a judge from carrying a concealed weapon or  
33 determining who ~~will~~ may carry a concealed weapon into his or her courtroom;

34 (7) ~~Any~~ A meeting place of the governing body of ~~any~~ a  
35 governmental entity;

36 (8) Any meeting of the General Assembly or a committee of the

1 General Assembly;

2 ~~(9) Any state office;~~

3 ~~(10) Any athletic event not related to firearms;~~

4 ~~(11) Any portion of an establishment, except a restaurant as~~  
 5 ~~defined in § 3-5-1202, licensed to dispense alcoholic beverages for~~  
 6 ~~consumption on the premises;~~

7 ~~(12) Any portion of an establishment, except a restaurant as~~  
 8 ~~defined in § 3-5-1202, where beer or light wine is consumed on the premises;~~

9 ~~(13)(A)(9)(A)~~ A school, college, community college, or  
 10 university campus building or event.

11 (B) However, subdivision ~~(13)(A)(9)(A)~~ of this section  
 12 does not apply to:

13 (i) A kindergarten through grade twelve (K-12)  
 14 private school operated by a church or other place of worship that:

15 (a) Is located on the developed property of  
 16 the kindergarten through grade twelve (K-12) private school;

17 (b) Allows the licensee to carry a concealed  
 18 handgun into the church or other place of worship under this section; and

19 (c) Allows the licensee to possess a concealed  
 20 handgun on the developed property of the kindergarten through grade twelve  
 21 (K-12) private school under § 5-73-119(e);

22 (ii) A kindergarten through grade twelve (K-12)  
 23 private school or a prekindergarten private school that through its governing  
 24 board or director has set forth the rules and circumstances under which the  
 25 licensee may carry a concealed handgun into a building or event of the  
 26 kindergarten through grade twelve (K-12) private school or the  
 27 prekindergarten private school;

28 (iii) Participation in an authorized firearms-  
 29 related activity;

30 (iv) Carrying a concealed handgun as authorized  
 31 under § 5-73-322; or

32 (v) A publicly owned and maintained parking lot of a  
 33 school, college, community college, or university if the licensee is carrying  
 34 a concealed handgun in his or her motor vehicle or has left the concealed  
 35 handgun in his or her locked and unattended motor vehicle;

36 ~~(14) Inside the~~

1           (10) The passenger terminal of ~~any~~ an airport, except that ~~no~~  
 2 ~~person~~ a person is not prohibited from carrying any legal firearm into the  
 3 passenger terminal if the firearm is encased for shipment for purposes of  
 4 checking the firearm as baggage to be lawfully transported on any aircraft;

5           ~~(15)(A) Any~~

6           (11)(A) A church or other place of worship.

7           (B) However, this subchapter does not preclude a church or  
 8 other place of worship from determining who may carry a concealed handgun  
 9 into the church or other place of worship;

10          ~~(16) Any~~

11          (12) A place where the carrying of a firearm is prohibited by  
 12 federal law;

13          ~~(17)(13)~~ Any place where a parade or demonstration requiring a  
 14 permit is being held, and the licensee is a participant in the parade or  
 15 demonstration; or

16          ~~(18)(A)(i) Any~~

17          (14)(A)(i) A place at the discretion of the person or entity  
 18 exercising control over the physical location of the place by placing at each  
 19 entrance to the place a written notice clearly readable at a distance of not  
 20 less than ten feet (10') that "carrying a handgun is prohibited".

21                 (ii)(a) If the place does not have a roadway  
 22 entrance, there shall be a written notice placed anywhere upon the premises  
 23 of the place.

24                         (b) In addition to the requirement of  
 25 subdivision ~~(18)(A)(ii)(a)~~ (14)(A)(ii)(a) of this section, there shall be at  
 26 least one (1) written notice posted within every three (3) acres of a place  
 27 with no roadway entrance.

28                         (iii) A written notice as described in subdivision  
 29 ~~(18)(A)(i)~~ (14)(A)(i) of this section is not required for a private home.

30                         (iv) ~~Any~~ A licensee entering a private home shall  
 31 notify the occupant that the licensee is carrying a concealed handgun.

32           (B) Subdivision ~~(18)(A)~~ (14)(A) of this section does not  
 33 apply if the physical location is:

34                         (i) A public university, public college, or  
 35 community college, ~~as defined in § 5-73-322,~~ and the licensee is carrying a  
 36 concealed handgun as provided under § 5-73-322; or

1 (ii) A publicly owned and maintained parking lot if  
 2 the licensee is carrying a concealed handgun in his or her motor vehicle or  
 3 has left the concealed handgun in his or her locked and unattended motor  
 4 vehicle.

5  
 6 SECTION 2. Arkansas Code Title 5, Chapter 73, is amended to add an  
 7 additional subchapter to read as follows:

8 Subchapter 5 – Possession of a Handgun While Intoxicated

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 10 5-73-501. Definitions.

11 As used in this subchapter:

12 (1) "Controlled substance" means a drug, substance, or immediate  
 13 precursor in Schedules I through VI; and

14 (2) "Date the conviction becomes final" means the latest of:

15 (A) The date of the person's conviction in district court,  
 16 if the person has communicated to the district court that he or she waives an  
 17 appeal of the conviction to the circuit court;

18 (B) The date after the person's available time to appeal a  
 19 district court conviction to circuit court, as dictated by court rules;

20 (C) The date of the person's conviction in circuit court,  
 21 if the person has communicated to the circuit court that he or she waives an  
 22 appeal to an appellate court;

23 (D) The date after the person's available time to appeal a  
 24 circuit court conviction to an appellate court, as dictated by court rules;

25 or

26 (E) The date the circuit court receives the mandate from  
 27 an appellate court affirming the conviction, if the conviction is appealed to  
 28 an appellate court;

29 (3) "Intoxicated" means influenced or affected by the ingestion  
 30 of alcohol, a controlled substance, any intoxicant, or any combination of  
 31 alcohol, a controlled substance, or an intoxicant, to such a degree that the  
 32 person's reactions, motor skills, and judgment are substantially altered and  
 33 the person, therefore, constitutes a clear and substantial danger of physical  
 34 injury or death to himself or herself or another person; and

35 (4) "Public place" does not include:

36 (A) A person's residence;

1                   (B) Real property owned by the person or in which the  
2 person has a possessory interest.

3  
4                   5-73-502. Possession of a handgun while intoxicated.

5                   (a) A person who knowingly possesses a handgun in a public place while  
6 intoxicated upon conviction is guilty of a Class C misdemeanor.

7                   (b) It is an affirmative defense to a prosecution under this section  
8 that the handgun is stored in a condition that renders the handgun:

9                   (1) Unloaded;

10                   (2) Not immediately accessible; or

11                   (3) Otherwise unable to be immediately employed as a weapon  
12 against another person.

13                   (c) The consumption of alcohol or the possession of an open container  
14 of alcohol while in possession of a handgun does not in and of itself  
15 constitute probable cause that a person committed the offense of possession  
16 of a handgun while intoxicated.

17  
18                   5-73-503. Chemical analysis permitted.

19                   (a) A chemical analysis of a person's blood, breath, saliva, or urine  
20 designed to show whether a person was intoxicated at the time he or she  
21 possessed a handgun may be made by a method approved by the State Board of  
22 Health.

23                   (b) An instrument performing the chemical analysis shall have been  
24 certified at least one (1) time in the last three (3) months preceding  
25 arrest, and the operator of the instrument shall have been properly trained  
26 and certified.

27  
28                   5-73-504. Presumptions.

29                   (a) If a chemical analysis of a person's blood, breath, saliva, or  
30 urine is conducted as authorized by § 5-73-503, it is presumed at the trial  
31 of a person who is charged with a violation of § 5-73-502 that the person was  
32 not intoxicated if the alcohol concentration of the person's blood, breath,  
33 saliva, or urine is four hundredths (0.04) or less by weight as shown by  
34 chemical analysis at the time of or within four (4) hours after the alleged  
35 offense.

36                   (b) A presumption does not exist if at the time of the alleged offense

1 the person has an alcohol concentration of more than four hundredths (0.04)  
2 by weight of alcohol in the defendant's blood, breath, saliva, or urine,  
3 although this fact may be considered with other competent evidence in  
4 determining the guilt or innocence of the defendant.

5  
6 5-73-505. Breath analysis.

7 (a)(1) An instrument used to determine the alcohol content of the  
8 breath for the purpose of determining if the person possessed a handgun while  
9 intoxicated shall be constructed so that the analysis:

10 (A) Is made automatically when a sample of the person's  
11 breath is placed in the instrument; and

12 (B) Does not require adjustment or other action by the  
13 person administering the analysis.

14 (2) The instrument shall display digitally the alcohol content  
15 on the instrument itself as well as on an automatic printout.

16 (b) A breath analysis made by or through the use of an instrument that  
17 does not conform to the requirements of this section is inadmissible in a  
18 criminal or civil proceeding.

19 (c)(1) The State Board of Health may adopt appropriate rules to carry  
20 out the intent of this section.

21 (2) Only instruments approved by the board as meeting the  
22 requirements of this section and its own rules shall be used for making the  
23 breath analysis for determining alcohol concentration.

24 (3)(A) The Department of Health may limit by its rules the types  
25 or models of testing devices that may be approved for use under this section.

26 (B) The approved types or models shall be specified by  
27 manufacturer's name and model.

28 (d) A law enforcement agency that conducts alcohol testing shall  
29 comply with this section.

30 (e) An alcohol testing device that is used by a law enforcement agency  
31 for investigations of § 5-10-105, § 5-65-103, or § 5-65-303 that has already  
32 been approved for use under § 5-65-207 may be used for the same purposes  
33 under this subchapter.

34  
35 5-73-506. Evidence.

36 (a) Except as provided in subsection (c) of this section, a record or

1 report of a certification, rule, evidence analysis, or other document  
2 pertaining to work performed by the Office of Alcohol Testing of the  
3 Department of Health under the authority of this subchapter shall be received  
4 as competent evidence as to the matters contained in the record or report in  
5 a court of this state, subject to the applicable rules of criminal procedure  
6 when attested to by the Director of the Office of Alcohol Testing of the  
7 Department of Health or his or her assistant, in the form of an original  
8 signature or by certification of a copy.

9 (b)(1) If a chemical analysis of a person's blood, breath, saliva, or  
10 urine is conducted, a person charged with violating § 5-73-502 has the right  
11 to cross-examine or call as a witness:

12 (A) The person who calibrates the instrument conducting a  
13 chemical analysis of the person's bodily substances;

14 (B) The operator of the instrument conducting a chemical  
15 analysis of the person's bodily substances; or

16 (C) A representative of the office.

17 (2)(A) The prosecuting attorney or the defendant may compel the  
18 testimony of a person listed in subdivision (b)(1) of this section by a  
19 subpoena issued to that person at least ten (10) days before the date of the  
20 hearing or trial.

21 (B) The person whose testimony is compelled shall have  
22 with him or her the record or report at issue, and the record or report is  
23 admissible at the hearing or trial.

24 (c) The admissibility of a chemical analysis that determines the  
25 presence in a person's blood, breath, saliva, or urine of a controlled  
26 substance or other intoxicant that is not alcohol is governed by § 12-12-313  
27 when that chemical analysis is performed by the State Crime Laboratory and  
28 when the chemical analysis is being used in a criminal prosecution under § 5-  
29 73-502.