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Praise the Hogs and Pass the Ammunition: The Expansion Of Concealed Carry Rights

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The old saying goes, there are three things you can never be: (1) too rich; (2) too good looking; or (3) too well-armed. The Arkansas General Assembly spent much of its 2017 legislative session helping Arkansans achieve the third of these goals. Contentious debate over the course of the legislative session ended with the creation of a new act significantly expanding the scope of concealed carry. The new act permits concealed carry in many new places, most notably college campuses. This, however, resulted in a firestorm when the Southeastern Conference implied that the University of Arkansas Razorbacks could be banned from playing home games if guns are allowed at games. This article traces the history of concealed carry in Arkansas, and other States, including the multi-year battle in Arkansas over concealed carry on campus.

The History of Concealed Carry

The regulation of concealed guns has a long history, and the exact start date of gun regulation is hard to pinpoint. Kentucky became the first state to prohibit carrying concealed firearms in 1813.¹ Arkansas adopted a prohibition against carrying concealed pistols in 1837, just one year after becoming a state.² Arkansas's prohibition prevented carrying concealed guns "except upon a journey," language which has led to much confusion and debate ever since.³ The state supreme court upheld Arkansas's prohibition in a very early constitutional challenge in *State v. Buzzard*, 4 Ark. 18 (1842).

The federal government first regulated concealed carry in 1927 when Congress adopted a statute requiring a license to purchase a pistol from mail order.⁴ This law aimed to limit the

¹ Sam B. Warner, Uniform Pistol Act, 29 Am. Inst. Crim. L. & Criminology 529, 529 (1938-1939).

² *Id.*

³ *Id.* See also Laurent Sacharoff & Jacob Worlow, Open Carry in Arkansas-an Ambiguous Statute, 2014 Ark. L. Notes 1 (2014)

⁴ Warner, 29 Am. Inst. Crim. L. & Criminology at 531.

availability of concealable firearms.⁵ In 1926, the National Conference of Commissioners on Uniform State Laws (i.e., the Uniform Law Commission) developed the Uniform Firearms Act as a uniform act to prohibit concealed carry, which many states adopted.⁶ Today, though, the Uniform Law Commission no longer lists the Uniform Firearms Act as an available uniform law and has not adopted a replacement act.

Attitudes regarding concealed carry changed significantly over the decades that followed Congressional action.⁷ A few states began to adopt concealed carry laws, the first being Washington in 1961.⁸ The states that followed Washington typically allowed concealed carry only in limited circumstances.⁹ The major change came in 1987 when Florida passed its concealed carry law. Florida's law permits most citizens to qualify for a concealed carry permit and to carry in most places. This began a rush of other states adopting similar concealed carry laws.¹⁰ Adoptions hit a high between 1994-1996 when fourteen states adopted laws like Florida's.¹¹ Arkansas joined this mid-90s wave, passing Act 411 of 1995.

Shall Issue versus May Issue

A divergence emerged as states began creating concealed carry laws. States divided over one short auxiliary verb, "shall" versus "may." Some states said permits "may" be issued to citizens while others stated permits "shall" be issued. A "shall issue" concealed carry law uses an objective standard of criteria that generally means the state must grant a permit to any adult without a criminal background who passes a safety class.¹² A "may issue" law uses subjective criteria allowing, but not requiring, the issuance of a permit.¹³ "May issue" states typically require the applicant to demonstrate a need for the concealed weapon, often because of a hazardous occupation.

Arkansas established its concealed carry law as "shall issue."¹⁴ This means Arkansas will issue a permit to citizen who meets certain basic, objective criteria. The current criteria are:

1. Arkansas resident for at least 90 days (except active duty military and spouses);
2. Either 21 years old or 18 years old and a member of the military;
3. No mental or physical infirmity preventing the safe handling of a handgun;
4. Not threatened or attempted suicide;

⁵ *Id.*

⁶ *Id.*

⁷ David B. Kopel, [The Great Gun Control War of the Twentieth Century—and its Lessons for Gun Laws Today](#), 39 Fordham Urban L.J. 1527 (2012).

⁸ Joseph A. Wegenka, [Concealed Handgun Laws in the United States](https://www.wku.edu/mae/documents/econ596-wegenka.pdf), <https://www.wku.edu/mae/documents/econ596-wegenka.pdf> (accessed 11-16-17).

⁹ *Id.*

¹⁰ Craig Chval, [Concealed Carry Laws: Violent Crime Deterrent or Stimulant?](https://economics.nd.edu/assets/165124/craig_chval_concealed_carry_laws_bernoulli.pdf), https://economics.nd.edu/assets/165124/craig_chval_concealed_carry_laws_bernoulli.pdf (accessed 11-16-17).

¹¹ Wegenka, [Concealed Handgun Laws in the United States](#).

¹² David B. Kopel, [The Licensing of Concealed Handguns for Lawful Protection: Support from Five State Supreme Courts](#), 68 Alb. L. Rev. 305, 305 (2005).

¹³ Thomas E. J. "Tobie" Hazard, [In the Crosshairs: Colorado's New Gun Laws](#), Colo. Law., January 2004, at 11.

¹⁴ A Democrat governor with a Democrat controlled house and senate passed the original law. A Republican governor with a Republican controlled house and senate has passed the legislation adopted since 2015.

5. Not convicted of a felony;
6. Criminal background check through the Arkansas State Police and the FBI;
7. Does not "chronically or habitually" abuse a controlled substance to the point of impairing normal faculties [an applicant is presumed to fail this requirement if he or she has been committed to a treatment facility or convicted of a substance abuse related crime within the preceding three years];
8. Does not "chronically or habitually" abuse alcohol to the point of impairing normal faculties [an applicant is presumed to fail this requirement if he or she has been committed to a treatment facility or convicted of two or more alcohol related crimes within the preceding three years];
9. Desires a legal means to carry a concealed handgun for self-defense;
10. Has not been adjudicated mentally incompetent;
11. Has not been committed to a mental health treatment facility;
12. Is not a fugitive from justice;
13. Does not have an active warrant for his or her arrest;
14. Has satisfactorily completed a training course; and
15. Signs a statement of allegiance to the United States Constitution and the Arkansas Constitution.¹⁵

Prohibited Place

Arkansas allows permit holders to carry a concealed handgun anywhere except for a relatively short list of specific places.¹⁶ The original 1995 act provided a list of eighteen prohibited places:

1. Police stations;
2. Buildings of the Arkansas Highway and Transportation Department ("AHTD")¹⁷ or any parking lots or grounds adjacent to such buildings;
3. Prisons or jails;
4. Courthouses (except for judges);¹⁸
5. Polling places;
6. Meeting place of the governing body of any governmental entity;
7. Any meeting of the legislature or a legislative committee;
8. Any building containing a state office;
9. Any public park (except for shooting competitions);
10. Any athletic event (except for shooting competitions);

¹⁵ Ark. Code Ann. § 5-73-309 (West).

¹⁶ Ark. Code Ann. § 5-73-306 (West).

¹⁷ The Arkansas Highway and Transportation Department recently changed its name to the Arkansas Department of Transportation. However, most references in this article are to the old name, so the AHTD abbreviation is used throughout.

¹⁸ Arkansas has long permitted judges and other approved court personnel to carry weapons in courthouses. This once led to a famous incident where a supreme court justice ordered the bailiff to execute a disruptive woodpecker sitting on a window ledge.

11. Any facility selling alcohol for on-premises consumption;¹⁹
12. Schools, colleges, community colleges and university campuses;
13. Airports;
14. Churches and other places of worship;
15. Any place prohibited by federal law;
16. In parades or demonstrations;
17. Any place marked "carrying a handgun is prohibited;"
18. Any private home unless the occupant grants permission.²⁰

Since 1995, the Arkansas General Assembly, which meets in regular session every other year, has adopted more than a dozen acts modifying this list. The first changes came in 1997 when the General Assembly removed AHTD owned rest areas and weigh stations from the list of prohibited places.²¹ In 2003, the General Assembly removed public parks and restaurants that sell alcohol from the prohibited list.²² In 2007, the General Assembly removed office buildings with a mix of state offices and non-state offices from the prohibited list, though the prohibition remained for the portion of the building actually containing the state office.²³ In 2013, the General Assembly gave churches and other places of worship the right to permit concealed carry.²⁴ The same year, the General Assembly also gave church operated private schools the right to permit concealed carry.²⁵ In 2015, the General Assembly expanded this right to all private schools.²⁶

The 2015 General Assembly adopted several changes, including the earlier mentioned expansion of concealed carry to all private schools. Act 1175 removed polling places from the prohibited list.²⁷ Act 1259 granted courthouse employees the right to conceal carry at work.²⁸ Act 1078 created a new exception for publicly owned parking lots.²⁹ This exception allows permit holders to keep a gun in a locked car in a public parking lot and allows permit holders to have a gun in the car while picking up children at a school. This exception does not apply to parking lots owned by the Department of Correction and the Department of Community Correction.³⁰ However, the exception expressly includes parking lots of colleges, community colleges and universities.³¹

¹⁹ A recent Arkansas Attorney General Opinion addressed whether a publicly owned building where alcohol was consumed could prohibit individuals with concealed-carry licenses from possessing concealed carry licenses on the premises. See [Attachment A](#).

²⁰ WEAPONS LICENSES TO CARRY CONCEALED WEAPONS, 1995 Arkansas Laws Act 411 (H.B. 1088).

²¹ WEAPONS—CONCEALED WEAPONS LICENSES, 1997 Arkansas Laws Act 1239 (H.B. 1640).

²² CONCEALED HANDGUN, 2003 Arkansas Laws Act 1110 (H.B. 1359).

²³ WEAPONS—CONCEALED HANDGUNS—LICENSES AND PERMITS, 2007 Arkansas Laws Act 664 (H.B. 1163).

²⁴ CHURCHES—CONCEALED HANDGUNS—PROHIBITIONS, 2013 Arkansas Laws Act 67 (S.B. 71).

²⁵ PRIVATE SCHOOLS—CHURCHES—CONCEALED HANDGUN CARRY, 2013 Arkansas Laws Act 1390 (S.B. 896).

²⁶ CONCEALED CARRY PERMITS—SCHOOL BUILDINGS AND GROUNDS—PRIVATE SCHOOLS, 2015 Arkansas Laws Act 933 (H.B. 1372).

²⁷ POLLS AND POLLING PLACES—CONCEALED CARRY LICENSE—HANDGUNS, 2015 Arkansas Laws Act 1175 (H.B. 1432).

²⁸ COURTHOUSES—COUNTY OFFICERS AND EMPLOYEES—CONCEALED CARRY LICENSEES, 2015 Arkansas Laws Act 1259 (S.B. 159).

²⁹ WEAPONS—CONCEALMENT—LICENSES AND PERMITS, 2015 Arkansas Laws Act 1078 (H.B. 1505)

³⁰ *Id.*

³¹ *Id.*

Campus Carry

Some authors trace the impetus for college campus carry to the 2007 massacre on the Virginia Tech campus where a gunman killed thirty-two people and wounded seventeen.³² Some believe that this massacre, and others like it, could have been prevented or stopped if armed citizens could intervene.³³ Others have also argued that permitting concealed carry could help women on college campuses protect themselves from sexual assault.³⁴

As of the writing of this article, twenty-three states permit concealed carry on campus at the discretion of the individual college.³⁵ Eleven states now have laws permitted campus carry regardless of the preference of the college, namely: Arkansas, Colorado, Georgia, Idaho, Kansas, Mississippi, Oregon, Tennessee (faculty only), Texas, Utah and Wisconsin.³⁶

Arkansas first joined the campus carry debate in 2013 when the General Assembly added a new section to the concealed carry law to permit carry on public university, college and community colleges under certain circumstances.³⁷ Thirty representatives and two senators sponsored Act 226 of 2013.³⁸ The Act took exactly two weeks after introduction to pass the House and received Senate approval ten days later, going through the entire process from introduction to adoption in twenty-four days. The Act passed the House with a vote of 70 for and 11 against with 19 not voting or voting present. The Act passed the Senate with a vote of 31 for and 4 against, though one of the members voting for the Act later wrote an official letter into the record claiming that he accidentally voted for the bill because he was distracted but really meant to vote against it. Even discounting this distracted senator, the Act still had enormous support with 70% approval in the House and more than 85% approval in the Senate.

Act 226 added the following section to Arkansas's concealed carry laws:

5–73–322. Concealed handguns in a university, college, or community college building.

(a) As used in this section:

(1)(A) "Public university, public college, or community college" means an institution that:

- (i) Regularly receives budgetary support from the state government;
- (ii) Is part of the University of Arkansas or Arkansas State University systems; or

³² <https://www.thetrace.org/2017/04/campus-carry-movement-to-allow-guns-on-college-grounds-explained/> (accessed 11-20-17)

³³ *Id.*

³⁴ <http://www.businessinsider.com/states-that-allow-guns-on-college-campuses-2017-4> (accessed 11-20-17)

³⁵ <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx> (accessed 11-20-17)

³⁶ *Id.*

³⁷ CONCEALED HANDGUN CARRY—COLLEGES AND UNIVERSITIES—FACULTY AND STAFF, 2013 Arkansas Laws Act 226 (H.B. 1243).

³⁸ The Arkansas General Assembly has one hundred representatives and thirty-five senators.

(iii) Is required to report to the Arkansas Higher Education Coordinating Board.

(B) "Public university, public college, or community college" does not include a private university or private college solely because:

(i) Students attending the private university or private college receive state-supported scholarships; or

(ii) The private university or private college voluntarily reports to the Arkansas Higher Education Coordinating Board; and

(2) "Staff member" means a person who is not enrolled as a full-time student at the university, college, or community college and is either employed by the university, college, or community college full time or is on a nine-month or twelve-month appointment at the university, college, or community college as a faculty member.

(b) A licensee may possess a concealed handgun in the buildings and on the grounds, whether owned or leased by the public university, public college, or public community college, of the public university, public college, or public community college where he or she is employed unless otherwise prohibited by § 5-73-306 if:

(1) He or she is a staff member; and

(2)(A) The governing board of the public university, public college, or public community college does not adopt a policy expressly disallowing the carrying of a concealed handgun by staff members in the buildings or on the grounds of the public university, public college, or public community college and posts notices as described in § 5-73-306(19).

(B) A governing board of the public university, public college, or public community college may adopt differing policies for the carrying of a concealed handgun by staff members for different campuses, areas of a campus, or individual buildings of the public university, public college, or public community college for which the governing board is responsible.

(C) A policy disallowing the carrying of a concealed handgun by staff members into the public university, public college, or public community college expires one (1) year after the date of adoption and must be readopted each year by the governing board of the public university, public college, or public community college to remain in effect.

(c) A licensee may possess a concealed handgun in the buildings and on the grounds of the private university or private college where he or she is employed unless otherwise prohibited by § 5-73-306 if:

(1) He or she is a staff member; and

(2) The private university or private college does not adopt a policy expressly disallowing the carrying of a concealed handgun in the buildings and on the grounds of the private university or private college and posts notices as described in § 5-73-306(19).

(d) The storage of a handgun in a university or college-operated student dormitory or residence hall is prohibited, under § 5-73-119(c).³⁹

³⁹ CONCEALED HANDGUN CARRY—COLLEGES AND UNIVERSITIES—FACULTY AND STAFF, 2013 Arkansas Laws Act 226 (H.B. 1243).

This new section ostensibly gave college staff members with a concealed carry permit the right to carry a gun on campus. The clause permitting colleges to adopt a policy expressly disallowing concealed carry spurred the next round of fighting over campus carry. In short order, every major college in the state adopted a policy to opt out of concealed carry.⁴⁰

By 2015, the nearly universal adoption of college policies prohibiting guns effectively eviscerated the existing campus carry law. The General Assembly responded meekly in 2015 with Act 1155 by enacting only a relatively minor change to extend campus carry to private community colleges.⁴¹ As previously mentioned, the 2015 General Assembly also adopted Act 1078 permitting handguns to be left in locked cars on college campuses. The General Assembly's desire to expand concealed carry rights clashed with the loophole in the 2013 act used by colleges to keep guns off campus. This set the stage for a major showdown in 2017.

The 2017 Showdown

The General Assembly adopted four acts in 2017 aimed at expanding concealed carry rights. These acts included the General Assembly's response to the colleges and universities that adopted policies banning guns.

Act 1090 constituted the most minor of these acts. This act just expanded the right to carry in courthouses to justices of the peace and any governmental employee whose office is in a courthouse, even if the person is not a court employee as previously required.

The 2017 Showdown: Act 1071

Things heated up with Act 1071, which begins with the uncodified preamble:

It is the intent of this act to reinforce and protect the right of each citizen to lawfully transport and store a handgun within his or her private motor vehicle for lawful purposes in any place where the private motor vehicle is otherwise permitted to be located."⁴²

This act expressly permits employees with a concealed carry permit to keep a gun locked in a car and prevents private employers from creating rules or conditions of employment to circumvent the legislative intent. The act requires that all private employers permit a gun to be left in a locked car if the concealed carry permit holder complies with certain requirements. These requirements include storing the gun out of sight in a locked storage container located in a locked car. The act provides a very narrow list of exceptions where an employer can prevent a gun from being kept in a car. The two main exceptions are: 1. If the employer owns the vehicle; or 2. If the employee is the subject of an active or pending employment disciplinary proceeding.⁴³

⁴⁰ <http://college.usatoday.com/2017/03/24/arkansas-just-voted-to-allow-concealed-carry-on-college-campuses/> (accessed 11-20-17).

⁴¹ TECHNICAL CORRECTIONS—TITLE 5—CRIMINAL OFFENSES, 2015 Arkansas Laws Act 1155 (S.B. 123).

⁴² WEAPONS—CONCEALED HANDGUN LICENSEE—POSSESSION, 2017 Arkansas Laws Act 1071 (S.B. 37).

⁴³ *Id.*

The 2017 Showdown: Act 562

In broad and far-reaching legislation, the General Assembly took direct aim at the recalcitrant colleges and universities with Act 562. Act 562 creates a new type of "endorsed" concealed carry permit.⁴⁴ The endorsed concealed carry permit starts with the basic permit but requires the permit holder to also complete an additional training course of no more than eight (8) hours approved by the Director of the Arkansas State Police.⁴⁵ A permit holder is not required to renew the endorsement once obtained.⁴⁶ As of January 2018, the Arkansas State Police are still developing the format of the additional training course. So far, the Arkansas State Police have only released a preliminary draft for public comment.⁴⁷

Under Act 562, the holder of an endorsed carry permit may enter the following places that are prohibited to ordinary concealed carry permit holders:

1. A bar unless the bar posts a prohibition notice;
2. A church or other place of worship unless the church posts a prohibition notice;
3. A public university, public college and community colleges;
4. Public buildings;
5. Meeting places of governing bodies;
6. State offices;
7. Athletic events;
8. An airport terminal; and
9. Parades.

After reconciling this list with the list that applies to all concealed carry permittees, this means that the following places remain prohibited to endorsed carry permittees: police stations, AHTD buildings (except rest areas and weigh stations), jails, prisons, courthouses (except government employees who work in the courthouse), courtrooms (except judges), K-12 schools (except private schools that grant permission), places where carrying a firearm is prohibited by federal law, businesses with signs prohibiting guns (except parking lots) and areas designated by the Arkansas State Police as "firearm-sensitive." This "firearm-sensitive" category is discussed extensively below in the context of Act 859.

The General Assembly also responded to the liability concerns of businesses and landowners who allow concealed carry with new immunity language.⁴⁸ Though businesses may

⁴⁴ The statute and this article use the term "endorsed." The draft regulations from the Arkansas State Police use the phrase "enhanced license" instead.

⁴⁵ Ark. Code Ann. § 5-73-322(g) (West).

⁴⁶ Ark. Code Ann. § 5-73-322(g)(2)(A)(i) (West).

⁴⁷ Arkansas State Police Rule 13.3 proposed October 11, 2017. The draft proposes an eight-hour training course with six hours of classroom instruction and two hours of live-fire range activities. The classroom instruction will be primarily a review of the legal requirements with practical instruction such as techniques for weapon retention. The live-fire range activities require the applicant to obtain a score of at least 70% shooting twenty rounds from three yards, twenty rounds from seven yards and ten rounds from fifteen yards. The applicant may attempt the test three times but must wait six months to retest if unsuccessful after the third attempt.

⁴⁸ CONCEALED HANDGUNS—PUBLIC UNIVERSITIES—PUBLIC COLLEGES, 2017 Arkansas Laws Act 562 (H.B. 1249).

elect to post signs prohibiting guns, Act 562 encourages fewer businesses to do so by providing tort immunity. The act provides that the both business and building owners are immune from injuries occurring because of an incident involving a concealed carry gun.

While immunity is a significant part of Act 562, the real crux of the act is the revival of campus carry. This act expands campus carry to all endorsed permit holders, not just staff members as provided in the 2013 version of the law.⁴⁹ The act, however, prohibits storing a gun in a college-operated student dormitory or residence hall.

Act 562 continues to permit private colleges to adopt policies prohibiting campus carry. The act, however, removes this right from public colleges. Public colleges may only prohibit concealed carry at official meetings being conducted in accordance with documented grievance and disciplinary procedures. A skeptical General Assembly feared the public colleges would abuse this potential loophole. The act places significant limits on declaring an official meeting where guns are prohibited. To qualify, the meeting must meet the following requirements:

1. The meeting must concern a documented grievance or disciplinary procedure.
2. The meeting cannot last more than nine hours;
3. All participants must be given at least 24 hours' notice of the official meeting;
4. Notice that guns are prohibited must be posted on the door of or entryway into the location of the official meeting; and
5. The area of the building hosting the meeting must be no larger than necessary to complete the grievance or disciplinary meeting.

In August 2017, the University of Arkansas system adopted a policy incorporating the new provisions of the act.⁵⁰ The policy essentially recites the law. Notably though, the policy points out that employees who bring a gun on campus (except for security personnel) are liable for any injuries that result from having the gun and do not qualify for workman's compensation from gun related injuries. The University of Arkansas's main campus in Fayetteville also created a website to provide information to students and employees about campus carry.⁵¹

Enter the Razorbacks

Act 562 passed by a vote of 71-22 in the House and 18-9 in the Senate. These comfortable margins were no match, though, for the brewing storm. The storm began with Southeastern Conference Commissioner Greg Sankey issuing a statement:

The University of Arkansas is a valued member of the Southeastern Conference and has a long history of working with public safety officials to provide a safe environment for intercollegiate athletic competition.

⁴⁹ *Id.*

⁵⁰ <https://www.uasys.edu/wp-content/uploads/sites/16/2016/04/UASP-290.1-Weapons.pdf> (accessed 12-7-17).

⁵¹ <https://safety.uark.edu/campus-carry/index.php> (accessed 12-7-17).

It is our desire to see athletic events and sports venues exempted from HB 1249 [i.e., Act 562].

Given the intense atmosphere surrounding athletic events, adding weapons increases safety concerns and could negatively impact the intercollegiate athletics program at the University of Arkansas in several ways, including scheduling, officiating, recruiting and attendance.

HB 1249 creates concerns for the Southeastern Conference and its member institutions. It remains our collective desire to provide a safe environment for student-athletes, coaches, officials and fans, and will continue to closely monitor the status of this legislation.⁵²

The General Assembly clearly understood the implication of this statement. The SEC would consider banning the Arkansas Razorbacks from holding home games or hosting tournaments if Act 562 allowed guns at SEC athletic events. There is no doubt that gun rights are sacred in Arkansas. There is, however, also no doubt that the Razorbacks are sacred in Arkansas. A contest for supremacy arose between these two sacrosanct subjects.

This clash resulted in Act 859, the final gun legislation of 2017. Act 859 is basically a somewhat obfuscated attempt to prohibit concealed carry at college sports events. Act 859's exclusion extends to public colleges, the Arkansas State Hospital (i.e., the state's psychiatric hospital) and the University of Arkansas for Medical Sciences (UAMS) (i.e., the state's medical school, which also serves as a public hospital). The Act defines "collegiate athletic events" as:

sporting or athletic contest, event, or practice of an individual or team of individuals in which one (1) or more individuals or a team of individuals sponsored by, funded by, represented by, or associated with a public or private university, college, or community college competes against themselves or another individual or team of individuals.⁵³

Act 859's exclusion requires an application to the Arkansas State Police to designate the venue a "firearm-sensitive area." To apply for the designation, a college must submit a detailed security plan and provide the security measures called for in the plan. The plan must include the following:

- (A) Total projected attendance;
- (B) Number of entrances and exits;
- (C) Number of on-site private security personnel;
- (D) Number of on-site law enforcement officers;
- (E) Number of on-site first responders;
- (F) Location of parking areas and number of motor vehicles projected to use the parking areas;

⁵² <https://www.cbssports.com/college-football/news/sec-stands-behind-exemption-to-arkansas-law-allowing-guns-in-college-stadiums/> (accessed 11-29-17).

⁵³ WEAPONS—CONCEALED HANDGUNS—POSSESSION, 2017 Arkansas Laws Act 859 (S.B. 724).

- (G) Routes for emergency vehicles;
- (H) Locations of all restrooms, stairs, and elevators;
- (I) Evacuation procedures;
- (J) Security communication protocol;
- (K) Location of emergency vehicles;
- (L) Public communication protocol; and
- (M) Bomb threat and active shooter procedures.⁵⁴

The plan must include the following security measures:

- (1) Security personnel or law enforcement officers on-site;
- (2) Use of a magnetometer or other metal-detecting device designed to detect a weapon;
- (3) Barricades; or
- (4) Other measures or devices designed to protect the public from a security threat.⁵⁵

The college must apply for the firearm-sensitive area designation annually for regularly scheduled events or must apply no later than five (5) days before other events. The Arkansas State Police has ten (10) days to approve or deny the annual plan and seventy-two (72) hours after receipt of the application to approve or deny other events. After the security plan is approved, the college must post a notification that firearms are prohibited in all designated areas. As an additional security measure, the security plan is exempt from public disclosure under the state's Freedom of Information Act to avoid potential bad actors learning about the security plan.

While Act 859 addresses the concerns of the Razorbacks and the SEC, the act leaves an interesting gap for high school and middle school sporting events held off campus. Arkansas has several large publicly-owned sporting venues, such as Verizon Arena (a 18,000-seat arena) and War Memorial Stadium (a 54,000-seat football field). These venues in Little Rock and similar ones across the state often host events such as high school tournaments. In the case of War Memorial Stadium, it also serves as the home playing field for Catholic High School for Boys, a local private school. Since these venues are public, they possibly cannot prohibit concealed carry under the new law as the collegiate exception does not apply to secondary education events. Similarly, it is unclear what happens when these venues host other non-collegiate events such as high school graduation ceremonies.

The Future

The battle over concealed carry in Arkansas is clearly not finished yet. The General Assembly has gone home until 2019, but the issue will continue to develop in the assembly's absence. The Arkansas State Police will soon finalize the requirements to obtain the endorsed permit necessary for campus carry. This will be followed by permits being issued and a real test of guns going to college with students. Hopefully, the guns on campus will actually make people

⁵⁴ *Id.*

⁵⁵ *Id.*

safer and prevent tragedy. Hopefully, the guns on campus will not lead to more terrible stories in the news.

ATTACHMENT A



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2017-062

February 9, 2018

The Honorable Bill Sample
State Senator
2340 North Highway 7
Hot Springs Village, AR 71909

Dear Senator Sample:

This is in response to your request for an opinion regarding Act 562 of 2017, which creates an enhanced licensing scheme for the carrying of concealed firearms and otherwise amends the privileges associated with concealed-carry licenses.¹ You ask two questions concerning the effect of Act 562 on public facilities where alcohol is served or consumed. I have slightly paraphrased the questions as follows:

- 1) Can a publicly owned building or facility that is licensed to dispense alcoholic beverages as described at Ark. Code Ann. § 5-73-306(11) prohibit individuals with concealed-carry licenses (including enhanced licenses under Ark. Code Ann. § 5-73-322(g)) from possessing concealed firearms on the premises?
- 2) Can a publicly owned building or facility where beer or light wine is consumed, as described at Ark. Code Ann. § 5-73-306(12), prohibit individuals with concealed-carry licenses (including enhanced licenses under Ark. Code Ann. § 5-73-322(g)) from possessing concealed firearms on the premises?

¹ The enhanced licensing scheme will be codified at Ark. Code Ann. § 5-73-322(g). Acts 2017, No. 562, § 6. Act 562 takes effect on September 1, 2017. *Id.* at § 8.

RESPONSE

The answer to both of these questions is “yes,” in my opinion. But before analyzing your specific questions, it will be beneficial to state the general rules governing concealed firearms in places where alcohol is served or consumed:

1. A “conventional” concealed-carry license does not authorize possession of a concealed firearm in any building or facility licensed to dispense alcohol, or in any building or facility where beer or light wine is consumed on the premises.
2. An “enhanced” concealed-carry license does not authorize possession of a concealed firearm in any building or facility licensed to dispense alcohol (or in any place where beer or light wine is consumed) where the establishment has posted a written notice banning concealed firearms.

DISCUSSION

Question 1: Can a publicly owned building or facility that is licensed to dispense alcoholic beverages as described at Ark. Code Ann. § 5-73-306(11) prohibit individuals with concealed-carry licenses (including enhanced licenses under Ark. Code Ann. § 5-73-322(g)) from possessing concealed firearms on the premises?

Yes. By means of a posted, written notice, a publicly owned building or facility licensed under Ark. Code Ann. § 5-73-306(11) to dispense alcoholic beverages² may prohibit individuals with concealed-carry licenses from possessing concealed firearms on the premises. A posted notice would be effective with respect to holders of enhanced concealed-carry licenses, as well as holders of conventional licenses. I reach this conclusion based on the plain language of Act 562 of 2017 (“Act”) and the concealed-carry statutes it amends.³

Your question is one of statutory interpretation, and so the primary task is to “give effect to the intent of the General Assembly” by construing Act 562 “just as it

² Ark. Code Ann. § 5-73-306(11) pertains to “portion[s] of an establishment, *except a restaurant as defined in § 3-5-1202*, licensed to dispense alcoholic beverages . . .” (emphasis added). Throughout this opinion, reference to establishments licensed to dispense alcoholic beverages specifically excludes all “restaurant[s] as defined in § 3-5-1202.”

³ The regulations promulgated by the Arkansas State Police and Alcoholic Beverage Control further support this conclusion.

reads.”⁴ To the extent the Act “conveys a clear and definite meaning, there is no need to resort to the rules of statutory construction.”⁵ But if the Act is ambiguous—for example, if sections pertaining to the same subject matter are “internally inconsistent”⁶—then the inconsistencies are resolved by “giv[ing] effect to the specific statute over the general.”⁷ And in all events, Act 562 “must be read in ... context and with a view to [its] place in the overall statutory scheme”⁸ governing concealed firearms.

Enhanced Concealed-Carry License Under Act 562

The “enhanced” license referred to in the Act’s title⁹ is defined in Section 6, which amends the Arkansas Code as it relates to possession of concealed firearms at institutions of higher learning:

A licensee who intends to carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college is required to complete a training course approved by the Director of the Department of Arkansas State Police. ... A licensee who completes a training course under this subsection shall be given a concealed carry endorsement ... that the person is permitted to possess and carry a concealed handgun in the buildings and on

⁴ *Brock v. Townsell*, 2009 Ark. 224, *9, 309 S.W.3d 179, 185-86 (2009) (internal citations omitted).

⁵ *Id.* (noting that a court must “construe[] the statute so that no word is left void, superfluous, or insignificant,” such that if possible, “meaning and effect are given to every word.”).

⁶ *ACW, Inc. v. Weiss*, 329 Ark. 302, 312-13, 947 S.W.2d 770, 775 (1997) (internal citations omitted).

⁷ *Searcy Farm Supply, LLC v. Merchants & Planters Bank*, 369 Ark. 487, 492, 256 S.W.3d 496, 501 (2007).

⁸ *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 666 (2007) (internal quotations omitted); accord *Weiss*, 329 Ark. at 312-13, 947 S.W.2d at 775 (“[O]ur review now turns to an examination of the whole Act, reconciling provisions to make them consistent, harmonious, and sensible in an effort to give effect to every part.”).

⁹ Acts 2017, No. 562 (“For An Act To Be Entitled ‘An Act ... Concerning Other Privileges Associated With an Enhanced License to Carry a Concealed Handgun.’”).

the grounds of a public university, public college, or community college.¹⁰

The Act then states that the holder of an enhanced license “is exempted from the prohibitions and restrictions on ... [c]arrying a [concealed handgun] in a publicly owned building or facility under § 5-73-122 ... and ... [c]arrying a concealed handgun in a prohibited place listed under § 5-73-306(7)-(12), (14), (15), and (17).”¹¹ The list of “prohibited place[s]” includes establishments licensed to dispense alcoholic beverages on the premises.¹²

Under Act 562, it is no longer punishable as a crime for enhanced-license holders to carry concealed firearms in certain public areas (like public universities, colleges, and community colleges).¹³ For this reason, the Act has created confusion about whether concealed firearms can be carried in other places—namely, establishments licensed to dispense alcoholic beverages.

¹⁰ *Id.*, § 6 (amending subsection (g) of Ark. Code Ann. § 5-73-322 (“Concealed handguns in a university, college, or community college building.”)).

¹¹ Acts 2017, No. 562, § 6 (adding the quoted language as subsection (h) of Ark. Code Ann. § 5-73-322); *cf.* Acts 2017, No. 562, § 1 (amending Ark. Code Ann. § 5-73-122(a)(3)(D) to state that for certain locations, “this subsection does not apply to a person carrying or possessing a firearm or other deadly weapon in a publicly owned building or facility or on the State Capitol grounds ... [i]f the person has completed the required training and received a concealed carry endorsement under § 5-73-322(g).”).

¹² *See* Ark. Code Ann. § 5-73-306(11). Prior to Act 562, Ark. Code Ann. § 5-73-306 provided that “[n]o license to carry a concealed handgun issued pursuant to this subchapter authorizes any person to carry a concealed handgun” into certain locations. Ark. Code Ann. § 5-73-306 (“Prohibited places.”). Section 5-73-306 enumerated a total of 17 locations where concealed-carry license holders were prohibited from carrying a concealed handgun, regardless of whether a written notice banning handguns was posted. And a licensee’s “[f]ailure to comply ... is a ground(s) for suspension and/or revocation of the Arkansas concealed handgun carry license.” Ark. Admin. Code § 130.00.8-7.0 (“Failure to Comply with Concealed Handgun Carry License Restrictions.”).

¹³ *See* Acts 2017, No. 562, § 1 (amending Ark. Code Ann. § 5-73-122(a)(3)(D) to state that “this subsection does not apply to a person carrying or possessing a firearm or other deadly weapon in a publicly owned building ... [i]f the person has ... received a concealed carry endorsement under § 5-73-322(g).”). However, a number of criminal statutes could apply to an individual carrying a concealed firearm (or a firearm in plain view). *See* Op. Att’y Gen. 2015-064 (cautioning that “any person who carries a weapon should be aware that a law enforcement officer might inquire into that person’s purpose.”); Addendum to Op. Att’y Gen. 2015-064 (“Principal Laws Limiting Open Carry of Handguns.”).

Indeed, Act 562 exempts holders of enhanced concealed-carry licenses “from the prohibitions ... on ... [c]arrying a concealed handgun in a prohibited place listed” at § 5-73-306(11)(A),¹⁴ which corresponds to an “establishment ... licensed to dispense alcoholic beverages ... on the premises.”¹⁵ But the Act also creates subsection 306(11)(B), which prohibits:

[a] person with a concealed carry endorsement under § 5-73-322(g) ... who is carrying a concealed handgun [from] enter[ing] an establishment under this section if the establishment ... places a written notice as permitted under subdivision (18) of this section ... prohibiting a person with a license to possess a concealed handgun at the physical location.¹⁶

Reading these sections together such that “no word is left void, superfluous, or insignificant,”¹⁷ I conclude that a publicly owned facility licensed to dispense alcohol may post a written notice in order to prevent individuals with enhanced concealed-carry licenses from possessing concealed firearms on the premises. According to Act 562, such a written notice is specifically effective as to “person[s] with a concealed carry endorsement under § 5-73-322(g).”¹⁸ And “the more specific prevails over the more general” when two statutes address the same subject matter.¹⁹ Thus, the authority to post a written notice supersedes an enhanced-license holder’s general privilege to carry a concealed firearm in “certain prohibited place[s],” including establishments that are licensed to dispense alcoholic beverages.²⁰ It is important to note an enhanced license *does not* entitle its holder to carry a concealed firearm in an alcohol-dispensing

¹⁴ Acts 2017, No. 562, § 6 (creating subdivision codified as Ark. Code Ann. § 5-73-322(h)(2)).

¹⁵ *Id.* at § 3 (creating subdivision codified as Ark. Code Ann. § 5-73-306(11)(A)).

¹⁶ *Id.* (creating subdivision codified as Ark. Code Ann. § 5-73-306(11)(B)).

¹⁷ *Brock*, 2009 Ark. 224 at *9, 309 S.W.3d 185-86.

¹⁸ Acts 2017, No. 562, § 3 (codified as Ark. Code Ann. § 5-73-306(11)(B)).

¹⁹ *Benton v. Gunter*, 342 Ark. 543, 546, 29 S.W.3d 719, 720-21 (2000).

²⁰ Acts 2017, No. 562, § 6 (creating subdivision codified as Ark. Code Ann. § 5-73-322(h)(2)).

establishment that has *posted a notice prohibiting handguns*.²¹ This written notice would be effective for both publicly and privately owned alcohol-dispensing establishments.²²

However, legislation concurrent with Act 562 indicates that a *privately* owned alcohol-dispensing establishment is not limited to written notices. Act 859 of 2017 further modifies § 5-73-306(11) such that facilities licensed to dispense alcohol “owned or operated by a private entity ... may provide written or verbal notification ... that carrying of a concealed handgun is prohibited.”²³ Thus, a privately owned alcohol-dispensing facility can prohibit firearms by verbal warning or written notice.

Conventional Concealed-Carry License Under Act 562

A public building or facility licensed to dispense alcohol may, by means of the same written notice, prohibit concealed firearms carried by conventional-license holders. Furthermore, although Act 562 established “privileges associated with an enhanced license to carry a concealed handgun,”²⁴ it left in place the statutory limitations on conventional concealed-carry licenses. These limitations include the prohibition on firearms in a public facility generally, including associated

²¹ See Ark. Code Ann. § 5-73-306(11)(B). Prior to Act 562, it was unnecessary for places listed at Ark. Code Ann. §§ 5-73-306(1)-(17) to post written notices in order to prevent concealed firearms on the premises. These places were simply prohibited to concealed firearms.

²² Regulations addressing firearms and alcohol do not distinguish in any way between public and private entities. And just as Act 562 authorizes an alcohol-dispensing establishment to post a written notice prohibiting handguns, the alcohol-dispensing permit itself may be “cancelled, suspended, [or] revoked” if the permittee “allowed, or knew, or reasonably should have known, that any person without a possessory or proprietary interest in the permitted outlet was in possession of a weapon on the permitted premises.” Ark. Code Ann. § 5-73-306(11); Ark. Admin. Code § 006.02.1-1.79(33). Likewise, the State Police cannot issue a concealed-carry license in the first place if the applicant “chronically or habitually use[s] an alcoholic beverage.” Ark. Admin. Code § 130.00.8-4.0(j). Finally, the concealed-carry license must be revoked if the State Police are notified “that a licensee has been found guilty or has pleaded guilty or ‘nolo contendere’ to an alcohol-related offense committed while carrying a handgun.” *Id.* at § 130.00.8-9.0(a)(3).

²³ Acts 2017, No. 859, § 6 (enacting Ark. Code Ann. § 5-73-306(19)). See also *id.* at § 4 (stating that privately owned establishments may “either place[] a written notice as permitted under subdivision (18) of this section or provide[] notice under subdivision (19) of this section ...”).

²⁴ Acts 2017, No. 562 (Title).

criminal penalties;²⁵ the prohibition on firearms in an alcohol-dispensing facility specifically (one of the places into which “[n]o license to carry a concealed handgun ... authorizes any person to carry a concealed handgun”);²⁶ and the residual authority of the “person or entity exercising control over the physical location of the place” to post a written notice prohibiting possession of concealed firearms.²⁷ In light of these statutes, it is my opinion that holders of conventional licenses may not carry a concealed firearm in a publicly owned alcohol-dispensing facility, whether or not that facility has posted a written notice under § 5-73-306(11)(B) and (18).

Question 2: Can a publicly owned building or facility where beer or light wine is consumed, as described at Ark. Code Ann. § 5-73-306(12), prohibit individuals with concealed-carry licenses (including enhanced licenses under Ark. Code Ann. § 5-73-322(g)) from possessing concealed firearms on the premises?

Yes. Act 562 treats facilities where beer or light wine is consumed identically to facilities licensed to dispense alcohol.²⁸ In my opinion, a written notice would be effective in prohibiting enhanced-license holders from possessing concealed firearms in a public building or facility where “beer or light wine is consumed on the premises.”²⁹ And conventional-license holders could not possess a concealed firearm in such a facility, with or without a written notice.³⁰

Act 562 splits subsection 306(12) into subparts, just as it did with subsection 306(11). The first part of subsection 306(12) states that a conventional concealed-carry license does not “authorize[] any person to carry a concealed handgun into

²⁵ Ark. Code Ann. § 5-73-122.

²⁶ Ark. Code Ann. § 5-73-306(11)(A); *but see id.* at § 306(11)(B) (regarding the necessity of a written notice to prohibit concealed firearms carried by holders of an enhanced license).

²⁷ *Id.* at § 306(18).

²⁸ Ark. Code Ann. § 5-73-306(12) pertains to “portion[s] of an establishment, *except a restaurant as defined in § 3-5-1202*, where beer or light wine is consumed on the premises...” (emphasis added). Reference in this opinion to establishments where beer or light wine is consumed on the premises specifically excludes all “restaurant[s] as defined in § 3-5-1202.”

²⁹ *See id.* at § 306(12)(A).

³⁰ *Id.*

... an establishment, except a restaurant as defined in § 3-5-1202, where beer or light wine is consumed on the premises.”³¹ And Act 562 specifically adds the following to the second part of subsection 306(12):

A person with a concealed carry endorsement under § 5-73-322(g) and who is carrying a concealed handgun may not enter an establishment under this section if the establishment places a written notice as permitted under subdivision (18) of this section prohibiting a person with a license to possess a concealed handgun at the physical location.³²

Thus, a written notice posted in an establishment where beer or light wine is consumed would deny entry to “[a] person with a concealed carry endorsement under § 5-73-322(g) who is carrying a concealed handgun.”³³ A written notice would likewise prohibit holders of a conventional concealed-carry license from entering the premises with a concealed firearm.³⁴ The authority to post written notices applies regardless of whether the establishment has public or private ownership.³⁵

Sincerely,



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³¹ Acts 2017, No. 562, § 3 (enacting Ark. Code Ann. § 5-73-306(12)(A)).

³² Acts 2017, No. 562, § 3 (enacting Ark. Code Ann. § 5-73-306(12)(B)).

³³ *Id.*; see also n.15 and accompanying text, *supra*.

³⁴ See Ark. Code Ann. § 5-73-306(18); *cf. id.* at § 306(12)(A) (“No license to carry a concealed handgun ... authorizes any person to carry a concealed handgun into ... [a]ny portion of an establishment ... where beer or light wine is consumed on the premises.”).

³⁵ *Id.* at §§ 306(12)(A), (18); see also Acts 2017, No. 859, § 4 (stating that private establishments under subsection 306(12) may provide written or “verbal notification ... that carrying of a concealed handgun is prohibited.”) (enacting Ark. Code Ann. § 5-73-306(19)).