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Bill Analysis
Legislative Service Commission

H.B. 498

123rd General Assembly
(As Introduced)

Reps. Callender, Jordan, Buchy, Roman, Hood, Vesper, Evans, Taylor, Williams, Trakas, Amstutz, Young, Clancy, Buehrer, A. Core, Cates, Womer Benjamin, Grendell, Netzley, Jacobson, Van Vyven, Terwilleger, Willamowski, Aslanides

BILL SUMMARY

- Grants a qualified immunity from civil liability in damages and injunctive relief to members of the firearms industry for harm sustained by any person as a result of the operation or discharge of a firearm.
- Specifies the circumstances in which a member of the firearms industry forfeits the immunity from civil liability and injunctive relief.
- Provides that the grant of qualified immunity does not limit the availability against members of the firearms industry of a product liability claim or a civil action for breach of contract or express warranty pertaining to firearms or their components or ammunition.
- Specifies that the grant of qualified immunity will be both prospective and retroactive in its application and declares the intent of the General Assembly that the severability provision of the Revised Code be applied if the Supreme Court declares the retroactive application unconstitutional.

CONTENT AND OPERATION

Immunity from liability in damages or injunctive relief

General immunity

The bill provides that, generally, a "member of the firearms industry" is not liable in damages in, and is not subject to a grant of injunctive relief in, a "tort" or other civil action for "harm" allegedly sustained by any "person" as a result of the operation or discharge of a "firearm." (See "Definitions," below, for the

definitions of the quoted terms.) Generally, a person who allegedly sustains harm as a result of the operation or discharge of a firearm or that person's personal representative does not have a claim for relief against, and may not recover damages or injunctive relief in a tort or other civil action against, a member of the firearms industry based upon that harm. (R.C. 2305.401(B)(1).)

Exceptions

Under the bill, a member of the firearms industry forfeits the above-described immunity from civil liability and injunctive relief under any of the following circumstances (R.C. 2305.401(B)(2) and (3)):

(1) If the member of the firearms industry operates or discharges the firearm that results in the harm that is the basis of the claim for relief in the tort or other civil action in a manner that constitutes negligence, willful or wanton misconduct, or intentionally tortious conduct or that constitutes a criminal violation of law;

(2) If the member of the firearms industry sells, lends, gives, or furnishes to any person, in violation of the statutory offense of unlawful transactions in weapons (see **COMMENT 1**) or improperly furnishing firearms to a minor (see **COMMENT 2**) or in violation of any other section of the Revised Code or of federal law, the firearm that results in the harm that is the basis for the claim for relief in the tort or other civil action.

Qualifications

The bill specifies the following qualifications for the above-described immunity from civil liability and injunctive relief granted to members of the firearms industry (R.C. 2305.401(C)(1), (2), and (3)):

(1) The grant of qualified immunity does not create a new cause of action or substantive legal right against a member of the firearms industry.

(2) The grant of qualified immunity does not limit the availability against a member of the firearms industry of a civil action that seeks damages for "harm" and that is based on a "product liability claim" authorized by the Product Liability Law (see **COMMENT 3**).

(3) The grant of qualified immunity does not limit the availability against a member of the firearms industry of a civil action for a breach of an express provision of a contract or of another agreement between persons, or a civil action for a breach of an express warranty, pertaining to firearms, firearms components, or firearms "ammunition" (see "**Definitions**," below).

Applicability of the bill

The bill specifies that R.C. 2305.401 (enacted by the bill) applies to tort or other civil actions commenced on or after the effective date of that section, or commenced prior to and pending on the effective date of the section, for damages or injunctive relief based upon harm allegedly sustained by any person as a result of the operation or discharge of a firearm prior to, on, or after the effective date of the section (R.C. 2305.401(D)).

The bill declares that it is the intent of the General Assembly in enacting the above-described division (D) of R.C. 2305.401 to provide for both the prospective and retroactive application of the qualified immunity from civil liability and injunctive relief provisions of R.C. 2305.401, as enacted by the act. If, however, the Ohio Supreme Court determines, in any litigation that may be commenced to contest the constitutionality of the qualified immunity from civil liability and injunctive relief provisions of R.C. 2305.401, that the retroactive application of those provisions would be violative of either the United States Constitution or the Ohio Constitution (see **COMMENT 4**), it is the intent of the General Assembly that the severability provision of *R.C. 1.59* (see **COMMENT 5**) be applied, that the qualified immunity from civil liability and injunctive relief provisions of divisions (A), (B), and (C) of R.C. 2305.401 (see "*Immunity from liability in damages or injunctive relief*," above) be severed from the unconstitutional provisions of division (D) of that section, and that the qualified immunity from civil liability and injunctive relief provisions of divisions (A), (B), and (C) of R.C. 2305.401 of the Revised Code be given prospective application consistent with R.C. 1.48 (see **COMMENT 6**). (Section 2.)

Definitions

For purposes of its provisions, the bill enacts the following definitions of terms (R.C. 2305.401(A)):

(1) "Ammunition" means any projectile capable of being expelled or propelled from a firearm by the action of an explosive or combustible propellant.

(2) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable. When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual

exercising control over the firearm. (R.C. 2923.11(B)--not in the bill but referred to in the bill.)

(3) "Harm" means injury, death, or loss to person or property, except as described above in paragraph (2) in "Qualifications" in "Immunity from liability in damages or injunctive relief." (See COMMENT 3.)

(4) "Member of the firearms industry" means trade associations of manufacturers, dealers, importers, or other persons interested in, and manufacturers, dealers, and importers of, firearms, firearms components, or firearms ammunition.

(5) "Person" includes an individual, corporation, business trust, estate, trust, partnership, and association (R.C. 1.59(C)--not in the bill but referred to in the bill) and additionally includes all governmental entities.

(6) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons.

COMMENT

1. The offense of unlawful transactions in weapons is committed by, among other acts, recklessly selling, lending, giving, or furnishing any firearm to any person prohibited by R.C. 2923.13 or R.C. 2923.15 (see below) from acquiring or using any firearm, or recklessly selling, lending, giving, or furnishing any dangerous ordnance to any person prohibited by R.C. 2923.13, 2923.15, or 2923.17 (see below) from acquiring or using any dangerous ordnance (R.C. 2923.20(A)(1)--not in the bill but referred to in the bill).

R.C. 2923.13 provides in relevant part as follows:

(A) Unless relieved from disability as provided in section 2923.14 of the Revised Code, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

(1) The person is a fugitive from justice.

(2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the

commission of an offense that, if committed by an adult, would have been a felony offense of violence.

(3) The person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.

(4) The person is drug dependent, in danger of drug dependence, or a chronic alcoholic.

(5) The person is under adjudication of mental incompetence.

R.C. 2923.15 prohibits any person, while under the influence of alcohol or any drug of abuse, from carrying or using any firearm or dangerous ordnance. R.C. 2923.17 generally prohibits any person from knowingly acquiring, having, carrying, or using any dangerous ordnance.

2. The offense of improperly furnishing firearms to a minor is committed by any person who does any of the following (R.C. 2923.21(A)--not in the bill but referred to in the bill):

(1) Sells any firearm to a person who is under 18 years of age;

(2) Subject to R.C. 2923.21(B) (see below), sells any handgun to a person who is under 21 years of age;

(3) Furnishes any firearm to a person who is under 18 years of age or, subject to R.C. 2923.21(B) (see below), furnishes any handgun to a person who is under 21 years of age, except for lawful hunting, sporting, or educational purposes, including, but not limited to, instruction in firearms or handgun safety, care, handling, or marksmanship under the supervision or control of a responsible adult;

(4) Sells or furnishes a firearm to a person who is 18 years of age or older if the seller or furnisher knows, or has reason to know, that the person is purchasing or receiving the firearm for the purpose of selling the firearm in violation of the prohibition described above in clause (1) to a person who is under

18 years of age or for the purpose of furnishing the firearm in violation of the prohibition described above in clause (3) to a person who is under 18 years of age;

(5) Sells or furnishes a handgun to a person who is 21 years of age or older if the seller or furnisher knows, or has reason to know, that the person is purchasing or receiving the handgun for the purpose of selling the handgun in violation of the prohibition described above in clause (2) to a person who is under 21 years of age or for the purpose of furnishing the handgun in violation of the prohibition described above in clause (3) to a person who is under 21 years of age;

(6) Purchases or attempts to purchase any firearm with the intent to sell the firearm in violation of the prohibition described above in clause (1) to a person who is under 18 years of age or with the intent to furnish the firearm in violation of the prohibition described above in clause (3) to a person who is under 18 years of age;

(7) Purchases or attempts to purchase any handgun with the intent to sell the handgun in violation of the prohibition described above in clause (2) to a person who is under 21 years of age or with the intent to furnish the handgun in violation of the prohibition described above in clause (3) to a person who is under 21 years of age.

Under R.C. 2923.21(B), the prohibitions described above in clauses (1) and (2) do not apply to the sale or furnishing of a handgun to a person 18 years of age or older and under 21 years of age if the person 18 years of age or older and under 21 years of age is a law enforcement officer who is properly appointed or employed as a law enforcement officer and has received firearms training approved by the Ohio peace officer training council or equivalent firearms training.

3. The Product Liability Law defines "harm" as death, physical injury to person, serious emotional distress, or physical damage to property other than the product involved and provides that economic loss is not "harm." (R.C. 2307.71(G).) The Product Liability Law also defines "product liability claim" as a claim that is asserted in a civil action and that seeks to recover compensatory damages from a manufacturer or supplier for death, physical injury to person, emotional distress, or physical damage to property other than the product involved, that allegedly arose from any of the following (R.C. 2307.71(M)):

(1) The design, formulation, production, construction, creation, assembly, rebuilding, testing, or marketing of that product;

(2) Any warning or instruction, or lack of warning or instruction, associated with that product;

(3) Any failure of that product to conform to any relevant representation or warranty.

4. Section 28 of Article II, Ohio Constitution, provides as follows:

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

5. The severability provision in the Revised Code is found in *R.C. 1.50*, not in *R.C. 1.59* as referred to in the bill. *R.C. 1.50* provides that if any provision of a section of the Revised Code or the application of the provision to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

6. Under *R.C. 1.48*, a statute is presumed to be prospective in its operation unless expressly made retrospective.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-16-99	p. 1369

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