



H.B. 610

123rd General Assembly
(As Introduced)

Reps. DePiero, Womer Benjamin, Vesper, Willamowski, Netzley, Buchy, Hollister, Hartnett, Flannery, Bender, Van Vyven, Sullivan, Perry, Trakas, Buehrer, Damschroder, Olman, Ford, Stevens, Distel, Jerse, Taylor, Grendell, Jordan

BILL SUMMARY

- Expands the exception to the prohibition against carrying concealed weapons by permitting officers, agents, and employees of Ohio, another state, or the United States, and law enforcement officers, who are authorized to carry concealed weapons to carry a concealed weapon when they are not acting within the scope of their duties.
- Expands the exceptions to the prohibition against illegal possession of a firearm in liquor permit premises by permitting officers, agents, and employees of Ohio, another state, or the United States, and law enforcement officers, who are authorized to carry firearms to possess a firearm in liquor permit premises when they are not acting within the scope of their duties.

CONTENT AND OPERATION

Carrying concealed weapons

Existing law

Prohibition and penalty. Existing law prohibits a person from knowingly carrying or having, concealed on his or her person or concealed ready at hand, any "deadly weapon" or "dangerous ordnance." A person who violates this prohibition is guilty of carrying concealed weapons, generally a misdemeanor of the first degree. If the offender previously has been convicted of carrying concealed weapons or of any "offense of violence," if the weapon involved is a "firearm" that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons is a felony

of the fourth degree. If the weapon involved is a firearm and the violation is committed at premises for which a D permit has been issued under the Ohio Liquor Law or if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons is a felony of the third degree. (R.C. 2923.12(A) and (D).) (For definitions of terms in quotes, see "Definitions," below.)

Exception. This prohibition does not apply to officers, agents, or employees of Ohio, any other state, or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance, and *acting within the scope of their duties* (R.C. 2923.12(B)). (For the definition of "law enforcement officer," see "Definitions," below.)

Affirmative defenses. Under existing law, it is an affirmative defense to a charge of carrying or having control of a weapon other than dangerous ordnance, that the actor was not otherwise prohibited by law from having the weapon, and that any of the following apply (R.C. 2923.12(C)):

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation that is of such character or is necessarily carried on in such manner or at such a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.

(2) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in a lawful activity and had reasonable cause to fear a criminal attack upon the actor or a member of the actor's family, or upon the actor's home, such as would justify a prudent person in going armed.

(3) The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home.

(4) The weapon was being transported in a motor vehicle for any lawful purpose, and was not on the actor's person, and, if the weapon was a firearm, was carried in compliance with the applicable requirements relating to firearms in motor vehicles.

Operation of the bill

The bill expands the exception to the prohibition against carrying concealed weapons by permitting officers, agents, or employees of Ohio, another state, or the United States, and law enforcement officers, who are authorized to carry

concealed weapons to carry a concealed weapon when they are not acting within the scope of their duties. Thus, under the bill, the prohibition against carrying concealed weapons does not apply to officers, agents, or employees of Ohio, any other state, or the United States, or to law enforcement officers, who are authorized to carry concealed weapons or dangerous ordnance (R.C. 2923.12(B)). (See **COMMENT.**)

Illegal possession of a firearm in liquor permit premises

Existing law

Prohibition and penalty. Existing law prohibits a person from possessing a firearm in any room in which liquor is being dispensed in premises for which a D liquor permit has been issued. A person who violates this prohibition is guilty of illegal possession of a firearm in liquor permit premises, a felony of the fifth degree. (R.C. 2923.121(A) and (D).)

Exceptions. The prohibition does not apply to officers, agents, or employees of Ohio, another state, or the United States, or to law enforcement officers, when authorized to carry firearms, *and acting within the scope of their duties*. The prohibition does not apply to hotel accommodations. Additionally, the prohibition does not prohibit members of veteran's organizations from possessing rifles in any room in any premises under the control of the veteran's organization as long as the rifle is not loaded with live ammunition and the person is not otherwise prohibited by law from having the rifle. Finally, the prohibition does not apply to any person possessing or displaying firearms in any room used to exhibit unloaded firearms for sale or trade in a soldiers' memorial, in a convention center, or in any other public meeting place, if the person is an exhibitor, trader, purchaser, or seller of firearms and is not otherwise prohibited by law from possessing, trading, purchasing, or selling the firearms. (Sec. 2923.121(B).)

Affirmative defenses. It is an affirmative defense to a charge of illegal possession of a firearm in a liquor permit premises that the actor was not otherwise prohibited by law from having the firearm, and that either of the following apply: (1) the firearm was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation that is of such character or is necessarily carried on in such manner or at such a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed, or (2) the firearm was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in a lawful activity, and had reasonable cause to fear a criminal attack upon the actor or a member of the actor's family, or upon the

actor's home, such as would justify a prudent person in going armed. (Sec. 2923.121(C).)

Operation of the bill

The bill expands the exceptions to the prohibition against illegal possession of a firearm in liquor permit premises by permitting officers, agents, or employees of Ohio, another state, or the United States, and law enforcement officers, who are authorized to carry firearms to possess a firearm in liquor permit premises when they are not acting within the scope of their duties. Thus, under the bill, the prohibition against illegal possession of a firearm in liquor permit premises does not apply to officers, agents, or employees of Ohio, any other state, or the United States, or to law enforcement officers, who are authorized to carry firearms (R.C. 2923.121(B)).

But R.C. 2923.15, unaffected by the bill, prohibits a person, while under the influence of alcohol or any drug of abuse, from carrying or using any firearm or dangerous ordnance. A person who violates this prohibition is guilty of using weapons while intoxicated, a misdemeanor of the first degree. As a result, while the bill would permit certain persons to possess a firearm in liquor permit premises, those persons would still be prohibited from carrying the firearm while under the influence of alcohol or any drug of abuse.

Pertinent offenses unaffected by the bill

Several other offenses in the Revised Code prohibit possessing or discharging a firearm in specified places and, like the offenses of carrying concealed weapons and illegal possession of a firearm in a liquor permit premises, these offenses except from the offenses' prohibitions those officers who are authorized to carry firearms or deadly weapons and who possess or discharge the firearm when acting within the scope of their duties. For these sections, the bill keeps the requirement that the officers act within the scope of their duties. The pertinent offenses are improper use of firearms in a vessel (R.C. 1547.69), illegal conveyance or possession of a deadly weapon in a school safety zone (R.C. 2923.122), illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance into or in a courthouse (R.C. 2923.123), improperly handling firearms in a motor vehicle (R.C. 2923.16), and improperly discharging a firearm at or into a habitation or in a school safety zone (R.C. 2923.161).

Definitions

Dangerous ordnance

As used in the Weapons Control Law, "dangerous ordnance" means any of the following, except as provided in the next paragraph: (1) any automatic or sawed-off firearm, zip-gun, or ballistic knife, (2) any explosive device or incendiary device, (3) nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pectretol, cyclotol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions, (4) any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon, (5) any firearm muffler or silencer, or (6) any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

"Dangerous ordnance" does not include any of the following: (1) any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder, (2) any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm, (3) any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder, (4) black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in clause (3) during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition, (5) dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece, or (6) any device that is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 921(a)(4), as amended, and regulations issued under that act. (R.C. 2923.11(K) and (L).)

Deadly weapon

As used in the Weapons Control Law, "deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon (R.C. 2923.11(A)).

Firearm

As used in the Weapons Control Law, "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).)

Law enforcement officer

As used in the Revised Code, "law enforcement officer" means any of the following: (1) a sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority, or state highway patrol trooper, (2) an officer, agent, or employee of Ohio or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority, (3) a mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation, (4) a member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission, (5) a person lawfully called to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called, (6) a person appointed by a mayor as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed, (7) a member of the organized militia of Ohio or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence, (8) a prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor, (9) an Ohio veterans' home police officer, and (10) a member of a police force employed by a regional transit authority (R.C. 2901.01(A)(11)).

Offense of violence

As used in the Revised Code, "offense of violence," means any of the following offenses (sec. 2901.01(A)(9)):

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary under certain circumstances, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of crime victim or witness, escape, and improperly discharging a firearm at or into a habitation or in a school safety zone, endangering children in certain circumstances, and the former offense of felonious sexual penetration;

(2) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, substantially equivalent to any offense listed in (1);

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio, any other state, or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense described in (1), (2), or (3).

COMMENT

Many law enforcement agencies consider their officers to always be on duty. In such circumstances, it is difficult to determine when such an officer is acting within the scope of the officer's duties.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-16-00	p. 1682

H0610-I.123/ejs