



Dennis M. Papp

*Final Analysis*  
Legislative Service Commission

**Am. Sub. H.B. 12**  
125th General Assembly  
(As Passed by the General Assembly)

**Reps.** Aslanides, Cates, Hollister, J. Stewart, Faber, Seitz, Grendell, Willamowski, Blasdel, Book, Buehrer, Callender, Calvert, Carano, Carmichael, Cirelli, Clancy, Collier, Core, Daniels, DeWine, Distel, Domenick, C. Evans, D. Evans, Fessler, Flowers, Gibbs, Gilb, Hagan, Hoops, Husted, Kearns, Latta, Manning, Niehaus, Oelslager, T. Patton, Peterson, Raga, Raussen, Reinhard, Schaffer, Schlichter, Schmidt, Schneider, Seaver, Setzer, Sferra, Taylor, Webster, White, Widener, Wolpert, Young, Hughes

**Sens.** Austria, Jordan, Schuring, Amstutz, Carnes, Harris, Jacobson, Mumper, Robert Gardner

**Effective date:** \*

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**ACT SUMMARY**

**Definition of handgun**

- Revises the definition of "handgun" that applies throughout the Weapons Control Law so that it means any firearm that has a short stock and is designed to be held and fired by the use of a single hand, or any combination of parts from which a firearm of that type can be assembled.

**Standard licenses to carry a concealed handgun**

- Enacts a comprehensive mechanism that permits a person in specified circumstances (generally described below) to obtain a license to carry a concealed handgun, which is valid for four years and may be renewed (hereafter, a "standard license to carry a concealed handgun" or a "standard license").

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Specifies that a person who wishes to obtain a standard license to carry a concealed handgun must submit, to the sheriff of the county in which the person resides or the sheriff of any county adjacent to the county in which the person resides, all of the following: (1) a completed application form prescribed by the Ohio Peace Officer Training Commission (OPOTC), (2) generally, a nonrefundable license fee prescribed by the Commission, (3) a color photograph taken within the preceding 30 days, (4) a firearms competency certification of a specified nature (see the next dot point), (5) a certification that the person has read a firearms-related pamphlet prescribed by the Commission, and (6) a set of fingerprints provided in a specified manner.
- Specifies a series of alternative methods by which an applicant may establish competence in handling a firearm in order to satisfy the firearms competency certification requirement for a standard license, and specifies the content (including range time and live-fire training, and other types of training) of the courses, classes, or programs that generally must be completed in order to establish such competence.
- Requires the sheriff who receives an application for a standard license to carry a concealed handgun, and the other required materials and information, (or an application for a temporary emergency license to carry a concealed handgun and the other required materials and information--see "*Temporary emergency licenses to carry a concealed handgun*," below) to conduct or cause to be conducted a criminal records check and incompetency records check of the applicant for the license to determine whether the applicant fails to meet any of the eligibility criteria established for the license, and specifies the manners in which the checks must be conducted (either through the use of an electronic fingerprint reading device or, in specified circumstances, by requesting the Bureau of Criminal Identification and Investigation (BCII) to conduct it by using standard fingerprint impression sheets and the applicant's Social Security number).
- Provides in specified circumstances for the destruction, within a specified period of time, of records other than the application for a standard license to carry a concealed handgun (or the affidavit submitted regarding an application for a temporary emergency license to carry a concealed handgun--see "*Temporary emergency licenses to carry a concealed*

handgun," below) that were made in connection with the criminal records check and incompetency records check.

- Requires a sheriff who receives an application for a standard license to carry a concealed handgun, and the other required materials and information, to enter specified information in the Law Enforcement Automated Data System (LEADS), within 45 days, if all of a list of specified eligibility criteria are satisfied, and upon entering the information into the System, to issue to the applicant a standard license to carry a concealed handgun.
- Specifies the content of a standard license to carry a concealed handgun, and that the license expires four years after the date of issuance.
- Provides procedures for a denial of an application for a standard license to carry a concealed handgun, the general appeal of a denial of an application, and, if the denial is based on the results of a criminal records check, for a challenge to the results of the records check (the appeal and challenge provisions also apply regarding a denial of an application for a temporary emergency license to carry a concealed handgun--see "Temporary emergency licenses to carry a concealed handgun," below).
- Provides procedures for the replacement of a lost or destroyed standard license to carry a concealed handgun.
- Specifies that a person who has been issued a standard license to carry a concealed handgun and who wishes to renew it must do so within 30 days after the expiration of the license by filing, with the sheriff of the county in which the person resides or the sheriff of any county adjacent to the county in which the person resides: (1) a completed renewal application form, (2) a new color photograph taken within the preceding 30 days, (3) a certification that the person has reread the firearms-related pamphlet, (4) a new set of fingerprints provided in a specified manner, (5) generally, a nonrefundable license renewal fee, and (6) a new firearms competency certification or a renewed firearms competency certification of a specified nature.
- Requires a sheriff who receives an application for renewal of a standard license to carry a concealed handgun, and the other required materials and information, to conduct or cause to be conducted a criminal records

check and incompetency records check of the applicant in the same manner as for an initial standard license, requires the sheriff to renew the standard license if the list of specified eligibility criteria regarding the issuance of initial standard licenses (subject to an exception, in specified circumstances, regarding renewed competency certifications) are satisfied, specifies that a renewed standard license is valid for four years after the date of issuance, and provides that the appeal and challenge provisions described above regarding denials of applications for initial standard licenses also apply regarding denials of applications for renewal of a standard license.

- Requires a sheriff, upon deciding to issue a standard license, issue a replacement standard license, or renew a standard license to carry a concealed handgun, and before actually issuing or renewing the license, to make available through LEADS all information to be contained on the license (this provision also applies regarding temporary emergency licenses to carry a concealed handgun--see "*Temporary emergency licenses to carry a concealed handgun*," below), and specifies that, except for use for law enforcement purposes by law enforcement agencies, the information made available by the sheriff is confidential and is not a public record (see the dot point below, regarding the offense of unauthorized use of LEADS).
- Specifies certain locations at which, and circumstances in which, a licensee with a valid standard license to carry a concealed handgun (or a valid temporary emergency license to carry a concealed handgun--see "*Temporary emergency licenses to carry a concealed handgun*," below) is not authorized to carry a concealed handgun, and provides that, except for those specified locations and circumstances, a person who is issued a valid license may carry a concealed handgun anywhere in Ohio if the person also carries the valid license and valid identification when in actual possession of the concealed handgun.
- Generally requires a person who has been issued a standard license to carry a concealed handgun (or a valid temporary emergency license to carry a concealed handgun--see "*Temporary emergency licenses to carry a concealed handgun*," below), who is approached by a law enforcement officer after the person has been stopped for a traffic stop or any other law enforcement purpose, and who is carrying a concealed handgun to promptly inform the officer that the person has been issued the license

and currently is carrying a concealed handgun, and imposes other duties upon the person if the person is in a motor vehicle that is stopped.

- Specifies that the act's provisions do not: (1) negate or restrict any rule, policy, or practice of a private employer (that is not a private institution of higher education) concerning or prohibiting the presence of firearms on the employer's premises or property, including motor vehicles the employer owns, or (2) require any such private employer to adopt a rule, policy, or practice concerning or prohibiting the presence of firearms on the employer's premises or property.
- Grants qualified immunity from civil liability: (1) to private employers (including private institutions of higher education) and to political subdivisions, in specified circumstances, for injury, death, or loss caused by or related to the bringing of a handgun onto the employer's or political subdivision's premises or property by a person with a standard license to carry a concealed handgun, and (2) to private employers of the type described in clause (1), in specified circumstances, for injury, death, or loss caused by or related to the employer's decision to permit or prohibit a licensee's bringing of handguns onto the employer's property.
- Specifies that the owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by a governmental entity, may post a sign in a conspicuous location prohibiting persons from carrying firearms or concealed firearms on that land or those premises, and specifies that a knowing violation of such a posted prohibition is the offense of criminal trespass.
- Provides that: (1) a person who holds a license to carry a concealed handgun issued by another state that is recognized by the Ohio Attorney General (the AG) pursuant to a reciprocity agreement entered into under the act under provisions described below (hereafter, a reciprocity state) has the same right to carry a concealed handgun in Ohio as a person who is issued a standard license to carry a concealed handgun, and is subject to the same restrictions as apply to a person who carries such a standard license, and (2) a peace officer has the same right to carry a concealed handgun in Ohio as a person who is issued a standard license, and is considered for reciprocity purposes as an Ohio licensee.
- Provides criteria and procedures for suspending or revoking a standard license to carry a concealed handgun (they also apply regarding a

temporary emergency license to carry a concealed handgun--see "Temporary emergency licenses to carry a concealed handgun," below), and enacts the offense of possessing a revoked or suspended concealed handgun license.

- Sets forth a form for an application for a standard license to carry a concealed handgun.

#### Civil immunity

- Grants qualified immunity from civil liability, in certain circumstances, to certain public officers and employees performing in good faith their licensing functions under the act, to entities and instructors performing in good faith certain actions related to competency certifications and renewed competency certifications under the act, and to law enforcement agencies regarding conduct of off-duty officers of the agency carrying a concealed handgun.

#### Sheriff's licensure records--generally not public records; criminal offense; journalist access

- Specifies that, except as described in the next dot point: (1) the records a sheriff keeps relative to the issuance, renewal, suspension, or revocation of a standard license to carry a concealed handgun (or to the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun--see "Temporary emergency licenses to carry a concealed handgun," below), including the application, reports of criminal records checks and incompetency records checks, Social Security numbers, and fingerprints, are confidential and are not public records, (2) a person who releases or disseminates records that are confidential under clause (1), unless required to do so by court order, is guilty of the offense of illegal release of confidential concealed handgun license records.
- Provides an exception to the confidentiality provision and criminal offense described in the preceding dot point, pursuant to which a sheriff, upon written request made and signed by a "journalist" (as defined in the act) must disclose to the journalist the name, county of residence, and date of birth of each person to whom the sheriff has issued a standard license, issued a replacement standard license, or renewed a standard license to carry a concealed handgun (or issued a temporary emergency

license or replacement temporary emergency license to carry a concealed handgun--see "*Obtaining a temporary emergency license to carry a concealed handgun,*" below); the request must include the journalist's name and title, include the name and address of the journalist's employer, and state that the disclosure of the information sought would be in the public interest.

#### *Miscellaneous provisions relating to sheriffs*

- Requires each sheriff to compile and report to OPOTC certain county-wide statistical information regarding licenses to carry a concealed handgun (and temporary emergency licenses to carry a concealed handgun--see "*Temporary emergency licenses to carry a concealed handgun,*" below).
- Requires each county to establish in the county treasury a sheriff's concealed handgun license issuance expense fund, and requires the sheriff to deposit into the fund for his or her county all fees paid by applicants regarding the issuance or renewal of standard licenses, or duplicate standard licenses, to carry a concealed handgun (or regarding temporary emergency licenses to carry a concealed handgun--see "*Temporary emergency licenses to carry a concealed handgun,*" below), and specifies the purposes for which the sheriff may expend any county portion of the fees in the fund.

#### *Temporary emergency licenses to carry a concealed handgun*

- Enacts a comprehensive mechanism that permits a person in specified circumstances (generally described below) to obtain a temporary emergency license to carry a concealed handgun, which is valid for 90 days and may not be renewed (hereafter, a "temporary emergency license to carry a concealed handgun" or a "temporary emergency license").
- Specifies that a person seeking a temporary emergency license to carry a concealed handgun must submit to the sheriff of the county in which the person resides all of the following: (1) "evidence of imminent danger" (see below) to the person or a member of the person's family, (2) a sworn affidavit containing all the information required to be on the license and attesting that the person satisfies specified eligibility criteria (they are the same as the eligibility criteria for the issuance of a standard license to carry a concealed handgun, other than the criteria that relate to a

competency certification and training and that require the applicant to certify that the applicant desires a legal means to carry a concealed handgun for defense of the applicant or a member of the applicant's family while engaged in lawful activity), (3) a temporary emergency license fee established by OPOTC for an amount that does not exceed the actual cost of conducting the criminal background check, or \$30, and (4) a set of fingerprints of the applicant provided in the same manner as is done for an application for a standard license.

- Defines "evidence of imminent danger," for purposes of the temporary emergency license provisions, as any of the following: (1) a statement sworn by the person seeking the license, made under threat of perjury, that states that the person has reasonable cause to fear a criminal attack upon the person or a member of the person's family, such as would justify a prudent person in going armed, or (2) a written document prepared by a governmental entity or public official describing the facts that give the person seeking the license reasonable cause to fear a criminal attack upon the person or a member of the person's family, such as would justify a prudent person in going armed (written documents of this nature include, but are not limited to, a temporary protection order, civil protection order, protection order issued by another state, or other court order, a court report, or a report filed with or made by a law enforcement agency or prosecutor).
- Requires a sheriff who receives the evidence of imminent danger, affidavit, fee, and fingerprints to: (1) immediately conduct or cause to be conducted a criminal records check and incompetency records check in the same manner as is done regarding applications for standard licenses to carry a concealed handgun, (2) immediately upon receipt of the results of the records checks, review the information and determine whether the eligibility criteria for the issuance of a standard license, other than the criteria that relate to a competency certification and training and to the applicant's certification of a desire to legally carry a concealed handgun for defense of the applicant or a member of the applicant's family, apply regarding the person, (3) if the sheriff determines that all of eligibility criteria for the issuance of a standard license, other than the two summarized in clause (2), apply regarding the person, immediately make available through LEADS all information that will be contained on the temporary emergency license if one is issued, and (4) upon making that

information available through LEADS, immediately issue to the person a temporary emergency license to carry a concealed handgun.

- Provides procedures regarding a denial of the issuance of a temporary emergency license, and provides that a person may appeal a denial, or challenge criminal records check results that were the basis of a denial, in the same manners specified under the act regarding a denial of an application for a standard license to carry a concealed handgun.
- Specifies that, if a temporary emergency license to carry a concealed handgun is issued: (1) the license must be in the form, and must include all of the information, prescribed for standard licenses to carry a concealed handgun and also must conspicuously specify that it is a temporary emergency license and the date of its issuance, (2) the license is valid for 90 days and may not be renewed, and (3) the person who has been issued the license cannot be issued another temporary emergency license unless at least four years has expired since the issuance of the prior temporary emergency license.
- Provides that a sheriff who issues a temporary emergency license to carry a concealed handgun to a person: (1) cannot require the person to submit a competency certificate as a prerequisite for issuing the license, (2) must comply with the LEADS-related provisions that apply regarding standard licenses, in regards to the temporary emergency license, and (3) must retain, for the entire period during which the temporary emergency license is in effect, the evidence of imminent danger that the person submitted and that was the basis for the license, or a copy of that evidence.
- Provides that, if a person is issued a temporary emergency license to carry a concealed handgun: (1) the person has the same right to carry a concealed handgun as a person who was issued a standard license to carry a concealed handgun, and any exceptions to the prohibitions contained in the act for a licensee with a standard license apply to a licensee with a temporary emergency license, and (2) the person is subject to the same restrictions, and to all other procedures, duties, and sanctions, that apply to a person who carries a standard license to carry a concealed handgun, other than the standard license renewal provisions.
- Provides that, if a sheriff issues a temporary emergency license to carry a concealed handgun: (1) the sheriff must suspend or revoke the license in

accordance with the act's provisions governing the suspension and revocation of standard licenses to carry a concealed handgun, and (2) in addition, the sheriff may revoke the license upon receiving information, verifiable by public documents, that the person to whom the license was issued is not eligible to possess a firearm under Ohio or federal law or that the person committed perjury in obtaining the license.

- Provides procedures for the replacement of a lost or destroyed temporary emergency license to carry a concealed handgun.
- Requires OPOTC to prescribe and make available to sheriffs a standard form to be used by a person who applies for a temporary emergency license to carry a concealed handgun.

#### **Miscellaneous offenses with respect to handgun licenses**

- Creates the offenses of falsification of a concealed handgun license, falsification to obtain a concealed handgun license, and possessing a revoked or suspended concealed handgun license.

#### **Criminal trespass**

- Revises the offense of criminal trespass to prohibit a person, without privilege to do so and being on the land or premises of another, from negligently failing or refusing to leave upon being notified "by signage posted in a conspicuous place or otherwise being notified" (added by the act) to do so by the owner, occupant, or agent or servant of either.

#### **Posting of signs in specified areas**

- Requires specified persons, boards, and entities with control over certain locations at which a licensee with a standard license or temporary emergency license to carry a concealed handgun is not authorized to carry a concealed handgun, to post warnings to that effect.

#### **Duties of the Ohio Peace Officer Training Commission**

- Requires OPOTC to: (1) prescribe and make available to sheriffs an application form to be used for applications for standard licenses to carry a concealed handgun and for renewals of such a license, a form for the actual standard license that contains specified information, and a form for the actual temporary emergency license to carry a concealed handgun

that contains specified information, (2) prepare, in consultation with the AG, a firearms law, dispute resolution, and use of deadly force pamphlet that contains specified information, and make copies available to persons or entities that provide firearms competency training for distribution to training participants and to sheriffs for distribution to applicants, (3) in consultation with the AG, prescribe a fee, limited by specified criteria, to be paid by applicants for a standard license to carry a concealed handgun (and, implicitly, prescribe a fee to be paid by persons seeking a temporary emergency license to carry a concealed handgun), (4) prescribe and make available to sheriffs county codes for licenses and license identification number procedures, and (5) maintain statistics with respect to the issuance, renewal, suspension, denial, etc., of standard licenses and temporary emergency licenses to carry a concealed handgun as reported by sheriffs, and annually prepare and submit to the Governor, President of the Senate, and Speaker of the House of Representatives a statistical report regarding that information.

**Duties of the Attorney General and the Bureau of Criminal Identification and Investigation**

- Requires the AG to: (1) in accordance with specified criteria, negotiate and enter into a reciprocity agreement with other states that issue licenses to carry a concealed handgun regarding the recognition of each other's licenses, (2) consult with and assist OPOTC in the preparation of the firearms law, dispute resolution, and use of deadly force pamphlet required under the act, and recommend changes to the pamphlet as they become necessary, (3) implicitly, consult with OPOTC in its prescribing of application fees for standard licenses and the use of the fees, and (4) by rule adopted under the Administrative Procedure Act, prescribe and make available to probate judges and chief clinical officers a form to be used by them as described below to make notifications regarding information to be used in incompetency records checks under the act.
- Requires BCII to prescribe a challenge and review procedure for applicants to use to challenge criminal records checks, if the sheriff does not have a challenge and review procedure.

**Duties of the Office of Criminal Justice Services**

- Requires the Office of Criminal Justice Services (OCJS) to prepare a poster and brochure that describes safe firearms practices, and furnish

copies free of charge to each federally licensed firearms dealer in Ohio, to be used by them as described below.

**Notifications from probate courts and chief clinical officers, for use in incompetency records checks**

- Provides that if, on or after the act's effective date, an individual is found by a court to be a mentally retarded person subject to hospitalization by court order or becomes an involuntary patient other than one who is a patient only for purpose of observation, the adjudicating probate judge or the chief clinical officer of the facility in which the person is an involuntary patient must notify BCII, on a form prescribed by the AG (see above), of the individual's identity.
- Requires BCII to compile and maintain the notices it receives from probate judges and chief clinical officers as described in the preceding dot point, and to use them for the purpose of conducting incompetency records checks under the act.
- Specifies that the notices described in the second preceding dot point and the information they contain are confidential, except as described in the preceding dot point, and are not public records.

**Duties imposed on federally licensed firearms dealers**

- Requires each "federally licensed firearms dealer" (defined in the act) to: (1) offer for sale to each person who purchases a firearm from the dealer, a trigger lock, gun lock, or gun locking device that is appropriate for the firearm purchased (the offer must be made at the time of the sale of the firearm), (2) post in a conspicuous location at the dealer's place of business the poster furnished by OCJS (see above), and (3) make available to all purchasers of firearms from the dealer the brochure furnished by OCJS (see above).

**Carrying concealed weapons**

- In the preexisting offense of carrying concealed weapons:
  - (1) Restructures the preexisting prohibition against carrying a concealed weapon or dangerous ordnance and revises the penalty structure for it.

(2) Enacts a new prohibition that prohibits a person who has been issued a standard license or temporary emergency license to carry a concealed handgun or a concealed handgun license issued by a reciprocity state, who is stopped for a law enforcement purpose, and who is carrying a concealed handgun from failing to inform any law enforcement officer who approaches after the stop that the person has a license and is carrying a concealed handgun.

(3) Enacts an additional exception to the preexisting prohibition when it involves a handgun other than a dangerous ordnance, which specifies that the prohibition when it involves such a handgun does not apply to a person who is carrying a valid standard license or temporary emergency license to carry a concealed handgun or a concealed handgun license issued by a reciprocity state, unless the person knowingly is in an unauthorized place.

(4) Limits the application of the preexisting affirmative defenses to a charge of the offense so that they do not apply when the weapon involved is a handgun, and creates a new affirmative defense to a charge of carrying a concealed handgun other than a dangerous ordnance, which specifies that it is an affirmative defense that the actor was not otherwise prohibited by law from having the handgun and that the handgun was carried or kept ready at hand by the actor for any lawful purpose and while in his or her own home (but this new affirmative defense is not available unless the actor, prior to arriving at his or her own home, did not transport or possess the handgun in a motor vehicle in a prohibited manner while it was being operated on a street, highway, or other public or private property used by the public for vehicular traffic).

(5) Specifies that, if a law enforcement officer stops a person to question the person regarding a possible violation of a prohibition included in the offense, for a traffic stop, or for any other law enforcement purpose, if the person surrenders a firearm to the officer, and if the officer does not charge the person with a concealed carry violation or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer must return the firearm to the person at the termination of the stop.

(6) Specifies that no person charged with carrying concealed weapons can be required to obtain a standard license or temporary emergency license to carry a concealed handgun as a condition for the dismissal of the charge.

**Illegal possession of a firearm in liquor permit premises**

- In the preexisting offense of illegal possession of a firearm in liquor permit premises: (1) additionally prohibits a person from possessing a firearm in an open air arena for which a D permit has been issued under the Liquor Control Law, (2) limits the application of the preexisting affirmative defenses to a charge of the offense so that they do not apply when the firearm involved is a handgun, and (3) specifies that no person charged with possession of a firearm in liquor permit premises can be required to obtain a standard license or temporary emergency license to carry a concealed handgun as a condition for the dismissal of the charge.

**Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone**

- In the preexisting offense of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone, additionally "excepts" from the prohibitions constituting the offense a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conduct, all of the following apply: (1) the person does not enter into a school building or onto school premises and is not at a school activity, (2) the person is carrying a valid standard license or temporary emergency license to carry a concealed handgun or a concealed carry license issued by a reciprocity state, (3) the person is in the school safety zone in accordance with 18 U.S.C. 922(q)(2)(B), and (4) the person is not knowingly in a place in which a licensee is not authorized to carry a concealed handgun.

**Illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse**

- In the preexisting offenses of illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse and illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse, additionally "excepts" from the preexisting prohibitions a person who conveys or attempts to convey a handgun into a courthouse, who, at the time of the

conveyance or attempted conveyance in question, possesses a valid standard license or temporary emergency license to carry a concealed handgun or a concealed carry license issued by a reciprocity state, and who complies with specified handgun "check in" procedures.

**Improperly handling firearms in a motor vehicle**

- In the preexisting offense of improperly handling firearms in a motor vehicle:

(1) Revises the penalties for violations of the preexisting prohibitions.

(2) Enacts a new prohibition that prohibits any person from knowingly transporting or having a loaded handgun in a motor vehicle if, at the time of the transportation or possession in question, the person is under the influence of alcohol, a drug of abuse, or a combination of them or the person's whole blood, blood serum or plasma, breath, or urine contains a concentration of alcohol prohibited under the offense of state OMVI for persons operating a vehicle, regardless of whether the person is operating or is a passenger in the vehicle.

(3) Enacts new prohibitions that prohibit a person who has been issued a standard license or temporary emergency license to carry a concealed handgun from doing any of the following: (a) knowingly transporting or having a loaded handgun in a motor vehicle, unless the loaded handgun either is in a holster and in plain sight on the person's person or it is securely encased by being stored in a closed, locked glove compartment or in a case that is in plain sight and that is locked, (b) if the person is transporting or has a loaded handgun in a motor vehicle in a manner described in clause (a), knowingly removing or attempting to remove the loaded handgun from the holster, glove compartment, or case, knowingly grasping or holding the loaded handgun, or knowingly having contact with the loaded handgun by touching it with the person's hands or fingers while the vehicle is being operated on a street, highway, or public property unless the person does so pursuant to and in accordance with a law enforcement officer's directions, (c) if the person is the driver or an occupant of a motor vehicle that is stopped for a traffic stop or for another law enforcement purpose and the person is transporting or has a loaded handgun in the vehicle, failing to promptly inform any law

enforcement officer who approaches the stopped vehicle that the person has been issued a license and then possesses a loaded handgun in the vehicle, (d) if the person is the driver or an occupant of a motor vehicle that is stopped for a traffic stop or another law enforcement purpose and the person is transporting or has a loaded handgun in the vehicle, knowingly disregarding or failing to comply with any lawful order of a law enforcement officer given while the vehicle is stopped, knowingly failing to remain in the vehicle while stopped, or knowingly failing to keep the person's hands in plain sight at any time after a law enforcement officer begins approaching the person while stopped and before the officer leaves, unless, regarding a failure to remain in the vehicle or to keep the person's hands in plain sight, the failure is pursuant to and in accordance with a law enforcement officer's directions, or (e) if the person is the driver or an occupant of a motor vehicle that is stopped for a traffic stop or another law enforcement purpose, if the person is transporting or has a loaded handgun in the vehicle in a manner described in clause (a), and if the person is approached by a law enforcement officer while stopped, knowingly removing or attempting to remove the loaded handgun from the holster, glove compartment, or case, knowingly grasping or holding the loaded handgun, or knowingly having contact with the loaded handgun by touching it with the person's hands or fingers in the vehicle at any time after a law enforcement officer begins approaching and before the officer leaves, unless the person does so pursuant to and in accordance with the officer's directions.

(4) Additionally "excepts" from the preexisting prohibitions related to transporting or possessing a firearm in a motor vehicle (but not from the new prohibitions described above in (2) and (3)), a person who: (a) possesses a valid standard license or temporary emergency license to carry a concealed handgun or a concealed carry license issued by a reciprocity state, (b) is not knowingly in an unauthorized place, and (c) either has the handgun in a holster and in plain sight on his or her person or has it securely encased by being stored in a closed, locked glove compartment or in a case that is in plain sight and that is locked.

(5) Limits the application of the preexisting affirmative defenses to a charge under the preexisting prohibitions related to transporting or possessing a firearm in a motor vehicle so that they do not apply to such a charge that involves a handgun, and enacts a new affirmative

defense to a charge under the preexisting prohibitions related to transporting or possessing a firearm in a motor vehicle (but not under the new prohibitions described above in (2) and (3)) that specifies that it is an affirmative defense to a charge under those prohibitions that the actor transported or had the firearm in the vehicle for any lawful purpose and while the vehicle was on his or her own property (but this new affirmative defense is not available unless the actor, prior to arriving at his or her own property, did not transport or possess the handgun in a motor vehicle in a manner prohibited under the preexisting prohibitions while the vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic).

(6) Specifies that, if a law enforcement officer stops a motor vehicle for a traffic stop or any other purpose, if any person in the vehicle surrenders a firearm to the officer, and if the officer does not charge the person with the offense of improperly handling firearms in a motor vehicle or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer must return the firearm to the person at the termination of the stop.

(7) Specifies that no person charged with improperly handling firearms in a motor vehicle in violation of any of the preexisting prohibitions related to transporting or possessing a firearm in a motor vehicle or in violation of the new OMVI-related prohibition can be required to obtain a standard license or temporary emergency license to carry a concealed handgun as a condition for the dismissal of the charge.

### **Improper use or handling of firearms in a vessel**

- In the preexisting offense involving the improper use or handling of firearms in a vessel:

(1) Excepts from the preexisting prohibitions related to transporting or possessing firearms in a vessel a person who transports or has a handgun in a vessel and who, at that time, has a valid standard license or temporary emergency license to carry a concealed handgun or a concealed handgun license issued by a reciprocity state, unless the person knowingly is in an unauthorized place.

(2) Limits the application of the preexisting affirmative defenses to a charge of violating the preexisting prohibitions related to transporting or possessing firearms in a vessel so that they do not apply to such a charge that involves a handgun, and enacts a new affirmative defense to a charge of violating the preexisting prohibitions related to transporting or possessing firearms in a vessel that specifies that it is an affirmative defense to a charge under those prohibitions that the actor transported or had the firearm in the vessel for any lawful purpose and while the vessel was on his or her own property (but this new affirmative defense is not available unless the actor, prior to arriving at the vessel on his or her own property, did not transport or possess the firearm in a vessel or in a motor vehicle in a prohibited manner while the vessel was being operated on a waterway that was not on his or her own property or while the vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic).

(3) Specifies that, if a law enforcement officer stops a vessel for a violation of the preexisting prohibitions or any other law enforcement purpose, if any person on the vessel surrenders a firearm to the officer, and if the officer does not charge the person with a violation of the preexisting prohibitions or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer must return the firearm to the person at the termination of the stop.

(4) Specifies that no person charged with a violation of the preexisting prohibitions related to transporting or possessing firearms in a vessel can be required to obtain a standard license or temporary emergency license to carry a concealed handgun as a condition for the dismissal of the charge.

#### **Having weapons while under a disability**

- In the preexisting offense of having weapons while under a disability:
  - (1) expands the mental health-related legal disabilities that bar a person from knowingly acquiring, having, carrying, or using a firearm or dangerous ordnance to additionally prohibit a person, unless relieved from the disability, from knowingly acquiring, having, carrying, or using a firearm or dangerous ordnance if the person has been adjudicated as a mental defective, has been committed to a mental institution, has been

found by a court to be a mentally ill person subject to hospitalization by court order, or is an involuntary (mental health) patient other than one who is a patient only for purposes of observation, (2) repeals a preexisting prohibition that had the effect of increasing the penalty for persons who committed the offense within five years of the date of their release from imprisonment or post-release control under a sentence imposed for a prior conviction of a first or second degree felony, and (3) increases the penalty for the offense to a felony of the third degree in all cases.

#### **Theft of a firearm or dangerous ordnance**

- In the preexisting offense of theft, when the property stolen is a firearm or dangerous ordnance (i.e., grand theft), increases the penalty from a felony of the fourth degree to a felony of the third degree, creates a presumption in favor of the court imposing a prison term, and requires the offender to serve any prison term imposed consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

#### **Unauthorized use of LEADS**

- Enacts the offense of unauthorized use of the Law Enforcement Automated Database System, a felony of the fifth degree, which prohibits a person from knowingly gaining or attempting to gain access to, causing access to be granted to, or disseminating information gained from access to LEADS without the consent of, or beyond the scope of the express or implied consent of, the chair of the LEADS Steering Committee.

#### **Access to sealed criminal conviction records**

- Expands the circumstances in which sealed criminal conviction records of first offenders may be inspected, to also authorize BCII, a sheriff, and their authorized employees to inspect the sealed records in connection with a criminal records check conducted under the act regarding persons seeking a standard license or temporary emergency license to carry a concealed handgun.

#### **Private investigators and security providers**

- Provides that the preexisting law regarding licensing of persons to engage in the business of private investigation, business of security services, or

both, does not prohibit a private investigator or security guard provider from carrying a concealed handgun if the person complies with the act's provisions governing standard licenses or temporary emergency licenses to carry a concealed handgun.

**Licensing scheme is law of general nature, preemption of field, legislative intent, and severability clause**

- Contains statements specifying that: (1) the General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding qualifications for, and authority granted to a person holding, such a license, (2) the General Assembly's intent in enacting the act's concealed handgun licensing mechanism is to enact laws of a general nature and, thereby, to occupy and preempt the field of issuing such licenses and the validity of such licenses, and (3) no municipal corporation or township may adopt or continue in existence any ordinance or resolution that is in conflict with the act's concealed handgun licensing mechanism.
- Contains statements specifying legislative intent in enacting the act, with respect to recognition of a person's preexisting right of defense of self and family and with respect to the validity of prior criminal convictions or the prosecution of prior offenses.
- Includes a severability clause regarding the act's provisions.

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## CONTENT AND OPERATION

### Overview

The act enacts a comprehensive mechanism that permits a person in specified circumstances to obtain a license to carry a concealed handgun that is valid for four years and may be renewed (hereafter, a "standard license to carry a concealed handgun" or a "standard license"), that permits a person in specified circumstances to obtain a temporary emergency license to carry a concealed handgun that is valid for 90 days and may not be renewed (hereafter, a "temporary emergency license to carry a concealed handgun" or a "temporary emergency license"), and that establishes rules that govern the carrying of a concealed handgun. The act also and makes other changes to the Firearms Laws.

### Definition of "handgun"

#### Formerly

Formerly, as used in the Weapons Control Law (set forth in R.C. 2923.11 to 2923.24), "handgun" meant any firearm designed to be fired while being held in one hand. Significant to this definition, under preexisting law, unchanged by the act, "firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, including 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 a projectile by the action of an explosive or combustible propellant, the trier of fact may rely on circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm. (R.C. 2923.11(B) and (C).)

### **Operation of the act**

The act modifies the definition of "handgun" that applies throughout the Weapons Control Law. Under the act, "handgun" means any of the following: (1) any firearm that has a short stock and is designed to be held and fired by the use of a single hand, or (2) any combination of parts from which a firearm of a type described in clause (1) can be assembled. (R.C. 2923.11(C).)

### **Obtaining and renewing a standard license to carry a concealed handgun**

#### **Making an application for a standard license**

Under the act, upon the request of a person who wishes to obtain a standard license to carry a concealed "handgun" or to renew a license of that nature, a sheriff must provide to the person free of charge an application form prescribed by the Ohio Peace Officer Training Commission (OPOTC) and a copy of the pamphlet prepared by the OPOTC, in consultation with the Attorney General (the AG), relating to Ohio's firearms laws, dispute resolution matters, and use of deadly force matters (see **Duties of the Ohio Peace Officer Training Commission,**" below) (in specified emergency situations, a person who wishes to carry a concealed handgun may obtain a *temporary emergency license* to carry a concealed handgun; the circumstances in which such a temporary emergency license may be obtained, and the mechanism for obtaining such a license, are described below in "**Obtaining a temporary emergency license to carry a concealed handgun**"). (R.C. 2923.125(A) and 2923.124(A).) The applicant must submit the completed application form and all of the following to the sheriff of the county in which the applicant resides or to the sheriff of any county adjacent to the county in which the applicant resides (R.C. 2923.125(B)):

(1) **License fee.** A nonrefundable license fee in the amount prescribed by OPOTC in consultation with the AG (see "**Duties of the Ohio Peace Officer Training Commission,**" below), except that the sheriff must waive the payment of the license fee in connection with an initial or renewal application for a standard license to carry a concealed handgun that is submitted by an applicant who is a retired peace officer, a retired law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer of the Department of Natural Resources (hereafter, "DNR officers"), or a retired federal law enforcement officer who, prior to retirement, was authorized under federal law to carry a firearm in the course of duty, unless the retired peace officer, DNR officer, or federal law enforcement officer retired as the result of a mental disability;

(2) **Photograph.** A color photograph of the applicant that was taken within 30 days prior to the date of the application;

(3) Competency certification. One or more of the following competency certifications, each of which must reflect that, regarding a certification described in (3)(a), (b), (c), (e), or (f), below, within the three years immediately preceding the application the applicant has performed that to which the competency certification relates and that, regarding a certification described in (3)(d), below, either the applicant currently is an active or reserve member of the armed forces of the United States or within the six years immediately preceding the application, the honorable discharge or retirement to which the certification relates occurred:

(a) An original or photocopy of a certificate of completion of a firearms safety, training, or requalification or firearms safety instructor course, class, or program that was offered by or under the auspices of the National Rifle Association and that complies with the requirements described below in "Course requirements";

(b) An original or photocopy of a certificate of completion of a firearms safety, training, or requalification or firearms safety instructor course, class, or program that satisfies all of the following: (i) it was open to members of the general public, (ii) it utilized qualified instructors who were certified by the National Rifle Association, the Executive Director of OPOTC, or a governmental official or entity of another state, (iii) it was offered by or under the auspices of a law enforcement agency of Ohio, another state, or the United States, a public or private college, university, or other similar postsecondary educational institution located in Ohio or another state, a firearms training school located in Ohio or another state, or another type of public or private entity or organization located in Ohio or another state, and (iv) it complies with the requirements described below in "Course requirements";

(c) An original or photocopy of a certificate of completion of a state, county, municipal, or Department of Natural Resources peace officer training school approved by OPOTC's Executive Director and that complies with the requirements described below in "Course requirements," or the applicant has satisfactorily completed and been issued a certificate of completion of a basic firearms training program, a firearms requalification training program, or another basic training program described in R.C. 109.78 or 109.801 that complies with those requirements;

(d) A document that evidences both of the following: (i) that the applicant is an active or reserve member of the armed forces of the United States, was honorably discharged from military service in the active or reserve armed forces of the United States, is a retired trooper of the State Highway Patrol, or is a retired peace officer, a retired DNR officer, or a retired federal law enforcement officer who, prior to retirement, was authorized under federal law to carry a firearm in the course of duty (provided that the retired peace officer, DNR officer, or federal law

enforcement officer must not have retired as a result of a mental disability), and (ii) that, through participation in that military service or through that former employment, the applicant acquired experience with handling handguns or other firearms, and the experience so acquired was equivalent to training that the applicant could have acquired in a course, class, or program described above in paragraph (3)(a), (b), or (c);

(e) A certificate or another similar document that evidences satisfactory completion of a firearms training, safety, or requalification or firearms safety instructor course, class, or program that is not otherwise described above in paragraph (3)(a), (b), (c), or (d), that was conducted by an instructor who was certified by an official or entity of the government of Ohio, another state, or the United States or by the National Rifle Association, and that complies with the requirements described below in "**Course requirements**";

(f) An affidavit that attests to the applicant's satisfactory completion of a course, class, or program described above in paragraph (3)(a), (b), (c), or (e) and that is subscribed by the applicant's instructor or an authorized representative of the entity that offered the course, class, or program or under whose auspices the course, class, or program was offered.

(4) **Reading of pamphlet.** A certification by the applicant that the applicant has read the pamphlet prepared by OPOTC, in consultation with the AG, that reviews firearms, dispute resolution, and use of deadly force matters (see "**Duties of the Ohio Peace Officer Training Commission**," below);

(5) **Fingerprints.** A set of fingerprints of the applicant provided as described below in "**Criminal records check and incompetency records check**" through use of an electronic fingerprint reading device or, if the sheriff to whom the application is submitted does not possess and does not have ready access to the use of such a reading device, on a standard fingerprint impression sheet prescribed by the AG pursuant to preexisting R.C. 109.572(C)(2), which is not in the act.

### **Course requirements**

Each course, class, or program described above in paragraphs (3)(a), (b), (c), or (e) must provide to each person who takes the course, class, or program a copy of the pamphlet prepared by the OPOTC, in consultation with the AG, that reviews firearms, dispute resolution, and use of deadly force matters (see "**Duties of the Ohio Peace Officer Training Commission**," below). Each such course, class, or program must include at least 12 hours of training in the safe handling and use of a firearm that must include all of the following: (1) at least ten hours of training on the following matters: the ability to name, explain, and demonstrate the rules for safe handling of a handgun and proper storage practices for handguns

and ammunition; the ability to demonstrate and explain how to handle ammunition in a safe manner; the ability to demonstrate the knowledge, skills, and attitude necessary to shoot a handgun in a safe manner; and gun handling training, and (2) at least two hours of training that consists of range time and live-fire training.

To satisfactorily complete the course, class, or program, the applicant must pass a competency examination that must include both a written section and a physical demonstration section. The written section must be on the ability to name and explain the rules for the safe handling of a handgun and proper storage practices for handguns and ammunition. The physical demonstration section must be a physical demonstration of competence in the use of a handgun and in the rules for safe handling and storage of a handgun and a physical demonstration of the attitude necessary to shoot a handgun in a safe manner.

The competency certification described above in paragraphs (3)(a), (b), (c), or (e) must be dated and attest that the course, class, or program the applicant successfully completed met the above requirements and that the applicant passed the above competency examination. (R.C. 2923.125(G).)

#### **Criminal records check and incompetency records check**

**Generally.** Upon receipt of a completed application form, supporting documentation, and, if not waived, license fee submitted by an applicant for a standard license to carry a concealed handgun or for renewal of such a license (or upon receipt of the evidence of imminent danger, sworn affidavit, fee, and set of fingerprints submitted by a person seeking a temporary emergency license to carry a concealed handgun; see **'Obtaining a temporary emergency license to carry a concealed handgun.'** below), a sheriff must conduct or cause to be conducted a criminal records check and an incompetency records check of the applicant in the following manner (R.C. 311.41(A), 2923.125(C), and 2923.1213(B)(2)):

(1) The sheriff must conduct the criminal records check and the incompetency records check of the applicant to determine whether the applicant fails to meet any of the act's eligibility criteria for a standard license to carry a concealed handgun. The sheriff must conduct the criminal records check and the incompetency records check required by this provision through use of an electronic fingerprint reading device or, if the sheriff does not possess and does not have ready access to the use of such an electronic reading device, by requesting BCII to conduct the checks in the manner described below. In order to conduct the criminal records check and the incompetency records check, the sheriff must obtain the fingerprints of not more than four fingers of the applicant by using an electronic fingerprint reading device for the purpose of conducting the records checks or, if the sheriff does not possess and does not have ready access to the use of such an electronic reading device, must obtain from the applicant a

completed standard fingerprint impression sheet prescribed by the AG pursuant to preexisting R.C. 109.572(C)(2), which is not in the act. The fingerprints so obtained, along with the applicant's Social Security number, must be used to conduct the records checks. The sheriff cannot retain the applicant's fingerprints as part of the application. If the sheriff does not use an electronic fingerprint reading device to obtain the fingerprints and conduct the records checks, the sheriff must submit the completed standard fingerprint impression sheet of the applicant, along with the applicant's Social Security number, to BCII's Superintendent and must request BCII to conduct the criminal records check and the incompetency records check of the applicant and, if necessary, must request the Superintendent to obtain information from the FBI as part of the criminal records check for the applicant. If it is not possible to use an electronic fingerprint reading device to conduct an incompetency records check, the sheriff must submit the completed standard fingerprint impression sheet of the applicant, along with the applicant's Social Security number, to the Superintendent and request BCII to conduct the incompetency records check.

(2) If at any time the applicant decides not to continue with the application process, except as described in the next sentence, the sheriff immediately must cease any investigation that is being conducted as described in paragraph (1), above. However, the sheriff must not cease that investigation if, at the time of the applicant's decision not to continue with the application process, the sheriff had determined from any of the sheriff's investigations that the applicant then was engaged in activity of a criminal nature.

**Destruction of records.** If the criminal records check and the incompetency records check conducted by the sheriff do not indicate that the applicant fails to meet the act's eligibility criteria for a standard license to carry a concealed handgun, except as otherwise described in this paragraph, the sheriff must destroy or cause a designated employee to destroy all records other than the application for the standard license or renewal, or the affidavit submitted regarding an application for a temporary emergency license (see "**Obtaining a temporary emergency license to carry a concealed handgun**," below), that were made in connection with the criminal records check and incompetency records check within 20 days after conducting the records checks. If an applicant appeals a denial of an application under the act's appeal provisions, as described below, or challenges the results of a criminal records check under the act's provisions, as described below in "**Challenge of the results of a criminal records check**," records of fingerprints of the applicant cannot be destroyed during the pendency of the appeal or the challenge and review. When an applicant appeals a denial under the act, the 20-day period described in this paragraph commences regarding the fingerprints upon the determination of the appeal. When required as a result of a challenge and review of the results of a criminal records check, the source the

sheriff used in conducting the criminal records check must destroy, or the chief operating officer of the source must cause an employee of the source to destroy, all records other than the application for the standard license or renewal, or the affidavit submitted regarding an application for a temporary emergency license, that were made in connection with the criminal records check within 20 days after completion of that challenge and review. (R.C. 311.41(B).)

With respect to a particular criminal records check or incompetency records check to which the preceding paragraph applies, the act prohibits a sheriff, the employee of a sheriff designated by the sheriff to destroy records, the source the sheriff used in conducting the criminal records check or incompetency records check, or the employee designated by the chief operating officer of the source to destroy records from failing to destroy or cause to be destroyed within the applicable 20-day period all records other than the application for the issuance or renewal of a standard license to carry a concealed handgun, or the affidavit submitted regarding an application for a temporary emergency license to carry a concealed handgun, made in connection with the particular criminal records check or incompetency records check. A person who violates this prohibition is guilty of "failure to destroy records," a misdemeanor of the second degree. (R.C. 311.41(C) and (D).)

**Application to renewals.** A sheriff also must conduct or cause to be conducted a criminal records check and an incompetency records check in accordance with these provisions upon receipt of an application to renew a standard license, a new color photograph, a new competency certification and pamphlet-reading certification, and, if not waived, a license renewal fee, as described below in "**Standard license renewal**" (R.C. 311.41 and 2923.125(F); also see "**Obtaining a temporary emergency license to carry a concealed handgun**," below, regarding the application of these provisions regarding licenses of that nature).

#### **When a standard license must be issued**

Except as specified below in "**Suspension of the standard license application process**" and "**Postponement of issuance of license**" within 45 days after receipt of a completed application form from an applicant for a standard license to carry a concealed handgun, the supporting documentation, and, if not waived, a license fee, a sheriff must make available through the Law Enforcement Automated Data System (LEADS) in accordance with the provisions described below in "**Standard license issuance, replacement, or renewal--sheriff must make information available through LEADS; use of the information**" the information described in those provisions and, upon making the information available through that System, must issue to the applicant a standard license to

carry a concealed handgun that expires four years after the date of issuance if all of the following apply (R.C. 2923.125(D)(1)):

(1) The applicant has been a resident of Ohio for at least 45 days and a resident of the county in which the person seeks the license or a county adjacent to the county in which the person seeks the license for at least 30 days.

(2) The applicant is at least 21 years of age.

(3) The applicant is not a fugitive from justice.

(4) The applicant is not under indictment for or otherwise charged with a felony; an offense under the Drug Offense Law, Controlled Substances Law, or Pharmacists/Dangerous Drugs Law that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; a misdemeanor offense of violence; or the offense of negligent assault, the new offense of falsification of a concealed handgun license, or the new offense of possessing a revoked or suspended concealed handgun license (see "**Suspension and revocation of license--Possessing a revoked or suspended license**," below).<sup>1</sup>

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<sup>1</sup> "Offense of violence," as defined in existing law (R.C. 2901.01(A)(9))--not in the act), means any of the following offenses:

(a) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault (a misdemeanor unless certain conditions are met), permitting child abuse, aggravated menacing (misdemeanor), menacing by stalking (a misdemeanor unless the offender previously was convicted of menacing by stalking the same victim or one of eight other conditions apply), menacing (misdemeanor), kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson (a misdemeanor under certain circumstances), aggravated robbery, robbery, aggravated burglary, burglary under certain circumstances, inciting to violence, aggravated riot, riot (misdemeanor), inducing panic (a misdemeanor except when the violation results in physical harm to a person or any one of several other conditions apply), domestic violence (a misdemeanor unless the offender previously was convicted of domestic violence or certain assault or stalking offenses involving a household member), intimidation, intimidation of crime victim or witness (a misdemeanor under certain circumstances), escape (a misdemeanor under certain circumstances), and improperly discharging a firearm at or into a habitation or in a school safety zone, endangering children under certain circumstances (a misdemeanor under certain circumstances), and the former offense of felonious sexual penetration;

(b) 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 (a);



(5) The applicant has not been convicted of or pleaded guilty to a felony or an offense under the Drug Offense Law, Controlled Substances Law, or Pharmacists/Dangerous Drugs Law that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; has not been adjudicated a delinquent child for committing an act that if committed by an adult would be a felony or an offense of a type described in the preceding clause; and has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing the offense of assault when the victim of the assault is a peace officer, regardless of whether the applicant was sentenced under the special sentencing provisions relating to assaults upon peace officers.

(6) The applicant, within three years of the date of the application, has not been convicted of or pleaded guilty to a misdemeanor offense of violence (other than the offense of resisting arrest when it is a misdemeanor or the offense of assault when the victim of the violation is a peace officer), or the new misdemeanor offense of possessing a revoked or suspended concealed handgun license (see "Suspension and revocation of license--Possessing a revoked or suspended license," below); and has not been adjudicated a delinquent child for committing an act that if committed by an adult would be such a misdemeanor offense of violence or that is the new misdemeanor offense of possessing a revoked or suspended concealed handgun license.

(7) Except as otherwise provided in paragraph (5), above, the applicant, within five years of the date of the application, has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing two or more offenses of assault or negligent assault.

(8) The applicant, within ten years of the date of the application, has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing the offense of resisting arrest.

(9) The applicant has not been adjudicated as a mental defective, has not been committed to any mental institution, is not under adjudication of mental incompetence, has not been found by a court to be a "mentally ill person subject to hospitalization by court order," and is not an involuntary "patient" other than one

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*(c) 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;*

*(d) A conspiracy or attempt to commit, or complicity in committing, any offense described in (a), (b), or (c).*

who is a patient only for purposes of observation (as used in this provision, the terms in quotation marks have the same meanings as in preexisting R.C. 5122.01, not in the act, which applies to the law regarding hospitalization of mentally ill persons).

(10) The applicant is not currently subject to a civil protection order, a temporary protection order, or a protection order issued by a court of another state (see **COMMENT 1**).

(11) The applicant certifies that the applicant desires a legal means to carry a concealed handgun for defense of the applicant or a member of the applicant's family while engaged in lawful activity.

(12) The applicant submits a competency certification of the type described above under paragraph (3) of "*Making the application for a standard license*," and submits a certification of the type described above in paragraph (4) under that part regarding the applicant's reading of the pamphlet prepared by the OPOTC, in consultation with the AG, that reviews firearms, dispute resolution, and use of deadly force matters.

#### *Suspension of the standard license application process*

If the sheriff with whom an application for a standard license to carry a concealed handgun was filed becomes aware that the applicant has been arrested for or otherwise charged with an offense that would disqualify the applicant from holding the license, the sheriff must suspend the processing of the application until the disposition of the case arising from the arrest or charge (R.C. 2923.125(D)(3)).

#### *Postponement of issuance of license*

If the sheriff determines that the applicant is a resident of the county in which the applicant seeks the license or of an adjacent county but does not yet meet the residency requirements for the issuance of a license, the sheriff must not deny the license because of the residency requirements but cannot issue the license until the applicant meets those requirements (R.C. 2923.125(D)(4)).

#### *Identifying letters and numbers to be placed on an issued standard license*

If the sheriff with whom an application for a standard license to carry a concealed handgun has been filed issues the standard license, the sheriff must place on the license a unique combination of letters and numbers identifying the license in accordance with the procedure prescribed by OPOTC under the act, as described below in "*Duties of the Ohio Peace Officer Training Commission*" (R.C. 2923.125(D)(2)(a)).

### **Denial of license application**

**General appeal of denial.** If a sheriff denies an application for a standard license to carry a concealed handgun because the applicant does not satisfy the criteria described above in "**When license must be issued**," the sheriff must specify the grounds for the denial in a written notice to the applicant. The applicant may appeal the denial pursuant to the Administrative Procedure Act appeal provisions set forth in preexisting R.C. 119.12 (not in the act). If the denial was a result of the criminal records check conducted under the act and if, pursuant to the act's provisions described below in "**Challenge of the results of a criminal records check**," the applicant challenges the criminal records check results using the appropriate challenge and review procedure, the time for filing the appeal pursuant to R.C. 119.12 is tolled during the pendency of the request or the challenge and review. If the court in the appeal enters a judgment sustaining the sheriff's refusal to grant the applicant a license to carry a concealed handgun, the applicant may file a new application beginning one year after the judgment is entered. If the court enters a judgment in favor of the applicant, that judgment does not restrict the authority of a sheriff to suspend or revoke the license pursuant to the act's suspension or revocation provisions regarding a standard license or a temporary emergency license, as described below, or to refuse to renew the license for any proper cause that may occur after the date the judgment is entered. In the appeal, the court has full powers to dispose of all costs. (R.C. 2923.125(D)(2)(b)).

**Challenge of the results of a criminal records check.** If a sheriff denies an application for a standard license to carry a concealed handgun, denies the renewal of a standard license to carry a concealed handgun, or denies an application for a temporary emergency license to carry a concealed handgun (see "**Obtaining a temporary emergency license to carry a concealed handgun**," below) as a result of the criminal records check conducted under the act's provisions and if the applicant believes the denial was based on incorrect information reported by the source the sheriff used in conducting the criminal records check, the applicant may challenge the criminal records check results using whichever of the following is applicable: (1) if BCII performed the criminal records check, by using BCII's existing challenge and review procedures, or (2) otherwise, by using the sheriff's existing challenge and review procedures or, if the sheriff does not have a challenge and review procedure, using the challenge and review procedure prescribed by BCII under the act. On this matter, the act requires BCII to prescribe a challenge and review procedure for applicants to use to challenge criminal records checks in counties in which the sheriff with whom the application was filed or submitted does not have an existing challenge and review procedure. (R.C. 2923.127.)

**Application to renewals.** These appeal and challenge provisions also apply regarding a denial of the renewal of a license to carry a concealed handgun as a result of the criminal records check (R.C. 2923.125(D)(2)(a) and (F) and 2923.127); see "**Standard license renewal,**" below; also see "**Obtaining a temporary emergency license to carry a concealed handgun,**" below, regarding the application of these appeal and challenge provisions regarding licenses of that nature).

#### **Replacement of lost or destroyed standard license**

If a standard license to carry a concealed handgun issued under the act is lost or destroyed, the "licensee" (defined for purposes of the act as a person to whom a license to carry a concealed handgun has been issued under the act or, except when the context clearly indicates otherwise, to whom a temporary emergency license to carry a concealed handgun has been issued under the act--R.C. 2923.124(D)) may obtain from the sheriff who issued that license a duplicate standard license upon the payment of \$15 and the submission of an affidavit attesting to the loss or destruction of the license. The sheriff, in accordance with the procedures that apply regarding the issuance of an original standard license as described above in "**Identifying letters and numbers to be placed on an issued standard license,**" must place on the replacement standard license a combination of identifying numbers different from the combination on the license that is being replaced. (R.C. 2923.125(E).)

#### **Standard license renewal**

A licensee who wishes to renew a standard license to carry a concealed handgun must do so within 30 days after the expiration date of the license (which is four years after the date of issuance) by filing with the sheriff of the county in which the applicant resides or with the sheriff of an adjacent county an application for renewal of the standard license (obtained from the sheriff), a new color photograph of the licensee that was taken within 30 days prior to the date of the renewal application, a certification by the applicant that, subsequent to the issuance of the license, the applicant has reread the pamphlet prepared by the OPOTC, in consultation with the AG, that reviews firearms, dispute resolution, and use of deadly force matters (see "**Duties of the Ohio Peace Officer Training Commission,**" below), a new set of fingerprints provided in accordance with the act's provisions regarding initial applications for a standard license to carry a concealed handgun, and a nonrefundable license renewal fee in the amount prescribed by OPOTC unless the fee is waived. The licensee also must submit a new competency certification of the type described above regarding initial applications for standard licenses that is not older than six years or a renewed competency certification of the type described below in "**Renewed competency certifications**" that is not older than six years.

Upon receipt of a completed renewal application, color photograph, certification of rereading of the pamphlet, new set of fingerprints, competency certification or renewed competency certification, and license renewal fee unless the fee is waived, a sheriff must conduct or cause to be conducted a criminal records check and incompetency records check as described in "**Criminal records check and incompetency records check**," above. The sheriff must renew the standard license if the sheriff determines that the applicant continues to satisfy the licensing eligibility requirements for standard licenses, except that the applicant is required to submit a renewed competency certification only in the circumstances described below in "**Renewed competency certifications**." A renewed standard license is valid for four years from the date of issuance and is subject to the provisions described in "**Replacement of lost or destroyed standard license**," above, and "**Privileges and duties of a licensee**," below, and to the suspension and revocation provisions. When the circumstances described in "**Denial of standard license application**," "**Suspension of the standard license application process**," and "**Postponement of issuance of standard license**," above, apply to a requested standard license renewal, the sheriff must comply with the requirements specified in those circumstances. (R.C. 2923.125(F).)

#### **Renewed competency certifications**

A person who has received a competency certification as required regarding initial applications for a standard license to carry a concealed handgun, or who previously has received a renewed competency certification as described in this paragraph, may obtain a renewed competency certification as described in this paragraph. If a person has received a competency certification within the preceding six years, or previously has received a renewed competency certification as described in this paragraph within the preceding six years, the person may obtain a renewed competency certification from an entity that offers a course, class, or program described in paragraph (3)(a), (b), (c), or (e) under the provisions relating to the making of an initial application for a standard license to carry a concealed handgun (see "**Making an application for a standard license**," above) by passing a competency examination of the type described under those provisions relating to the making of an initial application for a standard license. In these circumstances, the person is not required to attend the course, class, or program in order to be eligible to take the competency examination for the renewed competency certification. If more than six years has elapsed since the person last received a competency certification or a renewed competency certification, in order for the person to obtain a renewed competency certification, the person must both satisfactorily complete a course, class, or program described in paragraph (3)(a), (b), (c), or (e) under the provisions relating to the making of an initial application for a license to carry a concealed handgun (see "**Making an application for a standard license**," above) and pass a competency examination of

the type described under those provisions relating to the making of an initial application. A renewed competency certification issued under this provision must be dated and attest that the applicant passed the competency examination and, if applicable, that the person successfully completed a course, class, or program that met the requirements specified by the act for such courses, classes, or programs relating to the making of an initial application for a standard license. (R.C. 2923.125(G)(4).)

**Standard license issuance, replacement, or renewal--sheriff must make information available through LEADS; use of the information**

Upon deciding to issue a standard license, issue a replacement standard license, or renew a standard license to carry a concealed handgun under the act, and before actually issuing or renewing the standard license, the sheriff must make available through LEADS all information contained on the license (see "Application and license forms" under "Duties of the Ohio Peace Officer Training Commission," below, for a description of the required content of a standard license). If the standard license subsequently is suspended or revoked under the act's provisions described below in "Suspension and revocation of standard license" or it is lost or destroyed, the sheriff also must make available through LEADS a notation of that fact. The act requires the Superintendent of the State Highway Patrol to ensure that LEADS is so configured as to permit the transmission through it of the information specified in this paragraph.

Law enforcement agencies may use the information a sheriff makes available through the use of LEADS pursuant to the provisions described in the preceding paragraph (or pursuant to the act's provisions regarding temporary emergency licenses to carry a concealed handgun; see "Obtaining a temporary emergency license to carry a concealed handgun," below) for law enforcement purposes only. The information is confidential and is not a public record. The act specifies that a person who releases or otherwise disseminates this information obtained through LEADS in a manner not described in this paragraph is guilty of a violation of R.C. 2913.04 (see "Offense of unauthorized use of LEADS," below). The act specifies that, in addition to any penalties imposed under the Criminal Sentencing Law based on such a release of information in an unauthorized manner, if the offender is a sheriff, an employee of a sheriff, or any other public officer or employee, and if the violation was willful and deliberate, the offender is subject to a civil fine of \$1,000. Any person who is harmed by a violation of R.C. 2913.04 based on such a release of information in an unauthorized manner has a private cause of action against the offender for any injury, death, or loss to person or property that is a proximate result of the violation and may recover court costs and attorney's fees related to the action. (R.C. 2923.125(H) and 2923.129(D) and (E).)

## Privileges and duties of a licensee

### Generally

A standard license to carry a concealed handgun issued under the act expires four years after the date of issuance. A licensee under a standard license must be granted a 30-day grace period after the license expires during which the license remains valid. Except in the places and circumstances specified below in "**Places and circumstances not covered by a valid license**," a licensee who has been issued a standard license or a temporary emergency license may carry a concealed handgun anywhere in Ohio if the licensee also carries a valid license<sup>2</sup> and valid identification when the licensee is in actual possession of a concealed handgun. The licensee must give notice of any change in the licensee's residence address to the sheriff who issued the license within 45 days after that change. If a licensee is the driver or an occupant of a motor vehicle that is stopped as the result of a traffic stop or a stop for another law enforcement purpose and if the licensee is transporting or has a loaded handgun in the motor vehicle at that time, the licensee must promptly inform any law enforcement officer who approaches the vehicle while stopped that the licensee has been issued a standard license or temporary emergency license to carry a concealed handgun and that the licensee currently possesses or has a loaded handgun; the licensee must comply with lawful orders of a law enforcement officer given while the motor vehicle is stopped, must remain in the motor vehicle while stopped, and must keep the licensee's hands in plain sight while any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by an officer; and the licensee must not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with his or her hands or fingers, in any manner in violation of the act's provisions described below in "**Improperly handling firearms in a motor vehicle**" that pertain to licensees, while any law enforcement officer begins approaching the licensee while stopped and before the officer leaves. If a law enforcement officer otherwise approaches a person who has been stopped for a law enforcement purpose, if the person is a licensee, and if the licensee is carrying a concealed handgun at the time the officer approaches, the licensee must promptly inform the officer that the licensee has been issued a standard license or temporary emergency license to carry a concealed handgun and that the licensee currently is carrying a concealed handgun. (R.C. 2923.126(A).)

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<sup>2</sup> "Valid license" means a standard license or temporary emergency license to carry a concealed handgun that has been issued under the act's provisions, that is currently valid, that is not under suspension, and that has not been revoked (R.C. 2923.124(H)).

**Places and circumstances not covered by a valid license**

The act specifies that a valid standard license or temporary emergency license to carry a concealed handgun does not authorize the licensee to carry a concealed handgun in any manner prohibited under the portion of the offense of "carrying concealed weapons" that applies regarding the carrying of handguns by a licensee and the giving of notice to approaching law enforcement officers (see "**Carrying a concealed weapon**," below), in any manner prohibited under the offense of "improper handling of firearms in a motor vehicle" (see "**Improperly handling firearms in a motor vehicle**," below), or into any of the following places (R.C. 2923.126(B)):

(1) A police station, sheriff's office, or State Highway Patrol station, premises controlled by BCII, a "state correctional institution," jail, workhouse, or other "detention facility," an airport passenger terminal, or a state institution for the care, treatment, and training of mentally ill or mentally retarded persons (as used in this provision, "state correctional institution" includes any institution or facility operated by the Department of Rehabilitation and Correction that is used for the custody, care, or treatment of criminal, delinquent, or psychologically or psychiatrically disturbed offenders, and "detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in Ohio or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under the laws of the United States--R.C. 2923.124(C) and (G), by reference to preexisting R.C. 2921.01 and 2967.01, not in the act);

(2) A "school safety zone," in violation of the prohibition against illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone, as described below in "**Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone**";

(3) A courthouse or another building or structure in which a courtroom is located, in violation of the prohibition against illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance into, or in, a courthouse, as described below in "**Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a courthouse**";

(4) Any room or open air arena in which liquor is being dispensed in premises for which a D permit has been issued under the Liquor Permit Law, in violation of the prohibition against illegal possession of a firearm in liquor permit premises, as described below in "**Illegal possession of a firearm in liquor permit premises**";

(5) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

(6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(7) A child day-care center, type A family day-care home, type B family day-care home, or type C family day-care home, except that this restriction does not prohibit a licensee who resides in a type A family day-care home, type B family day-care home, or type C family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home (as used in this provision: (a) "child day-care center" means any place in which child day-care or publicly funded child day-care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee or administrator in which child day-care or publicly funded child day-care is provided for seven to 12 children at one time, provided that the term does not include a place located in and operated by a hospital in specified circumstances, a child day camp, a place that provides child day-care, but not publicly funded child day-care, in specified circumstances, (b) "type A family day-care home" means a permanent residence of the administrator in which child day-care or publicly funded child day-care is provided for seven to 12 children at one time or a permanent residence of the administrator in which child day-care is provided for four to 12 children at one time if four or more children at one time are under two years of age, provided that the term does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the home of the siblings, and does not include a child day camp, (c) "type B family day-care home" means a permanent residence of the provider in which child day-care is provided for one to six children at one time and in which no more than three children are under two years of age at one time, provided that the term does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the home of the siblings and does not include a child day camp, and (d) "type C family day-care home" means a family day-care home authorized to provide child day-care by Sub. H.B. 62 of the 121st General Assembly, as amended by Am. Sub. S.B. 160 of the 121st General Assembly and Sub. H.B. 407 of the 123rd General Assembly--R.C. 2923.124(L), by reference to preexisting R.C. 5104.01, not in the act, and R.C. 2923.124(M)).

(8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft (as used in this provision: (a) "foreign air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside of the United States when any part of the transportation is by aircraft, (b) "interstate air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in a state, territory, or possession of the United States and a place in the District of Columbia or another state, territory, or possession of the United States, Hawaii and another place in Hawaii through the airspace over a place outside Hawaii, the District of Columbia and another place in the District, or a territory or possession of the United States and another place in the same territory or possession, and when any part of the transportation is by aircraft, and (c) "intrastate air transportation" means the transportation by a common carrier of passengers or property for compensation, entirely in the same state, by turbojet-powered aircraft capable of carrying at least 30 passengers--R.C. 2923.124(N), by reference to preexisting 49 U.S.C. 40102, as now or hereafter amended, not in the act).

(9) Any building that is owned by Ohio or any political subdivision of Ohio, and all portions of any building that is not owned by any such governmental entity but that is leased by such a governmental entity.

(10) A place in which federal law prohibits the carrying of handguns.

**Policies of private employers, other than private colleges, universities, or other institutions of higher education**

The act provides that nothing in the act that is contained in R.C. 2923.126 negates or restricts a rule, policy, or practice of a *private employer (that is not a private college, university, or other institution of higher education)* concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer. Nothing in the act nothing in the act that is contained in R.C. 2923.126 requires a private employer of that nature to adopt a rule, policy, or practice concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer. (R.C. 2923.126(C)(1).)

**Qualified civil immunity for private employers and political subdivisions**

A *private employer (including a private college, university, or other institution of higher education)* is immune from liability in a civil action for any



injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose. A private employer of the type described in this paragraph is immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to the private employer's decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the premises or property of the private employer. (R.C. 2923.126(C)(2)(a).)

*A political subdivision* is immune from liability in a civil action, to the extent and in the manner provided in the preexisting Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744.--not in the act), for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto any premises owned, leased, or otherwise under the control of the political subdivision. As used in this provision, "political subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state, including, but not limited to, a county hospital commission appointed under R.C. 339.14, regional planning commission created pursuant to R.C. 713.21, county planning commission created pursuant to R.C. 713.22, joint planning council created pursuant to R.C. 713.231, interstate regional planning commission created pursuant to R.C. 713.30, port authority created pursuant to R.C. 4582.02 or 4582.26 or in existence on December 16, 1964, regional council established by political subdivisions pursuant to R.C. Chapter 167., emergency planning district and joint emergency planning district designated under R.C. 3750.03, joint emergency medical services district created pursuant to R.C. 307.052, fire and ambulance district created pursuant to R.C. 505.375, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under R.C. 343.01 or 343.012, and community school established under R.C. Chapter 3314. (R.C. 2923.126(C)(2)(b), by reference to preexisting R.C. 2744.01--not in the act).

**Posting of a sign on private property or property leased from a government entity**

The *owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States*, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. The act specifies that a person who knowingly violates a posted prohibition of that

nature is guilty of the offense of criminal trespass and is guilty of a misdemeanor of the fourth degree. (See "**Criminal trespass**," below.) (R.C. 2911.21(A) and (D) and 2923.126(C)(3).)

#### **License issued by another state**

The act provides that a person who holds a license to carry a concealed handgun that was issued pursuant to the law of another state that is recognized by the AG pursuant to a reciprocity agreement entered into by the AG under the act (see "**Duties of the Attorney General and the Bureau of Criminal Identification and Investigation**," below) has the same right to carry a concealed handgun in Ohio as a person who was issued a standard license to carry a concealed handgun under the act and is subject to the same restrictions that apply to a person who carries a standard license issued under the act (R.C. 2923.126(D)).

#### **Peace officer--right to carry concealed handgun and considered to be licensee**

The act specifies that a peace officer has the same right to carry a concealed handgun in Ohio as a person who was issued a standard license to carry a concealed handgun under the act. For purposes of reciprocity with other states, a peace officer is to be considered a licensee in Ohio. (R.C. 2923.126(D).)

#### **Suspension and revocation of license**

##### **Suspension of a standard or temporary emergency license**

If a licensee holding a valid standard license or temporary emergency license is arrested for or otherwise charged with an offense of a type described in paragraph (4) of "**When standard license must be issued**," above, or the offense of using weapons while intoxicated, or becomes subject to a temporary protection order or a protection order issued by a court of another state that is substantially equivalent to a temporary protection order (see **COMMENT 1**), the sheriff who issued the standard license or temporary emergency license must suspend it and comply with the provisions described in the following paragraph upon becoming aware of the arrest, charge, or temporary protection order.

Upon becoming aware of an arrest, charge, or temporary protection order as described in the preceding paragraph with respect to a licensee, the sheriff who issued the licensee's standard license or temporary emergency license must notify the licensee, by certified mail, return receipt requested, at the licensee's last known residence address that the standard or temporary emergency license has been suspended and that the licensee must surrender the standard or temporary

emergency license at the sheriff's office within ten days of the date on which the notice was mailed.

A suspension under these provisions is to be considered as beginning on the date that the licensee is arrested for or otherwise charged with one of the specified offenses or on the date the appropriate court issued the specified protection order, irrespective of when the sheriff notifies the licensee of the suspension. The suspension ends on the date on which the charges are dismissed or the licensee is found not guilty of the offense or, subject to the provisions requiring the revocation of the license as described below, on the date the appropriate court terminates the protection order. If the suspension so ends, the sheriff must return the standard or temporary emergency license to the licensee. (R.C. 2923.128(A).)

**Revocation of a standard or temporary emergency license**

A sheriff who issues to a licensee a standard or temporary emergency license to carry a concealed handgun must revoke the standard or temporary emergency license under the procedures described below upon becoming aware that the licensee satisfies any of the following (R.C. 2923.128(B)(1)):

(1) The licensee is under 21 years of age.

(2) At the time of the issuance of the standard or temporary emergency license, the licensee did not satisfy the eligibility requirements described in paragraph (3), (4), (5), (6), (7), or (8) in "**When standard license must be issued**," above.

(3) On or after the date on which the standard or temporary emergency license was issued, the licensee is convicted of or pleads guilty to the offense of using weapons while intoxicated or an offense described in paragraph (5), (6), (7), or (8) in "**When standard license must be issued**," above.

(4) On or after the date on which the standard or temporary emergency license was issued, the licensee becomes subject to a civil protection order or to a protection order issued by a court of another state that is substantially equivalent to a civil protection order (see **COMMENT 1**).

(5) The licensee knowingly carries a concealed handgun into a place that the licensee knows is an unauthorized place specified above in "**Places and circumstances not covered by a valid license**" under "**Privileges and duties of a licensee**."

(6) On or after the date on which the standard or temporary emergency license was issued, the licensee is adjudicated as a mental defective or is committed to a mental institution.

(7) At the time of the issuance of the standard or temporary emergency license, the licensee did not meet the residency requirements for the issuance of a license to carry a concealed handgun and currently does not meet those residency requirements.

(8) Regarding a standard license, the competency certificate the licensee submitted was forged or otherwise was fraudulent.

Upon becoming aware of any of the eight circumstances listed above that applies to a particular licensee who was issued a standard or temporary emergency license to carry a concealed handgun, the sheriff who issued the standard or temporary emergency license must notify the licensee, by certified mail, return receipt requested, at the licensee's last known residence address that the standard or temporary emergency license is subject to revocation and that the licensee may come to the sheriff's office and contest the sheriff's proposed revocation within 14 days of the date on which the notice was mailed. After the 14-day period and after consideration of any information that the licensee provides during that period, if the sheriff determines on the basis of the information of which the sheriff is aware that any of the above eight circumstances apply to the licensee and that the licensee no longer meets the requirements for holding a license to carry a concealed handgun, the sheriff must revoke the standard or temporary emergency license, notify the licensee of that fact, and require the licensee to surrender the license. (R.C. 2923.128(B)(2).)

#### **Possessing a revoked or suspended concealed handgun license**

The act prohibits a person, except in the performance of official duties, from possessing a standard or temporary emergency license that was issued and that has been revoked or suspended pursuant to the act's provisions. A person who violates this prohibition is guilty of possessing a revoked or suspended concealed handgun license, a misdemeanor of the third degree. (R.C. 2923.1211(B) and (C).)

#### **Qualified civil immunity related to conduct under the act, and for law enforcement agencies**

If a sheriff, the Superintendent or the employees of BCII, or OPOTC or its employees make a good faith effort in performing the duties imposed upon them by the act, in addition to the personal immunity of state and political subdivision officers and employees and the immunity for political subdivisions provided by preexisting R.C. 9.86 (not in the act) and the preexisting Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744., not in the act) and in addition to any other immunity possessed by BCII, OPOTC, and their employees, the sheriff, the sheriff's office, the county in which the sheriff has jurisdiction, BCII, the

Superintendent and employees of BCII, OPOTC, and the employees of OPOTC are immune from liability in a civil action for injury, death, or loss to person or property that allegedly was caused by or related to any of the following: (1) the issuance, renewal, suspension, or revocation of a standard license or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun, (2) the failure to issue, renew, suspend, or revoke a standard license or to issue, suspend, or revoke a temporary emergency license, or (3) any action or misconduct with a handgun committed by a licensee. The act further provides that any action of a sheriff relating to the issuance, renewal, suspension, or revocation of a standard license or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun is to be considered a governmental function for purposes of the preexisting Political Subdivision Sovereign Immunity Law. (R.C. 2923.129(A)(1) and (2).)

An entity that or instructor who provides a competency certification under the act (regarding a standard license to carry a concealed handgun) is immune from civil liability that might otherwise be incurred or imposed for any death or any injury or loss to person or property that is caused by or related to a person to whom the entity or instructor has issued the competency certificate if all of the following apply (R.C. 2923.129(A)(3)): (1) the alleged liability of the entity or instructor relates to the training provided in the course, class, or program covered by the competency certificate, (2) the entity or instructor makes a good faith effort in determining whether the person has satisfactorily completed the course, class, or program and makes a good faith effort in assessing the person in the competency examination conducted under the course, class, or program, and (3) the entity or instructor did not issue the competency certificate with malicious purpose, in bad faith, or in a wanton or reckless manner.

An entity that or instructor who provides a renewed competency certification under the act (regarding a standard license to carry a concealed handgun) is immune from civil liability that might otherwise be incurred or imposed for any death or any injury or loss to person or property that is caused by or related to a person to whom the entity or instructor has issued the renewed competency certificate if all of the following apply (R.C. 2923.129(A)(4)): (1) the entity or instructor makes a good faith effort in assessing the person in the competency examination conducted regarding the renewed certification, and (2) the entity or instructor did not issue the renewed competency certificate with malicious purpose, in bad faith, or in a wanton or reckless manner.

Under the act, a law enforcement agency that employs a peace officer is immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by any act of that peace officer if the act occurred while the peace officer carried a concealed handgun and was off duty and

if the act allegedly involved the peace officer's use of the concealed handgun. Preexisting R.C. 9.86 and 9.87 (which are not in the act, and provide for the qualified civil immunity of state governmental officers and employees and the circumstances under which it indemnifies such officers and employees) and the preexisting Political Subdivision Sovereign Immunity Law (not in the act) apply to any civil action involving a peace officer's use of a concealed handgun in the performance of the peace officer's official duties while the peace officer is off duty. (R.C. 2923.129(A)(5).)

**Sheriff's licensure records--generally not public records; journalist access; offense**

**General exemption from Public Records Law**

The act specifies that, notwithstanding the preexisting Public Records Law (R.C. 149.43--not in the act), except as described below in "**Journalist access exception**," the records that a sheriff keeps relative to the issuance, renewal, suspension, or revocation of a standard license or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun, including, but not limited to, completed applications for the issuance or renewal of a standard license, completed affidavits submitted regarding an application for a temporary emergency license, reports of criminal records checks and incompetency checks, and applicants' Social Security numbers and fingerprints, are confidential and are not public records. The act prohibits any person, except as described below in "**Journalist access exception**," from releasing or otherwise disseminating records that are confidential as described in this paragraph unless required to do so pursuant to a court order. A person who violates this prohibition is guilty of the offense of illegal release of confidential concealed handgun license records, a felony of the fifth degree. In addition to any penalties imposed for the violation under the Criminal Sentencing Law, if the offender is a sheriff, an employee of a sheriff, or any other public officer or employee, and if the violation was willful and deliberate, the offender is subject to a civil fine of \$1,000. Any person who is harmed by the violation has a private cause of action against the offender for any injury, death, or loss to person or property that is a proximate result of the violation and may recover court costs and attorney's fees related to the action. (R.C. 2923.129(B)(1) and (E).)

**Journalist access exception**

The act provides a "journalist access exception" to the exemption described above in "**General exemption from Public Records Law**." Under the act, upon a written request made to a sheriff and signed by a "journalist" (see below) on or after the act's effective date, the sheriff must disclose to the journalist the name, county of residence, and date of birth of each person to whom the sheriff has

issued a standard license or replacement standard license to carry a concealed handgun, renewed a standard license to carry a concealed handgun, or issued a temporary emergency license or replacement temporary emergency license to carry a concealed handgun under the act. The request must include the journalist's name and title, include the name and address of the journalist's employer, and state that the disclosure of the information sought would be in the public interest.

As used in this provision, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public. (R.C. 2923.129(B)(2).)

### **Miscellaneous provisions relating to sheriffs**

#### **Reports to Ohio Peace Officer Training Commission**

Under the act, each sheriff must report to OPOTC the number of standard licenses to carry a concealed handgun that the sheriff issued, renewed, suspended, revoked, or denied during the previous quarter of the calendar year, the number of applications for those licenses for which processing was suspended as provided in the act during the previous quarter of the calendar year, and the number of temporary emergency licenses to carry a concealed handgun that the sheriff issued, suspended, revoked, or denied during the previous quarter of the calendar year. The sheriff must not include in the report the applicant's or licensee's name or other identifying information. The sheriff must report that information in a manner that permits OPOTC to maintain the statistics and to timely prepare the statistical report described below in **'Duties of the Ohio Peace Officer Training Commission.'** This information received by OPOTC is a public record kept by OPOTC for purposes of the preexisting Public Records Law, which is not in the act. (R.C. 2923.129(C).)

The act specifies that any person who is "harmed by a violation" of the provisions described in the preceding paragraph has a private cause of action against "the offender" for any injury, death, or loss to person or property that is a proximate result of "the violation" and may recover court costs and attorney's fees related to the action (R.C. 2923.129(E)).

#### **Sheriff's concealed handgun license issuance expense fund**

The act requires each county to establish in the county treasury a sheriff's concealed handgun license issuance expense fund, and requires the sheriff of that county to deposit into that fund all fees paid by applicants for the issuance or

renewal of a standard license or a duplicate standard license to carry a concealed handgun, and all fees paid by a person seeking a temporary emergency license to carry a concealed handgun as described below in "**Obtaining a temporary emergency license to carry a concealed handgun**." The county must distribute the fees deposited into the fund in accordance with the specifications prescribed by the OPOTC as described below in "**Duties of the Ohio Peace Officer Training Commission**."

The sheriff, with the approval of the board of county commissioners, may expend any county portion of the fees deposited into the sheriff's concealed handgun license issuance expense fund for any costs incurred by the sheriff in connection with performing any administrative functions related to the issuance of standard or temporary emergency licenses to carry a concealed handgun, including, but not limited to, personnel expenses and the costs of any handgun safety education program that the sheriff chooses to fund (R.C. 311.42).

#### **Obtaining a temporary emergency license to carry a concealed handgun**

The act enacts a mechanism that permits, in specified emergency situations, a person who wishes to carry a concealed handgun to obtain a *temporary emergency license* to carry a concealed handgun that is valid for a limited period of time (R.C. 2923.1213).

#### **Eligibility for a temporary emergency license; submission of request**

Under the mechanism, a person seeking a temporary emergency license to carry a concealed handgun must submit to the sheriff of the county in which the person resides all of the following: (1) "evidence of imminent danger" to the person or a member of the person's family (see "**Meaning of "evidence of imminent danger"**," below), (2) a sworn affidavit that contains all of the information required to be on the license and attesting that the person satisfies specified eligibility criteria (see below), which are the same as the eligibility criteria for the issuance of a standard license to carry a concealed handgun, other than the criterion that relates to a competency certification and training and the criterion that requires the applicant to certify that the applicant desires a legal means to carry a concealed handgun for defense of the applicant or a member of the applicant's family while engaged in lawful activity, (3) a temporary emergency license fee established by OPOTC for an amount that does not exceed the actual cost of conducting the criminal background check, or \$30, and (4) a set of fingerprints of the applicant provided through use of an electronic fingerprint reading device or, if the sheriff to whom the application is submitted does not possess and does not have ready access to the use of an electronic fingerprint reading device, on a standard impression sheet prescribed pursuant to preexisting R.C. 109.572(C), not in the act (if the fingerprints are provided on a standard

impression sheet, the person also must provide the person's Social Security number to the sheriff).

The eligibility criteria to which the sworn affidavit described in clause (2) of the preceding paragraph must attest are that the person: is at least 21 years of age; is not a fugitive from justice; is not under indictment for or otherwise charged with an offense identified in R.C. 2923.125(D)(1)(d); has not been convicted of or pleaded guilty to an offense, and has not been adjudicated a delinquent child for committing an act, identified in R.C. 2923.125(D)(1)(e); within three years of the date of the submission, has not been convicted of or pleaded guilty to an offense, and has not been adjudicated a delinquent child for committing an act, identified in R.C. 2923.125(D)(1)(f); within five years of the date of the submission, has not been convicted of, pleaded guilty, or adjudicated a delinquent child for committing two or more violations identified in R.C. 2923.125(D)(1)(g); within ten years of the date of the submission, has not been convicted of, pleaded guilty, or adjudicated a delinquent child for committing a violation identified in R.C. 2923.125(D)(1)(h); has not been adjudicated as a mental defective, has not been committed to any mental institution, is not under adjudication of mental incompetence, has not been found by a court to be a mentally ill person subject to hospitalization by court order, and is not an involuntary patient other than one who is a patient only for purposes of observation, as described in R.C. 2923.125(D)(1)(i); and is not currently subject to a civil protection order, a temporary protection order, or a protection order issued by a court of another state, as described in R.C. 2923.125(D)(1)(j). (R.C. 2923.1213(B)(1).)

**Duties of the sheriff; issuance or denial of license; appeal of denial**

Upon receipt of the evidence of imminent danger, sworn affidavit, fee, and set of fingerprints required as described above, a sheriff immediately must conduct or cause to be conducted the criminal records check and the incompetency records check described in R.C. 311.41 (see "**Criminal records check and incompetency records check**" under "**Obtaining and renewing a standard license to carry a concealed handgun**," above). Immediately upon receipt of the results of the records checks, the sheriff must review the information and must determine whether the eligibility criteria summarized in the preceding paragraph apply regarding the person.

If the sheriff determines that all of the required eligibility criteria apply regarding the person, the sheriff must immediately make available through LEADS all information that will be contained on the temporary emergency license for the person if one is issued, and the Superintendent of the State Highway Patrol must ensure that the System is so configured as to permit the transmission through the system of that information. Upon making that information available through

LEADS, the sheriff must immediately issue to the person a temporary emergency license to carry a concealed handgun.

If the sheriff denies the issuance of a temporary emergency license to the person, the sheriff must specify the grounds for the denial in a written notice to the person. The person may appeal the denial, or challenge criminal records check results that were the basis of the denial if applicable, in the same manners specified above in "**Denial of license application**" under "**Obtaining and renewing a standard license to carry a concealed handgun**," regarding the denial of an application for a standard license to carry a concealed handgun.

A temporary emergency license to carry a concealed handgun must be in the form, and must include all of the information, described below in paragraphs (2) and (5) of "**Application and license forms**" under "**Duties of the Ohio Peace Officer Training Commission**," and also must include a unique combination of identifying letters and numbers in accordance with the provision described in paragraph (4) of that part. A temporary emergency license to carry a concealed handgun is valid for 90 days and may not be renewed. A person who has been issued a temporary emergency license to carry a concealed handgun cannot be issued another temporary emergency license unless at least four years has expired since the issuance of the prior temporary emergency license. (R.C. 2923.1213(B)(2).)

A sheriff who issues a temporary emergency license to carry a concealed handgun under the act cannot require a person seeking to carry a concealed handgun in accordance with its provisions to submit a competency certificate as a prerequisite for issuing the license and must comply with R.C. 2923.125(H) in regards to the license (R.C. 2923.1213(D)). The provisions of R.C. 2923.125(H) pertain to the sheriff's entry onto LEADS of specified information; they are described above in "**License issuance, replacement, or renewal--sheriff must make information available through LEADS; use of the information**," under "**Obtaining and renewing a standard license to carry a concealed handgun**."

A sheriff who issues a temporary emergency license to carry a concealed handgun under the act must retain, for the entire period during which the temporary emergency license is in effect, the evidence of imminent danger that the person submitted to the sheriff and that was the basis for the license, or a copy of that evidence, as appropriate (R.C. 2923.1213(E)).

#### **Privileges, duties, and restrictions under a temporary emergency license**

A person who holds a temporary emergency license to carry a concealed handgun issued under the act has the same right to carry a concealed handgun as a person who is issued a standard license to carry a concealed handgun under the

act, and any exceptions to the prohibitions contained in R.C. 1547.69 and R.C. 2923.12 to 2923.16 for a licensee with a standard license issued under the act apply to a licensee with a temporary emergency license to carry a concealed handgun. A person who holds a temporary emergency license to carry a concealed handgun is subject to the same restrictions, and to all other procedures, duties, and sanctions, that apply to a person who carries a standard license to carry a concealed handgun issued under the act, other than the license renewal provisions that apply regarding a standard license. (R.C. 2923.1213(C).)

#### **Suspension or revocation of temporary emergency license**

The act requires a sheriff who issues a temporary emergency license to carry a concealed handgun under its provisions to suspend or revoke the license in accordance with the provisions described above in "**Suspension and revocation of license.**" It provides that, in addition to the suspension or revocation procedures under those provisions, the sheriff may revoke the temporary emergency license upon receiving information, verifiable by public documents, that the person to whom the license was issued is not eligible to possess a firearm under the laws of either Ohio or the United States or that the person committed perjury in obtaining the license; if the sheriff revokes a temporary emergency license under this additional authority, the sheriff must notify the person, by certified mail, return receipt requested, at the person's last known residence address that the license has been revoked and that the person is required to surrender the license at the sheriff's office within ten days of the date on which the notice was mailed. The act states that R.C. 2923.125(H), described above in "**Duties of the sheriff; issuance or denial of license; appeal of denial.**" applies regarding any suspension or revocation of a temporary emergency license. (R.C. 2923.1213(D).)

#### **Issuance of duplicate temporary emergency license**

If a temporary emergency license to carry a concealed handgun issued under the act is lost or is destroyed, the licensee may obtain from the sheriff who issued that license a duplicate license upon the payment of a \$15 fee and the submission of an affidavit attesting to the loss or destruction of the license. The sheriff, in accordance with the procedures prescribed in R.C. 109.731 regarding standard licenses to carry a concealed handgun (see "**Duties of the Ohio Peace Officer Training Commission,**" below), must place on the replacement license a combination of identifying numbers different from the combination on the license that is being replaced. (R.C. 2923.1213(F).)

#### **Deposit of fees into sheriff's handgun license issuance expense fund**

The act requires a sheriff who receives any fees paid by a person in relation to a temporary emergency license to carry a concealed handgun or a replacement

temporary emergency license to carry a concealed handgun to deposit all fees so paid into the sheriff's handgun license issuance expense fund established by the act (R.C. 2923.1213(H)).

### **Ohio Peace Officer Training Commission duties**

The act requires OPOTC to prescribe, and to make available to sheriffs, a standard form to be used by a person who applies for a temporary emergency license to carry a concealed handgun on the basis of imminent danger of a type described in the first clause of the definition of that term as set forth below (R.C. 2923.1213(G)).

### **Meaning of "evidence of imminent danger"**

The act defines "evidence of imminent danger," for purposes of the above-described provisions relating to temporary emergency licenses to carry a concealed handgun, as any of the following (R.C. 2923.1213(A)):

(1) A statement sworn by the person seeking to carry a concealed handgun that is made under threat of perjury and that states that the person has reasonable cause to fear a criminal attack upon the person or a member of the person's family, such as would justify a prudent person in going armed;

(2) A written document prepared by a governmental entity or public official describing the facts that give the person seeking to carry a concealed handgun reasonable cause to fear a criminal attack upon the person or a member of the person's family, such as would justify a prudent person in going armed. Written documents of this nature include, but are not limited to, any "temporary protection order," "civil protection order," "protection order issued by another state" (see **COMMENT 1**, regarding the meaning of these terms), or other court order, any court report, and any report filed with or made by a law enforcement agency or prosecutor ("prosecutor" has the same meaning as in preexisting R.C. 2935.01, not in the act).

### **Miscellaneous offenses with respect to licenses**

#### **Falsification of a concealed handgun license**

The act enacts a new provision that prohibits a person from altering a standard license to carry a concealed handgun or a temporary emergency license to carry a concealed handgun that was issued pursuant to its provisions and prohibits a person from creating a fictitious document that purports to be a license of that nature. A person who violates either prohibition is guilty of the offense of falsification of a concealed handgun license, a felony of the fifth degree. (R.C. 2923.1211(A) and (C).)

### **Falsification to obtain a concealed handgun license**

**Preexisting law--prohibitions and penalties.** Preexisting law, retained by the act but expanded as described below, prohibits a person from knowingly making a false statement, or knowingly swearing or affirming the truth of a false statement previously made, in certain circumstances or in relation to certain types of documents, particularly official documents. Generally, a person who violates these prohibitions is guilty of the offense of falsification, a misdemeanor of the first degree. If the statement is made in connection with the purchase of a firearm and in conjunction with the furnishing to the seller of the firearm of a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity, the person is guilty of falsification to purchase a firearm, a felony of the fifth degree.

Preexisting law, unchanged by the act, also prohibits a person, in connection with the purchase of a firearm, from knowingly furnishing to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity. A person who violates this prohibition is guilty of the offense of falsification to purchase a firearm, a felony of the fifth degree. (R.C. 2921.13(A), (B), and (E).)

**Preexisting law--civil liability.** Under preexisting law, retained by the act but given a different division designation, a person who violates any of the falsification prohibitions is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action. The provision states that the civil action so authorized is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of a prohibition against falsification. (R.C. 2921.13(F).)

**Operation of the act.** The act adds two new prohibitions to the offense of falsification. First, it prohibits a person from knowingly making a false statement, or knowingly swearing or affirming the truth of a false statement previously made, when the statement is made in an application filed with a county sheriff under the act in order to obtain or renew a standard license to carry a concealed handgun or is made in an affidavit submitted to a sheriff under the act to obtain a temporary emergency license to carry a concealed handgun. Second, it prohibits a person, in an attempt to obtain a standard license to carry a concealed handgun under the act, from knowingly presenting to a sheriff a fictitious or altered document that purports to be a certification of the person's competence in handling a handgun as described in paragraph (3) of **'Making the application for a standard license,'**

above. A person who violates either prohibition is guilty of falsification to obtain a concealed handgun license, a felony of the fourth degree. The preexisting provision regarding liability in a civil action also applies to the new falsification prohibitions. (R.C. 2921.13(A)(14), (C), (F)(4), and (G).)

### **Criminal trespass**

#### **Formerly**

Preexisting law, retained by the act except for the revision described below, prohibits a person, without privilege to do so, from doing any of the following: (1) knowingly entering or remaining on the land or premises of another,<sup>3</sup> (2) knowingly entering or remaining on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard, (3) recklessly entering or remaining on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access, or (4) being on the land or premises of another, negligently failing or refusing to leave upon being notified to do so by the owner or occupant, or the agent or servant of either. A person who violates any of these prohibitions is guilty of the offense of criminal trespass, a misdemeanor of the fourth degree.

Under preexisting law, unchanged by the act, it is no defense to a charge of criminal trespass that the land or premises involved was owned, controlled, or in custody of a public agency or that the offender was authorized to enter or remain on the land or premises involved, when such authorization was secured by deception. (R.C. 2911.21.)

#### **Operation of the act**

The act revises the fourth prohibition included in the offense of criminal trespass to prohibit a person, without privilege to do so and being on the land or premises of another, from negligently failing or refusing to leave upon being notified *by signage posted in a conspicuous place or otherwise being notified* to do so by the owner or occupant, or the agent or servant of either. The penalty

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<sup>3</sup> "Land or premises" includes any land, building, structure, or place belonging to, controlled by, or in custody of another, and any separate enclosure or room, or portion thereof (R.C. 2911.21(E)).

remains a misdemeanor of the fourth degree. (R.C. 2911.21(A)(4) and (D) and 2923.126(C)(3).)

Related to this change, as described above in "*Places and circumstances not covered by a valid license*" under "*Privileges and duties of a licensee*," the act specifies that the owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or premises, and that a person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass (R.C. 2923.126(C)(3)).

**Posting of signs in specified areas**

The act requires specified persons, boards, and entities, or their designees to post a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance onto these premises." For each of the specified types of premises, the sign must be posted in a conspicuous location on the premises (the specified premises generally are within the list of premises in which a license does not authorize the licensee to carry a concealed handgun, as described above in "*Places and circumstances not covered by a valid license*" under "*Privileges and duties of a licensee*"; however, not all of the premises within that list are specified under this provision as being places at which a sign must be posted). The following table describes the places where the sign must be posted and the individual or entity responsible for putting up the sign (R.C. 2923.1212(A)):

<b>Place</b>	<b>Individual or entity responsible for putting up sign</b>
Police stations, municipal jails, and municipal courthouses and courtrooms	The Director of Public Safety or the person or board charged with the erection, maintenance, or repair of the premises
Sheriff's offices	The sheriff or the sheriff's designee who has charge of the sheriff's office
State highway patrol stations	The Superintendent of the State Highway Patrol or the Superintendent's designee
County, multicounty, municipal, municipal-county, or multicounty-municipal jails and workhouses, community-based correctional facilities,	The sheriff, chief of police, or person in charge of the facility or a designee of any of those persons



Place	Individual or entity responsible for putting up sign
halfway houses, alternative residential facilities, and other state or local correctional institutions or detention facilities within Ohio	
Airport facilities	The board of trustees of the regional airport authority with control of the facility, chief administrative officer of an airport facility with control of the facility, or other person in charge of the airport facility with control of the facility
Courthouses and the buildings and structures in which courtrooms are located	The officer or the officer's designee who has charge of the courthouse, building, or structure
Premises controlled by BCII	The Superintendent of BCII or the Superintendent's designee
Child day-care centers, type A family day-care homes, type B family day-care homes, and type C family day-care homes	The owner, administrator, or operator of the center or home
Buildings owned by Ohio or a political subdivision of Ohio	The officer, or the officer's designee, who has charge of the building
Portions of a building that are leased, not owned, by Ohio or a political subdivision	The officer, or the officer's designee, who has charge of that portion of the building

The act further requires the following boards, bodies, and persons, or designees, to post in the following locations a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to Ohio Revised Code section 2923.122, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance into a school safety zone"<sup>4</sup> (R.C. 2923.1212(B)):

(1) A board of education of a city, local, exempted village, or joint vocational school district or that board's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the board;

<sup>4</sup> "School safety zone" consists of a school, school building, school premises, school activity, and school bus (preexisting R.C. 2901.01(C)(1)--not in the act).

(2) A governing body of a school for which the State Board of Education prescribes minimum standards under R.C. 3301.07 or that body's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the school;

(3) The principal or chief administrative officer of a nonpublic school in a conspicuous location on property owned or controlled by that nonpublic school.

### **Duties of the Ohio Peace Officer Training Commission**

#### **Application and license forms**

The act requires OPOTC to prescribe, and to make available to sheriffs, all of the following (R.C. 109.731(A)(1), (2), and (5)):

(1) An application form to be used by a person who applies under the act for a standard license to carry a concealed handgun or for the renewal of a license of that nature and that conforms substantially to the form prescribed in the act (the form is prescribed in the act's R.C. 2923.1210, not reproduced in this final analysis);

(2) A form for the standard license to carry a concealed handgun that is to be issued by sheriffs to persons who qualify for such a license under the act and that conforms to the following requirements:

(a) It has space for the licensee's full name, residence address, and date of birth and for a color photograph of the licensee.

(b) It has space for the date of issuance of the license, its expiration date, its county of issuance, the name of the sheriff who issues the license, and the unique combination of letters and numbers that identify the county of issuance and the license given to the licensee by the sheriff in accordance with the provisions described below in "**Duties of the Attorney General, the Ohio Peace Officer Training Commission, and the Bureau of Criminal Identification and Investigation.**"

(c) It has space for the signature of the licensee and the signature or a facsimile signature of the sheriff who issues the license.

(d) It does not require the licensee to include serial numbers of handguns, other identification related to handguns, or similar data that is not pertinent or relevant to obtaining the license and that could be used as a *de facto* means of registration of handguns owned by the licensee.

(3) A form for the temporary emergency license to carry a concealed handgun that is to be issued by sheriffs to persons who qualify for such a license under the act, which form must conform to all the requirements set forth in (2)(a) to (d), above, and which additionally must conspicuously specify that the license is a temporary emergency license and the date of its issuance.

The act also requires OPOTC to prescribe, and to make available to sheriffs, a standard form to be used under the act by a person who applies for a temporary emergency license on the basis of imminent danger of a type described in the first clause of the definition of that term. (R.C. 2923.1213(H)).

### **Firearms laws, dispute resolution, and use of deadly force pamphlet**

The act further requires OPOTC, in consultation with the AG, to prepare a pamphlet that does all of the following, in everyday language: (1) explains the Ohio Firearms Laws, (2) instructs the reader in dispute resolution and explains the laws of Ohio relative to that matter, and (3) provides information to the reader regarding all aspects of the use of deadly force with a firearm, including, but not limited to, the steps that should be taken before contemplating the use of, or using, deadly force with a firearm, possible alternatives to using deadly force with a firearm, and the law governing the use of deadly force with a firearm. The act requires OPOTC to make copies of the pamphlet available to any person, public entity, or private entity that operates or teaches a training course, class, or program of a type described in the act regarding competency certifications that are required for a standard license to carry a concealed handgun and requests copies for distribution to persons who take the course, class, or program, and to sheriffs for distribution to applicants under the act for a standard license to carry a concealed handgun and applicants under the act for the renewal of such a license (R.C. 109.731(B)).

### **License application and renewal fee**

Under the act, OPOTC, in consultation with the AG, must prescribe a fee to be paid by an applicant under the act for a standard license to carry a concealed handgun or for the renewal of a license of that nature as follows: (1) for an applicant who has been a resident of Ohio for five or more years, an amount that does not exceed the lesser of the actual cost of issuing the license, including, but not limited to, the cost of conducting the criminal records check, or \$45, and (2) for an applicant who has been a resident of Ohio for less than five years, an amount that consists of the actual cost of having a criminal background check performed by the FBI, if one is so performed, plus the lesser of the actual cost of issuing the license, including, but not limited to, the cost of conducting the criminal records check, or \$45. OPOTC, in consultation with the AG, must specify the portion of the fee that will be used to pay each particular cost of the

issuance of the standard license. The sheriff must deposit all fees paid by an applicant under the act for the issuance or renewal of a license into the sheriff's concealed handgun license issuance expense fund established by the act. (R.C. 109.731(C).)

In a separate provision of law, the act also requires a person seeking a temporary emergency license to carry a concealed handgun to submit to the appropriate sheriff a temporary emergency license fee established by OPOTC for an amount that does not exceed the actual cost of conducting the criminal background check, or \$30 (R.C. 2923.1213(B)(1)). The act does not explicitly impose this duty on OPOTC, but it contemplates that OPOTC will establish such a temporary emergency license fee.

### **County codes and identification number procedures**

The act requires OPOTC to prescribe, and make available to sheriffs, a series of three-letter county codes that identify each Ohio county, and a procedure by which a sheriff is to give each standard license, replacement standard license, or renewal standard license to carry a concealed handgun, and each temporary emergency license or replacement temporary emergency license to carry a concealed handgun, the sheriff issues under the act a unique combination of letters and numbers that identifies the county in which the license was issued and that uses the county code and a unique number for each license the sheriff of that county issues (R.C. 109.69(A)(3) and (4)).

### **Timeframe for adopting rules and making forms and pamphlets available**

Within 30 days after the effective date of the act, OPOTC must submit to the Joint Committee on Agency Rule Review the rules required under R.C. 109.731 as enacted in the act. Within 30 days after those rules take effect, OPOTC must prepare and make available to Ohio sheriffs the application and license forms and the pamphlet it is required to prepare under the act and must prescribe the license fee for standard licenses and temporary emergency licenses to carry a concealed handgun. (Section 8.)

### **Statistics and reports**

The act requires OPOTC to maintain statistics with respect to the issuance, renewal, suspension, revocation, and denial of standard licenses to carry a concealed handgun and the suspension of processing of applications for those licenses, and with respect to the issuance, suspension, revocation, and denial of temporary emergency licenses to carry a concealed handgun, as reported by sheriffs as described in **'Reports to Ohio Peace Officer Training Commission,'** above. No later than the first day of March in each year, OPOTC must submit a

statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives indicating the number of standard licenses that were issued, renewed, suspended, revoked, and denied in the previous calendar year, the number of applications for those licenses for which processing was suspended in the previous calendar year, and the number of temporary emergency licenses to carry a concealed handgun that were issued, suspended, revoked, or denied in the previous calendar year. Nothing in the statistics or the statistical report can identify, or enable the identification of, any individual who was issued or denied a license, for whom a license was renewed, whose license was suspended or revoked, or for whom application processing was suspended. The statistics and the statistical report are public records for the purpose of the existing Public Records Law. OPOTC must submit its first annual statistical report no later than 15 months after the effective date of the act. (R.C. 109.731(D) and Section 8.)

**Duties of the Attorney General and the Bureau of Criminal Identification and Investigation**

**Reciprocity agreements with other license-issuing states**

The act requires the AG to negotiate and enter into a reciprocity agreement with any other license-issuing state under which a license to carry a concealed handgun that is issued by the other state is recognized in Ohio if the AG determines both of the following: (a) the eligibility requirements imposed by that license-issuing state for that license are substantially comparable to the eligibility requirements for a standard license to carry a concealed handgun in Ohio issued under the act, and (b) that license-issuing state recognizes a standard license to carry a concealed handgun issued in Ohio under the act (in the remaining parts of this final analysis, a state with which the AG has entered into an agreement under this provision is referred to as a "reciprocity state").

The act specifies that a reciprocity agreement entered into under the provision described in the preceding paragraph also may provide for the recognition in Ohio of a license to carry a concealed handgun issued on a temporary or emergency basis by the other license-issuing state, if the eligibility requirements imposed by that license-issuing state for the temporary or emergency license are substantially comparable to the eligibility requirements for a standard or temporary emergency license to carry a concealed handgun issued in Ohio under the act and if that license-issuing state recognizes a temporary emergency license to carry a concealed handgun issued in Ohio under the act.

The act prohibits the AG from negotiating any agreement with any other license-issuing state under which a license to carry a concealed handgun that is issued by the other state is recognized in Ohio other than as provided in the provisions described in the two preceding paragraphs. As used in these

provisions, "license-issuing state" means a state other than Ohio that, pursuant to law, provides for the issuance of a license to carry a concealed handgun. (R.C. 109.69.)

**Duties regarding pamphlets, fees, challenge and review procedures, and incompetency records check forms**

The act imposes the following duties upon the AG and BCII, with respect to certain pamphlets, fees, challenge and review procedures, and incompetency records check forms that are used under the act:

(1) It requires the AG to consult with and assist OPOTC in the preparation of the pamphlet regarding firearms laws, dispute resolution, and use of deadly force matters that the act requires OPOTC to prepare, and, as necessary, to recommend to OPOTC changes in the pamphlet to reflect changes in the law that are relevant to it (R.C. 109.731(B)).

(2) Although it does not explicitly impose this "consultation duty" on the AG, it provides that OPOTC's prescribing of application fees for standard licenses and specifying the portion of the fees to be used for payment of particular costs is to be in consultation with the AG (R.C. 109.731(C)).

(3) It requires BCII to prescribe a challenge and review procedure for applicants to use to challenge criminal records checks in counties in which the sheriff with whom an application for a standard license, a standard license renewal, or a temporary emergency license was filed does not have an existing challenge and review procedure (R.C. 2923.127(B)).

(4) It requires the AG, by rule adopted under the Administrative Procedure Act, to prescribe and make available to all probate judges and all chief clinical officers a form to be used for the purpose of making notifications regarding information to be used in incompetency records checks under the act (see "**Notifications regarding information to be used in incompetency records checks**," below), and requires BCII to compile and maintain the notices it receives from the judges and officers regarding those notifications and use them for purpose of conducting the incompetency records checks (R.C. 5122.311(B) and (C)).

**Duties of the Office of Criminal Justice Services**

The act requires the Office of Criminal Justice Services (OCJS) to prepare a poster and a brochure that describe safe firearms practices. The poster and brochure must contain typeface that is at least one-quarter inch tall. OCJS must furnish copies of the poster and brochure free of charge to each federally licensed

firearms dealer in Ohio. As used in this provision, "federally licensed firearms dealer" means an importer, manufacturer, or dealer having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the federal "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 923 et seq, and any amendments or additions to that act or reenactments of that act. (R.C. 181.251.)

The act imposes duties on federally licensed firearms dealers, with respect to their use of these posters and brochures (see **Duties imposed on federally licensed firearms dealers**," below).

**Notifications from probate courts and chief clinical officers--information to be used in incompetency records checks**

The act provides that, notwithstanding any Revised Code provision to the contrary, if, on or after the act's effective date, an individual is found by a court to be a mentally retarded person subject to hospitalization by court order or becomes an involuntary patient other than one who is a patient only for purposes of observation, the probate judge who made the adjudication or the chief clinical officer of the hospital, agency, or facility in which the person is an involuntary patient must notify BCII, on a form the AG must prescribe (see below), of the individual's identity. The notification must be transmitted by the judge or chief clinical officer not later than seven days after the adjudication of commitment.

Related to this, the act requires the AG, by rule adopted under the Administrative Procedure Act, to prescribe and make available to all probate judges and all chief clinical officers the form to be used for making the notifications, and requires BCII to compile and maintain the notices it receives from the judges and officers regarding those notifications and use the notice for the purpose of conducting incompetency records checks under the act (see **"Criminal records checks and incompetency records checks**," above). The notices and the information they contain are confidential, except as described in this paragraph, and are not public records. (R.C. 5122.311.)

**Duties imposed on federally licensed firearms dealers**

The act requires each federally licensed firearms dealer who sells any firearm, at the time of the sale of the firearm, to offer for sale to the purchaser of the firearm a trigger lock, gun lock, or gun locking device that is appropriate for that firearm. It also requires each federally licensed firearms dealer to post in a conspicuous location in the dealer's place of business the poster furnished to the dealer by OCJS and to make available to all purchasers of firearms from the dealer the brochure furnished to the dealer by OCJS (see **"Duties of the Office of Criminal Justice Services**," above). The definition of the term "federally licensed

firearms dealer" that is set forth above in "*Duties of the Office of Criminal Justice Services*" also applies to these provisions. (R.C. 2923.25.)

### *Carrying a concealed weapon*

#### *Formerly*

Preexisting law, modified by the act as described below, set forth a prohibition that constituted the offense of carrying concealed weapons, specified penalties for the offense, and provided an exception to the offense and affirmative defenses for a person charged with it.

*Prohibition.* Formerly, the provisions prohibited a person from knowingly carrying or having, concealed on the person's person or concealed ready at hand, any deadly weapon or dangerous ordnance (R.C. 2923.12(A)--see **COMMENT 2**).

*Penalty.* A person who violated the prohibition was guilty of the offense of carrying concealed weapons. Formerly, the offense generally was a misdemeanor of the first degree. But if the offender previously had been convicted of a violation of carrying concealed weapons or of any offense of violence, if the weapon involved was a firearm that was either loaded or for which the offender has ammunition ready at hand, or if the weapon involved was dangerous ordnance, carrying concealed weapons was a felony of the fourth degree. Also, if the weapon involved was a firearm and the violation was committed at premises for which a D permit had been issued under the Liquor Control Law or if the offense was committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons was a felony of the third degree. (R.C. 2923.12(D).)

*Exception.* Formerly, the provisions specified that the prohibition did not apply to officers, agents, or employees of Ohio or 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)).

*Affirmative defenses.* Formerly, the provisions specified that it was an affirmative defense to a charge under the prohibition 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 applied (R.C. 2923.12(C)--see **COMMENT 2**):

(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, which business or occupation was of a

character or was necessarily carried on in a manner or at 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, a member of the actor's family, or 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, was not on the actor's person, and, if the weapon was a firearm, was carried in compliance with the applicable requirements described in (3) in "*Improperly handling firearms in a motor vehicle*," below.

### *Operation of the act*

The act modifies the preexisting prohibition, the penalties for it, and the exceptions and affirmative defenses to it. It also enacts a new prohibition that applies only to persons who have been issued a standard license or temporary emergency license to carry a concealed handgun, and a new provision regarding the return of a firearm to a person.

*Prohibitions*. The act restructures the preexisting prohibition against carrying a concealed deadly weapon or dangerous ordnance (see **COMMENT 2**). Under the act, this prohibition as restructured (hereafter, referred to in this part of the final analysis as the "general concealed carry prohibition") prohibits a person from knowingly carrying or having, concealed on the person's person or concealed ready at hand, any of the following (R.C. 2923.12(A)): (1) a deadly weapon other than a handgun, (2) a handgun other than a dangerous ordnance, or (3) a dangerous ordnance.

The new prohibition the act enacts prohibits a person who has been issued a standard license or temporary emergency license to carry a concealed handgun under the act or a license to carry a concealed handgun from a reciprocity state, who is stopped for a law enforcement purpose, and who is carrying a concealed handgun from failing to promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a license to carry a concealed handgun and that the person then is carrying a concealed handgun (hereafter, in this part of the final analysis this prohibition is referred to as the "new concealed carry prohibition") (R.C. 2923.12(B)).

**Penalties for the general concealed carry prohibition.** The act generally retains the preexisting penalties for a violation of the *general concealed carry prohibition*, but provides for a reduced penalty for violations of that prohibition involving a handgun other than dangerous ordnance for a person who has a license to carry a concealed handgun but does not possess it at the time of the violation. Under the act, if a person being arrested for possessing a concealed handgun other than dangerous ordnance in violation of the *general concealed carry prohibition* promptly produces a valid standard license or temporary emergency license to carry a concealed handgun issued under the act or a license to carry a concealed handgun issued by a reciprocity state, and if at the time of the violation the person was not knowingly in an unauthorized place specified in "**Privileges and duties of a licensee**," above, the officer cannot arrest the person for the violation (R.C. 2923.12(G)(1) and (2).)

But if the person is not able to promptly produce such a license and if the person is not in such an unauthorized place, the officer may arrest the person for the violation, and the offender must be punished as follows (R.C. 2923.12(G)(2)):

(1) The offender is guilty of a minor misdemeanor if, within ten days after the arrest, the offender presents a standard license or temporary emergency license issued under the act, or a license issued by a reciprocity state, that was valid at the time of the arrest to the law enforcement agency that employs the arresting officer and, at the time of the arrest the offender was not knowingly in a place specified in "**Privileges and duties of a licensee**," above, as a place in which a licensee is not authorized to carry a concealed handgun.

(2) The offender is guilty of a misdemeanor and must be fined \$500 if all of the following apply: (a) the offender previously had been issued a standard license under the act, or a license issued by a reciprocity state that was similar in nature to an Ohio standard license, and that license expired within the two years immediately preceding the arrest, (b) within 45 days after the arrest, the offender presents any type of license described in clause (a) to the law enforcement agency that employs the arresting officer and the offender waives in writing the offender's right to a speedy trial on the charge of the violation that is provided in preexisting R.C. 2945.71 (not in the act), and (c) at the time of the commission of the offense, the offender was not knowingly in a place specified in "**Privileges and duties of a licensee**," above, as a place in which a licensee is not authorized to carry a concealed handgun.

(3) If neither paragraph (1) nor paragraph (2) apply, the offender is punished as under preexisting law.

**Penalties for the new concealed carry prohibition.** The act provides that a violation of the *new concealed carry prohibition* also is the offense of "carrying

concealed weapons" and is a misdemeanor of the fourth degree (R.C. 2923.12(G)(3)).

**Exception.** The act retains the preexisting exception to the general prohibition against carrying a concealed deadly weapon or dangerous ordnance, without change, and, by its terms, that exception also applies to the new concealed carry prohibition. The act enacts a new exception that specifies that the general concealed carry prohibition as rewritten by the act *against carrying a handgun other than a dangerous ordnance* ((2), above, in the first paragraph under "**Prohibitions**") does not apply to any of the following (R.C. 2923.12(C)):

(1) An officer, agent, or employee of Ohio, another state, or the United States, or a law enforcement officer, who is authorized to carry a handgun and acting within the scope of his or her duties (this is similar to the preexisting exception, but is limited in its application to the portion of the prohibition that pertains to handguns);

(2) A person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid standard license or temporary emergency license to carry a concealed handgun issued under the act or a license to carry a concealed handgun issued by a reciprocity state, unless the person knowingly is in a place specified in "**Privileges and duties of a licensee,**" above, as a place in which a licensee is not authorized to carry a concealed handgun.

The new exception does not apply to any of the other prohibitions set forth in the offense.

**Affirmative defenses.** The act limits the application of the preexisting affirmative defenses to a charge of carrying concealed weapons by specifying that they apply only to a charge in violation of the general concealed carry prohibition that is based on the carrying or having control of a weapon *other than a handgun* and other than a dangerous ordnance. Thus, the preexisting affirmative defenses do not apply to a charge in violation of the general concealed carry prohibition that is based on the carrying or having control of either a handgun or a dangerous ordnance, and do not apply to a charge in violation of the new concealed carry prohibition. (R.C. 2923.12(D).)

The act enacts a new affirmative defense that applies to a charge in violation of the general concealed carry prohibition that involves a handgun other than a dangerous ordnance. The new affirmative defense specifies that it is an affirmative defense to a charge in violation of the general concealed carry prohibition of carrying or having control of a handgun other than a dangerous ordnance that the actor was not otherwise prohibited by law from having the handgun and that the handgun was carried or kept ready at hand by the actor for

any lawful purpose and while in his or her own home, provided that this new affirmative defense is not available unless the actor, prior to arriving at his or her own home, did not transport or possess the handgun in a motor vehicle in a manner prohibited under the illegal transport or possession provisions described below in "*Improperly handling firearms in a motor vehicle*" while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic (R.C. 2923.12(E)).

*Return of firearm.* The act specifies that, if a law enforcement officer stops a person to question the person regarding a possible violation of the general concealed carry prohibition or the new concealed carry prohibition, for a traffic stop, or for any other law enforcement purpose, if the person surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of either concealed carry prohibition or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband (as defined for purposes of the Revised Code in preexisting R.C. 2901.01--not in the act), the officer must return the firearm to the person at the termination of the stop (R.C. 2913.12(H)).

*Prosecution.* The act specifies that no person who is charged with carrying concealed weapons in violation of either the general concealed carry prohibition or the new concealed carry prohibition can be required to obtain a standard license or temporary emergency license to carry a concealed handgun as a condition for the dismissal of the charge. (R.C. 2923.12(F).)

### *Illegal possession of a firearm in a liquor permit premises*

#### *Formerly*

*Prohibition and penalty.* Preexisting law, retained but expanded by the act as described below, prohibits a person from possessing a firearm in any room in which liquor is being dispensed on premises for which a D permit has been issued under the Ohio Liquor Law. A violation of the prohibition is the offense of illegal possession of a firearm in liquor permit premises, a felony of the fifth degree. (R.C. 2923.121(A) and (D).)

*Exceptions.* Preexisting law, unchanged by the act, specifies that the prohibition does not apply to officers, agents, or employees of Ohio or 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 unloaded rifles in any room in any premises under the control of the veteran's organization as long as 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. (R.C. 2923.121(B).)

**Affirmative defenses.** Formerly, the provisions specified that it was an affirmative defense to a charge of illegal possession of a firearm in liquor permit premises that the actor was not otherwise prohibited by law from having the firearm, and that either of the following applied: (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, which business or occupation was of such character or was 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. (R.C. 2923.121(C).)

#### **Operation of the act**

**Prohibition.** The act expands the offense to additionally prohibit a person from possessing a firearm in an open air arena for which a D permit has been issued under the Liquor Control Law. The penalty for violating this new prohibition is the same as for violating the preexisting prohibition under preexisting law, a felony of the fifth degree (R.C. 2923.121(A) and (E)).

**Affirmative defenses.** Under the act, the preexisting affirmative defenses to a charge of illegal possession of a firearm in liquor permit premises apply to the new prohibition enacted in the act, as described above, as well as to the preexisting prohibition. But the act limits the application of the preexisting affirmative defenses to a charge of the offense, in violation of either prohibition, by specifying that they apply only to a charge of illegal possession of a firearm in liquor permit premises *that involves the possession of a firearm other than a handgun*. Thus, the preexisting affirmative defenses do not apply to a charge *that involves the possession of a handgun*. (R.C. 2923.121(C).)

**Exceptions.** The act retains the preexisting exceptions to the offense of illegal possession of a firearm in liquor permit premises, without change, and, by

their terms, there might be circumstances in which they also will apply to the new prohibition enacted in the act (R.C. 2923.121(B)).

**Prosecution.** The act specifies that no person who is charged with illegal possession of a firearm in liquor permit premises can be required to obtain a standard license or temporary emergency license to carry a concealed handgun as a condition for the dismissal of the charge. (R.C. 2923.121(D).)

**Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone**

**Formerly**

**Prohibitions.** Preexisting law, unchanged by the act, prohibits a person from knowingly conveying, or attempting to convey, a deadly weapon or dangerous ordnance into a school safety zone and from knowingly possessing a deadly weapon or dangerous ordnance in a school safety zone (R.C. 2923.122(A) and (B)); preexisting R.C. 2923.122(C), generally not related to the act and generally not further discussed in this final analysis, set forth the offense of "illegal possession of an object indistinguishable from a firearm in a school safety zone").

**Penalties.** Under preexisting law, unchanged by the act, a person who violates either prohibition is guilty of the offense of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone. Generally, the violation is a felony of the fifth degree. But if the offender previously has been convicted of a violation of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone or illegal possession of an object indistinguishable from a firearm in a school safety zone, the violation is a felony of the fourth degree.

If the offender has not attained 19 years of age, regardless of whether the offender is attending or is enrolled in a school, the court generally also must impose upon the offender whichever of the following penalties applies:

(1) If the offender has been issued a probationary driver's license, restricted license, driver's license, or probationary commercial driver's license that then is in effect, the court must suspend for a period of not less than 12 months and not more than 36 months that license of the offender.

(2) If the offender has been issued a temporary instruction permit that then is in effect, the court must revoke it and deny the offender the issuance of another temporary instruction permit, and the period of denial must be for not less than 12 months and not more than 36 months.

(3) If the offender has been issued a commercial driver's license temporary instruction permit that then is in effect, the court must suspend the offender's driver's license, revoke the commercial driver's license temporary instruction permit, and deny the offender the issuance of another commercial driver's license temporary instruction permit, and the period of suspension plus the period of denial must total not less than 12 months and not more than 36 months.

(4) If, on the date the court imposes sentence upon the offender for the violation, the offender has not been issued any type of license that then is in effect to operate a motor vehicle in Ohio or a temporary instruction permit that then is in effect, the court must deny the offender the issuance of a temporary instruction permit for a period of not less than 12 months and not more than 36 months.

(5) If the offender is not an Ohio resident, the court must suspend for a period of not less than 12 months and not more than 36 months the nonresident operating privilege of the offender.

But, regarding an offender who has not attained 19 years of age, if the offender shows good cause why the court should not suspend or revoke one of the types of licenses, permits, or privileges described in (1) to (5) above or deny the issuance of a temporary instruction permit, the court in its discretion may choose not to impose the suspension, revocation, or denial generally required. (R.C. 2923.122(E)(1) and (F).)

**Exception.** Formerly, the provisions specified that the prohibitions constituting the offense of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone (and also those constituting the offense of illegal possession of an object indistinguishable from a firearm in a school safety zone) did not apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, authorized to carry deadly weapons or dangerous ordnance and acting within the scope of their duties, to any security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or to any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization (R.C. 2923.122(D)).

#### **Operation of the act**

**Exception.** The act retains the preexisting exception to the prohibitions, without change, and enacts an additional exception. Under the new exception, the



prohibitions constituting the offense of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone (and also those constituting the offense of illegal possession of an object indistinguishable from a firearm in a school safety zone) do not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession, all of the following apply: (1) the person does not enter into a "school building" or onto "school premises" and is not at a "school activity" (see below), (2) the person is carrying a valid standard license or temporary emergency license to carry a concealed handgun issued to the person under the act or a license to carry a concealed handgun issued by a reciprocity state, (3) the person is in the school safety zone in accordance with 18 U.S.C. 922(q)(2)(B), as described below, and (4) the person is not knowingly in a place in which a licensee is not authorized to carry a concealed handgun (see "Privileges and duties of a licensee," above) (R.C. 2923.122(D)(3)).

**Relevant definitions and federal law.** As used in the additional exception enacted in the act: (1) "school building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed, (2) "school premises" means either of the following: (a) the parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed, or (b) any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under existing R.C. Chapter 3314., or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under existing R.C. 3301.07 and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed, and (3) "school activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district, a governing authority of a community school established under existing R.C. Chapter 3314., a governing board of an educational service center, or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under existing R.C. 2201.07 (preexisting R.C. 2901.01 and 2925.01--not in the act).

Relevant to the additional exception, 18 U.S.C. 922(q)(2)(A) prohibits an individual from knowingly possessing a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual



knows, or has reasonable cause to believe, is a school zone. 18 U.S.C. 922(q)(2)(B) provides as follows:

(B) Subparagraph (A) does not apply to the possession of a firearm--

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is--

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

**Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a courthouse**

**Formerly**

**Prohibition and penalty.** Preexisting law, unchanged by the act, prohibits a person from knowingly conveying or attempting to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure where a courtroom is located (hereafter, collectively referred to as a "courthouse"). A person who violates this prohibition is guilty of illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse, which generally is a felony of the fifth degree. If the offender previously has been convicted of this offense or a violation of the prohibition described in the next paragraph, this offense is a felony of the fourth degree. (R.C. 2923.123(A) and (D)(1).)

Separate from the prohibition described above, preexisting law, unchanged by the act, also prohibits a person from knowingly possessing or having under the person's control a deadly weapon or dangerous ordnance in a courthouse. A violation of this prohibition is the offense of illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse. Generally, the offense is a felony of the fifth degree, but if the offender previously has been convicted of that offense or of a violation of the prohibition described in the preceding paragraph, it is a felony of the fourth degree. (R.C. 2923.123(B) and (D)(2).)

**Exception.** Formerly, the prohibitions described above did not apply to any of the following (R.C. 2923.123(C)):

(1) A judge of an Ohio court of record or a magistrate, subject to the court rule restriction described below;

(2) A peace officer, or an officer of a law enforcement agency of another state, a political subdivision of another state, or the United States, who was authorized to carry a deadly weapon or dangerous ordnance, who possessed or had under that individual's control a deadly weapon or dangerous ordnance as a requirement of that individual's duties, and who was acting within the scope of that individual's duties at the time of that possession or control, subject to the court rule restriction described below;

(3) A person who conveyed, attempted to convey, possessed, or had under the person's control a deadly weapon or dangerous ordnance that was to be used as evidence in a pending criminal or civil action or proceeding;

(4) A bailiff or deputy bailiff of an Ohio court of record who was authorized to carry a firearm, who possessed or had under that individual's control

a firearm as a requirement of that individual's duties, and who was acting within the scope of that individual's duties at the time of that possession or control, subject to the court rule restriction described below;

(5) A prosecutor, or a secret service officer appointed by a county prosecuting attorney, who was authorized to carry a deadly weapon or dangerous ordnance in the performance of the individual's duties, who possessed or had under that individual's control a deadly weapon or dangerous ordnance as a requirement of that individual's duties, and who was acting within the scope of that individual's duties at the time of that possession or control, subject to the court rule restriction described below.

The exceptions in (1), (2), (4), and (5), above, did not apply if a Supreme Court or local court rule prohibited all persons from conveying or attempting to convey a deadly weapon or dangerous ordnance into a courthouse or from possessing or having under one's control a deadly weapon or dangerous ordnance in a courthouse.

#### **Operation of the act**

The act retains the preexisting exceptions, without change, but expands them by enacting a new exception to the prohibitions. Under the act, in addition to the above specified individuals, the section containing the prohibitions does not apply to a person who conveys or attempts to convey a handgun into a courthouse, who, at the time of the conveyance or attempt, is carrying a valid standard license or temporary emergency license to carry a concealed handgun issued pursuant to the act or a license to carry a concealed handgun issued by a reciprocity state, and who transfers possession of the handgun to the officer or officer's designee who has charge of the courthouse. The officer must secure the handgun until the licensee is prepared to leave the premises. This exception applies only if the officer who has charge of the courthouse provides services of the nature described in the exception. An officer who has charge of a courthouse is not required to offer services of that nature. This exception does not apply if a Supreme Court or local court rule prohibits all persons from conveying or attempting to convey a deadly weapon or dangerous ordnance into a courthouse or from possessing or having under one's control a deadly weapon or dangerous ordnance in a courthouse. (R.C. 2923.123(C)(6).)

## *Improperly handling firearms in a motor vehicle*

### *Formerly*

**Prohibition.** Preexisting law, unchanged by the act but expanded as described below, prohibits a person from knowingly doing any of the following (R.C. 2923.16(A), (B), and (C)):

- (1) Discharging a firearm while in or on a motor vehicle;
- (2) Transporting or having a loaded firearm in a motor vehicle in a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle;
- (3) Transporting or having a firearm in a motor vehicle, unless it is unloaded and is carried in one of the following ways: (a) in a closed package, box, or case, (b) in a compartment that can be reached only by leaving the vehicle, (c) in plain sight and secured in a rack or holder made for the purpose, or (d) in plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

**Penalty.** Formerly, a person who violated any of the prohibitions was guilty of the offense of improperly handling firearms in a motor vehicle. A violation of the first or second prohibition was a misdemeanor of the first degree, and a violation of the third prohibition was a misdemeanor of the fourth degree. (R.C. 2923.16(F).)

**Exceptions.** Formerly, the provisions specified that the prohibitions did not apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of their duties.

The prohibition against knowingly discharging a firearm while in or on a motor vehicle did not apply to a person in specified circumstances related to shooting coyotes and groundhogs.

The prohibitions against transporting firearms in specified manners did not apply to a person if all of the following applied: (1) the person was the operator or a passenger in a motor vehicle at the time of the alleged violation, (2) the motor vehicle was on real property located in an unincorporated area of a township that was zoned or used for agriculture, (3) the person owned the property described in clause (b) or was the spouse, child, tenant, or spouse or child of a tenant of the owner of the real property, and (4) the person did not transport or possess the



firearm in an illegal manner prior to arriving at the real property. (R.C. 2923.16(D).)

**Affirmative defenses.** Formerly, the provisions specified that the first and second affirmative defenses authorized under preexisting law for persons charged with carrying a concealed weapon (see "**Carrying a concealed weapon,**" above) were affirmative defenses to a charge under the second or third preexisting prohibition, related to the transport or possession of a firearm in a motor vehicle (R.C. 2923.16(E)--see COMMENT 2).

### **Operation of the act**

**Prohibitions.** The act retains the preexisting prohibitions, without change (R.C. 2923.16(A) to (C)), and enacts a series of new prohibitions (R.C. 2923.16(D) and (E)).

In the first new prohibition (hereafter referred to as the "new OMVI-related prohibition), the act prohibits any person from knowingly transporting or having a loaded handgun in a motor vehicle if, at the time of that transportation or possession, the person is under the influence of alcohol, a drug of abuse, or a combination of them or the person's whole blood, blood serum or plasma, breath, or urine contains a concentration of alcohol prohibited for persons operating a vehicle, as specified in the preexisting offense of state OMVI under R.C. 4511.19(A), which is not in the act, regardless of whether the person at the time of the transportation or possession as described in this paragraph is the operator of, or a passenger in, the motor vehicle (R.C. 2923.16(D)).

In the other new prohibitions, the act prohibits a person who has been issued a standard license or temporary emergency license to carry a concealed handgun under the act from doing any of the following:

(1) Knowingly transporting or having a loaded handgun in a motor vehicle unless the loaded handgun either is in a holster and in plain sight on the person's person or it is securely encased by being stored in a closed, locked glove compartment or in a case that is in plain sight and that is locked;

(2) If the person is transporting or has a loaded handgun in a motor vehicle in a manner authorized under the provision described in the preceding paragraph, knowingly removing or attempting to remove the loaded handgun from the holster, glove compartment, or case, knowingly grasping or holding the loaded handgun, or knowingly having contact with the loaded handgun by touching it with the person's hands or fingers while the motor vehicle is being operated on a street, highway, or public property, unless the person removes, attempts to remove,

grasps, holds, or has the contact with the loaded handgun pursuant to and in accordance with directions given by a law enforcement officer;

(3) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose and if the person is transporting or has a loaded handgun in the motor vehicle in any manner, failing to promptly inform any law enforcement officer who approaches the vehicle while stopped that the person has been issued a license to carry a concealed handgun and that the person then possesses or has a loaded handgun in the motor vehicle;

(4) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose and if the person is transporting or has a loaded handgun in the motor vehicle in any manner, knowingly disregarding or failing to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, knowingly failing to remain in the motor vehicle while stopped, or knowingly failing to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless, regarding a failure to remain in the vehicle or to keep the person's hands in plain sight, the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(5) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose, if the person is transporting or has a loaded handgun in the motor vehicle in a manner authorized under the provision described above in (1), and if the person is approached by any law enforcement officer while stopped, knowingly removing or attempting to remove the loaded handgun from the holster, glove compartment, or case, knowingly grasping or holding the loaded handgun, or knowingly having contact with the loaded handgun by touching it with the person's hands or fingers in the motor vehicle at any time after the law enforcement officer begins approaching and before the officer leaves, unless the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer.

**Penalty.** The act increases the penalty for a violation of the first preexisting prohibition to a felony of the fourth degree. Regarding the penalty for a violation of the second preexisting prohibition, the act provides that: (1) if the offender, at the time of the offense, was carrying a valid standard license or temporary license to carry a concealed handgun, or a license to carry a concealed handgun issued by a reciprocity state, and the offender was not knowingly in a place in which a licensee is not authorized to carry a concealed handgun (see "**Privileges and duties of a licensee,**" above), the offense is a misdemeanor of the first degree or, if the

offender previously has been convicted of or pleaded guilty to a violation of that preexisting prohibition, a felony of the fourth degree, and (2) if clause (1) does not apply, the offense is a felony of the fourth degree. The act retains the preexisting penalty (i.e., a misdemeanor of the fourth degree) for a violation of the third preexisting prohibition.

The act provides that a violation of any of the new prohibitions it enacts also is the offense of "improperly handling firearms in a motor vehicle." A violation of the new OMVI-related prohibition is a felony of the fifth degree. A violation of the new prohibition described above in paragraph (3) under "**Prohibitions**" is a misdemeanor of the fourth degree. A violation of the new prohibition described above in paragraph (4) under "**Prohibitions**" is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of that prohibition, a felony of the fifth degree. A violation of the new prohibition described above in paragraph (1), (2), or (5) under "**Prohibitions**" is a felony of the fifth degree. (R.C. 2923.16(I).)

**Exception.** The act retains the preexisting exceptions to the preexisting prohibitions, without change. By its terms, the preexisting exception regarding government officers, agents, and employees and law enforcement officers also applies to the new prohibitions the act enacts, but, by their terms, the other preexisting exceptions do not apply to those new prohibitions (R.C. 2923.16(F)(1) to (3)). The act enacts a new exception to the second and third preexisting prohibitions. It states that the second and third preexisting prohibitions in the offense (i.e., the preexisting "transport or possession" prohibitions) do not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, all of the following apply (R.C. 2923.16(F)(4)):

(1) The person is carrying a valid standard license or temporary emergency license to carry a concealed handgun issued under the act's provisions or a license to carry a concealed handgun issued by a reciprocity state;

(2) The person is not knowingly in a place in which a licensee is not authorized to carry a concealed handgun (see "**Privileges and duties of a licensee,**" above);

(3) Either the handgun is in a holster and in plain sight on the person's person or the handgun is securely encased by being stored in a closed, locked glove compartment or in a case that is in plain sight and that is locked.

**Affirmative defenses.** The act limits the application of the preexisting affirmative defenses that are available regarding a charge of improperly handling firearms in a motor vehicle under the second or third preexisting prohibition by

specifying that they apply to a charge of improperly handling firearms in a motor vehicle under either of those prohibitions only when the charge *involves a firearm other than a handgun*. Thus, the preexisting affirmative defenses do not apply to a charge under either of those preexisting prohibitions *that involves the possession of a handgun*, do not apply to a charge under any of the new prohibitions, and (as under preexisting law) do not apply to a charge under the first preexisting prohibition. (R.C. 2923.16(G)(1).)

The act enacts a new affirmative defense that applies to a charge of improperly handling firearms in a motor vehicle under the second or third preexisting prohibition. The new affirmative defense specifies that it is an affirmative defense to a charge of improperly handling firearms in a motor vehicle under the second or third preexisting prohibition that the actor transported or had the firearm in the motor vehicle for any lawful purpose and while the motor vehicle was on his or her own property, provided that this affirmative defense is not available unless the actor, prior to arriving at his or her own property, did not transport or possess the firearm in a motor vehicle in a manner prohibited under the second or third preexisting prohibition while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic. (R.C. 2923.16(G)(2).)

**Return of firearm.** The act specifies that, if a law enforcement officer stops a motor vehicle for a traffic stop or any other purpose, if any person in the motor vehicle surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with the offense of improperly handling firearms in a motor vehicle or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband (as defined for purposes of the Revised Code in preexisting R.C. 2901.01--not in the act), the officer must return the firearm to the person at the termination of the stop (R.C. 2923.16(J)).

**Prosecution.** The act specifies that no person who is charged with improperly handling firearms in a motor vehicle in violation of any of the preexisting prohibitions, other than the discharge prohibition, or in violation of the new OMVI-related prohibition can be required to obtain a standard license or temporary emergency license to carry a concealed handgun as a condition for the dismissal of the charge (R.C. 2923.16(H)).

## **Improper use or handling of firearms in a vessel**

### **Formerly**

**Prohibitions.** Preexisting law, unchanged by the act, contains three prohibitions with respect to the use or handling of firearms in a vessel (R.C. 1547.69(B), (C), and (D)):

(1) It prohibits a person from knowingly discharging a firearm while in or on a vessel.

(2) It prohibits a person from knowingly transporting or having a loaded firearm in a vessel in such a manner that the firearm is accessible to the operator or any passenger.

(3) It prohibits a person from knowingly transporting or having a firearm in a vessel, unless it is unloaded and is carried in one of the following ways: (a) in a closed package, box, or case, or (b) in plain sight with the action opened or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

Preexisting R.C. 1547.69 also contains a provision, unchanged by the act, that prohibits any person from operating or permitting to be operated any vessel on Ohio waters in violation of the above prohibitions (R.C. 1547.69(G)).

**Penalty.** Under preexisting law, unchanged by the act, a person who violates any of the prohibitions is guilty of a misdemeanor of the fourth degree. (R.C. 1547.99(F)--not in the act.)

**Exceptions.** Formerly, R.C. 1547.69 specified that the prohibitions did not apply to: (1) officers, agents, or employees of Ohio or any other state or of the United States or to law enforcement officers when authorized to carry or have loaded or accessible firearms in a vessel and acting within the scope of their duties, (2) persons legally engaged in hunting, or (3) the possession or discharge of a U.S. Coast Guard approved signaling device required to be carried aboard a vessel when the signaling device is possessed or used for the purpose of giving a visual distress signal. A preexisting provision of the section, unchanged by the act, also prohibits any person from knowingly transporting or possessing a signaling device of a type described in clause (3) in or on a vessel in a loaded condition except as so authorized. (R.C. 1547.69(F) and (H).)

**Affirmative defenses.** Formerly, the provisions specified that the first two affirmative defenses authorized under preexisting law for persons charged with carrying a concealed weapon (see "**Carrying a concealed weapon,**" above) were affirmative defenses to a charge under the second or third preexisting prohibition

related to the transport or possession of firearms in a vessel (R.C. 1547.69(E)--see COMMENT 2).

### **Operation of the act**

**Exception.** The act retains the preexisting exceptions to the preexisting prohibitions, without change, and enacts a new exception that states that the second and third preexisting prohibitions, relating to the transport or possession of firearms in a vessel, do not apply to a person who transports or possesses a handgun in a vessel and who, at the time of that transportation or possession, is carrying a valid standard license or temporary emergency license to carry a concealed handgun issued under the act, or a license issued by a reciprocity state, unless the person knowingly is in a place on the vessel specified in "**Privileges and duties of a licensee,**" above, as a place in which a licensee is not authorized to carry a concealed handgun (R.C. 1547.69(H)).

**Affirmative defenses.** The act limits the application of the preexisting affirmative defenses to a charge of violating the second or third preexisting prohibition, relating to the transport or possession of firearms in a vessel, by specifying that they apply to such a charge only when the charge *involves a firearm other than a handgun*. Thus, the preexisting affirmative defenses do not apply to a charge under either of those preexisting prohibitions *that involves the transport or possession of a handgun*, and (as under preexisting law) do not apply to a charge under the first preexisting prohibition. (R.C. 1547.69(E)(1).)

The act enacts a new affirmative defense that applies to a charge of violating the second or third preexisting prohibition, relating to the transport or possession of firearms in a vessel. The new affirmative defense specifies that it is an affirmative defense to a charge of violating the second or third preexisting prohibition, relating to the transport or possession of firearms of any type in a vessel, that the actor transported or had the firearm in the vessel for any lawful purpose and while the vessel was on his or her own property, provided that this affirmative defense is not available unless the actor, prior to arriving at the vessel on his or her own property, did not transport or possess the firearm in a vessel or in a motor vehicle in a manner prohibited under R.C. 1547.69 or 2923.16(B) or (C) while the vessel was being operated on a waterway that was not on the actor's own property or while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic. (R.C. 1547.69(E)(1).)

**Return of firearm.** The act specifies that, if a law enforcement officer stops a vessel for a violation of R.C. 1547.69 or any other law enforcement purpose, if any person on the vessel surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer

does not charge the person with a violation of R.C. 1547.69 or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband (as defined for purposes of the Revised Code in preexisting R.C. 2901.01--not in the act), the officer must return the firearm to the person at the termination of the stop (R.C. 1547.69(I)).

**Prosecution.** The act specifies that no person who is charged with a violation of the second or third preexisting prohibition, related to transporting or possessing firearms in a vessel, can be required to obtain a standard license or temporary emergency license to carry a concealed handgun as a condition for the dismissal of the charge (R.C. 1547.69(E)(2)).

### **Having weapons while under disability**

#### **Formerly**

Preexisting law, modified by the act as described below, prohibited a person, unless the person was relieved from the disability under another specified provision of law, from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, if any of the following applied:

(1) The person was a fugitive from justice.

(2) The person was under indictment for or had been convicted of any felony offense of violence or had 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 was under indictment for or had been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or had 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 was drug dependent, in danger of drug dependence, or a chronic alcoholic.

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

Formerly, the law also prohibited a person who had been convicted of a felony of the first or second degree from violating the preceding prohibition within five years of the date of the person's release from imprisonment or from post-release control that was imposed for the commission of a felony of the first or second degree.

Formerly, a person who violated either prohibition was guilty of having weapons while under disability. A violation of the first prohibition was a felony of the fifth degree. A violation of the second prohibition was a felony of the third degree. (R.C. 2923.13.)

### **Operation of the act**

The act retains, without change, the first preexisting prohibition when it involves the circumstances specified in (1), (2), (3), or (4), above, but it expands the circumstance specified in (5), above, to additionally prohibit a person, unless relieved from the disability, from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance if the person has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a "mentally ill person subject to hospitalization by court order," or is an involuntary "patient" other than one who is a patient only for purposes of observation (the terms in quotation marks have the same meanings as in the preexisting law governing the hospitalization of mentally ill persons, which is not in the act).

The act increases the penalty for a violation of the first preexisting prohibition, as expanded by the act, to a felony of the third degree and repeals the second preexisting prohibition. (R.C. 2923.13(A)(5), (B), and (C)).

### **Theft of a firearm or dangerous ordnance**

#### **Formerly**

Preexisting law, unchanged by the act, prohibits a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services in any of the following ways (R.C. 2913.02(A)):

- (1) Without the consent of the owner or person authorized to give consent;
- (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;
- (3) By deception;
- (4) By threat;
- (5) By intimidation.

A person who violates this prohibition is guilty of theft. The precise name of the offense and the penalty for the offense depend on the type of the property or

the value of the property or services involved in the offense. If the property stolen is a firearm or dangerous ordnance, the violation is grand theft; formerly, grand theft committed in these circumstances was a felony of the fourth degree. (R.C. 2913.02(B)(1) and (4).)

### **Operation of the act**

The act increases the penalty for theft when the property stolen is a firearm or a dangerous ordnance to a felony of the third degree. The violation continues to be grand theft. The act creates a presumption in favor of the court imposing a prison term for the offense, and specifies that the offender must serve any prison term imposed consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender. Under a preexisting provision of the Felony Sentencing Law that the act does not change but that applies to the consecutive sentencing provision the act creates, when consecutive prison terms are imposed pursuant to that Law, the term to be served is the aggregate of all of the terms so imposed. (R.C. 2913.02(B)(4) and 2929.14(E)(3) and (5).)

### **Offense of unauthorized use of LEADS**

#### **Formerly**

**Prohibitions.** Preexisting law, unchanged by the act but expanded as described below, prohibits a person from doing any of the following: (1) knowingly using or operating the property of another without the consent of the owner or person authorized to give consent, or (2) knowingly gaining access to, attempting to gain access to, or causing access to be gained to any computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service or other person authorized to give consent by the owner. (R.C. 2913.04(A) and (B)).

**Penalty.** Under preexisting law, unchanged by the act, a violation of the first preexisting prohibition is the offense of unauthorized use of property. Unauthorized use of property generally is a misdemeanor of the fourth degree, except that:

(1) If the offense is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, unauthorized use of property is whichever of the following is applicable: (a) generally, a misdemeanor of the

first degree, (b) if the value of the property or services or the loss to the victim is \$500 or more and less than \$5,000, a felony of the fifth degree, (c) if the value of the property or services or the loss to the victim is \$5,000 or more and less than \$100,000, a felony of the fourth degree, and (d) if the value of the property or services or the loss to the victim is \$100,000 or more, a felony of the third degree.

(2) If the victim of the offense is an elderly person or disabled adult, unauthorized use of property is whichever of the following is applicable: (a) generally, a felony of the fifth degree, (b) if the value of the property or services or loss to the victim is \$500 or more and less than \$5,000, a felony of the fourth degree, (c) if the value of the property or services or loss to the victim is \$5,000 or more and less than \$25,000, a felony of the third degree, and (d) if the value of the property or services or loss to the victim is \$25,000 or more, a felony of the second degree.

Under preexisting law, unchanged by the act, a violation of the second preexisting prohibition is the offense of unauthorized use of computer, cable, or telecommunication property, a felony of the fifth degree. (R.C. 2913.04(D) and (E).)

**Affirmative defenses.** Preexisting law, unchanged by the act, specifies that the affirmative defenses contained in R.C. 2913.03 are affirmative defenses to a charge of a violation of either of the preexisting prohibitions (R.C. 2913.04(C)). Preexisting R.C. 2913.03(C), not in the act, specifies that it is an affirmative defense to a charge of unauthorized use of a vehicle brought under that section that, at the time of the alleged offense: (1) the actor, though mistaken, reasonably believed that the actor was authorized to use or operate the property, or (2) the actor reasonably believed that the owner or person empowered to give consent would authorize the actor to use or operate the property.

### **Operation of the act**

**Prohibitions.** The act retains, without change, the preexisting prohibitions that constitute the offenses of unauthorized use of property and unauthorized use of computer, cable, or telecommunication property (R.C. 2913.04(A) and (B)), but it enacts a new prohibition in the same section relative to the unauthorized use of LEADS. The new prohibition prohibits a person from knowingly gaining access to, attempting to gain access to, causing access to be granted to, or disseminating information gained from access to LEADS (created pursuant to R.C. 5503.10--see **COMMENT 3**) without the consent of, or beyond the scope of the express or implied consent of, the chair of the LEADS Steering Committee. (R.C. 2913.04(C).)

**Penalty.** The act specifies that a violation of the new prohibition it enacts is the offense of unauthorized use of the law enforcement automated database system, a felony of the fifth degree; the act does not change the penalties for violations of the preexisting prohibitions (R.C. 2913.04(G)).

**Affirmative defenses.** The act does not change the preexisting affirmative defenses provided for the preexisting offenses of unauthorized use of property and unauthorized use of computer, cable, or telecommunication property but, by the terms of the preexisting provision, the affirmative defenses also will apply to a charge of a violation of the new prohibition the act enacts (R.C. 2913.04(D)).

### **Access to sealed criminal conviction records**

#### **Formerly**

Preexisting law, unchanged by the act, specifies a procedure by which a "first offender" (defined in preexisting R.C. 2953.31--not in the act) may apply to a court for the sealing of the record of the offender's criminal conviction record. Under provisions expanded by the act as described below, records that are so sealed may be inspected only by specified law enforcement officers and agencies, prosecutors, and parole or probation officers for specified purposes, by persons authorized by the person who is the subject of the records, and by BCII or an authorized BCII employee for the purpose of providing information to certain boards or persons with respect to persons who apply for employment to work with children or to provide direct care to an older adult. (R.C. 2953.32(A) and (D).)

#### **Operation of the act**

The act expands the circumstances in which, and person by whom, sealed criminal conviction records may be inspected to also authorize BCII, an authorized employee of BCII, a sheriff, or an authorized employee of the sheriff to inspect sealed criminal conviction records of first offenders in connection with a criminal records check conducted under the act, as described in "**Criminal records check and incompetency records check,**" above (R.C. 2953.32(D)(10)).

### **Private investigators and security providers**

#### **Formerly**

Preexisting law, unchanged by the act, specifies the licensing requirements for persons to engage in the business of private investigation, the business of security services, or both. It also specifies the requirements for these licensees or registered employees of licensees (private investigators and security guard providers) to carry a firearm. These requirements include certification of satisfactory completion of firearms training, or other evidence of approval of

firearms training, by the Executive Director of OPOTC, registration as a licensee or employee who may carry a firearm, issuance of an identification card indicating that the licensee or employee is a firearm-bearer, and satisfactory requalification in firearms use on a periodic basis. (R.C. 4749.10.)

### **Operation of the act**

The act provides that nothing in the preexisting provisions described above prohibits a private investigator or a security guard provider from carrying a concealed handgun if the private investigator or security guard provider complies with the act's provisions governing standard licenses and temporary emergency licenses to carry a concealed handgun (R.C. 4749.10(C)).

### **Licensing scheme is law of general nature**

The act states that the General Assembly finds that licenses to carry concealed handguns are a matter of statewide concern and wishes to ensure uniformity throughout the state regarding the qualifications for a person to hold a license to carry a concealed handgun and the authority granted to a person holding a license of that nature. The act states that it is the intent of the General Assembly, in amending and enacting the sections of the Revised Code in the act that relate to standard licenses and temporary emergency licenses to carry a concealed handgun and, generally, to the firearms offenses, to enact laws of a general nature and, by enacting those laws of a general nature, the state occupies and preempts the field of issuing licenses to carry a concealed handgun and the validity of licenses of that nature. The act states that no municipal corporation may adopt or continue in existence any ordinance, and no township may adopt or continue in existence any resolution, that is in conflict with those sections, including, but not limited to, any ordinance or resolution that attempts to restrict the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed. (Section 9.)

### **Statements of legislative intent**

The act states that, in amending and enacting the sections of the Revised Code in the act that relate to standard licenses and temporary emergency licenses to carry a concealed handgun and, generally, to the firearms offenses, the General Assembly declares its intent to recognize both of the following (Section 6):

(1) The inalienable and fundamental right of an individual to defend the individual's person and the members of the individual's family;

(2) The fact that the right described above in (1) predates the adoption of the United States Constitution, the adoption of the Ohio Constitution, and the

enactment of all statutory laws by the General Assembly and may not be infringed by any enactment of the General Assembly.

The act further states that, in enacting and amending the sections of the Revised Code in the act relative to standard licenses and temporary emergency licenses to carry a concealed handgun and, generally, to the firearms offenses, the General Assembly declares that it is not its intent to declare or otherwise give the impression that, prior to the act's effective date, an individual did not have an inalienable and fundamental right, or a right under the Ohio Constitution or the United States Constitution, to carry a concealed handgun or other firearm for the defense of the individual's person or a member of the individual's family while engaged in lawful activity. The act further declares that it is not the General Assembly's intent to invalidate any prior convictions for violating any section of the Revised Code or a municipal ordinance prior to the act's effective date or to prevent the prosecution of any violation committed prior to that effective date. (Section 7.)

### **Severability clause**

The act provides that, if any provision of any of the listed sections of the Revised Code amended by the act, any provision of any of the listed sections of the Revised Code enacted by the act, or the application of any provision of those sections to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the particular section or related sections that can be given effect without the invalid provision or application, and to this end the provisions of the particular section are severable (Section 10).

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## **COMMENT**

1. The act specifies that, as used in its provisions relating to standard and temporary emergency licenses to carry a concealed handgun (R.C. 2923.124(I) to (K), and, by reference, preexisting R.C. 2919.27--not in the act):

(a) "Civil protection order" means a protection order issued, or a consent agreement approved, under existing R.C. 2903.214 (civil protection orders issued based on a person's commission of menacing by stalking) or 3113.31 (civil protection orders issued based on a person's commission of domestic violence);

(b) "Temporary protection order" means a protection order issued under R.C. 2903.213 (temporary protection orders issued after the filing of criminal charges against a person alleging the commission of the offense of menacing by stalking or certain assault-related or menacing-related offenses not involving a family or household member) or 2919.26 (temporary protection orders issued after the filing of criminal charges against a person alleging the commission of the

offense of domestic violence or certain assault-related or menacing-related offenses involving a family or household member);

(c) "Protection order issued by a court of another state" means an injunction or another order issued by a criminal court of a state other than Ohio for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person, including a temporary order, and means an injunction or order of that nature issued by a civil court of a state other than Ohio, including a temporary order and a final order issued in an independent action or as a *pendente lite* order in a proceeding for other relief, if the court issued it in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. "Protection order issued by a court of another state" does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States.

2. The Ohio Supreme Court recently addressed the validity of preexisting R.C. 2923.12, containing the offense of carrying concealed weapons. In the syllabus to its decision in *Klein v. Leis* (2003), 99 Ohio St. 537, the Court held that:

1. R.C. 2923.12 does not constitutionally infringe the right to bear arms; there is no constitutional right to bear concealed weapons.

2. The affirmative defenses of R.C. 2923.12(C), which apply to R.C. 2923.12 and 2923.16(B) and (C), are not vague.

3. Preexisting R.C. 5503.10, not in the act, creates in the Department of Public Safety, Division of State Highway Patrol, a program for administering and operating a Law Enforcement Automated Data System, to be known as LEADS, providing computerized data and communications to the various criminal justice agencies of the state. The program is administered by the Patrol's Superintendent, who may employ such persons as are necessary to carry out the purposes of the section. The Superintendent must adopt rules under the Administrative Procedure Act establishing fees and guidelines for the operation of and participation in the LEADS program, which rules must include criteria for granting and restricting access to information maintained in LEADS. The Superintendent must appoint a steering committee to advise the Superintendent in the operation of LEADS, comprised of persons who are representative of the criminal justice agencies in Ohio that use the system, and the Superintendent or the Superintendent's designee is chairman of the committee.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-28-03	pp. 75-76
Reported, H. Criminal Justice	03-06-03	p. 215
Passed House (69-28)	03-12-03	pp. 229-244
Reported, S. Judiciary on Criminal Justice	06-17-03	p. 485
Passed Senate (22-10)	06-18-03	pp. 499-503
House refused to concur in Senate amendments (5-94)	06-19-03	pp. 623-624
Senate requested conference committee	10-21-03	p. 1133
House acceded to request for conference committee	10-23-03	p. 1147
House agreed to conference committee report (70-27)	12-10-03	pp. 1309-1321
Senate agreed to conference committee report (25-8)	12-10-03	pp. 1269-1281
House reconsidered conference committee report (71-22)	01-06-04	pp. 1351-1352
House rejected conference committee report (5-88)	01-06-04	pp. 1353-1364
Senate acceded to request for second conference committee	01-06-04	p. 1318
House agreed to second conference committee report (69-24)	01-07-04	pp. 1371-1387
Senate agreed to second conference committee report (25-8)	01-07-04	pp. 1330-1346

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