Dennis M. Papp *Legislative Service Commission*

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(As Passed by the House)

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

BILL SUMMARY

Licenses to carry concealed handguns

- Specifies requirements for eligibility for a license to carry a concealed handgun and methods by which an applicant may establish competence in handling a handgun in order to satisfy one of those requirements.
- Sets forth a form for an application for a license to carry a concealed handgun.
- Requires the Ohio Peace Officer Training Commission (OPOTC) to prescribe application forms and license forms, and to prescribe a fee not to exceed the lesser of $45 or the actual cost of issuance for a license to carry a concealed handgun.
- Requires the sheriff receiving an application for a license to carry a concealed handgun to conduct a criminal records check of the applicant for the license.
- Provides procedures that relate to the denial of an application.
- Provides procedures for the renewal of a license.
- Specifies locations at which, and circumstances in which, a concealed handgun licensee is not authorized to carry a concealed handgun.

- Provides criteria and procedures for the suspension or revocation of a license.

- Grants qualified immunity from civil liability to certain public officers and employees performing their licensing functions and to firearms safety instructors and private employers under certain circumstances.

- Specifies that licensure records are generally considered to be confidential.

- Requires the sheriff to compile and report to OPOTC certain county-wide statistical information regarding licenses and requires OPOTC to compile and forward to certain governmental officials state-wide statistical information regarding licenses.

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

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

Related firearms offenses

- 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 bill)* to do so by the owner or occupant, or the agent or servant of either.

- In the offense of carrying concealed weapons: (1) restructures the prohibition and revises the penalty structure, (2) additionally excepts from the prohibition against carrying a handgun other than a dangerous ordnance a corrections officer who has successfully completed a basic firearms training course and who is authorized to carry a handgun, a person who possesses a valid license to carry a concealed handgun unless the person is in an unauthorized place, and a person who carries or has a handgun in a motor vehicle if certain criteria apply, and removes from the "government official/law enforcement officer" exception the requirement that the person be acting within the scope of duties, (3)

creates an additional affirmative defense that the weapon is a handgun and the person would have met all of the requirements for a license had the person applied for a license, (4) prohibits the use of certain affirmative defenses to a charge of carrying concealed weapons in certain subsequent firearms-related prosecutions, and (5) prohibits requiring a person charged with carrying concealed weapons to obtain a license to carry a concealed handgun as a condition for the dismissal of the charge.

- In the 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) revises the exception relating to government officers, agents, or employees to repeal the requirement that the officer, agent, or employee be acting within the scope of their duties, (3) additionally excepts (a) a corrections officer who has successfully completed a basic firearms training course and who is authorized to carry a handgun and (b) the permit holder or a designated employee if the permit holder or designated employee possesses a valid license to carry a concealed handgun, (4) creates an additional affirmative defense that the firearm is a handgun and the person would have met all of the requirements for a license had the person applied for a license, (5) prohibits the use of certain affirmative defenses to a charge of possession of a firearm in liquor permit premises in certain subsequent firearms-related prosecutions, and (6) prohibits requiring a person charged with possession of a firearm in liquor permit premises to obtain a license to carry a concealed handgun as a condition for the dismissal of the charge.

- In the offense of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone, additionally excepts a person who, at the time of conveying or attempting to convey a handgun into, or possessing a handgun in, a school safety zone, is carrying a valid license to carry a concealed handgun issued to the person under the bill and is in the school safety zone in accordance with 18 U.S.C. 922(q)(2)(B), unless the person knowingly is in a place in which a licensee is not authorized to carry a concealed handgun.

- In the 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 a

person who possesses a license to carry a concealed handgun and who complies with specified handgun "check in" procedures.

- In the offense of improperly handling firearms in a motor vehicle: (1) excepts from the prohibitions related to transporting or possessing a firearm in a motor vehicle a person who possesses a valid license to carry a concealed handgun unless the person is in an unauthorized place and a person who transports a handgun in a motor vehicle if certain criteria apply, (2) creates self defense as an affirmative defense to a charge of discharging a firearm from a motor vehicle and creates an additional affirmative defense to a charge of transporting or possessing a firearm in a motor vehicle that the firearm is a handgun and the person would have met all of the requirements for a license had the person applied for a license, (3) prohibits the use of certain affirmative defenses to a charge of improperly handling firearms in a motor vehicle in certain subsequent firearms-related prosecutions, and (4) prohibits requiring a person charged with improperly handling firearms in a motor vehicle to obtain a license to carry a concealed handgun as a condition for the dismissal of the charge.

- In the offense of improper use or handling of firearms in a vessel: (1) excepts from the prohibitions related to transporting or possessing firearms in a vessel a person who possesses a valid license to carry a concealed handgun unless the person is in an unauthorized place, (2) creates self defense as an affirmative defense to a charge of discharging a firearm while in or on a vessel and creates an additional affirmative defense to a charge of transporting or possessing a firearm in a vessel that the firearm is a handgun and the person would have met all of the requirements for a license had the person applied for a license, (3) prohibits the use of certain affirmative defenses to a charge of improper use or handling of firearms in a vessel in certain subsequent firearms-related prosecutions, and (4) prohibits requiring a person charged with improper use or handling of firearms in a vessel to obtain a license to carry a concealed handgun as a condition for the dismissal of the charge.

- Increases the penalty for having weapons while under disability to a felony of the third degree in all cases.

- Increases from a felony of the fourth degree to a felony of the third degree the penalty for theft of a firearm or dangerous ordnance, creates a presumption in favor of the court imposing a prison term for the offense,

and requires the offender to serve a prison term imposed for the offense consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

Legislative intent, licensing scheme is law of general nature, effective date

- Contains a statement of legislative intent with respect to the bill's concealed handgun licensing provisions.

- Prohibits a municipal corporation from adopting or continuing in existence any ordinance, and a township from adopting or continuing in existence, any resolution that is in conflict with the bill's concealed handgun licensing scheme.

- Specifies that the bill's amendments to, and enactment of, Revised Code sections take effect on January 1, 2004.

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CONTENT AND OPERATION

The bill enacts a comprehensive mechanism that permits a person in specified circumstances to obtain a license to carry a concealed handgun and that establishes rules that govern the carrying of a concealed handgun. The mechanism, and all of the other amendments to, and enactments of, Revised Code provisions the bill makes take effect on January 1, 2004 (Section 4).

Obtaining and renewing a license to carry a concealed handgun

Making the application

Under the bill, upon the request of a person who wishes to obtain a 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 containing the text of the Ohio Firearms Laws prepared by the OPOTC. The bill requires OPOTC to prescribe and make available to sheriffs an application for such a license and to prepare and make available to sheriffs a pamphlet that contains the text of the Ohio Firearms Laws. (R.C. 109.731(A)(1) and (B), 2923.125(A), and 2923.124(A)).[1] 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) A nonrefundable license fee in the amount prescribed by the OPOTC (up to $45), except that the sheriff must waive the payment of the license fee in connection with an initial or renewal application for a license to carry a concealed handgun that is submitted by an applicant who is a retired peace officer, a retired park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer of the Department of Natural Resources (hereafter, "DNR officers"), a retired federal law enforcement officer who, prior to retirement, was authorized under federal law to carry a firearm in the course of duty, or a retired corrections officer who, prior to retirement, had successfully completed a basic firearms training program approved by OPOTC and who was authorized to carry a firearm

[1] *"Handgun" means any firearm designed to be fired while being held in one hand (existing R.C. 2923.11(C)--not in the bill).*

in the course of duty, unless the retired peace officer, DNR officer, federal law enforcement officer, or corrections officer retired as the result of a mental disability;

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

(3) Unless the applicant is a retired peace officer, federal law enforcement officer, corrections officer, or DNR officer described above in (1), one or more of the following competency certifications, each of which must reflect that within the three years immediately preceding the application the applicant has performed that to which the competency certification relates:

(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 was open to members of the general public, that 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, that 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 that 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 the Executive Director of OPOTC 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 or was honorably discharged from military service in the active or reserve armed forces of the United States, and (ii) that, through participation in that military service, 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;

(g) A valid license to carry a handgun in Ohio or in a county or municipal corporation of Ohio, other than a license issued under the bill, that was or is issued prior to, on, or after the effective date of the bill and has not been revoked for cause.

(4) If the applicant has ever been declared incompetent or involuntarily hospitalized or institutionalized pursuant to court order, a certification of remission of the type described in paragraph (9) of "***When license must be issued***," below, or a copy of the court order reversing or vacating the court order adjudicating the applicant to be mentally incompetent or the order under which the applicant had been involuntarily hospitalized or institutionalized.

Course requirements

Each course, class, or program described above in paragraphs (3)(a), (b), (c), or (e) 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) the ability to name, explain, and demonstrate the rules for safe handling of a handgun, (2) the ability to demonstrate and explain how to handle ammunition in a safe manner, (3) the ability to demonstrate the knowledge, skills, and aptitude necessary to shoot a handgun in a safe manner, and (4) range time, live fire training, and gun handling 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 applicant's 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 aptitude necessary to shoot a handgun in a safe manner.

The competency certification described in those paragraphs must attest that the course, class, or program the applicant successfully completed met the above requirements. (R.C. 2923.125(G).)

Criminal records check

Upon receipt of an applicant's completed application form, supporting documentation, and, if not waived, license fee, a sheriff must conduct or cause to be conducted a criminal records check of the applicant in the following manner (R.C. 311.41(A) and 2923.125(C)):

(1) The sheriff must conduct the criminal records check of the applicant to determine whether the applicant fails to meet any of the bill's licensing eligibility criteria by using the Law Enforcement Automated Data System (LEADS) to gain access to the criminal records in the Bureau of Criminal Identification and Investigation (BCII), the National Crime Information Center, and the Interstate Identification Index. In conducting the criminal records check, the sheriff must use the applicant's name, Social Security number, and date of birth that are stated in the application or the fingerprints of not more than four fingers of the applicant if the applicant allows the sheriff to obtain those fingerprints using an electronic fingerprint reading device for the purpose of conducting the criminal records check.

(2) If a criminal records check conducted under paragraph (1), above, using the applicant's name, Social Security number, and date of birth that are stated in the application indicates that the applicant may fail to meet any of the licensing eligibility criteria and if the applicant wishes to proceed with the application, the sheriff must conduct further investigation to determine whether the applicant meets all of the licensing criteria. If the applicant previously has not done so, the applicant must allow the sheriff to obtain the fingerprints of not more than four fingers of the applicant using an electronic fingerprint reading device. The sheriff must use those fingerprints of the applicant to conduct an additional criminal records check of the applicant in the manner described in paragraph (1), above. The sheriff may not retain the applicant's Social Security number or fingerprints as part of the application.

(3) 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) or (2), above. However, the sheriff must not cease that investigation if both of the following apply: (a) 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, and (b) the sheriff would be subject to a possible criminal charge of dereliction of duty if the sheriff were to cease the investigation.

If the criminal records check conducted by the sheriff does not indicate that the applicant fails to meet the bill's licensing eligibility criteria, the sheriff must destroy or cause a designated employee to destroy all records other than the application that were made in connection with the criminal records check within 20 days after conducting the criminal records check. When required as described in "***Procedure for contesting the denial of a license based on criminal records check***," below, 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 that were made in connection with the criminal records check within the 20-day period specified in the provision described in that part of the analysis. (R.C. 311.41(B).)

With respect to a particular criminal records check to which the preceding paragraph applies, the bill 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 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 license to carry a concealed handgun made in connection with the particular criminal 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).)

A sheriff also must conduct a criminal records check in accordance with these provisions upon receipt of an application to renew a license, a new color photograph, and, if not waived, license renewal fee, as described below in "***License renewal***" (R.C. 311.41 and 2923.125(F)).

When license must be issued

Except as specified below in "***Suspension of the application process***," "***Postponement of issuance of license***," and "***Denial of application***," within 45 days after receipt of an applicant's completed application form, the supporting documentation, and, if not waived, license fee, a sheriff must issue to the applicant

a 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 "***Offenses with respect to licenses***," below).[2]

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[2] *"Offense of violence," as defined in existing law (R.C. 2901.01(A)(9)--not in the bill), 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, pleaded guilty to, or been adjudicated a delinquent child for an act that if committed by an adult would be 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; or 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, pleaded guilty to, or been adjudicated a delinquent child for an act that if committed by an adult would be 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 offense of possessing a revoked or suspended concealed handgun license (see "***Offenses with respect to licenses--Possessing a revoked or suspended concealed handgun license***," below).

(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 been 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 been adjudicated a delinquent child for the offense of resisting arrest.

(9) The applicant is not currently under an adjudication of mental incompetence and, subject to the exception described in the next sentence, has not been involuntarily hospitalized or institutionalized pursuant to court order (see **COMMENT** 1). However, a person who previously has been declared incompetent or involuntarily hospitalized or institutionalized pursuant to court order is eligible for a license to carry a concealed handgun if the person submits either (R.C. 2923.125(D)(6)): (a) a certification by a physician licensed pursuant to R.C. Chapter 4731. whose primary practice is in the field of psychiatry that the

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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).

condition that resulted in the applicant's involuntary hospitalization or institutionalization is in remission and is not reasonably likely to redevelop at a future time and that the applicant no longer represents a risk of physical harm to others, or (b) a copy of the court order reversing or vacating the court order adjudicating the person to be mentally incompetent or the order under which the applicant had been involuntarily hospitalized or institutionalized.

(10) The applicant is not currently subject to a temporary protection order issued pursuant to R.C. 2919.26 as a pretrial condition of release of an alleged domestic violence offender or similar offender or a temporary or permanent civil protection order issued pursuant to R.C. 3113.31 upon a petition for relief from domestic violence.

(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***," unless that competency certification is not required.

Suspension of the application process

If the sheriff with whom an application for a 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)(5)).

Denial of application

Generally. If a sheriff denies an application 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 and, if applicable, must comply with the procedure described in "***Denial of application for reasons not based on criminal records check***," below (R.C. 2923.125(D)(2)).

Denial of application for reasons not based on criminal records check. If a sheriff determines that an applicant for a license does not satisfy the bill's licensure requirements for reasons not based on the criminal records check, the sheriff must file a petition in the court of common pleas of the sheriff's county that requests the court to do both of the following: (1) review the applicant's application and supporting documentation and other relevant information that the sheriff submits and that was acquired in connection with the application and (2) authorize the sheriff to deny the requested license. The sheriff must serve the applicant with a copy of the petition in the manner prescribed in the Rules of Civil Procedure for the service of process regarding complaints. Upon the request of the sheriff or the applicant, the court must promptly hold a hearing on the petition prior to making a determination as described in the following paragraph.

If the court determines that the sheriff established by clear and convincing evidence that the applicant does not satisfy the bill's licensure requirements for reasons other than the criminal records check, the court must authorize the sheriff to deny the requested license. If the court determines that the sheriff has not sustained that burden of proof, it must order the sheriff to issue the requested license and to pay any reasonable attorney's fees incurred by the applicant. (R.C. 2923.125(D)(4).)

Procedure for contesting the denial of an application based on criminal records check. If a sheriff denies an application for a license to carry a concealed handgun as a result of the criminal records check 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 file a written request with the source requesting the source to conduct another criminal records check with respect to the applicant, to correct all erroneous information in the source's records that relates to the applicant and that may be relevant to the applicant's eligibility for a license to carry a concealed handgun, and to transmit that corrected information to the sheriff. If the source fails to perform those functions within 14 days or denies the applicant's request, the applicant may file in the court of common pleas of the applicant's county of residence a complaint that requests the court to order the source to perform those functions. If the applicant establishes by clear and convincing evidence that the source's records contain erroneous information that relates to the applicant and that may be relevant to a sheriff's determination as to the applicant's eligibility for a license, that the erroneous information should be corrected, and that the source's records as so corrected contain, and the criminal records check otherwise contained, no information that may be relevant to a sheriff's determination as to the applicant's eligibility for a license, the court must order the source to perform the requested functions. If a court order of that nature is entered, within 20 days after the source transmits corrected information to the sheriff who denied the issuance or renewal of the

license, the provisions for the destruction of records described in "***Criminal records check***," above, apply to the chief operating officer of the source or an employee of the source designated by that officer. (R.C. 2923.127.)

These 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. 2923.12); see "***License renewal***," below).

Replacement of lost or destroyed license

If a license to carry a concealed handgun issued under the bill is lost or is destroyed, the "licensee" (defined for purposes of the bill as a person to whom a license to carry a concealed handgun has been issued under the bill--R.C. 2923.124) may obtain from the sheriff who issued that license a duplicate license upon the payment of $15 and the submission of an affidavit attesting to the loss or destruction of the license (R.C. 2923.125(E)).

License renewal

A licensee who wishes to renew a 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 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, and a nonrefundable license renewal fee in the amount prescribed by the OPOTC (up to $45) unless the fee is waived. The licensee is not required to submit a new competency certificate.

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

Privileges and duties of a licensee

Generally

A license to carry a concealed handgun issued under the bill expires four years from the date of issuance. A licensee 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, the licensee may carry a concealed handgun anywhere in Ohio if the licensee also carries a valid license 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 law enforcement officer approaches a stopped vehicle as the result of a traffic stop or a stop for another law enforcement purpose and a licensee is the driver or an occupant of that vehicle, and if the licensee is carrying a concealed handgun at the time the officer approaches the vehicle, the licensee must promptly inform the officer that the licensee has been issued a license to carry a concealed handgun and that the licensee currently is carrying a concealed handgun. (R.C. 2923.126(A).)

Places and circumstances not covered by license

A valid license to carry a concealed handgun does not authorize the licensee to carry a concealed handgun into any of the following places[3] (R.C. 2923.126(B)):

(1) The secured area of 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, by reference to existing R.C. 2921.01 and 2967.01, not in the bill);

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[3] *"Valid license" means a license to carry a concealed handgun that has been issued under the bill's provisions, that is currently valid, that is not under suspension, and that has not been revoked (R.C. 2923.124(H)).*

(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 of a deadly weapon or dangerous ordnance into a courthouse or illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse, as described below in "***Illegal conveyance of a deadly weapon or dangerous ordnance into 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) The premises of 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 place in which federal law prohibits the carrying of handguns.

The bill provides that nothing in the bill 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, except that a licensee may keep a handgun in a locked motor vehicle that is not owned by the private employer. It also provides that nothing in the bill 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).)

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 that type 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. 2925.126(C)(2).)

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. 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 "***Miscellaneous offenses with respect to licenses--Criminal trespass***," below.) (R.C. 2911.21(A) and (D) and 2923.126(C)(3).)

License issued by another state

The bill provides that a person who holds a license to carry a concealed handgun that was issued pursuant to the law of another state has the same right to carry a concealed handgun in Ohio as a person who was issued a license to carry a concealed handgun under the bill and is subject to the same restrictions that apply to a person who carries a license issued under the bill (R.C. 2923.126(D)).

Suspension and revocation of license

Suspension of a license

If a licensee holding a valid license is arrested for or otherwise charged with an offense of a type described in paragraph (4) of "***When license must be issued***," above, or the offense of using weapons while intoxicated, or becomes subject to a temporary protection order of a type described in paragraph (10) of "***When license must be issued***," above, the sheriff who issued the license must suspend it and comply with 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, the sheriff who issued the license must notify the licensee, by certified mail, return receipt requested, at the licensee's last known residence address that the license has been suspended and that the licensee must surrender the 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 temporary 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 temporary protection order. If the suspension so ends, the sheriff must return the license to the licensee. (R.C. 2923.128(A).)

Revocation of a license

A sheriff who issues a license to carry a concealed handgun must revoke the 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 license, the licensee did not satisfy the eligibility requirements described in paragraph (3), (4), (5), (6), (7), or (8) in "***When license must be issued***," above.

(3) On or after the date on which the 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 license must be issued***," above.

(4) On or after the date on which the license was issued, the licensee becomes subject to a permanent civil domestic violence protection order.

(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 license***" under "***Privileges and duties of a licensee***."

(6) On or after the date on which the license was issued, the licensee is adjudicated to be mentally incompetent or has been involuntarily hospitalized or institutionalized pursuant to a court order.

(7) At the time of the issuance of the 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) 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, the sheriff who issued the license must notify the licensee, by certified mail, return receipt requested, at the licensee's last known residence address that the 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 the licensee satisfies any of the above eight circumstances and no longer meets the requirements for holding a license to carry a concealed handgun, the sheriff must revoke the 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 bill prohibits a person, except in the performance of official duties, from possessing a concealed handgun license that was issued and that has been revoked or suspended pursuant to the bill'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).)

Civil immunity

If a sheriff, the Superintendent or the employees of BCII, or the OPOTC or its employees make a good faith effort in performing the duties imposed upon them by the bill, in addition to the personal immunity of state and political subdivision officers and employees and the immunity for political subdivisions provided by existing R.C. 9.86 and the Political Subdivision Sovereign Immunity Law 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 license to carry a concealed handgun, (2) the failure to issue, renew, suspend, or revoke a license, or (3) any action or misconduct with a handgun committed by a licensee. The bill further provides that any action of a sheriff relating to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun is to be considered a governmental function for purposes of the 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 bill 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 (3) the entity or instructor did not issue the competency certificate with malicious purpose, in bad faith, or in a wanton or reckless manner.

Under the bill, 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. Existing R.C. 9.86 and 9.87 (which are not in the bill, and provide for the qualified civil immunity of state governmental officers and employees and the circumstances under which it indemnifies such officers and employees) apply to any civil action involving a peace officer's use of a concealed handgun in the performance of the peace officer's duties while the peace officer is off duty. (R.C. 2923.129(A)(4).)

Miscellaneous provisions relating to sheriff; related offenses

Sheriff's licensure records are not public records; offense

The records that a sheriff keeps relative to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun, including, but not limited to, completed applications for the issuance or renewal of a license, reports of criminal records checks, and applicants' Social Security numbers and fingerprints, are confidential and are not public records, notwithstanding the existing Public Records Law. The bill prohibits any person 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 misdemeanor of the second degree. (R.C. 2923.129(B) and (D).)

Reports to Ohio Peace Officer Training Commission

Under the bill, each sheriff must report to the OPOTC the number of licenses to carry a concealed handgun that the sheriff issued, renewed, suspended, revoked, or denied during the previous quarter of the calendar year and the number of applications for those licenses that were suspended as provided in the bill 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 is confidential and is not a public record. The bill prohibits any person 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 misdemeanor of the second degree. (R.C. 2923.129(C) and (D).)

Sheriff's concealed handgun license issuance expense fund

The bill 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 license or a duplicate 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 concealed handgun licenses, 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).

Miscellaneous offenses with respect to licenses

Falsification of a concealed handgun license

The bill prohibits a person from altering a 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 this 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

Existing law--prohibitions and penalties. Existing law 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.

Existing law 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)(12), (B), and (E)(3).)

Existing law--civil liability. Under existing law, 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 bill. The bill 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 bill in order to obtain or renew a license to carry a concealed handgun. Second, it prohibits a person, in an attempt to obtain a license to carry a concealed handgun under the bill, 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***," above. A person who violates either prohibition is guilty of falsification to obtain a concealed handgun license, a felony of the fourth degree. The existing 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

Existing law. Existing law 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,[4] (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 existing law, 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 bill. The bill 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 remains a misdemeanor of the fourth degree. (R.C. 2911.21(A)(4) and (D) and 2923.126(C)(3).)

Posting of signs in specified areas

The bill 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 license***"; however, not all of the premises within that list are specified under this provision as being

[4] *"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).*

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)):

Place	Individual or entity responsible for putting up sign
Police stations, municipal jails, and municipal courthouse 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, halfway houses, alternative residential facilities, and other state or local correctional institutions or detention facilities within Ohio	The sheriff, chief of police, or person in charge of the facility or a designee of any of those persons
Airport facilities	The board of trustees of the regional airport authority, chief administrative officer of the airport facility, or other person in charge of the airport 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

The bill 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"[5] (R.C. 2923.1212(B)):

[5] *"School safety zone" consists of a school, school building, school premises, school activity, and school bus (R.C. 2901.01(C)(1)--not in the bill).*

(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;

(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 bill requires OPOTC to prescribe, and to make available to sheriffs, both of the following (R.C. 109.731(A)):

(1) An application form to be used by a person who applies under the bill for a 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 bill (the form is prescribed in R.C. 2923.1210, not reproduced in this analysis);

(2) A form for the license to carry a concealed handgun that is to be issued by sheriffs to persons who qualify for the license under the bill 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, and the name of the sheriff who issues the license.

(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.

Firearms laws pamphlet

The bill further requires OPOTC to prepare a pamphlet that contains the text of the Ohio Firearms Laws and to make copies of the pamphlet available to sheriffs for distribution to applicants under the bill for a license to carry a concealed handgun and applicants under the bill for the renewal of such a license (R.C. 109.731(B)).

License application and renewal fee

OPOTC must prescribe a fee to be paid by an applicant under the bill for a license to carry a concealed handgun or for the renewal of a license of that nature in an amount that does not exceed the lesser of $45 or the actual cost of issuing the license, including, but not limited to, the cost of conducting the criminal records check. OPOTC must specify the portion of the fee that will be used to pay each particular cost of the issuance of the license. The sheriff must deposit all fees paid by an applicant under the bill for the issuance or renewal of a license into the Sheriff's Concealed Handgun License Issuance Expense Fund established by the bill. (R.C. 109.731(C).)

Timeframe for adopting rules and making forms and pamphlets available

Within 30 days after the effective date of the bill, OPOTC must submit to the Joint Committee on Agency Rule Review the rules required by the bill. Within 30 days after those rules take effect, OPOTC must prepare and make available to Ohio sheriffs the application and license forms and the Ohio Firearms Laws pamphlet and must prescribe the license fee. (Section 8.)

Statistics and reports

The bill requires OPOTC to maintain statistics with respect to the issuance, renewal, suspension, revocation, and denial of licenses to carry a concealed handgun and the suspension of applications for those licenses 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 those licenses that were issued, renewed, suspended, revoked, and denied in the previous calendar year and the number of applications for those licenses for which processing was suspended in the previous calendar year. OPOTC must submit its first annual statistical report no later than 15 months after the effective date of the bill. (R.C. 109.731(D) and Section 8.)

Oversee compliance with the destruction of records requirement

OPOTC also must oversee compliance with the requirement for the destruction of records required in relation to the criminal records check (see "***Criminal records check***," above). OPOTC may adopt rules under the Administrative Procedure Act implementing procedures to be followed in relation to the destruction of those records and to ensure that the destruction requirements are followed. OPOTC may hire employees to make appropriate investigations to ensure that the destruction requirements are followed. County sheriffs are required to cooperate with any investigation of that nature and to give the employees access to all places and records in the sheriff's office related to those criminal records checks. (R.C. 109.731(E).)

Carrying a concealed weapon

Existing law

Prohibition. Existing law prohibits 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 violates the prohibition is guilty of the offense of carrying concealed weapons, which generally is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of carrying concealed weapons or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons is a felony of the fourth degree. If the weapon involved is a firearm and the violation is committed at premises for which a D permit has been issued under the Liquor Control Law or if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons is a felony of the third degree. (R.C. 2923.12(D).)

Exception. The prohibition does 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 defense. It is 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 applies (R.C. 2923.12(C)):

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes while the actor was engaged in or was going to or from the actor's lawful business or occupation, 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 bill

Prohibition. The bill restructures the prohibition against carrying a concealed deadly weapon or dangerous ordnance (see **COMMENT** 2). It 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;

(3) A dangerous ordnance.

Penalty. The bill restructures the penalties for the offense of carrying concealed weapons. Under the bill, a person who violates the prohibition is guilty of carrying concealed weapons. Generally, carrying concealed weapons is a misdemeanor of the first degree (same as under existing law), but, under the bill:

(1) Subject to (2) and (3), below, carrying concealed weapons is a misdemeanor of the third degree if all of the following apply (added by the bill): (a) the weapon involved is a handgun, (b) at the time of the commission of the offense, the person would have met the requirements (2) through (11) of the requirements to be eligible for a license to carry a concealed handgun under "***When license must be issued***," above, if the offender had submitted an application for a license at the time the offender carried a concealed handgun but

would not have met the residency or the training or experience requirements to be eligible for a license to carry a concealed handgun as described in paragraphs (1) and (12) of "***When license must be issued***," above, and (c) the person was not knowingly in an unauthorized place specified above in "***Places and circumstances not covered by a license***" under "***Privileges and duties of a licensee***" at the time of the offense.

(2) Subject to (3), below, carrying concealed weapons is a felony of the fourth degree if the offender previously has been convicted of an offense of violence, if the weapon involved is a firearm, other than a handgun, that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance (similar to existing law, other than the handgun exception).

(3) Carrying concealed weapons is a felony of the third degree if any of the following apply: (a) the weapon involved is a handgun, and, at the time of the commission of the offense, the offender would not have met one or more of the requirements to be eligible for a license to carry a concealed handgun described in paragraphs (2) through (11) under "***When license must be issued***," above, if the offender had submitted an application for a license at the time the offender carried a concealed handgun and did not meet the residency or the training or experience requirements (added by the bill), (b) the weapon involved is a handgun, and the offender either used the handgun in the commission of an offense of violence or knowingly carried the handgun for the purpose of committing an offense of violence (added by the bill), (c) the weapon involved is a firearm, and the violation is committed at premises for which a D permit has been issued under the Liquor Control Law (same as existing law), or (d) the offense is committed aboard an aircraft or with purpose to carry a concealed weapon aboard an aircraft regardless of the weapon involved (same as existing law). Clause (d) in this paragraph does not apply if federal law does not prohibit possessing or carrying the involved weapon aboard the aircraft involved and if either the offender owns the aircraft or the offender does not own the aircraft but has received consent to carry a concealed weapon on the aircraft by the owner of the aircraft or by the person authorized to give consent (added by the bill). (R.C. 2923.12(D).)

Exception. The bill retains the existing exception to the prohibition against carrying a concealed deadly weapon or dangerous ordnance, and enacts a new exception that specifies that the prohibition as rewritten by the bill against carrying a handgun other than a dangerous ordnance ((2), above, under "***Prohibition***") does not apply to any of the following (R.C. 2923.12(B)):

(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 (this does not state that the person must be acting within the scope of his or her duties),

or a corrections officer who has successfully completed a basic firearms training program approved by OPOTC and who is authorized to carry a handgun;

(2) A person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid license to carry a concealed handgun issued under the bill's provisions, unless the person knowingly is in a place that is specified, as described above in "***Places and circumstances not covered by a license***" under "***Privileges and duties of a licensee***" as a place in which a licensee is not authorized to carry a concealed handgun;

(3) A person who carries or has a handgun in a motor vehicle if, at the time of the act, all of the following apply: (a) the person did not place the handgun in the motor vehicle, (b) the person does not carry or have the handgun on the person's person, and (c) the handgun is owned by a licensee for whom a valid license to carry a concealed handgun has been issued under the bill.

Affirmative defense. The bill authorizes an additional affirmative defense to a charge of carrying concealed weapons. The additional affirmative defense applies when the weapon involved is a handgun other than a dangerous ordnance and the actor would have met all of the requirements for a license to carry a concealed handgun described in "***When license must be issued***," above, if the actor had submitted an application for a license at the time the actor carried a concealed handgun. This affirmative defense does not apply to a person who knowingly was in a place that is an unauthorized place specified above in "***Places and circumstances not covered by a license***" under "***Privileges and duties of a licensee***" at the time of the alleged carrying or possession of a concealed handgun. The bill does not change the existing affirmative defenses (R.C. 2923.12(C)).

Prosecution. The bill provides that the fact that a person who is prosecuted under a charge of carrying concealed weapons is found to have carried or possessed a concealed weapon under the affirmative defense authorized by the bill or an affirmative defense described in paragraphs (1) and (2) of "***Affirmative defense***" in "***Existing law***," above, cannot be used in a subsequent prosecution of the person for carrying concealed weapons, illegal possession of a firearm in liquor permit premises, improperly handling firearms in a motor vehicle, illegal conveyance or possession of a deadly weapon in a school safety zone, illegal conveyance of a deadly weapon into a courthouse, or the improper use or handling of firearms in a vessel. The bill prohibits requiring a person who is charged with carrying concealed weapons to obtain a license to carry a concealed handgun as a condition for the dismissal of the charge. (R.C. 2923.12(D).)

Illegal possession of a firearm in a liquor permit premises

Existing law

Prohibition and penalty. Existing law prohibits a person from possessing a firearm in any room in which liquor is being dispensed 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. 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 defense. It is an affirmative defense to a charge of illegal possession of a firearm in a liquor permit premises that the actor was not otherwise prohibited by law from having the firearm, and that either of the following apply: (1) the firearm was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation, 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 bill

Prohibition. The bill 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 prohibition under existing law, a felony of the fifth degree (R.C. 2923.121(A) and (D)).

Exceptions. The bill revises the existing exception to the prohibition and enacts a new exception. It states that the expanded prohibition as described above does not apply to officers, agents, or employees of Ohio, another state, or the United States, or law enforcement officers, authorized to carry firearms, (the bill deletes *acting within the scope of their duties*) or to a corrections officer who has successfully completed a basic firearms training program approved by OPOTC and who is authorized to carry a firearm, unless the officer, agent, employee, law enforcement officer, or corrections officer is in violation of existing law's prohibition against using weapons while intoxicated (contained in existing R.C. 2923.15--not in the bill). The bill also provides that the expanded prohibition against possession of a firearm in liquor permit premises does not apply to the holder of the D permit issued under the Liquor Control Law if the holder is carrying a valid license to carry a concealed handgun issued under the bill, or to an employee of the holder of the D permit who is authorized by the permit holder to carry a handgun in the room or open air arena in which liquor is being dispensed and who is carrying a valid license to carry a concealed handgun issued to the employee under the bill. (R.C. 2923.121(B)(1) and (5).)

Prosecution. The bill provides that the fact that a person who is prosecuted under a charge of possession of a firearm in liquor permit premises is found to have possessed a firearm under the affirmative defense authorized by the bill or in existing law cannot be used in a subsequent prosecution of the person for illegal possession of a firearm in liquor permit premises, carrying concealed weapons, improperly handling firearms in a motor vehicle, illegal conveyance or possession of a deadly weapon in a school safety zone, illegal conveyance of a deadly weapon into a courthouse, or the improper use or handling of firearms in a vessel. The bill prohibits requiring a person who is charged with illegal possession of a firearm in liquor permit premises to obtain a 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

Existing law

Prohibitions. Existing law 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)).

Penalties. 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. 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, if the offender shows good cause why the court should not suspend or revoke one of these types of licenses, permits, or privileges 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. The prohibitions do 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 bill

The bill enacts an additional exception. Under the new exception, the prohibitions do not apply to a person who, at the time of conveying or attempting to convey a handgun into, or possessing a handgun in, a school safety zone, is carrying a valid license to carry a concealed handgun issued to the person under the bill and is in the school safety zone in accordance with 18 U.S.C. 922(q)(2)(B), unless the person knowingly is 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)).

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 into a courthouse

Existing law

Prohibition and penalty. Existing law 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 "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, existing law also prohibits a person from knowingly possessing or having under the person's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located. A violation of this prohibition is the offense of illegal possession or control of a deadly 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. The prohibitions described above do not apply to any of the following (R.C. 2923.123(C)):

(1) A judge of an Ohio court of record or a magistrate, unless 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;

(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 is authorized to carry a deadly weapon or dangerous ordnance, who possesses or has under that individual's control a deadly weapon or dangerous ordnance as a requirement of that individual's duties, and who is acting within the scope of that individual's duties at the time of that possession or control;

(3) A person who conveys, attempts to convey, possesses, or has under the person's control a deadly weapon or dangerous ordnance that is 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 is authorized to carry a firearm, who possesses or has under that individual's control a firearm as a requirement of that individual's duties, and who is acting within the scope of that individual's duties at the time of that possession or control;

(5) A prosecutor, or a secret service officer appointed by a county prosecuting attorney, who is authorized to carry a deadly weapon or dangerous ordnance in the performance of the individual's duties, who possesses or has under that individual's control a deadly weapon or dangerous ordnance as a requirement of that individual's duties, and who is acting within the scope of that individual's duties at the time of that possession or control.

The exceptions in (2), (4), and (5), above, do 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.

Operation of the bill

The bill expands the existing exceptions by enacting a new exception to the prohibitions. Under the bill, 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 or into another building or structure in which a courtroom is located (hereafter "courthouse"), who, at the time of the conveyance or attempt, is carrying a valid license to carry a concealed handgun issued pursuant to this bill, and who transfers possession of the handgun to the officer or officer's designee who has charge of the courthouse or building. The officer must secure the handgun until the licensee is prepared to leave the premises. This exemption 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

Existing law

Prohibition. Existing law 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. A person who violates any of the prohibitions is guilty of the offense of improperly handling firearms in a motor vehicle. A violation of the first or second prohibition is a misdemeanor of the first degree, and a violation of the third prohibition is a misdemeanor of the fourth degree. (R.C. 2923.16(F).)

Exceptions. The prohibitions do 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 does not apply to a person in specified circumstances related to shooting coyotes and groundhogs.

The prohibitions against transporting firearms in specified manners do not apply to a person if all of the following apply: (1) the person is the operator or a passenger in a motor vehicle, (2) the motor vehicle is on real property that is located in an unincorporated area of a township that is zoned or used for agriculture, (3) the person owns the property or is 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 on the real property. (R.C. 2923.16(D).)

Affirmative defenses. The first and second affirmative defenses authorized under existing law for persons who are charged with carrying a concealed weapon (see "***Carrying a concealed weapon***," above) are affirmative defenses to a charge under the second or third prohibition (R.C. 2923.16(E)).

Operation of the bill

Exception. The bill retains the existing exceptions to the prohibitions and enacts new exceptions to the second and third prohibitions. It states that the second and third prohibitions of the offense of improperly handling firearms in a motor vehicle do not apply to a person who (R.C. 2923.16(D)(4) and (5)):

(1) Transports or possesses a handgun in a motor vehicle and who, at the time of that transportation or possession, is carrying a valid license to carry a concealed handgun issued under the bill's provisions, unless the person knowingly is in a place in which a licensee is not authorized to carry a concealed handgun (see "***Places and circumstances not covered by a license***" under "***Privileges and duties of a licensee***," above);

(2) Transports a handgun in a motor vehicle if, at the time of the transportation, all of the following apply: (a) the person did not place the handgun in the motor vehicle, (b) the person does not possess the handgun on the person's person, and (c) the handgun is owned by a licensee for whom a valid license to carry a concealed handgun has been issued under the bill.

Affirmative defenses. The bill creates an additional affirmative defense to a charge under the first prohibition, related to the discharging of a firearm while in or on a motor vehicle, that applies if the offender discharged the firearm in self-defense. The bill also creates an additional affirmative defense to a charge under the second or third prohibition, related to transporting or possessing firearms in motor vehicles. The additional affirmative defense applies when the firearm

involved was a handgun and the actor would have met all of the requirements to be eligible for a license to carry a concealed handgun under the bill (see "***When license must be issued***," above) if the actor had submitted an application for a license at the time the actor transported or possessed the handgun in a motor vehicle. This affirmative defense does not apply to a person who knowingly carries a concealed handgun into a place in which a licensee is not authorized to carry a concealed handgun (see "***Places and circumstances not covered by a license***" under "***Privileges and duties of a licensee***," above). (R.C. 2923.16(E)(1) and (2).)

Prosecution. The bill provides that the fact that a person who is prosecuted under a charge of improperly handling firearms in a motor vehicle by violating the second or third prohibition related to transporting or possessing firearms in a motor vehicle is found to have possessed a firearm under the affirmative defense authorized by the bill or in existing law to a charge under either of those violations cannot be used in a subsequent prosecution of the person for improperly handling firearms in a motor vehicle, carrying concealed weapons, illegal possession of a firearm in liquor permit premises, illegal conveyance or possession of a deadly weapon in a school safety zone, illegal conveyance of a deadly weapon into a courthouse, or the improper use or handling of firearms in a vessel. The bill prohibits requiring a person who is charged with improperly handling firearms in a motor vehicle to obtain a license to carry a concealed handgun as a condition for the dismissal of the charge. (R.C. 2923.16(E)(3).)

The bill does not otherwise modify the offense of improperly handling firearms in a motor vehicle (R.C. 2923.16).

Improper use or handling of firearms in a vessel

Existing law

Prohibitions. Existing law 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 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.

R.C. 1547.69 also 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. 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 bill.)

Exceptions. The prohibitions do not apply to 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, and the prohibitions do not apply to persons legally engaged in hunting.

The prohibitions do not apply to 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. The section also prohibits any person from knowingly transporting or possessing such a signaling device in or on a vessel in a loaded condition except as so authorized. (R.C. 1547.69(F) and (H).)

Affirmative defenses. The first two affirmative defenses authorized for persons charged with the offense of carrying a concealed weapon (see "***Carrying a concealed weapon***," above) are affirmative defenses to a charge under the second or third prohibition related to firearms in a vessel (R.C. 1547.69(E)).

Operation of the bill

Exception. The bill retains the existing exceptions to the prohibitions, and enacts a new exception that states that the second and third 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 license to carry a concealed handgun issued under the bill's provisions, unless the person knowingly is in a place on the vessel that is specified, as described in "***Places and circumstances not covered by a license***" under "***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 defense. The bill creates a new affirmative defense to a charge under the first prohibition, related to the discharging of a firearm while in or on a vessel, that applies if the offender discharged the firearm in self-defense. The bill

also creates an additional affirmative defense to a charge under the second or third prohibition related to transporting or having firearms in a vessel. The additional affirmative defense applies when the firearm involved was a handgun and the actor would have met all of the requirements to be eligible for a license to carry a concealed handgun under "***When license must be issued***," above if the actor had submitted an application for a license at the time the actor transported or possessed the handgun in a vessel. This affirmative defense does not apply to a person who knowingly carries a concealed handgun into a place in which a licensee is not authorized to carry a concealed handgun described above in "***Places and circumstances not covered by a license***" under "***Privileges and duties of a licensee***." (R.C. 1547.69(E)(1) and (2).)

Prosecution. The bill provides that the fact that a person who is prosecuted for violating the second or third prohibition, related to transporting or possessing firearms in a vessel, is found to have possessed a firearm under the affirmative defense authorized by the bill or in existing law to a charge under a violation of either of those prohibitions cannot be used in a subsequent prosecution of the person for violating the first, second, or third prohibition related to the discharge of, transporting, or possessing firearms in a vessel or for carrying concealed weapons, illegal possession of a firearm in liquor permit premises, improperly handling firearms in a motor vehicle, illegal conveyance or possession of a deadly weapon in a school safety zone, or illegal conveyance of a deadly weapon into a courthouse. The bill prohibits requiring a person who is charged with a violation of the second or third prohibition related to transporting or possessing firearms in a vessel to obtain a license to carry a concealed handgun as a condition for the dismissal of the charge. (R.C. 1547.69(E)(3).)

The bill does not otherwise modify the prohibitions relating to firearms in a vessel (R.C. 1547.69).

Having weapons while under disability

Existing law

Existing law prohibits a person, unless the person is relieved from the disability under another provision of existing law, from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, if any of the following apply:

(1) The person is a fugitive from justice.

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

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

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

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

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

Existing law also prohibits a person who has 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 is imposed for the commission of a felony of the first or second degree.

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

Operation of the bill

The bill increases the penalty for a violation of the first prohibition to a felony of the third degree and repeals the second prohibition (R.C. 2923.13(B) and (C)).

Access to sealed criminal conviction records

Existing law

Existing law specifies a procedure by which a "first offender" (defined in existing R.C. 2953.31--not in the bill) may apply to a court for the sealing of the record of the offender's criminal conviction record. 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 bill

The bill expands the circumstances in which 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 described in "***Criminal records check***," above (R.C. 2953.32(D)(10)).

Private investigators and security providers

Existing law

Existing law 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 bill

The bill provides that nothing in the provisions in existing law 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 bill's provisions governing licenses to carry a concealed handgun (R.C. 4749.10(C)).

Theft of a firearm or dangerous ordnance

Existing law

Existing law 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, a felony of the fourth degree. (R.C. 2913.02(B)(1) and (4).)

Operation of the bill

The bill 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 bill creates a presumption in favor of the court imposing a prison term for the offense. The offender must serve the prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender. Under the existing Felony Sentencing Law, 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).)

Licensing scheme is law of general nature

The bill states that it is the intent of the General Assembly, in amending and enacting the sections of the Revised Code in the bill that relate to licenses to carry a concealed handgun and, generally, to the firearms offenses, to enact laws of a general nature. The bill 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. (Section 9.)

Statement of legislative intent

The bill states that in amending and enacting the sections of the Revised Code in the bill that relate to 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 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 bill further states that in enacting and amending the sections of the Revised Code in the bill relative to 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 bill'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 bill 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 effective date of the bill or to prevent the prosecution of any violation committed prior to that effective date. (Section 7.)

Severability clause

The bill provides that if any provision of any of the listed sections of the Revised Code amended by the bill, any provision of any of the listed sections of the Revised Code enacted by the bill, 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).

COMMENT

1. It is unclear how the sheriff is to make this determination.

2. The question of the constitutionality of the offense of carrying concealed weapons contained in R.C. 2923.12 currently is pending before the Ohio Supreme Court as the result of the case of *Klein v. Leis* (1st App. District, 2002), 146 Ohio App. 3d 526 (*appeal granted* 96 Ohio St.3d 1488). The First District Court of Appeals in *Klein* concluded that *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, required the Court of Appeals to determine whether the statute was fair, proper, moderate, suitable under the circumstances, and not excessive.[6] The Court of Appeals then concluded that R.C. 2923.12 was unreasonable: if a person carries a handgun concealed, the person commits the offense of carrying concealed weapons and, if the person carries the handgun openly, the person will be arrested

[6] *Noting that the right to bear arms is a constitutional right, the Court of Appeals believed that R.C. 2923.12 should be subjected to strict scrutiny: the subject statute is constitutional only if it is narrowly tailored to accomplish a compelling governmental interest. But the court of appeals concluded that Ohio Supreme Court precedent required the use of the* Arnold *standard.*

for inducing panic or disorderly conduct. The result is an unconstitutional total prohibition on the carrying of firearms. The Court of Appeals found the affirmative defenses to be problematic because they are ignored at the point of initial police contact, exposing the person to arrest, indictment, and prosecution for what later could be determined to have been the legal exercise of a fundamental right. The Court of Appeals also found the affirmative defenses to be unconstitutionally vague: they cannot be understood by a citizen of reasonable intelligence, they are subject to arbitrary enforcement, and they do not provide clear warning of the conduct that they seek to exempt from criminal liability.

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

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