Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 17*

129th General Assembly
(As Reported by H. State Government and Elections)

Sens. Schaffer, Jones, Faber, Cafaro, Jordan, Grendell, Daniels, Beagle, Seitz, Wilson, Widener, Oelslager, Manning, Cates, Hite, Niehaus, Obhof, Stewart

BILL SUMMARY

Concealed carry in a liquor permit premises

- Expands the types of liquor permit premises in which a concealed carry licensee may legally possess a concealed handgun to include any premises that has been issued a D liquor permit, which includes carry outs, restaurants, nightclubs, clubs, hotels, shopping malls, marinas, museums, and other establishments.

- Specifies that the exemption described in the preceding dot point applies only if a concealed carry licensee is not consuming beer or intoxicating liquor or under the influence of alcohol or a drug of abuse while in possession of a firearm in a premises that has been issued a D liquor permit.

Improperly handling firearms in a motor vehicle by a concealed carry licensee

- Through repeal of a prohibition, allows a concealed carry licensee to transport or have a loaded handgun in a motor vehicle regardless of whether it is secured in a holster, case, bag, or box or by other specified means if the person is not violating any other prohibition under the offense.

- In concert with the above change, repeals a prohibition that prohibits a concealed carry licensee from removing or attempting to remove a loaded handgun from the holster, case, bag, box, etc., grasp it, and from holding or having contact with it by touching it while the vehicle is being operated on a street, highway, or public property.

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* This analysis was prepared before the report of the House State Government and Elections Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Also repeals a prohibition against knowingly removing a loaded handgun from where it is secured, or knowingly grasping or holding the loaded handgun, if the concealed carry licensee is the driver or occupant of a motor vehicle that is stopped by a law enforcement officer, but retains a prohibition against knowingly having contact with the loaded handgun by touching it when stopped for a traffic stop or other law enforcement purpose.

- Includes introductory language that relates all improperly handling firearms in a motor vehicle prohibitions applicable only to concealed carry licensees with a loaded handgun in a vehicle, to a licensee who is the driver or an occupant of a motor vehicle stopped for a traffic stop or another law enforcement purpose or of a commercial motor vehicle stopped by a Motor Carrier Enforcement Unit employee for an authorized purpose.

Knowingly transporting a firearm in a motor vehicle by a concealed carry licensee

- Modifies an exception to prohibitions governing the transporting of a firearm in a motor vehicle by eliminating a portion of the exception generally requiring that a concealed carry licensee's handgun be secured in a holster, case, bag, or box or by other specified means.

Expungement of prior conviction of improperly handling firearms in a motor vehicle that no longer would be a crime

- Authorizes the expungement of a prior conviction of improperly handling firearms in a motor vehicle that no longer would be a crime under the bill.

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CONTENT AND OPERATION

Firearm possession in a liquor permit premises

The bill generally expands the types of liquor permit premises in which a "concealed carry licensee" (see below) may legally possess a firearm. The bill accomplishes this by altering an exemption from the offense of "illegal possession of a firearm in a liquor permit premises." Under current law, that offense prohibits a person from possessing a firearm in any room in which any person is consuming liquor in premises for which a D liquor permit has been issued or in an open air arena for which a similar permit has been issued, with certain exemptions. A D liquor permit generally applies to retail store carry outs, restaurants and nightclubs, clubs (such as private clubs), hotels and motels, enclosed shopping malls, river boats, marinas, museums, community entertainment districts, and other establishments and provides for on-premises consumption and, for some of the permits, sale in sealed containers for carry out.

One of the exemptions from the offense pertains to concealed carry licensees (the other exemptions from, and affirmative defenses to, the offense are described below in "**Firearm in liquor permit premises – other exemptions**" under "**Background**"). The bill modifies this exemption to allow a concealed carry licensee to possess a firearm in a room in which a person is consuming beer or intoxicating liquor in any D permit premises as long as the licensee is not consuming beer or intoxicating liquor or under the influence of alcohol or a drug of abuse (see "**Firearm restrictions established by property owner or lessee**" under "**Background**," below).[1]

Under current law, the concealed carry licensee exemption provides that a licensee is only exempt from the offense if the licensee possesses the firearm in a retail store with a D-6 and D-8 permit, or just a D-8 permit, issued for the store, and the person is not consuming liquor or under the influence of alcohol or a drug of abuse. A D-6 liquor permit authorizes the sale of intoxicating liquor on Sunday between the hours of 10 a.m. or 1 p.m. and midnight. A D-8 liquor permit authorizes the sale of

[1] R.C. 2923.121(A) and (B)(1)(e); R.C. 4303.13 to 4303.184, not in the bill.

tasting samples of beer, wine, and mixed beverages, but not spirituous liquor, at retail, for consumption on the premises.[2]

Under current law, unchanged by the bill, illegal possession of a firearm in a liquor permit premises is a felony of the fifth degree. However, if the offender commits the violation by knowingly carrying or having the firearm concealed on the offender's person or concealed ready at hand, it is a felony of the third degree.[3]

For purposes of this analysis, "concealed carry licensee" means a person issued an Ohio license to carry a concealed handgun, an Ohio temporary emergency license to carry a concealed handgun, or a comparable license issued by another state with which the Attorney General has entered into a reciprocity agreement.

Related to the changes described above, see "**Using weapons while intoxicated**" under "**Background**."

Improperly handling firearms in a motor vehicle by a concealed carry licensee

Existing law sets forth a series of prohibitions under the offense of "improperly handling firearms in a motor vehicle" that are applicable only to concealed carry licensees. The bill repeals some of those provisions and modifies others, as described below.

Securing a loaded handgun in a vehicle

The bill repeals a provision that prohibits a concealed carry licensee from knowingly transporting or having a loaded handgun in a motor vehicle unless one of the following applies:[4]

(1) The loaded handgun is in a holster on the person's person;

(2) The loaded handgun is in a closed case, bag, box, or other container that is in plain sight and that has a lid, a cover, or a closing mechanism with a zipper, snap, or buckle that has to be opened for a person to gain access to the handgun;

(3) The loaded handgun is securely encased by being stored in a closed glove compartment or vehicle console or in a case that is locked.

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[2] R.C. 2923.121(B)(1)(e); R.C. 4303.182 and 4303.184, not in the bill.

[3] R.C. 2923.121(E).

[4] Current R.C. 2923.16(E)(1), repealed by the bill.

Under current law, a violation of this prohibition is a felony of the fifth degree.[5]

The effect of this repeal is to allow a concealed carry licensee to transport or have a loaded handgun in a motor vehicle without having it secured, provided the person is not violating any other prohibition set forth under the offense of improperly handling firearms in a motor vehicle (see "**Removing, grasping, or touching a loaded handgun after being stopped**" and "**Knowingly transporting a firearm in a motor vehicle by a concealed carry licensee**," below; also see "**Improperly handling firearms in a motor vehicle – alcohol or drug-related prohibition, exemptions, and affirmative defenses**" under "**Background**," below).

Removing, grasping, or touching a loaded handgun while operating a vehicle

In concert with the above change, the bill also repeals a provision that prohibits a concealed carry licensee who is transporting or has a loaded handgun in a motor vehicle from knowingly doing any of the following:[6]

(1) Removing or attempting to remove the loaded handgun from the holster, case, bag, box, container, or glove compartment in which it is located while the motor vehicle is being operated on a street, highway, or public property;

(2) Grasping or holding the loaded handgun while the motor vehicle is being so operated;

(3) Having contact with the loaded handgun by touching it with the person's hands or fingers while the motor vehicle is being so operated.

The prohibition does not apply if the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by a law enforcement officer.[7] Under current law, a violation of this prohibition is a felony of the fifth degree.[8]

Removing, grasping, or touching a loaded handgun after being stopped

Also in concert with the above change, the bill repeals a provision that prohibits a concealed carry licensee from knowingly removing or attempting to remove a loaded handgun from the holster, case, bag, box, container, or glove compartment in which it is

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[5] R.C. 2923.16(I).

[6] Current R.C. 2923.16(E)(2), repealed by the bill.

[7] Current R.C. 2923.16(E)(2), repealed by the bill.

[8] R.C. 2923.16(I).

located or knowingly grasping or holding the loaded handgun if all of the following apply:[9]

(1) The licensee is the driver or occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose;

(2) The licensee is transporting the loaded handgun in accordance with current requirements for securing the handgun (see above);

(3) The licensee is approached by any law enforcement officer while stopped.

Similar language in an existing provision that describes duties of a concealed carry licensee is not changed by the bill.[10]

However, the bill retains a prohibition under which a concealed carry licensee to whom the circumstances described above in paragraphs (1) to (3) apply must not knowingly have contact with the loaded handgun by touching it with the person's hands or fingers in the motor vehicle at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves. The bill also expressly makes this prohibition apply to a concealed carry licensee who is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the Motor Carrier Enforcement Unit (see "**Motor Carrier Enforcement Unit**" under "**Background**," below) and to whom the circumstances described above in paragraphs (2) and (3) apply. The prohibition does not apply if the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer.[11] The bill does not change the penalty for a violation of this prohibition, which is a felony of the fifth degree.[12]

Other changes regarding prohibitions that apply only to concealed carry licensees

Three other prohibitions under the offense of improperly handling firearms in a motor vehicle apply only to a concealed carry licensee who has a loaded handgun in a vehicle and is the driver or an occupant of any motor vehicle stopped for a traffic stop or another law enforcement purpose. One other such prohibition applies only to a licensee who is the driver or an occupant of a commercial motor vehicle stopped by a

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[9] Current R.C. 2923.16(E)(5).

[10] R.C. 2923.126(A), not in the bill.

[11] R.C. 2923.16(E)(4).

[12] R.C. 2923.16(I).

Motor Carrier Enforcement Unit employee for an authorized purpose. The bill includes introductory language that applies all of the prohibitions to a licensee who is the driver or an occupant of any motor vehicle stopped for a traffic stop or another law enforcement purpose or is the driver or an occupant of a commercial motor vehicle stopped by a Motor Carrier Enforcement Unit employee for an authorized purpose. The substantive effect of this change, if any, is unclear, but it arguably is technical in nature. Under the bill, the prohibitions, which apply to drivers and occupants of motor vehicles or commercial vehicles, relate to:

(1) Promptly informing any law enforcement officer who approaches the vehicle while stopped that the person is a licensee and then has a loaded handgun in the motor vehicle;

(2) Promptly informing the employee of the Unit who approaches the vehicle while stopped that the person is a licensee and then has a loaded handgun in the commercial motor vehicle;

(3) Remaining in the motor vehicle and keeping the licensee's hands in plain sight at any time after a law enforcement officer begins approaching the licensee after being stopped;

(4) Complying with a lawful order of a law enforcement officer given while the motor vehicle is stopped.[13]

The bill expressly states that all of the prohibitions under the offense of improperly handling firearms in a motor vehicle that are applicable only to concealed carry licensees apply to a concealed carry licensee issued a license by another state with which the AG has entered into a reciprocity agreement. This is a clarifying change, since a concealed carry licensee who was issued a license by any such state has the same rights to carry a concealed handgun, and is subject to the same restrictions, that apply to a licensee with an Ohio license.[14]

The bill changes divisional references in the penalty provisions for improperly handling firearms in a motor vehicle and a series of references in R.C. 2923.128 to various divisions of R.C. 2923.16 to conform the references to the divisional redesignations made by the bill.

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[13] R.C. 2923.16(E)(1), (2), (3), and (5).

[14] R.C. 2923.16(E) and R.C. 2923.125(D), not in the bill.

Knowingly transporting a firearm in a motor vehicle by a concealed carry licensee

Modification of an exception

Current law, under the offense of improperly handling firearms in a motor vehicle, prohibits any person from:[15]

(1) Knowingly transporting or having a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle; or

(2) Knowingly transporting or having a firearm in a motor vehicle unless the person may lawfully possess that firearm under an applicable Ohio or federal law, the firearm is unloaded, and the firearm 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) If the firearm is at least 24 inches in overall length as measured from the muzzle to the part of the stock furthest from the muzzle and if the barrel is at least 18 inches in length, either 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.

Current law establishes an exception to both of the above prohibitions that is related to concealed carry licensees. The bill expands the exception so that if a person is a concealed carry licensee, is carrying his or her valid concealed carry license, and does not knowingly have the handgun in a place where it is otherwise prohibited (see "**Concealed carry licensees – prohibited places**" under "**Background**," below), the person is exempt from the prohibitions.

Currently, the exception provides that the prohibitions do not apply to a person who transports or possesses a handgun in a motor vehicle when, at the time of the transportation or possession, all of the following apply:

(1) The person is a concealed carry licensee;

[15] R.C. 2923.16(B) and (C).

(2) The licensee transporting or possessing the handgun is not knowingly in a place where the licensee otherwise is prohibited from possessing a concealed handgun;

(3) The handgun is (a) in a holster on the person's person, (b) in a closed case, bag, box, or other container that is in plain sight and that has a lid, a cover, or a closing mechanism with a zipper, snap, or buckle that has to be opened for a person to gain access to the handgun, or (c) is securely encased by being stored in a closed glove compartment or vehicle console or in a case that is locked.[16]

The bill eliminates item (3), thus eliminating the portion of the exemption related to securing the handgun.[17] It also conforms the penalty for violation of the first of the specified prohibitions by a concealed carry licensee to reflect the removal of item (3) from the exception. Currently, a violation of the prohibition generally is a fourth degree felony, but is a first degree misdemeanor if the offender who commits the violation is a person to whom clauses (1) and (2) of the preceding paragraph apply. Under the bill, a violation always is a fourth degree felony.[18]

Other provisions under improperly handling firearms in a motor vehicle

In addition to the prohibitions previously described in this analysis, an alcohol or drug-related prohibition under the offense of improperly handling firearms in a motor vehicle could be relevant to the bill. That prohibition, and other exemptions and affirmative defenses of interest to the bill, are discussed below in "**Improperly handling firearms in a motor vehicle – alcohol or drug-related prohibition, exemptions, and affirmative defenses**" under "**Background**."

Expungement of prior conviction of improperly handling firearms in a motor vehicle that no longer would be a crime under the bill

Existing law, unchanged by the bill, authorizes in specified circumstances the sealing of the record of conviction of "first offenders," the sealing of records after a not guilty finding, dismissal of charges, or entry of a no bill, and the sealing of records when a court enters a judgment vacating and setting aside a conviction because of DNA testing.[19] The bill enacts a mechanism that authorizes the expungement of the records of a prior conviction of improperly handling firearms in a motor vehicle that no longer would be a crime under the bill.

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[16] R.C. 2923.16(F)(5).

[17] R.C. 2923.16(F)(5).

[18] R.C. 2923.16(I).

[19] R.C. 2953.31 to 2953.36, not in the bill except for R.C. 2953.321, 2953.33, and 2953.35; R.C. 2953.51 to 2953.56, not in the bill; and 2953.57 to 2953.61, not in the bill.

Authorization to file application for expungement

Under the bill, if a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of R.C. 2923.16(E) as it existed prior to the bill's effective date and if the conduct that was the basis of the violation no longer would be a violation of that division on or after the bill's effective date, the person may file an application as described below requesting the "expungement" of the "record of conviction" (see "**Definitions**," below). The conduct under current R.C. 2923.16(E) that the bill "decriminalizes" is described above in "**Improperly handling firearms in a motor vehicle by a concealed carry licensee**."

Also, under the bill, if a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of R.C. 2923.16(B) or (C) as they existed prior to the bill's effective date and if the conduct that was the basis of the violation no longer would be a violation of the particular division on or after the bill's effective date due to the application of R.C. 2923.16(F)(5) as it exists on and after the bill's effective date, the person may file an application as described below requesting the expungement of the record of conviction. The conduct under current R.C. 2923.16(B) or (C) that the bill "decriminalizes" due to the application of R.C. 2923.16(F)(5) is described above in "**Knowingly transporting a firearm in a motor vehicle by a concealed carry licensee**."[20]

Expungement procedure and order

Any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of R.C. 2923.16(B), (C), or (E) as they existed prior to the bill's effective date and who is authorized as described above in "**Authorization to file application for expungement**" to file an application for the expungement of the conviction record may apply to the sentencing court for the expungement of the record of conviction. The person may file the application at any time on or after the bill's effective date. The application must: (1) identify the applicant, the offense for which the expungement is sought, the date of the conviction of or plea of guilty to that offense, and the court in which the conviction occurred or the guilty plea was entered, (2) include evidence that the offense was a violation of R.C. 2923.16(B), (C), or (E) as they existed prior to the bill's effective date and that the applicant is authorized to file an application for expungement under the mechanism, and (3) include a request for expungement of the record of conviction of that offense under the mechanism.

Upon the filing of an application and the payment of a $50 fee, if applicable, the court must set a date for a hearing and notify the "prosecutor" (see "**Definitions**," below)

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[20] R.C. 2923.16(H)(2)(a).

for the case of the hearing on the application. The fee is not required if the applicant is indigent. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. An objection must specify the reasons for believing a denial of the application is justified. The court must direct its regular probation officer, a state probation officer, or the county department of probation to make inquiries and written reports as the court requires concerning the applicant. The court is required to pay $30 of the fee into the state treasury and to pay $20 of the fee into the county general revenue fund.

The court must hold the hearing scheduled and, at the hearing, must determine whether the applicant has been convicted of or pleaded guilty to a violation of R.C. 2923.16(E) as it existed prior to the bill's effective date and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after the bill's effective date, and determine whether the applicant has been convicted of or pleaded guilty to a violation of R.C. 2923.16(B) or (C) as they existed prior to the bill's effective date and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after the bill's effective date due to the application of R.C. 2923.16(F)(5) as it exists on and after the bill's effective date. If the prosecutor has filed an objection to the application, the court must consider the reasons against granting the application specified by the prosecutor in the objection. The court also must weigh the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea expunged against the legitimate needs, if any, of the government to maintain those records.[21]

The court may order the expungement of all "official records" (see "**Definitions**," below) pertaining to the case and the deletion of all index references to the case and, if it does order the expungement, must send notice of the order to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after making the determinations described in the preceding paragraph, determines both of the following:[22]

(1) That the applicant has been convicted of or pleaded guilty to a violation of R.C. 2923.16(E) as it existed prior to the bill's effective date and the conduct that was the basis of the violation no longer would be a violation of that division on or after the bill's effective date, or that the applicant has been convicted of or pleaded guilty to a violation of R.C. 2923.16(B) or (C) as they existed prior to the bill's effective date and the conduct that was the basis of the violation no longer would be a violation of that

[21] R.C. 2953.37(B) to (D)(1) and (D)(3).

[22] R.C. 2953.37(D)(2)(a).

division on or after the bill's effective date due to the application of R.C. 2923.16(F)(5) as it exists on and after the bill's effective date;

(2) That the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea expunged are not outweighed by any legitimate needs of the government to maintain those records.

The proceedings in the case that is the subject of an expungement order issued as described above must be considered not to have occurred and the conviction or guilty plea of the person who is the subject of the proceedings must be expunged. The record of the conviction cannot be used for any purpose, including, but not limited to, a criminal records check under R.C. 109.572 or a determination under R.C. 2923.125 or 2923.1212 of eligibility for a license or temporary emergency license to carry a concealed handgun. The applicant may, and the court must, reply that no record exists with respect to the applicant upon any inquiry into the matter.[23]

Other effects of expungement order

Existing law provides for the preservation and limited use of records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" (see "**Definitions**," below) and that pertain to a case the records of which have been ordered sealed under the law governing the sealing of the record of conviction of "first offenders" (the records and reports are designated as "investigatory work product"). The bill extends the provisions so that they also apply to records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" and that pertain to a case the records of which have been ordered expunged under the bill's provisions described above.[24]

Existing law specifies that an order to seal the record of a person's conviction restores the person to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control. The bill extends this provision so that it also applies regarding an order to expunge the record of a person's conviction issued under the bill's provisions described above.[25]

Existing law specifies that, in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, subject to a few specified exceptions, a person may be questioned only with respect to convictions not

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[23] R.C. 2953.37(D)(2)(b); R.C. 2923.125(D)(5).

[24] R.C. 2953.321.

[25] R.C. 2953.33(A).

sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered. The bill provides that, in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any conviction expunged under the bill's provisions described above.[26]

Existing law provides that, except as expressly authorized by specified provisions of law, any officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any department, agency, or other instrumentality of the state, or any political subdivision of the state, any information or other data concerning any arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which the officer or employee had knowledge of were sealed by an order under the law governing the sealing of the record of conviction of "first offenders" is guilty of "divulging confidential information," a misdemeanor of the fourth degree. It is not a violation of this provision for the Bureau of Criminal Identification and Investigation or any authorized Bureau employee participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the Bureau's Superintendent. The bill extends the prohibition under the offense of "divulging confidential information" so that it also applies to records with respect to which the officer or employee had knowledge of were expunged by an order issued under the bill's provisions described above.[27]

Attorney General public media advisory

The bill requires the Attorney General to develop a public media advisory that summarizes the expungement procedure described above and the offenders who are authorized to apply for the expungement. Within 30 days after the bill's effective date, the Attorney General must provide a copy of the advisory to each daily newspaper published in the state and each television station that broadcasts in the state. The Attorney General may provide the advisory in a tangible form, an electronic form, or in both tangible and electronic forms.[28]

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[26] R.C. 2953.33(B).

[27] R.C. 2953.35.

[28] R.C. 2923.16(H)(2)(b).

Definitions

As used in the bill's expungement provisions:

"**Expunge**" means to destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.[29]

"**Official records**" means all records that are possessed by any public office or agency that relate to a criminal case, including, but not limited to: the notation to the case in the criminal docket; all subpoenas issued in the case; all papers and documents filed by the defendant or the prosecutor in the case; all records of all testimony and evidence presented in all proceedings in the case; all court files, papers, documents, folders, entries, affidavits, or writs that pertain to the case; all computer, microfilm, microfiche, or microdot records, indices, or references to the case; all index references to the case; all fingerprints and photographs; all records and investigative reports pertaining to the case that are possessed by any law enforcement officer or agency, except that any records or reports that are the specific investigatory work product of a law enforcement officer or agency are not and shall not be considered to be official records when they are in the possession of that officer or agency; and all investigative records and reports other than those possessed by a law enforcement officer or agency pertaining to the case. "Official records" does not include records or reports maintained pursuant to R.C. 2151.421 by a public children services agency or the department of job and family services.[30]

"**Prosecutor**" means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer who has the authority to prosecute a criminal case in the court in which the case is filed.[31]

"**Record of conviction**" means the record related to a conviction of or plea of guilty to an offense.[32]

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[29] R.C. 2953.37.

[30] R.C. 2953.37, by reference to R.C. 2953.51, which is not in the bill.

[31] R.C. 2953.37, by reference to R.C. 2953.31, which is not in the bill.

[32] R.C. 2953.37.

Background

Firearm in liquor permit premises – other exemptions

Existing law, unchanged by the bill, provides several other exemptions from the prohibitions in R.C. 2923.121. Of interest to the bill, two of the exemptions specify that the section does not do any of the following:[33]

(1) Apply to an officer, agent, or employee of Ohio or any other state or the United States, or to a law enforcement officer, who is authorized to carry firearms and is acting within the scope of the officer's, agent's, or employee's duties, or apply to any person employed in Ohio who is authorized to carry firearms and who is subject to and in compliance with the firearms requalification requirements of R.C. 109.801, unless the appointing authority of the person has expressly specified that the exemption described in this paragraph does not apply to the person;

(2) Apply to the principal holder of a D permit issued for premises or an open air arena under R.C. Chapter 4303. while in the premises or open air arena for which the permit was issued, if the principal holder also possesses a valid concealed carry license and as long as the principal holder is not consuming liquor or under the influence of alcohol or a drug of abuse, or any agent or employee of that holder who also is a peace officer, as defined in R.C. 2151.3515, who is off duty, and who otherwise is authorized to carry firearms while in the course of the officer's official duties and while in the premises or open air arena for which the permit was issued and as long as the agent or employee of that holder is not consuming liquor or under the influence of alcohol or a drug of abuse.

Firearm restrictions established by property owner or lessee

Existing law, unchanged by the bill, provides that nothing in the law that specifies the authority of concealed carry licensees to carry a concealed handgun 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 D permit premises), including motor vehicles owned by the private employer, and that nothing in that law 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.

Existing law, unchanged by the bill, also provides that, subject to an exception that applies in certain residential landlord-tenant circumstances, the owner or person in

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[33] R.C. 2923.121(B)(1)(a) to (d), (B)(2), and (B)(3).

control of private land or premises, and a private person or entity leasing land or premises owned by Ohio, the United States, or a political subdivision of Ohio 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. Except as otherwise described in this paragraph, a person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass in violation of existing R.C. 2911.21(A)(4) and is guilty of a misdemeanor of the fourth degree. If a person knowingly violates a posted prohibition of that nature and the posted land or premises primarily was a parking lot or other parking facility, the person is not guilty of criminal trespass and instead is subject only to a civil cause of action for trespass based on the violation.[34] This provision probably applies to the operator of premises for which a D permit has been issued.

Using weapons while intoxicated

Existing law, unchanged by the bill, prohibits a person, while under the influence of alcohol or any drug of abuse, from carrying or using any firearm or dangerous ordnance. A violation of the prohibition is the offense of "using weapons while intoxicated," a first degree misdemeanor.[35]

Motor Carrier Enforcement Unit

Existing law creates in the Department of Public Safety, Division of State Highway Patrol, a Motor Carrier Enforcement Unit, to be administered by the Superintendent of the State Highway Patrol. The Unit is responsible for enforcement of commercial motor vehicle transportation safety, economic, and hazardous materials requirements and compliance with orders and rules of the Public Utilities Commission, applicable laws under R.C. Chapters 4919., 4921., and 4923., and any other applicable laws or rules. Uniformed employees of the Unit may stop commercial motor vehicles for the exclusive purpose of inspecting the vehicles to enforce compliance with orders and rules of the Public Utilities Commission as required by R.C. 5502.01(F).[36]

Improperly handling firearms in a motor vehicle – alcohol or drug-related prohibition, exemptions, and affirmative defenses

In addition to the prohibitions previously described in this analysis, another prohibition under the offense of "improperly handling firearms in a motor vehicle" could be relevant to the bill. It prohibits any person, including a concealed carry

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[34] R.C. 2923.126(C)(1) and (3), not in the bill.

[35] R.C. 2923.15, not in the bill.

[36] R.C. 5503.34, not in the bill.

licensee, from knowingly transporting or having a loaded handgun in a motor vehicle if, at the time of that transportation or possession, any of the following applies: (1) the person is under the influence of alcohol, a drug of abuse, or a combination of them, or (2) the person's whole blood, blood serum or plasma, breath, or urine contains a prohibited concentration of alcohol, a listed controlled substance, or a listed metabolite of a controlled substance prohibited for persons operating a vehicle, as specified under the offense of state OVI, regardless of whether the person at the time of the transportation or possession as described in this division is the operator of or a passenger in the motor vehicle.[37]

Existing law, of interest to and unchanged by the bill, provides that the "transporting" prohibitions under the offense of "improperly handling firearms in a motor vehicle" do not apply in specified circumstances to:[38] (1) certain government personnel and law enforcement officers, (2) generally, any person employed in Ohio who is authorized to carry or have loaded firearms in motor vehicles and is in compliance with specified firearms requalification requirements, or (3) a person transporting the firearm on property owned by the person or a related person or a person who possesses a firearm in a vehicle during the open hunting season for a wild quadruped or game bird. Existing law provides several affirmative defenses to the prohibitions described above in "**Knowingly transporting a firearm in a motor vehicle by a concealed carry licensee**."[39]

Concealed carry licensees – prohibited places

Existing law provides that a concealed carry licensee generally may carry a concealed handgun anywhere in Ohio if the licensee carries his or her valid license and valid identification when in actual possession of a concealed handgun.[40] But existing law also specifies that a valid license does not authorize a concealed carry licensee to carry a concealed handgun into any of a list of specified places. The specified places from which concealed carry is barred for licensees include a few that could be relevant to a licensee's carrying of a firearm in a vehicle and, thus, could be relevant to the exception modified by the bill. Those specified places are:

(1) A school safety zone if the licensee carrying the concealed handgun is in violation of R.C. 2923.122;

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[37] R.C. 2923.16(A) and (D).

[38] R.C. 2923.16(F)(1), (4), and (6).

[39] R.C. 2923.16(G).

[40] R.C. 2923.126(A).

(2) An open air arena with a D liquor permit if the licensee's carrying the concealed handgun is in violation of R.C. 2923.121;

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

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

Other specified places from which concealed carry is barred for licensees are: specified law enforcement offices, correctional facilities, and airport facilities; courthouses and other court facilities; premises for which a D liquor permit has been issued if the licensee carrying the concealed handgun is in violation of R.C. 2923.121; a place of worship, unless it posts or permits otherwise; generally, a day-care facility; generally, an aircraft; and a government building of Ohio or an Ohio political subdivision that is not used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other court facility.[41]

HISTORY

ACTION	DATE
Introduced	02-01-11
Reported, S. Judiciary – Criminal Justice	04-13-11
Passed Senate (25-7)	04-13-11
Reported, H. State Gov't & Elections	---

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[41] R.C. 2923.126(B).