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H.B. 86
133rd General Assembly

Bill Analysis

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Version: As Introduced

Primary Sponsor: Rep. Plummer

Sarah A. Maki, Attorney

Summary

- Clarifies that certain firearms are not "dangerous ordnance" under the Weapons Law.

Detailed Analysis

Dangerous ordnance definition

Operation of the bill

Existing law defines the term "dangerous ordnance" for purposes of the Weapons Law. It includes as dangerous ordnance, subject to a list of exceptions (see below), specified types of items. One item specifically included within the list as dangerous ordnance is any firearm with an overall length of at least 26 inches that is approved for sale by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) under the "Gun Control Act of 1968," 18 U.S.C. 921(a)(3), but that is found by the Bureau not to be regulated under the "National Firearms Act," 26 U.S.C. 5845(a).¹ This type of firearm was included in the list by H.B. 228 of the 132nd General Assembly (see "**Purpose and intent of the bill**," below), which takes effect on March 28, 2019.

The bill removes firearms with an overall length of at least 26 inches that are approved for sale by the BATFE under the "Gun Control Act of 1968," 18 U.S.C. 921(a)(3), but that are found by the BATFE not to be regulated under the "National Firearms Act," 26 U.S.C. 5845(a), from the list of types of items specifically included as dangerous ordnance and, instead, includes firearms of that nature within the list of exceptions to dangerous ordnance. As a result, a firearm of that nature will not be a type of item that is specifically included as dangerous ordnance and, instead, will be a type of item expressly excluded as dangerous ordnance.²

¹ R.C. 2923.11(K)(7).

² R.C. 2923.11(K)(7) and (L)(7).

Purpose and intent of the bill

The purpose of the bill is to correct a drafting error made in H.B. 228. The act inadvertently included firearms with an overall length of at least 26 inches that are approved for sale by the BATFE under the "Gun Control Act of 1968," 18 U.S.C. 921(a)(3), but that are found by the BATFE not to be regulated under the "National Firearms Act," 26 U.S.C. 5845(a), within the list of items specified as "dangerous ordnance." The intent of the bill is to expressly exclude firearms of that nature from the definition of "dangerous ordnance," and not to include such firearms within that definition.³

Retroactivity

The bill specifies that its amendments to the "dangerous ordnance" definition will apply retroactively to any civil or criminal proceeding based on conduct that occurred on or after March 28, 2019, which is the effective date of H.B. 228, and prior to the effective date of the bill.⁴

Existing law

Items expressly excluded as dangerous ordnance

Existing law, modified by the bill as described above, specifies that "dangerous ordnance," as used in the Weapons Law, does not include any of the following:⁵

1. Any firearm, including a military weapon and its ammunition, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder;
2. Any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and its ammunition, unless the firearm is an automatic or sawed-off firearm;
3. Any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;
4. Black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in paragraph (3), above, during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;
5. Dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece;

³ Section 3.

⁴ Section 4.

⁵ R.C. 2923.11(L).

6. Any device that is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968" 18 U.S.C. 921(a)(4), as amended, and regulations issued under that act.

Items included as dangerous ordnance

In addition to the type of firearm to which the bill pertains, as described above, existing law specifies that "dangerous ordnance" means any of the following, subject to the exception specified above:⁶

1. Any automatic or sawed-off firearm, zip-gun, or ballistic knife (note that H.B. 228 also modified the definition of "sawed-off firearm" to exclude firearms with an overall length of at least 26 inches that are approved for sale by the BATFE under the "Gun Control Act of 1968," 18 U.S.C. 921(a)(3), but that are found by the BATFE not to be regulated under the "National Firearms Act," 26 U.S.C. 5845(a));
2. Any explosive device or incendiary device;
3. Nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions;
4. Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon;
5. Any firearm muffler or suppressor;
6. Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

Background – dangerous ordnance-related prohibitions

Existing law sets forth several criminal prohibitions that directly pertain to possession or transfer of dangerous ordnance, and several others that include use of dangerous ordnance as one of several elements in a prohibition or as a basis for an increased penalty for the offense. Among the prohibitions that directly pertain to possession or transfer of dangerous ordnance are:

1. A prohibition against knowingly acquiring, having, carrying, or using any dangerous ordnance,⁷ subject to an exception if a license or permit is obtained for a limited, specified purpose from a law enforcement official;⁸

⁶ R.C. 2923.11(K).

⁷ R.C. 2923.17.

⁸ R.C. 2923.18.

2. A prohibition, in acquiring, possessing, carrying, or using any dangerous ordnance, from negligently failing to take proper precautions to: (a) secure the dangerous ordnance against theft, or against its acquisition or use by any unauthorized or incompetent person or (b) insure the safety of persons and property;⁹
3. Prohibitions against:¹⁰ (a) recklessly selling, lending, giving, or furnishing any firearm to any person prohibited by Ohio law from acquiring or using any firearm or to any person prohibited by Ohio law from acquiring or using any dangerous ordnance, (b) possessing any firearm or dangerous ordnance with purpose to dispose of it in violation of clause (a), (c) when transferring any dangerous ordnance to another, negligently failing to require the transferee to exhibit such identification, license, or permit showing him to be authorized to acquire dangerous ordnance under Ohio law, or negligently failing to take a complete record of the transaction and forthwith forwarding a copy of that record to the sheriff of the county or safety director or police chief of the municipality where the transaction takes place, or (d) knowingly failing to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in the person's possession or under the person's control;
4. A prohibition against possessing or having under the person's control any substance, device, instrument, or article, with purpose to use it criminally, with possession or control of any dangerous ordnance, or the materials or parts for making dangerous ordnance, in the absence of circumstances indicating the dangerous ordnance, materials, or parts are intended for legitimate use, constituting prima-facie evidence of criminal purpose.¹¹

History

Action	Date
Introduced	02-19-19

H0086-I-133/ts

⁹ C. 2923.19.

¹⁰ R.C. 2923.20.

¹¹ R.C. 2923.24.