



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Sarah A. Maki

### **Sub. S.B. 208**

132nd General Assembly

(As Reported by H. Federalism and Interstate Relations)

**Sens.** Terhar, Beagle, Coley, Hottinger, Huffman, Jordan, Thomas, Uecker, Eklund, Hackett, Hoagland, Kunze, McColley, Obhof, Oelslager, Peterson

**Reps.** Retherford, Zeltwanger

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## **BILL SUMMARY**

- Specifies that an establishment serving the public may not bar a law enforcement officer or investigator who is carrying validating identification from carrying a weapon on the premises that they are authorized to carry, regardless of whether they are acting within the scope of their duties while carrying the weapon.
- Specifies that the general restriction it enacts that is described in the preceding dot point is an exception to the existing provisions that permit the posting of private land or privately leased public land against possession of firearms on the land and that provide sanctions for violating such a posted prohibition.
- Modifies the existing exemption for law enforcement officers from "illegal possession of a firearm in a liquor permit premises" to specify that the offense does not apply to any such officer or investigator who is authorized to carry firearms but is not acting within the scope of their duties and certain requirements are met.
- Specifies that a peace officer has the same right to carry a concealed handgun in Ohio as a person who has been issued a concealed handgun license provided that the officer when carrying a concealed handgun is carrying validating identification.
- Provides that the employer of persons at an establishment serving the public and the owner and operator of such an establishment is immune from liability in a civil action for injury, death, or loss that was allegedly caused by or related to a law enforcement officer or investigator bringing a weapon to the establishment.
- Provides that the immunity described in the preceding dot point is not available to an owner, operator, or employer if the owner, operator, or employer engaged in an

act or omission that contributed to the injury, death, or loss and that act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner.

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## CONTENT AND OPERATION

### **General restriction against specified public place barring law enforcement officer from carrying weapon on premises**

The bill enacts a general restriction in the Firearms Law that specifies that an "establishment serving the public" may not prohibit or restrict a "law enforcement officer" or "investigator" who is carrying "validating identification" from carrying a weapon on the premises that the officer or investigator is authorized to carry, regardless of whether the officer or investigator is acting within the scope of that officer's or investigator's duties while carrying the weapon.<sup>1</sup> As used in the provision:<sup>2</sup>

**"Establishment serving the public"** means a "hotel" (see below), a restaurant or other place where food is regularly offered for sale, a retail business or other commercial establishment or office building that is open to the public, a "sports venue" (see below), or any other place of public accommodation, amusement, or resort that is open to the public.

**"Hotel"** means a "transient hotel," "extended stay hotel," or "residential hotel," all of which are defined terms. **"Hotel"** includes any structure consisting of one or more

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<sup>1</sup> R.C. 2923.1214(A).

<sup>2</sup> R.C. 2923.121(F)(3), R.C. 2923.1214(C) and by reference, R.C. 3731.01, not in the bill; also R.C. 2901.01, not in the bill.



buildings containing any combination of more than five guestrooms that are each approved by the building code official with jurisdiction and the State Fire Marshal as meeting the requirements for transient sleeping rooms or extended stay temporary residence dwelling units, or as having features of such sleeping rooms and dwelling units within the same room, and such structure is specifically constructed, kept, used, maintained, advertised, and held out to the public to be a place where transient sleeping accommodations or temporary residence is offered for pay to persons, but such structure does not otherwise meet the definition of a transient hotel or an extended stay hotel as defined in this section. "**Hotel**" does not include agricultural labor camps, apartment houses, apartments or other similar places of permanent personal residence, lodging houses, rooming houses, or hospital or college dormitories.

"**Sports venue**" means any arena, stadium, or other facility that is used primarily as a venue for sporting and athletic events for which admission is charged.

"**Investigator**" has the same meaning as described below in "**Illegal possession of a firearm in liquor permit premises.**"

"**Law enforcement officer**" has the meaning specified in existing law, described below in "**Relevant existing definitions.**"

"**Validating identification**" means one of the following:

(1) Photographic identification issued by the law enforcement agency for which an individual serves as a law enforcement officer that identifies the individual as a law enforcement officer of the agency.

(2) Photographic identification issued by the Bureau of Criminal Identification and Investigation (BCII) that identifies an individual as an investigator of BCII.

### **Immunity from liability for injury, death, or loss to person or property**

The bill provides that the owner of an establishment serving the public, the operator of an establishment serving the public, and the employer of persons employed at an establishment serving the public 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 a law enforcement officer or investigator bringing a weapon into the establishment or onto the premises of the establishment.<sup>3</sup> However, this immunity is not available to an owner, operator, or employer of an establishment serving the public with respect to injury, death, or loss to person or property if the owner, operator, or employer engaged

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<sup>3</sup> R.C. 2923.1214(B)(1).

in an act or omission that contributed to the injury, death, or loss and the owner's, operator's, or employer's act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner.<sup>4</sup>

### **Exemption from posting on privately owned land or privately leased public land that otherwise bars firearm possession**

The bill specifies that the general restriction against barring a law enforcement officer from carrying a weapon on specified types of premises that it enacts in the Firearms Law, as described above, is an exception to the existing provision that permits the posting of private land or privately leased public land against the possession of firearms on the land and that provides sanctions for a violation of such a posted prohibition. Under the existing provision, subject to an exception regarding residential rental premises that is not relevant to the bill, the owner or person in 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 the land or on those premises prohibiting the carrying of firearms or concealed firearms on or onto the land or those premises. The bill specifies that the general restriction against barring a law enforcement officer from carrying a weapon on specified types of premises that it enacts in the Firearms Law, as described above, is another exception to the existing provision.

Currently, unchanged by the bill, a person who knowingly violates a posted prohibition of the type described in the preceding paragraph generally is guilty of a fourth degree misdemeanor offense of "criminal trespass," subject to two exceptions. First, if the person knowingly violates such a posted prohibition and the posted land or premises primarily is a parking facility, the person is not guilty of criminal trespass and instead is subject only to a civil trespass action based on the violation. Second, if a person knowingly violates such a posted prohibition and the posted land or premises is a specified type of child day-care premises, unless the person is a licensee who resides in a specified type of such premises, the person is guilty of a first degree misdemeanor or fourth degree felony offense of "aggravated trespass," depending on the circumstances present.<sup>5</sup>

### **Right to carry a concealed handgun**

The bill modifies the provision that states that a peace officer has the same right to carry a concealed handgun in Ohio as a person who was issued a concealed handgun

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<sup>4</sup> R.C. 2923.1214(B)(2).

<sup>5</sup> R.C. 2923.126(C)(3).



license by specifying that the officer, when carrying a concealed handgun under the authority of this provision, must be carrying validating identification.<sup>6</sup>

**"Validating identification"** means photographic identification issued by the agency for which an individual serves as a peace officer that identifies the individual as a peace officer of the agency.<sup>7</sup>

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

### **Law enforcement officer and investigator exemption**

The bill modifies the exemption from the prohibition under the offense of "illegal possession of a firearm in a liquor permit premises" that currently is provided for law enforcement officers and other specified government personnel. Currently, the exemption specifies that the prohibition does not 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*. The bill splits law enforcement officers and investigators from the exemption and provides them with a separate exemption that does not require that, at the time in question, they are acting within the scope of their duties but that does require that, at that time, they are not consuming or under the influence of alcohol. Under the bill's law enforcement officer/investigator exemption, the prohibition does not apply to a "law enforcement officer" or "investigator" who is authorized to carry "firearms" but is not acting within the scope of the officer's or investigator's duties, as long as both of the following apply:<sup>8</sup>

(1) The officer or investigator is not consuming beer or intoxicating liquor or under the influence of alcohol or a drug of abuse and is carrying validating identification.

(2) If the firearm the officer or investigator possesses is a firearm issued or approved by the law enforcement agency served by the law enforcement officer or by BCII with respect to an investigator, the agency or BCII does not have a specific policy prohibiting all officers of the agency or all investigators of BCII from carrying a firearm issued or approved by the agency or BCII in such a manner.

Under the bill's exemption regarding other government personnel, as under existing law, the prohibition does not apply to an officer, agent, or employee of Ohio or

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<sup>6</sup> R.C. 2923.126(E)(1).

<sup>7</sup> R.C. 2923.126(G)(5).

<sup>8</sup> R.C. 2923.121(B)(1)(b).



any other state or the United States, or 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.*<sup>9</sup> As used in the provisions:<sup>10</sup>

**"Investigator"** means an officer or employee of BCII who is engaging in specified investigatory conduct described in R.C. 109.54 or 109.83.

**"Law enforcement officer"** and **"firearm"** have the meanings specified in existing law, described below in **"Relevant existing definitions."**

**"Validating identification"** has the same meaning as described above in **"General restriction against specified public place barring law enforcement officer from carrying weapon on premises."**

### **Prohibition and penalty**

The existing prohibition under the offense of "illegal possession of a firearm in a liquor permit premises," unchanged by the bill, prohibits a person from possessing a firearm in any room in which any person is consuming beer or intoxicating liquor in a premises for which a D permit has been issued under the Liquor Control Law or in an open air arena for which such a permit has been issued. A violation of the prohibition generally is a fifth degree felony, but it is a third degree felony if the offender commits it by knowingly carrying or having the firearm concealed on the offender's person or concealed ready at hand.

Existing law provides several exemptions from the prohibition, in addition to the law enforcement officer/government personnel exemption modified by the bill as described above. These exemptions provide that, in specified circumstances, the prohibition does not apply to: persons employed in Ohio who are authorized to carry firearms and have specified training, rooms used as hotel guest accommodations, the principal holder of the D permit, off-duty peace officers employed by the principal holder of the D permit while in the premises or arena, concealed handgun licensees, veteran's organization members in the organization's premises, or firearms merchants or purchasers at a firearms show.<sup>11</sup>

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<sup>9</sup> R.C. 2923.121(B)(1)(a).

<sup>10</sup> R.C. 2923.121(F), by reference to R.C. 109.541, not in the bill; also R.C. 2901.01 and 2923.11, not in the bill.

<sup>11</sup> R.C. 2923.121.



## Law enforcement firearm exemptions not changed by the bill

### Exemptions from specific prohibitions

Existing law prohibits several other types of firearms-related conduct and exempts law enforcement officers and specified government personnel from the prohibitions in specified circumstances. Most of the exemptions apply to officers, agents, or employees of Ohio or any other state or of the United States or law enforcement officers (hereafter, collectively referred to as "qualifying officials") in specified circumstances. The bill does not change these exemptions. A summary of the exemptions follows:

(1) A qualifying official, when authorized to carry or have loaded or accessible firearms in a vessel and acting within the scope of the official's duties, is exempt from several prohibitions that relate to the discharge, transport, or possession of a firearm in a vessel.<sup>12</sup>

(2) A qualifying official who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns and is acting within the scope of the official's duties is exempt from several prohibitions that relate to the possession, concealed on the person's person or concealed ready at hand, of a deadly weapon, handgun, or dangerous ordnance.<sup>13</sup>

(3) An officer, agent, or employee of Ohio or any other state or the United States who is authorized to carry deadly weapons or dangerous ordnance and is acting within the scope of the officer's, agent's, or employee's duties, a law enforcement officer who is authorized to carry deadly weapons or dangerous ordnance, or a security officer employed by a board of education or school governing body of a school while on duty pursuant to the contract of employment is exempt from several prohibitions that relate to the conveyance, attempted conveyance, or possession of a deadly weapon, dangerous ordnance, or object indistinguishable from a firearm into or in a school safety zone.<sup>14</sup>

(4) 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

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<sup>12</sup> R.C. 1547.69, not in the bill.

<sup>13</sup> R.C. 2923.12, not in the bill.

<sup>14</sup> R.C. 2923.122, not in the bill.





possession or control generally is exempt from several prohibitions that relate to the conveyance, attempted conveyance, or possession of a deadly weapon or dangerous ordnance into or in a courthouse or another building or structure in which a courtroom is located. But the exemption does not apply if a rule of superintendence or another type of rule adopted by the Supreme Court pursuant to Article IV, Ohio Constitution, or an applicable local rule of court prohibits all persons from conveying, attempting to convey, or possessing a deadly weapon or dangerous ordnance into or in a courthouse or another building or structure in which a courtroom is located.<sup>15</sup>

(5) A qualifying official, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of the official's duties, is exempt from several prohibitions that relate to the discharge, transportation, or possession of a firearm while in or on a motor vehicle.<sup>16</sup>

(6) A qualifying official who discharges a firearm while acting within the scope of the official's duties is exempt from several prohibitions that relate to the discharge of a firearm at or into a habitation; at, in, or into a school safety zone; or, with a specified intent, within 1,000 feet of a school building or school premises.<sup>17</sup>

(7) A qualifying official, to the extent that the official is authorized to acquire, have, carry, or use dangerous ordnance and is acting within the scope of the official's duties, is exempt from the prohibition against acquiring, having, carrying, or using any dangerous ordnance.<sup>18</sup>

### **General treatment in same manner as concealed handgun licensee**

Existing law, unchanged by the bill, specifies that a peace officer has the same right to carry a concealed handgun in Ohio as a person who was issued a concealed handgun license.<sup>19</sup> Concealed handgun licensees are authorized to carry a concealed handgun anywhere in Ohio, while carrying the license and a valid identification, subject to a few exceptions. Under the exceptions, a license does not authorize a licensee to

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<sup>15</sup> R.C. 2923.123, not in the bill.

<sup>16</sup> R.C. 2923.16, not in the bill.

<sup>17</sup> R.C. 2923.161, not in the bill.

<sup>18</sup> R.C. 2923.17, not in the bill.

<sup>19</sup> R.C. 2923.126(E)(1).





carry a concealed handgun in a vehicle in a manner prohibited under the law governing firearm possession in a vehicle<sup>20</sup> or into:<sup>21</sup>

(1) A police station, sheriff's office, or State Highway Patrol station, premises controlled by BCII; a state correctional institution, jail, workhouse, or other detention facility; any area of an airport passenger terminal that is beyond a passenger or property screening checkpoint or to which access is restricted through security measures by the airport authority or a public agency; or a Department of Mental Health or Department of Developmental Disabilities institution;

(2) A school safety zone, in violation of R.C. 2923.122;

(3) A courthouse or another building or structure in which a courtroom is located, in violation of R.C. 2923.123;

(4) A premises or open air arena for which a D permit has been issued under the Liquor Control Law, in violation of R.C. 2923.121;

(5) Premises owned or leased by an 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 or unless the licensee is carrying the concealed handgun pursuant to a written policy, rule, or other authorization adopted by the institution's board of trustees or other governing body that authorizes specific individuals or classes of individuals to carry a concealed handgun on the premises;

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

(7) A building that is a government facility of Ohio or an Ohio political subdivision and that is not used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located, unless the governing body with authority over the building has enacted a statute, ordinance, or policy that permits a licensee to carry a concealed handgun into the building; or

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

Also, nothing in the section describing the authority of a licensee to carry a concealed handgun negates or restricts a rule, policy, or practice of a private employer

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<sup>20</sup> R.C. 2923.16, not in the bill.

<sup>21</sup> R.C. 2923.126(B).



that is not an 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.<sup>22</sup>

## Relevant existing definitions

Several existing definitions are relevant to the bill's provisions, including:

**"Law enforcement officer,"** which means:<sup>23</sup>

(1) A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, metropolitan housing authority police officer, or State Highway Patrol trooper;

(2) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, who has a statutory duty to conserve the peace or to enforce all or certain laws is imposed and to arrest violators, within the limits of that statutory duty and authority;

(3) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(4) A member of an organized county, township, or municipal auxiliary police force, within the scope of the member's appointment or commission;

(5) A person lawfully called to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(6) A person appointed by a mayor as a special patrolling officer during a riot or emergency, for the purposes and during the time when the person is appointed;

(7) A member of the Ohio organized militia or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(8) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

(9) A veterans' home police officer, regional transit authority police officer, or port authority special police officer;

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<sup>22</sup> R.C. 2923.126(C)(1).

<sup>23</sup> R.C. 2901.01(A), not in the bill.



(10) The House of Representatives Sergeant at Arms if given statutory arrest authority and an Assistant House of Representatives Sergeant at Arms;

(11) The Senate Sergeant at Arms and an Assistant Senate Sergeant at Arms; or

(12) A municipal corporation special police officer employed at a municipal airport or other municipal air navigation facility in specified circumstances.

**"Firearm"** means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant; the term includes an unloaded firearm and any firearm that is inoperable but that can readily be rendered operable. When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including the representations and actions of the individual exercising control over the firearm. As used in this definition, "deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.<sup>24</sup>

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## HISTORY

ACTION	DATE
Introduced	10-03-17
Reported, S. Judiciary	04-10-18
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Reported, H. Federalism and Interstate Relations	06-27-18

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<sup>24</sup> R.C. 2923.11(A) and (B), not in the bill.

