



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Nicholas A. Keller

Am. Sub. H.B. 228 132nd General Assembly (As Passed by the General Assembly)

- Reps.** T. Johnson and LaTourette, Conditt, Schuring, Pelanda, Patton, McColley, Antani, Becker, Brenner, Carfagna, Dean, Duffey, Ginter, Goodman, Green, Henne, Hill, Hood, Householder, Huffman, Keller, Koehler, Lipps, Merrin, Riedel, Roegner, Romanchuk, Schaffer, Slaby, R. Smith, Sprague, Stein, Thompson, Vitale, Wiggam, Retherford, Butler, Faber, Gavarone, Hagan, Hoops, Kick, McClain, Perales, Seitz, T. Smith, Wilkin, Young
- Sens.** Coley, Uecker, Bacon, Burke, Hackett, Hoagland, Hottinger, Huffman, Jordan, Obhof, Peterson, Terhar, Wilson

Effective date: March 28, 2019; certain provisions effective December 28, 2019

ACT SUMMARY

State preemption

- Expands the scope of an individual's right to bear arms and the state's need to regulate firearms.
- Expands state preemption of local firearm regulations that interfere with the right to bear arms and inhibit an individual from protecting themselves, their families, and others from intruders or attackers, or otherwise inhibit the legitimate use of firearms.
- Expands the situations in which a person, group, or entity adversely affected by the enactment or enforcement of a local firearm regulation may bring a civil action for damages, declaratory relief, injunctive relief, or reasonable expenses.
- Delays the act's "preemption" provisions until December 28, 2019.

Self-defense

- Shifts to the state the burden to prove beyond a reasonable doubt that a person charged with an offense that involved the use of force against another did not use that force in self-defense, defense of another, or defense of that person's residence.

- Requires that a person charged with an offense present evidence that tends to support that the person acted in self-defense, defense of another, or defense of that person's residence.

Elimination and modification of carry requirements

- Modifies the mandatory posting of signs that warn against the conveyance of a deadly weapon or dangerous ordnance onto specified premises.
- Eliminates the requirement that a concealed handgun licensee in possession of a concealed handgun must carry valid identification.

Unlawful transactions in weapons

- Expands the offense of unlawful transactions in weapons by prohibiting a person from knowingly doing any of the following:
 - Soliciting a federally licensed firearms dealer or private seller to transfer a firearm or ammunition in a manner prohibited by state or federal law;
 - Providing materially false information to a federally licensed firearms dealer;
 - Procuring another person to commit the above offenses.
- Makes a violation a third degree felony.

Officer carrying a firearm while not acting in the scope of officer's duties

- Permits a law enforcement officer or BCII investigator who is authorized to carry firearms but is not acting within the scope of the person's duties to possess a firearm in a liquor permit premises under certain specified circumstances.
- Prohibits an establishment serving the public from prohibiting or restricting a law enforcement officer or BCII investigator not acting within the scope of the person's duties from carrying a weapon that the officer or investigator is authorized to carry onto the premises under certain specified circumstances.

Law enforcement officer always on duty

- Specifies that, for Revised Code purposes, certain law enforcement officers are always on duty, regardless of whether they are within work hours or on the clock.



Corrections officers authorized to carry firearms on duty

- Permits a corrections officer employed by a multicounty, municipal-county, or multicounty-municipal correctional center to carry a firearm while on duty if the officer has received firearms training and is specifically authorized to carry firearms by the person in charge of the correctional center in which the officer serves.
- Requires corrections officers who are authorized to carry firearms to complete annual firearms requalification training.

Definitions of sawed-off firearm and dangerous ordnance

- Excludes certain firearms from the definition of sawed-off firearm and includes those firearms in the definition of dangerous ordnance.

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CONTENT AND OPERATION

The act (1) expands state preemption of local firearm regulations, (2) shifts to the state the burden to prove beyond a reasonable doubt that a person charged with an offense that involved the use of force against another did not use that force in self-defense, defense of another, or defense of that person's residence, (3) modifies certain requirements within the Concealed Carry Law and the offense of unlawful transactions in weapons, and (4) specifies when on-duty and off-duty law enforcement officers and corrections officers may carry concealed weapons. The General Assembly overrode Governor Kasich's veto of the act.



State preemption

The act expands the right to bear arms to include acquiring, carrying, and manufacturing firearms, their components, and their ammunition. Under continuing law, an individual may exercise the right to keep and bear arms by owning, possessing, purchasing, selling, transferring, transporting, storing, or keeping firearms, their components, and their ammunition.

The act expands the state's regulation of firearms to include manufacturing, taxing, keeping, and reporting of loss or theft of firearms, their components, and their ammunition. Continuing law provides that the state has the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, acquisition, transport, storage, carrying, sale, or transfer of firearms, their components, and their ammunition. The act further specifies that any local firearm regulation that interferes with an individual's right to bear arms, inhibits individuals from protecting themselves, their families, or others from intruders and attackers, or otherwise inhibits the legitimate use of firearms is preempted by the state of Ohio.¹

The act allows a person, group, or entity adversely affected by the enactment or enforcement of a preempted local firearm ordinance, rule, regulation, resolution, practice, or other action enacted or enforced by a political subdivision to bring a civil action against the political subdivision.²

The court may award actual damages, declaratory relief, injunctive relief, or a combination of those remedies. Additionally, reasonable expenses must be awarded if either of the following is true: (1) the person, group, or entity prevails in their civil action, or (2) the ordinance, rule, regulation, resolution, practice, or action or the manner of its enforcement is repealed or rescinded prior to a final determination of the civil action. Reasonable expenses include reasonable attorney's fees, court costs, expert witness fees, and compensation for loss of income. Any damages or expenses awarded must be awarded against, and paid by, the political subdivision.³

All of these changes to the firearms preemption law take effect December 28, 2019.⁴

¹ R.C. 9.68(A).

² R.C. 9.68(B).

³ R.C. 9.68(B) and (C)(3).

⁴ Section 3.



Self-defense

Burden of proof

The act shifts the burden of proof for the affirmative defense of self-defense, defense of another, or defense of a person's residence from the accused to the prosecution. Under the act, a person accused of an offense that involved the person's use of force against another need only present evidence that tends to support that the accused used the force in self-defense, defense of another, or defense of that person's residence, and the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense, defense of another, or defense of the person's residence.

Under continuing law, unchanged by the act, a person is presumed to have acted in self-defense or defense of another when using defensive force that is intended to cause death or great bodily harm to another if the person against whom the defensive force is used unlawfully and without privilege to do so entered or is entering the residence or vehicle occupied by the person using the defensive force.⁵

Elimination and modification of carry requirements

Posting of prohibited carry signs

The act replaces a requirement that specified certain persons, boards, and entities, or their designees, responsible for various premises post a prohibited carry sign in a conspicuous place on the premises with a more general requirement. Under the act, the person, board, or entity that owns or controls a place or premises identified under continuing law as a place into which a valid concealed handgun license does not authorize a licensee to carry a concealed handgun must post a prohibited carry sign in one or more conspicuous places on the premises.

Under continuing law, the prohibited carry sign must contain 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."⁶

⁵ R.C. 2901.05.

⁶ R.C. 2923.1212 and 2923.126(B).



Carrying of valid identification

The act eliminates the requirement that a concealed handgun licensee must carry valid identification when in possession of a concealed handgun. Under continuing law, a concealed handgun licensee must carry a valid concealed handgun license when in possession of a concealed handgun.⁷

Unlawful transactions in weapons

The act prohibits a person from knowingly doing any of the following:⁸

- Soliciting, persuading, encouraging, or enticing a federally licensed firearms dealer or a private seller to transfer a firearm or ammunition in a manner prohibited by state or federal law;
- Providing "materially false information" to a federally licensed firearms dealer or private seller with an intent to deceive. "Materially false information" is defined as information relating to the transfer of a firearm or ammunition that portrays an illegal transaction as legal or a legal transaction as illegal;
- Procuring, soliciting, persuading, encouraging, or enticing another person to commit the above offenses.

The penalty for the above offenses is a third degree felony.⁹ Law enforcement officers acting within the scope of their duties and persons acting in accordance with directions given by a law enforcement officer are exempt from the prohibition.¹⁰

Under continuing law, unchanged by the act, the offense of unlawful transactions in weapons prohibits a person from doing any of the following:¹¹

- Recklessly selling, lending, giving, or furnishing any firearm or dangerous ordnance to any person otherwise prohibited by state law from acquiring or using any firearm or dangerous ordnance;

⁷ R.C. 2923.126(A).

⁸ R.C. 2923.20(A)(3) to (5) and (D)(3).

⁹ R.C. 2923.20(C).

¹⁰ R.C. 2923.20(B).

¹¹ R.C. 2923.20(A)(1), (2), (6), (7), and (8).



- Possessing any firearm or dangerous ordnance with purpose to dispose of it in violation of the above;
- Manufacturing, possessing for sale, selling, or furnishing to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, springblade knife, gravity knife, or similar weapon;
- When transferring any dangerous ordnance to another, negligently failing to follow any of several specified requirements;
- Knowingly failing to report the loss or theft of any firearm or dangerous ordnance in the person's possession or under the person's control to law enforcement authorities.

Officer carrying a firearm while not acting in the scope of officer's duties

D permit premises

The act permits a law enforcement officer or Bureau of Criminal Identification and Investigation (BCII) investigator who is authorized to carry firearms but is not acting within the scope of the officer's or investigator's duties to possess a firearm in a room in which any person is consuming beer or intoxicating liquor in a premises for which a D permit has been issued under Ohio's Liquor Control Law or in an open air arena for which a permit of that nature has been issued if several conditions are met. To carry firearms under these circumstances, the officer or investigator must carry "validating identification" (see "**Definitions**," below, for terms in quotation marks), must not be consuming beer or liquor or under the influence of drugs or alcohol, and must not be carrying an agency- or BCII-issued firearm for which the agency or BCII has a "restrictive firearms carrying policy."¹²

Establishments serving the public

Similarly, the act prohibits an "establishment serving the public" from prohibiting or restricting a law enforcement officer or BCII investigator not acting within the scope of the officer's or investigator's duties from carrying a weapon that the officer or investigator is authorized to carry onto the premises if the person is carrying "validating identification" and the weapon is not a department- or agency-issued firearm for which the department or agency has a "restrictive firearms carrying policy." The owner or operator of an establishment serving the public and the employer of persons employed at such an establishment are immune from liability in a civil action

¹² R.C. 2923.121(B)(1)(b).



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 unless the owner, operator, or employer engaged 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.¹³

The act specifies that the general restriction against barring a law enforcement officer from carrying a weapon on specified types of premises, as described above, is an exception to the continuing law 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.¹⁴

Peace officer right to concealed carry

The act also requires a peace officer to carry validating identification in order to have the same right to carry a concealed handgun as a concealed handgun licensee under continuing law. This requirement does not affect a peace officer's right to carry a concealed handgun under any other authority.¹⁵

Definitions

As used in the act:

"Validating identification" means either photographic identification issued by the law enforcement agency for which an individual serves as a law enforcement officer or peace officer that identifies the individual as a law enforcement officer or peace officer of the agency, or photographic identification issued by the BCII that identifies an individual as an investigator of the BCII.¹⁶

"Restrictive firearms carrying policy" means a specific policy of a law enforcement agency or the BCII that prohibits all officers of the agency or all investigators of the BCII, while not acting within the scope of the officer's or investigator's duties, from doing either of the following: (a) carrying a firearm issued or approved by the agency or BCII 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 Ohio's

¹³ R.C. 2923.1214.

¹⁴ R.C. 2923.126(C)(3)(a).

¹⁵ R.C. 2923.126(E)(1).

¹⁶ R.C. 2923.121(F)(5), 2923.1214(D)(5), and 2923.126(G)(5).



Liquor Control Law or in an open air arena for which a permit of that nature has been issued, or (b) carrying a firearm issued or approved by the agency or BCII in an establishment serving the public.¹⁷

"Establishment serving the public" means a hotel, 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, or any other place of public accommodation, amusement, or resort that is open to the public.¹⁸

Law enforcement officer always on duty

The act specifies that, for Revised Code purposes, a "law enforcement officer" who, by virtue of the officer's employment, commissioning, disposition, appointment, or election as a law enforcement officer, has a responsibility to enforce all or certain laws (1) holds public office on a continuing basis and has a continuing duty to enforce those laws, and (2) is always on duty, regardless of whether the officer is, or is not, officially within work hours or officially on the clock.¹⁹

"Law enforcement officer," as used in this provision, is defined broadly to include any person employed, commissioned, disposed, appointed, or elected as a peace officer or law enforcement officer under continuing law or any person employed in Ohio and authorized to carry firearms who is subject to annual firearms requalification training, for the state, a political subdivision of the state, or any agency, department, or instrumentality of the state or a political subdivision of the state.²⁰

The act also repeals a related provision under which 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 allegedly caused by any act of that officer that occurred while the officer carried a concealed handgun and was off duty if the act allegedly involved the officer's use of the concealed handgun. The repealed provision specified that certain Revised Code sections regarding governmental immunity and potential liability (unchanged by the act) applied to any civil action involving a peace officer's use of a concealed handgun in the performance of the officer's official duties while the officer was off duty.²¹

¹⁷ R.C. 2923.121(F)(3) and 2923.1214(D)(5).

¹⁸ R.C. 2923.1214(D)(1).

¹⁹ R.C. 9.69(B).

²⁰ R.C. 9.69(A).

²¹ R.C. 2923.129(A)(5); R.C. Chapter 2744. and sections 9.86 and 9.87, not in the act.



Corrections officers authorized to carry firearms on duty

The act permits a corrections officer employed by a multicounty, municipal-county, or multicounty-municipal correctional center to carry a firearm while acting within the scope of the officer's official duties if the officer has been granted permission to carry a firearm in the discharge of official duties by the person in charge of the multicounty, municipal-county, or multicounty-municipal correctional center. Permission may be granted under the act only if the corrections officer has successfully completed a basic firearm training program approved by the executive director of the Ohio Peace Officer Training Commission. The act also requires corrections officers who are authorized to carry firearms in the discharge of official duties to complete annual firearms requalification training.²²

Definitions of sawed-off firearm and dangerous ordnance

Sawed-off firearm

The act amends the definition of "sawed-off firearm" to exclude a firearm that meets all of the following criteria: (1) the overall length of the firearm is at least 26 inches, (2) the firearm is approved for sale by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) under the Gun Control Act of 1968, and (3) the firearm is found not to be regulated by BATFE under the National Firearms Act. Otherwise, a shotgun with a barrel less than 18 inches long, a rifle with a barrel less than 16 inches long, or a shotgun or rifle less than 26 inches long overall remains a "sawed-off firearm" under continuing law.²³

Dangerous ordnance

The act amends the definition of "dangerous ordnance" to include a firearm that meets all of the following criteria: (1) the overall length of the firearm is at least 26 inches, (2) the firearm is approved for sale by BATFE under the Gun Control Act of 1968, and (3) the firearm is found not to be regulated by BATFE under the National Firearms Act.²⁴

The placement of this language within the definition of "dangerous ordnance" was a drafting error. H.B. 86 of the 133rd General Assembly corrected this error by moving the description of these firearms to the list of items that are expressly not to be considered dangerous ordnance, where it properly appeared in earlier versions of this

²² R.C. 109.801 and 307.93(A).

²³ R.C. 2923.11(F).

²⁴ R.C. 2923.11(K)(7).



act. H.B. 86 is effective March 28, 2019, which is the same date that this act goes into effect. Therefore, on that date, a firearm that meets the criteria described above will not be considered to be "dangerous ordnance."²⁵

Technical change

The act also changes an apparently incorrect cross reference.²⁶

HISTORY

ACTION	DATE
Introduced	05-16-17
Reported, H. Federalism & Interstate Relations	05-23-18
Passed House (65-32)	11-14-18
Reported, S. Gov't Oversight & Reform	12-06-18
Passed Senate (19-10)	12-06-18
House concurred in Senate amendments (59-22)	12-06-18
House voted to override veto (67-22)	12-27-18
Senate voted to override veto (21-11)	12-27-18

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²⁵ R.C. 2923.11(L)(7), as amended by H.B. 86.

²⁶ R.C. 2953.37(D)(2)(b).

