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Legislative Budget
Office

S.B. 215
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Johnson

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SUMMARY

- Provides that a person who is a “qualifying adult” is not required to obtain a concealed handgun license in order to carry a concealed handgun that is not a “restricted firearm.”
- Defines “qualifying adult” as a person who is 21 years of age or older and who is not legally prohibited from possessing or receiving a firearm under specified federal or state law.
- Defines “restricted firearm” as a firearm that is a dangerous ordnance or that is a firearm that any law of this state or the United States prohibits the person from possessing, having, or carrying.
- States that specified references to a concealed handgun licensee apply to a qualifying adult, unless the context clearly indicates otherwise.
- States that expiration, suspension, and revocation references to a concealed handgun license do not apply to a qualifying adult, unless the person has been issued a concealed handgun license.
- Eliminates the requirement that a concealed handgun licensee must carry a concealed handgun license in order to carry a concealed handgun.
- Eliminates the requirement that a concealed handgun licensee or qualified military member must notify a law enforcement officer or motor carrier enforcement unit employee that the person is authorized to carry a concealed handgun and is then carrying a handgun.
- Permits expungement of convictions based on failure to comply with the notification requirements described in the preceding dot point.
- Specifies that the mere carrying or possession of a handgun that is not a restricted firearm does not constitute grounds for any law enforcement officer or agent of the

state, a county, a municipal corporation, or a township to conduct any search, seizure, or detention, no matter how temporarily, of an otherwise law-abiding person.

- Establishes procedures for a pretrial immunity hearing in a tort action or criminal case related to a person's use of force against another, regarding a claim of immunity based on the person's self-defense, defense of another, or defense of the person's residence.

DETAILED ANALYSIS

Eliminates requirement that a concealed handgun license must be obtained

The bill provides that a person who is a "qualifying adult" is not required to obtain a concealed handgun license in order to carry a concealed handgun that is not a "restricted firearm." Regardless of whether the person has been issued a concealed handgun license, a person who is a qualifying adult may carry a concealed handgun that is not a restricted firearm anywhere in this state in which a person who has been issued a concealed handgun license may carry a concealed handgun. The right of a person who is a qualifying adult to carry a concealed handgun that is not a restricted firearm is that same right as granted to a person who has been issued a concealed handgun license, and a qualifying adult who is granted the right is subject to the same restrictions as apply to a person who has been issued a concealed handgun license.¹

If a person is a qualifying adult, and the person thereafter comes within any category of persons prohibited from possessing or receiving a firearm under specified federal or state law, both of the following apply automatically and immediately upon the person coming within that category:²

1. The above provisions do not apply to the person.
2. The below provisions (see, "**References to concealed handgun license and concealed handgun licensee,**") do not apply to the person.

References to concealed handgun license and concealed handgun licensee

The bill specifies that for purposes of any section of the Revised Code that refers to a concealed handgun license or concealed handgun licensee, except when the context clearly indicates otherwise, all of the following apply:³

1. A person who is a qualifying adult and is carrying or has, concealed on the person's person or ready at hand, a handgun that is not a restricted firearm must be deemed to have been issued a valid concealed handgun license.

¹ R.C. 2923.111(B).

² R.C. 2923.111(D)(2) and 18 United States Code (U.S.C.) 922(g)(1) to (9), not in the bill.

³ R.C. 2923.111(D)(1).

2. If the provision refers to a person having been issued a concealed handgun license or having been issued a concealed handgun license that is valid at a particular point in time, the provision must be construed as automatically including a person who is a qualifying adult and who is carrying or has, concealed on the person's person or ready at hand, a handgun that is not a restricted firearm, as if the person had been issued a concealed handgun license or had been issued a concealed handgun license that is valid at the particular point in time.
3. If the provision in specified circumstances requires a concealed handgun license to engage in specified conduct, or prohibits a concealed handgun licensee from engaging in specified conduct, the provision must be construed as applying in the same circumstances to a person who is a qualifying adult in the same manner as if the person was a concealed handgun licensee.
4. If the application of the provision to a person depends on whether the person is or is not a concealed handgun licensee, the provision must be applied to a person who is a qualifying adult in the same manner as if the person was a concealed handgun licensee.
5. If the provision pertains to the imposition of a penalty or sanction for specified conduct and the penalty or sanction applicable to a person who engages in the conduct depends on whether the person is or is not a concealed handgun licensee, the provision must be applied to a person who is a qualifying adult in the same manner as if the person was a concealed handgun licensee.

References to expiration, suspension, and revocation of concealed handgun license

The bill provides that the concealed handgun license expiration provisions and the concealed handgun license suspension and revocation provisions do not apply with respect to a person who is a qualifying adult, unless the person has been issued a concealed handgun license.⁴

Definitions

The bill uses the following definitions:

“Qualifying adult” means a person who is 21 years of age or older and who is not legally prohibited from possessing or receiving a firearm under specified federal or state law.⁵

“Restricted firearm” means a firearm that is a dangerous ordnance or that is a firearm that any law of this state or the United States prohibits the subject person from possessing, carrying, or having.⁶

⁴ R.C. 2923.111(D)(2).

⁵ R.C. 2923.111(A)(2) and 18 U.S.C. 922(g)(1) to (9), not in the bill.

⁶ R.C. 2923.111(A)(1).

Eliminates requirement that a concealed handgun licensee must carry a concealed handgun license

The bill eliminates the requirement that a concealed handgun licensee must carry a concealed handgun license in order to carry a concealed handgun. Under the bill, a concealed handgun licensee may carry a concealed handgun anywhere in the state if the concealed handgun license is valid when the licensee is in actual possession of a concealed handgun. Under current law, a concealed handgun licensee may carry a concealed handgun anywhere in this state if the licensee also carries a valid concealed handgun license when the licensee is in actual possession of the concealed handgun.⁷

Eliminates requirement that a concealed handgun licensee has a duty to notify

The bill eliminates the requirement that a concealed handgun licensee or qualified military member has a duty to notify. Under current law, a concealed handgun licensee or qualified military member has a duty to notify as follows:

1. If a concealed handgun licensee is stopped for a law enforcement purpose and is carrying a concealed handgun, the person must promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a concealed handgun license and that the person is then carrying a concealed handgun.⁸
2. If a concealed handgun licensee or active duty military member is the driver or occupant of a motor vehicle that is stopped for a law enforcement purpose and is transporting or has a loaded handgun in the motor vehicle, the person must promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a concealed handgun license or is authorized to carry a concealed handgun as a qualified military member and that the person then possesses or has a loaded handgun in the motor vehicle.⁹
3. If a concealed handgun licensee or active duty military member is the driver or occupant of a commercial motor vehicle that is stopped for a specified purpose and is transporting or has a loaded handgun in the commercial motor vehicle, the person must promptly inform any employee of the unit who approaches the person after the person has been stopped that the person has been issued a concealed handgun license or is

⁷ R.C. 1547.69(H)(2), 2923.12(C)(2) and (F)(2), 2923.121(B)(1)(d) and (e), 2923.122(D)(3) and (4), 2923.123(C)(6), 2923.126(A)(1), (D), and (F)(1), and 2923.16(F)(5) and (L).

⁸ R.C. 2923.12(B)(1) and 2923.126(A)(3).

⁹ R.C. 2923.126(A)(2) and 2923.16(E)(1).

authorized to carry a concealed handgun as a qualified military member and that the person then possesses or has a loaded handgun in the commercial motor vehicle.¹⁰

In eliminating the notification requirements described above, the bill also removes the criminal penalties associated with failure to follow those requirements. Under current law, a violation of the notification requirements is generally a first degree misdemeanor and results in suspension of the licensee's concealed handgun license, unless the law enforcement officer had actual knowledge that the person was a licensee, in which case the violation is a minor misdemeanor and the license is not suspended.¹¹

Under the bill, a person who has been convicted of or pleaded guilty to a violation of the notification requirements as they existed prior to the bill's effective date may request that records related to that conviction be expunged. Under continuing law, the person seeking expungement must apply to the sentencing court for the expungement of the record of conviction.¹²

Search, seizure, or detention of person carrying a handgun

The bill specifies that the mere carrying or possession of a handgun that is not a restricted firearm, with or without a concealed handgun license, does not constitute grounds for any law enforcement officer or agent of the state, a county, a municipal corporation, or a township to conduct any search, seizure, or detention, no matter how temporarily, of an otherwise law-abiding person.¹³

Pretrial immunity hearing

The bill establishes procedures for a pretrial immunity hearing in a tort action or criminal case related to a person's use of force against another, regarding a claim of immunity based on the person's self-defense, defense of another, or defense of the person's residence.

Right to a pretrial immunity hearing

The bill provides that, in a tort action or criminal case against a person related to the person's use of force against another, the person has a right to a pretrial immunity hearing regarding a claim of immunity based on the person's self-defense, defense of another, or defense of the person's residence as follows:¹⁴

1. In a tort action filed against a person related to the person's use of force against another, the person has a right to a pretrial immunity hearing, as described below,

¹⁰ R.C. 2923.126(A)(2) and 2923.16(E)(1).

¹¹ R.C. 2923.12(F)(3), 2923.128, and 2923.16(I).

¹² R.C. 2923.12(E)(2), 2923.16(H)(2), and 2953.37.

¹³ R.C. 2923.111(C).

¹⁴ R.C. 2307.601(D)(1), 2901.05(A)(2), and 2901.09(D).

regarding a claim of immunity from liability for injury, death, or loss to another based on self-defense, defense of another, or defense of that person's residence.

2. In a criminal case where a person is accused of an offense that involved the person's use of force against another, the person has a right to a pretrial immunity hearing, as described below, regarding a claim of immunity from criminal prosecution based on self-defense, defense of another, or defense of that person's residence.

Pretrial motion

Under the bill, a person who has a right to a pretrial immunity hearing in a tort action or criminal case under the bill's provision described above and who would like the hearing must file a pretrial motion claiming that the person used the force in self-defense, defense of another, or defense of that person's residence. The filing of the motion establishes a *prima facie* claim of self-defense, defense of another, or defense of that person's residence.¹⁵

Pretrial immunity hearing

The bill specifies that when a person who has a right to a pretrial immunity hearing in a tort action or criminal case under the bill's provision described above files a motion requesting the hearing, the court then must hold a pretrial immunity hearing, and proceed as follows:¹⁶

1. In a tort action, the court must grant the motion and hold that the person used the force in self-defense, defense of another, or defense of that person's residence unless the party seeking to overcome the immunity provides substantial evidence that the person did not use the force in self-defense, defense of another, or defense of that person's residence.
2. In a criminal case, the court must grant the motion and hold that the person used the force in self-defense, defense of another, or defense of that person's residence unless the state proves by proof beyond a reasonable doubt that the person did not use the force in self-defense, defense of another, or defense of that person's residence (this provision replaces an existing provision that specifies that if, at the trial of a person who is accused of an offense that involved the person's use of force against another, there is evidence presented that tends to support that the person used the force in self-defense, defense of another, or defense of that person's residence, the prosecution must prove beyond a reasonable doubt that the person did not use the force in self-defense, defense of another, or defense of that person's residence, as the case may be).

¹⁵ R.C. 2307.601(D)(2) and 2901.05(B)(1).

¹⁶ R.C. 2307.601(D)(2) and 2901.05(B)(1).

Proof beyond a reasonable doubt

The bill retains, for use in its provisions described above regarding criminal cases, the following existing definitions that apply regarding the criminal cases:¹⁷

“**Reasonable doubt**” is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. **Reasonable doubt** is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt.

“**Proof beyond a reasonable doubt**” is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person’s own affairs.

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 08-05-21 |

S0215-I-134/ts

¹⁷ R.C. 2901.05(E).