



Greg Schwab

*Final Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 347**

126th General Assembly  
(As Passed by the General Assembly)

**Reps.** Aslanides, Buehrer, Latta, Webster, Garrison, Hagan, Reidelbach, Schneider, Raga, Faber, Schlichter, J. Stewart, Seaver, D. Evans, Setzer, Carano, Gibbs, Willamowski, T. Patton, Reinhard, Allen, Raussen, Fessler, Bulp, Daniels, Uecker, Hoops, J. McGregor, Seitz, Law, Peterson, Hood, Cassell, Collier, Schaffer, Domenick, Combs, Taylor, Blasdel, Oelslager, White, Carmichael, Flowers, Gilb, Distel, Wagoner, Blessing, Book, Brinkman, Calvert, Coley, Core, DeWine, C. Evans, Hartnett, Martin, R. McGregor, Redfern, Sayre, Wolpert, Yuko

**Sens.** Clancy, Grendell, Amstutz, Austria, Cates, Harris, Hottinger, Jordan, Mumper, Niehaus, Padgett, Schuring, Wachtmann, Carey

**Effective date:** March 14, 2007

---

### **ACT SUMMARY**

- Provides that the individual right to keep and bear arms, being a fundamental individual right that predates the U.S. Constitution and Ohio Constitution and being constitutionally protected in every part of Ohio, the General Assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition, and that, except as specifically provided by the U.S. Constitution, Ohio Constitution, or that state or federal law, a person may, without further license, permission, restriction, delay, or process own, possess, purchase, sell, transfer, transport, or keep any firearm, part of a firearm, its components, and its ammunition.
- Requires the court to award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with the provision described in the previous dot point.

- Specifies that the provisions described in the preceding two dot points do not apply to either (1) a zoning ordinance that regulates or prohibits the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for residential or agricultural uses or (2) a zoning ordinance that specifies the hours of operation or the geographic areas where the commercial sale of firearms, firearm components, or ammunition for firearms may occur, provided that the zoning ordinance is consistent with zoning ordinances for other retail establishments in the same geographic area and does not result in a de facto prohibition of the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for commercial, retail, or industrial uses.
- In the provision that requires specified categories of law enforcement personnel to successfully complete a firearms requalification program each year (1) provides that the specified categories of personnel who are authorized to carry firearms in the course of their duties must successfully complete the program and (2) modifies the categories of law enforcement personnel who are specified as being subject to the program to also include any person who is a "peace officer" under the R.C. 109.71 definition of that term.
- Expands the R.C. 109.71 definition of "peace officer" to also include investigators of the Bureau of Criminal Identification and Investigation (BCII) commissioned as special agents for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to R.C. 109.541 and specifies that R.C. 109.71 "does not confer any arrest authority or any ability or authority to detain a person, write or issue any citation, or provide any disposition alternative, as granted under R.C. Chapter 2935."
- Expands the information that must be on an application for a concealed carry license, an application for the renewal of such a license, or an affidavit for a temporary emergency license to carry a concealed handgun to also include statements as to whether the applicant is legally living in the United States or currently is subject to a suspension of a license imposed for a misdemeanor offense under a provision enacted in the act and expands the information that must be on such an application to include whether the applicant previously applied in any Ohio county or any other state for a license to carry a concealed handgun or a temporary emergency license to carry a concealed handgun (if the applicant states

that the applicant previously has so applied, the application must list each county in Ohio and each other state in which the applicant previously applied for either type of license and, to the best of the applicant's knowledge, the date of the application).

- Requires a sheriff to accept a completed affidavit for a temporary emergency concealed carry license and the accompanying information and fee at any time during normal business hours, and prohibits a sheriff from requiring an appointment or designating a specific period of time for the submission or acceptance of this information or the provision to any person of an application form or renewal application.
- Directs a sheriff to provide applications and to accept an application for a concealed carry license or the renewal of such a license at least 15 hours a week, the hours of which must be posted.
- Specifies that an application for renewal of a license to carry a concealed handgun may be filed not later than 90 days before, and not later than 30 days after, the expiration date of the license.
- Requires a sheriff, in order to conduct a criminal records check and incompetency records check of an applicant for a concealed carry license, a license renewal, or a temporary emergency concealed carry license to obtain the fingerprints of at least four fingers of the applicant.
- Prohibits a person who is illegally living in the United States, or who is subject to a suspension of a previously issued license for a misdemeanor offense under a provision the act enacts, from obtaining a concealed carry license, a license renewal, or a temporary emergency concealed carry license.
- States that an appeal of a denial of a concealed carry license, license renewal, or temporary emergency concealed carry license must be brought in the county served by the sheriff who denied the application.
- For a concealed carry license issued on or after the effective date of the act, extends the validity of a license by one year, so that a license issued on or after the effective date of the act expires five years after the date of issuance.

- Requires a one-year suspension of the concealed carry license or temporary emergency concealed carry license of a person convicted of a misdemeanor violation of certain prohibitions regarding a licensee's failure to notify an approaching law enforcement officer that the person is a licensee and has a concealed handgun or a licensee's failure to keep his or her hands in plain sight or remain in a stopped vehicle, if applicable, while a law enforcement officer is approaching, and a two-year suspension of a person convicted of a misdemeanor violation of certain prohibitions regarding a licensee's disregarding or failing to comply with a lawful order of a law enforcement officer.
- Requires the revocation of the concealed carry license or temporary emergency concealed carry license of a person whom the issuing sheriff learns is not legally living in the United States.
- Increases by \$10 the fee for an application for a concealed carry license or the renewal of such a license that is made on or after the act's effective date.
- Enacts a new exemption from the prohibitions in the offense of "carrying concealed weapons" that apply to any person that specifies that the prohibitions do not apply to persons who are employed in Ohio, who are authorized to carry weapons, and who are subject to and in compliance with the law's firearms requalification requirements, unless the appointing authority expressly specifies that the exemption does not apply.
- Regarding the prohibitions in the offense of "carrying concealed weapons" that apply only to persons with a concealed carry license or temporary emergency concealed carry license:
  - (1) Increases the penalty for a violation of the continuing provision that prohibits a licensee who is stopped for a law enforcement purpose and is carrying a concealed handgun from failing to notify an approaching law enforcement officer of the license and the handgun, and provides a one-year suspension of the licensee's license;
  - (2) Enacts new prohibitions that generally prohibit a licensee who is stopped for a law enforcement purpose and is carrying a concealed handgun, from: (a) failing to keep the licensee's hands in plain sight

while a law enforcement officer is approaching, (b) removing or attempting to remove the loaded handgun from the place in which the licensee is carrying it, grasping or holding the handgun, or having contact with the handgun by touching it with the licensee's hands or fingers while the law enforcement officer is approaching, or (c) disregarding or failing to comply with a lawful order of a law enforcement officer given while the licensee is stopped, including a specific order to keep the licensee's hands in plain sight;

(3) Enacts a new exemption that specifies that the continuing and new prohibitions do not apply to persons subject to and in compliance with the law's firearms requalification requirements (as modified by the act) unless the appointing authority expressly specifies that the exemption does not apply.

- Regarding the prohibitions in various offenses that prohibit any person from possessing a firearm in liquor permit premises, conveying or possessing, etc., a deadly weapon or dangerous ordnance, etc., in a school safety zone, conveying or possessing a deadly weapon or dangerous ordnance in a courthouse, or discharging, transporting, or having a firearm while in or on a vessel, enacts a new exemption that specifies that the prohibitions do not apply to persons who are employed in Ohio, who are authorized to carry a specified type of weapon (generally the type mentioned in the prohibition), and who are subject to and in compliance with the law's firearms requalification requirements (as modified by the act) unless the appointing authority expressly specifies that the exemption does not apply.
- Regarding the prohibitions in the offense of "improperly handling firearms in a motor vehicle" that apply only to persons with a concealed carry license or temporary emergency concealed carry license:

(1) Revises the provision that prohibits a licensee from transporting or having a loaded handgun in a motor vehicle unless it is done in a specified manner so that a licensee cannot transport or possess a loaded handgun in a motor vehicle unless: (a) the handgun is in a holster on the licensee's person (the act removes the former "plain sight" requirement), (b) the 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, which lid, cover or closing mechanism must be opened for a person to gain

access to the handgun, or (c) the handgun is securely encased by being stored in a closed, locked glove compartment or in a case (the act removes the former "plain sight" requirement) that is locked;

(2) In the provision that prohibits a licensee who is in a motor vehicle that is stopped for a law enforcement purpose and is carrying a concealed handgun from failing to notify an approaching law enforcement officer of the license and the handgun: (a) expands the prohibition so that it also applies to a licensee who is in a commercial motor vehicle that is stopped by an employee of the Motor Carrier Enforcement Unit in the Department of Public Safety, Division of State Highway Patrol from failing to notify an approaching employee of the Unit of the license and the handgun, (b) increases the penalty for a violation of the prohibition, as expanded, and (c) provides a one-year suspension of the licensee's license;

(3) In the provision that prohibits a licensee who is in a motor vehicle that is stopped for a law enforcement purpose and is carrying a concealed handgun from failing to remain in the vehicle while stopped or failing to keep the licensee's hands in plain sight while a law enforcement officer is approaching, increases the penalty for a violation of the prohibition in specified circumstances and provides a one-year suspension of the licensee's license for a misdemeanor violation of the prohibition;

(4) In the provision that prohibits a licensee who is in a motor vehicle that is stopped for a law enforcement purpose and is carrying a loaded handgun from failing to comply with a lawful order of a law enforcement officer given while the licensee is stopped: (a) lists as an example of the type of order contemplated an order to the licensee to keep his or her hands in plain sight, (b) increases the penalty for a violation of the prohibition in specified circumstances, and (c) provides a two-year suspension of the licensee's license for a misdemeanor violation of the prohibition;

(5) Enacts a new exemption that specifies that the prohibitions do not apply to persons who are employed in Ohio, who are authorized to carry loaded firearms in vehicles, and who are subject to and in compliance with the law's firearms requalification requirements (as modified by the act) unless the appointing authority expressly specifies that the exemption does not apply.

- Regarding the prohibitions in the offense of "improperly handling firearms in a motor vehicle" that apply to any person:

(1) Regarding the prohibition against 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 and the prohibition against knowingly transporting or having a firearm in a motor vehicle, unless it is unloaded and is carried in a closed package, box, or case, in a compartment that can be reached only by leaving the vehicle, in plain sight and secured in a rack or holder made for that purpose, or 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, modifies an exemption that applies to a person with a concealed carry license or temporary emergency concealed carry license who is not in a prohibited place and has the handgun in a specified manner so that the exemption applies only if: (a) the handgun is in a holster on the licensee's person (the act removes the former "plain sight" requirement), (b) the 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, which lid, cover, or closing mechanism must be opened for a person to gain access to the handgun, or (c) the handgun is securely encased by being stored in a closed, locked glove compartment or in a case (the act removes the former "plain sight" requirement) that is locked;

(2) Regarding the prohibition that prohibits a person from transporting or having a loaded handgun in a motor vehicle if the person is under the influence of alcohol, a drug of abuse, or a combination of them or the person's whole blood, blood serum or plasma, breath, or urine contains a prohibited concentration of alcohol: (a) increases the penalty for a violation of the prohibition in specified circumstances, and (b) provides that a continuing exemption generally available to government officers and law enforcement officers authorized to carry loaded firearms and acting within the scope of their duties and the new exemption enacted in the act as described in (3) below do not apply to conduct in violation of the prohibition;

(3) Enacts a new exemption that specifies that the prohibitions do not apply to persons who are employed in Ohio, who are authorized to carry loaded firearms in vehicles, and who are subject to and in compliance with the law's firearms requalification requirements (as modified by the act) unless the appointing authority expressly specifies that the exemption does not apply.

- Provides that: (1) a "qualified retired peace officer" who possesses a "retired peace officer identification card" issued pursuant to the act's provisions and a valid firearms requalification certification issued pursuant to the act's provisions has the same right to carry a concealed handgun in Ohio as a person who was issued an Ohio concealed carry license and is subject to the same restrictions that apply to a person who carries a license so issued, and (2) for purposes of reciprocity with other states, a qualified retired peace officer who possesses such a retired peace officer identification card and such a valid firearms requalification certification is considered to be a licensee in Ohio.
- Increases, to a felony of the first degree, the penalty for the offense of "grand theft" when the property stolen is a firearm or dangerous ordnance and it is stolen from a federally licensed firearms dealer.
- Provides an increased penalty for the offenses of "felonious assault," "aggravated assault," and "assault" committed against a BCII investigator.

---

## TABLE OF CONTENTS

Need to provide uniform laws with respect to regulation of firearms .....	9
Completion of a firearms requalification program.....	10
Law retained in part by the act .....	10
Operation of the act .....	11
Definition of "peace officer" .....	12
Inclusion of BCII investigators .....	12
"Peace officers" required to complete firearms requalification program.....	13
The Concealed Carry Licensing Law.....	16
Applying for a concealed carry license .....	16
Criminal records check.....	17
Criteria to receive a license .....	18
Appeal of a license denial .....	21
Expiration of a license .....	22



Suspension or revocation of a license .....	22
Fee for a license .....	25
The offense of carrying concealed weapons .....	26
General prohibitions .....	26
Prohibitions applicable only to concealed carry licensees .....	28
Exemption from the prohibitions against possessing a weapon in a liquor permit premises, school safety zone, and courthouse and from firearms offenses while in or on a vessel .....	30
Continuing prohibitions; exemptions retained in part by the act .....	30
Operation of the act .....	34
Improperly handling firearms in a motor vehicle.....	35
Prohibitions applicable only to concealed carry licensees .....	35
General prohibitions .....	39
Retired peace officers--same right to carry concealed handgun as a concealed carry licensee .....	41
Law retained in part by the act .....	41
Operation of the act .....	42
Theft of firearms or dangerous ordnance from federally licensed firearms dealer--increased penalty .....	44
Theft prohibition--violation involving a firearm or dangerous ordnance .....	44
Felonious assault, aggravated assault, and assault--increased penalty.....	45
Felonious assault.....	45
Aggravated assault.....	46
Assault .....	47
Peace officer definition for assault offenses.....	48

---

## CONTENT AND OPERATION

### *Need to provide uniform laws with respect to regulation of firearms*

The act enacts a new provision that states that the individual right to keep and bear arms, being a fundamental individual right that predates the U.S. Constitution and Ohio Constitution, and being a constitutionally protected right in every part of Ohio, the General Assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition. The act states that, except as specifically provided by the U.S. Constitution, Ohio Constitution, or state or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition. In addition to any other relief provided, the act requires a court to award costs and reasonable attorney fees to

any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with the above-described provision.

These provisions do not apply, however, to the following: (1) a zoning ordinance that regulates or prohibits the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for residential or agricultural uses, or (2) a zoning ordinance that specifies the hours of operation or the geographic areas where the commercial sale of firearms, firearm components, or ammunition for firearms may occur, provided that the zoning ordinance is consistent with zoning ordinances for other retail establishments in the same geographic area and does not result in a *de facto* prohibition of the commercial sale of firearms, firearm components, or ammunition for firearms in areas zoned for commercial, retail, or industrial uses.

The act states that, as used in the above-described provisions, the possession, transporting, or carrying of firearms, their components, or their ammunition include, but are not limited to, the possession, transporting, or carrying, openly or concealed on a person's person or concealed ready at hand, of firearms, their components, or their ammunition. (R.C. 9.68.)

### **Completion of a firearms requalification program**

#### **Law retained in part by the act**

Law retained in part by the act requires the following persons to successfully complete a firearms requalification program approved by the Executive Director of the Ohio Peace Officer Training Commission (OPOTC) each year: any sheriff, deputy sheriff, marshal, deputy marshal, township constable, chief of police or member of an organized police department of a municipal corporation or township, chief of police or member of a township police district police force, Superintendent of the State Highway Patrol, State Highway Patrol trooper, special police officer of the State Highway Patrol designated under R.C. 5503.09, enforcement agent employed by the Department of Public Safety under R.C. 5502.14 to enforce the laws and rules regulating the use of food stamps, or chief of police of a university or college police department or state university law enforcement officer appointed under R.C. 3345.04; any parole or probation officer who carries a firearm in the course of official duties; any employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer who carries a firearm in the course of official duties; the House of Representatives sergeant at arms if the sergeant at arms has arrest authority pursuant to R.C. 101.311(E)(1); any assistant House of Representatives sergeant at arms; any employee of the Department of Youth Services who is designated pursuant to R.C. 5139.53(A)(2) as being authorized to

carry a firearm while on duty as described in that provision; or a special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility described in R.C. 109.71(A)(19). None of these persons is permitted to carry a firearm during the course of official duties if the person does not comply with the requirement to complete a firearms requalification program. (R.C. 109.801(A).)

### **Operation of the act**

The act modifies the categories of persons who are required to successfully complete a firearms requalification program by specifying that, each year, any of the following persons *who are authorized to carry firearms in the course of their official duties* must successfully complete the firearms requalification program (R.C. 109.71(A) and 109.801(A)(1)):

(1) Any "peace officer." The act makes R.C. 109.71's definition of "peace officer" applicable to this provision and expands the definition; the modified definition includes as peace officers many of the categories of persons previously required under R.C. 109.801 to have firearms requalification training and additionally includes other categories of persons that the law previously did not require to have firearms requalification training (see "**Definition of "peace officer"**," below, for the definition of the term and identification of the additional peace officers who must have such training under the act);

(2) Any sheriff;

(3) Any chief of police of an organized police department of a municipal corporation or township;

(4) Any chief of police of a township police district police force;

(5) The Superintendent of the State Highway Patrol and any State Highway Patrol trooper;

(6) Any chief of police of a university or college police department;

(7) Any parole or probation officer who carries a firearm in the course of official duties;

(8) The House of Representatives sergeant at arms if the sergeant at arms has arrest authority pursuant to R.C. 101.311(E)(1);

(9) Any assistant House of Representatives sergeant at arms;

(10) Any employee of the Department of Youth Services who is designated pursuant to R.C. 5139.53(A)(2) as being authorized to carry a firearm while on duty as described in that provision.

The modification of the categories of persons who are required to successfully complete a firearms requalification program that is described above relates to the act's establishment of an exemption from various firearms-related prohibitions for persons who are subject to and in compliance with the firearms requalification requirements (see "*The offense of carrying concealed weapons,*" "*Exemption from the prohibitions against possessing a weapon in a liquor permit premises, school safety zone, and courthouse and from firearms offenses while in or on a vessel,*" and "*Improperly handling firearms in a motor vehicle,*" below).

### *Definition of "peace officer"*

#### *Inclusion of BCII investigators*

Continuing law defines "peace officer" for purposes of R.C. 109.71 to 109.77, which govern OPOTC. The definition, generally retained by the act, includes many categories of officers who have general law enforcement authority (e.g., deputy sheriffs, members of an organized municipal police department, township constables, etc.) or law enforcement authority related to particular, specified matters (e.g., railroad company police officers, Department of Natural Resources park officers, veterans' home police officers, Auditor of State investigators, amusement park police officers, etc.) (R.C. 109.71; see **COMMENT 1**).

Continuing law also states that officers and employees of the Bureau of Criminal Identification and Investigation (BCII) who are "investigative personnel" of the Bureau and who have been awarded a certificate by OPOTC's Executive Director attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program are considered for purposes of R.C. 109.71 to 109.77 as if they were included in the R.C. 109.71 definition of "peace officer." The investigative personnel in those circumstances also are considered peace officers during the term of their employment with BCII in that capacity, for purposes of maintaining a current and valid basic training certificate. (R.C. 109.542, not in the act.)

The act expands the R.C. 109.71 definition of "peace officer" so that it also includes an investigator, as defined in R.C. 109.541 (see below), of BCII who is commissioned by BCII's Superintendent as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace

officers pursuant to authority granted under R.C. 109.541 (see below). It also specifies that R.C. 109.71 "does not confer any arrest authority or any ability or authority to detain a person, write or issue any citation, or provide any disposition alternative, as granted under R.C. Chapter 2935." (R.C. 109.71, second paragraph, and (A)(22).) R.C. 109.541, not in the act, specifies that an "investigator" means a BCII officer or employee who is described in R.C. 109.54, regarding BCII's provision of investigative personnel and assistance to requesting law enforcement authorities, and also addresses an investigator's provision of assistance and emergency assistance to law enforcement officers and peace officers.

**"Peace officers" required to complete firearms requalification program**

Because the act expands the R.C. 109.71 definition of "peace officer" to include BCII investigators in specified circumstances and because it makes that definition applicable to the firearms requalification section and requires all peace officers under that definition who are authorized to carry firearms in the course of their official duties to have firearms requalification training, all of the following peace officers must have annual firearms requalification training if they are authorized to carry firearms in the course of their official duties (R.C. 109.71(A)(1) and 109.801(A); the peace officers in italics are added by the act to the list of officers who must have the training):

(1) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a township or municipal corporation, member of a township police district or joint township police district police force, *member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D)*, or township constable, who is commissioned and employed as a peace officer by a political subdivision of Ohio or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of Ohio, ordinances of a municipal corporation, resolutions of a township, or regulations of a board of county commissioners or board of township trustees, or any of those laws, ordinances, resolutions, or regulations;

(2) *A police officer employed by a railroad company and appointed and commissioned by the Secretary of State pursuant to R.C. 4973.17 to 4973.22;*

(3) *Employees of the Department of Taxation engaged in the enforcement of R.C. Chapter 5743. and designated by the Tax Commissioner for peace officer training for purposes of the delegation of investigation powers under R.C. 5743.45;*

(4) *An undercover drug agent;*

(5) Enforcement agents of the Department of Public Safety whom the Director of Public Safety designates under R.C. 5502.14;

(6) An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer designated pursuant to R.C. 1501.013, a park officer designated pursuant to R.C. 1541.10, a forest officer designated pursuant to R.C. 1503.29, a preserve officer designated pursuant to R.C. 1517.10, a wildlife officer designated pursuant to R.C. 1531.13, or a state watercraft officer designated pursuant to R.C. 1547.521;

(7) *An employee of a park district who is designated pursuant to R.C. 511.232 or 1545.13;*

(8) *An employee of a conservancy district who is designated pursuant to R.C. 6101.75;*

(9) *A police officer employed by a hospital that employs and maintains its own proprietary police department or security department, who is appointed and commissioned by the Secretary of State pursuant to R.C. 4973.17 to 4973.22;*

(10) *Veterans' homes police officers designated under R.C. 5907.02;*

(11) *A police officer employed by a qualified nonprofit corporation police department pursuant to R.C. 1702.80;*

(12) A state university law enforcement officer appointed under R.C. 3345.04 or a person serving as a state university law enforcement officer on a permanent basis on June 19, 1978, who has been awarded a certificate by OPOTC's Executive Director attesting to the person's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program;

(13) *A special police officer employed by the Department of Mental Health pursuant to R.C. 5119.14 or the Department of Mental Retardation and Developmental Disabilities pursuant to R.C. 5123.13;*

(14) *A member of a campus police department appointed under R.C. 1713.50;*

(15) *A member of a police force employed by a regional transit authority under R.C. 306.35(Y);*

(16) *Investigators appointed by the Auditor of State pursuant to R.C. 117.091 and engaged in the enforcement of R.C. Chapter 117. regarding the conduct of public audits;*



(17) A special police officer designated by the Superintendent of the State Highway Patrol pursuant to R.C. 5503.09 or a person who was serving as a special police officer pursuant to that section on a permanent basis on October 21, 1997, and who has been awarded a certificate by OPOTC's Executive Director attesting to the person's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program;

*(18) A special police officer employed by a port authority under R.C. 4582.04 or 4582.28 or a person serving as a special police officer employed by a port authority on a permanent basis on May 17, 2000, who has been awarded a certificate by OPOTC's Executive Director attesting to the person's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program;*

(19) A special police officer employed by a municipal corporation who has been awarded a certificate by OPOTC's Executive Director for satisfactory completion of an approved peace officer basic training program and who is employed on a permanent basis on or after March 19, 2003, at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in federal law and that is required to be under a security program and is governed by aviation security rules of the Transportation Security Administration of the United States Department of Transportation as provided in federal law;

*(20) A police officer employed by an owner or operator of an amusement park that has an average yearly attendance in excess of 600,000 guests and that employs and maintains its own proprietary police department or security department, who is appointed and commissioned by a judge of the appropriate municipal court or county court pursuant to R.C. 4973.17;*

*(21) A police officer employed by a bank, savings and loan association, savings bank, credit union, or association of banks, savings and loan associations, savings banks, or credit unions, who is appointed and commissioned by the Secretary of State pursuant to R.C. 4973.17 to 4973.22;*

*(22) An investigator, as defined in R.C. 109.541, of BCII who is commissioned by BCII's Superintendent as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under R.C. 109.541 (added to the R.C. 109.70 definition of "peace officer" by the act).*

## *The Concealed Carry Licensing Law*

### *Applying for a concealed carry license*

*Continuing law.* Continuing law provides that, upon the request of a person who wishes to obtain a license to carry a concealed handgun or to renew a license to carry a concealed handgun, a sheriff must provide the person free of charge an application form and a pamphlet prepared by OPOTC describing firearms, dispute resolution, and use of deadly force matters. The applicant, then, must submit a completed application to the sheriff of the county in which the applicant resides or to the sheriff of any adjacent county. The application must be accompanied by the license fee discussed below in "*Fee for a license*" unless waived by the sheriff when authorized by law, a color photograph of the applicant taken within 30 days of the date of application, a specified type of certification evidencing the applicant's competence with firearms, a certification by the applicant that the applicant has read the OPOTC firearms pamphlet, and a set of fingerprints. (R.C. 2923.125(A) and (B).)

If an applicant is applying for the renewal of a concealed carry license, continuing law provides that the applicant must apply to the sheriff of the county in which the applicant resides or the sheriff of any adjacent county within 30 days after the expiration date of the license. An applicant for a renewal license must also submit a color photograph of the applicant taken within 30 days of the date of application, a certification by the applicant that the applicant has reread the OPOTC firearms pamphlet, a new set of fingerprints, a firearms competency certification that is not older than six years, and the license renewal fee unless the fee is waived. (R.C. 2923.125(F).)

If an applicant is applying for a temporary emergency license to carry a concealed handgun (law largely unchanged by the act provides a special mechanism for the issuance of such licenses, which are valid for 90 days and are nonrenewable), the applicant must submit to the sheriff of the county where the applicant resides: (1) "evidence of imminent danger" (a defined term) to the person or a member of the person's family, (2) a sworn affidavit containing all of the information required to be on the license and the information described below in "*Criteria to receive a license*," except for the residency requirements specified by paragraph (1) of that section, (3) a license fee, and (4) a set of fingerprints (R.C. 2923.1213(B)(1)).

*Operation of the act.* The act expands the information that must be on an application for a license to carry a concealed handgun, an application for the renewal of such a license, and an affidavit for a temporary emergency license to carry a concealed handgun. In addition to the information required on the application or affidavit or submitted with it under ongoing law, under the act, the



application or affidavit also must state whether the applicant: (1) is legally living in the United States or (2) currently is subject to a suspension of a license or temporary emergency license to carry a concealed handgun imposed for a misdemeanor firearm offense under a provision enacted by the act and described below in "*Suspension or revocation of a license.*" In an application for a license or renewal of a license (but not for a temporary emergency license), the applicant must include in the application a statement as to whether the applicant has previously applied in any county in Ohio or in any other state for a license to carry a concealed handgun or a temporary emergency license to carry a concealed handgun. If the applicant states that the applicant previously has so applied, the applicant must list on the application each county in Ohio, and each other state, in which the applicant previously applied for either type of license and, to the best of the applicant's knowledge, the date on which the application was made. (R.C. 2923.125(D)(1)(a) and (m), 2923.1210 (questions 1(a) and 11 under Section III, and Section V), and 2923.1213(B)(1)(b).)

Regarding an application for a temporary emergency license to carry a concealed handgun, the act specifies that the sheriff must accept the evidence of imminent danger, the sworn affidavit, the fee, and the required set of fingerprints at any time during normal business hours. The act prohibits a sheriff from requiring an appointment or designating a specific period of time for the submission or acceptance of the evidence, affidavit, fee, and fingerprints. The act also prohibits a sheriff from requiring an appointment or designating a specific period of time for the provision to any person of an application form. (R.C. 2923.1213(B)(2) and (I).)

Regarding an application for a license to carry a concealed handgun or for renewal of such a license, the act requires a sheriff to accept a completed application form or renewal application form and the fee, items, materials, and information that must accompany the form, and to provide to a person an application or renewal application form and a copy of the OPOTC firearms pamphlet, during at least 15 hours a week and requires the sheriff to post notice of the hours during which the sheriff is so available (R.C. 2923.125(A), (F), and (I)).

The act also specifies that a renewal application may be filed not earlier than 90 days before the expiration date of the license and not later than 30 days after the expiration of the license (R.C. 2923.125(F)).

### **Criminal records check**

**Law generally unchanged by the act.** Upon receipt of an applicant's completed application form, renewal application form, or temporary emergency license affidavit, fee (if not waived), and supporting documentation, the sheriff must conduct or cause to be conducted a criminal records check and incompetency

records check. If the sheriff has access to an electronic fingerprint reading device, the sheriff is responsible for conducting these record checks through use of the device. However, if the sheriff does not possess or have ready access to the use of an electronic fingerprint reading device, the sheriff must request BCII to conduct the checks. In order to conduct the checks, the sheriff *must obtain the fingerprints of not more than four fingers of the applicant* by using an electronic fingerprint reading device for purposes of conducting the checks or, if the sheriff does not possess or have ready access to the use of such a device, by obtaining from the applicant a completed standard fingerprint impression sheet. If the sheriff does not use an electronic fingerprint reading device to obtain the fingerprints and conduct the checks, the sheriff must submit the completed standard fingerprint impression sheet of the applicant, along with the applicant's Social Security number, to the Superintendent of BCII and request BCII to conduct the records checks. If necessary, the sheriff also must request BCII to obtain information from the FBI as part of the criminal records check. Unless an application is denied and the applicant files an appeal, as described below in "*Appeal of a license denial*," if a records check fails to reveal any of the disqualifying factors described below in "*Criteria to receive a license*," all records other than the application or affidavit must be destroyed. (R.C. 311.41, 2923.125(C) and (F), and 2923.1213(B)(2).)

*Operation of the act.* The act modifies the provision that describes in general the fingerprinting requirement a sheriff follows to conduct a criminal records check and incompetency records check upon receipt of an application form or affidavit, fee, and supporting documentation. Under the act, in order to conduct the checks, the sheriff *must obtain the fingerprints of at least four fingers of the applicant* by using an electronic fingerprint reading device for purposes of conducting the checks or, if the sheriff does not possess or have ready access to the use of such a device, by obtaining from the applicant a completed standard fingerprint impression sheet. The act retains without change the other procedures specified in ongoing law regarding the fingerprinting and the records check procedures. (R.C. 311.41(A)(1), 2923.125(C) and (F), and 2923.1213(B)(2).)

#### *Criteria to receive a license*

*Ongoing law.* Under ongoing law, to qualify for a license to carry a concealed handgun, for renewal of a license to carry a concealed handgun, or for a temporary emergency license to carry a concealed handgun, an applicant must satisfy specified criteria. The criteria that must be satisfied for the different types of licenses are the same, except that two criteria that apply regarding regular licenses and renewals do not apply regarding temporary emergency licenses. Under continuing law, an applicant must satisfy all of the following (R.C. 2923.125(D)(1) and (F), 2923.1210, and 2923.1213(B)(2); the criteria that apply

only regarding regular licenses and renewals and that do not apply regarding temporary emergency licenses are identified in the paragraphs describing them):

(1) The applicant has been a resident of Ohio for at least 45 days and a resident of the county in which the person seeks the license or a county adjacent to the county in which the person seeks the license for at least 30 days.

(2) The applicant is at least 21 years of age.

(3) The applicant is not a fugitive from justice.

(4) The applicant is not under indictment for or otherwise charged with a felony; an offense under R.C. Chapter 2925., 3719., or 4729. that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; a misdemeanor offense of violence; or a violation of R.C. 2903.14 (negligent assault) or 2923.1211 (falsification of a concealed handgun license and possessing a revoked or suspended concealed handgun license).

(5) The applicant has not been convicted of or pleaded guilty to a felony or an offense under R.C. Chapter 2925., 3719., or 4729. that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; has not been adjudicated a delinquent child for committing an act that if committed by an adult would be a felony or would be an offense under R.C. Chapter 2925., 3719., or 4729. that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; and has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a violation of R.C. 2903.13 (assault) when the victim of the violation is a peace officer, regardless of whether the applicant was sentenced for committing that offense against a peace officer.

(6) The applicant, within three years of the date of the application, has not been convicted of or pleaded guilty to a misdemeanor offense of violence other than a misdemeanor violation of R.C. 2921.33 (resisting arrest) or a violation of R.C. 2903.13 (assault) when the victim of the violation is a peace officer, or a misdemeanor violation of R.C. 2923.1211 (falsification of a concealed handgun license and possessing a revoked or suspended concealed handgun license); and has not been adjudicated a delinquent child for committing an act that if committed by an adult would be a misdemeanor offense of violence other than a misdemeanor violation of R.C. 2921.33 or a violation of R.C. 2903.13 when the victim of the violation is a peace officer or for committing an act that if committed by an adult would be a misdemeanor violation of R.C. 2923.1211.

(7) Except as otherwise provided in paragraph (5), above, the applicant, within five years of the date of the application, has not been convicted of, pleaded

guilty to, or adjudicated a delinquent child for committing two or more violations of R.C. 2903.13 (assault) or 2903.14 (negligent assault).

(8) The applicant, within ten years of the date of the application, has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing a violation of R.C. 2921.33 (resisting arrest).

(9) The applicant has not been adjudicated as a mental defective, has not been committed to any mental institution, is not under adjudication of mental incompetence, has not been found by a court to be a mentally ill person subject to hospitalization by court order, and is not an involuntary patient other than one who is a patient only for purposes of observation.<sup>1</sup>

(10) The applicant is not currently subject to a civil protection order, a temporary protection order, or a protection order issued by a court of another state.

(11) The applicant certifies that the applicant desires a legal means to carry a concealed handgun for defense of the applicant or a member of the applicant's family while engaged in lawful activity (*does not apply to temporary emergency licenses*).

(12) The applicant submits a specified type of certification evidencing the applicant's competence with firearms and submits a certification regarding the applicant's reading of the firearms pamphlet (*does not apply to temporary emergency licenses*).

If all of the above qualifications are met, the sheriff must issue the applicant a license within 45 days of receipt of the application, fee, and supporting documentation or renew the license (in the case of a temporary emergency license, the license must be issued immediately upon the determination that the criteria are satisfied).<sup>2</sup> However, before actually issuing the license, the sheriff must make available, through the Law Enforcement Automated Data Systems, all information contained on the license. (R.C. 2923.125(D)(1), (F), and (H) and 2923.1213(B)(2).)

---

<sup>1</sup> "Mentally ill person subject to hospitalization by court order" and "patient" have the same meanings under this provision as in R.C. 5122.01 (R.C. 2923.125(D)(1)(i)).

<sup>2</sup> If the sheriff determines that the applicant for a license to carry a concealed handgun is a resident of the county in which the applicant seeks the license or an adjacent county but does not yet meet the residency requirements described in the first requirement, the sheriff is prohibited from denying the license on that basis, but cannot issue the license until the applicant meets the residency requirements (R.C. 2923.125(D)(4)).

**Operation of the act.** The act adds two additional criteria for a license to carry a concealed handgun, the renewal of such a license, or a temporary emergency license to carry a concealed handgun. The first additional criterion requires that an applicant be legally living in the United States (R.C. 2923.125(D)(1)(a), (D)(4), and (F), 2923.1210, and 2923.1213(B)(1)). The second additional criterion requires that the applicant must not currently be subject to a suspension of a license or temporary emergency license to carry a concealed handgun imposed under the act for certain misdemeanor firearms offense convictions (R.C. 2923.125(D)(1)(m) and (F), 2923.1210, and 2923.1213(B)(1)).

### **Appeal of a license denial**

**Law generally retained by the act.** Under law generally retained by the act, if a sheriff denies an application for a license to carry a concealed handgun or for a temporary emergency license to carry a concealed handgun because the applicant does not satisfy the requirements described above in "**Criteria to receive a license**," the sheriff must specify the grounds for denial in a written notice to the applicant. The applicant may, then, appeal the denial to the appropriate court of common pleas. (R.C. 2923.125(D)(2)(b) and (F) and 2923.1213(B)(2).)

If the sheriff denies an application for a license to carry a concealed handgun, for the renewal of a license to carry a concealed handgun, or for a temporary emergency license to carry a concealed handgun as a result of the criminal records check, described above in "**Criminal records check**," and if the applicant believes the denial was based on incorrect information reported by the source the sheriff used in conducting the check, the applicant may challenge the criminal records check results using either BCII's existing challenge and review procedure or the sheriff's existing challenge and review procedure, depending on which entity performed the check and whether the sheriff has a challenge and review procedure (R.C. 2923.127).

**Operation of the act.** The act specifies that, if a sheriff denies an application because the applicant does not satisfy the requirements described above in "**Criteria to receive a license**," the applicant's appeal must be brought in the county served by the sheriff who denied the application. The act also clarifies that in the case of a denial and the applicant's challenging a criminal records check performed by a sheriff, the existing challenge and review procedure to be used is the one of the sheriff who denied the application if that sheriff has such a procedure. (R.C. 2923.125(D)(2)(b), 2923.127(A)(2), and 2923.1213(B)(2).)

The act also expressly specifies that if a sheriff denies the renewal of a license to carry a concealed handgun, the applicant may appeal the denial or challenge the criminal record check results in the same manner as for a license denial (R.C. 2923.125(F)).

### **Expiration of a license**

**Law generally retained by the act.** Under law generally retained by the act, a license or a renewed license to carry a concealed handgun expires four years after the date of issuance. A licensee who has been issued a license has a 30-day grace period after the license expires during which the license remains valid. A temporary emergency license is valid for 90 days and may not be renewed, and the person to whom it was issued cannot be issued another temporary emergency license unless at least four years has expired since the issuance of the prior temporary emergency license. (R.C. 2923.125(D)(1) and (F), 2923.126(A), and 2923.1213(B)(2).)

**Operation of the act.** For a license, other than a temporary emergency license, issued or renewed on or after the effective date of the act, the act extends the validity of a license by one year, so that a license that is issued or renewed on or after the effective date of the act expires five years after the date of issuance. For a license issued or renewed prior to the effective date of the act, the license remains valid for four years from the date of issuance. The act retains the 30-day grace period during which a license remains valid after its expiration, but, as described above in "**Applying for a concealed carry license**," the act specifies that an application for renewal of a license may be filed not earlier than 90 days before the license's expiration date and not later than 30 days after that date. The act makes no change to the 90-day period for which a temporary emergency license remains valid. (R.C. 2923.125(D)(1), (2)(a), and (F), 2923.126(A), and 2923.1213(B)(2).)

### **Suspension or revocation of a license**

**Law retained in part by the act.** If a licensee holding a valid license or temporary emergency license to carry a concealed handgun is subsequently arrested for or otherwise charged with an offense under R.C. Chapter 2925., 3719., or 4729. that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; a misdemeanor offense of violence; or a violation of R.C. 2903.14 (negligent assault) or 2923.1211 (falsification of a concealed handgun license and possessing a revoked or suspended concealed handgun license), or becomes subject to a temporary protection order issued in Ohio or another state, the sheriff who issued the license or temporary emergency license must suspend the license and notify the licensee of the suspension. The suspension begins on the date the licensee is arrested for or otherwise charged with the offense or the date the protection order is issued, and it is lifted when the charges are dismissed, the licensee is found not guilty, or the protection order terminates. (R.C. 2923.128(A).)

The law also provides that a sheriff who issues a license or temporary emergency license must revoke the license, and notify the licensee of the revocation, upon becoming aware of any of the following (R.C. 2923.128(B)):

(1) The licensee is under 21 years of age.

(2) At the time of the issuance of the license or temporary emergency license, the licensee did not satisfy the eligibility requirements described above in paragraphs (3), (4), (5), (6), (7), or (8) of "Criteria to receive a license."

(3) On or after the date on which the license or temporary emergency license was issued, the licensee is convicted of or pleads guilty to a violation of R.C. 2923.15 (using weapons while intoxicated) or an offense described above in paragraphs (5), (6), (7), or (8) of "Criteria to receive a license."

(4) On or after the date on which the license or temporary emergency license was issued, the licensee becomes subject to a civil protection order or to a protection order issued by a court of another state that is substantially equivalent to a civil protection order.

(5) The licensee knowingly carries a concealed handgun into a place that the licensee knows is an unauthorized place specified in R.C. 2923.126(B).<sup>3</sup>

(6) On or after the date on which the license or temporary emergency license was issued, the licensee is adjudicated as a mental defective or is committed to a mental institution.

(7) At the time of the issuance of the license or temporary emergency license, the licensee did not meet the residency requirements described in paragraph (1) of "Criteria to receive a license" and currently does not meet those residency requirements.

(8) The competency certificate the licensee submitted was forged or otherwise was fraudulent.

Upon suspending or revoking a license or temporary emergency license to carry a concealed handgun under the above-described provisions, a sheriff must make available through LEADS a notation of that fact (R.C. 2923.125(H)).

**Operation of the act.** The act enacts a new suspension requirement, enacts a new circumstance in which the sheriff who issued a license is required to revoke

---

<sup>3</sup> See **COMMENT 2** for an explanation of these prohibited places.

the license, and adds clarifying language regarding a suspension or revocation under the law's suspension or revocation mechanism, as follows:

(1) The act provides that, if a licensee holding a valid license or temporary emergency license to carry a concealed handgun is convicted of or pleads guilty to a misdemeanor violation of R.C. 2923.12(B)(1), (2), or (4)<sup>4</sup> or R.C. 2923.16(E)(3), (4), or (6),<sup>5</sup> the sheriff who issued the license or temporary emergency license, upon becoming aware of the conviction or guilty plea, must suspend the license or temporary emergency license and notify the licensee of the suspension, of the date that it ends, and that the licensee is required to surrender the license or temporary emergency license to the sheriff. Upon suspending the license or temporary emergency license, the sheriff also must comply with R.C. 2923.125(H), which requires a sheriff who suspends any such license to make available through LEADS a notation of that fact. The act specifies that a suspension under this provision is considered as beginning on the date that the licensee is convicted of or pleads guilty to the offense in question, irrespective of when the sheriff notifies the licensee. The suspension ends on the date that is one year after the date that the licensee is convicted of or pleads guilty to the offense in question, if the offense is a misdemeanor violation of R.C. 2923.12(B)(1) or (2) or 2923.16(E)(3) or (4), and the date that is two years after the date of the conviction or guilty plea, if the offense is a misdemeanor violation of R.C. 2923.12(B)(4) or 2923.16(E)(6). If the licensee's license is a regular license and it remains valid after the suspension ends, when the suspension ends, the sheriff must return the license to the licensee. If the licensee's license is a regular license and it expires before the suspension ends, or if the licensee's license is a temporary emergency license, the licensee is not eligible to apply for a new license or temporary emergency license or to renew the license until after the suspension ends. (R.C. 2923.128(A)(2) and (3); also R.C. 2923.125(H).)

---

<sup>4</sup> *The continuing prohibition regarding a licensee's failure to notify an approaching law enforcement officer that the person is a licensee and has a concealed handgun, the prohibition the act enacts regarding a licensee's failure to keep his or her hands in plain sight while a law enforcement officer is approaching, and the prohibition the act enacts regarding a licensee's failure to regard or comply with a lawful order of a law enforcement officer.*

<sup>5</sup> *The continuing prohibition, expanded by the act, regarding the failure of a licensee who is in a motor vehicle to notify an approaching law enforcement officer that the person is a licensee and has a concealed handgun, the ongoing prohibition regarding the failure of a licensee who is in a motor vehicle to remain in the vehicle after it is stopped by a law enforcement officer or to keep his or her hands in plain sight while an officer is approaching, and the ongoing prohibition, modified by the act, regarding the failure of a licensee who is in a motor vehicle to regard or comply with a lawful order of a law enforcement officer.*



(2) As the act prohibits an illegal resident from qualifying for a license to carry a concealed handgun, the act also requires a sheriff to revoke a license that has been issued to a person if the sheriff learns that the person is not legally living in the U.S. (R.C. 2923.128(B)(1)(g), by cross-reference to R.C. 2923.125(D)(1)).

(3) The act adds clarifying language regarding a suspension or revocation of a license or temporary emergency license under those circumstances unchanged by the act that confirms that, upon suspending or revoking the license or temporary emergency license, the sheriff must comply with R.C. 2923.125(H), which requires a sheriff who suspends or revokes any such license to make available through LEADS a notation of that fact (R.C. 2923.128(A)(1) and (B)(2)).

### **Fee for a license**

**Continuing law.** Under continuing law, OPOTC, in consultation with the Attorney General, prescribes the fee to be paid by an applicant for a concealed carry license or a renewal license. OPOTC sets the fee for a temporary emergency license in an amount that does not exceed the actual cost of conducting the criminal background check or \$30. (R.C. 109.731(C)(1) and 2923.1213(B)(1)(c); by reference in R.C. 2923.125(B)(1).)

**Operation of the act.** The act makes no change to the fee for a temporary emergency license, but for a regular license or a renewal license it increases the fee for an application made on or after the effective date of the act. Under the act, the prescribed fee for a concealed carry license or a renewal license by an applicant who has been an Ohio resident for five or more years is an amount that does not exceed the lesser of the actual cost of issuing the license, including, but not limited to, the cost of conducting a criminal records check, or whichever of the following is applicable: (1) for an application made on or after the effective date of the act, \$55, or (2) for an application made prior to the effective date of the act, \$45. Under the act, the prescribed fee for a concealed carry license or renewal license by an applicant who has been an Ohio resident for less than five years is an amount that consists of the actual cost of having a criminal background check performed by the FBI, if performed, plus the lesser of the actual cost of issuing the license, including, but not limited to, the cost of conducting a criminal records check, or whichever of the following applies (R.C. 109.731(C)(1)(a) and (b); by reference in R.C. 2923.125(B)(1)): (1) for an application made on or after the effective date of the act, \$55, or (2) for an application made prior to the effective date of the act, \$45. (R.C. 109.731(C)(1)(a) and (b); by reference in R.C. 2923.125(B)(1).) Formerly, if an applicant for a concealed carry license or renewal license had been a resident of Ohio for five or more years, the fee for the license was an amount that did not exceed the lesser of the actual cost of issuing the license, including, but not limited to, the cost of conducting the criminal

records check, or \$45. If an applicant had been a resident of Ohio for less than five years, the fee for the license was an amount that consisted of the actual cost of having a criminal background check performed by the FBI, if performed, plus the lesser of the actual cost of issuing the license, including, but not limited to, the cost of conducting the criminal records check, or \$45.

### **The offense of carrying concealed weapons**

Continuing law sets forth a series of prohibitions, the violation of which constitutes the offense of "carrying concealed weapons." Some of the prohibitions apply generally to all persons, and some apply only to persons who have been issued a license or temporary emergency license to carry a concealed handgun (or a comparable license issued by another state that is valid in Ohio under reciprocity agreements). The act changes many of these provisions. A summary of the prohibitions, the penalties for the offense, and related provisions, and the changes the act makes to them, follows.

#### **General prohibitions**

**Continuing prohibition and penalties; exemptions retained in part by the act.** One continuing prohibition prohibits any person from knowingly carrying or having, concealed on the person's person or concealed ready at hand any of the following: (1) a deadly weapon other than a handgun, (2) a handgun other than a dangerous ordnance, or (3) a dangerous ordnance.

A violation of this prohibition is the offense of "carrying concealed weapons." Generally, carrying concealed weapons in violation of one of these prohibitions is a misdemeanor of the first degree. However, if the offender previously has been convicted of this offense or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, the offense is a felony of the fourth degree. If the weapon involved is a firearm and the violation is committed at premises for which a D-permit liquor permit has been issued under R.C. Chapter 4303. or if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, the offense is a felony of the third degree. Special penalties apply if the offender has been issued a license or temporary emergency license to carry a concealed handgun and the offender produces it within a specified period of time. (R.C. 2923.12(A) and (G)(1) and (2).)<sup>6</sup>

---

<sup>6</sup> *If the person is "being arrested" for carrying a concealed handgun and promptly produces a valid license and is not knowingly in a place described in R.C. 2923.126(B) (see COMMENT 2), the officer is prohibited from arresting the person. If the person*

Law retained in part by the act provides for exemptions from the prohibition. This prohibition does not apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance and acting within the scope of their duties. The portion of the prohibition regarding a handgun other than a dangerous ordnance does not apply to: (1) an officer, agent, or employee of Ohio or any other state or the United States, or a law enforcement officer, who is authorized to carry a handgun and acting within the scope of the officer's, agent's, or employee's duties, or (2) a person who, at the time of the conduct, is carrying a valid license or temporary emergency license to carry a concealed handgun issued in Ohio or a comparable license issued by another state that is valid in Ohio under reciprocity agreements, unless the person knowingly is in a prohibited place described in R.C. 2923.126(B) (see **COMMENT 2**). Ongoing law also provides certain affirmative defenses to this prohibition. (R.C. 2923.12(C), (D), and (E).)

**Operation of the act.** The act retains the prohibition and penalties described above, but it modifies the exemptions from the prohibition and enacts a new exemption from the prohibition as follows:

(1) **Modification of former exemptions.** The act consolidates into the exemption that exempts in specified circumstances specified governmental officers, agents, and employees and law enforcement officers from the entire prohibition the separate exemption that exempts from the portion of the prohibition regarding a handgun other than a dangerous ordnance specified governmental officers, agents, and employees and law enforcement officers in specified circumstances. Under the act, the exemption applies to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, who are authorized to carry concealed weapons or dangerous ordnance or are authorized to carry handguns and are acting within the scope of their duties. This modified exemption applies to the new prohibitions discussed below. (R.C. 2923.12(C)(1)(a) and repeal of (2)(a).)

(2) **New exemption.** The act enacts a new exemption from the entire prohibition that specifies that the prohibition does not apply to any person who is employed in Ohio, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns, and who is subject to and in compliance with the firearms requalification requirements described above in "**Completion of a firearms requalification program,**" unless the appointing authority of that person has expressly specified that this exemption does not apply

---

*does not promptly produce a license, the officer may arrest the person, but reduced penalties apply if the person subsequently presents a license. (R.C. 2923.12(G)(2).)*

to the person. This new exemption applies to the new prohibitions discussed below. (R.C. 2923.12(C)(1)(b).)

**Prohibitions applicable only to concealed carry licensees**

**Law retained in part by the act.** A prohibition retained in part by the act prohibits a person who has been issued a license or temporary emergency license to carry a concealed handgun in Ohio or a license to carry a concealed handgun issued by another state that is valid in Ohio under reciprocity agreements, who is stopped for a law enforcement purpose, and who is carrying a concealed handgun from failing to promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a license or temporary emergency license and that the person then is carrying a concealed handgun. A violation of this prohibition also is the offense of "carrying concealed weapons"; a violation of this prohibition is a misdemeanor of the fourth degree. The conduct addressed by this prohibition also is restated, in the provisions related to the effect of a license that has been issued, as an affirmative duty of a licensee (i.e., a licensee carrying a concealed handgun who is stopped for a law enforcement purpose promptly must inform an approaching law enforcement officer of the license and the handgun, etc.). (R.C. 2923.12(B) and (G)(3) and 2923.126(A).)

This prohibition does not apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance (R.C. 2923.12(C)(1)).

**Operation of the act.** The act modifies the penalty for violations of the ongoing prohibition, expands the prohibition to also prohibit other specified types of conduct, and enacts a new exemption from the prohibition as follows:

(1) **Modification of penalty for the continuing prohibition.** The act increases from a misdemeanor of the fourth degree to a misdemeanor of the first degree the penalty for a violation of the continuing prohibition. The act also provides that, in addition to any other penalty or sanction imposed for the violation, the offender's license or temporary emergency license to carry a concealed handgun must be suspended for one year. (R.C. 2923.12(G)(3).)

(2) **Expansion of prohibition--new types of conduct.** The act expands the ongoing prohibition so that it also prohibits a person who has been issued a license or temporary emergency license to carry a concealed handgun in Ohio or a license to carry a concealed handgun issued by another state that is valid in Ohio under reciprocity agreements, who is stopped for a law enforcement purpose, and who is carrying a concealed handgun, from doing any of the following:

(a) Knowingly failing to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer. The violation is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of this prohibition or the prohibition described in the second succeeding paragraph, a felony of the fifth degree. In addition to any other penalty or sanction imposed for a misdemeanor violation of this prohibition, the offender's license or temporary emergency license to carry a concealed handgun must be suspended for one year. (R.C. 2923.12(B)(2) and (G)(4).)

(b) If approached by any law enforcement officer while stopped, knowingly removing or attempting to remove the loaded handgun from the holster, pocket, or other place in which the person is carrying it, knowingly grasping or holding the loaded handgun, or knowingly having contact with the loaded handgun by touching it with the person's hands or fingers at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless 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. The violation is a felony of the fifth degree. (R.C. 2923.12(B)(3) and (G)(5).)

(c) Knowingly disregarding or failing to comply with any lawful order of any law enforcement officer given while the person is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight. The violation is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of this prohibition or the prohibition described in the second preceding paragraph, a felony of the fifth degree. In addition to any other penalty or sanction imposed for a misdemeanor violation of this prohibition, the offender's license or temporary emergency license must be suspended for two years. (R.C. 2923.12(B)(4) and (G)(4).)

(3) **New prohibitions restated as affirmative duties.** The act also modifies ongoing provisions related to the effect of a license that has been issued so that they also restate as an affirmative duty of a licensee the new prohibitions the act adds that are described above in paragraph (2) of this part of the analysis (i.e., they restate that a licensee carrying a concealed handgun who is stopped for a law enforcement purpose must comply with lawful orders of a law enforcement officer given while the licensee is stopped, must keep the licensee's hands in plain sight while any law enforcement officer is approaching unless directed otherwise by an officer, and may not remove, attempt to remove, grasp, or hold the loaded handgun or have contact with the loaded handgun by touching it with the

licensee's hands or fingers while any law enforcement officer is approaching, etc.) (R.C. 2923.126(A)).

(4) **New exemption.** The act enacts a new exemption from the entire prohibition that specifies that the prohibition does not apply to any person who is employed in Ohio, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns, and who is subject to and in compliance with the firearms requalification requirements described above in "**Completion of a firearms requalification program,**" unless the appointing authority for that person has expressly specified that this exemption does not apply to the person (R.C. 2923.12(C)(1)(b)).

**Exemption from the prohibitions against possessing a weapon in a liquor permit premises, school safety zone, and courthouse and from firearms offenses while in or on a vessel**

**Continuing prohibitions; exemptions retained in part by the act**

**Illegal possession of a firearm in liquor permit premises.** Continuing law prohibits a person from possessing a firearm in any room in which liquor is being dispensed in premises for which a D permit has been issued or in an open air arena for which a permit of that nature has been issued (R.C. 2923.121(A)). However, under exemptions retained in part by the act, this prohibition does not apply to the following (R.C. 2923.121(B)):

- (1) Officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, authorized to carry firearms, and acting within the scope of their duties;
- (2) Any room used for the accommodation of hotel guests;
- (3) Possession of a rifle by a member of a veteran's organization in any room owned, leased, or otherwise under the control of the veteran's organization, if the rifle is not loaded with live ammunition and if the person is not otherwise prohibited by law from having the rifle;
- (4) Any person possessing or displaying firearms in any room used to exhibit firearms for sale or trade in a soldiers' memorial, in a convention center, or in any other public meeting place, if the person is an exhibitor, trader, purchaser, or seller of firearms and is not otherwise prohibited by law from possessing, trading, purchasing, or selling the firearms.

A violation of this prohibition is the offense of "illegal possession of a firearm in liquor permit premises," a felony of the fifth degree (R.C. 2923.121(E)).

*Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone and illegal possession of an object indistinguishable from a firearm in a school safety zone.* Continuing law prohibits a person from knowingly conveying, attempting to convey, or possessing a deadly weapon or dangerous ordnance in a school safety zone. Continuing law also prohibits a person from knowingly possessing an object in a school safety zone if the object is indistinguishable from a firearm, whether or not the object is capable of being fired, and if the person indicates that the person possesses the object and that it is a firearm, or the person knowingly displays or brandishes the object and indicates that it is a firearm. (R.C. 2923.122(A) to (C).)

Under exemptions retained in part by the act, these prohibitions do not apply to the following persons (R.C. 2923.122(D)(1) and (3)):

(1) To officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, authorized to carry deadly weapons or dangerous ordnance and acting within the scope of their duties, to any security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or to any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization;

(2) To a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession of the handgun, all of the following apply: (a) the person does not enter into a school building or onto school premises and is not at a school activity, (b) the person is carrying a valid license or temporary emergency license to carry a concealed handgun, (c) the person is in the school safety zone in accordance with the federal Gun Control Act of 1968, 18 U.S.C. 922(q)(2)(B), and (d) the person is not knowingly in a place described in R.C. 2923.126(B)(1) or (B)(3) to (10) (see **COMMENT 2**).

In addition, the prohibition against illegal possession of an object indistinguishable from a firearm in a school safety zone does not apply to premises upon which home schooling is conducted. It also does not apply to a school administrator, teacher, or employee who possesses an object that is indistinguishable from a firearm for legitimate school purposes during the course of employment, a student who uses an object that is indistinguishable from a firearm under the direction of a school administrator, teacher, or employee, or any other person who with the express prior approval of a school administrator possesses an object that is indistinguishable from a firearm for a legitimate

purpose, including the use of the object in a ceremonial activity, a play, reenactment, or other dramatic presentation, or a ROTC activity or another similar use of the object. (R.C. 2923.122(D)(2).)

A violation of any of these prohibitions is the offense of "illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone" or "illegal possession of an object indistinguishable from a firearm in a school safety zone." The penalty for the offenses range from a misdemeanor of the first degree to a felony of the fourth degree, depending on the violation and whether the offender has previously been convicted of one of these violations. A mandatory driver's or commercial driver's license or permit suspension is required if the person who commits the violation is under 19. (R.C. 2923.122(E) and (F).)

**Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a courthouse.** Continuing law prohibits a person from knowingly conveying, attempting to convey, possessing, or having under the person's control a deadly weapon or dangerous ordnance into or in a courthouse or another building or structure in which a courtroom is located (R.C. 2923.123(A) and (B)). Under exemptions retained in part by the act, this prohibition does not apply to a person who conveys, attempts to convey, possesses, or has under the person's control a deadly weapon or dangerous ordnance that is to be used as evidence in a pending criminal or civil action or proceeding. It also does not apply to any of the following persons, unless a rule of superintendence or another type of rule adopted by the Supreme Court or an applicable local rule of court prohibits all persons from conveying or attempting to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located or from possessing or having under one's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located (R.C. 2923.123(C)):

(1) A judge of an Ohio court of record or a magistrate;

(2) 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 possession or control;

(3) A bailiff or deputy bailiff of a court of record of this state who is authorized to carry a firearm, who possesses or has under that individual's control a firearm 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 possession or control;



(4) A prosecutor, or a secret service officer appointed by a county prosecuting attorney, who is authorized to carry a deadly weapon or dangerous ordnance in the performance of the individual's duties, 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 possession or control;

(5) A person who conveys or attempts to convey a handgun into a courthouse or into another building or structure in which a courtroom is located, who, at the time of the conveyance or attempt, is carrying a valid license or temporary emergency license to carry a concealed handgun issued in Ohio or issued by another state that is valid in Ohio under reciprocity agreements, and who transfers possession of the handgun to the officer or officer's designee who has charge of the courthouse or building. The officer must secure the handgun until the licensee is prepared to leave the premises. The exemption described in this provision applies only if the officer who has charge of the courthouse or building provides services of the nature described in this provision. An officer who has charge of the courthouse or building is not required to offer services of the nature described in this provision.

A violation of this prohibition is the offense of "illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse" or "illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse," a felony of the fifth degree for a first offense and a felony of the fourth degree for a subsequent offense (R.C. 2923.123(D)).

**Firearm offenses while in or on a vessel.** Continuing law prohibits a person from knowingly discharging a firearm while in or on a vessel or knowingly transporting or having a loaded firearm in a vessel in a manner that the firearm is accessible to the operator or any passenger. Ongoing law also prohibits a person from knowingly transporting or having a firearm in a vessel unless it is unloaded and is carried either in a closed package, box, or case or 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 that cannot be stripped, in plain sight. (R.C. 1547.69(B) to (D).)

Under exemptions retained in part by the act, the prohibitions do not apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, when authorized to carry or have loaded or accessible firearms in a vessel and acting within the scope of their duties. They also do not apply to persons legally engaged in hunting or to the possession or discharge of a Coast Guard-approved signaling device required to be carried aboard a vessel when it is possessed or used for the purpose of giving a visual distress signal. The prohibitions, other than the discharge prohibition, also do not apply to a person

who transports or has a handgun in a vessel and who is carrying a valid license or temporary emergency license to carry a concealed handgun issued in Ohio or issued by another state that is valid in Ohio under reciprocity agreements, unless the person knowingly is in a prohibited place on the vessel described in R.C. 2923.126(B) (see **COMMENT 2**). (R.C. 1547.69(F) and (H).)

A violation of either prohibition is a misdemeanor of the fourth degree (R.C. 1547.99(F)).

### **Operation of the act**

The act enacts a new exemption from the continuing prohibitions against a person possessing a firearm in liquor permit premises, conveying or possessing, etc., a deadly weapon or dangerous ordnance, etc., in a school safety zone, conveying or possessing a deadly weapon or dangerous ordnance in a courthouse or courtroom, or discharging, transporting, or having a firearm while in or on a vessel that will be available to specified persons in addition to the continuing exemptions. The act's new exemption specifies that the continuing prohibitions against possessing a firearm in liquor permit premises, conveying or possessing, etc., a deadly weapon or dangerous ordnance, etc., in a school safety zone, conveying or possessing, etc., a deadly weapon or dangerous ordnance in a courthouse (subject to the provision described in the next paragraph), or discharging, transporting, or having a firearm while in or on a vessel do not apply to any person who is employed in Ohio, who is authorized to carry firearms (regarding the liquor permit premises prohibition), deadly weapons or dangerous ordnance (regarding the school safety zone prohibitions and the courthouse and courtroom prohibitions), or loaded or accessible firearms (regarding the vessel prohibitions), and who is subject to and in compliance with the firearms requalification requirements described above in "**Completion of a firearms requalification program**," unless the appointing authority of that person has expressly specified that this exemption does not apply to the person. (R.C. 1547.69(H)(1)(b), 2923.121(B)(1)(b), 2923.122(D)(1)(b), and 2923.123(C)(2)(b).)

The act specifies that the new exemption it enacts that is described in the preceding paragraph does not apply if a rule of superintendence or another type of rule of the Supreme Court or an applicable local rule of court prohibits all persons from conveying or attempting to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located or from possessing or having under one's control a deadly weapon or dangerous ordnance in a courthouse or in another building in which a courtroom is located (R.C. 2923.123(C)(2)(b) and (E)). The act also consolidates the common language of the ongoing exemptions from the continuing prohibition against conveying or possessing a deadly weapon or dangerous ordnance in a courthouse or courtroom that are available in specified circumstances to judges, magistrates,

peace officers, enforcement officers of other states, bailiffs, deputy bailiffs, prosecutors, secret service officers, and licensees, unless a Supreme Court rule or an applicable local court rule prohibits all persons from engaging in the otherwise prohibited conduct (i.e., the "court rule" exception to the exemptions) in one provision and includes a reference to that one provision in each of the individual exemptions (R.C. 2923.123(C)(1), (2)(a), (4), (5), and (6) and (E)).

### **Improperly handling firearms in a motor vehicle**

Continuing law sets forth several prohibitions that relate to the discharge, transportation, or possession of a firearm (or, for some of the prohibitions, a handgun) in a motor vehicle. Some of the prohibitions apply only to persons who have been issued an Ohio license or temporary emergency license to carry a concealed handgun or a comparable license issued by another state that is valid in Ohio under reciprocity agreements and only in relation to handguns, and some apply generally to all persons. A violation of any of the prohibitions is the offense of "improperly handling firearms in a motor vehicle." The act changes many of these provisions. A summary of the prohibitions, the penalties for violations of them, and related provisions, and the changes the act makes to them, follows.

### **Prohibitions applicable only to concealed carry licensees**

The following prohibitions, and the related penalties and other provisions, apply only to persons who have been issued an Ohio license or temporary emergency license to carry a concealed handgun or a comparable license issued by another state that is valid in Ohio under reciprocity agreements (hereafter, a "concealed carry licensee" or "licensee") and only in relation to handguns:

(1) **Manner of transporting a loaded handgun in vehicle**. Law retained in part by the act prohibits a concealed carry licensee from knowingly transporting or having a loaded handgun in a motor vehicle unless the loaded handgun either is in a holster *and in plain sight* on the person's person or it is securely encased by being stored in a closed, locked glove compartment or in a case *that is in plain sight* and that is locked. A violation of this prohibition is a felony of the fifth degree. The exemption described below in paragraph (6) of this part of the analysis applies to this prohibition. The act modifies this prohibition by prohibiting a licensee from knowingly transporting or having a loaded handgun in a motor vehicle unless one of the following applies: (a) the loaded handgun is in a holster on the person's person (holster no longer required to be in plain sight), (b) 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, which lid, cover, or closing mechanism must be opened for a person to gain access to the handgun (new), or (c) the loaded handgun is securely encased by being stored in a closed, locked glove compartment or in a case that is locked

(case no longer required to be in plain sight). Under the act, a violation of this prohibition remains a felony of the fifth degree. (R.C. 2923.16(E)(1), (F)(1), and (I).)

(2) **Removing/grasping/touching a loaded handgun in a vehicle.** Law retained in part by the act prohibits a concealed carry licensee who is transporting or has a loaded handgun in a motor vehicle in a manner described above in paragraph (1) of this part of the analysis from knowingly removing or attempting to remove the loaded handgun from the holster, glove compartment, or case, knowingly grasping or holding the loaded handgun, or knowingly having contact with the loaded handgun by touching it with the person's hands or fingers while the motor vehicle is being operated on a street, highway, or public property unless 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. A violation of this prohibition is a felony of the fifth degree. The exemption described below in paragraph (6) of this part of the analysis applies to this prohibition. The act modifies this prohibition by conforming its language to the language of the new manner in which a licensee may possess a loaded handgun in a motor vehicle that is described above in paragraph (1) of this part of the analysis so that it also applies regarding a removal or attempted removal of a loaded handgun from the bag, box, or container in which it is located. Under the act, a violation of this prohibition remains a felony of the fifth degree. (R.C. 2923.16(E)(2), (F)(1), and (I).)

(3) **Informing law enforcement officer of license and loaded handgun in a vehicle.** Law retained in part by the act prohibits a concealed carry licensee who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose and who is transporting or has a loaded handgun in the motor vehicle in any manner, from failing to promptly inform any law enforcement officer who approaches the vehicle while stopped that the person has been issued a license or temporary emergency license to carry a concealed handgun and that the person then possesses or has a loaded handgun in the motor vehicle. A violation of this prohibition is a misdemeanor of the fourth degree. The exemption described below in paragraph (6) of this part of the analysis applies to this prohibition. The act does not change the substance of this prohibition, but expands it so that it also prohibits a licensee who is the driver or an occupant of a "commercial motor vehicle" (as defined in existing R.C. 4506.25(A), not in the act) that is stopped for inspection by an employee of the Motor Carrier Enforcement Unit in the Department of Public Safety, Division of State Highway Patrol to enforce compliance with rules and orders of the Public Utilities Commission, pursuant to R.C. 5503.34, from failing to promptly inform the employee of the Unit who approaches the vehicle while stopped that the licensee has been issued a license or temporary emergency license to carry a

concealed handgun and that the licensee then possesses or has a loaded handgun in the commercial motor vehicle. The act increases the penalty for a violation of this expanded prohibition to a misdemeanor of the first degree. The act also provides that, in addition to any other penalty or sanction imposed for the violation, the offender's license or temporary emergency license to carry a concealed handgun must be suspended for one year. (R.C. 2923.16(E)(3), (F)(1), (I), (K)(6), and (K)(7).)

(4) **Complying with order of law enforcement officer/remaining in a vehicle/keeping hands in plain sight.** Law retained in part by the act prohibits a concealed carry licensee who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose and who is transporting or has a loaded handgun in the motor vehicle in any manner, from knowingly disregarding or failing to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, knowingly failing to remain in the motor vehicle while stopped, or knowingly failing to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless, regarding a failure to remain in the motor vehicle or to keep the person's hands in plain sight, the failure is pursuant to and in accordance with directions given by a law enforcement officer. A violation of this prohibition is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of the prohibition, a felony of the fifth degree. The exemption described below in paragraph (6) of this part of the analysis applies regarding this prohibition. The act modifies this prohibition by removing from it the portion that pertains to disregarding or failing to comply with a lawful order of a law enforcement officer and establishing the removed portion of the prohibition as a new prohibition, with an example of a type of order contemplated and a different penalty. Specifically, under the act:

(a) A licensee who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose and who is transporting or has a loaded handgun in the motor vehicle in any manner, is prohibited from *knowingly* disregarding or failing to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, *including, but not limited to, a specific order to the person to keep the person's hands in plain sight.* A violation of this new prohibition is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of this prohibition or the prohibition described in the next paragraph, a felony of the fifth degree. The act also provides that, in addition to any other penalty or sanction imposed for the violation, the offender's license or temporary emergency license to carry a concealed handgun must be

suspended for two years. The exemption described below in paragraph (6) of this part of the analysis applies. (R.C. 2923.16(E)(6), (F)(1), and (I).)

(b) The act does not change the portions of the prohibition that pertain to remaining in the motor vehicle and keeping the licensee's hands in plain sight. It modifies the penalty for a violation of this prohibition so that it generally remains a misdemeanor of the first degree but is a felony of the fifth degree if the offender previously has been convicted of or pleaded guilty to a violation of this prohibition or the prohibition described in the preceding paragraph. The act also provides that, for a misdemeanor violation of the prohibition, in addition to any other penalty or sanction imposed for the violation, the offender's license or temporary emergency license to carry a concealed handgun must be suspended for one year. (R.C. 2923.16(E)(4), (F)(1), and (I).)

(5) **Removing/grasping/touching a loaded handgun in a vehicle while a law enforcement officer is approaching.** Law retained in part by the act prohibits a concealed carry licensee who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose, who is transporting or has a loaded handgun in the motor vehicle in a manner authorized above under paragraph (1) of this part of the analysis, and who is approached by any law enforcement officer while stopped, from knowingly removing or attempting to remove the loaded handgun from the holster, glove compartment, or case, knowingly grasping or holding the loaded handgun, or knowingly having 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, unless 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. A violation of this prohibition is a felony of the fifth degree. The exemption described below in paragraph (6) of this part of the analysis applies to this prohibition. The act modifies this prohibition by conforming its language to the language of the new manner in which a licensee may possess a loaded handgun in a motor vehicle that is described above in paragraph (1) of this part of the analysis so that it also applies regarding a removal or attempted removal of a loaded handgun from a case, bag, box, or container in which it is located. Under the act, a violation of this prohibition remains a felony of the fifth degree. (R.C. 2923.16(E)(5), (F)(1), and (I).)

(6) **Exemption from the prohibitions applicable only to concealed carry licensees.** Ongoing law specifies that the prohibitions described above in paragraphs (1) to (5) of this part of the analysis do not apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, when authorized to carry or have loaded or accessible firearms in motor

vehicles and acting within the scope of their duties. The act retains this exemption to these prohibitions as modified by the act. The act enacts an additional exemption from the prohibitions that specifies that the prohibitions do not apply to any person who is employed in Ohio, who is authorized to carry or have loaded or accessible firearms in motor vehicles, and who is subject to and in compliance with the firearms requalification requirements described above in "Completion of a firearms requalification program," unless the appointing authority of that person has expressly specified that this exemption does not apply to the person. Both exemptions apply to all of the prohibitions discussed in paragraphs (1) to (5), above. (R.C. 2923.16(F)(1).)

(7) Prohibitions restated as affirmative duty. The act modifies the continuing provisions related to the effect of a license that has been issued so that they also restate as an affirmative duty of the licensee the new prohibition the act adds that is described above in paragraph (3) of this part of the analysis, and clarifies the provisions that restate as an affirmative duty the prohibitions described in parts (1) and (2) of this part of the analysis so that the provisions more accurately reflect those prohibitions (R.C. 2923.126(A)).

### General prohibitions

The following prohibitions, and the related penalties and other provisions, apply generally to all persons:

(1) Discharging a firearm from a vehicle. Continuing law prohibits a person from knowingly discharging a firearm while in or on a motor vehicle. A violation of this prohibition is a felony of the fourth degree. The exemption described below in paragraph (4) of this part of the analysis applies to this prohibition, and an additional exemption is provided in limited circumstances for a person who discharges the firearm on his or her own property at a coyote or groundhog. The act does not change this prohibition or the penalty for it. (R.C. 2923.16(A), (F)(1), (F)(2), and (I).)

(2) Manner of transporting a loaded firearm or a firearm in a vehicle. Ongoing law prohibits a person from 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. A violation of this prohibition is a misdemeanor of the first degree or a felony of the fourth degree, depending upon the circumstances present. Continuing law also prohibits a person from knowingly transporting or having a firearm in a motor vehicle, unless it is unloaded and is carried: (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 that purpose, or (d) 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. A violation of this prohibition is a misdemeanor of the fourth degree.

The exemption described below in paragraph (4) of this part of the analysis applies to these prohibitions. Under law unchanged by the act, these prohibitions do not apply to a person who is the operator of or a passenger in a vehicle that is on agricultural property in an unincorporated area of a township, which property is owned by the person, the spouse or a parent of the person, the landlord of the person, or the landlord of the spouse or a parent of the person, and who did legally transport or possess a firearm in a motor vehicle prior to arriving on that property. Under law generally unchanged by the act, these prohibitions do not apply to a person who is transporting or carrying a handgun in a vehicle, if the person is carrying a valid license or temporary emergency license to carry a concealed handgun issued in Ohio or a comparable license issued by another state that is valid in Ohio under reciprocity agreements, the person is not knowingly in a prohibited place described in R.C. 2923.126(B) (see **COMMENT 2**), and either the handgun is in a holster *and in plain sight* on the person's person or the handgun is securely encased by being stored in a closed, locked glove compartment or in a case *that is in plain sight* and that is locked.

The act does not change these prohibitions or the penalty for them, but it modifies the exemption that is described in the last sentence of the preceding paragraph. The act modifies that exemption (and creates a new exemption described below in paragraph (4)) so that the prohibitions do not apply to a licensee who is not knowingly in a prohibited place if one of the following applies: (a) the handgun is in a holster on the person's person, (b) the 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, which lid, cover, or closing mechanism must be opened for a person to gain access to the handgun, or (c) the handgun is securely encased by being stored in a closed, locked glove compartment or in a case that is locked. (R.C. 2923.16(B), (C), (F)(1), (F)(3), (F)(4), and (I).)

(3) **Transporting a loaded handgun in a vehicle while intoxicated.** Continuing law prohibits a person from knowingly transporting or having a loaded handgun in a motor vehicle if, at the time of that transportation or possession: (a) the person is under the influence of alcohol, a drug of abuse, or a combination of them, or (b) the person's whole blood, blood serum or plasma, breath, or urine contains a concentration of alcohol prohibited under the offense of state OVI (R.C. 4511.19(A), not in the act), regardless of whether the person at the time of the transportation or possession is the operator of or a passenger in the motor vehicle. Formerly, any violation of this prohibition was a felony of the fifth degree, and the exemption described below in paragraph (4) of this part of the analysis applied



regarding this prohibition. The act does not change this prohibition, but increases the penalty for a violation of it to a felony of the fourth degree if the loaded handgun is concealed on the person's person. The act also provides that the ongoing exemption described below in paragraph (4) of this part of the analysis no longer applies, and that the new exemption the act enacts as described in that paragraph does not apply, to conduct in violation of this prohibition. (R.C. 2923.16(D), (F)(1), and (I).)

(4) **Exemption from the prohibitions applicable generally to all persons.** Continuing law specifies that the prohibitions described above in paragraphs (1) to (3) of this part of the analysis do not apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of their duties. The act enacts an additional exemption from the prohibitions that specifies that they do not apply to any person who is employed in Ohio, who is authorized to carry or have loaded or accessible firearms in motor vehicles, and who is subject to and in compliance with the firearms requalification requirements described above in "**Completion of a firearms requalification program**," unless the appointing authority of that person has expressly specified that this exemption does not apply to the person. Both exemptions apply to the prohibitions discussed above in paragraphs (1) and (2) of this part of the analysis, but, under the act, neither applies to the prohibition discussed in paragraph (3). (R.C. 2923.16(F)(1).)

**Retired peace officers--same right to carry concealed handgun as a concealed carry licensee**

**Law retained in part by the act**

Law retained in part by the act provides that a person who holds a license to carry a concealed handgun that was issued pursuant to the law of a state other than Ohio and that is recognized by the Attorney General pursuant to an existing reciprocity agreement (entered into under R.C. 109.69, not in the act) has the same right to carry a concealed handgun in Ohio as a person who was issued an Ohio license to carry a concealed handgun and is subject to the same restrictions that apply to a person who carries such an Ohio license. It also provides that a "peace officer" (see **COMMENT 3**) has the same right to carry a concealed handgun in Ohio as a person who was issued an Ohio license to carry a concealed handgun, and that, for purposes of reciprocity with other states, a "peace officer" is considered to be a licensee in Ohio. (R.C. 2923.126(D), redesignated in the act as R.C. 2923.126(D) and (E).)

### Operation of the act

**Grant of the right.** The act grants certain "retired peace officers" the same right, in specified circumstances, to carry a concealed handgun in Ohio as a person who was issued an Ohio license to carry a concealed handgun. Specifically, the act provides that a "qualified retired peace officer" (see "**Retired peace officer definitions,**" below) who possesses a "retired peace officer identification card" (see "**Retired peace officer definitions,**" below) issued pursuant to the provisions described below in "**Retired peace officer identification card**" and a valid firearms requalification certification issued pursuant to the provisions described below in "**Firearms requalification certification**" has the same right to carry a concealed handgun in Ohio as a person who was issued an Ohio license to carry a concealed handgun under R.C. 2923.125 and is subject to the same restrictions that apply to a person who carries a license so issued. For purposes of reciprocity with other states, a qualified retired peace officer who possesses such a retired peace officer identification card and such a valid firearms requalification certification is considered to be a licensee in Ohio. (R.C. 2923.126(F)(1).)

**Retired peace officer identification card.** Under the act, each public agency of Ohio or of an Ohio political subdivision that is served by one or more "peace officers" (see **COMMENT 3**) must issue a *retired peace officer identification card* to any person who retired from service as a peace officer with that agency if the issuance is in accordance with the agency's policies and procedures and if the person, with respect to the person's service with that agency, satisfies all of the following: (1) the person retired in good standing from service as a peace officer with the public agency, and the retirement was not for reasons of mental instability, (2) before retiring from service as a peace officer with that agency, the person was authorized to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and the person had statutory powers of arrest, (3) at the time of the person's retirement as a peace officer with that agency, the person was trained and qualified to carry firearms in the performance of the peace officer's duties, (4) before retiring from service as a peace officer with that agency, the person was regularly employed as a peace officer for an aggregate of 15 years or more, or, in the alternative, the person retired from service as a peace officer with that agency, after completing any applicable probationary period of that service, due to a service-connected disability, as determined by the agency, and (5) the person has a nonforfeitable right to benefits under the retirement plan of that agency.

A retired peace officer identification card issued to a person as described in the preceding paragraph must identify the person by name, contain a photograph of the person, identify the public agency of Ohio or of the Ohio political

subdivision from which the person retired as a peace officer and that is issuing the identification card, and specify that the person retired in good standing from service as a peace officer with the issuing public agency and satisfies the criteria set forth in clauses (1) to (5) of the preceding paragraph. In addition to the required content specified in this paragraph, a retired peace officer identification card issued to a person may include the firearms requalification certification described below in "**Firearms requalification certification**." If the identification card includes that certification, the identification card serves as the firearms requalification certification for the retired peace officer. If the issuing public agency issues credentials to active law enforcement officers who serve the agency, the agency may comply with the provisions of the preceding paragraph by issuing the same credentials to persons who retired from service as a peace officer with the agency and who satisfy the criteria set forth in clauses (1) to (5) of the preceding paragraph, provided that the credentials so issued to retired peace officers are stamped with the word "RETIRED."

A public agency of Ohio or of an Ohio political subdivision may charge persons who retired from service as a peace officer with the agency a reasonable fee for issuing to the person a retired peace officer identification card pursuant to the above-described provisions. (R.C. 2923.126(F)(2).)

**Firearms requalification certification**. If a person retired from service as a peace officer with a public agency of Ohio or of an Ohio political subdivision and the person satisfies the criteria set forth in clauses (1) to (5) of the first paragraph under "**Retired peace officer identification card**," above, the public agency may provide the retired peace officer with the opportunity to attend a firearms requalification program that is approved for purposes of firearms requalification required under R.C. 109.801, as described above in "**Completion of a firearms requalification program**." The retired peace officer may be required to pay the cost of the course.

If a retired peace officer who satisfies those criteria attends a firearms requalification program that is approved for purposes of firearms requalification required under R.C. 109.801, the retired peace officer's successful completion of the firearms requalification program requalifies the retired peace officer for purposes of the act's criteria for carrying a concealed handgun for one year from the date on which the program was successfully completed, and the requalification is valid during that one-year period. If a retired peace officer who satisfies those criteria satisfactorily completes such a firearms requalification program, the retired peace officer must be issued a *firearms requalification certification* that identifies the retired peace officer by name, identifies the entity that taught the program, specifies that the retired peace officer successfully completed the program, specifies the date on which the course was successfully completed, and specifies

that the requalification is valid for one year from that date of successful completion. The firearms requalification certification for a retired peace officer may be included in the retired peace officer identification card issued to the retired peace officer. A retired peace officer who attends a firearms requalification program that is approved for purposes of firearms requalification required under R.C. 109.801 may be required to pay the cost of the program. (R.C. 2923.126(F)(3).)

**Retired peace officer definitions.** As used in the act's provisions regarding a retired peace officer's carrying of a concealed handgun (R.C. 2923.126(F)(4)):

(1) "Qualified retired peace officer" means a person who satisfies all of the following: (a) the person satisfies the criteria set forth in clauses (1) to (5) of the first paragraph under "**Retired peace officer identification card,**" above, (b) the person is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance, and (c) the person is not prohibited by federal law from receiving firearms.

(2) "Retired peace officer identification card" means an identification card issued pursuant to the provisions described above in "**Retired peace officer identification card**" to a person who is a retired peace officer.

**Theft of firearms or dangerous ordnance from federally licensed firearms dealer--increased penalty**

**Theft prohibition--violation involving a firearm or dangerous ordnance**

**Continuing prohibition; penalty provisions retained in part by the act.**

Continuing law prohibits a person, with purpose to "deprive" the "owner" of property or services, from knowingly obtaining or exerting control over either the property or services in any of the following ways: (1) without the consent of the owner or person authorized to give consent, (2) beyond the scope of the express or implied consent of the owner or person authorized to give consent, (3) by "deception," (4) by threat, or (5) by intimidation (R.C. 2913.02(A)) (see **COMMENT 4** for definitions of the terms in quotation marks).

A violation of the prohibition generally is named the offense of "theft." In specified circumstances, the violation is given a more specific name as described below. The penalties for the offense vary, depending on the value of the property or services stolen, the type of victim, the type of property or services stolen, and other factors. Under provisions retained in part by the act, if the property stolen is a "firearm" or "dangerous ordnance," a violation of the prohibition is "grand theft," a felony of the third degree, there is a presumption in favor of the court imposing a prison term for the offense, and the offender must serve a prison term imposed for

it consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender. (R.C. 2913.02(B)(1) and (4).)

**Operation of the act.** The act increases, to a felony of the first degree, the penalty for "grand theft" when the property stolen is a firearm or dangerous ordnance and it is stolen from a "federally licensed firearms dealer" (see below). Under the act, "grand theft of a firearm or dangerous ordnance is punished as follows: (1) except as otherwise described in clause (2) of this paragraph, it remains a felony of the third degree, and there is a presumption in favor of a prison term for the offense, and (2) if the firearm or dangerous ordnance was stolen from a "federally licensed firearms dealer" (see below), the offense is a felony of the first degree (under existing R.C. 2929.13(D), not in the act, for felonies of the first degree, there automatically is a presumption for a prison term). Under law unchanged by the act, the offender must serve a prison term imposed for "grand theft" when the property stolen is a firearm or dangerous ordnance consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender. (R.C. 2913.02(B)(4).)

The act specifies that, as used in its provisions described in the preceding paragraph, "federally licensed firearms dealer" means an importer, manufacturer, or dealer having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the federal Gun Control Act of 1968, 18 U.S.C. 921 *et seq.*, and any amendments or additions to that act or reenactments of that act (R.C. 2913.01(MM), by reference to existing R.C. 5502.63, not in the act).

### **Felonious assault, aggravated assault, and assault--increased penalty**

#### **Felonious assault**

**Continuing prohibition; penalty provisions retained in part by the act.** Ongoing law prohibits a person from knowingly causing serious physical harm to another or to another's unborn, or knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance. It also prohibits a person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, from knowingly engaging in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct, knowingly engaging in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, or knowingly engaging in sexual conduct with a person under 18 who is not the spouse of the offender. A violation of this prohibition is the offense of "felonious assault." Felonious assault generally is a felony of the second degree, but: (1) if

the victim of a violation of the first prohibition is a "peace officer" (see "*Peace officer definition for assault offenses*," below), the offense is a felony of the first degree, and (2) if the victim of the offense is a "peace officer" and the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the first degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. (R.C. 2903.11.)

**Operation of the act.** The act expands the penalty enhancement provisions in the offense of felonious assault that apply when the victim is a peace officer so that they also apply when the victim of the offense is *an investigator of BCII* (see below). Under the act, felonious assault generally remains a felony of the second degree, but: (1) if the victim of a violation of the first prohibition is a "peace officer" *or an investigator of BCII*, the offense is a felony of the first degree, and (2) if the victim of the offense is a "peace officer" *or an investigator of BCII* and the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the first degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. (R.C. 2903.11(D).)

Under the act, for purposes of this penalty enhancement provision, "investigator of BCII" means an investigator, as defined in R.C. 109.541 (see below) of BCII who is commissioned by BCII's Superintendent as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under R.C. 109.541 (R.C. 2903.11(E)(4) and (5)); this is the same definition as is used in the expansion of the R.C. 109.71 definition of "peace officer," as described above in "*Inclusion of BCII investigators*" under "*Definition of peace officer*"). R.C. 109.541, not in the act, specifies that an "investigator" means a BCII officer or employee who is described in R.C. 109.54, regarding BCII's provision of investigative personnel and assistance to requesting law enforcement authorities, and also addresses an investigator's provision of assistance and emergency assistance to law enforcement officers and peace officers.

### **Aggravated assault**

**Continuing prohibition; penalty provisions retained in part by the act.** Continuing law prohibits a person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, from knowingly causing serious physical harm to another or to another's unborn, or knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance. A violation of the prohibition is the offense of "aggravated assault."

Aggravated assault generally is a felony of the fourth degree, but: (1) if the victim of the offense is a "peace officer" (see "*Peace officer definition for assault offenses*," below), the offense is a felony of the third degree, and (2) if the victim of the offense is a "peace officer" and the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the third degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. (R.C. 2903.12.)

**Operation of the act.** The act expands the penalty enhancement provisions in the offense of aggravated assault that apply when the victim is a peace officer so that they also apply when the victim of the offense is *an investigator of BCII* (see below). Under the act, aggravated assault generally remains a felony of the fourth degree, but: (1) if the victim of the offense is a "peace officer" *or an investigator of BCII*, the offense is a felony of the third degree, and (2) if the victim of the offense is a "peace officer" *or an investigator of BCII* and the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the third degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. Under the act, for purposes of this penalty enhancement provision, "investigator of BCII" has the same meaning as described above under "*Felonious assault*." (R.C. 2903.12.)

### **Assault**

**Continuing prohibition; penalty provisions retained in part by the act.** Continuing law prohibits a person from knowingly causing or attempting to cause physical harm to another or to another's unborn or recklessly causing serious physical harm to another or to another's unborn. A violation of the prohibition is the offense of "assault." Assault generally is a misdemeanor of the first degree, but in a number of specified circumstances it is a felony of the third, fourth, or fifth degree. Among the circumstances in which the offense is a felony of the fourth degree are the following: (1) the victim of the offense is a "peace officer" (see "*Peace officer definition for assault offenses*," below), a firefighter, or a person performing emergency medical service, while in the performance of their official duties, or (2) the victim of the offense is a "peace officer" and the victim suffered serious physical harm as a result of the commission of the offense; in a case of this nature, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration. (R.C. 2903.13.)

**Operation of the act.** The act expands the penalty enhancement provisions in the offense of assault that apply when the victim is a peace officer so that they also apply when the victim of the offense is *an investigator of BCII* (see below). Under the act, assault generally remains a misdemeanor of the first degree, and, in

a number of specified circumstances, it remains a felony of the third, fourth, or fifth degree. Under the act, among the circumstances in which the offense is a felony of the fourth degree are the following: (1) the victim of the offense is a peace officer *or an investigator of BCII*, a firefighter, or a person performing emergency medical service, while in the performance of their official duties, or (2) the victim of the offense is a peace officer *or an investigator of BCII*, and the victim suffered serious physical harm as a result of the commission of the offense; in a case of this nature, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration. Under the act, for purposes of this penalty enhancement provision, "investigator of BCII" has the same meaning as described above under "*Felonious assault*." (R.C. 2903.13.)

### *Peace officer definition for assault offenses*

Under continuing law, as used in the penalty provisions for the offenses of felonious assault, aggravated assault, and assault, "peace officer" includes, except as provided in R.C. 2935.081, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to R.C. 737.04; member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D); member of a police force employed by a regional transit authority under R.C. 306.05(Y); state university law enforcement officer appointed under R.C. 3345.04; enforcement agent of the Department of Public Safety designated under R.C. 5502.14; employee of the Department of Taxation to whom investigation powers have been delegated under R.C. 5743.45; employee of the Department of Natural Resources who is a natural resources law enforcement staff officer designated pursuant to R.C. 1501.013, a forest officer designated pursuant to R.C. 1503.29, a preserve officer designated pursuant to R.C. 1517.10, a wildlife officer designated pursuant to R.C. 1531.13, a park officer designated pursuant to R.C. 1541.10, or a state watercraft officer designated pursuant to R.C. 1547.521; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; veterans' home police officer appointed under R.C. 5907.02; special police officer employed by a port authority under R.C. 4582.04 or 4582.28; police constable of any township; police officer of a township or joint township police district; a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in federal law, and that is required to be under a security program and is governed by federal aviation security rules; the House of Representatives sergeant at arms if the house sergeant at arms has arrest authority pursuant to R.C. 101.311(E)(1); and an assistant House of Representatives sergeant at arms; *officer or employee of BCII who has been*



*awarded a certificate by the OPOTC's Executive Director attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to R.C. 109.54 or 109.541; and, for the purpose of arrests within those areas, for the purposes of actions related to real property under R.C. Chapter 5503., and the filing of and service of process relating to those offenses witnessed or investigated by them, the Superintendent and troopers of the State Highway Patrol (R.C. 2903.11(D) and (E), 2903.12(B), and 2903.13(D), by reference to existing R.C. 2935.01, which is not in the act).*

---

## COMMENT

1. Two hundred twenty-six Revised Code sections use the term "peace officer." This total is not affected by the act. Formerly, in 19 of those 226 sections, the definition of the term set forth in R.C. 109.71 explicitly was made applicable (a number of other sections to which that definition applies use "peace officer" as part of a longer term, such as Ohio Peace Officer Training Commission or Peace Officer Training Academy, but those sections are not included within this tally of 19 sections). As described below, the act makes the R.C. 109.71 definition of "peace officer" apply to additional Revised Code sections using that term. In over 50 of those 226 sections, the term is given the same meaning that is provided in another definition of the term that is set forth in R.C. 2935.01, and in most of the other sections the term is not defined. By modifying the R.C. 109.71 definition of "peace officer," the act makes its changes to that definition automatically apply to all of the other Revised Code sections that use the R.C. 109.71 definition. The act's modification of the R.C. 109.71 definition of the term does not affect the sections that use the R.C. 2935.01 definition of the term. The act's inclusion in R.C. 109.71 of the statement specifying that the section "does not confer any arrest authority or any ability or authority to detain a person, write or issue any citation, or provide any disposition alternative, as granted under R.C. Chapter 2935.," further indicates an intent that the modification of the R.C. 109.71 definition of the term does not affect the R.C. 2935.01 definition of the term and the related powers under that Chapter of persons included within that definition. Regarding the Revised Code sections that use the term "peace officer" but that do not define the term or incorporate by reference a separate definition of the term, although the R.C. 109.71 definition is not explicitly applicable to those sections, it is plausible that a court charged with determining the meaning of the term would view the definition as one factor to be considered in determining that meaning; however, it is equally plausible that a court charged with determining the meaning of the term would hold that the definition should not be considered in determining that meaning.

The 19 Revised Code sections to which the R.C. 109.71 definition of "peace officer" continue to apply (and a brief summary of them) are: (a) R.C. 109.542, which states that BCII officers and employees who are "investigative personnel" and who have been awarded an OPOTC certificate attesting to their completion of an approved peace officer basic training program are considered for purposes of R.C. 109.71 to 109.77 as if they were R.C. 109.71 *peace officers*, and are considered *peace officers* during the term of their BCII employment in that capacity, for purposes of maintaining a current and valid basic training certificate, (b) R.C. 109.73, 109.741, 109.742, 109.744, 109.75, 109.752, and 109.761, which pertain to the training of *peace officers*, (c) R.C. 109.76, which provides that nothing in R.C. 109.71 to 109.77 exempts a *peace officer*, or other officer or employee, from the civil service provisions of R.C. Chapter 124., (d) R.C. 109.77, which generally requires completion of an approved *peace officer* basic training program before a person may work in any of a list of specified law enforcement capacities, including a *peace officer* of a county, township, municipal corporation, regional transit authority, or metropolitan housing authority, and which also generally prohibits the issuance of a *peace officer* basic training certificate, and generally requires the revocation of a certificate previously issued, to a person convicted of a felony or another specified offense, (e) R.C. 109.801, described in "Completion of a firearms requalification program" in the **CONTENT AND OPERATION** part of this analysis, which currently uses *peace officer* in a very limited instance related to municipal airport special police officers, (f) R.C. 149.43, which contains the state's Public Records Law and provides an exception from the definition of "public record" for "*peace officer*, firefighter, or EMT residential and familial information," which it defines, (g) R.C. 311.01, which sets forth the qualifications for the office of sheriff, one of which includes as an option that the person in question, within the preceding four years, has obtained or held a valid basic *peace officer* certificate of training issued by OPOTC or a training certificate issued pursuant to R.C. 5503.05, and has been employed as a full-time *peace officer* performing duties related to the enforcement of statutes, ordinances, or codes, (h) R.C. 2915.01, which includes as a "security officer," for purposes of certain bingo provisions in the Gambling Law, a person who has successfully completed a *peace officer's* training course pursuant to R.C. 109.71 to 109.79 and who is hired to provide security for the premises where bingo is conducted, (i) R.C. 2929.43, which sets forth procedures that must be completed when a person who is convicted of or pleads guilty to a felony is a *peace officer*, (j) R.C. 3701.24 to 3701.249, which pertain to AIDS and HIV programs, testing, and counseling and provide special disclosure and testing provisions if a *peace officer* is exposed, or believes he or she may have been exposed, to HIV infection in performing his or her duties, (k) R.C. 4501.271, which pertains to the potential confidentiality of the residence address contained in motor vehicle records of certain categories of *peace officers*, (l) R.C. 4511.031, which exempts, from a general prohibition against a person possessing a portable device capable of changing traffic control

devices to green, certain categories of *peace officers*, (m) R.C. 4749.10, which sets forth criteria for a person licensed under the state's Private Investigator Law to carry a firearm in the course of the person's duties, one of which includes as an option that the person is a former *peace officer* who previously had completed a firearms training course at a school approved by OPOTC and received a certificate or other evidence of satisfactory completion of that course, and (n) R.C. 5101.26, which provides that, as used in that section and R.C. 5101.27 to 5101.30, "law enforcement agency" includes an agency that employs *peace officers* (within the cited range of sections, only R.C. 5101.27 and 5101.28, which pertain to the disclosure, use, and exchange of information regarding public assistance recipients, use the term).

As described above, the act makes the R.C. 109.71 definition apply to R.C. 109.78 to 109.801. The effect on R.C. 109.801 is described in "*Completion of a firearms requalification program*" in the **CONTENT AND OPERATION** part of this analysis. The only other section within that range that is affected by this change is R.C. 109.78. That section pertains to the certification and training of special police, security guards, and private police. One of its provisions specifies that an OPOTC certificate of basic training or the completion of 25 years of active duty as a *peace officer* satisfies the educational requirements for appointment or commission as a special police officer or special deputy of an Ohio political subdivision. Another prohibits any public or private educational institution, and the State Highway Patrol's Superintendent, from employing a person as a special police officer, security guard, or other position in which the person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic *peace officer* training program, *unless the person has completed 20 years of active duty as a peace officer*.

2. R.C. 2923.126(B), unchanged by the act, provides that a valid license to carry a concealed handgun does not authorize the licensee to carry a concealed handgun in any manner prohibited under R.C. 2923.12(B) or in any manner prohibited under R.C. 2923.16. Also, a valid license does not authorize the licensee to carry a concealed handgun into any of the following places:

(a) 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, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to R.C. 5119.02(A) or R.C. 5123.03(A)(1);

(b) A school safety zone;

(c) A courthouse or another building or structure in which a courtroom is located;

(d) Any room or open air arena in which liquor is being dispensed in premises for which a D permit has been issued;

(e) Any 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;

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

(g) A child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home, except that this prohibition does not prohibit a licensee who resides in a type A family day-care home, a type B family day-care home, or a type C family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(h) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(i) Any building that is owned by Ohio or any political subdivision of Ohio, and all portions of any building that is not owned by any of these governmental entities but that is leased by such a governmental entity;

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

3. R.C. 2923.14's definition of "peace officer" is unchanged by the act. R.C. 2923.124, by reference to R.C. 2935.01 (not in the act), specifies that, for purposes of R.C. 2923.124 to 2923.1213, "peace officer" includes, except as provided in R.C. 2935.081, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to R.C. 737.04; member of a police force employed by a metropolitan housing authority; member of a police force employed by a regional transit authority; state university law enforcement officer; enforcement agent of the Department of Public Safety; employee of the Department of Taxation to whom investigation powers have been delegated under R.C. 5743.45; employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a forest officer, a preserve officer, a wildlife officer, a park officer, or a state watercraft officer;

individual designated to perform law enforcement duties by a board of park commissioners of a park district or a board of directors of a conservancy district; veterans' home police officer; special police officer employed by a port authority; police constable of any township; police officer of a township or joint township police district; a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in a specified provision of federal law, and that is required to be under a security program and is governed by aviation security rules of the Transportation Security Administration of the United States Department of Transportation; the House of Representatives sergeant at arms if the house sergeant at arms has arrest authority pursuant to R.C. 101.311(E)(1); and an assistant house sergeant at arms; officer or employee of BCII who has been awarded a certificate by OPOTC's Executive Director attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to R.C. 109.54 or 109.541; and, for the purpose of arrests within those areas, for the purposes of actions related to real property under R.C. Chapter 5503., and the filing of and service of process relating to those offenses witnessed or investigated by them, the Superintendent and troopers of the State Highway Patrol.

4. R.C. 2913.01 defines a series of terms for purposes of the laws concerning theft and fraud offenses, R.C. Chapter 2913. R.C. 2901.01, not in the act, defines a series of terms for purposes of the Revised Code. The definitions in those sections that are unaffected by the act but that are relevant to the act are:

(a) "Deception," which means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact (R.C. 2913.01(A)).

(b) "Deprive," which means to do any of the following: (i) withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration, (ii) dispose of property so as to make it unlikely that the owner will recover it, or (iii) accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration (R.C. 2913.01(C)).

(c) "Owner," which means, unless the context requires a different meaning, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful (R.C. 2913.01(D)).

---

## HISTORY

ACTION	DATE
Introduced	09-20-05
Reported, H. Criminal Justice	03-07-06
Passed House (76-19)	03-08-06
Reported, S. Judiciary - Criminal Justice	11-29-06
Passed Senate (19-10)	11-29-06
House concurred in Senate amendments (74-14)	11-29-06
Vetoed by Governor	12-07-06
Veto overridden by House (71-21)	12-07-06
Veto overridden by Senate (21-12)	12-12-06

06-hb347-126.doc/kl