

**IN THE SUPREME COURT OF OHIO**

State of Ohio,	:	
	:	
Appellee,	:	Case No. 06-0826
	:	
v.	:	
	:	
Thomas L. Davis,	:	On Appeal from the Marion County
	:	Court of Appeals, Third
	:	Appellate District
Appellant	:	

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**MERIT BRIEF OF APPELLEE STATE OF OHIO**

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Jim Slagle (0032360)  
(COUNSEL OF RECORD)  
Marion County Prosecuting Attorney  
134 E. Center Street  
Marion, Ohio 43302  
(740) 223-4290  
Fax No. (740) 223-4299  
[jslagle@co.marion.oh.us](mailto:jslagle@co.marion.oh.us)

COUNSEL FOR APPELLEE

Clifford Spohn (#00205330)  
SPOHN, SPOHN, & ZEIGLER  
144 E. Center Street  
Marion, Ohio 43302  
(740) 387-0900  
Fax No. (740) 387-5248

COUNSEL FOR APPELLANT

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## INTRODUCTION

The Defendant-Appellant suggests that if a handgun is transported in a motor vehicle in a closed package, box, or case in conformity with R.C. 2923.16(C)(1), that this should be an affirmative defense to the charge of Carrying Concealed Weapons in violation of R.C. 2923.12. The Defendant-Appellant ignores the plain language of R.C. 2923.12(D)(4) which provides that the affirmative defense of transporting a weapon in compliance with R.C. 2923.16(C) is only an affirmative defense for “a deadly weapon other than a handgun.” Thus, the Defendant-Appellant is suggesting that the Supreme Court rewrite Ohio’s criminal statutes.

This issue was resolved by the Ohio Legislature after several years of debate when the Legislature passed the concealed carry law which gave citizens the opportunity to obtain a license to carry a concealed handgun. The Legislature provided that a person who possesses a valid license to carry a concealed handgun is not guilty of the offense of Carrying Concealed Weapons. R.C. 2923.12(C)(2)(b).<sup>1</sup> The Legislature determined that since a person could obtain a license to carry a concealed handgun, that it was no longer necessary for most of the affirmative defenses to Carrying Concealed Weapons to be applicable to handguns. See R.C. 2923.12(D).

While reasonable people may disagree as to the circumstances under which a handgun should be possessed and how it should be transported,<sup>2</sup> under our system of government these policy choices

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<sup>1</sup> The law does provide specified locations, which are not applicable to this case, where even a person with a concealed carry license may not take his handgun. These include such places as a police station, school safety zone, courthouse, liquor establishment, university, church, daycare center, aircraft, etc. See R.C. 2923.126.

<sup>2</sup> As is discussed at pp. 7-9 herein, the current law continues to allow a non-licensee to transport a handgun in a motor vehicle, without subjecting the owner to prosecution for Carrying

are determined by the Legislature. For that reason, the proposition of law proposed by the Defendant-Appellant should be rejected.

### **STATEMENT OF THE CASE AND FACTS**

On June 14, 2005, the Defendant-Appellant proceeded to a trial to the court on stipulated facts on the charge of Carrying Concealed Weapons. The Defendant-Appellant was found guilty by the Trial Court and sentenced to one year of community control sanctions.<sup>3</sup> He appealed his conviction. On March 13, 2006, the Third District Court of Appeals affirmed the Defendant-Appellant's conviction, with Judge Richard Rogers concurring in part and dissenting in part.

On April 20, 2005, the Defendant-Appellant was stopped for a traffic offense. The arresting officer discovered a black plastic handgun case on the driver floorboard between the front seat of the vehicle and the Defendant-Appellant's legs (Tr. 9). An unloaded handgun was contained in the case along with a loaded magazine for the handgun (Tr. 9). Photographs of the closed case in the location it was found and the open case showing the gun and magazine were introduced into evidence as State's Exhibits 1 and 2. The stipulated facts were orally agreed to at the trial (Tr. 7-13). Counsel then made final arguments and submitted post-trial brief before the Court issued a ruling (Tr. 14-18, 24-25; Post-Trial Briefs filed on June 16, 2005 and June 20, 2005).

The Defendant-Appellant did not have a license to carry a concealed handgun.

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Concealed Weapons, so long as the handgun is either not concealed or not kept "ready at hand."

<sup>3</sup> The Defendant-Appellant was released from community control sanctions on September 22, 2006, after having completed his one year on community control sanctions.

**ARGUMENT IN SUPPORT OF PROPOSITION OF LAW**

**Appellee's Proposition of Law No. I: In accordance with the plain language of R.C. 2923.12(D) the affirmative defenses to Carrying Concealed Weapons as set forth in that paragraph do not apply to handguns. R.C. 2923.12(D) applied.**

The Defendant-Appellant was found guilty of Carrying Concealed Weapons in violation of R.C. 2923.12(A) which provides:

No person shall knowingly carry or have, 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;<sup>4</sup>
- (3) A dangerous ordnance.

**Affirmative defense**

The Defendant-Appellant argues that the affirmative defense set forth in R.C. 2923.16(C) is applicable to this case. R.C. 2923.16(C) provides:

No person shall knowingly transport or have a firearm in a motor vehicle, unless it is unloaded and is carried in one of the following ways:

- (1) In a closed package, box, or case;
- (2) In a compartment that can be reached only by leaving the vehicle;
- (3) In plain sight and secured in a rack or holder made for that purpose;
- (4) 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 be easily stripped, in plain sight.

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<sup>4</sup> R.C. 2923.12(A)(2) is the applicable subsection, since it was stipulated that the firearm was a .380 High Point semiautomatic handgun (Tr. 9).

However, R.C. 2923.16(C) is not applicable to this case because the deadly weapon the Defendant-Appellant possessed was a handgun.<sup>5</sup>

The Carrying Concealed Weapons statute (R.C. 2923.12) incorporates R.C. 2923.16(C) as part of an affirmative defense, only for firearms other than handguns. R.C. 2923.12(D) provides:

It is an affirmative defense to a charge under division (A)(1) of this section of carrying or having control of a weapon other than a handgun and other than a dangerous ordnance that the actor was not otherwise prohibited by law from having the weapon and that any of the following applies: \*\*\*\*

(4) The weapon was being transported in a motor vehicle for any lawful purpose, was not on the actor's person, and, if the weapon was a firearm, was carried in compliance with the applicable requirements of division (C) of section 2923.16 of the Revised Code.

(emphasis added)

Thus, the affirmative defense that the firearm was transported in a motor vehicle in compliance with the requirements of R.C. 2923.16(C) is only applicable to a charge of carrying concealed weapons in violation of R.C. 2923.12(A)(1), which is a deadly weapon other than a handgun.<sup>6</sup> In the instant case, the Defendant-Appellant was convicted Carrying Concealed Weapons in violation of R.C.

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<sup>5</sup> Even the Dissenting Judge agreed that the affirmative defense of lawful transport under R.C. 2923.16(C) was not applicable in this case, as the Dissenting Judge concurred on the ruling on Assignment of Error Number One. See ¶24 of the lower court's opinion issued on March 13, 2006.

<sup>6</sup> There is a logical policy reason to treat handguns differently than rifles or shotguns because handguns are much more easily concealed. Moreover, individuals can obtain a license to carry a concealed handgun which would protect them from being convicted of carrying concealed weapon. See R.C. 2923.12(C)(2)(b).

2923.12(A)(2) because the gun in question was a handgun.<sup>7</sup>

R.C. 2923.12(E) sets forth an additional affirmative defense to Carry Concealed Weapons which is applicable to handguns, but which is also not applicable to the instant case. The statute provides:

It is an affirmative defense to a charge under division (A) of this section of carrying or having control of a handgun other than a dangerous ordnance that the actor was not otherwise prohibited by law from having the handgun and that the handgun was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home, \*\*\*\*

(emphasis added)

Thus, the affirmative defense set forth in R.C. 2923.12(E) also would not be applicable to this case since the weapon was in the Defendant-Appellant's vehicle rather than his home.

At trial, there was some ambiguity as to whether the affirmative defense issue was even being presented for the Trial Court to determine. Initially, the Prosecutor stated:

The question simply to be determined is whether or not the Defendant has an affirmative defense.

(Tr. 4).

Later, both the Defense and Prosecutor agreed two times that the sole issue was "whether or not that's ready at hand within the meaning of the Carrying Concealed Weapons statute" (Tr. 7, 11).

Nevertheless, Defense Counsel did argue at trial both that the firearm was not ready at hand and that

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<sup>7</sup> Prior to April 8, 2004, the carrying concealed weapon statute did not separately specify the (A)(1), (A)(2), and (A)(3) violations and the affirmative defense raised by the Defendant-Appellant would have applied to all firearms.

the affirmative defense existed.<sup>8</sup>

Because both Counsel focused on the “ready at hand” issue, little or nothing was put on the record to establish that the Defendant-Appellant was not prohibited by law from having the weapon or that he was carrying the weapon for a lawful purpose, both of which are also required elements of the affirmative defense set forth in R.C. 2923.12(D). It is, of course, a defendant’s burden to establish all of the elements of an affirmative defense.

**Ready at hand**

Defense Counsel argued that because the clip or magazine was not in the handgun and instead was beside the handgun in the gun case, that the firearm was not “ready at hand.” Both the Trial Court and Appellate Court correctly rejected this argument, as the Carrying Concealed Weapons statute applies to both loaded firearms and firearms which are unloaded but for which the ammunition is ready at hand. See R.C. 2923.12(G)(1).<sup>9</sup> Moreover, the definition of firearm includes “any firearm that is inoperable but can readily be rendered operable.” R.C. 2923.11(B). In the instant case, all that would need to be done to make the gun operable was to insert the magazine in the gun, which can be accomplished in a matter of seconds (Tr. 18-19).

Appellant relied on *State v. Beasley* (1983), 4 Ohio St.3d 24. However, in *Beasley*, the

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<sup>8</sup> See Defendant’s Post-Trial Brief filed June 16, 2005 and Defense Counsel’s argument at Tr. 14-15.

<sup>9</sup> If the weapon involved in an offense of Carrying Concealed Weapons “is a firearm that is either loaded or for which the offender has ammunition ready at hand,” the offense of Carrying Concealed Weapons is a felony of the fourth degree. If the weapon is not a firearm (or dangerous ordnance), or is unloaded and ammunition is not ready at hand, then the offense is a misdemeanor of the first degree. See R.C. 2923.12(G)(1).

firearm in question was disassembled into three different parts. The gun, the firearms cylinder, and a rod, which would hold the cylinder in position and serve as an axle around which the cylinder would revolve, were all in separate pieces. Thus, the gun would have needed to have been re-assembled. That is significantly different than the instant case in which the magazine had simply been taken out of the gun. Unlike the cylinder, the magazine is designed to be completely removed and must be removed in order to load the magazine with ammunition.<sup>10</sup>

There is also no question that the location of the firearm was “ready at hand,” since the gun case was at his feet (Tr. 7, 9). All the Defendant-Appellant needed to do was reach down to grab it. “Ready at hand” means so near as to be conveniently accessible and within immediate physical reach. See e.g. 4 O.J.I. Section 523.12(6); *Porello v. State* (1929), 121 Ohio St. 280. Firearms found under the car seat or in a bag on the floorboard have been found to be “ready at hand.” See e.g. *State v. Brewer* (March 14, 1991), 8<sup>th</sup> App. Dist. No. 58185; *State v. Higgins* (February 24, 1994), 10<sup>th</sup> App. Dist. No. 93AP-403.

### **Transporting handguns**

The Defendant-Appellant suggests that R.C. 2923.12 (Carrying Concealed Weapons statute) and R.C. 2923.16 (Improperly Handling Firearms in a Motor Vehicle) set forth a “Hobson’s Choice.”<sup>11</sup> Specifically, Appellant makes the following argument:

The transportation statute [2923.16(C)(1)] directs the firearm to be in a closed package, box, or case (i.e. concealed!) but the Carrying Concealed Weapons statute [2923.12] sets forth concealment as a

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<sup>10</sup> See ¶15 of the lower court’s opinion.

<sup>11</sup> See Appellant’s brief at p. 3.

primary element of the offense.

It is impossible to lawfully transport in a motor vehicle pursuant to 2923.16(C)(1) unless it is concealed.<sup>12</sup>

Appellant's argument is based on a false premise, that being that R.C. 2923.16(C) directs a person who is transporting a firearm in a motor vehicle to have the firearm "in a closed package, box, or case." Actually, this is only one of four ways that R.C. 2923.16(C) allows a firearm to be transported in a motor vehicle. R.C. 2923.16(C)(2, 3, or 4) provide the following additional options:

- (2) In a compartment that can be reached only by leaving the vehicle;
- (3) In plain sight and secured in a rack or holder made for that purpose;
- (4) In plain sight with the action open or the weapon stripped, or, if the firearm is of a type in which the action will not stay open or which cannot be easily be stripped, in plain sight.

In any of the circumstances set forth in R.C. 2923.16(C)(2, 3, or 4), the individual would not be guilty of Carrying Concealed Weapons in violation of R.C. 2923.12. If the weapon is transported in a compartment that can be reached only by leaving the vehicle, as suggested in R.C. 2923.16(C)(2), the firearm would not be "ready at hand." If the firearm were transported in plain sight in conformity with R.C. 2923.16(C)(3 or 4), the firearm would not be concealed.

If an individual desires to transport his handgun in a closed case, then he needs to either have a concealed carry license, or place the case in the trunk<sup>13</sup> of the vehicle, another compartment that can be

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<sup>12</sup> See Appellant's brief at p. 3.

<sup>13</sup> In the instant case, the Defendant-Appellant was driving a 1985 GMC Jimmy (Tr. 8). This vehicle probably did not have a trunk or other outside compartment, although this is not clearly established in the record. Nevertheless, even if the Defendant-Appellant desired to transport his handgun in a closed case, if he put the case in the back portion of the vehicle, behind the rear seat, it

reached only by leaving the vehicle, or some place where it is not “ready at hand.” In the instant case, the Defendant-Appellant transported his handgun in a closed case which was located at his feet.

There is a legitimate policy reason for the Legislature to prohibit concealed handguns from being transported within arm’s reach of an individual. Law enforcement officers who stop a vehicle may be placed in harm’s way because an individual is able to immediately grab a concealed handgun and shoot the officer.<sup>14</sup> Additionally, private citizens could be put in danger due to road rage incidents which are all too frequent in our society. While there is no perfect solution which will prevent all possible danger, the solution set forth in the statutes is not unreasonable and should be applied under the plain language of the statutes.

### CONCLUSION

The Appellee, State of Ohio, respectfully requests that this Court adopt the Appellee’s proposed proposition of law. The Appellee further requests that the judgment of the Third District Court of Appeals be affirmed and the Defendant-Appellant’s conviction be upheld, as the Trial Court did not abuse its discretion in finding the Defendant-Appellant guilty based on the stipulated facts

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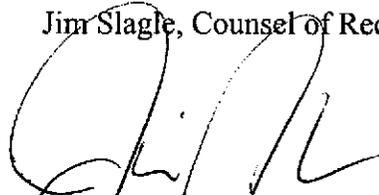
would not be “ready at hand” to the Defendant-Appellant who was the only occupant in the vehicle. When the officer asked the Defendant-Appellant why he had the gun case at his feet, he advised the officer that he “had just thrown it in there” (Tr. 10).

<sup>14</sup> R.C. 2923.126(A) requires that the holder of a concealed carry license, who is transporting a loaded handgun in his motor vehicle, must promptly inform any law enforcement officer who approaches the vehicle while stopped that the licensee was issued a license and currently possesses a loaded handgun. As part of the process to obtain a concealed carry license, an individual must complete at least 12 hours of training in the safe handling and use of firearms. R.C. 2923.125(G)(1).

contained in the record.

Respectfully submitted,

Jim Slagle, Counsel of Record



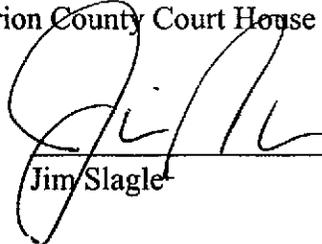
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Jim Slagle

COUNSEL FOR APPELLANT, STATE OF OHIO

Proof of Service

I certify that a copy of this Merit Brief of Appellee State of Ohio was delivered to Clifford Spohn, Attorney for Appellant, 144 E. Center Street, Marion, Ohio 43302 by placing a true copy of same in his mail depository box at the Marion County Court House on October 19, 2006.

A handwritten signature in black ink, appearing to read "Jim Slagle", is written over a horizontal line. The signature is stylized and cursive.

Jim Slagle

COUNSEL FOR APPELLANT, STATE OF OHIO

## APPENDIX

R.C. 2923.11

**§ 2923.11. Definitions.**

As used in sections 2923.11 to 2923.24 of the Revised Code:

(A) "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

(B) (1) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.

(2) When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm.

(C) "Handgun" means any of the following:

(1) Any firearm that has a short stock and is designed to be held and fired by the use of a single hand;

(2) Any combination of parts from which a firearm of a type described in division (C)(1) of this section can be assembled.

(D) "Semi-automatic firearm" means any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a single function of the trigger.

(E) "Automatic firearm" means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. "Automatic firearm" also means any semi-automatic firearm designed or specially adapted to fire more than thirty-one cartridges without reloading, other than a firearm chambering only .22 caliber short, long, or long-rifle cartridges.

(F) "Sawed-off firearm" means a shotgun with a barrel less than eighteen inches long, or a rifle with a barrel less than sixteen inches long, or a shotgun or rifle less than twenty-six inches long overall.

(G) "Zip-gun" means any of the following:

(1) Any firearm of crude and extemporized manufacture;

(2) Any device, including without limitation a starter's pistol, that is not designed as a firearm, but that is specially adapted for use as a firearm;

(3) Any industrial tool, signalling device, or safety device, that is not designed as a firearm, but that as designed is capable of use as such, when possessed, carried, or used as a firearm.

(H) "Explosive device" means any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. "Explosive device" includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode.

## R.C. 2923.11 (con't.)

(6) Any device that is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 921(a)(4), as amended, and regulations issued under that act.

(M) "Explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. "Explosive" includes all materials that have been classified as class A, class B, or class C explosives by the United States department of transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. "Explosive" does not include "fireworks," as defined in section 3743.01 of the Revised Code, or any explosive that is not subject to regulation under the rules of the fire marshal adopted pursuant to section 3737.82 of the Revised Code.

**HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 728 (Eff 8-22-78); 141 v H 51 (Eff 7-30-86); 142 v H 24 (Eff 7-31-87); 143 v S 96 (Eff 6-13-90); 146 v S 2. Eff 7-1-96; 150 v H 12, § 1, eff. 4-8-04.**

**Not analogous to former RC § 2923.11 (RS § 7035; 67 v 25; 78 v 131; GC § 12693; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.**

The effective date is set by section 6 of SB 2.

#### Effect of Amendments

H.B. 12, Acts 2004, effective April 8, 2004, rewrote (C).

#### 19xx Committee Report or Comment.

#### 1974 Committee Comment to H 511

This section defines a number of terms used in the weapons control measures in the criminal code. Some of the terms are also used in other contexts in the code, such as section 2903.11, felonious assault, which includes causing or attempting physical harm by means of a deadly weapon or dangerous ordnance.

"Deadly weapon" is defined as any device capable of causing death, and which is either designed or specially adapted for use as a weapon (such as a gun, knife, billy, or brass knuckles), or is carried, possessed, or used as a weapon (such as a rock or cane when used for offensive or defensive purposes).

The definitions of "firearm," "semi-automatic firearm," "automatic firearm," and "sawed-off firearm" are substantially the same as in former law.

The definition of "zip-gun" is new, and includes: (1) any firearm which is crudely devised; (2) any device not designed as a firearm but which is adapted for use as one, such as a starter's pistol drilled or modified to accept ball cartridges; and (3) any device not designed as a firearm but which can be used as a firearm as it is, such as a flare pistol.

"Explosive device" means any device adapted to cause injury to persons or property by explosion, and consisting of an explosive substance or agency plus a means to detonate it. Thus, dynamite with a primer is an explosive device but without a primer is not an explosive device. The definition specifically includes any bomb, explosive demolition device, blasting cap or detonator containing an explosive charge, and any pressure vessel which has been tampered with so as to explode.

## R.C. 2923.11 (con't.)

"Incendiary device" means any device adapted to cause injury to persons or property by means of fire, and consisting of an incendiary substance or agency and a means to ignite it.

"Dangerous ordnance" includes: automatic and sawed-off firearms; zip-guns; explosive and incendiary devices; high explosives; high explosive compositions; plastic explosives; blasting agents; and military weapons. Excepted from the definition are: firearms using a percussion cap or other obsolete ignition system; military pistols, rifles, or shotguns (other than automatic or sawed-off firearms) suitable for sporting purposes; antique-type cannon and their ammunition; powder, caps, and primers used for small arms or small arms ammunition; de-activated dangerous ordnance kept as a trophy, souvenir, or museum piece; and any device expressly excepted from the definition of "destructive device" used in the federal "Gun Control Act of 1968."

## R.C. 2923.126

**[§ 2923.12.6] § 2923.126. Expiration of license; carrying of license and identification; notice of change of residence; motor vehicle stops; prohibited places.**

(A) A license to carry a concealed handgun that is issued under section 2923.125 [2923.12.5] of the Revised Code shall expire four years after the date of issuance. A licensee who has been issued a license under that section shall be granted a grace period of thirty days after the licensee's license expires during which the licensee's license remains valid. Except as provided in divisions (B) and (C) of this section, a licensee who has been issued a license under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code may carry a concealed handgun anywhere in this state if the licensee also carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun. The licensee shall give notice of any change in the licensee's residence address to the sheriff who issued the license within forty-five days after that change.

If a licensee is the driver or an occupant of a motor vehicle that is stopped as the result of a traffic stop or a stop for another law enforcement purpose and if the licensee is transporting or has a loaded handgun in the motor vehicle at that time, the licensee shall promptly inform any law enforcement officer 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 currently possesses or has a loaded handgun; the licensee shall comply with lawful orders of a law enforcement officer given while the motor vehicle is stopped, shall remain in the motor vehicle while stopped, and shall keep the licensee's hands in plain sight while any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of division (E) of section 2923.16 of the Revised Code, while any law enforcement officer begins approaching the licensee while stopped and before the officer leaves. If a law enforcement officer otherwise approaches a person who has been stopped for a law enforcement purpose, if the person is a licensee, and if the licensee is carrying a concealed handgun at the time the officer approaches, the licensee shall promptly inform the officer that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently is carrying a concealed handgun.

(B) A valid license issued under section 2923.125 [2923.12.5] or 2923.1213 [2923.12.13] of the Revised Code does not authorize the licensee to carry a concealed handgun in any manner prohibited under division (B) of section 2923.12 of the Revised Code or in any manner prohibited under section 2923.16 of the Revised Code. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places:

(1) A police station, sheriff's office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation, 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 division (A) of section 5119.02 of the Revised Code or division (A)(1) of section 5123.03 of the Revised Code;

(2) A school safety zone, in violation of section 2923.122 [2923.12.2] of the Revised Code;

(3) A courthouse or another building or structure in which a courtroom is located, in violation of

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section 2923.123 [2923.12.3] of the Revised Code;

(4) Any room or open air arena in which liquor is being dispensed in premises for which a D permit has been issued under Chapter 4303, of the Revised Code, in violation of section 2923.121 [2923.12.1] of the Revised Code;

(5) 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;

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

(7) 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 division 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;

(8) 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;

(9) Any building that is owned by this state or any political subdivision of this state, and all portions of any building that is not owned by any governmental entity listed in this division but that is leased by such a governmental entity listed in this division;

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

(C) (1) Nothing in this section shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer. Nothing in this section shall require a private employer of that nature to adopt a rule, policy, or practice concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer.

(2) (a) A private employer shall be immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose. A private employer is immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to the private employer's decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the premises or property of the private employer. As used in this division, "private employer" includes a private college, university, or other institution of higher education.

(b) A political subdivision shall be immune from liability in a civil action, to the extent and in the manner provided in Chapter 2744, of the Revised Code, for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto any premises or property owned, leased, or otherwise under the control of the political subdivision. As used in this division, "political subdivision" has the same meaning as in section 2744.01 of the Revised Code.

(3) The owner or person in control of private land or premises, and a private person or entity leasing

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land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. A person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass in violation of division (A)(4) of section 2911.21 of the Revised Code and is guilty of a misdemeanor of the fourth degree.

(D) A person who holds a license to carry a concealed handgun that was issued pursuant to the law of another state that is recognized by the attorney general pursuant to a reciprocity agreement entered into pursuant to section 109.69 of the Revised Code has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code and is subject to the same restrictions that apply to a person who carries a license issued under that section.

A peace officer has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under section 2923.125 [2923.12.5] of the Revised Code. For purposes of reciprocity with other states, a peace officer shall be considered to be a licensee in this state.

**HISTORY: 150 v H 12, § 1, eff. 4-8-04.**

See the provisions of § 10 of H.B. 12 (150 v - ) following RC § 2923.12.