



COLUMBUS | CLEVELAND
CINCINNATI | DAYTON
MARIETTA

BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
MAIN: 614.227.2300
FAX: 614.227.2390

www.bricker.com
info@bricker.com

Kurtis A. Tunnell
614.227.8837
ktunnell@bricker.com

Christopher N. Slagle
614.227.
cslagle@bricker.com

Amanda M. Grandjean
614.227.6062
agrandjean@bricker.com

MEMORANDUM

TO: Ohio Manufacturers' Association
FROM: Bricker & Eckler LLP
DATE: June 21, 2017
RE: Senate Omnibus Amendment- Concealed Firearm Civil Cause of Action

I. Senate Substitute H.B. 49 Omnibus Amendment Update.

Yesterday, the Senate unveiled the omnibus amendment to the Senate's substitute version of H.B. 49 (FY18-19 Biennium Budget). The omnibus amendment contains amendment SC5837, which proposes to add a civil cause of action to R.C. 2923.1210. The proposed amendment is attached to this report.

Pursuant to this proposed new civil cause of action, a business entity, property owner, or public or private employer may be liable if such specified entity, person or employer, establishes, maintains, or enforces a policy or rule that prohibits, or effectively prohibits, a person with a valid concealed handgun license from transporting or storing a firearm or ammunition when the firearm and all ammunition stays inside the person's privately owned vehicle while the person is inside the vehicle, or each firearm and all ammunition is locked in the trunk, glove box, or other enclosed compartment or container within, or on, the person's privately owned vehicle and the vehicle is in a location where it is otherwise permitted to be.

If such business entity, property owner, or public or private employer is found liable in this civil cause of action, a court may award compensatory damages and any equitable relief, including injunctive relief that a court may find appropriate. Additionally, if the plaintiff is successful in the cause of action, the court may grant costs and reasonable attorney's fees to the plaintiff after a hearing is held to determine the amount of the fees.

Overall, the amendment language in the state budget will provide additional litigation opportunities for alleged aggrieved employees against employers in Ohio. While we cannot calculate specifically the additional costs, we know that new causes of action provide incentives for the plaintiff's bar to bring suits against employers in Ohio. Whether the case is won or lost, employers and, specifically, OMA member companies who may be sued, will be forced to spend additional resources defending such lawsuits and to potentially face significant damage calculations to the extent the cases are won and/or settled.

II. Background on Current Concealed Handgun and Firearm Law.

During the 131st General Assembly “lame duck” legislative session in December 2016, S.B. 199 emerged as an important piece of legislation because of its provisions relaxing Controlled Carry Weapons (“CCW”) restrictions.

Of great interest to Ohio’s business community, the bill originally contained language that extended protected class status to CCW permit holders under Ohio’s employment anti-discrimination laws. The business community opposed this language extending protected class status. The bill also allowed concealed firearms in all state and local government buildings lacking security checkpoints, such as libraries and boards of elections. In the final remaining hours of the 2016 legislative session, the House of Representatives restored the abilities for political subdivisions to opt-in to allow concealed carry weapons inside government buildings through statute or ordinance.

Despite significant opposition from the business community, the General Assembly preserved language in S.B. 199 that blocks businesses from banning guns in locked vehicles in private, employer-owned parking lots. The OMA and every other major business group opposed this provision along with the aforementioned creation of a CCW protected class. At the end of the day, the parking lot language remained unchanged, but the General Assembly did eliminate the CCW protected class.

The Ohio Manufacturers’ Association asked the Governor for a veto of this legislation. However, Governor Kasich signed S.B. 199 into law on December 19, 2016.

Now that S.B. 199 is effective, current Ohio law prohibits any business entity, property owner, or public or private employer from establishing, maintaining, or enforcing a policy or rule that prohibits or has the effect of prohibiting a valid concealed handgun licensee from transporting or storing a firearm or ammunition inside the person's privately owned motor vehicle while the person is present, or in the trunk, glove box, or other enclosed compartment or container in or on the motor vehicle, so long as the vehicle is in a location where it is otherwise permitted to be. R.C. 2923.1210(A).

The law was undated, per S.B. 199, to also protect any business entity, property owner, or employer from civil liability for damages, injuries, or death resulting from another person's actions involving a firearm or ammunition transported or stored in a motor vehicle, including from theft of a firearm from an employee's or invitee's automobile, unless the business entity, property owner, or public or private employer intentionally solicited or procured the other person's injurious actions.

III. Effect of Senate Substitute H.B. 49 Omnibus Amendment Concealed Handgun Gun Cause of Action on Current Law and Employers.

S.B. 199 created R.C. 2923.1210, which, as mentioned above, made it illegal for any business entity, property owner, or public or private employer to prohibit a valid concealed handgun

licensee from storing a firearm or ammunition, under certain specified circumstances, in such person's privately owned vehicle in any location where the vehicle is permitted to be such as a parking lot. Thus, if an employee, for example, is a valid concealed handgun licensee, he or she may store a firearm and ammunition in an enclosed compartment or container, within his or her vehicle anywhere that a vehicle is permitted to be on the employer's property.

Although, it is currently illegal for an employer to prohibit any person with a valid concealed handgun license from properly storing such firearm and ammunition in his or her vehicle on the employer's property, the omnibus amendment's proposed civil cause of action creates an easier path for such employees to sue his/her employer. Additionally, as stated above, the employer, if found liable, could be on the hook for compensatory damages or equitable or injunctive relief, which is subject to the court's discretion. Regardless of the result of the suit, employers will face the additional costs of legal expenses defending new litigation actions.

Thus, instead of simply maintaining the prohibition in the law as it currently is, the omnibus amendment paves a clear route to the courtroom for plaintiffs who wish to sue a business entity, property owner, or public or private employer for violating R.C. 2923.1210. The proposed omnibus amendment concealed handgun cause of action subjects employers to additional legal liability and costs.

The underlying language within SB 199 from 2016 was bad for Ohio employers, and, specifically the OMA. The creation of a new private right of action for allegedly aggrieved employees is potentially worse.