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MEMORANDUM

TO: Ohio Manufacturers' Association
FROM: Bricker & Eckler LLP
DATE: December 8, 2016
RE: Senate Bill 199

On December 6, 2016, the House added language to Senate Bill 199 that proposes to amend Ohio's employment discrimination laws, R.C. Chapter 4112, to create a new protected class – concealed carry licensees or their equivalent.

Under S.B. 199, employers will be prohibited from taking adverse employment action against employees or applicants who are concealed carry licensees because the licensee possesses a firearm within the person's private real property or in a vehicle not controlled or owned by the employer, even if the vehicle is located on the employer's property.

Specifically, S.B. 199 makes it an unlawful discriminatory practice:

(K) For any employer, to discharge without just cause, to refuse to hire, or otherwise to discriminate against a person who holds a valid concealed handgun license with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because the licensee possessed a firearm within the person's private real property or within a motor vehicle not owned or controlled by the employer, regardless of whether the motor vehicle is located on the employer's real property and, if the motor vehicle is located on the employer's real property, regardless of the location of the motor vehicle on the employer's real property.

Proposed R.C. 4112.02(K).

These new amendments to S.B. 199 go far beyond the bill's original intent, which was to give active duty military personnel the same rights and protections as concealed carry owners without having to go through the concealed carry application and training process.

In creating this new protected class, S.B. 199 starts down a slippery slope by greatly expanding the characteristics that have been historically protected by discrimination laws. S.B. 199 equates the right to possess a concealed carry

firearm in a motor vehicle on the employer's premises with protected characteristics such as race, age, sex, religion, and disability. This new protected class would be afforded the same rights and remedies as every other protected class in Ohio, including the ability to file an administrative charge of discrimination with the Ohio Civil Rights Commission and institute a lawsuit in court.

Presently, many private employers in Ohio ban their employees from possessing weapons anywhere on the employer's premises, including weapons kept in motor vehicles. S.B. 199 takes away an employer's right to regulate the presence of weapons on their private property, which may hamper their ability and obligation to provide a safe workplace for their employees. While the bill does allow employers to ban licensees from possessing a firearm in an employer-owned or controlled vehicle, licensees will be permitted to possess firearms in any other vehicle located on the employer's premises. Additionally, as written, the motor vehicle can be located anywhere on the employer's premises – not just in the parking lot. This may be concerning for employers who have large facilities or buildings into which vehicles can be driven.

Further complicating matters, the bill is internally inconsistent regarding what an employer can lawfully ban. While amended R.C. 4112.02(K) prohibits employers from taking adverse employment action against concealed carry licensees who possess a firearm in a motor vehicle located on the employer's premises, R.C. 2923.126(C)(1), which has not been amended, still allows private employers to prohibit "...the presence of firearms on the employer's premises or property, including motor vehicles owned by the private employer."