

# ABOUT THE NEW GUN LAW

## *What landlords and business owners need to know*

By Jeffrey M. Poth

By the recent passage of House Bill 12 allowed Ohio citizens, for the first time ever, to apply for permits to carry concealed firearms. Landlords and business owners have many questions regarding the application of this new law and how it affects them. Three of the most common questions that clients raise with their attorneys are:

### **As a landlord, can I do anything to prevent people from carrying guns onto my property?**

**Yes.** In addition to allowing citizens to carry concealed weapons, House Bill 12 gave landlords/property owners the statutory right to prevent individuals from carrying firearms onto the premises.

If a landlord/property owner of an apartment building desires to keep guns out of the property, he or she must post a sign at the main entrance and/or alternate entrances of the building where it is easy for all to see upon entering the premises. The posting of the sign then gives the property owner the right to have that person arrested for trespassing because he or she brought a gun onto the property in violation of the posting. In order to comply with the statute, the sign should read "No firearms or concealed firearms are permitted on the premises. Violators will be prosecuted." The sign should then be conspicuously displayed for individuals entering the property.

The bigger question, particularly for landlords, is whether they do, in fact, want to post a sign to keep guns off their property. While House Bill 12 gives them the legal right to prohibit possession of firearms on the property, it does not place an obligation on them to do so. Hence, this law should be viewed as a tool which landlords/property owners can use if they so desire. As a practical matter, a landlord may lose tenants who wish to carry firearms through the common areas of the building or may lose tenants who want weapons banned from the building. For security purposes it raises the question of whether a landlord should deprive the residents of the right to defend themselves if a building is in a dangerous or high-risk neighborhood, or whether it would be reasonable to allow responsible tenants to have firearms to protect themselves and others. The process in deciding whether to post such a sign should take into account not only whether a landlord feels that a dangerous person will bring firearms onto the premises, but also whether the residents have a need to protect themselves.

### **As an employer, am I required to do anything under the new law?**

**No.** This legislation provided a gift to employers in the form of immunity from suit. A private employer is not liable for claims in a civil action arising from injury to person or property, or death, from a licensee's use of a

gun on the employer's premises. This is true whether or not guns are permitted on the premises. As amended by Ohio House Bill 12, R.C. § 2923.126(C)(2)(a) states:

[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.

This immunity makes the decision to post a sign to make the workplace weapons-free a non-issue — at least from a liability standpoint.

### **If I have a permit, can I shoot someone in self defense?**

**Yes.** However, the use of self defense does not require a permit. Keep in mind that while a weapon can be used in self defense, it is important to note there is a fine line between self defense and murder. A person, who uses a weapon and kills someone in "self defense" may be charged with murder and be forced to stand trial and prove his defense. To establish self defense, one must show that: (1) he was not at fault for creating the situation which gave rise to the use of force; (2) he had a bona fide belief that he was in danger of death or great bodily harm, and the only recourse was to use force; and (3) the duty to retreat has not been violated (no such duty exists in one's home). Self defense is an affirmative defense which means that the burden of proof is on the defendant to prove that he acted in self defense. Additionally, theft of property, even in one's own home, is insufficient to justify the use of deadly force or to sustain a claim of self defense. Hence, it is quite clear that the use of a weapon in self defense should always be a last resort and only when there is a present danger of death or great bodily harm to oneself or others.



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