



H.R. 218, the “Law Enforcement Officers’ Safety Act” and S. 1132, the “Law Enforcement Officers’ Safety Act Improvements Act”

On 22 July 2004, President George W. Bush signed H.R. 218, the “Law Enforcement Officers’ Safety Act,” into law. The Act, now Public Law 108-277, went into effect immediately.

The bill exempts qualified active and retired law enforcement officers from local and State prohibitions on the carrying of concealed firearms.

On 12 October 2010, President Barack H. Obama signed S. 1132, the “Law Enforcement Officers’ Safety Act,” into law. The Act, now Public Law 110-272, went into effect immediately.

The bill to improve the ability of retired officers to comply with the documents required by existing Federal law when carrying a firearm under 18 USC 926C and makes other modifications to existing law.

Frequently Asked Questions (FAQs) about H.R. 218/S. 1132:

Who is eligible to carry concealed firearms under this legislation?

Qualified law enforcement officers employed by or retired from a local, State or Federal law enforcement agency.

A “qualified active law enforcement officer” is defined as an employee of a government agency who:

- is authorized by law to engage in or supervise the prevention, detection, investigation, prosecution or the incarceration of any person for any violation of law;
- has statutory powers of arrest;
- is authorized by the agency to carry a firearm;
- is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
- meets the standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance, and

- is not prohibited by Federal law from possessing a firearm.

The recent amendment to the law expands the definition of “qualified active law enforcement officer” to law enforcement officers employed by the Amtrak Police Department and the Federal Reserve Police Department, even though these are not employees of a governmental agency.

In addition, any “law enforcement or police officer of the executive branch of the Federal Government” is also included in the expanded definition, meaning that civilian law enforcement officers employed by the U.S. Department of Defense are able to carry under 18 USC 926B even if their prior status was in question over the issue of “statutory” arrest authority.

Qualified active law enforcement officers must carry the photographic identification issued by the agency for which they are employed.

If you are an active duty law enforcement officer with any local, State or Federal governmental agency and you meet all of the requirements above, you may carry a concealed firearm under the provisions set out in the law.

A “qualified retired law enforcement officer” is defined as an individual who:

- has separated from service in good standing with a government agency as a law enforcement officer for an aggregate of ten (10) years or more or separated from such an agency due to a service-connected disability after completing any applicable probationary period of such service;
- was authorized by law to engage in or supervise the prevention, detection, investigation, prosecution or the incarceration of any person for any violation of law;
- had statutory powers of arrest;
- is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- is not prohibited by Federal law from possessing a firearm.

The recent amendment to the law expands the definition of “qualified retired law enforcement officer” to law enforcement officers employed by the Amtrak Police Department and the Federal Reserve Police Department, even though these are not employees of a governmental agency.

In addition, any “law enforcement or police officer of the executive branch of the Federal Government” is also included in the expanded definition, meaning that civilian law enforcement officers separated from service by the U.S. Department of Defense are able to carry under 18 USC 926B even if their prior status was in question over the issue of “statutory” arrest authority.

Qualified retired law enforcement officers must carry the photographic identification issued by the agency for which they were employed and have now separated.

An officer separating from service with his agency who has been officially found by a qualified medical professional employed by the agency to be unqualified for continued service for reasons related to mental health and, for that reason are not issued the photographic identification described above and in the statute, are not qualified retired law enforcement officers as described in 18 USC 926C. Similarly, an officer who has entered into an agreement with the agency from

which he is separating which acknowledges that the officer is not qualified under 18 USC 926C for reasons related to mental health and for these reasons will not receive or accept the photographic identification described above are not qualified retired law enforcement officers as described in 18 USC 926C.

In addition to carrying the photographic identification issued by the agency for which they were employed or were separated, the qualified retired law enforcement officer must also carry documentation which certifies that they have met, within the most recent twelve month period, the active duty law enforcement standards for qualification for a firearm of the same type as the one they intend to carry.

The standard the qualified retired law enforcement officer must meet is that of his former agency, that of the State in which he resides, or in the absence of State standards—or the recognition thereof—the standards of any law enforcement agency in the State in which the qualified retired law enforcement officer and the certified firearms instructor resides.

This document which certifies that the qualified retired law enforcement officer has met the standards described above must be issued by the retired officer's former agency, by the State in which he lives, or by a certified firearms instructor within the State in which the qualified retired law enforcement officer resides.

Do I need a concealed carry permit from my State or any other documentation to carry lawfully?

No. Qualified active and retired law enforcement officers do not need any additional concealed carry permits or licenses. Federal law *exempts* them from local and State prohibitions on the carriage of concealed firearms.

A qualified law enforcement officer needs to carry his photographic identification issued to him by his agency.

A retired law enforcement officer needs to carry his photographic identification issued to him by the agency from which he has separated *and* a document that certifies that he has met, within the most recent twelve month period, the active duty law enforcement standards for qualification for a firearm of the same type as the one they intend to carry. See above for more information on the standards a qualified retired officer must meet and what entities can issue this certification document.

Can I carry any type of firearm or ammunition under this law?

No. The exemption provided under this Federal law applies to the carriage of concealed firearms only. The definition of “firearm” in this statute specifically excludes machine guns, silencers, explosives or other destructive devices as these terms are defined in Federal law.

However, recent amendments to the Federal law do extend the exemption to allow the carriage of ammunition “not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act.” This means that qualified active and retired law enforcement officers may carry ammunition in States which may have prohibited the possession of certain

ammunition by persons not actively serving in law enforcement within that State.

Is the exemption provided by the law total—can I now carry anywhere at any time?

No. The new law exempts all qualified active and retired law enforcement officers from ***State and local laws*** with respect to the carrying of concealed firearms. These officers are not exempt from Federal law or regulation, which governs the carriage of firearms onto aircraft or other “common carriers,” Federal buildings, Federal property, or national parks.

In addition, State (not local) laws which prohibit the carriage of firearms onto State or local government property and State (not local) laws which allow private entities to prohibit firearms on their private property would still apply to qualified active and retired law enforcement officers.

The law says I am exempt from the laws of “any State or any political subdivision thereof.” Does this mean the law is not effective in Washington, D.C., Puerto Rico, or other U.S. territories?

No. The law applies in these places as well. The term “State” is defined in Chapter 44 of Title 18, which is the portion of the U.S. Code that the Law Enforcement Officers’ Safety Act amends, and the one that applies when interpreting this Act.

Section 921, Chapter 44 of Title 18 reads: “The term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).”

My agency has a policy that does not allow me to carry my firearm while I am off-duty. Does this mean that this legislation will not benefit me?

If you are a qualified active law enforcement officer, you are legally able to carry a firearm under 18 USC 926B. There may be agencies which enforce or adopt policies, rules, regulations, or employment conditions which discourage or punish officers which choose to carry while off-duty, but such actions do not mean that the officer cannot carry lawfully under the provisions of this statute.

Your agency, however, can prohibit you from carrying your agency-issued weapon, which is the property of the governmental entity.

I work for a civilian law enforcement agency with the U.S. Department of Defense. My superiors, which include active military personnel, have told me that I do not meet the definitions of 18 USC 926B because I do not have statutory arrest authority, despite the fact that my agency can and does make arrests. Am I eligible to carry or not?

Yes, you are. The FOP has maintained that any law enforcement officer classified by the Office

of Personnel Management (OPM) as GS-0083, the “Police Series,” meets the definition of qualified active or retired law enforcement officer. The OPM publication, *Grade Evaluation Guide for Police and Security Guard Positions in Series GS-0083/0085*, states the following:

This series includes positions the primary duties of which are the performance or supervision of law enforcement work in the preservation of the peace; the prevention, detection, and investigation of crimes; the arrest or apprehension of violators; and the provision of assistance to citizens in emergency situations, including the protection of civil rights. The purpose of police work is to assure compliance with Federal, State, county, and municipal laws and ordinances, and agency rules and regulations pertaining to law enforcement work.

In further describing the nature of “police work,” the aforementioned publication states the following:

The primary mission of police officers in the Federal service is to maintain law and order. In carrying out this mission, police officers protect life, property, and the civil rights of individuals. They prevent, detect, and investigate violations of laws, rules, and regulations involving accidents, crimes, and misconduct involving misdemeanors and felonies. They arrest violators, assist in the prosecution of criminals, and serve as a source of assistance to persons in emergency situations.

Police services are provided in Federal residential areas, parks, reservations, roads and highways, commercial and industrial areas, military installations, Federally owned and leased office buildings, and similar facilities under Federal control. Within their jurisdictions, police officers enforce a wide variety of Federal, State, county, and municipal laws and ordinances, and agency rules and regulations relating to law enforcement. They must be cognizant of the rights of suspects, the laws of search and seizure, constraints on the use of force (including deadly force), and the civil rights of individuals.

Police officers are commissioned, deputized, appointed, or otherwise designated as agency and/or local law enforcement officers by statute, delegation, or deputization by local governments, or other official act. Arrest and apprehension authority includes the power to formally detain and incarcerate individuals pending the completion of formal charges (booking); requesting and serving warrants for search, seizure, and arrest; testifying at hearings to establish and collect collateral (bond); and/or participating in trials to determine innocence or guilt.

Police officers carry firearms or other weapons authorized for their specific jurisdictions. They wear uniforms and badges, use military style ranks (private, sergeant, lieutenant, etc.), and are commonly required to refamiliarize themselves with authorized weapons periodically and demonstrate skill in their use.

The FOP is aware that certain Federal law enforcement agencies employed by Departments within the U.S. Department of Defense (DoD) have informed the GS-0083 Federal law enforcement officers which work for these agencies that they do not meet the definition of “qualified active law enforcement officer” and “qualified retired law enforcement officer” because they do not have statutory powers of

arrest. The FOP maintains that these officers do have this authority. Regardless of this disagreement, it is certain that these officers can and do take suspected offenders into custody, book them, investigate the suspected offenses, and participate in court proceedings seeking to convict those whom they took into custody for the suspected offense. It is also certain that it was the intent of Congress in passing the Law Enforcement Officers' Act of 2003 that Federal law enforcement officers designated as GS-0083 employees (or any subsequent successor to that series) meet the definition of qualified active or retired law enforcement officer in 18 USC 926B and 18 USC 926C.

To this end, the original statute was recently amended (by S. 1132) to clarify that any Federal law enforcement officer classified as a GS-0083 (or any successor to that series) who is employed by the Executive Branch also be deemed to meet the definitions in 18 USC 926B and 18 USC 926C. On this point, the law reads:

...a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.

This makes the question of whether or not a Federal law enforcement officer employed by the U.S. Department of Defense has statutory arrest powers moot for the purposes of LEOSA, as such officers are now **by definition** qualified active or retired law enforcement officers.

This language was adopted by Congress specifically to address this issue, and their intent on this point is made very clear in Section III of the Judiciary Committee's report, 111-233 on S. 1132:

Section 2(a)(2) makes explicit that active law enforcement officers employed by the Amtrak Police Department, the Federal Reserve, or who serve as law enforcement officers 'of the executive branch of the Federal Government' are eligible for the law's benefits.

Finally, the President acknowledged this in his statement which accompanied the announcement that he had signed the bill into law:

[S. 1132] ...specifies that current and former law enforcement and police officers of the executive branch of the Federal Government and current and former law enforcement officers of the Amtrak Police Department and the Federal Reserve may generally be exempted from State laws prohibiting the carrying of concealed weapons.

I was injured in the line of duty and was separated from service or forced to retire as a result of the injury. As a result, I do not have ten (10) years aggregated experience as a law enforcement officer. Am I excluded from carrying under the provisions of this new law?

No. Officers who are injured on the job and retired from active service as a result of that injury are included in the bill, as per Section 926C(b)(3)(B). These retired officers are eligible to carry under the law, provided that they have completed their probationary term of service.

Note that these officers must still qualify with the weapon that they intend to carry every twelve months and are not exempt from the documentation requirements described above.

I am a fully-sworn law enforcement officer with statutory law enforcement authority but I work for a railroad, a private university, or other non-governmental employer. I attended the same police academy, received the same training and meet the same qualifications as my law enforcement colleagues in my State. Am I able to carry under the statute as amended?

Unless you are an employee of the Amtrak or Federal Reserve Police Departments, which are entities controlled by the Federal government, but are not technically government entities, you must be an employee of a local, State or Federal governmental agency to carry a firearm under the statute as amended.

Does this bill allow me to carry a firearm on an aircraft, train or cruise ship?

No. This legislation exempts qualified active and retired law enforcement officers from State and local laws regarding the carrying of concealed firearms. The carriage of firearms on aircraft and other “common carriers” is regulated by other Federal statutes and carrier policy.