



## **H.R. 218, the “Law Enforcement Officers’ Safety 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.

### **Frequently Asked Questions (FAQs) about H.R. 218:**

#### ***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;
- 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.

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 retired in good standing from service with a government agency as a law enforcement officer for an aggregate of fifteen (15) years or more for reasons other than mental instability, or retired 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;
- has a nonforfeitable right to benefits under the retirement plan of the agency for which he was employed;
- meets, at his own expense, the same standards for qualification with a firearm as an active officer within the State in which he resides;
- 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.

Qualified retired law enforcement officers must carry the photographic identification issued by the agency for which they were employed *and* 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. This document must be issued by the retired officer’s former agency *or* from the State in which he lives.

The definition of “firearm” specifically excludes machine guns, silencers, explosives or other destructive devices as these terms are defined in Federal law.

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

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, Federal buildings, Federal property, and 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 will legally be able to carry a firearm under the provisions of H.R. 218. 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 under the provisions of the bill.

***I am a retired officer—how do I qualify to carry under the provisions of this bill?***

The legislation requires retired law enforcement officers to meet the active duty standards for qualification with a firearm in the State where they reside or with their former agency. Retired officers must qualify at their own expense and, once they do, will be able to carry the firearm with which they have been qualified under the provisions of this Act.

While each State or agency may adopt different procedures, the F.O.P. envisions that retired officers will be able to qualify at the very same facilities used by active duty officers.

The State or agency will issue retired officers who have qualified with their firearm a document certifying that the officer has met the State or agency’s requirements. Retired officers must carry this documentation in addition to their photographic identification.

***My former agency and/or my State is not familiar with the new law and they have no procedure in place to qualify me and issue me the required document stating that I have met the active duty law enforcement standards for qualification with the firearm I intend to carry. What should I do?***

The law has only been in place for a very short time, and many States and/or agencies may not have fully acquainted themselves with its effects, nor considered how they can or will qualify retired officers. This will take additional time, and we urge retired officers not to be frustrated with the pace at which these procedures are implemented.

We recommend that retired members first check with their former agencies, if they live close

enough to them to make it practicable, to see what options might be available. Next, we recommend that retired officers contact the State Attorney General, the State Police, or whatever State agency has the authority over law enforcement officer standards and training to learn the latest information on how the States are going to qualify retired officers.

In early August, the National F.O.P. sent a letter to U.S. Attorney General John D. Ashcroft requesting that the Department of Justice formulate regulations and guidelines for the States to implement the new law. The National Legislative Office will be working with officials at the Department on developing these regulations.

***In the meantime, we strongly urge State and local lodges to work with their respective States and law enforcement agencies to begin implementing procedures by which they can qualify retired law enforcement officers as described in the Law Enforcement Officers' Safety Act.***

***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 fifteen (15) 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 AMTRAK, 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 provisions of H.R. 218?***

No. You must be an employee of a local, State or Federal governmental agency to carry a firearm under the provisions of this legislation.

With that said, the F.O.P. has been aware of regulatory precedent in which some non-governmental agencies received a waiver or special recognition declaring them to be a governmental agency for the purposes of certain sections of Title 18, Chapter 44 of the U.S. Code. The F.O.P. is investigating these precedents, but would emphasize that, at this time, law enforcement officers employed by a non-governmental agency are not eligible to carry under the provisions of the Law Enforcement Officers' Safety Act.

***Does this bill allow me to carry a firearm on an airplane?***

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 is regulated by other Federal statutes and airline policy.