

Understanding HR-218

Limitations on protection against prosecution for possession of a handgun in a state where a RETIRED law enforcement officer is *not* licensed

There are many requirements in order for the Law Enforcement Officers' Safety Act (LEOSA) (a.k.a. HR-218) (at 18 USC §926C) to provide a retiree with protection against prosecution for possession of a handgun in any state where a retiree is not licensed. Even when a retiree has the protection of HR-218, he or she may nonetheless be subject to a field investigation or station-house investigation to verify compliance with each requirement of HR-218.

The following is a summary of requirements for HR-218 to provide a retiree with protection against prosecution:

- Required firearms qualification course within the past 12 months (18 USC §926C(c)(4))
- Not under the influence of alcohol or other substance (18 USC §926C(c)(6))
- Carrying the required identification, which is typically (1) retiree's identification card without firearms restriction and (2) certification proving the required training within the past 12 months (18 USC §926C(a) and (d))
- Matters relating to prior service, such as: separation in good standing, arrest powers, an aggregate of 10 or more years of service, and mental health findings (18 USC §926C(c)(1, 2, 3, and 5)), and
- Not prohibited by Federal law from receiving a firearm (18 USC §926C(c)(7)), which includes, among other things, orders of protection and prior convictions for any felony or domestic violence misdemeanor as listed in 18 USC §922(g).

Additionally, HR-218 does not supersede the laws of any state that restrict firearm possession in certain places (18 USC §926C(b)), or other state laws that are not in direct conflict with LEOSA (as stated in 18 USC §927).

Please keep in mind that if your training was a day past the 12 month period, or if you've had a couple of drinks, or if you don't meet any of the other requirements, you will not have the protection of HR-218. Also, many of the requirements necessitate that on-duty law enforcement investigate to determine whether or not you have the protection of HR-218.

Conferral with private counsel and a careful review of the precise requirements of HR-218 as it relates to your specific background and circumstance is recommended if you plan to carry a firearm in any state where you are not licensed.

A full text of the laws cited herein are printed on a second sheet or the rear of this sheet

18 U.S.C. § 926C : US Code - Section 926C: Carrying of concealed firearms by qualified retired law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that - (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified retired law enforcement officer" means an individual who - (1) separated from service in good standing from service with a public agency as a law enforcement officer; (2) before such separation, was 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 had statutory powers of arrest; (3)(A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or (B) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency; (4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State; (5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or (B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1); (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and (7) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is - (1) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or (2)(A) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer; and (B) a certification issued by the State in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met - (I) the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or (II) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

(e) As used in this section - (1) the term "firearm" - (A) except as provided in this paragraph, has the same meaning as in section 921 of this title; (B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and (C) does not include - (i) any machinegun (as defined in section 5845 of the National Firearms Act); (ii) any firearm silencer (as defined in section 921 of this title); and (iii) any destructive device (as defined in section 921 of this title); and (2) the term "service with a public agency as a law enforcement officer" includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.

18 U.S.C. § 927 : US Code - Section 927: Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

18 U.S.C. § 922 : US Code - Section 922: Unlawful acts. 18 U.S.C. § 922(g) states:

It shall be unlawful for any person - (1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; (2) who is a fugitive from justice; (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act(21 U.S.C. § 802));(4) who has been adjudicated as a mental defective or who has been committed to a mental institution; (5) who, being an alien-(A) is illegally and unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(26)));(6) who has been discharged from the Armed Forces under dishonorable conditions; (7) who, having been a citizen of the United States, has renounced his citizenship; (8) who is subject to a court order that-(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the intimate partner or child; and (C) by its terms explicitly prohibits the use, or attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or (9) who has been convicted in any court of a misdemeanor crime of domestic violence

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.