

**THE FORMER NEW JERSEY  
STATE TROOPER ASSN., INC.**



**Understanding**

**H.R. 218**

**Rights & Responsibilities**

# Congressional Intent

- Federal legislation is enacted for nationwide application.
- Nationwide application requires consistency, so unless Federal laws reference the incorporation of state law, then state laws are not relevant.

# Law Enforcement Officers Safety Act (LEOSA)

## Congressional Intent

- LEOSA 2004 – Intent Expressed in Statement:
  1. Parity between local LEOs & Federal LEOs who carry nationwide; and
  2. Create additional Homeland Security force of all current and retired qualified LEOs; and
  3. Enable current and retired qualified LEOs to protect themselves, their families, and others from criminals and terrorists.

# Congressional Intent

- LEOSA does not:
  1. Confer any law enforcement authority; or
  2. Require qualified current or separated LEOs to carry or to take any law enforcement action.

# Congressional Intent

- LEOSA 2010 – Intent Expressed in Statement:
- Making it easier for retired LEOs to get qualified for nationwide carry and minimize the burden on state and Federal agencies to administer qualifications for retired LEOs.

# LEOSA Coverage Checklist

1. Is the person either;
  - ✓ employed as a LEO for an agency of the Federal Executive Branch of Government, Federal Reserve or Amtrak Police Department; or
  - by a federal, state, county, or local governmental agency.

# LEOSA Coverage Checklist

- If not, did the person separate in good standing with a law enforcement agency as a LEO after an aggregate of ten or more years as a LEO?
- If no, person is not covered.

# LEOSA Coverage Checklist

2. If active, does the individual have in their possession a valid photographic identification [card, letter, certificate, commission, etc.] issued by their government employer that identifies them as a LEO of the agency?



# LEOSA Coverage Checklist

- If not, is the person a former or retired LEO and have in their possession a valid photograph identification [card, letter, certificate, commission, etc.] issued by the government employer from which they separated that identifies the person as having been employed as a LEO,

# LEOSA Coverage Checklist

- and either a state certification or firearms instructor certification which states that the person is qualified to carry and has qualified within the last 12 months?
  - If no, person is not covered.

# LEOSA Coverage Checklist

3. Does (or if retired “did”) the individual have statutory authority to make arrests (or to make apprehensions under 10 U.S.C. § 807(b) anywhere in the United States,

# LEOSA Coverage Checklist

- or were they a LEO employed by the Federal Executive Branch of Government, Federal Reserve or Amtrak Police Dept. and have authority under any law in the United States to either supervise or engage in law enforcement activity?
  - If no, person is not covered.

# LEOSA Coverage Checklist

4. Is (or if retired “was”) the individual authorized by their agency to carry a firearm at any time either on or off-duty?
  - If no, person is not covered.

# LEOSA Coverage Checklist

5. If active and their agency has standards to regularly qualify, has the individual qualified under that agency standard?
  - If no, person is not covered.
  - If there is no agency standard, disregard.

# LEOSA Coverage Checklist

- If retired, see #2(b),(c).
- If you have answered yes to questions 1-5, the individual is covered by LEOSA, unless any of the following apply:

# LEOSA Coverage Checklist

- The individual is under the influence of alcohol or another drug.
- The individual is prohibited by Federal law from receiving a firearm because:
  - convicted of misdemeanor domestic. 18 U.S.C. § 922(d)(9)



# LEOSA Coverage Checklist

- subject of a lawful post-hearing restraining order. 18 U.S.C. § 922(d)(9)
- convicted felon and not a government employee acting in the scope
- unlawful alien or fugitive from justice. 18 U.S.C. § 922

# LEOSA Coverage Checklist

- former U.S. citizen who renounced citizenship. 18 U.S.C. § 922
- pending indictment for a crime punishable by over 1 year. 18 U.S.C. § 922
- unlawful user/or addicted to CDS. 18 U.S.C. § 922 (citing 21 U.S.C. 802)

# LEOSA Coverage Checklist

- The firearm carried is a machinegun as defined by the NFA, § 5845.
- The firearm carried is a silencer or destructive device under the GCA, § 921
- The individual is within a federal facility or land in violation of GCA, § 930

# LEOSA Coverage Checklist

- The individual is within a government facility or land in violation of state law.
- The firearm was physically carried on the person and over 26 inches long.

# **18 USCS § 926B**

**Carrying of concealed  
firearms by qualified  
law enforcement  
officers**

# 18 USCS § 926B

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

# 18 USCS § 926B

(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.

# 18 USCS § 926B

(c) As used in this section, the term "qualified law enforcement officer" means an employee of a governmental agency who:

1. 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 or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);



# 18 USCS § 926B

2. is authorized by the agency to carry a firearm;
3. is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
4. meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
5. is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and,
6. is not prohibited by Federal law from receiving a firearm.

# 18 USCS § 926B

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer that identifies the employee as a police officer or law enforcement officer of the agency.

# 18 USCS § 926B

(e) As used in this section, the term "firearm":

1. except as provided in this subsection, has the same meaning as in section 921 of this title [26 USCS § 921];
2. includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act [26 USCS §§ 5801

# 18 USCS § 926B

## 3. does not include:

- any machinegun (as defined in section 5845 of the National Firearms Act;
- any firearm silencer (as defined in section 921 of this title; and
- any destructive device (as defined in section 921 of this title.

# 18 USCS § 926B

(f) For the purposes of this section, a LEO of the Amtrak Police Department, a LEO of the Federal Reserve, or a LEO 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,

# 18 USCS § 926B

- or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice).

# **18 USCS § 926C**

**Carrying of concealed firearms  
by qualified retired law  
enforcement officers**

# 18 USCS § 926C

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired LEO 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).



# 18 USCS § 926C

(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.

# 18 USCS § 926C

(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 LEO;

# 18 USCS § 926C

(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

# 18 USCS § 926C

(3) (A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or had statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice;

# 18 USCS § 926C

(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;

# 18 USCS § 926C

(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 LEO's, as determined by the former agency of the individual, the State in which the individual resides or,

# 18 USCS § 926C

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;

# 18 USCS § 926C

(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



# 18 USCS § 926C

(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,

# 18 USCS § 926C

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,

# 18 USCS § 926C

(7) is not prohibited by Federal law from receiving a firearm.

# 18 USCS § 926C

(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 LEO that indicates that identifies the person as having been employed as a LEO and

# 18 USCS § 926C

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

# 18 USCS § 926C

(2) (A) a photographic identification issued by the agency from which the individual separated from service as a LEO that identifies the person as having been employed as a LEO; and

# 18 USCS § 926C

(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

# 18 USCS § 926C

(B) 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:



# 18 USCS § 926C

(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

# 18 USCS § 926C

(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.

# 18 USCS § 926C

(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 [18 USCS § 921];

# 18 USCS § 926C

(B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act [26 USCS §§ 5801 et seq.]; and

(C) does not include:

(i) any machinegun as defined in section of the National Firearms Act

# 18 USCS § 926C

(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

# 18 USCS § 926C

(2) the term "service with a public agency as a LEO includes service as a LEO of the Amtrak Police Department, service as a LEO of the Federal Reserve, or service as a LEO of the executive branch of the Federal Government.

# Who Can Carry

- Any person who meets LEOSA's criteria without regard to:
  - Federal, state, county, local, or bi-state agency
  - Military or Civilian agencies
  - Full-time, part time, or volunteer status
  - Agency or state restrictions

# Who Can Carry?

- Empowerment Clause: Notwithstanding any other provision of the law of any State..., an individual who is a qualified, or qualified retired, LEO and who is carrying the ID required by subsection (d) may carry a concealed firearm that has been... transported in interstate... commerce,



# Who Can Carry?

- subject to subsection (b).
- LEOSA § 926B(a) and § 926C(a)
- Note: “Notwithstanding” here means that state law does not matter.

# Who Can Carry: Definition

- A qualified LEO is either a:
  - a) LEO of the Amtrak Police Department, Federal Reserve, or of the Executive Branch of the Federal Government; or
  - b) gov't employee who is authorized by law to engage in LE activity and has statutory powers of arrest; and

# Who Can Carry: Definition

- c) Meets agency standards to carry a firearm;  
and
- d) Is authorized by their agency to carry a  
firearm (at some time).

# Who Can Carry: Definition

- e) The LEO must also have on-duty law enforcement authority, statutory powers of arrest or apprehension, authority to carry at some time, and meet agency standards to carry.
- f) Note: Executive Branch Federal LEOs need not have “statutory” powers of arrest.

# Who Can Carry: Definition

- f) “employee of a gov’t agency....” 926B(c), and
- g) an individual who served “with a public agency” as a” LEO.... §926C(c)(1).
- h) The Gun Control Act, §921 does not define gov’t agency, public agency, employee or servant.

# Myth 1: Who Can Carry

- Myth – Only LEOs who attend a “full” law enforcement academy can carry under LEOSA
  - Fact – There is no such thing and training standards vary widely.
  - See the FLETC training requirements for USMS Detention Enforcement Officers and FBPO corrections officers.

# Myth 2: Who Can Carry

- Myth – Only LEOs with agency permission can carry off-duty under LEOSA
  - Senate and House Reports make clear that agency restrictions for on-duty behavior are preserved but for off-duty behavior are trumped

# Myth 3: Who Can Carry

- Myth – Only LEOs with authority on the “street” can carry off-duty under LEOSA
  - Fact - Jurisdiction is not relevant to LEOSA. Per Congressional statements and application of the Act, LEOSA applies to LEOs regardless of their actual jurisdiction.



# Myth 4: Who Can Carry

- Myth – Only paid or full-time LEOs can carry off duty under LEOSA
  - Fact - LEOSA applies to any LEO who meets its criteria. There are no requirements that a LEO be full-time or part-time.
  - Paid and volunteer status is equal under LEOSA, and

# Myth 4: Who Can Carry

- Now that the pension requirement is gone, volunteer LEOs are eligible to carry off duty and after separation from service.

# Retired LEO

- Separated in good standing, as determined by their agency plus aggregate of 10 yrs LEO service; or
- Separated from service after completing any applicable probationary period of service due to a service connected disability, as determined by such agency plus qualification.

# Qualification

- As of October 2010
- If a retiree's state has a uniform standard for LEOs, such as in CT or NJ, the retiree must qualify at least annually with
  - their former agency or
  - per the standard of his state. 926C(c)(4)

# 2012 Amendment

- Introduced in the Defense Authorization Act by Sen. Patrick Leahy and Sen. Jim Webb
- No Congressional Statement & no debate
- Supported by FOP and DoD, not the NRA

# 2012 Amendment

- This provision changed in with the 2012 amendment requested by the FOP.
- And now requires the ID identify the bearer as a police officer or LEO of the agency.

# 2012 Amendment

- Before, LEOSA only required that the ID be agency issued and contain a photograph.
- Now, at least some portion of the ID must identify the employee as a police officer or LEO.

# 2012 Amendment

- The ID required for former LEOs also changed with the 2012 Amendment requested by the FOP.
- The photo ID must now in some way identify “the person as having been employed as a police officer or law enforcement officer” ... and



# 2012 Amendment

- a firearms training certification that indicates that the person has been tested and met the standards for active LEOs within the last year. See LEOSA § 926C(d) (2013).

# Bottom Line

- Retiree Must have: A Retired LEO ID from their gov't agency and
- A certification issued by their State of residence or a certified firearms instructor in their state that they have, within the law year, been tested and found to meet the standards established by the State, or

# Bottom Line

- if no state standard, the standard of any LE agency in that state to carry the concealed firearm.

# Retired ID

- A qualified retired LEO does not require a state permit to carry under LEOSA, but having a permit, if one is applicable and available, is good extra insurance.

# Suggestions for Those Without An Agency ID?

- LEOSA does not require agencies to issue retired ID's. If your does not,
- Have your union address it in collective bargaining; or
- Use the political process to have your elected representatives require the agency to issue retiree IDs.

# Suggestions for Those Without An Agency ID?

- Seek volunteer or part-time employment with an agency who will after some time provide you with a retired ID based on prior LE service;
- Get a state permit with wide reciprocity such as the Florida or Utah permits;

# What Firearms Can Be Carried?

- GCA, § 921(a)(3) defines firearm as:
- A weapon designed to expel a projectile by action of an explosive, its frame or receiver, silencer, or destructive device .

# LEOSA Approved “Firearm”

- LEOSA, however, excludes any machine gun, silencer, or destructive device. LEOSA § 926B(e) or § 926C(e).
  - See *People v. Peterson*



# Ammunition

- Federal law prohibits armor piercing handgun ammo, 18 USC 921 without a license.
- It also prohibits possession of handgun ammo by persons under age 21.
- LEOSA 2010 addressed ammo, § 926B(e) and
- Any ammo not expressly banned by Federal law is covered by LEOSA.

# Ammunition

- So, the NJ and San Francisco bans on hollow nose bullets are preempted for LEOs and RLEOs who meet LEOSA's standards.

# Magazine Capacity

- LEOSA does not expressly address magazine capacity for carry, however, state magazine bans that preclude range qualification are arguably preempted.

# Magazine Capacity

- For e.g., State or agency X requires active LEOs to use a 15 round magazine to qualify.
- The same State bans mags above 10 rds.
- That ban unlawfully precludes RLEOs from qualifying under LEOSA.

# Magazine Capacity

- “States” with 10 round magazine limits:
  - NY, D.C., California, Hawaii and Massachusetts.
- States with 15 round magazine limits:
  - New Jersey. N.J.S.A. 2C:39-1y.
  - A ten round magazine limit in NJ was vetoed in 2014.

# Magazine Capacity

- Judge William Skretny of the Western District of NY ruled in Dec 2013 that the NY SAFE Act 7 round magazine limit was arbitrary and therefore unconstitutional.

# Ammo & Mags for FLEOs

- Federal officers & agents are not subject to state law when their conduct is pursuant to federal authority and is consistent with applicable federal standards.
  - See *State v. Mollica*, 114 NJ 329, 351, 355 (1989).

# Ammo & Mags for FLEOs

- Thus, off-duty Federal LEOs may carry hollow nose ammo & hi-cap mags if consistent with their federal agency's off-duty carry policy.
- Otherwise, see state law and LEOSA.



# Common Sense v. LEOSA

- Though any firearm can be carried concealed under LEOSA, LEOs should carry a firearm they are comfortable with but to the extent possible one they've been trained with (or a substantially similar firearm) that
- Does not exceed the caliber of their agency firearm.

# Where Is LEOSA Applicable?

- Gun Control Act § 921(a)(2) defines the term “State” to include all states within the United States, the District of Columbia, Puerto Rico, and other U.S. possessions
- LEOSA therefore applies nationwide, not just outside your home state.

# Where Is LEOSA Applicable?

- Yes that includes D.C., New York City, Chicago, San Francisco, and Virginia.

# Where Not to Carry

- LEOSA does not preempt state laws that:
  1. permit “private persons” to restrict firearms “on their property”;
  2. restrict guns on government property.
  3. LEOSA also does not preempt federal laws, rules, or regulations which predated it.

# Where Not to Carry

- Be advised that when in New York City, an NYPD internal memo suggests that if an officer is not confident about the LEOSA authority of a person they should be escorted into the Precinct for further investigation, to copy and fax their ID for verification.

# Where Not to Carry

- It is recommended that all visiting state and local LEOs carry photo copies of their ID if legal to copy. (Federal IDs cannot be legally copied) and drivers license in addition to the actual IDs, so that they may offer these copies in lieu of what may become an unreasonable investigatory detention.

# Where Not to Carry

- D.C. requires all handguns in the District to be registered, but will not allow registration.
- Hawaii: State A.G. in 2008 began requiring all visiting LEOs to “register” their firearm in every county visited.
- Are these restrictions preempted by LEOSA?

# Where Not to Carry

- Yes, these restrictions are preempted by LEOSA's. 18 U.S.C. 926B, 926C.



# Posted Bans By Private Property Owners

- Private persons / entities can restrict firearms “on their property”
- If a privately owned establishment posts a sign that bans patrons from entering with firearms, it is best to presume the sign applies to you as an off-duty or retired LEO with a firearm.

# Posted Bans By Private Property Owners

- You may inform the manager of your status and ask whether you can enter despite the posted sign.
- If not, you should either take your business elsewhere or secure your firearm in your car safe.

# Posted Bans By Private Property Owners

- Target stores: “Bringing firearms to Target creates an environment that is at odds with the family-friendly shopping and work experience we strive to create.”
- “We also respectfully request that guests not bring firearms to Target – even in communities where it is permitted by law.

# Posted Bans By Private Property Owners

- Starbucks: Requests customers not carry firearms in their stores or outdoor areas but does not ban carry.
  - <http://www.starbucks.com/blog/an-openletter-from-howard-schultz-ceo-of-starbuckscoffee-company/1268>

# Posted Bans By Private Property Owners

- Chipotle: In May 2014, Chris Arnold the Communications Director for Chipotle stated, “...we are respectfully asking that customers not bring guns into our restaurants, unless they are authorized law enforcement personnel.”

# Posted Bans By Private Property Owners

- As far as LEOSA is concerned, do NOT carry at a public school in a state that prohibits such carry.
- Be aware that signs are not required in all states. Ignorance may be no defense.

# Posted Bans By Private Property Owners

- *Mazzarella* (3d Cir. 2010).
  - The Second Amendment does not apply to government buildings and “sensitive places.”

# Posted Bans By Private Property Owners

- Regardless of “any other law, rule or regulation, no person while on postal property may carry firearms... except for official purposes.”
- (Don't Carry Here under LEOSA)



# Posted Bans By Private Property Owners

- Unlawful to possess firearm in a Federal Court facility, such as a Court, U.S. Attorney's Office, U.S. Marshal's Office.
- Federal, state, and local officers only exempt from the federal facility proscription while in the lawful performance of their duties.

# Posted Bans By Private Property Owners

- When transporting guns on an airline flight, pack unloaded firearms in a locked, hard-sided container.
- Ammunition should be stored in the original box or in "fiber, wood, or metal boxes ... or in other packaging specifically designed to carry small amounts of ammunition."

# Posted Bans By Private Property Owners

- Amtrak also requires handgun cases to be stored inside a suitcase or other checked bag.

# State Bans on Private Property Are Trumped

- State restrictions on private property are trumped by LEOSA. For e.g.,
- Casinos: N.J.A.C. 19:45-1.13 (guns banned in casinos) (trumped by LEOSA)
- Bans on guns in bars or taverns. (trumped by LEOSA)

# Considerations For Off-Duty & Retired LEOs

1. Know where not to carry
2. Get a backup state permit with wide reciprocity like Florida or Utah
3. Buy carry or self-defense insurance with civil and criminal defense coverage
4. Always be prepared to immediately & loudly surrender to a uniformed LEO.

# Considerations For Off-Duty & Retired LEOs

- What to carry in your “Grand Jury Kit”:
  1. Your LEO ID, drivers license, CCW, pistol permit or receipt for purchase.
  2. Copies of drivers license, range qual-record, LEO certification, Statutes for your arrest and law enforcement authority, and LEOSA.

# Acknowledgement

This presentation was compiled to inform all active and retired law enforcement officers about the importance of adhering to the conditions set forth in the Federal Law Enforcement Officers Safety Act. Our sincere appreciation to Chief John Sisto – Rockaway Police Department (*Ret*) for preparing this presentation and for allowing The Former New Jersey State Troopers Association to disseminate it to our members.

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