

## **The Steve Young-Law Enforcement Officers Safety Act of 2004 (H.R. 218)**

Coming from the Detective Division of the NYPD, the hodge-podge of laws relating to the carriage of concealed weapons by law enforcement officers never seemed to make much sense to me. The surrounding States of New Jersey and Connecticut are virtually suburbs of NYC, with millions of people (some of them bad guys) trekking to NYC on a daily basis. There are thousands of Federal LEO's crossing these borders daily. The Port Authority Police are licensed to carry in both NY and NJ. The Triboro Bridge and Tunnel Authority Toll Collectors were licensed to "carry" in their Off-Duty time but were not allowed to carry their weapons while On-Duty. What a mess! With 50,000 members of the NYPD alone, the number of yearly incursions, both on and off-duty into neighboring states must be staggering.

Now, *perhaps* both active and retired law enforcement officers who are or were employed by local, State, and Federal governments may no longer have to worry about crossing state lines without first notifying and obtaining permission from the intended jurisdiction. The legislative battle over H.R. 218 ended on July 22, 2004, when President George W. Bush signed the Law Enforcement Officers Safety Act of 2004 into law, but *for retiree's* it may be quite some time before it affects you. Read on and see why!

Now that H.R. 218 is the law of the land, whom exactly does it pertain to? Who not? And what are the current requirements? Exactly where does this law apply, and where is it still prohibited to carry a concealed weapon.

To answer the first question, HR 218 applies to individuals we are currently working as a law enforcement officer for a governmental Law Enforcement agency, whether it is local, State, or Federal, and he/she must meet the following criteria as per Sec. 926 B sub(c) of the law that requires that the officer:

- (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;*
- (2) is authorized by the agency to carry a firearm;*
- (3) is not the subject of any disciplinary action by the agency;*
- (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.<sup>1</sup>*

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<sup>1</sup> H.R. 218, Law Enforcement Officers Safety Act of 2004. Sec. 926 B sub(c)

Retired law enforcement officers who worked an aggregate total of fifteen years for a local, State, or Federal agency must meet very similar requirements as written in Sec. 926 C sub(c):

- (1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;*
- (2) before such retirement, 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 retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or*  
*(B) retired 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) has a nonforfeitable right to benefits under the retirement plan of the agency;*
- (5) during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;*
- (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.<sup>2</sup>*

Who is not covered under H.R. 218? If you resigned or were dismissed from a local, State, or Federal law enforcement agency with less than fifteen years of aggregate service in the capacity listed above, except for those who were injured in the line of duty and forced to retire, you are not covered by this law. Line-of-Duty retirees are qualified so long as they meet all of the additional criteria.

If you meet the requirements for current or retired LEO's as described above, but you are or were employed by a private company or institution, such as a private University Public Safety Officer, or a Security Officer who works or retired from a private firm with government contracts, or work or retired from a private organization such as AMTRAK, you will not qualify. Again, only current and retired employees of local, State, or Federal Government agencies are covered by this law.

Now, before you retired LEO's leave Topeka for Times Square or Disney with your concealed weapons there are parts of this law that you need to know, or comply with: 1) You will need to carry photo identification from your former agency that acknowledges that you have within the past year been tested and passed the standards for training and qualification that are required of active members for the same type of firearm that you are carrying; or 2) you must carry photo identification that documents your former employment with the law enforcement agency (a retiree identification card); and 3) if you

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<sup>2</sup> H.R. 218, Sec. 926 C sub(c)

now live in another State you can either qualify with your former agency as above, or obtain and carry a certification from your new State indicating that within the last year you have *“been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.”*<sup>3</sup> So, if you haven’t qualified with your gun since you retired you had better contact your old agency, or the State or local police in the new State where you reside and arrange for training and testing, at your own expense.

**\*\*\*RETIREE WARNING\*\*\***

One immediate problem for retirees will be that Federal, State, and local agencies have not yet have created their own guidelines for this training and certification process, so you will have to be patient and work with them. I advise caution and recommend that you do not take it upon yourself to carry a concealed weapon in any State that you are not licensed in until you have obtained the training/qualification document, and double checked with the State that you plan on entering to insure that they are complying with this new law. The FOP has written to the Attorney General’s Office and the Department of Justice, requesting that they provide guidance to the States to insure uniformity, but in the interim you can contact you prior Agency, the State Attorney General, State Police, or whichever agency regulates training of police.

As for qualified current LEO’s, you must carry your agency issued identification card with you at all times when you are carrying a concealed weapon.

While this new law has seemingly erased State boundaries, there are still some restrictions on the carriage of concealed weapons. You will not be able to carry:

- (1) *any machinegun (as defined in section 5845 of the National Firearms Act);*
- (2) *any firearm silencer (as defined in section 921 of this title); and*
- (3) *a destructive device (as defined in section 921 of this title).*<sup>4</sup>

Section 921 refers to that section of the US Code, Title 18.

Also, this law exempts qualified individuals from local and State laws only, but not from Federal Laws. You will not be authorized to carry on Airlines, in Federal Buildings or properties, or National Parks. You will also be subject to any State laws that prohibit concealed weapons on State or local property such as Courts, Office Buildings, etc., or from State laws that grant the right to private entities to exclude firearms, such as Ballparks, Power Plants, etc.

Some additional good news is that you will also be able to carry your concealed weapon within the “District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).”<sup>5</sup>

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<sup>3</sup> H.R. 218, Sec. Sec. 926C d 2B

<sup>4</sup> H.R. 218, Sec. Sec. 926C d 2C

Again, if you do or did not work as a LEO for a local, State, or Federal Agency this law has no effect upon you. If you are a private investigator, insurance investigator, bail enforcement officer, etc, who is licensed to carry a concealed weapon within your own jurisdiction but you do not qualify under H.R. 218, you must continue to operate within the boundaries of your own licensing laws.

\*\*\*\*\* Word Count 1437 to this point \*\*\*\*\*

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<sup>5</sup> U.S. Code, Title 18, Section 921, 2

## PART II

According to Timothy R. Richardson, Senior Legislative Liaison for the Fraternal Order of Police, *“The F.O.P. was the primary organization in favor of the bill, along with several much smaller rank-and-file police organizations. The opponents of the bill were the International Association of Chiefs of Police (IACP), the Police Executive Research Forum (PERF), and a few other police management groups.”* I found the apparent break in the “blue wall” a little odd so I decided to poke around a little to find out what was behind it.....

I met with Tim at the FOP HQ in Washington, D.C., on September 10<sup>th</sup>, 2004, and learned about the 12-year struggle to pass this Bill into Law. Tim, a bright young man who’s father was the Chief of Detectives in Burlington County, NJ, and who comes from a long line of law enforcement family members, had lived with the ups and downs of this bill for many years and could spew out the names of friends and foes, as well as the dates of significant events. I learned that this law was first introduced to the House in 1992 by Rep. Duke Cunningham (R-CA), at the urging of the Law Enforcement Alliance of America (LEAA), a coalition group comprised of law enforcement professionals, crime victims, and concerned citizens. The bill floundered for several years but finally got traction once the FOP made it their # 1 priority.

According to Tim Richardson the main concern voiced by of the IACP in their opposition to the bill was the potential liability against the employer/municipality if an off-duty officer became involved in a shooting out of State, but rather than offering any amendment to remove or limit the potential liability, the IACP and PERF chose to remain silent yet still opposed the bill. Another possibility for their opposition may be the Labor/Management dichotomy since the IACP members may be in a position where they are influenced by Mayor’s, City Manager’s, Governor’s, etc., who for one reason or another do not want people carrying concealed weapons.

From a political standpoint, the main proponents of the Bill were the aforementioned Duke Cunningham, and former Rep. Bill McCollum (R-FL) as well as the recent House Leadership of Dennis Hastert (R-IL) and Tom DeLay (R-TX), and the main opponent in the House was the Chairman of the Judiciary Committee F. James Sensenbrenner (R-WI) who cited States Rights issues as he main concern.

On the Senate side, the proponents were Sen. Ben Nighthorse Campbell (R-CO) and Sen. Patrick Leahy (D-VT), with the major opponent being Sen. Edward Kennedy (D-Mass). According to Tim Richardson, one of the biggest and most influential supporters was Pres. George W. Bush, who along with Hastert and DeLay managed to get the bill out of the Judiciary Committee and before the Full House for a voice vote, and then over to the Senate where a voice vote was taken as well.

So, after years of frustration the bill, renamed **The Steve Young-Law Enforcement Officers Safety Act of 2004**, after the former FOP President who died of cancer on January 9, 2003, was signed into law by Pres. Bush on July 22, 2004.