

The Law Enforcement Officers Safety Act – A.K.A.: HR-218

The Law Enforcement Officers Safety Act (LEOSA for short or HR-218) was signed into federal law in 2004 as a supplement to the Gun Control Act of 1968. Predominant support for HR-218 included rank and file law enforcement officers (LEO), The Fraternal Order of Police (FOP), and the Law Enforcement Alliance of America. Police Executive Research Forum (PERF) and the International Association of Chiefs of Police (IACP) worked in opposition of the bill. Several House of Representative Judiciary committee members didn't want it to come to a vote in committee, commenting that there was no need for any police officer to be armed off duty. It eventually reached the house floor for confirmation, then on to the Senate and eventual signing by President George W. Bush.

Each state and local law enforcement agency then had to decide how it would be regulated and enforced. Some states (like New Jersey) were more concerned about the "enforced" part. The new law applied to current active law enforcement officers, as well as retired officers. The retired feature requires a bit more understanding. Let's look at a portion of what the LEOSA implemented:

- Must be actively employed as a Law Enforcement Officer, or;
- Retired after 10 years of service as a law enforcement officer in good standing with a public agency; or medically after one year, passed probation and completed an academy;
- Was authorized to make arrests;
- Must carry a department issued identification card;
- Must qualify annually with their handgun on an approved course.

(Do note that this is only a brief overview).

Initial concerns were how a retired officer could obtain LEOSA credentials as well as firearms qualifications. You can't help but think that somewhere across our great America some agencies and jurisdictions felt they had special needs or interpretations (like New Jersey). Then there's those small counties where one applicant may have run against the current elected Sheriff, or maybe the old: *dating my sister or ex-wife*.

By 2012 the procedure is pretty much refined with most agencies across the country, both by the HR-218 issuing departments, as well as agencies producing the confirmation letter verifying service. Like any legislation however, there have been numerous court challenges. (It seemed so simple). How many of us retired and active officers thought it was that simple? I know I did. After numerous court challenges, the law was refined once in 2010 with no other adjustments anticipated at this time. The law at first appears to be a little broad, but that is intentional as it prevents overbearing states and agencies from creating their own interpretations that would undermine the intent of the law.

As a retired Reno Police Officer, my retired companions and I watched the proposed legislation for years. Within days of the bill being signed, several of us qualified together on a firearms course that exceeded the Nevada P.O.S.T. minimums. We produced our own credentials that explained to anyone the existence of HR-218 and that we were compliant. It was most of a year

before the Nevada Sheriffs and Chiefs Association established a protocol for our state based on LEOSA mandates. Only after that did we formally comply with our state's documented requirements.

On May 24, 2012 the Las Vegas Metropolitan Police Department hosted a seminar on the LEOSA. It was instructed by Steven C. Mannion, Esq., a firearms instructor, part-time federal law enforcement officer, and military officer. He is an attorney/partner of the law firm of Decotiis, Fitzpatrick & Cole, LLP in New Jersey. He has defended numerous law enforcement agencies and hundreds of officials over the last 18 years. He possesses LEOSA credentials. This material is only an overview and not intended as any form of authority on The Law Enforcement Officers Safety Act. It is only to point out a portion what most of us did not know and remind fellow officers the limitations of our knowledge and the vulnerabilities that we possess from own lack of awareness. At the conclusion of this article, I'll include information on how to fight back the ignorance that we all too often embrace.

The first half of the class we nodded frequently being familiar with the LEOSA. Maybe a little fine tuning on some grayish issues; then BAM: the part of the class that made all of our jaws drop. Some of what LEOSA isn't; what you **can't** do:

- Have alcohol in your system. Most state standards parallel their DUI minimums, but some (like Hawaii) prohibit any traceable amounts of alcohol when armed, well below a B.A. of .08% which is common for intoxicated driving. If you travel to or live in Hawaii, leave the gun at home if you're going to have a beer on the beach or a mai tai with dinner.
- Possess armor piercing ammo., machine guns, or silencers.
- Understand New Jersey! Until recently (hopefully it's done), certain officials have continued to make arrests on fellow officers based on an agency's misunderstanding (I'll leave it at that). Arrested officers may and do win months or years later, but the legal, family and professional costs aren't worth it. It took years of litigation to reverse New Jersey officials' belief that the LEOSA applied to all officers except New Jersey LEOs in New Jersey! It is not a firearms friendly place. (It's safe to say, I'm sure it is not just New Jersey).
- Possess high capacity magazines. States with 10 round magazine restrictions include: California, Hawaii, New York, Massachusetts, and D.C. LEOSA does not address this issue.
- Off duty Federal Law Enforcement Officers may carry hollow nose ammo and high capacity magazines if consistent with their agency's off-duty policy.
- Been convicted of domestic violence. (Note: this applies to what you did, not what you were convicted of or pled to).
- Subject to a lawful restraining order.
- Convicted of a felony.
- Carry concealed on private property when posted as prohibited.
- Carry on government property (unlike private property, signs are not required). This includes parks, stadiums, and the U.S. Post office.

- Schools: Federal law prohibits “any Individual” to possess a gun within 1,000 feet of a public, private, or parochial K-12 school. Driving from home to work or to the store most often violates this law. Though enforcement of this 1,000 foot rule would seem futile, you can expect increased activity when actually on school premises. We all know there’s plenty of “*those*” teachers, principals, security guards, etc. that hate guns or disrespect the police and wouldn’t be too concerned about embarrassing you (or worse) in front of your child at a school play or soccer game.
- Provide armed security for convicted felons.

Now some suggestions for surviving as an off duty or retired officer pursuant to the LEOSA of 2004:

Most every department has an Officer *A. Hole*. We probably know one on our own department or one from an adjoining jurisdiction. Our hope here is that we don’t run into one that doesn’t understand the law, or maybe an officer who is the aggressive go-getter trying to impress the lieutenant. That’s the easy scenario. Our biggest fear is the unfortunate life changing event when deadly force becomes an issue. When headlines are made and careers on the line, don’t expect a fellow officer to cut you any slack. If you did everything right, you can expect smooth sailing. NOT! Expect your whole life to collapse. If all does go right, it may take years; and tens to hundreds of thousands of dollars to resolve. If you’re an active duty officer involved in an off duty incident, your agency may or may not back you. If you’re retired, there’s a significant probability your agency will act like they never knew you; except to give the press your photo and personnel file.

We prepare for that deadly encounter our entire careers, and even after retirement with annual range qualifications to remain compliant with the LEOSA. Now that we’re on our own; WE’RE ON OUR OWN. On a retired cop’s salary, I know I’m barely in a position to fight a moving violation, let alone a criminal case and the inevitable “*my baby was an angle*” civil case.

To help tip the case in your favor, consider:

- Shooting a qualification course more than once a year.
- Keep copies of everything you do to maintain your LEOSA qualification, including range quals, applications, previous issued credentials, etc.
- Carry a gun that you know and can document familiarization and training with.
- Have insurance:
 1. The NRA Endorsed Insurance Program
 2. Professional Law Enforcement Association
 3. Federal Employees Defense Services
 4. FOP Defense Plan (very limited)
 5. Home owners policy with civil and criminal; coverage

For day to day activities as an officer (active duty or retired) carrying pursuant to LEOSA, Steve suggests you always carry what he referred to as a “Grand Jury Kit.” The kit includes copies of your LEO Identification, driver’s license, your HR-218 credentials (and CCW if you have one),

pistol permit (registration) or pistol purchase receipt, range qualification, LEO certification, and statutes identifying your arrest authority. If you are confronted, be prepared to surrender to a uniformed LEO and cooperate until you have a safe manner to produce your documents. If you are retired, be explicit in making it known that you are retired. Do not represent or imply that you are active duty. Late in 2011 (Yes, in New Jersey) an off duty officer was arrested and charged with impersonating an on duty officer.

In closing, it bears repeating that this is only an overview of the one class mentioned earlier. It is not intended as any legal advice, but to inform officers of the existence of the Law Enforcement Officers Safety Act of 2004 and some of its limitations.

I highly suggest that you look up Mr. Mannion's web site: www.sheepdogacademy.com where each point discussed is available in more detail, including case law and initial congressional review. Steve's seminar material or DVD can be purchased, or you can arrange to attend one of his live classes. (I received no compensation from Steve Mannion; I just think it's that important for any active or retired LEO that ever plans to carry a pistol beyond the scope of their employment).

(Author Ralph Willits is a retired Reno Nevada Police Officer and is currently working as an Investigative Aide with the Las Vegas Metropolitan Police Department, assigned to the CCW Unit doing HR-218 backgrounds and certification).