04-25 - LAW ENFORCEMENT OFFICERS SAFETY ACT- OFFICERS CARRYING CONCEALED FIREARMS IN OTHER STATES

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services

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LAW ENFORCEMENT OFFICERS SAFETY ACT-

OFFICERS CARRYING CONCEALED FIREARMS IN OTHER STATES

PURPOSE

The purpose of this newsletter is to inform Department members of the enactment of a federal law that allows both active and retired law enforcement officers to carry a concealed firearm wherever they go in the United States, regardless of most state or local prohibitions.

This newsletter only addresses the issue of field personnel who may encounter armed active or retired law enforcement officers from other states. A separate document will address the issues dealing with active and retired sworn Sheriff's Department members who plan to travel to different states and carry a concealed firearm.

LAW

On July 22, 2004, H.R. 218, also known as the “Law Enforcement Officers Safety Act of 2004," was signed into law. (18 U.S.C. §§ 926B, 926C.) It exempts *qualified* active and retired law enforcement officers from state laws prohibiting the carrying of concealed firearms.

This law allows *qualified* active and retired law enforcement officers to carry a concealed firearm nationwide. When traveling in another state, they are not required to inform state or local authorities that they are carrying a concealed firearm, but they must produce valid identification if challenged.

This law does not extend an officer’s authority to enforce the law in states where it is not already authorized; rather, it only authorizes an officer to carry a concealed firearm.

Officers who qualify under this law still must obey local prohibitions or restrictions against carrying concealed weapons on:

1. private property, if the owner imposes such prohibitions or restrictions, and
2. state or local government property, such as a courthouse or public park.

Federal laws, in general, prohibit law enforcement officers from being armed on airplanes unless specific authorization is obtained. This Act does not supersede these restrictions.

ACTIVE OFFICER REQUIREMENTS

Per 18 U.S.C. § 926B, a qualified law enforcement officer means an employee of a governmental agency who:

- 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);

- is authorized by the agency to carry a firearm;
- is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
- meets 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 receiving a firearm.

RETIRED OFFICER REQUIREMENTS

Per 18 U.S.C. § 926C, a qualified retired law enforcement officer means an individual who:

- separated from service in good standing from service with a public agency as a law enforcement officer;
- 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 the law, and 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);
- before such separation served as a law enforcement officer for an aggregate of 10 years or more; or

- 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;

- 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;

- 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; or

- 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 required by this statute;

- is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

- is not prohibited by federal law from receiving a firearm.

IDENTIFICATION

Active law enforcement officers must carry photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a law enforcement officer of the agency.

Retired law enforcement officers must carry either:

1. a photographic identification issued by the agency from which the individual separated from service as a

law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer and 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 established by the agency to carry a firearm of the same type as the concealed firearm;

or

2. a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer; and

3. 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 one 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:

- 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

- 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.

WEAPON RESTRICTIONS

This law does not give qualified active or retired law enforcement officers the right to carry:

- any machine gun
- any firearm silencer
- any destructive device

CONCLUSION

If deputies conclude that an officer's identification and qualifications to possess a concealed weapon are legitimate, no further action is necessary. However, there may

be difficulty in verifying the identity and eligibility of out-of-state law enforcement officers. Deputies encountering persons who they believe may not be authorized to carry a concealed firearm under the provisions of this law should question the person, closely examine the identification, call the concerned law enforcement agency, and run the gun through the Automated Firearm's System (AFS). They should also consult a field supervisor.

If the person does not meet the requirements for a qualified active or retired law enforcement officer and is not carrying the required identification, then the person is not exempt from State law prohibiting the carrying of concealed firearms, and, therefore, may be subject to arrest for violating State law. For example, if a patrol deputy encounters an out-of-state active or retired law enforcement officer who is carrying a concealed firearm and is under the influence of a controlled substance, that officer is subject to arrest for the applicable Health & Safety Code violations as well as the Penal Code violations (12025/12031 PC).

Deputies should also keep in mind the possibility that they may run across someone carrying a concealed firearm and in possession of fraudulent law enforcement identification.

When in doubt, every effort must be made to validate the identification credentials of anyone carrying a firearm pursuant to this Act.

Any questions regarding the contents of this newsletter may be directed to Weapons Training Unit.