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SUGGESTED UPDATES AND IMPROVEMENTS TO THE LAW ENFORCEMENT OFFICER SAFETY ACT (LEOSA) (aka HR218) SOCIETY OF FORMER SPECIAL AGENTS OF THE FBI

HR 218 COMMITTEE

October 27, 2017

The main purpose of these suggestions is to improve LEOSA so the major purpose of its passage in 2004, to allow retired LEOs to serve as force multipliers in fighting crime and terrorism, to recognize the extensive training and benefits to the public by authorizing gun carry by retired LEOs, and to allow retired LEOs self-protection regarding their past employment, is better served. There are two LEOSA provisions, one which allows concealed carry by retired LEOs without the need to obtain state CCW permits (18 USC 926C), and the other provision allows concealed carry by active duty LEOs without the need to obtain state CCW permits when they travel outside their jurisdiction (18 USC 926B). LEOSA is a good piece of legislation that has a few issues probably unintended by Congress. These issues need a legislative fix for the law to effectively achieve its intended purpose - to allow qualified retired (and active duty) LEOs to carry firearms nationwide, both for their own protection and the protection of others, without requiring them to obtain state CCW permits.

Major Problems with LEOSA

1) The Federal Gun Free School Zone Act (GFSZA) Conflict: LEOSA does not exempt one from the GFSZA (contained in 18 USC 921(a)(25) and 922(q)(2)(A)). The GFSZA is a federal law that prohibits the possession of a firearm in a school, or within 1000 feet of a primary or secondary school. Among the exemptions are holders of carry permits issued by the state in which the school is located, and on-duty police. This law makes it a federal felony to carry a firearm within 1000 feet of a school zone. This restriction also applies to LEOSA carrying active duty police officers passing by a school outside their home state. Without the fix, LEOSA is basically null and void in urban and suburban areas, as it is almost impossible to move around most populated areas without passing within 1000 feet of a school. This fix could be incorporated within the language of the GFSZA itself, or in the provisions of LEOSA. The GFSZA has a provision in it which authorizes concealed carry if the person has a state CCW permit. Since the purpose of Congress in enacting LEOSA was to remove the requirement to obtain a state CCW permit for concealed carry, allowing such carry by retired LEOs, without the need for a state CCW permit, would be consistent with the purposes of LEOSA.

2) The Common Carrier Conflict: LEOSA does not specifically authorize carry on board “common carriers” such as aircraft, trains, buses, and ferries. The aircraft exclusion is understandable, due to the many security and safety issues involved in air travel. However, Congress should reconsider the blanket “common carrier” exclusion regarding Amtrak. In many urban and suburban areas, common carriers are heavily utilized by retired officers as well as active duty officers traveling out-of-state. The presence of armed and experienced LEOs on common carriers, active duty or retired, will allow for quicker response and intervention in active shooter incidents on a train, bus, or ferry.

3) The National Park Issue: A federal regulation prohibits gun carry in a national park unless a person has a state CCW permit. This problem is like the one contained in the GFSZA above. In both instances, a person would need a state CCW permit to comply with federal law. Since LEOSA was intended to remove the need for retired officers to obtain state CCW permits, fixing this problem would be consistent with the purposes of LEOSA. This problem could be fixed by legislative change to the LEOSA statute, or by amending the federal regulation which currently restricts gun carry in national parks.

4) The Magazine Capacity Issue: When carrying a firearm under LEOSA, it becomes difficult to ascertain and comply with the various magazine capacity laws of the different states one may travel through. LEOSA does not exempt retired officers from state restrictions regarding magazine capacity, although it does exempt retired officers from state restrictions on the type of ammunition that can be carried. Under LEOSA a retired officer may carry any ammunition not prohibited by Federal law. An amendment to LEOSA can be made which would allow a retired officer to carry any magazine not prohibited under federal law. For example, New Jersey allows concealed carry of magazines up to 15 rounds, but New York, Connecticut, and Massachusetts only allow carry of magazines up to 9 rounds. This leads to the anomaly whereby a retired officer travelling from New Jersey to New York and then to Connecticut or Massachusetts with a firearm holding a 15 round magazine would be protected by LEOSA in New Jersey, but not in New York, Connecticut, or Massachusetts.

5) Qualification Issue: LEOSA requires the retired officer to qualify with their firearm based on state of residence qualification standards, or on the qualification standard of their former employing agency. LEOSA requires qualification to be on the course mandated by the state for active duty officers (or the course used by the former employer of the officer). Some retired Agents have noted problems finding certified state firearms instructors who will conduct a qualification course based on requirements for active duty officers. Some states do not have a clearly defined state standard, leaving it to individual law enforcement agencies to determine their own standard. Some states allow a person to obtain a CCW permit without shooting a qualification course, or do not require the qualification course shot by the permit holder to be the same course required of an active duty officer. Some states grant CCW permits for retired officers under different standards than for civilians. For example, New Jersey makes it very difficult for a citizen to obtain a CCW permit, but much easier for a retired officer to obtain a CCW permit. Under NJ's scheme, retired officers must twice yearly shoot a qualification course using State certified instructors on a special course for retired officers, as required under the NJ “Retired Police

Officer” handgun carry permit law. But this course is not the same course required of active duty officers. Thus a retired officer in NJ could obtain a state CCW permit, yet still not be covered under LEOSA because they did not qualify on the same course required of active duty officers. LEOSA should be amended to specifically allow, in addition to the other methods, qualification on a state approved qualification course for retired officers, or qualification on any course of fire which would entitle a person to obtain a CCW permit in that state. Since retired LEOs are no longer using weapons as a matter of routine or offensively by making arrests, transporting prisoners, or serving warrants, there is no need to hold retired LEOs to the same qualification standard as an active duty LEO.

6) Private and State Property Otherwise Open to the Public: LEOSA allows private persons to ban weapon carry on their property, and allows states to ban weapon carry on state property. This broad prohibition should be removed so that LEOSA authorizes gun carry when such areas are otherwise open to the public. For example, shootings have occurred in movie theaters and shopping malls, but if a movie theater or shopping mall prohibited gun carry, then LEOSA doesn't apply and a retired LEO cannot carry a weapon in those locations. The presence of armed and experienced LEOs (retired or active duty but out of state) in such areas could greatly mitigate harm caused by an active shooter. Carry in such areas can be restricted in the case of a court house or airport.

Adopting the above legislative changes to LEOSA would fill gaps currently existing in that law, and act in accord with Congressional purpose in enacting LEOSA in 2004, which was to remove the requirement for retired officers to obtain state CCW permits for concealed carry within their home state, and when travelling out of state. Expanding LEOSA in the above described manner will allow retired and active duty officers to better serve as force multipliers in protecting the public, their families, and themselves, when faced with an imminent threat of death or serious bodily harm, or when suddenly confronted by somebody they may have arrested in the past.

LEOSA does not give retired officers any arrest or detention authority beyond those enjoyed by any other citizen. Any person carrying under LEOSA and using their firearm could be sued civilly, or prosecuted criminally, and LEOSA accords them no greater legal defense for such use, than it would any other civilian.

Respectfully,
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