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**TO:** All County Prosecutors  
Colonel Joseph R. Fuentes, Superintendent, Division of State Police  
All Police Chiefs  
All Law Enforcement Chief Executives

**FROM:** Peter C. Harvey, Attorney General

**DATE:** June 7, 2005

**RE:** Guidance Regarding the Law Enforcement Officers Safety Act of 2004 [PL 108-277 (HR 218)].

The recently enacted *Law Enforcement Officers Safety Act of 2004*, 18 U.S.C.A. §926B and §926C ("H.R. 218") allows full-time active duty and retired law enforcement officers, who meet specific criteria, to carry concealed firearms anywhere throughout the nation without having first obtained permits to carry from a foreign state. The passage of H.R. 218 has raised a number of questions with regard to New Jersey's police officers traveling out of state as well as with police officers from other jurisdictions visiting our state.

**A. Full-Time Active Duty Officers**

With respect to full-time active duty police officers, we discourage agencies from permitting their officers to take their agency issued weapons out of state. Nonetheless, each New Jersey law enforcement agency should, in consultation with its legal counsel, make its own determination. In formulating a policy, each agency should consider the following issues. First, firearms issued by a police department are government property; making each agency potentially liable for the use or misuse of that weapon by one of its police officers. Liability may attach for the misuse of a weapon regardless of whether the officer is on personal business outside of his or her jurisdiction. If your agency currently requires officers to carry their agency issued weapon off duty, then it may be prudent to evaluate that restriction in light of the passage of H.R. 218.

Second, H.R. 218 does not provide active duty police officers with law enforcement powers or immunities outside of their jurisdictions. While on personal business, police officers are ordinary citizens who happen to have the right to carry concealed weapons as a result of H.R. 218. Each agency must determine whether it will provide legal representation to officers who



may fire or otherwise use their agency issued weapon while out of state on personal business.

We recommend that all agencies clearly and unequivocally advise their officers of the foregoing by way of a clearly written policy. We are also requesting that all agencies remind active full-time police officers that they do not possess police powers or immunities in other states and are personally responsible for checking and understanding the laws of any jurisdictions that they visit while armed.

#### **B. Active Duty Police Officers From Other States**

We have received a number of inquiries from police officers from other jurisdictions inquiring as to their "authority" under H.R. 218 while they travel through or remain in New Jersey while on personal business. The appropriate response is that they are ordinary citizens while visiting our state and possess no police powers. Similarly, the federal law does not provide immunity to out of state officers who commit firearms related offenses within New Jersey. Please advise out of state officers who seek guidance that if they happen upon a situation in our state that requires police intervention, they should call the appropriate state, county or municipal police department to respond. Finally, some jurisdictions permit their citizens and police officers to openly carry their weapons. Please be advised that H.R. 218 permits only the carrying of concealed firearms.

#### **C. Retired Police Officers**

The passage of the Federal Law Enforcement Officers Safety Act does not alter the obligation of retired New Jersey law enforcement officers to comply with the provisions of *N.J.S.A. 2C:39-61* in order to carry a firearm in this state. Absent statutory changes to our retired officer permitting procedures, it remains in full effect and officers must comply with its requirements. Furthermore, retired New Jersey police officers who carry a gun in another state are ordinary citizens. The right to carry a gun under H.R. 218 does not imply the right to exercise police powers. Further information concerning the rights and obligations of retired New Jersey police officers to carry a firearm under H.R. 218 will be issued in the near future.

#### **D. Other Restrictions**

Finally, H.R. 218 does not supersede or limit existing New Jersey law. Therefore, it remains permissible for private business and government agencies (such as casinos and schools), as many currently do, to restrict the possession of firearms on their property.

Attached for your review and information is a copy of H.R. 218 as well as additional reference material from this office concerning the implementation of the law.

Attachments

## APPENDIX A

### NEW JERSEY STATE POLICE, COUNTY AND MUNICIPAL POLICE OFFICERS

Congress recently enacted and the president signed the *Law Enforcement Officers Safety Act of 2004* (18 U.S.C.A. §926B and -C). The Act, commonly referred to as *H.R. 218*, will permit county and municipal police officers and retired police officers, who meet specific criteria, to carry concealed firearms anywhere in the United States without having first obtained a permit to carry from the state or states in which they intend to travel.

Under *H.R. 218*, a regular police officer will be eligible to carry a firearm anywhere in the United States if he or she is a governmental employee 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 who has statutory powers of arrest. In addition, the officer must meet the following criteria:

- a. is authorized by the agency to carry a firearm;
- b. is not the subject of any disciplinary action by the agency;
- c. meets agency standards, if any, which require the employee to regularly qualify in the use of a firearm;
- d. is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- e. is not prohibited by federal law from receiving a firearm.

To qualify under *H.R. 218*, a regular police officer must also carry photographic identification issued by his or her employer. There is no federal permit that will be issued to authorize the officer to carry a firearm throughout the nation.

*H.R. 218* does not authorize the possession by regular police officers of the following items:

- a. a machine gun as defined by section 5845 of the National Firearms Act;
- b. a firearm silencer as defined by section 921 of Chapter 44 of Title 18 of the United States Code; and
- c. a destructive device as defined by section 921 of Chapter 44 of Title 18 of the United States Code.

In addition, a police officer cannot carry a firearm under *H.R.* 218 if the officer is subject to:

- a. disciplinary action by his or her employer and is not permitted to carry a firearm within the State, either while charges are pending or as a result of disciplinary action; or
- b. a domestic violence restraining order which prohibits the carrying of a firearm off duty; or
- c. a conviction in this State or elsewhere of a crime involving domestic violence which would render them ineligible under federal law to possess or carry a firearm.

In sum, *H.R.* 218 provides regular police officers with a narrow authority to carry a firearm anywhere in the United States without a permit. *H.R.* 218 does not confer upon regular police officers the authority to exercise police powers or perform police duties in states in which they intend to travel. Furthermore, *H.R.* 218 does not confer upon regular police officers the privileges and immunities commonly associated with the exercise of police powers. **Thus, it is incumbent upon the officer who intends to carry a firearm to or through another state to determine what restrictions exist for the carrying of a firearm in the state the officer intends to visit. Officers should also be aware that other jurisdictions also restrict the use or possession of hollow nose bullets. It is imperative that officers ascertain the laws that are in place in the states that they intend to visit.**

Police officers employed by a county or municipal police department who have questions concerning the implementation of *H.R.* 218 should consult with legal counsel.

H.R.218

*One Hundred Eighth Congress*

*of the*

*United States of America*

*AT THE SECOND SESSION*

Begun and held at the City of Washington on Tuesday,  
the twentieth day of January, two thousand and four

An Act

To amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Law Enforcement Officers Safety Act of 2004'.

**SEC. 2. EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.**

(a) In General- Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

**'Sec. 926B. Carrying of concealed firearms by qualified law enforcement officers**

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

'(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.

`(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;

`(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.

`(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.

`(e) As used in this section, the term `firearm' does not include--

`(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) any destructive device (as defined in section 921 of this title).'

(b) Clerical Amendment- The table of sections for such chapter is amended by inserting after the item relating to section 926A the following:

'926B. Carrying of concealed firearms by qualified law enforcement officers.'

### **SEC. 3. EXEMPTION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.**

(a) In General- Chapter 44 of title 18, United States Code, is further amended by inserting after section 926B the following:

#### **'Sec. 926C. Carrying of concealed firearms by qualified retired law enforcement officers**

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

`(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.

`(c) As used in this section, the term `qualified retired law enforcement officer' means an individual who--

`(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.

`(d) The identification required by this subsection is--

`(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that 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 standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

`(2)(A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

`(B) a certification issued by the State in which the individual resides that 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 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.

(e) As used in this section, the term 'firearm' does not include--

- (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).!

(b) Clerical Amendment- The table of sections for such chapter is further amended by inserting after the item relating to section 926B the following:

'926C. Carrying of concealed firearms by qualified retired law enforcement officers.!

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

*END*