

FDLE's "Questions and Answers Regarding HR 218"

October, 2008

Compiled by the FDLE Office of General Counsel

Note: As used herein, "HR 218" refers to Title 18, 44 United States Code, sections 926B and 926C, the "Federal Law Enforcement Officers Safety Act of 2004."

1. Does Florida have firearms proficiency standards applicable to active law enforcement officers?

- Yes. The Florida Criminal Justice Standards and Training Commission established firearms qualification standards through Rule 11B-27.00212(15), Florida Administrative Code, effective July 1, 2006. It requires meeting minimum standards by all active Florida certified law enforcement officers at least once every two years, and documentation of meeting those standards. Florida employing agencies are responsible for assuring their active officers conform to this statewide active officer minimum standard.

2. Does Florida authorize a process by which retired officers can demonstrate their firearms proficiency as one of the required elements of HR 218?

- Yes. House Bill 143 (Chapter 2007-111, Laws of Florida), effective July 1, 2007 authorized a process that will allow qualified retired law enforcement officers to seek to satisfy the firearms proficiency portion of HR 218. The law authorizes the Florida Criminal Justice Standards and Training Commission (CJSTC) to issue a confirmation card to persons who pass the firing range testing component. The proficiency is based on meeting the firearms minimums applied to active officers (See Question #1). The card was authorized by Rule 11B-27.014, F.A.C. which was effective March 3, 2008. The law authorizes, but does not require, agencies to open their ranges to retirees.

3. How does the process work for retired law enforcement officers?

- HR 218 gives retired officers two options for demonstrating firearms proficiency. Under the first option, a retiree may return to the agency from which he or she retired in good standing, and shoot the firearms regimen that agency requires of its active officers. The agency's standards may be more demanding than a state's minimum qualifications. For example a Florida agency may require its active officers to show greater proficiency on the range than is required as the mandatory minimum under state guidelines. If that is the case, an agency retiree who has returned to that agency to "shoot the course" will have to meet the enhanced requirements since that is what is applied to the agency's active officers. A retiree living in Florida using this option would have to return to the agency from which he or she retired in good standing, even if that agency is out of state.

A second option is to find a training center, agency or other venue within Florida that has opened its range to allow retirees to fire the state's minimum firearms course as applied to active officers. This option is available only for retirees who now reside in Florida. The range master administering the firearms regimen must be an authorized CJSTC firearms instructor. Only CJSTC-certified firearms instructors will be issued the official state confirmation cards and they are the only ones authorized to issue such cards.

A retiree will go to the range, and shoot under the conditions imposed by the range host (including, as allowed by HR 218, paying for any costs to the host). Upon successful completion of the shooting requirements, the retiree will be issued the official CJSTC verification card. The date of the "shoot" is on the card.

4. How often must a retiree “shoot” the firearms course?

- When a retiree is encountered carrying a concealed firearm and relies upon HR 218 as the authority for carrying the gun, he or she must demonstrate that he or she has fired the required firearms course within the last twelve months. This means retirees must return to a range yearly and demonstrate firearms proficiency. Each time this is done, the retiree will receive an updated CJSTC verification card.

5. Does receipt of the CJSTC verification card mean I have fully met HR 218 requirements?

- No. The card is evidence that you have successfully completed the firearms qualification only. Other factors listed in HR 218 will be evaluated at the time of encountering you carrying a concealed firearm. For example, you must have in your possession the required identification; you must not be intoxicated or under the influence; you must not be under a federal firearms disqualification; and you must demonstrate that you have, within the last twelve months, successfully fired either your former agency’s firearms qualifications or your resident state’s minimum qualifications applied to active officers. The CJSTC issued card addresses only the date that you “shot” the firearms course successfully. You are solely responsible for assuring you are otherwise in compliance with HR 218’s requirements.

6. I cannot find a range near my home that is open to retirees. Doesn’t HR 218 require agencies to make their ranges available?

- No. HR 218 does not require agencies to open their ranges to retirees. Florida’s process does not require agencies to open their ranges to retirees. The decision to open an agency’s range to retirees is one for each agency to make. Many agencies already have trouble accommodating the firearms range need of their active personnel and may not have “spare time” at the range for retirees. Even though retirees are supposed to pay the costs of range time, agencies may simply not be able to afford the time off necessitated by a release their certified firearms instructors to do retiree firearms qualifications. Liability considerations may discourage many agencies since retirees are not agency employees and the ability of the agency to cover damages or injuries may be limited or non-existent. Florida’s legislature and the CJSTC wisely chose to allow each agency to make its own determination of whether to open its range to retirees or not.

7. Because agencies are not required to open their ranges to retirees, I cannot find a local range that is open to retirees. What can I do?

- As noted above, agencies are not required to open their ranges. Some criminal justice training centers and/or agencies may decide to open their ranges. CJSTC-certified and approved firearms instructors can conduct the firearms qualification at any range they believe allows demonstration of the state’s minimum firearms qualifications. You may have to attend a range out of your home county as you seek to qualify under HR 218. If ranges remain unavailable, you may not be able to meet HR 218’s requirements. In that case, you may want to consider obtaining a Florida Concealed Weapons Permit, as discussed below.

8. A local firearms instructor indicates (s)he is providing “HR 218 qualification” firearms sessions. Will that meet HR 218’s requirements?

- FDLE cannot provide a binding legal opinion on this matter. You should consult with your own attorney for guidance. However, as a general observation we note that HR 218 describes the identification that a retiree who is trying to qualify under the “state

standards” option (persons who have not returned to their former employer to qualify) as follows:

- (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. (Underline added.)

FDLE takes the position that the only certification “issued by the State” in Florida is the CJSTC-approved firearms qualification card, which by rule may be issued only by authorized CJSTC-certified firearms instructors. Any retiree considering an “alternative” means of demonstrating firearms proficiency for HR 218 purposes should ask the range master for proof that he or she is currently a CJSTC-certified firearms instructor, and that he or she is in possession of the CJSTC-approved firearms qualification cards. The CJSTC has not authorized any other card as the card “issued by the State.” Remember that it is your burden to demonstrate you are under HR 218 when you are encountered carrying a concealed firearm. Failure to demonstrate you are carrying the appropriate identification could lead to a conclusion by a prosecutor that you did not fall under HR 218’s protection, and could subject you to being charged with carrying a concealed firearm. Each retiree should carefully evaluate the method and person(s) providing the HR 218 firearms proficiency opportunity.

9. I am an active officer traveling out of Florida. What identification does HR 218 require me to carry?

- HR 218 describes the identification required to be carried by active law enforcement officers:

(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.

An active officer’s photographic credentials should suffice to meet HR 218’s requirement for active officers. Some agencies place expiration dates on their credentials to help assure they remain active and current. If your agency does this, be careful to assure you are carrying fresh, non-expired, credentials.

10. I am a retired officer, residing in Florida. What identification does HR 218 require me to carry?

- It depends on whether you have been qualified by your former employing agency or whether you are qualifying under the state’s general “active officer” firearms qualifications.

--If you have returned to your employing agency, HR 218 requires:

... 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....

The identification must be photographic, and must demonstrate that you have been tested or otherwise found by your former employing agency to meet the standards “for active law enforcement officers” to carry a firearm. Many agencies in Florida simply choose to issue the CJSTC-authorized card. However, note that under this alternative, there is no requirement that the card be “issued by the state.” Thus some agencies may

have developed their own card. The CJSTC has recommended that agencies doing so pattern their card after the CJSTC-authorized card to avoid confusion, however.

--If you go to a general range open to retirees, HR 218 requires two sets of identification:

...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.

A photographic credential marked "retired" or similar issuance from your employing agency should suffice for the first part. Having a current CJSTC issued firearms completion card should suffice for the second part. The CJSTC-authorized card is the only "certification issued by the State" of Florida. (See Question #8.)

11. I live in another state but spend a lot of time in Florida. Can I qualify under Florida's HR 218 approach?

- If you retired from a Florida law enforcement agency, and if that agency opens its range to its retirees, you can return to the Florida agency and "shoot" the agency's course. The "return to agency from which I retired" option does not require you to be a resident of the state where the agency is located.
- If you retired from a non-Florida law enforcement agency, or if your Florida law enforcement agency does not open its range to its retirees, you have to demonstrate your firearms qualifications in the state in which you reside since the "certification issued by the State" must be issued by the "State in which the individual resides." (See excerpt of HR 218 in Question #10). You do not have an option of qualifying under Florida's law and process unless you are a Florida resident.

12. The agency from which I retired does not open its range to its retirees. There are no ranges near my residence that are open to retirees. What are my options?

- Remembering that neither HR 218 nor Florida law and rule requires ranges to be opened to retirees, you would appear to have basically three choices:
 - i. Find a range somewhere in the state open to retirees and travel there once a year to "qualify" and receive your CJSTC-issued card;
 - ii. Refrain from carrying a concealed firearm under authority of HR 218 since you cannot meet the law's requirements; or
 - iii. Obtain a Florida Concealed Weapons Permit which will allow you to carry your firearm in Florida in a manner virtually identical to what HR 218 allows, and which receives reciprocal recognition and acceptance in 33 other states.
- Florida's concealed weapons permit is administered through the Florida's Department of Agriculture and Consumer Services, Division of Licensing. Information on how to obtain and maintain the license, along with the current list of "reciprocity" states, can be located on the internet at: <http://licqweb.doacs.state.fl.us/weapons/index.html> .

13. What enforcement powers does HR 218 give active or retired law enforcement officers?

- NONE. FDLE takes the position that HR 218 does NOT empower officers with extra-territorial power or jurisdiction. Instead, FDLE believes HR 218 simply authorizes

qualified law enforcement officers and qualified retired law enforcement officers who meet the act's requirements to carry their firearms concealed throughout the United States. It does not give those officers extra-territorial arrest powers. It is very likely that any enforcement action taken will be considered a "citizen's arrest" and the use of the firearm in effecting that arrest will be evaluated under the laws of the state in which the action occurred as to whether it was appropriate, reasonable, and legal.

- Active and retired officers should use caution in interjecting themselves in enforcement actions. It is likely you will be in plain clothes and you will probably not be known to local officers responding to the scene. You may easily be mistakenly identified as a perpetrator with a gun, which could place you in a dangerous situation as responding officers "draw down" upon you. If you were to become engaged in a shoot-out, you likely will have no ability to call for assistance or backup. State law in the location where you become involved in an incident may differ from Florida law. For example, some states may require persons to attempt to disengage or withdraw from a situation ("retreat") before using deadly force. Any use of your firearm will be at your own discretion, and at your own risk.
- Any use of your firearm in self-defense or in defense of others will be evaluated under the law of the state in which the use occurred. Some states are not "firearms-friendly" and the use of the gun could fall under intense scrutiny. Again, use of your firearm is at your own discretion and at your own risk.

14. As an active officer who might encounter persons carrying firearms under the authority of HR 218, what things should I keep in mind?

- Evaluate the status of the person who claims to be carrying under HR 218 at the time you encounter him or her carrying the firearm. To be entitled to carry under HR 218, the person must meet all the qualifications that make him or her a qualified law enforcement officer (active officer) or a qualified retired law enforcement officer. Since some factors relate to one's criminal history status, a criminal history check will likely need to be performed. Remember that federal law disqualifies persons from being able to possess a firearm when under certain domestic violence injunctions or when convicted of a misdemeanor crime of domestic violence.
- The fact that a person is carrying proof of having successfully shot the state's firearms regimen within the last 12 months is not proof that the person meets the other requirements of HR 218. Evaluate at the time you encounter, not at the time he or she was last at a firing range.
- Florida officers should become familiar with the official CJSTC-approved firearms card. It will be easy to print out a fake card, or bogus "home agency" credentials. Any suspicious aspect of presented identification should be carefully investigated.
- Expect to be presented many out-of-state credentials. You cannot be expected to be able to validate each one. A call to an employing agency that issued the credentials may be a quick means of determining whether you are dealing with a legitimate current or retired officer from that agency.
- Firearms proficiency within 12 months of the encounter is required for retired officers. Active officers must meet the standards established by the employing agency. Active credentials may not clearly indicate what those standards are, so a follow-up phone call to the agency may be necessary. (See full text of HR 218 at end of these questions and answers.)
- Remember that HR 218 authorizes carrying a concealed firearm, but is not a mechanism that gives persons extra-territorial arrest or law enforcement power. Discuss this with your local prosecutors if this becomes a potential issue.
- Arresting a person solely because you suspect the HR 218 status to carry a concealed firearm may be a risky arrest. If there are other factors (e.g. the person is intoxicated, meaning he or she fails one of HR 218's requirements), appropriate arrest action may be

justified. Seek assistance of supervisors or agency legal advisors as needed. The various factors to justify HR 218 status are such that an on-the-street judgment call may need to be avoided until you can otherwise confirm employment or retirement status, etc. In short, you should use good judgment, and determining whether someone is under HR 218 or not will not always be an easy call. In many cases, however, there may be independent grounds for enforcement action on the basis of something other than just carrying the concealed firearm.

- Recognize that since HR 218 has passed, the chances that you may encounter a “good guy” unknown to you in plain clothes carrying or using a firearm have increased. Never drop your guard, but recognize you may encounter a well-intentioned off duty active officer or a retired officer attempting enforcement actions or coming to officers’ assistance. This adds another complication to an often already complex situation.
- HR 218 offers an opportunity for development of fraudulent credentials, tendered to “legitimize” possession of a firearm by a person who cannot legally possess one. Scrutinize the presented credentials and exercise good judgment. Never be shy about contacting purported employing agencies or agencies from which someone claims to have retired. That may be the only way to determine whether you are dealing with legitimate credentials or fraudulent ones.

15. How can I obtain a copy of HR 218?

- At the end of this “question and answer” document is the full text of the federal bill.

Note: The information in this question and answer document is NOT legal advice and is not provided as a binding legal opinion or interpretation of HR 218 or Florida law to individuals or agencies. The answers and comments herein are FDLE’s Office of General Counsel’s interpretation of HR 218 and Florida law.

FDLE cannot issue a binding opinion to other agencies or officers or retirees.

All those reading this publication are urged to contact their own agency legal advisors, their local prosecutors, or (in the case of retirees) their private attorneys to obtain legal counsel and advice.

Full text of HR 218:

108th CONGRESS
2d Session
H. R. 218

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.

(end of bill)

(end of questions and answers)