

## UNDERSTANDING HR 218

On July 22, 2004, the Law Enforcement Officers Safety Act (LEOSA) of 2004, also commonly called “**HR 218**,” became law (Title 18, 44 U.S.C. §, 926B, 926C). This federal law allows “a Qualified Retired Law Enforcement Officer” (QRLO) with identification that meets specified criteria to carry a concealed firearm anywhere in the nation, notwithstanding most other state and local laws which restrict the possession of concealed weapons.

Although the Federal law seems straight forward, it’s been a significant topic for debate and we have seen unbalanced interpretations among law enforcement agencies around the country. Why is this? The latest legal updates support that HR 218 is the law of the land, however; it doesn’t preclude an officer or retired officer that has complied with the HR 218 standard from being arrested if found to be in possession of a concealed firearm in violation of state and local law.

What protections does HR218 provide? The Act creates an *affirmative defense* to criminal prosecution brought by state or local authorities for an alleged violation of their concealed weapons statutes. Therefore, the burden falls on the law enforcement officer to prove that he or she is a "qualified" officer, entitled to the protections of HR 218. This means, you may still be arrested, only to assert the defense and protection of HR 218 at a later time. <sup>1</sup>

Let’s make one thing clear; your retired CCW issued by the Westminster Police Department is valid only in the State of California. If you have become a resident of another state after retirement and are using your California CCW credentials to carry a concealed weapon in that state, you may be placing yourself at risk. You must check with the law enforcement agency in your home State to find out the CCW requirements and their observation of HR 218 in regard to out of state CCW credentials. It is important to know that the protections of HR 218 require that you seek CCW credentialing in the state you reside. <sup>2</sup>

To blindly assume that you can carry your concealed weapon anywhere in the country without reprisal thinking your California CCW is valid in all 50 states or you enjoy unlimited protection under HR 218, then you are mistaken. You must be a “qualified” law enforcement officer or a “qualified” retired law enforcement officer.

In order to be “a Qualified Retired Law Enforcement Officer” under the HR 218, you must be (1) retired in good standing from his or her employing agency (other than for reasons of mental instability); (2) was authorized to perform the specified law enforcement functions and held a position for which powers of arrest were granted by statute; (3) was regularly employed as a law enforcement officer for an aggregate of 15 years or more before his or her retirement, or retired from service with his or her agency (after completing any applicable probationary period of such service) due to a service-connected disability as determined by the agency; (4) has a non-forfeitable right to retirement plan benefits of the law enforcement agency; (5) during the most recent year, has met state firearms training and qualifications that are the same as the training

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<sup>1</sup> Incident in Sturgis, South Dakota (2008).

<sup>2</sup> Title 18, 44 U.S.C. §926C (d) (2) (B) – requires yearly certification in the state the individual QRLO resides.

and qualifications for active duty officers; (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; (7) is not prohibited by Federal law from receiving a firearm; (8) carries a photo identification issued by the agency; and (9) meets an annual qualification requirement.<sup>3</sup>

As stated in item #5 above, Qualified Retired Law Enforcement Officers are required to meet the state's standards for the "training and qualification for active law enforcement officers to carry firearms" under HR 218. Penal Code Section 832.3 and 12027 sets forth the initial and continuing training and testing requirements for peace officers in California.

However, current California law does not set a statewide standard for the training and qualification of active law enforcement officers after graduation from the academy. Standards are established by individual law enforcement agencies for both active and retired officers in those agencies. Therefore, you must shoot and qualify yearly using the agency's current qualification standard for active officers.

The yearly renewal and qualification is also a requirement under 12027PC<sup>4</sup> for all retired California law enforcement retirees that have concealed weapons endorsements.

## **FREQUENTLY ASKED QUESTIONS**

What does this mean to you?

In order to comply with 12027PC and HR 218, all current CCW retirees **must now be licensed yearly** to maintain their CCW privilege in California.

I don't want the HR 218 endorsement, does this mean I still have to renew my California CCW each year?

**Yes.** Aside from the provisions of HR 218, California law requires every CCW retiree to qualify with their firearm every 12 months with the active qualification standard of the agency.

Will there be an HR 218 endorsement on my ID card?

No, because of the previously discussed unbalanced interpretations of the law throughout the country, an HR 218 endorsement will not display on the ID card. The "HR 218 approved" box on the WPD CCW application will be marked "No" unless specified otherwise by the Chief of Police.

Does HR 218 or my California CCW confer powers of arrest?

**No.** Retirees must understand that HR 218 and/or their California CCW **does not confer or vest police powers upon anyone.**

Even full-time California peace officers traveling to another state, who are not on official business, generally do not have peace officer powers in another state nor would they be exempt from criminal or civil litigation if general law enforcement action is taken while off-duty.

<sup>3</sup> Title 18, 44 U.S.C. §926C, 118 Stat. at 866-67.

<sup>4</sup> An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry concealed firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a concealed firearm.

Do HR 218 and my valid CCW endorsement allow me to carry a firearm on an airplane?

**No.** This legislation exempts qualified active and retired law enforcement officers from most State and local laws regarding the carrying of concealed firearms. The carriage of firearms on aircraft is strictly regulated by other Federal statutes, the TSA, and airline policy.

I am a retiree that resides in California, what do I need to do?

You will be required to renew your Westminster Police Department ID card and CCW credential **yearly**. You will be contacted to inform you of your new yearly renewal date as well as where to get the forms needed for licensure.

I reside in California and do not want the protections of HR 218, can I opt out of the yearly renewal process and keep only my CCW for California?

**No.** California law requires every California CCW retiree to qualify with their firearm every 12 months with the active qualification standard of the agency. By completing the CCW renewal process, the HR 218 language will be automatically added to your ID card.

I reside in California but travel to other states regularly, how does HR 218 affect me and what are my protections?

When you travel outside of California and intend on carrying a concealed weapon, it is incumbent that you check with those State(s) so that you may ensure not only what the laws are in regard to carrying a concealed weapon, but also their interpretation and observance of HR 218 under the code.

I reside in a state other than California, what do I need to do to get covered under HR 218?

Title 18, 44 U.S.C. §926C (d)(2)(B), requires a certification issued **by the State in which the individual retiree 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.

First and foremost, if you reside in a State other than California, you must check with the State you reside and inquire as to their requirements for carrying a concealed weapon and HR 218.

Is there any CCW reciprocity agreement between California and the other 49 States to allow my California CCW to be a valid CCW in the State I reside?

**No.** Your California CCW is only valid in California. Once you reside outside of California, you must seek credentialing for CCW and HR 218 in the State you reside.

The state I reside in will not certify me under HR 218, can I go to a state that has HR 218 certification and use it in my home state?

**No.** Many states have no formal process in place nor do they license or endorse for HR 218 pursuant to Title 18, 44 U.S.C. §926C (d)(2)(B). You cannot travel to a State that has a HR 218 certification process and use it in your home state.

The state I reside in offers HR218 certification, can I use this certification from my home state in lieu of having to qualify again with the Westminster CCW standard?

**No.** If you have a valid HR218 certificate from another state, it will not relieve you of your requirement to qualify for your Westminster/California CCW credential if you want to keep your California credential. Penal Code section 12027 requires you qualify with the current department (Westminster) qualification standard.

What if I choose not to renew my CCW every year?

You will lose your California CCW endorsement and protections under HR 218.

Those retirees that choose to opt out will be required to complete a “CCW opt out” form and will be issued an ID card with **no CCW or Qualified Retired Law Enforcement Officer endorsement**. Those ID cards will be valid for a period of 5 years.

I live in Oregon and have received my HR218 certification card, may I opt out of the California CCW requirement and still retain my Westminster Police ID Card?

**Yes.** Those out of state retirees that have successfully obtained a HR218 certificate from their state of residence may opt out of the California CCW requirement and still receive an HR 218 endorsement on the Westminster ID Card. However, the HR218 endorsement will only be valid for 1 year since the statute requires the retiree to qualify yearly in the state they reside. Each out of state retiree must re-apply each year and supply a current HR218 certification to qualify for the endorsement on their ID Card.

In a nutshell, what are all the changes I can expect?

All of the changes are:

- Every CCW retiree must renew their ID card yearly.
- Every CCW retiree must qualify and be certified by the range staff with the active duty standard qualification course at their own expense yearly. (California residents will complete the Westminster PD course of fire. Out of State residents must complete their home State’s active duty standard qualification course of fire.)
- Every CCW retiree must complete a CCW/QRLO form.