



**Effective: October 12, 2010**

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

▣ Part I. Crimes (Refs & Annos)

▣ Chapter 44. Firearms (Refs & Annos)

→ § 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) separated from service in good standing from service with a public agency as a law enforcement officer;

(2) 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 law, and had statutory powers of arrest;

(3)(A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or

(B) 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;

(4) during the most recent 12-month period, has met, at the expense of the individual, the standards for quali-

fication 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;

**(5)(A)** 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 as described in subsection (d)(1); or

**(B)** 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 as described in subsection (d)(1);

**(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 separated 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 active duty standards for qualification in firearms training as established by the agency 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 separated from service as a law enforcement officer; and

**(B)** 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 1 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--

**(I)** 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

**(II)** 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.

(e) As used in this section--

(1) the term "firearm"--

(A) except as provided in this paragraph, has the same meaning as in section 921 of this title;

(B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(C) does not include--

(i) any machinegun (as defined in section 5845 of the National Firearms Act);

(ii) any firearm silencer (as defined in section 921 of this title); and

(iii) any destructive device (as defined in section 921 of this title); and

(2) the term "service with a public agency as a law enforcement officer" includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.

#### CREDIT(S)

(Added Pub.L. 108-277, § 3(a), July 22, 2004, 118 Stat. 866, and amended Pub.L. 111-272, § 2(c), Oct. 12, 2010, 124 Stat. 2855.)

#### HISTORICAL AND STATUTORY NOTES

##### Revision Notes and Legislative Reports

2004 Acts. House Report No. 108-560, see 2004 U.S. Code Cong. and Adm. News, p. 805.

##### References in Text

The National Firearms Act, referred to in subsec. (e), is Act June 26, 1934, c. 757, 48 Stat. 1236, which was classified principally to chapter 53 of Title 26, 26 U.S.C.A. § 5801 et seq., prior to repeal and replacement by the National Firearms Act Amendments of 1968, Pub.L. 90-618, Title II, Oct. 22, 1968, 82 Stat. 1227, also clas-

sified to chapter 53 of Title 26, 26 U.S.C.A. § 5801 et seq. Section 5845 of the National Firearms Act, was classified to 26 U.S.C.A. § 5845. For complete classification, see 26 U.S.C.A. § 5849 and Tables.

#### Amendments

2010 Amendments. Subsec. (c)(1). Pub.L. 111-272, § 2(c)(1)(A), struck out “retired” and inserted “separated from service” and struck out “, other than for reasons of mental instability” following “officer”.

Subsec. (c)(2). Pub.L. 111-272, § 2(c)(1)(B), struck out “retirement” and inserted “separation”.

Subsec. (c)(3)(A). Pub.L. 111-272, § 2(c)(1)(C)(i), struck out “retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more” and inserted “separation, served as a law enforcement officer for an aggregate of 10 years or more”.

Subsec. (c)(3)(B). Pub.L. 111-272, § 2(c)(1)(C)(ii), struck out “retirement” and inserted “separation”.

Subsec. (c)(4). Pub.L. 111-272, § 2(c)(1)(D), rewrote par. (4), which formerly read: “(4) has a nonforfeitable right to benefits under the retirement plan of the agency;”.

Subsec. (c)(5). Pub.L. 111-272, § 2(c)(1)(E), rewrote par. (5), which formerly read: “(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;”.

Subsec. (d)(1). Pub.L. 111-272, § 2(c)(2)(A), struck out “retired” and inserted “separated”, and struck out “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” and inserted “to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm”.

Subsec. (d)(2)(A). Pub.L. 111-272, § 2(c)(2)(B)(i), struck out “retired” and inserted “separated”.

Subsec. (d)(2)(B). Pub.L. 111-272, § 2(c)(2)(B)(ii), rewrote subpar. (B), which formerly read: “(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.”.

Subsec. (e). Pub.L. 111-272, § 2(c)(3), rewrote subsec. (e), which formerly read:

“(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).”.

## NOTES OF DECISIONS

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### 1. Constitutionality

Law Enforcement Officers Safety Act (LEOSA) did not unconstitutionally require states to issue necessary identification to retired law enforcement officers so that they would be allowed to carry concealed weapons in interstate commerce, precluding retired corrections officers' action against New York state agencies for declarative and injunctive relief; regardless of its reliance on state standards for issuance of necessary identification, LEOSA was federal scheme that placed no affirmative obligation on state actors. *Johnson v. New York State Dept. of Correctional Services*, N.D.N.Y.2010, 2010 WL 1752550. Weapons 🔑 106(1)

### 2. Construction

Law Enforcement Officers Safety Act (LEOSA) contained no explicit congressional intent to preempt states' authority to issue identification needed for retired law enforcement officers to carry concealed weapons in interstate commerce; statute demonstrated only intent to bar criminal prosecution of retired law enforcement officers who carry concealed firearms in interstate commerce, but such right was made contingent upon retired officer's possession of requisite state-issued identification. *Johnson v. New York State Dept. of Correctional Services*, N.D.N.Y.2010, 2010 WL 1752550. Weapons 🔑 104

### 3. Proper parties

Commissioners of New York's Department of Correctional Services (DOCS) and Division of Criminal Justice Services (DCJS) were proper parties to retired corrections officers' action for declarative and injunctive relief under Law Enforcement Officers Safety Act (LEOSA) provision permitting retired officers to carry concealed weapons in interstate commerce; retired officers did not allege that New York's firearm licensing scheme was in violation of federal law, but rather asserted that commissioners' failure to issue photographic identification and certifications violated LEOSA. *Johnson v. New York State Dept. of Correctional Services*, N.D.N.Y.2010, 2010 WL 1752550. Injunction 🔑 114(3)

### 4. Private cause of action

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Congress did not expressly intend to create private cause of action under Law Enforcement Officers Safety Act (LEOSA), precluding retired corrections officers' action against state agencies for declarative and injunctive relief under LEOSA provision permitting retired officers to carry concealed weapons in interstate commerce; any rights expressly conferred by LEOSA were contingent upon retired officer's possession of identification, but nothing in LEOSA bestowed either explicit right to obtain that identification or federal remedy for state agency's failure to issue such identification. *Johnson v. New York State Dept. of Correctional Services*, N.D.N.Y.2010, 2010 WL 1752550. Weapons ↪ 136

18 U.S.C.A. § 926C, 18 USCA § 926C

Current through P.L. 111-349 (excluding P.L. 111-296, 111-309, 111-314, 111-320, and 111-322) approved 1-4-11

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