

## Montana Auxiliary Reserve Deputy Proposal

### Summary:

Title 18 USC Sect. 926B Law Enforcement Officers Safety Act (also referred to as HR218), is a Federal law that exempts qualified active and retired law enforcement officers from local and State prohibitions on the carrying of a concealed firearm.

Essentially it uses the commerce clause as a way of exempting individuals who meet a minimal set of requirements from being prohibited from a concealed weapon anywhere in the U.S. This is a Federal law that exempts qualified active and retired law enforcement officers from local and State prohibitions on the carrying of concealed firearms.

The LEOSA has been challenged on a few occasions by The City of New York with the case in 06 of NYC v Rodriguez (a PA Constable) and in 08 of NYC v Booth (a NJ Sheriff's Deputy) In both cases all charges were dismissed under 18 U.S.

What we propose, is that the sovereign state of Montana draft legislation which would create a specialized category of sworn law enforcement officer who was exempted from the POST training which is currently required and exempted from the current residency requirement. One possible name for this new category of officer would be the title of Auxiliary Reserve Deputy or ARD.

This specialized category of officer would not be issued a badge, only the Photo ID required by the LEOSA, and would have narrowly defined and highly curtailed statutory powers of arrest in a specific jurisdiction. (For example, they could be empowered by statute to have powers of arrest only for gross infringements of the 2nd amendment while on Montana soil) This could even be further limited to include a caveat (as with California Level III reserve deputies) where statutory powers of arrest may only be exercised while the ARD officer is in the presence of a supervisory Sheriff's officer.

This program would not only allow Montana state residents, who wish to participate, to travel with their concealed firearms throughout all 50 states without being molested, it would also allow law abiding residents of good moral character from other states to become ARD officers, enabling them to carry concealed firearms in jurisdictions where they would otherwise be unable to obtain a concealed firearm permit, or even be able to lawfully possess a firearm (such as NYC)

The wording of HR218 is such that it would not only allow ARD's to keep and bear all title 1 firearms (and some title 2) it would allow ARD's to completely circumvent any and all state initiated magazine restrictions, assault weapons bans, and prohibitions against the ownership of unconventional firearms.

Departmental liability for the actions of the ARD could be eliminated by clearly defining by statute that the ARD is an independent contractor who is solely liable for any civil torts brought against them and that the state of Montana cannot be held liable for the

actions of the ARD. This could be further augmented by requiring the applicant to sign a statement assuming liability for their own actions and to hold faultless the state of Montana in the event of officer misconduct. The ARD applicant would additionally have to sign a conduct agreement which would clearly stipulate that any misuse or abuse of credentials would be grounds for immediate suspension, the invalidation of said credentials. Additionally the applicants could be required to post a bond which would be forfeit to the state of Montana in the event that the ARD officer misuses, misrepresents, or abuses their credentials. As a further safeguard against liability the ARD could be required to possess concealed carry insurance.

The costs of administration and implementation could easily be recouped by the charging of a moderate application processing fee (our market research indicates that \$500 for a two year employment contract, and \$1000 for a 5 year employment contract would be well received) Salary would be fixed at \$1 per year to satisfy the minimum requirements of the LEOSA. No badge need be issued to satisfy the requirements of the LEOSA, a simple photographic ID would suffice, which would greatly reduce the cost of issuing ARD law enforcement credentials.

There are approximately 300 million firearms in circulation in the United States, with about 80 million gun owners. If one half of one percent of gun owners applied for ARD credentials at \$1000 each for a 5 year employment contract, the state of Montana would see an influx of revenue (primarily from outside its existing tax base) of approximately 400 million dollars every 5 years. This does not take into account the number of individuals who live in restrictive areas (such as New York City) who are unable to even possess a firearm due to restrictive local conditions for whom ARD employment would mean finally obtaining the means to defend their life, liberty, and family.

Background checks to satisfy the requirement of ensuring the applicants are of good moral character can be performed quickly and inexpensively by utilizing the NCIS database (the same system already used to perform background checks during the sale of firearms by licensed dealers) And Montana's own requirement for the carrying of a concealed firearm can be easily met by including a modified version of Montana's hunter safety test as a component of the application (additional sections could be added to make certain that the applicant understands the limitations of their statutory powers)

The creation of the ARD and implementation thereof would in no way infringe upon the rights of private property owners to regulate their own premises as the LEOSA expressly does not supersede or limit the laws of any State that permits private persons or entities to prohibit or restrict the possession of concealed firearms on their property or prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park. Which, in keeping with the Heller decision, satisfies the 'sensitive areas' language of the SCOTUS majority opinion? This also will preserve the integrity of Montana's own statutes against the bearing of armaments in specific limited locations.

There is also some small satisfaction to be gleaned from using the Federal government's own misguided interpretation of the commerce clause to empower law abiding citizens all over the nation to keep and bear arms regardless of local infringements. And the benefits to Montana residents, both in terms of revenue streams for the state being generated from

outside the tax base, as well as the ability to enjoy 2nd amendment rights while traveling in any state in the union, are substantive.

Thank you for your time, please feel free to forward this to anyone you think may be interested in it.

Please Call or Email me if you have any questions, concerns, or need clarification.

Thank you,

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p.s. I have attached the text of Title 18 USC section 926B (the LEOSA aka HR218) to the bottom of this email.

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:

“§ 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;

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“(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:

“§ 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;

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“(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.