

CHAPTER 181  
FORMERLY  
SENATE BILL NO. 45

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE FEDERAL LAW ENFORCEMENT OFFICERS SAFETY ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 11, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 1441A State implementation of the federal Law Enforcement Officers Safety Act of 2004 [18 U.S.C. §§ 926B, 926C]~~

~~(a) For purposes of this section, unless the context otherwise requires:~~

~~(1) "Firearm" means a weapon as defined in 18 U.S.C. § 921(a)(3), but does not include a machine gun as defined in § 5845(b) of the National Firearms Act, 26 U.S.C. § 5845(b), or a firearm silencer as defined in 18 U.S.C. § 921(a)(24), or a destructive device as defined in 18 U.S.C. § 921(a)(4);~~

~~(2) "Law Enforcement Officers Safety Act" means an act of the United States Congress known as the Law Enforcement Officers Safety Act of 2004, Pub. L. No. 108 277, 118 Stat. 865 (2004), and codified at 18 U.S.C. §§ 926B and 926C;~~

~~(3) "Officer" means a qualified active duty law enforcement officer or a qualified retired law enforcement officer, or both;~~

~~(4) "Parent agency" means the agency from which a qualified retired law enforcement officer retired;~~

~~(5) "Qualified active duty law enforcement officer" means an employee of a governmental agency who:~~

~~a. 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;~~

~~b. Is authorized by the agency to carry a firearm;~~

~~c. Is not the subject of any disciplinary action by the agency;~~

~~d. Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;~~

~~e. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and~~

~~f. Is not prohibited by federal law from receiving a firearm;~~

~~(6) "Qualified retired law enforcement officer" means an individual who:~~

~~a. Retired in good standing from service with a governmental agency in Delaware as an active duty law enforcement officer, other than for reasons of mental instability;~~

~~b. Before 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 who had statutory powers of arrest;~~

~~e.1. Before retirement, was regularly employed as an active duty law enforcement officer for an aggregate of 15 years or more; or~~

~~2. Retired from service with a governmental agency in Delaware, after completing any applicable probationary period of service, due to a service connected disability, as determined by the agency;~~

~~d. Has a nonforfeitable right to benefits under the retirement plan of the agency;~~

~~e. During the most recent 12-month period, has met, at that individual's own expense, Delaware's standards for training and qualification for qualified active-duty law enforcement officers to carry firearms;~~

~~f. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and~~

~~g. Is not prohibited by federal law from receiving a firearm.~~

~~(b) The State and any agency or political subdivision of the State employing 1 or more active-duty officers shall issue a photographic identification card to each officer retired from employment by them who has fulfilled the requirements and standards of paragraph (a)(6) of this section. The card must indicate the status of the officer as being an officer who has retired from service.~~

~~(c) The proficiency standards for retired officers of this State which meet the minimum requirements under the federal Law Enforcement Officers Safety Act are:~~

~~(1) A retired officer shall, within the year immediately preceding the carrying of the firearm, fire a score equal to or greater than 80% on the Standard Off-Duty Qualification Course; and~~

~~(2) A retired officer shall demonstrate the required level of proficiency through 1 course of fire for each type and caliber of firearm that the officer intends to carry pursuant to the federal Law Enforcement Officers Safety Act. The types of firearms are revolver and semi-automatic pistol; the calibers vary. A photographic identification card issued pursuant to this section must indicate the type or types and caliber or calibers of firearm with which the officer demonstrated the required proficiency and the date upon which proficiency was demonstrated.~~

~~(d)(1) A retired officer wishing to demonstrate the levels of proficiency required by subsection (c) of this section may do so either through that retired officer's parent agency or through an instructor qualified under the Council of Police Training to conduct the training required. The parent agency of a retired officer may recover the cost of ammunition and targets from retired officers using the parent agency to meet the requirements of subsection (c) of this section. A parent agency that receives a request for the issuance of a photographic identification card from a retired officer who possesses a certificate of demonstrated proficiency, signed by an instructor authorized to attest to a retired officer's proficiency pursuant to this section, shall accept the certificate, make a record of it, and, in a timely fashion, issue the photographic identification card, if, and only if, the retired officer submits, at a minimum, to a criminal history records check.~~

~~(2) A retired officer who was an active officer in a state other than Delaware must apply to the other state for a photographic identification card, although that retired officer may receive a certification for firearm proficiency standards in this State under subsection (f) of this section.~~

~~(e) The Attorney General of the State, acting in the capacity of the chief law enforcement officer of the State, is responsible for ensuring the standard of the form of a photographic identification card and otherwise ensuring that Delaware law meets the requirements of federal law for implementing the Law Enforcement Officers Safety Act within the State.~~

~~(f) A retired officer residing in the State whose parent agency is physically located or headquartered in another state may use the services of a qualified instructor authorized to conduct the training required, or may use the services of any Delaware-based law enforcement agency, at the option of the agency, to meet the proficiency standards under subsection (c) of this section. A retired officer residing in the State who uses the provisions of this section, has an affirmative duty to report to the Delaware Department of Justice any fact or circumstance which may act as a legal impediment to the officer's legal right to keep and bear arms, including, but not limited to, any conviction making the officer a person prohibited from purchasing, owning, possessing, or controlling a deadly weapon or ammunition for a firearm under § 1448 of this title.~~

~~(g) A Delaware parent agency, its officers, agents, and employees, and all other persons authorized to certify and attest to the required level of officer proficiency pursuant to subsection (c) of this section, are not subject to, and are immune from, claim, suit, liability, damages, and any other civil recourse arising from any act, decision,~~

~~or determination undertaken or performed, or from any recommendation made, in conjunction with the determination of a retired officer's proficiency as required in subsection (c) of this section, so long as their act, decision, determination, or recommendation does not rise to the level of wilful and wanton, reckless, or grossly negligent conduct.~~

~~(h) Nothing contained in this section may interfere in any manner with a retired officer's ability to obtain or renew a license to carry a concealed deadly weapon under § 1441 of this title.~~

~~(i) This section may not be construed to grant to or bestow upon a retired officer any law enforcement powers or authority not otherwise held by the officer. Likewise, this section may not be construed to extend or enlarge upon the law enforcement powers or authority of current, active duty officers.~~

§ 1441A State implementation of the federal Law Enforcement Officers Safety Act of 2004 [18 U.S.C. § 926B as amended in 2010 and 2013] 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) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(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 or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;

(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 that identifies the employee as a police officer or law enforcement officer of the agency.

(e) As used in this section, the term "firearm":

(1) except as provided in this subsection, has the same meaning as in section 921 of Title 18, United States Code;

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

(3) does not include:

- a. any machinegun (as defined in section 5845 of the National Firearms Act);
- b. any firearm silencer (as defined in section 921 of Title 18, United States Code); and
- c. any destructive device (as defined in section 921 of Title 18, United States Code).

(f) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency 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 has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice).

§ 1441B State implementation of the federal Law Enforcement Officers Safety Act of 2004 [18 U.S.C. § 926C as amended in 2010 and 2013] 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) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(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 or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(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 qualification 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) of this section; 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) of this section;

(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 identifies the person as having been employed as a police officer or law enforcement officer and 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 that identifies the person as having been employed as a police officer or 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:

1. 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

2. 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 Title 18, United States Code;

b. includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

c. 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 Title 18, United States Code); and

3. any destructive device (as defined in section 921 of Title 18, United States Code); 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.

(3) the term “a firearm of the same type” means a revolver or a semi-automatic pistol.

Approved September 03, 2015