

Depending on who you believe, either 10.98 million (University of New Orleans) or 17.74 million (City of New Orleans) people visited New Orleans in 2017, spending \$7.51B or \$8.7B (respectively) while they were here. I do not know how many of those individuals were law enforcement professionals, but in 2012, the FBI said there were about 700,000 sworn officers. If reality bears out the averages, then that means there were somewhere between 21,960 and 35,480 law enforcement officers who were part of those visitors to New Orleans.

In August 2019, there will be thousands of active and retired law enforcement officers in New Orleans for the FOP's 64th Biennial Conference. While I have no idea how many of those law enforcement visitors will be armed and carrying concealed weapons during their visit, I can imagine there will be a few. Some of those visitors carrying a concealed weapon might be visiting local eating and/or eating establishments. While there are lots of things New Orleans is known for drinking and eating must be near the top of the list.

EXECUTIVE SUMMARY

For those of you who don't want to read the reasons why, here is a summary of the law in Louisiana:

- **Law enforcement officers are not forbidden from carrying concealed weapons in bars and/or restaurants**
- **Any active or retired law enforcement officer approached by the NOPD while visiting New Orleans should 1) comply with all requests; and 2) be prepared to produce identification compliant with the requirements of LEOSA.**
- **Guns and alcohol don't mix in New Orleans or any other jurisdiction. Play it smart. If you are going to be drinking, leave your weapon in the hotel safe.**

If you are interested in the "why," feel free to keep reading.

La. R.S. 14:95.5 says that nobody is allowed to intentionally possess a firearm while on the premises of an alcohol beverage outlet. It goes on to define an alcoholic beverage outlet (ABO) as any business which sells alcohol in individual servings that are intended to be consumed on the premises, without regard for how much of the business's revenues are derived from the sale of alcohol. As you might imagine, there are exceptions – exceptions which should not be conflated. In addition to the exceptions found in La. R.S. 14:95.5, there is also a federal law which likely preempts the state law, at least as it applies to the FOP members visiting in August, or the thousands of law enforcement officers who visit New Orleans every year.

La. R.S. 14:95.5(C)(1) says that the provisions of La. R.S. 14:95.5 do not apply to the owner or lessee of an ABO, an employee of the owner or lessee of an ABO, or to a law enforcement officer, or to a law enforcement officer or other person vested with law enforcement authority or listed in R.S. 14:95(G) or (H). La. R.S. 14:95.5(C)(2) says that someone with a concealed handgun permit can carry pursuant to 40:1379.1 or 40:1379.3 if the ABO has a Class A restaurant permit.

I am not aware of any definition of law enforcement officer in Louisiana statutes. La. R.S. 40:2402 defines "Peace Officer" in terms of Louisiana POST and is often cited as a starting point for defining "law enforcement officer." However, that is not what the statute says.

La. R.S. 14:95(G) provides exemptions to La. R.S. 14:95, Illegal Carrying of Weapons (except La. R.S. 14:95(4) which I will touch on at the end) for Sheriffs, their deputies, state and city police officers, etc. in the course of their duties. It also provides an exemption for Sheriffs, their deputies, state and city police officers, as long as they are POST certified. It exempts retired law enforcement with at least 12 years and annual qualification with the appropriate id and reserve or auxiliary police officers as long as they have the appropriate identification and qualify annually with the POST firearms course.

La. R.S. 14:95(H) provides exemptions for justices, judges, and other members of the judicial or legislative branches of government as long as they have the proper identification and qualify annually with the POST firearms course.

All that is pretty complicated when La. R.S. 14:95.5(C)(1) simply exempts law enforcement officers. Furthermore, unlike the exemptions found in La. R.S. 14:95, the exemptions in La. R.S. 14:95.5(C)(1) do not require qualification on a POST course (other jurisdictions don't necessarily have a POST Council – although other jurisdictions do have some variation of POST).

As it relates to those with concealed handgun permits, the statutory limitations are listed in La. R.S. 40:1379.3. These, however, do not apply to law enforcement officers.

La. R.S. 14:1379.1.3 provides that law enforcement officers can, generally speaking, carry a concealed weapon anywhere in Louisiana, including anywhere open to the public, given certain conditions. This statute was modeled after LEOSA, which is described below.

The Law Enforcement Officers Safety Act (LEOSA) is a United States federal law, enacted in 2004, that allows two classes of persons - the "qualified Law Enforcement officer" and the "qualified retired or separated Law Enforcement officer" - to carry a concealed firearm in any jurisdiction in the United States or United States Territories, regardless of state or local laws, with certain exceptions. (<https://leosaonline.com/>) This law is sometimes referred to as H.R. 218 after the bill introduced before its passage.

(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 this title;

(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 this title); and

(C) any destructive device (as defined in section 921 of this title).

(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).

CONCLUSION

Preemption is the doctrine which basically stands for the proposition that based on the Supremacy Clause of the U.S. Constitution (Article VI, Clause 2) federal law preempts state and local law when they attempt to govern the same topic. In this case, LEOSA, a federal law, states that certain law enforcement officers, active and retired, can carry concealed firearms anywhere in the United States except that it recognizes a state’s right to pass legislation allowing private persons to restrict firearms possession on their property or to restrict possession of firearms in government buildings or installations. Finally, LEOSA does not override the Gun-Free School Zone Act.

I defended a law enforcement officer from Mississippi who had been arrested in a bar in the French Quarter for carrying a concealed handgun. Ultimately, the District Attorney’s Office reached the same conclusion as I did considering the above and refused the charges. The officers who made the arrest in that case confused the laws on concealed handgun permits with the laws governing law enforcement officers. The officer who was arrested realized he had made a mistake by carrying a concealed firearm in a bar because guns and alcohol don’t mix.

REAL MESSAGE TO TAKE AWAY WITH REGARD TO GUNS AND ABO’S

Guns and alcohol do not mix. LEOSA and Louisiana Law both exempt intoxicated persons from the protection of the law, and for good reason. Actually, the legislation uses the language “under the influence of. . .” What does that mean? I have seen that language interpreted to mean “the presence of any alcohol at all – even the slightest bit.”

On behalf of the Louisiana Fraternal Order of Police and the FOP Crescent City Lodge, we are looking forward to the thousands of FOP members who will be coming to visit in August. We do want everyone to enjoy themselves. Furthermore, poor decision making is probably forgivable. However, if someone ends up hurt or dead because of the mixture of guns and alcohol, or drinking and driving, the law is not going to be quite so forgiving.