



Federal Laws and Legislation on Carrying Concealed Firearms: An Overview

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Summary

Whether an individual is permitted to carry a concealed firearm is a matter traditionally regulated by the states. State laws vary with respect to eligibility requirements to obtain a concealed carry permit (CCP). A majority of states, known as “shall-issue” jurisdictions, require the issuing authority to issue a CCP to an applicant so long as he or she meets certain statutory requirements. Another handful of states, known as “may-issue” jurisdictions, grant the issuing authority discretion to issue a CCP upon a finding of proper cause, or upon the applicant demonstrating good character. States decide which out-of-state CCPs to recognize, typically through the use of reciprocity agreements.

Although Congress has enacted federal firearm laws that govern, among other things, the possession, transfer, and sale of firearms, it has seldom legislated on the issue of concealed carry. It has passed only a few laws on concealed carry, allowing individuals in certain occupations and who meet certain qualifications to carry concealed nationwide notwithstanding state or local laws. These laws include the Armored Car Industry Reciprocity Act of 1993 (P.L. 103-55); the Arming Pilots Against Terrorism Act of 2002 (P.L. 107-296); the Law Enforcement Officers Safety Act (LEOSA) (P.L. 108-277); and the Credit Card Act (P.L. 111-24). However, in the 112th Congress and past years, legislation has been introduced that would permit individuals to carry concealed nationwide, or on certain federal lands. These bills include H.R. 822, the National Right-to-Carry Reciprocity Act of 2011; S. 176, the Common Sense Concealed Firearms Permit Act of 2011; H.R. 2900, the Secure Access to Firearms Enhancement Act of 2011; and S. 1588, the Recreational Land Self-Defense Act of 2011.

This report first provides an overview of how concealed carry is generally regulated among the states. It then summarizes the federal laws regulating concealed carry. Lastly, it examines the concealed carry legislation pending before 112th Congress. This report does not address carrying firearms on military installations by military personnel.

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Introduction

Carrying a concealed firearm is an activity traditionally regulated by the states. Generally, each state has its own concealed carry eligibility laws and requirements, and determines which out-of-state concealed carry permits it will recognize. Although regulating concealed carry has been left to the states, Congress has passed a few laws that authorize certain individuals to carry concealed firearms across state lines, notwithstanding individual state provisions. In addition, it has enacted a measure that permits individuals to carry concealed firearms on federal lands that are units of the National Park System and National Wildlife Refuge System. Yet, in the past few years, Congress has considered measures that would permit nationwide concealed carry and continues to consider legislation that would allow concealed carry on other federal lands.

This report first provides an overview of how concealed carry is generally regulated among the states. It then summarizes the federal laws regulating concealed carry. Lastly, it examines the concealed carry legislation pending before 112th Congress. This report does not address carrying firearms on military installations by military personnel.

Overview on Concealed Carry

Carrying a concealed firearm is basically the ability of an individual to carry on his or her person a firearm, typically a handgun, in a concealed manner.¹ Regulations pertaining to concealed carry vary by state.

States that issue concealed carry permits are generally either a “shall-issue” or a “may-issue” state. Among these states, some issue permits only to residents, while others issue permits to both residents and non-residents. In “shall-issue” jurisdictions, the issuing authority is required to grant an applicant the concealed carry permit (CCP) if he or she meets the statutory requirements. In “may-issue” jurisdictions, the issuing authority generally has the discretion to grant or deny a CCP based on a variety of statutory factors. For example, the state of North Carolina is a “shall-issue” jurisdiction. It provides: “The sheriff *shall* issue a permit to carry a concealed handgun to a person who qualifies for a permit under G.S. 14-415.12. The permit shall be valid throughout the State for a period of five years from the date of issuance.”² (emphasis added). By comparison, the state of California is a “may-issue” jurisdiction. It provides: “The sheriff of a county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying satisfies any one of the conditions ... *may* issue to that person a license to carry a pistol ...”³ (emphasis added).

Because states with “may-issue” laws typically grant permits at their discretion, obtaining a permit in “may-issue” states is arguably more difficult than in “shall-issue” states. There are,

¹ In contrast, carrying a firearm can also refer to “open carry.” Open carry means that an individual is carrying a firearm (handgun or long gun) on his or her person in a manner that is visible to the public.

² N.C. Gen. Stat. §14-415.11(b) (2011).

³ Cal. Penal Code §12050(a)(1) (2011). *See also* Ala. Code §13A-11-75A (2011) (“The sheriff of a county, upon the application of any person residing in that county, *may* issue a qualified or unlimited license ... if it appears that the applicant has good reason to fear injury to his or her person or property or has any other proper reason for carrying a pistol, and that he or she is a suitable person to be so licensed.”).

however, jurisdictions which utilize the term “shall-issue” in statute but could be considered “may-issue” jurisdictions because they typically require the applicant to provide evidence of good character or demonstrate proper cause in his or her need for the CCP. For example, Rhode Island law states: “The licensing authorities of any city or town *shall* ... issue a license or permit to carry concealed upon his or her person a pistol or revolver ... if it appears that the applicant has good reason to fear an injury to his or her person or property or has any other proper reason for carrying a pistol or revolver, and that he or she is a suitable person to be so licensed.”⁴

Only the state of Illinois and the District of Columbia prohibit concealed carry.⁵ On the other hand, states like Alaska, Vermont, Arizona, and Wyoming do not require their residents to have CCPs to carry a concealed firearm; though, some of these states (*e.g.* Alaska and Arizona) continue to issue CCPs to their residents so they may carry concealed in other states which require permits for the purpose of reciprocity.⁶

Each state decides which out-of-state permits it will honor.⁷ This is done via reciprocity and recognition agreements that can be either written or unwritten.⁸ States tend to recognize or enter into reciprocity agreements with other jurisdictions where the concealed carry requirements are similar to their own.⁹ For example, the state of Washington mandates that it will recognize concealed carry permits of other states only if the licensing state (1) does not issue to persons under the age of 21; and (2) requires mandatory fingerprint-based background checks of criminal and mental health history.¹⁰ Reciprocity agreements can change periodically. For instance, the

⁴ R.I. Gen. Laws §11-47-11 (2011) (emphasis added). *See also* Md. Code Ann. Pub. Safety §5-306 (2011) (“[T]he Secretary shall issue a permit ... [if the applicant] based on an investigation has a good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.”).

⁵ 720 Ill. Comp. Stat. Ann. 5/24-1(a)(4) (2011) (It is unlawful for a person to “[carry or possess] concealed on or about his person” except in certain locations and under specific circumstances.). DC repealed its provision that granted the Chief of Police the authority to issue CCPs. D.C. Code §22-4506 (2001). However, DC law does not expressly prohibit residents from carrying concealed. It provides that “No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law ...” In addition, the state of Wisconsin had also banned concealed carry until 2011. Wisconsin Act 35, passed in 2011, instituted a “shall-issue” concealed carry licensing scheme effective November 2011.

⁶ In Alaska, while no permit is required to carry within the state, a permit may be obtained for purposes of carrying out of state, <http://www.dps.state.ak.us/statewide/permitslicensing/reciprocity.aspx>; In Vermont, while no permit is required to carry within the state, a Vermont resident must obtain a non-resident permit from another state in order to carry out of state, <http://www.dps.state.vt.us/vtsp/faq1.html#VermontGun>.

⁷ *See, e.g.*, National Rifle Association, Guide to Interstate Right-to-Carry Reciprocity and Recognition 2010, <http://www.nraila.org/recmap/Recguide.pdf>.

⁸ *See, e.g.*, Arizona Dep’t of Public Safety, http://ccw.azdps.gov/reciprocity/documents/Reciprocal_Agreements_Current.pdf; Virginia State Police, http://www.vsp.state.va.us/Firearms_Reciprocity.shtm; Texas Dep’t of Public Safety, http://www.txdps.state.tx.us/administration/crime_records/chl/reciprocity.htm.

⁹ *But cf.* Pennsylvania and Virginia have entered a reciprocity agreement with one another but Virginia requires its applicants to take an approved firearms safety training course (Va. Code §18.2-308) whereas Pennsylvania does not.

¹⁰ Wash. Rev. Code §9.41.073 (2011). *See also* Washington State Office of the Att’y General, <http://www.atg.wa.gov/ConcealedWeapons/Reciprocity.aspx>. For example, Washington states that it does not recognize CCPs from the state of Minnesota because “Washington does not have the training required by Minnesota”; nor does it recognize CCPs from the state of Montana because a “mandatory mental health background check does not appear to meet Washington requirement. Allows under 21-yrs-old to have license.” Similarly, it rejects CCPs from the state of Nebraska because of “[n]o mandatory fingerprint-based criminal background check. No mandatory mental health background check. [Washington] does not meet [Nebraska’s] training requirement.” For states where reciprocity is recognized, like Florida and Louisiana, the state of Washington states, “Meets [Washington’s] requirements.”

state of Florida's Department of Agriculture and Consumer Services, Division of Licensing announced:

The Division of Licensing constantly monitors changing gun laws in other states and attempts to negotiate agreements as the laws in those states allow. This list was last updated on January 1, 2011, when the State of Iowa was added to the reciprocity list. NOTE: EFFECTIVE July 1, 2009, Nevada was no longer reciprocal with Florida. Authorities in Nevada notified the Division of Licensing that as of that date Nevada would no longer honor Florida concealed weapon licenses. Therefore, in accordance with the reciprocity agreement provision set forth in section 790.015, Florida Statutes, Florida could not longer honor concealed weapon licenses issued by the State of Nevada.¹¹

Notably, some states only honor out-of-state permits if the licensee holds a permit from his state of residence, otherwise an out-of-state visitor would have to apply for a non-resident permit, if offered, of the state in which he wishes to carry. For example, Colorado, a "shall-issue" jurisdiction, provides that another state's CCP is valid if it is issued to a person who is 21 years of age or older, and "a resident of that state that issued the permit, as demonstrated by the address stated on a valid picture identification that is issued by the state that issued the permit and is carried by the permit holder."¹² There are also other states that honor out-of-state CCPs irrespective of whether that individual is a resident or non-resident of the state from which he obtained his license. Utah, for example, provides that its unlawful carrying penalties do not apply to any person to whom a permit to carry a concealed firearm has been issued by the state or by another state or county.¹³

Carrying a concealed firearm should be distinguished from transporting a firearm in a vehicle. States generally provide an exception to their CCP requirements if the individual is transporting a firearm in a vehicle for specific purposes and the firearm is unloaded and disassembled. The state of Michigan requires individuals to obtain a CCP in order to possess, carry, or transport a pistol in the state, unless the individual is "carrying a pistol unloaded in a wrapper or container in the trunk of his or her vehicle ... [or that the pistol is] unloaded in a locked compartment or container that is separated from the ammunition for that pistol from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business, or in moving goods from [one] place of abode or business to another place of abode or business."¹⁴ Maryland similarly makes it unlawful to transport a handgun, concealed or open, unless one is licensed to do so. Other exceptions where lawful transportation is permitted include if the handgun is unloaded and carried in an enclosed case and if the individual is transporting the handgun between certain locations.¹⁵ Yet, in the state of New York, for example, it is unlawful for

¹¹ Fla. Dep't of Agriculture and Consumer Protection, Division of Licensing, http://licgweb.doacs.state.fl.us/news/concealed_carry.html.

¹² Colo. Rev. Stat. §18-12-213 (2011). *See also* S.C. Code Ann. §23-31-215(N) (2011) ("Valid out-of-state permits to carry concealable weapons held by a resident of a reciprocal state must be honored by this State, provided that the reciprocal state requires an applicant to successfully pass a criminal background check and a course in firearm training and safety.") (emphasis added).

¹³ Utah Code Ann. §76-10-523 (2011). *See also* S.D. Codified Laws §23-7-7.4 ("Any valid permit to carry a concealed pistol, issued to a nonresident of South Dakota, is valid in South Dakota according to the terms of its issuance in the State of its issue, but only to the extent that the terms of issuance comply with any appropriate South Dakota statute or promulgated rule.")

¹⁴ Mich. Comp. Laws §§28.422, 28.432a (2011).

¹⁵ Md. Crim. Law Code Ann. §4-203(b)(3). Maryland also provides other exceptions for transporting a handgun without a permit, including transporting a handgun used in connection with an organized military activity, target (continued...)

an individual to transport a firearm without being licensed by the state to do so, and there do not appear to be any exceptions.¹⁶ There is, however, also a federal safe harbor that permits individuals to transport a firearm in a vehicle between states without fear of being prosecuted for violating the carrying/transportation laws of a state through which he travels.

Interstate Transportation of Firearms

Section 926A of title 18 of the U.S. Code was first enacted under the Firearms Owner Protection Act (FOPA) in 1986.¹⁷ Shortly thereafter during the same Congress, a bill (S. 2414, 99th Congress) sponsored by Senator Strom Thurmond was introduced to amend certain provisions in title 18 of the U.S. Code, including the newly enacted Section 926A.¹⁸ Currently, 18 U.S.C. Section 926A provides:

Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter *from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm*, if during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: Provided, That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console. [Emphasis added]

There is little jurisprudence interpreting Section 926A, but proceedings from the House floor on S. 2414 provide some guidance on how this provision could be construed.¹⁹ The colloquy on the House floor between Representative Ron Marlenee of Montana and Representative Bill McCollum of Florida, a Member of the House Subcommittee on Crime, which had jurisdiction over firearms issues, provides some clarification as to the intended meaning of S. 2414.²⁰

The dialogue suggests that the purpose of Section 926A is to create a “safe harbor for interstate travelers,” such that any traveler who transports his firearm in accordance with the section

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shooting, or the moving of handguns by a bona fide gun collector to a place for public or private exhibition. *Id.*

¹⁶ N.Y. Penal Law §265.20(3) (2011). Individuals who are carrying or are only exempt from prosecution of criminal possession of a weapon if they are licensed pursuant to New York state law.

¹⁷ P.L. 99-308; 100 Stat. 460 (1986), *amending* P.L. 90-618; 82 Stat. 1213 (1968). It provided for the “transport of unloaded, not readily accessible firearms in interstate commerce, notwithstanding any provision of any legislation enacted, or any rule or regulation prescribed by any State or political subdivision thereof.”

¹⁸ P.L. 99-360; 100 Stat. 766 (1986).

¹⁹ As a general principle courts may treat certain types of legislative history as more authoritative than others. For example, committee report explanations, and especially those of conference committees, are considered more persuasive and reliable than statements made during floor debates or hearings. Within floor debates, statements of sponsors and explanations by floor managers are usually accorded the most weight, and statements by other committee members of the reporting committee[s] next. Floor statements by Members not associated with sponsorship or committee consideration of a bill have little weight, and statements by bill opponents less weight still. Hearings may be useful in providing background, less so as to illuminating the meaning of particular language. *See* CRS Report 97-589, *Statutory Interpretation: General Principles and Recent Trends*, by Larry M. Eig.

²⁰ Senator Edward Kennedy summarized the contents of the bill during Senate consideration of S. 2414, but no colloquy or other debate took place. 132 *Cong. Rec.* 9607 (1986).

“cannot be convicted of violating a more restrictive State or local law in any jurisdiction through which he travels.”²¹ While travelers are not required to transport their firearms in accordance with this section, failure to do so may place them at risk of being in violation of state laws governing firearm transportation.²² The federal safe harbor is available only to those who are eligible to possess a firearm under federal law and who can “legally own and transport a firearm under the law of their home jurisdiction.”²³ Representative McCollum stated that the provision applies “only after [individuals] leave the boundaries of their State or local jurisdiction,” since Section 926A applies to the interstate transportation of firearms.²⁴ He further stated the provision “does not modify the State or local laws of the place or origin or the jurisdiction where the trip ends in any way.”²⁵ This strongly indicates that Section 926A does not preempt the transportation or possession laws of the origin or destination state, and therefore does not act as a safe harbor at the place of origin or destination if these jurisdictions require the individual to meet certain requirements.²⁶

The legislative history further indicates that Section 926A is meant to apply to transportation of a firearm in a vehicle and not meant to provide a safe harbor for concealed carriage of a firearm where the firearm is carried on one’s person. During the House colloquy, Representative McCollum stated: “The term ‘carry’ in this instance is intended to mean the ability to put the firearm in a vehicle and transport it to the place of destination. ... Further the use of the word ‘carry’ is not intended to mean and does not mean that a State license to carry a concealed weapon is a predicate to valid use of the safe harbor provision ... unless a permit to carry a concealed firearm is a prerequisite to legal transportation of an unloaded inaccessible firearm in a given jurisdiction.”²⁷

²¹ 132 *Cong. Rec.* 15227 (1986) (statement of Representative McCollum).

²² *Id.* at 15227-8. Representative McCollum continued to state that “section 926A will be valuable to the person who either knows he will be traveling through a jurisdiction with restrictive laws or is unfamiliar with various laws of the jurisdiction he will be traversing. Many times people traveling in interstate commerce can unwittingly find themselves in violation of all kinds of technical requirements for possession of firearms.” *Id.* at 15228.

²³ *Id.*

²⁴ The Gun Control Act of 1968, as amended, defines “interstate or foreign commerce” as “commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but does not include commerce between places within the same State but through any place outside that State.” 18 U.S.C. §921(a)(2).

²⁵ 132 *Cong. Rec.* 15228 (1986) (statement of Representative McCollum).

²⁶ Statements on the record appear to indicate that during intrastate travel at the point of origin and destination, an individual must be in compliance with both state as well as any local laws. However, one court has also found that the defense or safe harbor created by §926A is lost if the owner of the firearm stops for reasons not related to his trip, such as a stay with a girlfriend or for business unrelated to the trip. *People v. Selyukov*, 854 N.Y.S.2d 298 (N.Y. Village Ct. 2008).

²⁷ *Id.* If “carry” meant “concealed carry,” then taking advantage of §926A could be difficult because while most jurisdictions permit a firearm within the home, they may prohibit the carrying of such firearm on public roads or in a vehicle. For example, in *Beach v. Kelly*, 860 N.Y.S.2d 112 (N.Y. App. Div. 2008), the New York Supreme Court, Appellate Division, ruled to revoke a petitioner’s pistol license issued by the City of New York because he violated the terms of his permit when he “carried his firearm to and from the airport” for his trip to Nevada, where he also held a “license to carry.” *Id.* at 113. The petitioner argued that “since he was permitted to carry his gun in New York and held a license to carry a firearm in Nevada, [that] the agency’s determination was arbitrary and capricious.” *Id.* 113. The court held that §926A would be inapplicable “where the licensee is not permitted by the terms of the license to lawfully carry the firearm at the time he embarks on a trip to another state.” *Id.* at 114. The use of the term “carry” in this decision seems to indicate that the petitioner carried his weapon on his person, rather than transporting the firearm in a secure and inaccessible manner, in which case the decision would be consistent with the interpretations offered by the legislative history. However, if the petitioner was “carrying” his firearm in a manner more akin to transporting the (continued...)

The decision *In Re Matter of Two Seized Firearms* illustrates both how a court declined to apply Section 926A when the individual did not follow the requirements of the safe harbor, and how travelers may be associating “carry” with concealed carry rather than transportation of a firearm.²⁸ The Supreme Court of New Jersey inquired whether the state of New Jersey “must permit a motorist from Florida to carry on the New Jersey Turnpike, a loaded handgun in a glove compartment because Florida would permit such possession on its highways.”²⁹ The defendant argued, perhaps incorrectly, that his home state of Florida “would allow him to carry loaded guns in his car.”³⁰ The prosecutor questioned the accuracy of this assertion by citing the Florida statute, which makes it lawful to transport a firearm, without obtaining a license to carry concealed, so long as it is “securely encased” or not otherwise “readily accessible for immediate use” when transported.³¹ The defendant’s argument and the prosecutor’s recital of Florida law potentially demonstrate that the defendant believed “carry” to refer to some sort of concealed carry of loaded firearms, whereas the prosecutor read it as the transportation of firearms in a vehicle regardless of any license to carry concealed. Furthermore, the court stated that an individual could only “obtain the umbrella of federal protection” provided in Section 926A, if the gun owner is “legally qualified to possess and carry the firearm, and must transport it unloaded, and neither the firearm nor any ammunition can be ‘readily accessible,’ or ‘directly accessible’ from the passenger compartment of the vehicle.”³² Finding that the defendant did not abide by the storage provisions of Section 926A, the court found the defendant to have no federally protected right to transport his loaded revolvers in the glove compartment.

The New Jersey Supreme Court’s decision in *Revell v. Port Authority of New York, New Jersey* also demonstrates that courts have struggled with how to apply Section 926A to situations not involving vehicular travel.³³ Given the limited legislative history and judicial precedent interpreting the applicability of Section 926A, the court in *Revell* held that Section 926A did not apply to protect an individual, who through no fault of his own, was forced to stay overnight in a New Jersey hotel, after missing a connecting flight.³⁴ Before his outgoing flight from Utah, the defendant properly declared that his luggage contained his unloaded firearm and ammunition in a separate, locked hard case. Although it appears that Section 926A only contemplates vehicular travel and is not clear about keeping a gun at an overnight airport hotel, the court stated that the section “clearly requires the traveler to part ways with his weapon and ammunition during a travel; it does not address this type of uninterrupted journey or what the traveler is to do in [the] situation.”³⁵ Furthermore, the court stated: “The careful owner will ... explain the situation,

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firearm, which the court deemed as a violation of the terms of his permit, then it appears that the safe harbor protection of §926A would not apply because it is still intrastate travel.

²⁸ 602 A.2d 728 (N.J. 1992).

²⁹ *Id.* at 729. The formal question on appeals was “whether a non-resident gun owner may avoid the sanctions of New Jersey’s gun-control laws on the basis that possession of the weapon was legal in the owner’s state of residence and that the owner was merely transporting weapons through New Jersey without criminal intent and knowledge that New Jersey would regard the possession as illegal.” *Id.* at 728.

³⁰ *Id.* at 729.

³¹ Fla. Stat. §790.25(3)(l) and (5).

³² *Matter of Two Seized Firearms*, 602 A.2d at 730.

³³ 598 F.3d 128 (N.J. 2010).

³⁴ *Id.*

³⁵ *Id.* at 137.

requesting that his firearm and ammunition be held overnight for him.”³⁶ The court continued to state in a footnote: “Of course, this suggestion leaves unanswered the question of what the gun owner should do if the law enforcement officers decline to assist him.”³⁷ In the court’s view, this offered a “reasonable means,” though inconvenient, for a responsible gun owner to maintain the protection of Section 926A and prevent unexpected exposure to state and local gun regulations.

Federal Laws on Concealed Carry

At the federal level—apart from the three laws that are discussed in this section—federal law enforcement officers, or federal agents, generally are authorized by statute to carry a firearm. Such statutory provisions commonly state that they are authorized to carry firearms “for the purpose of performing duties.”³⁸ While federal agents are likely authorized to carry their firearms nationwide pursuant to enforcing federal laws,³⁹ policies on carrying firearms off-duty appear to be left to the discretion of the agency.⁴⁰ This section discusses the Armored Car Industry Reciprocity Act of 1993, the Arming Pilots Against Terrorism Act of 2002, and the Law Enforcement Officers Safety Act of 2003. These laws authorize certain persons to carry a concealed firearm across state lines, notwithstanding individual state provisions on the carriage of concealed firearms.

Armored Car Industry Reciprocity Act of 1993

The Armored Car Industry Reciprocity Act was passed in 1993 and amended in 1997.⁴¹ This act entitles certain armored car crew members to carry weapons, for which they have licenses, into

³⁶ *Id.*

³⁷ *Id.* at note 18.

³⁸ See e.g., 10 U.S.C. §1585 (“... civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe.”); 18 U.S.C. §3107 (“The Director, Associate Director ... inspectors and agents of the Federal Bureau of Investigation ... may carry firearms ...”); 22 U.S.C. §2709 (“... special agents of the Department of State and the Foreign Service may ... (4) if designated by the Secretary and qualified ... carry firearms for the purpose of performing the duties authorized by this section.”); 14 U.S.C. §95 (“A special agent of the Coast Guard Investigative Service ... has the [] authority: (A) to carry firearms. ... The authorities provided ... shall be exercised only in the enforcement of statutes for which the Coast Guard has law enforcement authority.”).

³⁹ The Transportation Security Administration has its own regulations for law enforcement officers who are flying with firearms. See 49 C.F.R. §1544.219 and http://www.tsa.gov/lawenforcement/programs/traveling_with_guns.shtm.

⁴⁰ See e.g., Internal Revenue Manual (IRM), Criminal Investigation, Part 9.1.4 Criminal Investigation Directives-Directive No. 4- Firearms., available at, http://www.irs.gov/irm/part9/irm_09-001-004.html:

(2) Special agents are authorized, but are not required, to carry their IRS-issued weapon when off-duty. When carrying their IRS-issued weapon off-duty, special agents are subject to all IRM provisions concerning firearms. ...

(6) Special agents who carry a privately-owned weapon during off-duty hours are subject to the same civil and criminal restrictions as a private citizen. Special agents may not use their position or credentials to qualify under state or local laws to purchase, license, carry or use private weapons; however, upon request, credentials may be displayed as occupational identification, but not to influence the decision.

Law Enforcement Authority, 28 C.F.R. §0.29j (“Special Agents of the Office of Inspector General are authorized to: ... (f) carry firearms when on duty; and (g) carry firearms while off-duty as authorized by the Inspector General.”).

⁴¹ P.L. 103-55; 107 Stat. 276 (1993), amended P.L. 105-287; 112 Stat. 2776 (1998). The purpose of the act was intended to remedy the problems faced by the armored car industry due to findings that, among other things, armored (continued...)

any other state while in the service of an armored car company.⁴² An “armored car crew member” is defined as “an individual who provides protection for goods transported by an armored car company.”⁴³ An armored car crew member, who is employed by an armored car company, must have

- a license issued by the appropriate state agency where he is primarily employed to carry a weapon while acting in the services of his employer in the state, and the state agency must meet the minimum requirements under the act; and
- met all other applicable requirements to act as an armored crew member in the state in which the member is primarily employed by such company.⁴⁴

State reciprocity of the weapons license for an armored car employee is administered on the state level. Under the act, as amended, a state agency meets the minimum state requirements if it determines to its satisfaction that (A) the crew member has received or continues to receive classroom and range training in weapons safety and marksmanship from a qualified instructor for each weapon that the crew member is licensed to carry, and (B) the receipt or possession of a weapon by the crew member does not violate federal law as determined on the basis of a criminal record background check or as determined by the agency, when it is issuing to an armored car crew member either the initial weapons license or renewing the weapons license.⁴⁵ Furthermore, the state weapons licenses must be renewed every two years or every five years, if a state enacted such law before 1996.⁴⁶

Although this act permits an armored car employee to carry a firearm across state lines so long as she meets the minimum state requirements as prescribed by federal law, the legislative history indicates that “the reciprocity extended to crew members ... is available only while that employee is carrying out his or her duties of protecting an armored car shipment.”⁴⁷ The 1993 House Report further states: “The permission does not extend to off-duty activities, nor does it permit armored car company employees to carry their own personal weapons across state lines unless they are being used to protect cargo.”⁴⁸

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car employees often placed themselves in violation of state weapons laws and were vulnerable to criminal charges because the regulation of permits to carry firearms is handled at the state level. H.Rept. 103-62, at 2 (1993).

⁴² 15 U.S.C. §5902.

⁴³ 15 U.S.C. §5904(1). An “armored car company” is one that is subject to regulation under 49 U.S.C. §§13501 *et seq.* and registered under federal law to engage in the business of transporting and protecting currency, bullion, securities, precious metals, supplemental nutrition assistant benefit programs, and other articles of unusual value in interstate commerce.

⁴⁴ 15 U.S.C. §5902(a).

⁴⁵ 15 U.S.C. §5902(b). For issuing an initial weapons license, the training and background check must be conducted during the year in which the license will be issued.

⁴⁶ 15 U.S.C. §5902(b)(3).

⁴⁷ H.Rept. 103-62, at 4 (1993). *See also* Armored Car Reciprocity Act: Hearing on H.R. 1189 Before the Subcomm. on Telecommunications, Trade and Consumer Protection of the H. Comm. on Commerce, 103d Cong. 17 (1993) (statement of Representative Cardiss Collins and Mr. Charles Allen, President, Armored Motor Service Corp.); Armored Car Reciprocity Amendments of 1997: Hearing on H.R. 624 Before the Subcomm. Telecommunications, Trade and Consumer Protection of the H. Comm. on Commerce, 105th Cong. 16 (1997) (statement of Representative Gene Green and Mr. Wayne Rogillo, on behalf of the National Association of Security and Investigative Regulators).

⁴⁸ H.Rept. 103-62, at 4 (1993).

Arming Pilots Against Terrorism Act of 2002

The Arming Pilots Against Terrorism Act of 2002 established the Federal Flight Deck Officer (FFDO) program.⁴⁹ The FFDO program is administered by the Transportation Security Administration (TSA) Office of Law Enforcement/Federal Air Marshal Service.⁵⁰ Under the act, volunteer pilots who are eligible and complete the program requirements as established by the Under Secretary of Transportation Security (TSA Administrator)⁵¹ may be deputized as FFDOs to defend the flight decks of air carriers, including all-cargo carriers, against acts of criminal violence or air piracy.⁵² Pilots who participate in the FFDO program are not eligible for compensation from the federal government for their services provided as a FFDO, but they are treated as an employee of the federal government for purposes of liability arising out of any action or omission taken in defending the flight deck.⁵³

The TSA Administrator may deputize a pilot, who applies to be such an officer and is determined to be qualified as such. Pursuant to the statute, a pilot is qualified to be a FFDO if the pilot is employed by an air carrier, and the TSA Administrator determines, at his discretion, that the pilot meets the standards established and has completed the required training.⁵⁴ If training is completed in a satisfactory manner, deputization is for a period of five years unless revoked or suspended.⁵⁵ The TSA notes that FFDOs are considered federal law enforcement officers only for the limited purposes of carrying firearms and using force, including lethal force to defend the flight deck, and that deputization does not grant or authorize FFDOs “to exercise other law enforcement powers such as the power to make arrests, or seek or execute warrants for arrest, or seizure of evidence, or to otherwise act as Federal law enforcement outside the jurisdiction of aircraft flight decks.”⁵⁶

FFDOs are issued firearms and other necessary equipment by the Federal Air Marshal Service, and they are further permitted to purchase a private firearm for the purpose of the program, if the firearm is of a type that may be used under the program.⁵⁷ FFDOs are also permitted “whenever necessary to participate in the program” to carry a firearm within any state and from one state into another.⁵⁸ Thus, similar to the armored car crew members, the statute preempts state law and

⁴⁹ P.L. 107-296; 116 Stat.2300 (2002), *amended* P.L. 108-176; 117 Stat. 2570 (2003). In the wake of September 11, 2001 attacks, this program was implemented to be an additional deterrent and measure to ensure the safety and security of the flying public.

⁵⁰ TSA, Federal Flight Deck Officers, <http://www.tsa.gov/lawenforcement/programs/ffdo.shtm>.

⁵¹ 49 U.S.C. §114(b) (“The head of the [Transportation Security] Administration shall be the Under Secretary of Transportation for Security.”).

⁵² 49 U.S.C. §44921(a). The statute defines “pilot” as an individual who has “final authority and responsibility for the operation and safety of the flight or any other flight deck crew member.” 49 U.S.C. §44921(k)(2). For eligibility requirements, *see* FFDO Program Eligibility, *available at*, http://www.tsa.gov/lawenforcement/programs/ffdo_eligibility.shtm.

⁵³ 49 U.S.C. §§44921(e), (h).

⁵⁴ 49 U.S.C. §44921(d). *See* FFDO Selection & Training, *available at*, http://www.tsa.gov/lawenforcement/programs/ffdo_training.shtm. (describes requirements to be selected as FFDO and the elements of training).

⁵⁵ Revocation can occur if the TSA Administrator finds that the FFDO no longer meets the qualifications. 49 U.S.C. §44921(d)(4). In the case of accidental discharge of a firearm that results in the injury or death of a passenger or crew member, the TSA Administrator “shall revoke the deputization of the [FFDO] responsible for that firearm if [it is determined] that the discharge was attributable to the negligence of the officer.” 49 U.S.C. §44921(i)(1).

⁵⁶ FFDO Important Information, http://www.tsa.gov/lawenforcement/programs/ffdo_information.shtm.

⁵⁷ 49 U.S.C. §§44921(c)(1), (f)(1).

⁵⁸ 49 U.S.C. §44921(f)(2).

permits FFDOs to carry their firearms interstate and within a state to the extent necessary for completing their duties. The House Report for the act also indicates that the authority to carry firearms interstate does not extend to off-duty activities, though this preemption clarification is less explicit than the House Reports for the Armored Car Industry Reciprocity Act, discussed above.⁵⁹

Law Enforcement Officers Safety Act of 2003

The Law Enforcement Officers Safety Act (LEOSA) was passed in 2003 and amended by the LEOSA Improvements Act of 2010.⁶⁰ This act permits “qualified law enforcement officers” (LEOs) both active and retired to carry a concealed firearm across state lines so long as they are carrying the proper identification and meet the statutory requirements.⁶¹

Under LEOSA, as amended, a “qualified LEO” is an employee of a governmental agency who is

- (1) 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) authorized by the agency to carry a firearm;
- (3) 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) not under the influence of alcohol or drugs; *and*
- (6) is not prohibited by federal law from receiving a firearm.⁶²

The LEOSA Improvements Act further clarified that LEOs of the Amtrak Police Department and the Federal Reserve as well as other executive branches of the federal government, who have statutory powers of arrest and are 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, are to be considered “qualified LEOs.”⁶³ For active or qualified LEOs to be eligible to carry a concealed firearm interstate under the provision, they must carry a photographic identification issued by the governmental agency where the individual is employed as a LEO.⁶⁴ The act does

⁵⁹ H.Rept. 107-555, pt. 1, at 15 (2002) (“The Committee [on Transportation] states that H.R. 4635 preempts state law to the extent necessary to allow Federal flight deck officers to carry firearms interstate and within a state and to limit their liability for the use of that gun to defend the cockpit of an aircraft.”).

⁶⁰ P.L. 108-277; 118 Stat. 865 (2004), *amended* P.L. 111-272 (2010). This law is codified at 18 U.S.C. §§926B, 926C.

⁶¹ Although LEOSA generally prescribes who may be eligible under statute, it is difficult to assess every federal and state agency whose law enforcement personnel would be eligible under the act because job titles and duties as prescribed by law vary from agency to agency. For surveys on federal law enforcement officers who may be eligible under the provisions of LEOSA, *see* Federal Bureau of Investigation, Bureau of Justice Statistics, Bulletin NCJ212750—Federal Law Enforcement Officers, 2004 (July 2006) (see Tables 1 and 2 for general list of federal agencies that employ personnel authorized to carry firearms and make arrests); and General Accountability Office, Federal Law Enforcement—Survey of Federal Civilian Law Enforcement Functions and Authorities, GAO-07-121 (December 2006) (see Appendix II, the number of federal civilian law enforcement officers as reported by the federal agencies and Appendix VI, the four most common job series by component and law enforcement functions).

⁶² 18 U.S.C. §926B(c). *See infra* note 66 for definition of “qualified retired LEO.”

⁶³ The Senate Report noted that “the specifically named Federal law enforcement agencies named in the legislation constitute a non-exhaustive list. For example, special police assigned to the National Zoological Park in Washington, D.C., who have statutory power of arrest, carry firearms, and complete training at the Federal Law Enforcement Training Center, should, in the Committee’s view be eligible for the benefits provided under 18 U.S.C. §§926B-926C.” S.Rept. 111-233, at 4, n. 12 (2010).

⁶⁴ 18 U.S.C. §926B(d).

not appear to limit the type of weapon a qualified LEO may carry, so long as it meets the general definition of “firearm” under 18 U.S.C. Section 921 and is not a machine gun, firearm silencer or destructive device, as defined by the appropriate federal statutes.⁶⁵

The LEOSA Improvements Act amended the definition of “qualified retired LEO,” so that it would encompass more individuals who would otherwise be precluded from eligibility.⁶⁶ Those who served as a LEO for an executive branch of government or with the Amtrak Police Department or the Federal Reserve are also included as “qualified retired LEOs.” The Senate Report on the LEOSA Improvements Act indicated that a 2005 memorandum by then-Attorney General of the United States John Ashcroft complicated the statutory process for retired federal LEOs.⁶⁷ The effect of the directive was to preclude federal officers from obtaining the requisite certification from their former agencies pursuant to 18 U.S.C. Section 926C(d)(1). According to the Senate Report, retired individuals encompassed by the Department of Justice directive would be subject to “varying State procedures—and to State law enforcement agencies with which they had not been employed” in order to satisfy the firearms testing requirement.⁶⁸

To ease the burden on the states in implementing LEOSA for retired LEOs, the LEOSA Improvements Act amended the standards by providing more options as to how a qualified retired LEO could obtain such training. Thus, the act, as amended, provides that during the most recent 12-month period, an individual will have to meet the standards for qualification in firearms training for active LEOs, as determined by his former agency, or by the state where the individual resides. Alternatively, if the state has not established such standards, the individual must meet either the standards of any law enforcement agency within the individual’s state of residence, or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within the state.⁶⁹ The individual must obtain this certification at his or her own expense.

The act provides two alternatives for the necessary photographic identification card (ID) that a qualified retired LEO must carry. Implementation is left to the discretion of the federal and state

⁶⁵ “Firearm” is defined as any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device, but not an antique firearm. 18 U.S.C. §921(a)(3).

⁶⁶ Under the act, as amended, a “qualified retired law enforcement officer” is an individual who: (1) separated from service in good standing with a public agency as a law enforcement officer; (2) had statutory powers of arrest and was authorized by law, prior to being separated from service, to engage in or supervise the prevention, detection, investigation or prosecution of, or the incarceration of any person for, any violation of law; (3) served as an officer for an aggregate of 10 years or more or separated after completing any applicable probationary period due to a service-connected disability; (4) has met certain training standards; (5) has not been found unqualified for reasons related to mental health by a medical professional of the agency, or has not entered into an agreement with the agency in which the individual acknowledges that he or she is not qualified for reasons related to mental health, which would prevent the agency from issuing the requisite photographic identification; (6) is not under the influence of drugs or alcohol; and (7) is not prohibited by federal law from receiving a firearm. 18 U.S.C. §926C(c).

⁶⁷ The memorandum to all Department of Justice (DOJ) law enforcement agencies stated: “Individual components [of the DOJ] shall not themselves train or qualify retired employees to carry a firearm, as authorized under the law. In order to be authorized under the Act to carry a firearm, a retired qualified [law enforcement officer] from a DOJ component must qualify pursuant to 18 U.S.C. §926C(d)(2)(B), and in accordance with state standards for active LEOs.” S.Rept. 111-233, at 2 (2010) (*citing* Memorandum from John Ashcroft, Attorney General, to all Department of Justice Law Enforcement Agencies (Jan 31, 2005) (on file with the Senate Judiciary Committee)).

⁶⁸ S.Rept. 111-233, at 3.

⁶⁹ 18 U.S.C. §926C(c)(4). *See, e.g.*, Connecticut Dep’t of Pub. Safety, Information on LEOSA, *available at*, <http://www.ct.gov/dps/cwp/view.asp?a=2158&q=303746>.

agencies.⁷⁰ The first type of ID permitted is one issued by the agency from which the officer separated, indicating that he has, within one year from the date of issuance, 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.⁷¹ The second type of ID permitted is one from the agency from which the person retired *and* a certification by the state or the certified firearms instructor, indicating that within one year from the date of issuance, the individual has been tested or otherwise found by the state or certified firearms instructor to have met (1) the active duty standards for qualification in firearms, as established by the state, to carry a firearm of the same type as the concealed firearm, or (2) the standards set by any law enforcement agency, in the absence of any state standards, to carry a firearm of the same type as the concealed firearm.⁷² Here, unlike active officers, qualified retired LEOs appear to be limited with respect to the types of firearms they are able to carry pursuant to the act because the certification from either the agency or the firearms instructor will state that they have met the standards “to carry a firearm of the same type as the concealed firearm.”

Although the act permits certain LEOs to carry a concealed firearm notwithstanding any other provision of state law or any political subdivision thereof, it explicitly states that it is not intended to supersede the laws of any state that (1) permit private persons or entities to prohibit the 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.⁷³

National Parks Legislation

Under the Credit Card Act of 2009,⁷⁴ the Senate adopted an amendment to prevent the Secretary of the Interior from enforcing or promulgating any regulation that would prohibit an individual from possessing a firearm, including an assembled or functional firearm, in any unit of the National Park System (NPS) or the National Wildlife Refuge System (NWRS).⁷⁵ An individual who is carrying a firearm must comply with the law of the state in which the NPS or NWRS is located. Accordingly, an individual, who is carrying a concealed firearm and hiking through a national park that crosses state lines, bears the responsibility of knowing beforehand the concealed carry laws of each state he or she plans to travel through.⁷⁶

⁷⁰ For example, the Department of Defense (DOD) issued an instruction as to the “Implementation of the Law Enforcement Officers Safety Act of 2004,” which covers which organization within DOD that the act applies to, and the procedures by which they are to implement the necessary photographic identification, *available at* <http://www.dtic.mil/whs/directives/corres/pdf/552512p.pdf>. *See also* United States Coast Guard issued a general message in 2010, which may no longer be effective, on “Limitations and Risks to Coast Guard Personnel Under the Law Enforcement Officers Safety Act” *available at* http://www.uscg.mil/announcements/ALCOAST/549-10_alcoast.txt; Department of Homeland Security Instruction Guide on the Law Enforcement Officers Safety Act, November 8, 2008, *available at* http://www.dhs.gov/xlibrary/assets/foia/mgmt_instruction_257_01_001_law_enforcement_officers_safety_act.pdf.

⁷¹ 18 U.S.C. §926C(d)(1).

⁷² 18 U.S.C. §926C(d)(2)(A)-(B).

⁷³ 18 U.S.C. §§926B(b), 926C(b).

⁷⁴ P.L. 111-24; 123 Stat. 1734 (2009).

⁷⁵ Senator Tom Coburn introduced S.Amdt. 1067 to H.R. 627 (111th Congress, 1st Sess. 2009), which was adopted by the Senate by a vote of 67-29 on May 12, 2009.

⁷⁶ For each national park, the NPS has posted online information related to concealed carry laws of the state in which the national park is located. *See, e.g.*, Great Basin National Park in Nevada Firearms Regulations, *available at*, <http://www.nps.gov/grba/parkmgmt/firearms-regulations.htm>.

Federal Bills on Concealed Carry of Firearms

Several types of concealed carry bills have been introduced in 112th Congress. One, H.R. 822, would require states to recognize out-of-state concealed carry permits so long as a person is carrying a valid state-issued CCP and a document with photographic identification. The second, H.R. 2900, is a broader bill that would authorize nationwide concealed carry. The third, S. 176, is another type of concealed carry bill that would require states, which issue CCPs, to establish minimum standards of who could carry concealed. Lastly, S. 1588, similar to the National Parks law, would permit an individual to carry a firearm on federal lands that fall under the jurisdiction of the Army Corps of Engineers.

H.R. 822 (112th Congress)

Representative Cliff Stearns introduced H.R. 822, the National Right-to-Carry Reciprocity Act of 2011. During mark-up of the bill in the House Judiciary Committee, Representative Trent Franks offered an amendment in the nature of a substitute that was adopted on October 14, 2011.⁷⁷ The House of Representatives passed this bill on November 16, 2011, by a vote of 272-154.

Under H.R. 822, as amended, an individual would be allowed to carry a concealed handgun into another state as long as he or she is carrying a “valid identification document containing a photograph of the person”⁷⁸ and a valid state-issued CCP. In meeting these two criteria, an individual would be able to carry concealed in “any State” that either (1) has a statute permitting residents to obtain a CCP to carry concealed firearms, or (2) that does not prohibit the carrying of concealed firearms. Thus, the bill would not allow an individual to carry concealed in the state of Illinois, as that state expressly prohibits the carrying of concealed firearms, nor does the state issue CCPs to its residents.⁷⁹ Likewise, it appears unlikely that an individual could carry concealed into the District of Columbia under the first condition of the bill because DC law provides no mechanism by which an individual can obtain a CCP.⁸⁰ Although individuals may no longer obtain a CCP in the District, DC law does not expressly prohibit residents from carry concealed, because the provision states “[n]o person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law...”⁸¹ While this leaves open the possibility that an individual who had obtained a CCP in the past may still lawfully carry concealed under this provision, CCPs issued by the District were only valid for one year from the date of issuance.⁸² It is therefore unlikely

⁷⁷ Another amendment offered by Representative Dan Lungren was adopted on October 14, 2011. This amendment requires the Government Accountability Office to audit state laws and regulations that allow concealed carry permits to be issued to non-residents and the effectiveness of these laws to protecting public safety.

⁷⁸ H.R. 822, §2 provides that the term “identification document” means a “document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State which, when completed with information concerning a particular individual is of a type intended or commonly accepted for the purpose of identification of individuals.”

⁷⁹ 720 Ill. Comp. Stat. Ann. 5/24-1 (“A person commits the offense of unlawful use of weapons when he knowingly: (4) carries or possesses in any vehicle or concealed on or about his person ... any pistol, revolver, stun gun ...”). Both the DC and Illinois concealed carry provisions apply to “any person,” and not simply “residents.”

⁸⁰ In 2009, DC repealed its provision that granted the Chief of Police the authority to issue CCPs. D.C. Code §22-4506 (2001) (repealed).

⁸¹ D.C. Code §22-4504 (2011).

⁸² D.C. Code §22-4506 (2001) (repealed).

that any person who had previously obtained a CCP can lawfully carry concealed, as it is likely that his CCP expired. Thus, even though there appears to be an understanding that the bill would not apply to the District,⁸³ an individual could argue that because DC does not expressly prohibit the carrying of concealed firearms, that it falls under the second condition of H.R. 822, thereby allowing an individual to carry concealed in the District with an out-of-state CCP. However, it is unclear whether a court would look solely at the District's statutory language or also consider that the overall practical effect of DC's laws precludes concealed carry by any individual.

Furthermore, under the bill, an individual, not otherwise eligible in his state of residence for a CCP, would not be allowed to obtain an out-of-state, or non-resident, CCP in a state with less restrictive eligibility requirements, and use that permit to carry concealed in his state of residence.⁸⁴ For example, a majority of states issue CCPs to individuals who are at least 21 years of age or older, while only a handful of states issue CCPs to individuals who are 18 years of age or older. Thus, residents from states such as California, Florida, or Colorado who do not meet the state's age requirement would not be able to obtain a non-resident, out-of-state, CCP, from states (e.g. Idaho, Indiana and Maine) that issue non-resident permits to individuals 18 years and older,⁸⁵ and use that CCP to carry back in his state of residence.

As discussed in the beginning, eligibility requirements vary among states, as does reciprocity. Thus, under H.R. 822, although states would retain their own eligibility standards and permitting schemes, it seems the bill would have a preemptive effect. For example, the state of Oregon, a "shall-issue" jurisdiction that considers carrying concealed without a non-Oregon permit to be a misdemeanor, would be required to honor all other out-of-state permits.⁸⁶ Likewise, some states such as Colorado or South Carolina that have chosen to recognize out-of-state CCPs only if the individual is a resident of the issuing state would be required, under the bill, to recognize the out-of-state CCPs of an individual who is not a resident of the issuing state. Moreover, it appears a "may-issue" state would be required to recognize permits from "shall-issue" jurisdictions, and "shall-issue" jurisdictions that do not recognize each other would also be required to recognize each other. For example, states like California and New Jersey, which are "may-issue" jurisdictions and do not recognize any other out-of-state concealed carry permits,⁸⁷ would appear to be required to recognize all other states where one is entitled to carry concealed. In addition, while the bill would preclude an individual from obtaining an out-of-state CCP to carry concealed back in his state of residence, as discussed above, it may also be possible that an individual, who obtains a CCP from his state of residence and subsequently moves into another state, would not be able to use that CCP when he becomes a resident of the state where he moved.⁸⁸

⁸³ See Amendment #3 offered by Representative Louie Gohmert during the House Judiciary Committee mark-up of H.R. 822, available at, <http://judiciary.house.gov/hearings/pdf/10132011%20Gohmert%20Amdt3%20%20FAILED.pdf> (amendment would have added "District of Columbia" as a location where individuals could carry concealed under the bill).

⁸⁴ This also would be the effect of H.R. 822 as introduced. The bill explicitly states that an individual who is carrying both the photographic identification document and the CCP "may possess or carry a concealed handgun ... in any State, other than the State of residence of the person" that has a statute allowing residents to carry concealed or does not otherwise prohibit its residents from doing so. (emphasis added).

⁸⁵ Idaho Code Ann. §18-3302 (2011); Ind. Code Ann. §35-47-2-3 (2011); and Me. Rev. Stat. tit. 25, §2003 (2011).

⁸⁶ Or. Rev. Stat. §166.250 (2011). See also Oregon State Police, available at, <http://egov.oregon.gov/OSP/ID/chl.shtml>.

⁸⁷ Cal. Penal Code §§12025, 12027; see also California Department of Justice, Bureau of Firearms, available at, <http://ag.ca.gov/firearms/pubfaqs.php#3>; N.J. Stat. Ann. §2C:39-5 (2011) (making it a crime to possess a handgun without first having obtained a permit to carry pursuant to New Jersey law).

⁸⁸ It is unclear when one becomes a "resident" of a state, as the term "residence" is not defined in the bill. It is possible (continued...)

H.R. 822, as amended, further provides that an individual who takes advantage of nationwide concealed carry would be subject to “the same conditions and limitations . . . that apply to the possession or carrying of a concealed handgun by residents of the State” who are either licensed by the state to carry or not prohibited from doing so.⁸⁹ The amended bill, however, makes explicit that an individual who carries pursuant to the bill would not be required to meet the “eligibility [requirements] to possess or carry, [that are] imposed by” the state into which the individual travels.⁹⁰ For example, the state of Ohio generally prohibits possession of a firearm in any establishment licensed to serve alcohol, in a court house, in government buildings and airports.⁹¹ Under H.R. 822, an individual who is otherwise allowed to carry in these locations in his state of residence would be required to abide by Ohio law when carrying concealed in Ohio.

Additionally, H.R. 822, as introduced, stated that where an issuing authority is allowed to impose additional restrictions on individual concealed carry permits, a firearm carried in that state would be carried “according to the same terms authorized by an unrestricted license or permit issued to a resident of the state.” The Franks substitute does not include this provision. A state that issues restricted CCPs, therefore, could attempt to argue that visitors would be subject to the restrictions that are placed upon its own residents on a case-by-case basis.

H.R. 2900 (112th Congress)

H.R. 2900, the Secure Access to Firearms Enhancement Act of 2011, was introduced by Representative Paul Broun. This bill is arguably much broader than H.R. 822 as it would permit any person who (1) “is carrying a valid license issued pursuant to the law of any State and which permits the person to carry a concealed firearm”; or (2) “is entitled to carry a concealed firearm in and pursuant to the laws of the State in which the person resides carrying a concealed firearm in his state of residence” to carry concealed in any state “subject to the laws of the State in which the firearm is carried concerning specific types of locations in which firearms may not be carried.” Thus, residents from states such as Vermont, Alaska, and Arizona would not need to obtain a concealed carry permit to carry into another state. Moreover, it would be possible under this bill for an individual to obtain an out-of-state CCP and carry in his state of residence in the event he is not initially eligible for a CCP in his state of residence.

(...continued)

one could be considered a resident of a state where he lives eight months out of the year even though he has established residency in another state by virtue of homeownership or driver’s license.

⁸⁹ H.R. 822 as introduced stated that “a firearm shall be carried according to the same terms authorized by an unrestricted license or permit issued to a resident of the State.”

⁹⁰ While this arguably would be the implicit purpose and effect of the bill as introduced, Representative Trent Franks introduced his substitute amendment during mark-up on October 13, 2011, stating his “substitute amendment simply clarifies the underlying bill to make certain that states retain their ability to determine the eligibility rules regarding their own residents are permitted to carry a concealed weapon. And the amendment also makes clear that state and local laws regarding the possession and carrying of concealed weapons remain in place within the states borders for both residents and non-residents alike just as each state sets its own traffic laws.” House Comm. on the Judiciary mark-up October 13, 2011, Statement of Representative Trent Franks, *available at*, <http://www.cq.com/doc/congressionaltranscripts-3963227>.

⁹¹ Ohio Rev. Code Ann. §§2923.121-123, 2923.1212 (2011).

S. 176 (112th Congress)

Senator Barbara Boxer introduced S. 176, the Common Sense Concealed Firearms Permit Act of 2011. Under the bill, each state that allows residents to carry concealed firearms would be required to establish a permitting process that requires its residents, who wish to carry concealed, to obtain a CCP and meet certain eligibility requirements that would be established under the bill. At a minimum, an applicant must be a legal resident of the United States; 21 years of age or older; demonstrate good cause to the local law enforcement agency for requesting a CCP; and demonstrate that he or she is “worthy of the public trust to carry a concealed firearm in public.”⁹² Thus, under S. 176, it appears that states such as Vermont and Alaska, which permit concealed carry but do not require its residents obtain CCPs to carry within the state, would be required to amend its laws to require residents to obtain CCPs. Moreover, some “shall-issue” states would have to add “may-issue” type requirements. The bill does not explicitly provide that it would allow holders of the state-issued CCP to carry in another state.

S. 1588 (112th Congress)

S. 1588, the Recreational Land Self-Defense Act of 2011, was introduced by Senator Jim Webb. It would prohibit the Secretary of the Army from promulgating or enforcing any regulation that prohibits an individual from possessing a firearm, including an assembled or functional firearm, at water resources development projects managed by the Army Corps of Engineers.⁹³ Under the bill, an individual must not be prohibited by law from possessing a firearm, and the possession of the firearm must be in compliance with the law of the state where the water resources project is located. Thus, similar to the National Parks concealed carry legislation from 2009, an individual would bear responsibility for knowing and complying with all applicable concealed carry laws of the state or states where the water resources development project is located.

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⁹² S. 176 would appear to allow a state to add other eligibility requirements in addition to those listed in the bill because it uses the phrase “at a minimum” in its section on requirements.

⁹³ S. 1588 specifically refers to “water resources development projects” covered under part 327 of title 36, Code of Federal Regulations. For more information on Water Resources Development under the Army Corps of Engineers, see *The U.S. Army Corps of Engineers: A Brief History- Water Resources Development*, available at, <http://www.usace.army.mil/History/Documents/Brief/14-water/water.html>.