

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4782

By Delegates Horst, Chiarelli, Summers,
Householder, Kimble, Phillips, Hite, Maynor, Hardy,
Howell, and Espinosa

[Originating in the Committee on the Judiciary;

Reported on February 7, 2024]

1 A BILL to amend and reenact §8-12-5a of the Code of West Virginia, 1931, as amended, relating to
2 limitations upon municipalities' power to restrict the sale and storage of weapons;
3 declaring ordinances which restrict or prohibit certain sales of firearms, firearms
4 accessories or components, and other lawful personal defense tools or products as void;
5 restricting a municipality from using its planning or zoning powers solely to prohibit the sale
6 of firearms, firearms accessories or components, or lawful personal defense tools or
7 products other than firearms within a prescribed distance of any other type of commercial
8 property or of school property or other educational property; providing remedies for
9 violations; and clarifying that the amendment to the section shall be known as the Second
10 Amendment Business Protection Act.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED
RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL
OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

**§8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession,
transfer, ownership, carrying, transport, sale, and storage of certain weapons and
ammunition.**

1 (a) Neither a municipality nor the governing body of any municipality may, by ordinance or
2 otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell, or
3 store any deadly weapon, firearm, or pepper spray, or any ammunition or ammunition components
4 to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly
5 prohibit the ownership of the ammunition in any manner inconsistent with or in conflict with state
6 law.

7 (b) For the purposes of this section:

8 (1) "Deadly weapon" has the meaning provided in §61-7-2 of this code.

9 (2) "Firearm" has the meaning provided in §61-7-2 of this code.

10 (3) "Municipally owned or operated building" means any building that is used for the
11 business of the municipality, such as a courthouse, city hall, convention center, administrative
12 building, or other similar municipal building used for a municipal purpose permitted by state law:
13 *Provided*, That "municipally owned or operated building" does not include a building owned by a
14 municipality that is leased to a private entity where the municipality primarily serves as a property
15 owner receiving rental payments.

16 (4) "Municipally owned recreation facility" means any municipal swimming pool, recreation
17 center, sports facility, facility housing an after-school program, or other similar facility where
18 children are regularly present.

19 (5) "Pepper spray" means a temporarily disabling aerosol that is composed partly of
20 capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose,
21 throat, and skin that is intended for self-defense use.

22 (c)(1) A municipality may enact and enforce an ordinance or ordinances that prohibit or
23 regulate the carrying or possessing of a deadly weapon, firearm, or pepper spray in municipally
24 owned or operated buildings.

25 (2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person
26 from carrying or possessing a deadly weapon, firearm, or pepper spray openly or that is not
27 lawfully concealed in a municipally owned recreation facility: *Provided*, That a municipality may not
28 prohibit a person with a valid concealed handgun license from carrying an otherwise lawfully
29 possessed firearm into a municipally owned recreation facility and securely storing the firearm out
30 of view and access to others during their time at the municipally owned recreation facility.

31 (3) A person may keep an otherwise lawfully possessed deadly weapon, firearm, or pepper
32 spray in a motor vehicle in municipal public parking facilities if the vehicle is locked and the deadly
33 weapon, firearm, or pepper spray is out of view.

34 (4) A municipality may not prohibit or regulate the carrying or possessing of a deadly
35 weapon, firearm, or pepper spray on municipally owned or operated property other than
36 municipally owned or operated buildings and municipally owned recreation facilities pursuant to
37 subdivisions (1) and (2) of this ~~section~~ subsection: *Provided*, That a municipality may prohibit
38 persons who do not have a valid concealed handgun license from carrying or possessing a firearm
39 on municipally owned or operated property.

40 (d) It shall be an absolute defense to an action for an alleged violation of an ordinance
41 authorized by this section prohibiting or regulating the possession of a deadly weapon, firearm, or
42 pepper spray that the person: (1) Upon being requested to do so, left the premises with the deadly
43 weapon, firearm, or pepper spray or temporarily relinquished the deadly weapon, firearm, or
44 pepper spray in response to being informed that his or her possession of the deadly weapon,
45 firearm, or pepper spray was contrary to municipal ordinance; and (2) but for the municipal
46 ordinance the person was lawfully in possession of the deadly weapon, firearm, or pepper spray.

47 (e) Any municipality that enacts an ordinance regulating or prohibiting the carrying or
48 possessing of a deadly weapon, firearm, or pepper spray pursuant to subsection (c) of this section
49 shall prominently post a clear statement at each entrance to all applicable municipally owned or
50 operated buildings or municipally owned recreation facilities setting forth the terms of the
51 regulation or prohibition.

52 (f) Redress for an alleged violation of this section may be sought through the provisions of
53 §53-1-1 *et seq.* of this code, which may include the awarding of reasonable attorney's fees and
54 costs, if the petitioner prevails.

55 (g) For the purposes of §61-7-14 of this code, municipalities may not be considered a
56 person charged with the care, custody, and control of real property.

57 (h) This section does not:

58 (1) Authorize municipalities to restrict the carrying or possessing of deadly weapons,
59 firearm, or pepper spray, which are otherwise lawfully possessed, on public streets and sidewalks
60 of the municipality; or

61 (2) Limit the authority of a municipality to ~~restrict the commercial use of real estate in~~
62 ~~designated areas through planning or zoning ordinances~~ enact or enforce generally applicable
63 zoning or business ordinances that apply to firearms businesses to the same degree as other
64 similar businesses except as follows:

65 (A) Any provision of an ordinance that is designed or enforced to effectively restrict or
66 prohibit the sale, purchase, transfer, manufacture, repair, or display of firearms, ammunition,
67 firearms accessories or components as that term is defined in §31A-2B-3 of this code, or personal
68 defense tools or products other than firearms which are otherwise lawful under the laws of this
69 state is void.

70 (B) A municipality may not use its planning or zoning powers solely to prohibit the sale of
71 firearms, ammunition, firearms accessories or components as that term is defined in §31A-2B-3 of
72 this code, or personal defense tools or products other than firearms within a prescribed distance of
73 any other type of commercial property or of school property or other educational property.

74 Any person aggrieved by a violation of this subdivision may seek redress as provided in
75 subsection (f) of this section.

76 (i) The amendments to this section enacted in the 2024 Regular Session of the Legislature
77 shall be known as the Second Amendment Business Protection Act.

NOTE: The purpose of this bill is to prevent municipalities from targeting protected businesses with planning and zoning ordinances more restrictive than those placed upon other businesses. The bill shall be known as the Second Amendment Business Protection Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.