

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 317**

7 (By Senators Unger, Nohe, Kessler (Mr. President), D. Hall,  
8 Stollings, Tucker, Cann, Fitzsimmons, Kirkendoll, Miller, Laird,  
9 Williams, Yost, Beach, Edgell, Plymale, Prezioso and Snyder)

10 \_\_\_\_\_  
11 [Originating in the Committee on the Judiciary;  
12 reported February 19, 2014.]

13 \_\_\_\_\_  
14  
15  
16 A BILL to amend and reenact §8-1-5a of the Code of West Virginia,  
17 1931, as amended; and to amend and reenact §8-12-5 and  
18 §8-12-5a of said code, all relating to municipal firearm laws;  
19 removing firearm provisions from the Municipal Home Rule Pilot  
20 Program; prohibiting ordinances from being enacted under the  
21 Municipal Home Rule Pilot Program that are in conflict with  
22 certain other state law; clarifying municipal authority to  
23 arrest, convict and punish individuals for certain firearms  
24 offenses authorized by code and federal law; removing the

1 grandfather clause excepting certain municipal ordinances  
2 limiting the purchase, possession, transfer, ownership,  
3 carrying, transporting, selling or storing of guns or  
4 ammunition from the general provision prohibiting such  
5 ordinances; defining terms; clarifying municipalities'  
6 authority to regulate possession and carrying of firearms;  
7 permitting municipalities to enact and enforce certain  
8 ordinances relating to limiting possession of firearms in  
9 municipal buildings and on municipal property; permitting  
10 persons to store firearms in vehicles on public property under  
11 certain circumstances; creating absolute defenses to a  
12 violation of municipal firearm ordinances; requiring posting  
13 of certain signs; specifying that private redress for  
14 violations may be brought under chapter fifty-three of this  
15 code and may include reasonable attorneys fees and costs;  
16 excluding municipalities from the use of section fourteen,  
17 article seven, chapter sixty-one of this code; and clarifying  
18 that municipalities cannot prohibit the otherwise lawful  
19 carrying of firearms on municipal streets and sidewalks except  
20 when a street or sidewalk is temporarily closed to traffic for  
21 purposes of municipally authorized events of limited duration.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §8-1-5a of the Code of West Virginia, 1931, as amended,  
24 be amended and reenacted; and that §8-12-5 and §8-12-5a of said

1 code be amended and reenacted, all to read as follows:

2 **ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL**  
3 **PROVISIONS; CONSTRUCTION.**

4 **§8-1-5a. Municipal Home Rule Pilot Program.**

5 (a) *Legislative findings.* -- The Legislature finds and  
6 declares that:

7 (1) The initial Municipal Home Rule Pilot Program brought  
8 innovative results, including novel municipal ideas that became  
9 municipal ordinances which later resulted in new statewide  
10 statutes;

11 (2) The initial Municipal Home Rule Pilot Program also brought  
12 novel municipal ideas that resulted in court challenges against  
13 some of the participating municipalities;

14 (3) The Municipal Home Rule Board was an essential part of the  
15 initial Municipal Home Rule Pilot Program, but it lacked some  
16 needed powers and duties;

17 (4) Municipalities still face challenges delivering services  
18 required by federal and state law or demanded by their  
19 constituents;

20 (5) Municipalities are sometimes restrained by state statutes,  
21 policies and rules that challenge their ability to carry out their  
22 duties and responsibilities in a cost-effective, efficient and  
23 timely manner;

24 (6) Continuing the Municipal Home Rule Pilot Program is in the

1 public interest; and

2 (7) Increasing the powers and duties of the Municipal Home  
3 Rule Board will enhance the Municipal Home Rule Pilot Program.

4 (b) *Continuance of pilot program.* -- The Municipal Home Rule  
5 Pilot Program is continued until July 1, 2019. The ordinances  
6 enacted by the four participating municipalities pursuant to the  
7 initial Municipal Home Rule Pilot Program are hereby authorized and  
8 may remain in effect until the ordinances are repealed, but are  
9 null and void if amended and such amendment is not approved by the  
10 Municipal Home Rule Board: *Provided*, That any ordinance enacting  
11 a municipal occupation tax is hereby null and void.

12 (c) *Authorizing participation.* --

13 (1) Commencing July 1, 2013, twenty Class I, Class II, Class  
14 III and/or Class IV municipalities that are current in payment of  
15 all state fees may participate in the Municipal Home Rule Pilot  
16 Program pursuant to the provisions of this section.

17 (2) The four municipalities participating in the pilot program  
18 on July 1, 2012, are hereby authorized to continue in the pilot  
19 program and may amend current written plans and/or submit new  
20 written plans in accordance with the provisions of this section.

21 (3) If any of the four municipalities participating in the  
22 pilot program on July 1, 2012, do not want to participate in the  
23 pilot program, then on or before June 1, 2014, the municipality  
24 must submit a written letter to the board indicating the

1 municipality's intent not to participate and the board may choose  
2 another municipality to fill the vacancy: *Provided*, That if a  
3 municipality chooses not to participate further in the pilot  
4 program, its ordinances enacted pursuant to the Municipal Home Rule  
5 Pilot Program are hereby authorized and may remain in effect until  
6 the ordinances are repealed, but are null and void if amended:  
7 *Provided, however*, That any ordinance enacting a municipal  
8 occupation tax is null and void.

9 (d) *Municipal Home Rule Board*. -- The Municipal Home Rule  
10 Board is hereby continued. The board members serving on the board  
11 on July 1, 2012, may continue to serve, except that the Chair of  
12 the Senate Committee on Government Organization and the Chair of  
13 the House Committee on Government Organization shall be ex officio  
14 nonvoting members. Effective July 1, 2013, the Municipal Home Rule  
15 Board shall consist of the following five voting members:

16 (1) The Governor, or a designee, who shall serve as chair;

17 (2) The Executive Director of the West Virginia Development  
18 Office or a designee;

19 (3) One member representing the Business and Industry Council,  
20 appointed by the Governor with the advice and consent of the  
21 Senate;

22 (4) One member representing the largest labor organization in  
23 the state, appointed by the Governor with the advice and consent of  
24 the Senate; and

1 (5) One member representing the West Virginia Chapter of the  
2 American Institute of Certified Planners, appointed by the Governor  
3 with the advice and consent of the Senate.

4 (e) *Board's powers and duties.* -- The Municipal Home Rule  
5 Board has the following powers and duties:

6 (1) Review, evaluate, make recommendations and approve or  
7 reject, by a majority vote of the board, each aspect of the written  
8 plan submitted by a municipality;

9 (2) By a majority vote of the board, select, based on the  
10 municipality's written plan, new Class I, Class II, Class III  
11 and/or Class IV municipalities to participate in the Municipal Home  
12 Rule Pilot Program;

13 (3) Review, evaluate, make recommendations and approve or  
14 reject, by a majority vote of the board, the amendments to the  
15 written plans submitted by municipalities;

16 (4) Approve or reject, by a majority vote of the board, each  
17 ordinance submitted by a participating municipality pursuant to its  
18 written plan or its amendments to the written plan;

19 (5) Consult with any agency affected by the written plans or  
20 the amendments to the written plans; and

21 (6) Perform any other powers or duties necessary to effectuate  
22 the provisions of this section.

23 (f) *Written plan.* -- On or before June 1, 2014, a Class I,  
24 Class II, Class III or Class IV municipality desiring to

1 participate in the Municipal Home Rule Pilot Program shall submit  
2 a written plan to the board stating in detail the following:

3 (1) The specific laws, acts, resolutions, policies, rules or  
4 regulations which prevent the municipality from carrying out its  
5 duties in the most cost-efficient, effective and timely manner;

6 (2) The problems created by the laws, acts, resolutions,  
7 policies, rules or regulations;

8 (3) The proposed solutions to the problems, including all  
9 proposed changes to ordinances, acts, resolutions, rules and  
10 regulations: *Provided*, That the specific municipal ordinance  
11 instituting the solution does not have to be included in the  
12 written plan; and

13 (4) A written opinion, by an attorney licensed to practice in  
14 West Virginia, stating that the proposed written plan does not  
15 violate the provisions of this section.

16 (g) *Public hearing on written plan.* -- Prior to submitting its  
17 written plan to the board, the municipality shall:

18 (1) Hold a public hearing on the written plan;

19 (2) Provide notice at least thirty days prior to the public  
20 hearing by a Class II legal advertisement;

21 (3) Make a copy of the written plan available for public  
22 inspection at least thirty days prior to the public hearing; and

23 (4) After the public hearing, adopt an ordinance authorizing  
24 the municipality to submit a written plan to the Municipal Home

1 Rule Board after the proposed ordinance has been read two times.

2       (h) *Selection of municipalities.* -- On or after June 1, 2014,  
3 by a majority vote, the Municipal Home Rule Board may select from  
4 the municipalities that submitted written plans and were approved  
5 by the board by majority vote, new Class I, Class II, Class III  
6 and/or Class IV municipalities to participate in the Municipal Home  
7 Rule Pilot Program.

8       (i) *Ordinance, act, resolution, rule or regulation.* -- After  
9 being selected to participate in the Municipal Home Rule Pilot  
10 Program and prior to enacting an ordinance, act, resolution, rule  
11 or regulation based on the written plan, the municipality shall:

12       (1) Hold a public hearing on the proposed ordinance, act,  
13 resolution, rule or regulation;

14       (2) Provide notice at least thirty days prior to the public  
15 hearing by a Class II legal advertisement;

16       (3) Make a copy of the proposed ordinance, act, resolution,  
17 rule or regulation available for public inspection at least thirty  
18 days prior to the public hearing;

19       (4) After the public hearing, submit the comments, either in  
20 audio or written form, to the Municipal Home Rule Board;

21       (5) Obtain approval, from the Municipal Home Rule Board by a  
22 majority vote, for the proposed ordinance, act, resolution, rule or  
23 regulation; and

24       (6) After obtaining approval from the Municipal Home Rule

1 Board, read the proposed ordinance, act, resolution, rule or  
2 regulation at least two times.

3 (j) *Powers and duties of municipalities.* -- The municipalities  
4 participating in the Municipal Home Rule Pilot Program have the  
5 authority to pass an ordinance, act, resolution, rule or  
6 regulation, under the provisions of this section, that is not  
7 contrary to:

8 (1) Environmental law;

9 (2) Bidding on government construction and other contracts;

10 (3) The Freedom of Information Act;

11 (4) The Open Governmental Proceedings Act;

12 (5) Wages for construction of public improvements;

13 (6) The provisions of this section;

14 (7) The provisions of section five-a, article twelve of this  
15 chapter; and

16 ~~(7)~~ (8) The municipality's written plan.

17 (k) *Prohibited acts.* -- The municipalities participating in  
18 the Municipal Home Rule Pilot Program do not have the authority to  
19 pass an ordinance, act, resolution, rule or regulation, under the  
20 provisions of this section, pertaining to:

21 (1) The Constitution of the United States or West Virginia;

22 (2) Federal law or crimes and punishment;

23 (3) Chapters sixty-a, sixty-one and sixty-two of this code or  
24 state crimes and punishment;

1 (4) Pensions or retirement plans;

2 (5) Annexation;

3 (6) Taxation: *Provided*, That a participating municipality may  
4 enact a municipal sales tax up to one percent if it reduces or  
5 eliminates its municipal business and occupation tax: *Provided*,  
6 *however*, That if a municipality subsequently reinstates or raises  
7 the municipal business and occupation tax it previously reduced or  
8 eliminated under the Municipal Home Rule Pilot Program, it shall  
9 eliminate the municipal sales tax enacted under the Municipal Home  
10 Rule Pilot Program: *Provided further*, That any municipality that  
11 imposes a municipal sales tax pursuant to this section shall use  
12 the services of the Tax Commissioner to administer, enforce and  
13 collect the tax in the same manner as the state consumers sales and  
14 service tax and use tax under the provisions of articles fifteen,  
15 fifteen-a and fifteen-b, chapter eleven of this code and all  
16 applicable provisions of the streamlined sales and use tax  
17 agreement: *And provided further*, That such tax will not apply to  
18 the sale of motor fuel or motor vehicles;

19 (7) Tax increment financing;

20 (8) Extraction of natural resources;

21 (9) Persons or property outside the boundaries of the  
22 municipality: *Provided*, That this prohibition under the Municipal  
23 Home Rule Pilot Program does not affect a municipality's powers  
24 outside its boundary lines under other sections of this chapter,

1 other chapters of this code or court decisions;

2 (10) Marriage and divorce laws;

3 ~~(11) Restricting the carrying of a firearm, as that term is~~  
4 ~~defined in section two, article seven, chapter sixty-one of this~~  
5 ~~code: *Provided, That, notwithstanding the provisions of subsection*~~  
6 ~~(p) of this section, municipalities may regulate the carrying of a~~  
7 ~~firearm in municipal buildings dedicated to government operations~~  
8 ~~other than parking buildings or garages: *Provided, however, That*~~  
9 ~~on other municipal property, municipalities may regulate only those~~  
10 ~~persons not licensed to carry a concealed firearm; and~~

11 ~~(12)~~ (11) An occupation tax, fee or assessment payable by a  
12 nonresident of a municipality.

13 (1) *Amendments to written plans.* -- A municipality selected to  
14 participate in the Municipal Home Rule Pilot Program may amend its  
15 written plan at any time.

16 (m) *Reporting requirements.* -- Commencing December 1, 2015,  
17 and each year thereafter, each participating municipality shall  
18 give a progress report to the Municipal Home Rule Board and  
19 commencing January 1, 2016, and each year thereafter, the Municipal  
20 Home Rule Board shall give a summary report of all the  
21 participating municipalities to the Joint Committee on Government  
22 and Finance.

23 (n) *Performance Evaluation and Review Division review.* --  
24 Before January 1, 2019, the Performance Evaluation and Review

1 Division of the Legislative Auditor's office shall conduct a  
2 performance review on the pilot program and the participating  
3 municipalities. The review shall include the following:

4 (1) An evaluation of the effectiveness of expanded home rule  
5 on the participating municipalities;

6 (2) A recommendation as to whether the expanded home rule  
7 should be continued, reduced, expanded or terminated;

8 (3) A recommendation as to whether any legislation is  
9 necessary; and

10 (4) Any other issues considered relevant.

11 (o) *Termination of the pilot program.* -- The Municipal Home  
12 Rule Pilot Program terminates on July 1, 2019. No ordinance, act,  
13 resolution, rule or regulation may be enacted by a participating  
14 municipality after July 1, 2019, pursuant to the provisions of this  
15 section. An ordinance, act, resolution, rule or regulation enacted  
16 by a participating municipality under the provisions of this  
17 section during the period of the Municipal Home Rule Pilot Program  
18 shall continue in full force and effect until repealed, but is null  
19 and void if it is amended and such amendment is not approved by the  
20 Municipal Home Rule Board.

21 ~~(p) Additional requirements for participation.~~

22 ~~(1) The Class I, Class II, Class III and/or Class IV~~  
23 ~~municipalities that wish to participate in the Municipal Home Rule~~  
24 ~~Pilot Program, pursuant to the provisions of this section, must~~

1 ~~agree to the requirements set forth in this subsection concerning~~  
2 ~~regulation of firearms, ammunition and firearm accessories:~~  
3 ~~Provided, That if the four municipalities participating in the~~  
4 ~~pilot program on July 1, 2012, wish to continue in the pilot~~  
5 ~~program then those municipalities must also agree to comply with~~  
6 ~~the requirements of this subsection.~~

7 ~~(2) Definitions.---~~

8 ~~As used in this subsection:~~

9 ~~(A) "Ammunition" means fixed cartridge ammunition, shotgun~~  
10 ~~shells, the individual components of fixed cartridge ammunition and~~  
11 ~~shotgun shells, projectiles for muzzle loading firearms and any~~  
12 ~~propellant used in firearms or ammunition.~~

13 ~~(B) "Firearm accessory" means a device specifically designed~~  
14 ~~or adapted to enable the wearing or carrying about one's person, or~~  
15 ~~the storage or mounting in or on a conveyance, of a firearm, or an~~  
16 ~~attachment or device specifically designed or adapted to be~~  
17 ~~inserted into or affixed onto a firearm to enable, alter or improve~~  
18 ~~the functioning or capabilities of the firearm.~~

19 ~~(C) "Firearm" has the same meaning as in section two, article~~  
20 ~~seven of chapter sixty-one.~~

21 ~~(3) General rule.---~~

22 ~~(A) Notwithstanding any other provision of this code to the~~  
23 ~~contrary, except as otherwise provided in this section,~~  
24 ~~municipalities participating in the Municipal Home Rule Pilot~~

1 ~~Program, pursuant to this section, shall not restrict in any manner~~  
2 ~~the right of any person to purchase, possess, transfer, own, carry,~~  
3 ~~transport, sell or store any revolver, pistol, rifle or shotgun, or~~  
4 ~~any other firearm, or any ammunition or ammunition components to be~~  
5 ~~used therewith, or the keeping of gunpowder so as to directly or~~  
6 ~~indirectly prohibit the ownership of the ammunition, or, to~~  
7 ~~restrict in any manner the right of any person to purchase,~~  
8 ~~possess, transfer, own, carry, transport, sell or store any other~~  
9 ~~firearm accessory or accoutrement, under any order, ordinance or~~  
10 ~~rule promulgated or enforced by the municipality. This subsection~~  
11 ~~may not be construed to prevent any law enforcement official with~~  
12 ~~appropriate authority from enforcing any statute enacted by the~~  
13 ~~state.~~

14 ~~(B) The authority of a municipality to regulate firearms,~~  
15 ~~ammunition or firearm accessories may not be inferred from its~~  
16 ~~proprietary authority, home rule status or any other inherent or~~  
17 ~~general power.~~

18 ~~(C) Any existing or future orders, ordinances or rules~~  
19 ~~promulgated or enforced in violation of this subsection are null~~  
20 ~~and void.~~

21 ~~(4) Applicability and effective dates. --~~

22 ~~Ninety days after a new municipality has been selected by the~~  
23 ~~Board to participate in the pilot program, or a previously~~  
24 ~~participating municipality has chosen to continue to participate in~~

1 ~~the pilot program, any municipal gun ordinances previously~~  
2 ~~authorized by the provisions of section five a, article twelve of~~  
3 ~~this chapter shall no longer be of any force or effect for any~~  
4 ~~municipality participating in this program to the extent they are~~  
5 ~~in conflict with the provisions of this subsection: *Provided, That*~~  
6 ~~no provision in this subsection may be construed to limit the~~  
7 ~~authority of a municipality to restrict the commercial use of real~~  
8 ~~estate in designated areas through planning or zoning ordinances.~~

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

13 **§8-12-5. General powers of every municipality and the governing**  
14 **body thereof.**

15 In addition to the powers and authority granted by: (i) The  
16 Constitution of this state; (ii) other provisions of this chapter;  
17 (iii) other general law; and (iv) any charter, and to the extent  
18 not inconsistent or in conflict with any of the foregoing except  
19 special legislative charters, every municipality and the governing  
20 body thereof shall have plenary power and authority therein by  
21 ordinance or resolution, as the case may require, and by  
22 appropriate action based thereon:

23 (1) To lay off, establish, construct, open, alter, curb,  
24 recurb, pave or repave and keep in good repair, or vacate,

1 discontinue and close, streets, avenues, roads, alleys, ways,  
2 sidewalks, drains and gutters, for the use of the public, and to  
3 improve and light the same, and have them kept free from  
4 obstructions on or over them which have not been authorized  
5 pursuant to the succeeding provisions of this subdivision; and,  
6 subject to such terms and conditions as the governing body shall  
7 prescribe, to permit, without in any way limiting the power and  
8 authority granted by the provisions of article sixteen of this  
9 chapter, any person to construct and maintain a passageway,  
10 building or other structure overhanging or crossing the airspace  
11 above a public street, avenue, road, alley, way, sidewalk or  
12 crosswalk, but before any permission for any person to construct  
13 and maintain a passageway, building or other structure overhanging  
14 or crossing any airspace is granted, a public hearing thereon shall  
15 be held by the governing body after publication of a notice of the  
16 date, time, place and purpose of the public hearing has been  
17 published as a Class I legal advertisement in compliance with the  
18 provisions of article three, chapter fifty-nine of this code and  
19 the publication area for the publication shall be the municipality:  
20 *Provided*, That any permit so granted shall automatically cease and  
21 terminate in the event of abandonment and nonuse thereof for the  
22 purposes intended for a period of ninety days, and all rights  
23 therein or thereto shall revert to the municipality for its use and  
24 benefit;

1           (2) To provide for the opening and excavation of streets,  
2 avenues, roads, alleys, ways, sidewalks, crosswalks and public  
3 places belonging to the municipality and regulate the conditions  
4 under which any such opening may be made;

5           (3) To prevent by proper penalties the throwing, depositing or  
6 permitting to remain on any street, avenue, road, alley, way,  
7 sidewalk, square or other public place any glass, scrap iron,  
8 nails, tacks, wire, other litter or any offensive matter or  
9 anything likely to injure the feet of individuals or animals or the  
10 tires of vehicles;

11          (4) To regulate the use of streets, avenues, roads, alleys,  
12 ways, sidewalks, crosswalks and public places belonging to the  
13 municipality, including the naming or renaming thereof, and to  
14 consult with local postal authorities, the Division of Highways and  
15 the directors of county emergency communications centers to assure  
16 uniform, nonduplicative addressing on a permanent basis;

17          (5) To regulate the width of streets, avenues and roads, and,  
18 subject to the provisions of article eighteen of this chapter, to  
19 order the sidewalks, footways and crosswalks to be paved, repaved,  
20 curbed or recurbed and kept in good order, free and clean, by the  
21 owners or occupants thereof or of the real property next adjacent  
22 thereto;

23          (6) To establish, construct, alter, operate and maintain, or  
24 discontinue, bridges, tunnels and ferries and approaches thereto;

1           (7) To provide for the construction and maintenance of water  
2 drains, the drainage of swamps or marshlands and drainage systems;

3           (8) To provide for the construction, maintenance and covering  
4 over of watercourses;

5           (9) To control and administer the waterfront and waterways of  
6 the municipality and to acquire, establish, construct, operate and  
7 maintain and regulate flood control works, wharves and public  
8 landings, warehouses and all adjuncts and facilities for navigation  
9 and commerce and the utilization of the waterfront and waterways  
10 and adjacent property;

11           (10) To prohibit the accumulation and require the disposal of  
12 garbage, refuse, debris, wastes, ashes, trash and other similar  
13 accumulations whether on private or public property: *Provided,*  
14 *That,* in the event the municipality annexes an area which has been  
15 receiving solid waste collection services from a certificated solid  
16 waste motor carrier, the municipality and the solid waste motor  
17 carrier may negotiate an agreement for continuation of the private  
18 solid waste motor carrier services for a period of time, not to  
19 exceed three years, during which time the certificated solid waste  
20 motor carrier may continue to provide exclusive solid waste  
21 collection services in the annexed territory;

22           (11) To construct, establish, acquire, equip, maintain and  
23 operate incinerator plants and equipment and all other facilities  
24 for the efficient removal and destruction of garbage, refuse,

1 wastes, ashes, trash and other similar matters;

2 (12) To regulate or prohibit the purchase or sale of articles  
3 intended for human use or consumption which are unfit for use or  
4 consumption, or which may be contaminated or otherwise unsanitary;

5 (13) To prevent injury or annoyance to the public or  
6 individuals from anything dangerous, offensive or unwholesome;

7 (14) To regulate the keeping of gunpowder and other  
8 combustibles;

9 (15) To make regulations guarding against danger or damage by  
10 fire;

11 (16) To arrest, convict and punish any individual for carrying  
12 about his or her person any revolver or other pistol, dirk, bowie  
13 knife, razor, slingshot, billy, metallic or other false knuckles or  
14 any other dangerous or other deadly weapon of like kind or  
15 character: Provided, That with respect to any firearm a  
16 municipality may only arrest, convict and punish someone if they  
17 are in violation of an ordinance authorized by subsection five-a of  
18 this article, a state law proscribing certain conduct with a  
19 firearm or applicable federal law;

20 (17) To arrest, convict and punish any person for importing,  
21 printing, publishing, selling or distributing any pornographic  
22 publications;

23 (18) To arrest, convict and punish any person for keeping a  
24 house of ill fame, or for letting to another person any house or

1 other building for the purpose of being used or kept as a house of  
2 ill fame, or for knowingly permitting any house owned by him or her  
3 or under his or her control to be kept or used as a house of ill  
4 fame, or for loafing, boarding or loitering in a house of ill fame,  
5 or frequenting same;

6 (19) To prevent and suppress conduct and practices which are  
7 immoral, disorderly, lewd, obscene and indecent;

8 (20) To prevent the illegal sale of intoxicating liquors,  
9 drinks, mixtures and preparations;

10 (21) To arrest, convict and punish any individual for driving  
11 or operating a motor vehicle while intoxicated or under the  
12 influence of liquor, drugs or narcotics;

13 (22) To arrest, convict and punish any person for gambling or  
14 keeping any gaming tables, commonly called "A, B, C," or "E, O,"  
15 table or faro bank or keno table, or table of like kind, under any  
16 denomination, whether the gaming table be played with cards, dice  
17 or otherwise, or any person who shall be a partner or concerned in  
18 interest, in keeping or exhibiting the table or bank, or keeping or  
19 maintaining any gaming house or place, or betting or gambling for  
20 money or anything of value;

21 (23) To provide for the elimination of hazards to public  
22 health and safety and to abate or cause to be abated anything which  
23 in the opinion of a majority of the governing body is a public  
24 nuisance;

1           (24) To license, or for good cause to refuse to license in a  
2 particular case, or in its discretion to prohibit in all cases, the  
3 operation of pool and billiard rooms and the maintaining for hire  
4 of pool and billiard tables notwithstanding the general law as to  
5 state licenses for any such business and the provisions of section  
6 four, article thirteen of this chapter; and when the municipality,  
7 in the exercise of its discretion, refuses to grant a license to  
8 operate a pool or billiard room, mandamus may not lie to compel the  
9 municipality to grant the license unless it shall clearly appear  
10 that the refusal of the municipality to grant a license is  
11 discriminatory or arbitrary; and in the event that the municipality  
12 determines to license any business, the municipality has plenary  
13 power and authority and it shall be the duty of its governing body  
14 to make and enforce reasonable ordinances regulating the licensing  
15 and operation of the businesses;

16           (25) To protect places of divine worship and to preserve peace  
17 and order in and about the premises where held;

18           (26) To regulate or prohibit the keeping of animals or fowls  
19 and to provide for the impounding, sale or destruction of animals  
20 or fowls kept contrary to law or found running at large;

21           (27) To arrest, convict and punish any person for cruelly,  
22 unnecessarily or needlessly beating, torturing, mutilating,  
23 killing, or overloading or overdriving or willfully depriving of  
24 necessary sustenance any domestic animal;

1           (28) To provide for the regular building of houses or other  
2 structures, for the making of division fences by the owners of  
3 adjacent premises and for the drainage of lots by proper drains and  
4 ditches;

5           (29) To provide for the protection and conservation of shade  
6 or ornamental trees, whether on public or private property, and for  
7 the removal of trees or limbs of trees in a dangerous condition;

8           (30) To prohibit with or without zoning the location of  
9 occupied house trailers or mobile homes in certain residential  
10 areas;

11          (31) To regulate the location and placing of signs,  
12 billboards, posters and similar advertising;

13          (32) To erect, establish, construct, acquire, improve,  
14 maintain and operate a gas system, a waterworks system, an electric  
15 system or sewer system and sewage treatment and disposal system, or  
16 any combination of the foregoing (subject to all of the pertinent  
17 provisions of articles nineteen and twenty of this chapter and  
18 particularly to the limitations or qualifications on the right of  
19 eminent domain set forth in articles nineteen and twenty), within  
20 or without the corporate limits of the municipality, except that  
21 the municipality may not erect any system partly without the  
22 corporate limits of the municipality to serve persons already  
23 obtaining service from an existing system of the character proposed  
24 and where the system is by the municipality erected, or has

1 heretofore been so erected, partly within and partly without the  
2 corporate limits of the municipality, the municipality has the  
3 right to lay and collect charges for service rendered to those  
4 served within and those served without the corporate limits of the  
5 municipality and to prevent injury to the system or the pollution  
6 of the water thereof and its maintenance in a healthful condition  
7 for public use within the corporate limits of the municipality;

8       (33) To acquire watersheds, water and riparian rights, plant  
9 sites, rights-of-way and any and all other property and  
10 appurtenances necessary, appropriate, useful, convenient or  
11 incidental to any system, waterworks or sewage treatment and  
12 disposal works, as aforesaid, subject to all of the pertinent  
13 provisions of articles nineteen and twenty of this chapter;

14       (34) To establish, construct, acquire, maintain and operate  
15 and regulate markets and prescribe the time of holding the same;

16       (35) To regulate and provide for the weighing of articles sold  
17 or for sale;

18       (36) To establish, construct, acquire, maintain and operate  
19 public buildings, municipal buildings or city halls, auditoriums,  
20 arenas, jails, juvenile detention centers or homes, motor vehicle  
21 parking lots or any other public works;

22       (37) To establish, construct, acquire, provide, equip,  
23 maintain and operate recreational parks, playgrounds and other  
24 recreational facilities for public use and in this connection also

1 to proceed in accordance with the provisions of article two,  
2 chapter ten of this code;

3 (38) To establish, construct, acquire, maintain and operate a  
4 public library or museum or both for public use;

5 (39) To provide for the appointment and financial support of  
6 a library board in accordance with the provisions of article one,  
7 chapter ten of this code;

8 (40) To establish and maintain a public health unit in  
9 accordance with the provisions of section two, article two, chapter  
10 sixteen of this code, which unit shall exercise its powers and  
11 perform its duties subject to the supervision and control of the  
12 West Virginia Board of Health and State Bureau for Public Health;

13 (41) To establish, construct, acquire, maintain and operate  
14 hospitals, sanitariums and dispensaries;

15 (42) To acquire, by purchase, condemnation or otherwise, land  
16 within or near the corporate limits of the municipality for  
17 providing and maintaining proper places for the burial of the dead  
18 and to maintain and operate the same and regulate interments  
19 therein upon terms and conditions as to price and otherwise as may  
20 be determined by the governing body and, in order to carry into  
21 effect the authority, the governing body may acquire any cemetery  
22 or cemeteries already established;

23 (43) To exercise general police jurisdiction over any  
24 territory without the corporate limits owned by the municipality or

1 over which it has a right-of-way;

2       (44) To protect and promote the public morals, safety, health,  
3 welfare and good order;

4       (45) To adopt rules for the transaction of business and the  
5 government and regulation of its governing body;

6       (46) Except as otherwise provided, to require and take bonds  
7 from any officers, when considered necessary, payable to the  
8 municipality, in its corporate name, with such sureties and in a  
9 penalty as the governing body may see fit, conditioned upon the  
10 faithful discharge of their duties;

11       (47) To require and take from the employees and contractors  
12 such bonds in a penalty, with such sureties and with such  
13 conditions, as the governing body may see fit;

14       (48) To investigate and inquire into all matters of concern to  
15 the municipality or its inhabitants;

16       (49) To establish, construct, require, maintain and operate  
17 such instrumentalities, other than free public schools, for the  
18 instruction, enlightenment, improvement, entertainment, recreation  
19 and welfare of the municipality's inhabitants as the governing body  
20 may consider necessary or appropriate for the public interest;

21       (50) To create, maintain and operate a system for the  
22 enumeration, identification and registration, or either, of the  
23 inhabitants of the municipality and visitors thereto, or the  
24 classes thereof as may be considered advisable;

1           (51) To require owners, residents or occupants of  
2 factory-built homes situated in a factory-built rental home  
3 community with at least ten factory-built homes, to visibly post  
4 the specific numeric portion of the address of each factory-built  
5 home on the immediate premises of the factory-built home of  
6 sufficient size to be visible from the adjoining street: *Provided,*  
7 That in the event no numeric or other specific designation of an  
8 address exists for a factory-built home subject to the  
9 authorization granted by this subdivision, the municipality has the  
10 authority to provide a numeric or other specific designation of an  
11 address for the factory-built home and require that it be posted in  
12 accordance with the authority otherwise granted by this section.

13           (52) To appropriate and expend not exceeding twenty-five cents  
14 per capita per annum for advertising the municipality and the  
15 entertainment of visitors;

16           (53) To conduct programs to improve community relations and  
17 public relations generally and to expend municipal revenue for such  
18 purposes;

19           (54) To reimburse applicants for employment by the  
20 municipality for travel and other reasonable and necessary expenses  
21 actually incurred by the applicants in traveling to and from the  
22 municipality to be interviewed;

23           (55) To provide revenue for the municipality and appropriate  
24 the same to its expenses;

1 (56) To create and maintain an employee benefits fund which  
2 may not exceed one tenth of one percent of the annual payroll  
3 budget for general employee benefits and which is set up for the  
4 purpose of stimulating and encouraging employees to develop and  
5 implement cost-saving ideas and programs and to expend moneys from  
6 the fund for these purposes;

7 (57) To enter into reciprocal agreements with governmental  
8 subdivisions or agencies of any state sharing a common border for  
9 the protection of people and property from fire and for emergency  
10 medical services and for the reciprocal use of equipment and  
11 personnel for these purposes;

12 (58) To provide penalties for the offenses and violations of  
13 law mentioned in this section, subject to the provisions of section  
14 one, article eleven of this chapter, and such penalties may not  
15 exceed any penalties provided in this chapter and chapter sixty-one  
16 of this code for like offenses and violations; and

17 (59) To participate in a purchasing card program for local  
18 governments authorized and administered by the State Auditor as an  
19 alternative payment method.

20 **§8-12-5a. Limitations upon municipalities' power to restrict the**  
21 **purchase, possession, transfer, ownership, carrying,**  
22 **transport, sale and storage of certain weapons and ammunition.**

23 (a) The Except as provided by the provisions of this section  
24 and the provisions of section five of this article,

1 ~~notwithstanding,~~ neither a municipality nor the governing body of  
2 any municipality may, by ordinance or otherwise, limit the right of  
3 any person to purchase, possess, transfer, own, carry, transport,  
4 sell or store any revolver, pistol, rifle or shotgun or any  
5 ammunition or ammunition components to be used therewith nor to so  
6 regulate the keeping of gunpowder so as to directly or indirectly  
7 prohibit the ownership of the ammunition in any manner inconsistent  
8 with or in conflict with state law.

9 ~~Nothing herein shall in any way~~

10 (b) For the purposes of this section:

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

20 (2) "Municipally owned recreation facility" means any  
21 municipal swimming pool, recreation center, sports facility,  
22 facility housing an after-school program or other similar facility  
23 where children are regularly present.

24 (c) (1) A municipality may enact and enforce an ordinance or

1 ordinances that prohibit or regulate the carrying or possessing of  
2 a firearm in municipally owned or operated buildings.

3 (2) A municipality may enact and enforce an ordinance or  
4 ordinances that prohibit a person from carrying or possessing a  
5 firearm openly or that is not lawfully concealed in a municipally  
6 owned recreation facility: *Provided,* That a municipality may not  
7 prohibit a person with a valid concealed handgun permit from  
8 carrying an otherwise lawfully possessed firearm into a municipally  
9 owned recreation facility and securely storing the firearm out of  
10 view and access to others during their time at the municipally  
11 owned recreation facility.

12 (3) A person may keep an otherwise lawfully possessed firearm  
13 in a motor vehicle in municipal public parking facilities if the  
14 vehicle is locked and the firearm is out of view.

15 (4) A municipality may not prohibit or regulate the carrying  
16 or possessing of a firearm on municipally owned or operated  
17 property other than municipally owned or operated buildings and  
18 municipally owned recreation facilities pursuant to subdivisions  
19 (1) and (2) of this section: *Provided,* That a municipality may  
20 prohibit persons who do not have a valid concealed handgun license  
21 from carrying or possessing a firearm on municipally owned or  
22 operated property.

23 (d) It shall be an absolute defense to an action for an  
24 alleged violation of an ordinance authorized by this section

1 prohibiting or regulating the possession of a firearm that the  
2 person: (1) Upon being requested to do so, left the premises with  
3 the firearm or temporarily relinquished the firearm in response to  
4 being informed that his or her possession of the firearm was  
5 contrary to municipal ordinance; and (2) but for the municipal  
6 ordinance the person was lawfully in possession of the firearm.

7 (e) Any municipality that enacts an ordinance regulating or  
8 prohibiting the carrying or possessing of a firearm pursuant to  
9 subsection (c) of this section shall prominently post a clear  
10 statement at each entrance to all applicable municipally owned or  
11 operated buildings or municipally owned recreation facilities  
12 setting forth the terms of the regulation or prohibition.

13 (f) Redress for an alleged violation of this section may be  
14 sought through the provisions of chapter fifty-three of this code,  
15 which may include the awarding of reasonable attorneys fees and  
16 costs.

17 (g) Upon the effective date of this section, section fourteen,  
18 article seven, chapter sixty-one of this code is inapplicable to  
19 municipalities. For the purposes of that section, municipalities  
20 may not be considered a person charged with the care, custody and  
21 control of real property.

22 (h) This section does not:

23 (1) Impair the authority of any municipality, or the governing  
24 body thereof, to enact any ordinance or resolution respecting the

1 power to arrest, convict and punish any individual under the  
2 provisions of subdivision (16), section five of this article or  
3 from enforcing any such ordinance or resolution; ~~Provided, That any~~  
4 ~~municipal ordinance in place as of the effective date of this~~  
5 ~~section shall be excepted from the provisions of this section:~~  
6 ~~Provided, however, That no provision in this section may be~~  
7 ~~construed to~~

8       (2) Authorize municipalities to restrict the carrying or  
9 possessing of firearms, which are otherwise lawfully possessed, on  
10 public streets and sidewalks of the municipality: Provided, That  
11 whenever pedestrian or vehicular traffic is prohibited in an area  
12 of a municipality for the purpose of a temporary event of limited  
13 duration, not to exceed fourteen days, which is authorized by a  
14 municipality, a municipality may prohibit persons who do not have  
15 a valid concealed handgun license from possessing a firearm in the  
16 area where the event is held; or

17       (3) Limit the authority of a municipality to restrict the  
18 commercial use of real estate in designated areas through planning  
19 or zoning ordinances.