

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 96

SENATORS TRUMP, CLINE, RUCKER, AZINGER, MAYNARD,

ROBERTS, SYPOLT, AND SMITH, *original sponsors*

[Originating in the Committee on Government

Organization; reported on January 17, 2020]

1 A BILL to amend and reenact §8-12-5a of the Code of West Virginia, 1931, as amended, relating
2 to prohibiting municipalities from limiting the rights of persons to purchase, possess,
3 transfer, own, carry, transport, sell, or store deadly weapons or pepper spray in any
4 manner inconsistent with or in conflict with state law; adding definitions; removing authority
5 of municipalities to prohibit possession of deadly weapons or pepper spray in area where
6 temporary event is held; and restricting the award of reasonable attorney's fees and costs
7 to petitioners seeking redress under this law to only those that prevail.

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) Except as provided by the provisions of this section and the provisions of §8-12-5 of
2 this code, neither a municipality nor the governing body of any municipality may, by ordinance or
3 otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell,
4 or store any ~~revolver, pistol, rifle or shotgun~~ deadly weapon or pepper spray, or any ammunition
5 or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so
6 as to directly or indirectly prohibit the ownership of the ammunition in any manner inconsistent
7 with or in conflict with state law.

8 (b) For the purposes of this section:

9 "Deadly weapon" means an instrument which is designed to be used to produce serious
10 bodily injury or death or is readily adaptable to that use. The term "deadly weapon" includes, but
11 is not limited to:

12 (A) A blackjack, gravity knife, knife, switchblade knife, nunchaku, metallic or false
13 knuckles, pistol, revolver and firearm, as defined in §61-7-2 of this code, or other deadly weapons
14 of like kind or character which may be easily concealed on or about the person; and

15 (B) A rifle and a shotgun.

16 "Deadly weapon" does not include explosive, chemical, biological and radiological
17 materials, or any item or material owned by a school or county board of education intended for
18 curricular use, and used by a student solely for curricular purposes.

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

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

28 "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum
29 oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin
30 that is intended for self-defense use.

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

34 (2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person
35 from carrying or possessing a ~~firearm~~ deadly weapon or pepper spray openly or that is not lawfully
36 concealed in a municipally owned recreation facility: *Provided*, That a municipality may not
37 prohibit a person with a valid concealed handgun permit from carrying an otherwise lawfully

38 possessed firearm into a municipally owned recreation facility and securely storing the firearm out
39 of view and access to others during their time at the municipally owned recreation facility.

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

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

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

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

61 (f) Redress for an alleged violation of this section may be sought through the provisions
62 of chapter 53 of this code, which may include the awarding of reasonable attorney's fees and
63 costs, if the petitioner prevails.

64 (g) Upon the effective date of this section, §61-7-14 of this code is inapplicable to
65 municipalities. For the purposes of that section, municipalities may not be considered a person
66 charged with the care, custody, and control of real property.

67 (h) This section does not:

68 (1) Impair the authority of any municipality, or the governing body thereof, to enact any
69 ordinance or resolution respecting the power to arrest, convict and punish any individual under
70 the provisions of §8-12-5(16) of this code or from enforcing any such ordinance or resolution;

71 (2) Authorize municipalities to restrict the carrying or possessing of ~~firearms deadly~~
72 weapons or pepper spray, which are otherwise lawfully possessed, on public streets and
73 sidewalks of the municipality; ~~Provided, That whenever pedestrian or vehicular traffic is prohibited~~
74 ~~in an area of a municipality for the purpose of a temporary event of limited duration, not to exceed~~
75 ~~fourteen days, which is authorized by a municipality, a municipality may prohibit persons who do~~
76 ~~not have a valid concealed handgun license from possessing a firearm in the area where the~~
77 ~~event is held or~~

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

NOTE: The purpose of this bill is to prohibit municipalities from limiting the rights of persons to purchase, possess, transfer, own, carry, transport, sell or store deadly weapons or pepper spray in any manner inconsistent with or in conflict with state law. The bill would also restrict the award of reasonable attorney's fees and costs to petitioners seeking redress under this law, to only those who prevail.

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