

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENGROSSED**

**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 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.