

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 96

SENATORS TRUMP, CLINE, RUCKER, AZINGER, MAYNARD,

ROBERTS, SYPOLT, SMITH, HAMILTON, ROMANO, AND

FACEMIRE, *original sponsors*

[Passed March 2, 2020; in effect 90 days from passage]

1 AN ACT to amend and reenact §8-12-5a of the Code of West Virginia, 1931, as amended, relating
2 to prohibiting municipalities from limiting in any manner inconsistent with or in conflict with
3 state law, the rights of persons to purchase, possess, transfer, own, carry, transport, sell,
4 or store deadly weapons, firearms, or pepper spray; defining terms; extending restrictions
5 on municipal regulation of firearms to pepper spray and deadly weapons; removing
6 authority of municipalities to prohibit possession of deadly weapons or pepper spray in
7 areas where temporary events are held; and limiting award of attorney's fees and costs to
8 petitioners prevailing in certain actions.

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
2 or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport,
3 sell, or store any deadly weapon, firearm, or pepper spray, or any ammunition or ammunition
4 components to be used therewith nor to so regulate the keeping of gunpowder so as to directly
5 or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict
6 with state 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
28 not 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
32 pepper spray in a motor vehicle in municipal public parking facilities if the vehicle is locked and
33 the deadly 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: *Provided*, That a municipality may prohibit persons who
38 do not have a valid concealed handgun license from carrying or possessing a firearm on
39 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,
42 or pepper spray that the person: (1) Upon being requested to do so, left the premises with the
43 deadly weapon, firearm, or pepper spray or temporarily relinquished the deadly weapon, firearm,
44 or 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
53 of §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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2020.

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Governor