

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 96

SENATORS TRUMP, CLINE, RUCKER, AZINGER, MAYNARD,

ROBERTS, SYPOLT, SMITH, ROMANO, AND FACEMIRE,

original sponsors

[Originating in the Committee on the Judiciary;

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

8 (b) For the purposes of this section:

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

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

11 (4) ~~(3)~~ “Municipally owned or operated building” means any building that is used for the
12 business of the municipality, such as a courthouse, city hall, convention center, administrative
13 building, or other similar municipal building used for a municipal purpose permitted by state law:
14 *Provided*, That “municipally owned or operated building” does not include a building owned by a
15 municipality that is leased to a private entity where the municipality primarily serves as a property
16 owner receiving rental payments.

17 (2) ~~(4)~~ “Municipally owned recreation facility” means any municipal swimming pool,
18 recreation center, sports facility, facility housing an after-school program, or other similar facility
19 where children are regularly present.

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

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

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

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

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

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

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

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

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

61 (h) This section does not:

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

65 ~~(2)~~ (1) Authorize municipalities to restrict the carrying or possessing of firearms deadly
66 weapons, firearm, or pepper spray, which are otherwise lawfully possessed, on public streets and
67 sidewalks of the municipality; ~~Provided, That whenever pedestrian or vehicular traffic is prohibited~~
68 ~~in an area of a municipality for the purpose of a temporary event of limited duration, not to exceed~~
69 ~~fourteen days, which is authorized by a municipality, a municipality may prohibit persons who do~~
70 ~~not have a valid concealed handgun license from possessing a firearm in the area where the~~
71 ~~event is held or~~

72 ~~(3)~~ (2) Limit the authority of a municipality to restrict the commercial use of real estate in
73 designated areas through planning or zoning ordinances.