

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4541

BY DELEGATES PHILLIPS, FOLK, STANSBURY, J. NELSON,

ELDRIDGE, RODIGHIERO, SOBONYA, HOUSEHOLDER,

UPSON AND ZATEZALO

[Introduced February 16, 2016; Referred

to the Committee on Political Subdivisions then the

Judiciary.]

1 A BILL to amend and reenact §8-12-5a of the Code of West Virginia, 1931, as amended, relating
 2 to the authority of municipalities to regulate the purchasing, possessing, transferring,
 3 owning, carrying, transporting, selling and storing of knives.

Be it enacted by the Legislature of West Virginia:

1 That §8-12-5a of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

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

8 (b) For the purposes of this section:

9 (1) "Municipally owned or operated building" means any building that is used for the
 10 business of the municipality, such as a courthouse, city hall, convention center, administrative
 11 building or other similar municipal building used for a municipal purpose permitted by state law:

12 *Provided,* That "municipally owned or operated building" does not include a building owned by a
 13 municipality that is leased to a private entity where the municipality primarily serves as a property

14 owner receiving rental payments.

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

18 (c)(1) A municipality may enact and enforce an ordinance or ordinances that prohibit or
19 regulate the carrying or possessing of a knife or a firearm in municipally owned or operated
20 buildings.

21 (2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person
22 from carrying or possessing a knife or a firearm openly or that is not lawfully concealed in a
23 municipally owned recreation facility: *Provided*, That a municipality may not prohibit a person with
24 a valid concealed handgun permit from carrying an otherwise lawfully possessed firearm into a
25 municipally owned recreation facility and securely storing the firearm out of view and access to
26 others during their time at the municipally owned recreation facility.

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

29 (4) A municipality may not prohibit or regulate the carrying or possessing of a knife or a
30 firearm on municipally owned or operated property other than municipally owned or operated
31 buildings and municipally owned recreation facilities pursuant to subdivisions (1) and (2) of this
32 section: *Provided*, That a municipality may prohibit persons who do not have a valid concealed
33 handgun license from carrying or possessing a firearm on municipally owned or operated
34 property.

35 (d) It ~~shall be~~ is an absolute defense to an action for an alleged violation of an ordinance
36 authorized by this section prohibiting or regulating the possession of a knife or a firearm that the
37 person: (1) Upon being requested to do so, left the premises with the knife or firearm or
38 temporarily relinquished the knife or firearm in response to being informed that his or her
39 possession of the knife or firearm was contrary to municipal ordinance; and (2) but for the

40 municipal ordinance the person was lawfully in possession of the knife firearm.

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

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

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

51 (h) This section does not:

52 (1) Impair the authority of any municipality, or the governing body thereof, to enact any
53 ordinance or resolution respecting the power to arrest, convict and punish any individual under
54 the provisions of subdivision (16), section five of this article or from enforcing any such ordinance
55 or resolution;

56 (2) Authorize municipalities to restrict the carrying or possessing of knives or firearms,
57 which are otherwise lawfully possessed, on public streets and sidewalks of the municipality:
58 *Provided*, That whenever pedestrian or vehicular traffic is prohibited in an area of a municipality
59 for the purpose of a temporary event of limited duration, not to exceed fourteen days, which is
60 authorized by a municipality, a municipality may prohibit persons who do not have a valid
61 concealed handgun license from possessing a firearm in the area where the event is held; or

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

NOTE: The purpose of this bill is to limit the authority of municipalities to regulate the

purchasing, possessing, transferring, owning, carrying, transporting, selling and storing of knives.

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