

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 355

BY SENATORS AZINGER, MAYNARD, SMITH, SYPOLT,

CLINE, TARR, AND HAMILTON

[Introduced January 21, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §8-12-5a of the Code of West Virginia, 1931, as amended, relating
 2 to removing authority of municipalities to restrict firearm possession without a valid
 3 concealed handgun license in certain areas during brief temporary events.

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 or any ammunition or ammunition components to be
 5 used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit
 6 the ownership of the ammunition in any manner inconsistent with or in conflict with state law.

7 (b) For the purposes of this section:

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

14 (2) "Municipally owned recreation facility" means any municipal swimming pool, recreation
 15 center, sports facility, facility housing an after-school program or other similar facility where

16 children are regularly present.

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

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

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

27 (4) A municipality may not prohibit or regulate the carrying or possessing of a firearm on
28 municipally owned or operated property other than municipally owned or operated buildings and
29 municipally owned recreation facilities pursuant to §8-12-5a (1) and §8-12-5a (2) of this code:
30 *Provided*, That a municipality may prohibit persons who do not have a valid concealed handgun
31 license from carrying or possessing a firearm on municipally owned or operated property.

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

38 (e) Any municipality that enacts an ordinance regulating or prohibiting the carrying or

39 possessing of a firearm pursuant to subsection (c) of this section shall prominently post a clear
40 statement at each entrance to all applicable municipally owned or operated buildings or
41 municipally owned recreation facilities setting forth the terms of the regulation or prohibition.

42 (f) Redress for an alleged violation of this section may be sought through the provisions
43 of chapter 53 of this code, which may include the awarding of reasonable attorneys fees and
44 costs.

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

48 (h) This section does not:

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

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

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

NOTE: The purpose of this bill is to remove authority of municipalities to restrict possession of firearms without a valid concealed carry permit in certain areas during a brief temporary

event.

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