

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4782

By Delegates Horst, Chiarelli, Summers,
Householder, Kimble, Phillips, Hite, Maynor, Hardy,
Howell, and Espinosa

[Introduced January 16, 2024; Referred
to the Committee on Political Subdivisions then
Judiciary]

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 and
 3 ammunition, and preventing municipalities from targeting protected businesses with
 4 planning and zoning ordinances more restrictive than those placed upon other businesses,
 5 to be known as the Second 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: *Provided*, That a municipality may prohibit persons who do
38 not have a valid concealed handgun license from carrying or possessing a firearm on municipally
39 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: Provided, That a municipality shall not
63 restrict or regulate a business entity protected by §15-5-19a(6)-(8) of this code in a manner more
64 restrictive than the planning or zoning ordinances imposed upon any other business.

NOTE: The purpose of this bill is to prevent municipalities from targeting protected businesses with planning and zoning ordinances more restrictive than those placed upon other businesses. The bill shall be known as the Second Amendment Business Protection Act.

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