

### § 13. Right to bear arms

The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

#### Source:

Entire article added, effective August 1, 1876, see L. 1877, p. 30.

#### Case Note:

#### ANNOTATION

**Law reviews.** For article, "POWPO and Gun Rights After Carbajal", see 44 Colo. Law. 31 (Sept. 2015). For article, "The Right to Arms in Nineteenth Century Colorado", see 95 Denv. L. Rev. 329 (2018).

**No absolute right to bear arms.** The right to bear arms is not absolute, and it can be restricted by the state's valid exercise of its police power. *People v. Garcia*, 197 Colo. 550, 595 P.2d 228 (1979).

The conflicting rights of the individual's right to bear arms and the state's right, indeed its duty under its inherent police power, to make reasonable regulations for the purpose of protecting the health, safety, and welfare of the people prohibits granting an absolute right to bear arms under all situations. *People v. Blue*, 190 Colo. 95, 544 P.2d 385 (1975).

The right to bear arms is not absolute as that right is limited to the defense of one's home, person, and property. *People v. Ford*, 193 Colo. 459, 568 P.2d 26 (1977).

**Right to bear arms is not absolute.** *Douglass v. Kelton*, 199 Colo. 446, 610 P.2d 1067 (1980); *People v. Pflugbeil*, 834 P.2d 843 (Colo. App. 1992).

**This section does not protect an individual's right to possess a short shotgun for self-defense.** The statutory prohibition on short shotguns is a reasonable exercise of the state's police power. *People v. Sandoval*, 2016 COA 14, 409 P.3d 425.

**Convicted felons' rights subject to limitation.** Defendants cannot invoke the same constitutionally protected right to bear arms as could others where the right of a convicted felon to bear arms is subject to reasonable legislative regulation and limitation. *People v. Blue*, 190 Colo. 95, 544 P.2d 385 (1975).

**Municipal ordinance making it unlawful to possess a dangerous or deadly weapon was unconstitutionally overbroad.** *Lakewood v. Pillow*, 180 Colo. 20, 501 P.2d 744 (1972).

**Affirmative defense.** A defendant charged under §18-12-108 who presents competent evidence showing that his purpose in possessing weapons was the defense of his home, person, and property as recognized by this section thereby raises an affirmative defense. *People v. Ford*, 193 Colo. 459, 568 P.2d (1977).

**Trial court properly excluded affirmative defense** based on this section and a proposed jury instruction where the defendant's offer of proof was insufficient to support the proposed affirmative defense. *People v. Barger*, 732 P.2d 1225 (Colo. App. 1986).

**Counsel did not render ineffective assistance by failing to investigate an affirmative defense on the right to possess firearms for self-defense,** which would have been inconsistent with defendant's theory of defense. *People v. Ray*, 2015 COA 92, 378 P.3d 772.

**In considering a challenge to the validity of an ordinance regulating the exercise of the right to bear arms, a court need not determine the status of the right to bear arms under this section.** The trial court erred in reaching the question of the status of the right

guaranteed under this section, and in holding that the right is fundamental. *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994).

**Trial court erred in reviewing ordinance regulating the exercise of the right to bear arms under the strict scrutiny standard.**

The right to bear arms may be regulated by the state under its police power in a reasonable manner. *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994); *Rocky Mtn. Gun Owners v. Hickenlooper*, 2016 COA 45M, 371 P.3d 768.

**Ordinance is related to a legitimate government interest and is a valid exercise of police power**

where assault weapons are weapons of choice for drug traffickers and other criminals and where they account for thirty percent of the weapons used by organized crime, gun trafficking, and terrorists and over twelve percent of drug-related crimes nationwide. *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994).

**Limiting issuance of concealed handgun permits to state residents only does not violate the second amendment or the privileges and immunities clause of article IV of the U.S. constitution.**

The second amendment does not confer a right to carry concealed weapons, and carrying a concealed weapon is not a privilege or immunity protected under article IV. *Peterson v. Martinez*, 707 F.3d 1197 (10th Cir. 2013).

**Applied** in *People v. Nakamura*, 99 Colo. 262, 62 P.2d 246 (1936); *People v. Taylor*, 190 Colo. 144, 544 P.2d 392 (1975); *Rocky Mtn. Gun Owners v. Hickenlooper*, 2018 COA 149, \_\_\_ P.3d \_\_\_.