

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5232

By Delegates Maynor, Phillips, Smith, Crouse,
McGeehan, Horst, Steele, Willis, Gearheart, Hornby,
and Hite

[Introduced January 26, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §61-7-14 of the Code of West Virginia, 1931, as amended, relating to
2 updating the Business Liability Protection Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

1 This section may be referred to as "The Business Liability Protection Act".

2 (a) As used in this section:

3 (1) "Parking lot" means any property that is used for parking motor vehicles and is available
4 to customers, employees, or invitees for temporary or long-term parking or storage of motor
5 vehicles: *Provided*, That for purposes of this section, parking lot does not include the private
6 parking area at a business located at the primary residence of the property owner.

7 (2) "Motor vehicle" means any privately-owned automobile, truck, minivan, sports utility
8 vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle
9 operated on the roads of this state and, which is required to be registered under state law:
10 *Provided*, That for purposes of this section, motor vehicle does not mean vehicles owned, rented,
11 or leased by an employer and used by the employee in the course of employment.

12 (3) "Employee" means any person, who is over 18 years of age, not prohibited from
13 possessing firearms by the provisions of this code or federal law, and

14 (A) Works for salary, wages, or other remuneration;

15 (B) Is an independent contractor; or

16 (C) Is a volunteer, intern, or other similar individual for an employer.

17 (4) "Employer" means any business that is a sole proprietorship, partnership, corporation,
18 limited liability company, professional association, cooperative, joint venture, trust, firm, institution,
19 association, or public-sector entity, that has employees.

20 (5) "Invitee" means any business invitee, including a customer or visitor, who is lawfully on
21 the premises of a public or private employer.

22 (6) "Locked inside or locked to" means

23 (A) The vehicle is locked; or

24 (B) The firearm is in a locked trunk, glove box, or other interior compartment, or

25 (C) The firearm is in a locked container securely fixed to the vehicle; or

26 (D) The firearm is secured and locked to the vehicle itself by the use of some form of
27 attachment and lock.

28 (b) Notwithstanding the provisions of this article, any owner, lessee or other person
29 charged with the care, custody, and control of real property may prohibit the carrying openly or
30 concealing of any firearm or deadly weapon on property under his or her domain: *Provided*, That
31 for purposes of this section "person" means an individual or any entity which may acquire title to
32 real property: *Provided, however*, That for purposes of this section "natural person" means an
33 individual human being.

34 (c) Any natural person carrying or possessing a firearm or other deadly weapon on the
35 property of another who refuses to temporarily relinquish possession of the firearm or other deadly
36 weapon, upon being requested to do so, or to leave the premises, while in possession of the
37 firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be
38 fined not more than \$1,000 or confined in jail not more than six months, or both: *Provided*, That the
39 provisions of this section do not apply to a natural person as set forth in §61-7-6(a)(5) through §61-
40 7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while acting in his or her official
41 capacity or to a natural person as set forth in §61-7-6(b)(1) through §61-7-6(b)(8) of this code,
42 while acting in his or her official capacity: *Provided, however*, That under no circumstances, except
43 as provided for by the provisions of §61-7-11a(b)(2)(A) through (I) of this code, may any natural
44 person possess or carry or cause the possession or carrying of any firearm or other deadly
45 weapon on the premises of any primary or secondary educational facility in this state unless the
46 natural person is a law-enforcement officer or he or she has the express written permission of the
47 county school superintendent.

48 (d) Prohibited acts. – Notwithstanding the provisions of subsections (b) and (c) of this
49 section:

50 (1) No owner, lessee, or other person charged with the care, custody, and control of real
51 property may prohibit any customer, employee, or invitee from possessing any legally owned
52 firearm, when the firearm is

53 (A) Lawfully possessed;

54 (B) Out of view;

55 (C) Locked inside or locked to a motor vehicle in a parking lot; and

56 (D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

57 (2) No owner, lessee, or other person charged with the care, custody, and control of real
58 property may violate the privacy rights of a customer, employee, or invitee either

59 ~~(A) By verbal or written inquiry, regarding the presence or absence of a firearm locked
60 inside or locked to a motor vehicle in a parking lot; or~~

61 ~~(B)~~ (A) By conducting an actual search of a motor vehicle in a parking lot to ascertain the
62 presence of a firearm within the vehicle: *Provided*, That a search of a motor vehicle in a parking lot
63 to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-duty,
64 law enforcement personnel, in accordance with statutory and constitutional protections.

65 ~~(C)~~ (B) No owner, lessee, or other person charged with the care, custody, and control of
66 real property may ~~take any action against~~ remove a customer, employee, or invitee based upon
67 verbal or written statements of any party concerning possession of a firearm stored inside a motor
68 vehicle in a parking lot for lawful purposes, nor may they terminate an employee or take other
69 adverse employment action against an employee, except upon statements made pertaining to
70 unlawful purposes or threats of unlawful actions involving a firearm made in violation of §61-6-24
71 of this code.

72 (3) No employer may condition employment upon either:

73 (A) The fact that an employee or prospective employee holds or does not hold a license
74 issued pursuant to §61-7-4 or §61-7-4a of this code; or

75 (B) An agreement with an employee or a prospective employee prohibiting that natural
76 person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when
77 the firearm is kept for lawful purposes.

78 (4) No owner, lessee, or other person charged with the care, custody, and control of real
79 property may prohibit or attempt to prevent any customer, employee, or invitee from entering the
80 parking lot of the person's place of business because the customer's, employee's, or invitee's
81 motor vehicle contains a legal firearm being carried for lawful purposes that is out of view within
82 the customer's, employee's, or invitee's motor vehicle.

83 (e) Limitations on duty of care; immunity from civil liability. —

84 (1) When subject to the provisions of subsection (d) of this section, an employer, owner,
85 lessee, or other person charged with the care, custody, and control of real property has no duty of
86 care related to the acts prohibited under said subsection.

87 (2) An employer, owner, lessee, or other person charged with the care, custody, and
88 control of real property is not liable in a civil action for money damages based upon any actions or
89 inactions taken in compliance with subsection (d) of this section. The immunity provided in this
90 subdivision does not extend to civil actions based on actions or inactions of employers, owners,
91 lessees, or other persons charged with the care, custody, and control of real property unrelated to
92 subsection (d) of this section.

93 (3) Nothing contained in this section may be interpreted to expand any existing duty or
94 create any additional duty on the part of an employer, owner, lessee, or other person charged with
95 the care, custody, and control of real property.

96 (f) Enforcement. — The Attorney General is authorized to enforce the provisions of
97 subsection (d) of this section and may bring an action seeking either:

- 98 (1) Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of
99 the rights secured in subsection (d) of any customer, employee, or invitee;
- 100 (2) Civil penalties of no more than \$5,000 for each violation of subsection (d) and all costs
101 and attorney's fees associated with bringing the action; or
- 102 (3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this
103 section, including costs and attorney's fees. This action must be brought in the name of the state
104 and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a
105 settlement with any alleged violator in the course of his or her enforcement of subsection (d) of this
106 section.
- 107 (4) Notwithstanding any other provision in this section to the contrary, the authority granted
108 to the Attorney General in this subsection does not affect the right of a customer, employee, or
109 invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation
110 of the rights protected under this section in his or her own name and instituted in the circuit court
111 for the county where the alleged violator resides, has a principal place of business, or where the
112 alleged violation occurred. In any successful action brought by a customer, employee, or invitee
113 aggrieved under the authority of subsection (d) of this section, the court may award injunctive or
114 other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three
115 of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the
116 authority of subsection (d) of this section, the court shall award all court costs and attorney's fees
117 to the prevailing party.

NOTE: The purpose of this bill is to update the Business Liability 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.