

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

House Bill 4187

BY DELEGATES FOSTER, GRAVES, BUTLER, SUMMERS,

ZATEZALO, R. MILLER, BARRET, ISNER, HOLLEN AND

BLAIR

[Reported February 22, 2018.]

1 A BILL to amend and reenact §61-7-14 of the Code of West Virginia, 1931, as amended, relating
2 to creating the “Business Liability Protection Act”; providing definitions; providing for the
3 right to limit possession of firearms on certain premises; establishing misdemeanor
4 criminal offense and penalty for persons refusing to relinquish firearm or leave premises
5 when requested; prohibiting employers from actions against individuals related to legal
6 possession of firearm in a motor vehicle under certain circumstances; establishing
7 limitations on a duty of care of public and private employers; providing for immunity from
8 liability of public and private employers for compliance with the provisions of this statute;
9 providing enforcement authority of the provisions of this statute to the Attorney General;
10 providing remedies for violations of the provisions of this statute including injunctive relief,
11 civil fines or both; providing for civil action by private persons to enforce provisions of
12 statute; and enumerating remedies.”

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 automobile, truck, minivan, sports utility vehicle, motor
8 home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads
9 of this state and, which is required to be registered under state law.
10 (3) “Employee” means any person, who is over eighteen years of age, not prohibited from
11 possessing firearms by the provisions of this code or federal law, and

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

13 (B) Is an independent contractor; or

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

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

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

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

21 (A) The vehicle is locked; or

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

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

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

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

32 (c) Any natural person carrying or possessing a firearm or other deadly weapon on the
33 property of another who refuses to temporarily relinquish possession of the firearm or other deadly
34 weapon, upon being requested to do so, or to leave the premises, while in possession of the
35 firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be
36 fined not more than \$1,000 or confined in jail not more than six months, or both: *Provided*, That
37 the provisions of this section do not apply to a natural person as set forth in ~~subdivisions (3)~~

38 ~~through (7), inclusive, subsection (a), section six of this article §61-7-6(a)(3) through §61-7-6(a)(7)~~
39 ~~of this code while the person is acting in his or her an official capacity; and or to a natural person~~
40 ~~as set forth in subdivisions (1) through (8), inclusive, subsection (b) of said section §61-7-6(b)(1)~~
41 ~~through §61-7-6(b)(8) of this code, while the person is acting in his or her official capacity:~~
42 *Provided, however,* That under no circumstances, except as provided for by the provisions of
43 ~~paragraph (l), subdivision (2), subsection (b), section eleven-a of this article, §61-7-11a(b)(2)(A)~~
44 ~~through (l) of this code,~~ may any natural person possess or carry or cause the possession or
45 carrying of any firearm or other deadly weapon on the premises of any primary or secondary
46 educational facility in this state unless the natural person is a law-enforcement officer or he or she
47 has the express written permission of the 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; and

54 (B) Locked inside or locked to a private motor vehicle in a parking lot; and

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

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

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

60 (B) By conducting an actual search of a private motor vehicle in a parking lot to ascertain
61 the presence of a firearm within the vehicle.

62 (C) Furthermore, no owner, lessee, or other person charged with the care, custody, and
63 control of real property may take any action against a customer, employee, or invitee based upon

64 verbal or written statements of any party concerning possession of a firearm stored inside a
65 private motor vehicle in a parking lot for lawful purposes; except upon statements made pertaining
66 to unlawful purposes or threats of unlawful actions involving a firearm made in violation of §61-6-
67 24 of this code.

68 (D) A search of a private motor vehicle in a parking lot to ascertain the presence of a
69 firearm within that private motor vehicle may only be conducted by on-duty, law enforcement
70 personnel, in accordance with statutory and constitutional protections.

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

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

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

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

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

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

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

90 lessees, or other persons charged with the care, custody, and control of real property unrelated
91 to subsection (d) of this section.

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

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

97 (1) Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of
98 the rights secured in subsection (d) of any customer, employee, or invitee;

99 (2) Civil penalties of no more than \$5,000 for each violation of subsection (d) and all costs
100 and attorney’s fees associated with bringing the action; or

101 (3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this
102 section, including costs and attorney’s fees. This action must be brought in the name of the state
103 and instituted in the circuit court of Kanawha County. The Attorney General may negotiate a
104 settlement with any alleged violator in the course of his or her enforcement of subsection (d) of
105 this section.

106 Notwithstanding any other provision in this section to the contrary, the authority granted
107 to the Attorney General in this subsection does not affect the right of a customer, employee or
108 invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation
109 of the rights protected under this section in his or her own name and instituted in the circuit court
110 for the county where the alleged violator resides, has a principal place of business, or where the
111 alleged violation occurred. In any successful action brought by a customer, employee, or invitee
112 aggrieved under the authority of subsection (d) of this section, the court may award injunctive or
113 other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three
114 of this subsection. In any action brought by a customer, employee, or invitee aggrieved under

115 the authority of subsection (d) of this section, the court shall award all court costs and attorney's
116 fees to the prevailing party.

NOTE: The purpose of this bill is to create the "Business Liability Protection Act". The bill includes the right to limit possession of firearms on certain premises and definitions. It also provides for misdemeanor criminal offense and penalty. It prohibits employers from certain specific actions against a person when that person possesses a firearm legally, including a condition of employment. The bill provides a duty of care of public and private employers and provides for immunity from liability. The bill authorizes the Attorney General to enforce this statute, including the right to sue or seek injunctive relief; and seek civil fines.

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