

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4187**

BY DELEGATES FOSTER, GRAVES, BUTLER, SUMMERS,  
ZATEZALO, R. MILLER, BARRET, ISNER, HOLLEN AND  
BLAIR

[Introduced January 18, 2018; Referred  
to the Committee on Small Business  
Entrepreneurship and Economic Development then  
the Judiciary.]

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”; the right to limit possession of firearms  
 3 on certain premises; providing definitions; misdemeanor criminal offense and penalty;  
 4 prohibiting employers from certain specific actions against a person when that person  
 5 possesses a firearm legally, including a condition of employment; providing a duty of care  
 6 of public and private employers and immunity from liability; authorizing the Attorney  
 7 General to enforce this statute, including the right to sue or seek injunctive relief; and  
 8 providing for civil fines.

*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 ~~Notwithstanding the provisions of this article, any owner, lessee or other person charged~~  
 2 ~~with the care, custody and control of real property may prohibit the carrying openly or concealing~~  
 3 ~~of any firearm or deadly weapon on property under his or her domain: *Provided*, That for purposes~~  
 4 ~~of this section “person” means an individual or any entity which may acquire title to real property.~~  
 5 ~~Any person carrying or possessing a firearm or other deadly weapon on the property of~~  
 6 ~~another who refuses to temporarily relinquish possession of the firearm or other deadly weapon,~~  
 7 ~~upon being requested to do so, or to leave the premises, while in possession of the firearm or~~  
 8 ~~other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not~~  
 9 ~~more than \$1,000 or confined in jail not more than six months, or both: *Provided*, That the~~  
 10 ~~provisions of this section do not apply to a person as set forth in subdivisions (3) through (7),~~  
 11 ~~inclusive, subsection (a), section six of this article while the person is acting in an official capacity;~~  
 12 ~~and to a person as set forth in subdivisions (1) through (8), inclusive, subsection (b) of said~~  
 13 ~~section, while the person is acting in his or her official capacity: *Provided, however*, That under~~  
 14 ~~no circumstances, except as provided for by the provisions of paragraph (1), subdivision (2),~~  
 15 ~~subsection (b), section eleven-a of this article, may any person possess or carry or cause the~~

16 ~~possession or carrying of any firearm or other deadly weapon on the premises of any primary or~~  
17 ~~secondary educational facility in this state unless the person is a law enforcement officer or he or~~  
18 ~~she has the express written permission of the county school superintendent~~

19 This section may known as “The Business Liability Protection Act”.

20 (a) As used in this section:

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

25 (2) “Motor vehicle” means any automobile, truck, minivan, sports utility vehicle, motor  
26 home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads  
27 of this state and required to be registered under state law.

28 (3) “Employee” means any person, who is over eighteen years of age, not prohibited from  
29 possessing firearms by the provisions of this code or federal law and:

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

31 (B) Is an independent contractor; or

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

33 (4) “Employer” means any business that is a sole proprietorship, partnership, corporation,  
34 limited liability company, professional association, cooperative, joint venture, trust, firm, institution  
35 or association, or public sector entity, that has employees.

36 (5) “Invitee” means any business invitee, including a customer or visitor, who is lawfully  
37 on the premises of a public or private employer.

38 (b) Notwithstanding the provisions of this article, any owner, lessee, or other person  
39 charged with the care, custody, and control of real property may prohibit the carrying openly or  
40 concealed of any firearm or deadly weapon on property under his or her domain: *Provided*, That  
41 for purposes of this section “person” means an individual or any entity which may acquire title to

42 real property.

43 (c) Any person carrying or possessing a firearm or other deadly weapon on the property  
44 of another who refuses to temporarily relinquish possession of the firearm or other deadly  
45 weapon, upon being requested to do so, or to leave the premises, while in possession of the  
46 firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be  
47 fined not more than \$1,000 or confined in jail not more than six months, or both fined and confined:  
48 Provided, That the provisions of this section do not apply to a person as set forth in §61-7-6(a)(3)  
49 through §61-7-6(a) (7) of this code while the person is acting in an official capacity; and to a  
50 person as set forth in §61-7-6(b)(1) through §61-7-6(b) (8) of this code while the person is acting  
51 in his or her official capacity: Provided, That under no circumstances, except as provided for by  
52 §61-7-11(a)(1) (2) of this code may any person possess or carry or cause the possession or  
53 carrying of any firearm or other deadly weapon on the premises of any primary or secondary  
54 educational facility in this state unless the person is a law-enforcement officer or he or she has  
55 the express written permission of the county school superintendent.

56 (d) Prohibited acts.

57 (1) No public or private employer may prohibit any customer, employee, or invitee from  
58 possessing any legally owned firearm when the firearm is lawfully possessed and locked inside  
59 or locked to a private motor vehicle in a parking lot and when the customer, employee, or invitee  
60 is lawfully in that area.

61 (2) No public or private employer may violate the privacy rights of a customer, employee,  
62 or invitee by verbal or written inquiry regarding the presence of a firearm inside or locked to a  
63 private motor vehicle in a parking lot or by an actual search of a private motor vehicle in a parking  
64 lot to ascertain the presence of a firearm within the vehicle. Further, no public or private employer  
65 may take any action against a customer, employee, or invitee based upon verbal or written  
66 statements of any party concerning possession of a firearm stored inside a private motor vehicle  
67 in a parking lot for lawful purposes. A search of a private motor vehicle in the parking lot of a

68 public or private employer to ascertain the presence of a firearm within the vehicle may only be  
69 conducted by on-duty law-enforcement personnel, based upon due process and must comply  
70 with constitutional protections.

71 (3) No public or private 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 §61-7-4(a) of this code; or

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

77 (4) No public or private employer may prohibit or attempt to prevent any customer,  
78 employee, or invitee from entering the parking lot of the employer's place of business because  
79 the customer's, employee's, or invitee's private motor vehicle contains a legal firearm being  
80 carried for lawful purposes, that is out of sight within the customer's, employee's, or invitee's  
81 private motor vehicle.

82 (e) Duty of care of public and private employers; immunity from liability. --

83 (1) When subject to the provisions of subsection (d) of this section, a public or private  
84 employer has no duty of care related to the actions prohibited under that subsection.

85 (2) A public or private employer is not liable in a civil action based on actions or inactions  
86 taken in compliance with this section. The immunity provided in this section does not apply to civil  
87 actions based on actions or inactions of public or private employers that are unrelated to  
88 compliance with this section.

89 (3) Nothing contained in this section may be interpreted to expand any existing duty or  
90 create any additional duty on the part of a public or private employer, property owner, or property  
91 owner's agent.

92 (f) Enforcement. – The Attorney General is authorized to enforce the provisions of this  
93 section and may bring a civil action to restrain a public or private employer from violating this

94 section:

95 (1) For injunctive or other appropriate equitable relief to protect the exercise or enjoyment  
96 of the rights secured in this section to any customer, employee, or invitee of a public or private  
97 employer, or

98 (2) For civil penalties of no more than \$5,000 for each violation of this section and all costs  
99 and attorney's fees associated with bringing the action; or

100 (3) For both equitable relief and civil penalties, including costs and attorney's fees. This  
101 action must be brought in the name of the state and instituted in the circuit court of Kanawha  
102 County. The Attorney General may negotiate a settlement with any employer in the course of his  
103 or her enforcement of this section.

104 The grant of authority to the Attorney General in this section does not affect the right of a  
105 person aggrieved under this section to bring a civil action for violation of rights protected under  
106 the section in his or her name and instituted in the circuit court for the county where the alleged  
107 violation resides or has a principal place of business or where the alleged violation occurred. In  
108 any successful action brought by a customer, employee, or invitee aggrieved under this section,  
109 the court may award injunctive relief and all reasonable personal costs and losses suffered by the  
110 aggrieved person because of the violation of rights under this section. In any action brought by  
111 an aggrieved person pursuant to this section, the court shall award all court costs and attorney's  
112 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.