

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 3069**

BY DELEGATE SHOTT

[Introduced February 12, 2019; 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  
 2 to the right of certain persons to limit possession of firearms on premises; and providing a  
 3 limitation on certain persons possessing firearms upon property owned or leased by a  
 4 chemical manufacturing facility or oil and gas refinery operating under an air quality permit  
 5 issued by the West Virginia Department of Environmental Protection, Division of Air  
 6 Quality on which the primary business conducted is the manufacture, use, storage, or  
 7 transportation of hazardous, combustible, or explosive materials; and providing  
 8 conditional exceptions to that limitation.

*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,  
19 institution, association, or public-sector entity, that has employees.

20 (5) "Invitee" means any business invitee, including a customer or visitor, who is lawfully  
21 on 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 fined and confined:  
39 *Provided*, That the provisions of this section do not apply to a natural person as set forth in §61-  
40 7-6(a)(5) through §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while acting  
41 in his or her official capacity or to a natural person as set forth in §61-7-6(b)(1) through §61-7-

42 6(b)(8) of this code, while acting in his or her official capacity: *Provided, however,* That under no  
43 circumstances, except as provided for by the provisions of §61-7-11a(b)(2)(A) through (I) of this  
44 code, may any natural person possess or carry or cause the possession or carrying of any firearm  
45 or other deadly weapon on the premises of any primary or secondary educational facility in this  
46 state unless the natural person is a law-enforcement officer or he or she has the express written  
47 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;

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) 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  
63 lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-  
64 duty, law enforcement personnel, in accordance with statutory and constitutional protections.

65 (C) No owner, lessee, or other person charged with the care, custody, and control of real  
66 property may take any action against a customer, employee, or invitee based upon verbal or  
67 written statements of any party concerning possession of a firearm stored inside a motor vehicle

68 in a parking lot for lawful purposes, except upon statements made pertaining to unlawful purposes  
69 or threats of unlawful actions involving a firearm made in violation of §61-6-24 of this code.

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

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

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

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

81 (5) The provisions of this subsection do not apply to:

82 (A) Property owned or leased by a chemical manufacturing facility or oil and gas refinery  
83 operating under an air quality permit issued by the West Virginia Department of Environmental  
84 Protection, Division of Air Quality; and

85 (B) On which the primary business conducted is the manufacture, use, storage, or  
86 transportation of hazardous, combustible, or explosive materials.

87 (C) Except, that the provisions of this subsection do apply to an employee of such a facility  
88 who holds a license issued pursuant to §61-7-4 or §61-7-4a of this code, and who stores a legally  
89 owned firearm locked inside or locked to a private motor vehicle in a parking lot which the  
90 employer provides for employees which is located outside of the secured and restricted area  
91 containing the physical plant of the facility or refinery; which secured and restricted area is not  
92 open to the public and the ingress into which is constantly monitored by security personnel.

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

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

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

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

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

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

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

112 (3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this  
113 section, including costs and attorney's fees. This action must be brought in the name of the state  
114 and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a  
115 settlement with any alleged violator in the course of his or her enforcement of subsection (d) of  
116 this section.

117 (4) Notwithstanding any other provision in this section to the contrary, the authority granted  
118 to the Attorney General in this subsection does not affect the right of a customer, employee, or  
119 invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation

120 of the rights protected under this section in his or her own name and instituted in the circuit court  
121 for the county where the alleged violator resides, has a principal place of business, or where the  
122 alleged violation occurred. In any successful action brought by a customer, employee, or invitee  
123 aggrieved under the authority of subsection (d) of this section, the court may award injunctive or  
124 other appropriate equitable relief and civil penalties as set forth in subdivisions ~~one, two and three~~  
125 (1), (2) and (3) of this subsection. In any action brought by a customer, employee, or invitee  
126 aggrieved under the authority of subsection (d) of this section, the court shall award all court costs  
127 and attorney's fees to the prevailing party.

NOTE: The purpose of this bill is to provide a limitation on certain persons possessing firearms upon property owned or leased by a chemical manufacturing facility or oil and gas refinery operating under an air quality permit issued by the West Virginia Department of Environmental Protection, Division of Air Quality on which the primary business conducted is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials.

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