

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4187

BY DELEGATES FOSTER, GRAVES, BUTLER, SUMMERS, ZATEZALO,

R. MILLER, BARRETT, ISNER, HOLLEN AND BLAIR

[Passed March 10, 2018; in effect ninety days from passage.]

1 AN ACT 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; prohibiting owners,
3 lessees, or other persons charged with the care, custody, and control of real property from
4 prohibiting any customer, employee, or invitee from possessing a legal owned firearm
5 under certain circumstances; prohibiting owners, lessees, or other persons charged with
6 the care, custody, and control of real property from violating certain privacy rights of a
7 customer, employee, or invitee; providing that no employer may condition employment
8 under certain circumstances; providing that no owner, lessee, or other person charged
9 with the care, custody, and control of real property may prevent a customer, employee, or
10 invitee from entering the parking lot because the motor vehicle contains a legal firearm;
11 providing immunity and limitations of liability; providing that the Attorney General is
12 authorized to enforce the such provisions; providing customers, employees, and invitees
13 with a civil cause of action; and providing forms of relief and civil penalties.

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: *Provided*, That
39 the provisions of this section do not apply to a natural person as set forth in §61-7-6(a)(5) through
40 §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while acting in his or her
41 official capacity or to a natural person as set forth in §61-7-6(b)(1) through §61-7-6(b)(8) of this
42 code, while acting in his or her official capacity: *Provided, however*, That under no circumstances,
43 except as provided for by the provisions of §61-7-11a(b)(2)(A) through (I) of this code, may any
44 natural 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) 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 (e) *Limitations on duty of care; immunity from civil liability.* —

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

85 (2) An employer, owner, lessee, or other person charged with the care, custody, and
86 control of real property is not liable in a civil action for money damages based upon any actions

87 or inactions taken in compliance with subsection (d) of this section. The immunity provided in this
88 subdivision does not extend to civil actions based on actions or inactions of employers, owners,
89 lessees, or other persons charged with the care, custody, and control of real property unrelated
90 to subsection (d) of this section.

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

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

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

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

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

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

113 of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the
114 authority of subsection (d) of this section, the court shall award all court costs and attorney's fees
115 to the prevailing party.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2018.

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Governor