WEST VIRGINIA CODE: §61-7-14

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

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

(a) As used in this section:

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

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

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

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

(B) Is an independent contractor; or

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

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

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

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

(A) The vehicle is locked; or

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

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

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

WV Legislature

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

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

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

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

(A) Lawfully possessed;

(B) Out of view;

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

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

(2) No owner, lessee, or other person charged with the care, custody, and control of real property may violate the privacy rights of a customer, employee, or invitee by conducting an actual search of a motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle: *Provided*, That a search of a motor vehicle in a parking lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-duty, law enforcement personnel, in accordance with statutory and constitutional protections.

WV Legislature

(3) No owner, lessee, or other person charged with the care, custody, and control of real property may remove a customer, employee, or invitee for storing a firearm inside a motor vehicle in a parking lot as defined in this section, nor may they terminate an employee or take other adverse employment action against an employee for such storage, except in cases of threats of unlawful action.

(4) No employer may condition employment upon either:

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

WV Legislature