



SPONSOR: Rep. Lynn & Rep. Bentz & Rep. Mitchell &
Sen. Townsend
Reps. Baumbach, Brady, Kowalko

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 366

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO SAFE STORAGE OF FIREARMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1456, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1456. ~~Unlawfully permitting a minor access to a firearm~~ Unsafe storage of a firearm; class A ~~or B~~ misdemeanor.

(a)(1) A person is guilty of ~~unlawfully permitting a minor access to~~ unsafe storage of a firearm when the person intentionally or recklessly stores or leaves a loaded firearm within the reach or easy access of ~~a minor~~ an unauthorized person and ~~where the minor~~ the unauthorized person obtains the firearm ~~and uses it to inflict serious physical injury or death upon the minor or any other person.~~

(2) For the purposes of this section:

a. "Unauthorized person" means a child or person prohibited by state or federal law from owning or possessing a firearm.

b. "Stores or leaves" does not mean when the firearm is carried by or under the control of the owner or other lawfully-authorized user.

(b) It ~~shall be~~ is an affirmative defense to a prosecution under this section if any of the following circumstances exist:

(1) The firearm was stored in a locked box or ~~container~~ container, disabled with a tamper-resistant trigger lock which was properly engaged so as to render the firearm inoperable by a person other than the owner or other lawfully-authorized user, or stored in a location which a reasonable person would have believed to be secure from access ~~to a minor; or by an unauthorized person.~~

(2) The ~~minor obtains~~ unauthorized person obtained the firearm as the result of an unlawful entry by any ~~person; or person.~~

(3) ~~The serious physical injuries or death to the minor or any other person results from a target or sport shooting accident or hunting accident.~~

23 (c)(1) ~~Unlawfully permitting a minor access to a firearm~~ Unsafe storage of a firearm is a class ~~A misdemeanor~~ B
24 misdemeanor if paragraphs (c)(2)a., b., or c. of this section do not apply.

25 (2) Unsafe storage of a firearm is a class A misdemeanor if the unauthorized person does any of the following:

26 a. Commits or attempts to commit a crime with the firearm.

27 b. Uses the firearm to inflict serious physical injury or death upon any person, including the unauthorized
28 person.

29 c. Transfers or attempts to transfer the firearm to another unauthorized person.

30 (d) The Superior Court has jurisdiction over an offense under this section.

31 (e) It is not an offense under this section if the firearm was manufactured in or before the year 1899, or is a replica
32 of such firearm if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

SYNOPSIS

This Act revises the crime of "unlawfully permitting a child access to a firearm," an existing class A misdemeanor under Delaware law. The offense is renamed "unsafe storage of a firearm" to place emphasis on firearm safety and proper storage. Under the revised statute, a crime is committed when a person intentionally or recklessly stores or leaves a loaded firearm where a minor or other person prohibited by law, or "unauthorized person," can access the firearm, and the unauthorized person obtains the firearm. The unauthorized person's use of the firearm to inflict serious physical injury or death is not an element of the offense, but is an aggravating factor. For the purposes of this offense, "stores and leaves" does not include when firearm is carried by or under the control of the owner or another lawfully-authorized user.

Under this Act, the offense is a class B misdemeanor if there are no aggravating circumstances. If, however, the unauthorized person uses the firearm to commit a crime, uses the firearm to inflict serious physical injury or death upon anyone, or transfers the firearm to another unauthorized person, the offense is a class A misdemeanor. It is an affirmative defense that the person stored the firearm in a locked container, disabled it with a tamper-resistant trigger lock, or stored it in a location a reasonable person would have thought was safe from access by unauthorized persons.

This Act provides an exception for firearms manufactured in or before 1899, or a replica to such firearms, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

This Act also makes technical changes to conform existing law to the standards of the Delaware Legislative Drafting Manual.