

1 **Senate Bill No. 370**

2 (By Senators Unger, Kessler (Mr. President), Browning, Klempa and
3 Laird)

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5 [Introduced January 20, 2012; referred to the Committee on the
6 Judiciary.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new section, designated §61-7-16, relating to
13 the transport and storage of firearms in private vehicles;
14 definition; providing that rules or policies shall not be
15 established that prohibit a person's lawful transport or
16 storage of a firearm or ammunition; civil actions for
17 violations; recovery for employees discharged for violation of
18 rule or policy prohibited by section; limitation on liability;
19 and exemptions.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new section, designated §61-7-16, to read as
23 follows:

24 **ARTICLE 7. DANGEROUS WEAPONS.**

1 **§61-7-16. Transport and storage of firearms in private vehicles.**

2 (a) As used in this section, "motor vehicle" means any
3 automobile, truck, minivan, sports utility vehicle, motorcycle,
4 motor scooter, or any other vehicle required to be registered under
5 state law when operated on the highways of this state.

6 (b) Except as otherwise provided in this section, a business
7 entity, owner, manager, or legal possessor of real property, or
8 public or private employer may not establish, maintain, or enforce
9 a policy or rule that prohibits or has the effect of prohibiting a
10 person's otherwise lawful transportation or storage of a firearm or
11 ammunition when:

12 (1) The firearm or ammunition:

13 (A) Is kept from ordinary observation within the person's
14 attended, privately-owned motor vehicle; or

15 (B) Is kept from ordinary observation and locked within the
16 trunk, glove box, or interior of the person's privately-owned motor
17 vehicle or a container securely affixed to such vehicle; and

18 (2) The vehicle is operated or parked in a location where it
19 is otherwise permitted to be.

20 (c) A person who is injured or incurs damages, or the
21 survivors of a person killed, as a result of a violation of
22 subsection (b) may bring a civil action in the appropriate court
23 against any business entity, owner, manager, or legal possessor of
24 real property, or public or private employer who committed or

1 caused the violation. A person who is denied the opportunity to
2 transport or store a firearm or ammunition by a policy or rule
3 prohibited by subsection (b), may bring a civil action in the
4 appropriate court to enjoin any business entity, owner, manager, or
5 legal possessor of real property, or public or private employer
6 from violating subsection (b). In any actions brought pursuant to
7 this section, court costs and attorney fees shall be awarded to the
8 prevailing plaintiff.

9 (d) An employee discharged by a public or private employer for
10 a violation of a policy or rule prohibited by subsection (b) is
11 entitled to full recovery as specified in subdivisions (1) to (4),
12 inclusive, of this subsection. If demand for the recovery has not
13 been satisfied within forty-five calendar days, the employee may
14 bring a civil action in the appropriate court of this state against
15 the public or private employer and is entitled to the following:

16 (1) Reinstatement to the same position held at the time of his
17 or her termination from employment, or to an equivalent position;

18 (2) Reinstatement of the employee's full fringe benefits and
19 seniority rights, as appropriate;

20 (3) Compensation, if appropriate, for lost wages, benefits, or
21 other lost remuneration caused by the termination; and

22 (4) Payment of reasonable attorney fees and legal costs
23 incurred.

24 (e) No business entity, owner, manager, or legal possessor of

1 real property, or public or private employer shall be held liable
2 in any civil action for damages, injuries, or death resulting from
3 or arising out of another person's actions involving a firearm or
4 ammunition transported or stored pursuant to subsection (b),
5 including, but not limited to, the theft of a firearm from an
6 employee's or invitee's automobile, unless the business entity,
7 owner, manager, or legal possessor of real property, or public or
8 private employer intentionally solicited or procured the other
9 person's injurious actions. (f) The prohibitions in subsection
10 (b) do not apply if:

11 (1) The motor vehicle is on the grounds of an owner-occupied
12 single-family detached residence or a tenant-occupied single-family
13 detached residence;

14 (2) The motor vehicle is an employer-owned motor vehicle being
15 used during and in the course of an employee's duties on behalf of
16 the employer;

17 (3) The motor vehicle is on the grounds of any public or
18 private primary or secondary school, including any vocational
19 education facility where secondary vocational education programs
20 are conducted, unless it is operated and attended by a person
21 twenty-one years of age or older who is temporarily on the grounds
22 for the purpose of picking up or dropping off a student who is
23 attending classes or participating in an activity at the school or
24 vocational education facility; or

1 (4) The motor vehicle is located in any place where firearms
2 are prohibited by federal law; or

3 (5) The motor vehicle is located on the grounds of any
4 facility owned or operated by the Division of Corrections, the
5 Regional Jail and Correctional Facility Authority or the Division
6 of Juvenile Services.

7 (g) This section applies notwithstanding, and is specifically
8 intended to control any contrary provisions or applications of:

9 (1) Subsection (g) of section eleven-a of this article
10 (premises which house courts of law or offices of family master);

11 (2) Section fourteen of this article (right of any owner,
12 lessee or other person charged with the care, custody and control
13 of real property to prohibit the carrying of any firearm on
14 property under his or her domain);

15 (3) Section three, article three-b of this chapter (trespass
16 on property other than structure or conveyance);

17 (4) Section five, article three-b of this chapter (trespass on
18 state government property);

19 (5) Subsection (b) of section nineteen, article six of this
20 chapter (state capitol complex);

21 (6) Any rule or policy established by the Division of Veterans
22 Affairs under section 3, article two of chapter nine-a (see W. Va.
23 Code St. R. §86-1-5.3.7., authorizing transporting or possessing
24 weaponry on the ground of State Home for Veterans);

1 (7) Any rule or policy established by the Higher Education
2 Policy Commission, Council for Community and Technical College
3 Education, or the governing board of any institution of higher
4 learning under articles one, one-b one-d, two-a, two-b, two-c and
5 four of chapter eighteen-b (governance of institutions of higher
6 learning); and

7 (8) Any rule or policy established by the Division of National
8 Resources under section seven, article one of chapter twenty (see
9 W. Va. Code R. §58-31-2.14, generally prohibiting uncased firearms
10 in state parks, state forests, and state wildlife management areas,
11 and on state trails).

12 (h) It is the intent of this section to reinforce and protect
13 the right of each citizen lawfully to transport and store firearms
14 within his or her private motor vehicle for lawful purposes in any
15 place where the vehicle is otherwise permitted to be. This section
16 is to be liberally construed to effectuate this purpose.

NOTE: The purpose of this bill is to protect the lawful
transport and storage of firearms in private vehicles.

This section is new; therefore, strike-throughs and
underscoring have been omitted.