

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 3/20/09
BILL NO. HB 228
These
22817.avi
amendments
create
the
grey. FIVE BILL

Amendments to House Bill No. 228
3rd Reading Copy

Requested by Senator Dan McGee

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 27, 2009 (4:58pm)

1. Title, line 8.

Following: "SECTIONS"
Strike: "45-8-315,"
Insert: "45-3-103,"
Following: "45-8-316,"
Insert: "45-8-317, 45-8-321,"

2. Title, line 9.

Following: the first "MCA;"
Strike: "AND REPEALING SECTION 45-8-317, MCA"
Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 10.

Following: line 9
Insert: "WHEREAS, the legislature declares that:
(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana Constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II, section 12, of the Montana Constitution, are fundamental and may not be called into question;
(2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana Constitution;
(3) self-defense is a natural right under section 1-2-104, MCA, and is included in sections 49-1-101 and 49-1-103, MCA;
(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;
(5) in a criminal case in which self-defense is asserted, the burden of proof is as provided in [section 11];
(6) in self-defense, the use of justifiable force discourages violent crime and prevents victimization; and
(7) the purpose of [sections 1 through 3] is to clarify and secure the ability of the people to protect themselves."

4. Page 1, line 13 through line 25.

Strike: section 1 in its entirety
Renumber: subsequent sections

5. Page 1, line 29.

Following: "prior to"

Strike: "acting in self-defense."

Insert: "using force. The provisions of this section apply to a person offering evidence of justifiable use of force under 45-3-102, 45-3-103, or 45-3-104."

6. Page 2, line 1 through line 16.

Strike: section 3 in its entirety

Insert: "NEW SECTION. **Section 2. Openly carrying weapon -- display -- exemption.** (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon in an appropriate circumstance.

(3) This section does not limit the authority of the board of regents to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on campuses of the Montana university system."

Renumber: subsequent sections

7. Page 2, line 22.

Insert: "**Section 4.** Section 45-3-103, MCA, is amended to read:

"45-3-103. Use of force in defense of occupied structure.

(1) A person is justified in the use of force or threat to use force against another when and to the extent that he the person reasonably believes that ~~such conduct~~ the use of force is necessary to prevent or terminate ~~such the~~ other's unlawful entry into or attack upon an occupied structure. ~~However, he~~

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

~~(1)(a)~~ (a) the entry is made or attempted ~~in violent, riotous, or tumultuous manner~~ and he the person reasonably believes that ~~such the~~ force is necessary to prevent an assault upon ~~or offer of personal violence to him~~ the person or another then in the occupied structure; or

~~(2)(b)~~ (b) he the person reasonably believes that ~~such the~~ force is necessary to prevent the commission of a forcible felony in the occupied structure."

{ Internal References to 45-3-103:

ok 45-3-105* }

8. Page 4, line 8.

Following: "allowed."

Insert: "(1)"

9. Page 4, line 12.

Following: line 11

Insert: "(2) The provisions of this section do not apply to housing provided by the Montana university system and other postsecondary institutions."

10. Page 4, line 23 through line 28.

Strike: section 7 in its entirety

Renumber: subsequent sections

11. Page 5, line 1.

Following: "Every"

Strike: "A"

Insert: "Except as provided in subsection (3), a"

12. Page 5, line 2.

Following: "person"

Strike: ", if using it to commit a criminal offense,"

13. Page 5, line 8 through line 9.

Following: "person" on line 8

Strike: remainder of line 8 through "offense," on line 9

14. Page 5, line 11.

Following: line 10

Insert: "(3) A person may carry a concealed weapon upon the person unless the person is prohibited by 45-8-321(1) (a) through (1) (h) from obtaining a concealed weapon permit.

(4) This section does not limit the authority of the board of regents to regulate the carrying of weapons, as defined in 45-8-361(5) (b), on campuses of the Montana university system."

15. Page 5, line 12.

Following: line 11

Insert: "Section 8. Section 45-8-317, MCA, is amended to read:

"45-8-317. **Exceptions.** (1) Section 45-8-316 does not apply to:

(a) any peace officer of the state of Montana or of another state who has the power to make arrests;

(b) any officer of the United States government authorized to carry a concealed weapon;

(c) a person in actual service as a member of the national guard;

(d) a person summoned to the aid of any of the persons named in subsections (1) (a) through (1) (c);

(e) a civil officer or the officer's deputy engaged in the discharge of official business;

(f) a probation and parole officer authorized to carry a firearm under 46-23-1002;

(g) a person issued a permit under 45-8-321 or a person with a permit recognized under 45-8-329;

(h) an agent of the department of justice or a criminal investigator in a county attorney's office;

(i) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; or

(j) the carrying of arms on one's own premises or at one's home or place of business; or

(k) the carrying of a concealed weapon pursuant to 45-8-316(3).

(2) With regard to a person issued a permit under 45-8-321, the provisions of 45-8-328 do not apply to this section."

{ Internal References to 45-8-317:

OK 45-8-315* }

Insert: "Section 9. Section 45-8-321, MCA, is amended to read:

"45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other

conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3) (a) through (3) (c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be

satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible."

{ Internal References to 45-8-321: ALL OK

45-8-315* 45-8-315* 45-8-317 45-8-317

45-8-322* 45-8-322 }"

Renumber: subsequent sections

16. Page 5, line 16 through line 17.

Following: "person." on line 16

Strike: remainder of line 16 through "45-3-106." on line 17

17. Page 5, line 20.

Following: line 19

Insert: "NEW SECTION. Section 11. Justifiable use of force -- burden of proof. In a criminal trial, when the defendant has offered evidence of justifiable use of force, the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified."

Renumber: subsequent sections

18. Page 5, line 21.

Strike: section 10 in its entirety

Renumber: subsequent sections

19. Page 5, line 23.

Strike: "4"

Insert: "3"

20. Page 5, line 25.

Strike: "4"

Insert: "3"

21. Page 5, line 30.

Strike: "1"

Insert: "24"

Strike: "4"

Insert: "1"

22. Page 6, line 1.

Strike: "1"

Insert: "24"

Strike: "4"

Insert: "1"

23. Page 6, line 4.

Following: line 3

Insert: "(4) [Section 11] is intended to be codified as an integral part of Title 46, chapter 16, part 1, and the provisions of Title 46, chapter 16, part 1, apply to [section 11]."

24. Page 6, line 5.

Following: line 4

Insert: "NEW SECTION. Section 13. {standard} Effective date. [This act] is effective on passage and approval."

- END -