

Amendments to House Bill No. 388
1st Reading Copy

Requested by Representative Ellie Boldman Hill

For the House Judiciary Committee

Prepared by Helen Thigpen
February 16, 2015 (7:30am)

1. Title, page 1, line 4.

Following: "SELF-DEFENSE LAWS;"

Strike: "REQUIRING" on line 4 through "DATE." on line 8

Insert: "REQUIRING VIOLENT ENTRY FOR THE USE OF FORCE IN DEFENSE OF AN OCCUPIED STRUCTURE TO BE JUSTIFIED; CLARIFYING THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-3-103 AND 45-8-321, MCA; AND REPEALING SECTIONS 45-3-110, 45-3-111, 45-3-112, 46-5-313, 46-16-131, AND 70-24-110, MCA."

2. Page 1, line 12 through page 2, line 6.

Strike: everything after the enacting clause

Insert: "**Section 1.** 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 the person reasonably believes that the use of force is necessary to prevent or terminate the other person's unlawful entry into or attack upon an occupied structure.

(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:

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

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

{ Internal References to 45-3-103:

x45-3-105 * x45-3-110 }"

Insert: "**Section 2.** 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

Internal References to 45-3-112: None.
Internal References to 46-5-313: None.
Internal References to 46-16-131: None.
Internal References to 70-24-110: None.}"

- END -

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) ~~subject to the provisions of subsection (6),~~ has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration; or

(ii) 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 on 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, except a person referred to in subsection (1)(c)(ii), 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:

x45-8-315 * x45-8-315 * x45-8-317 x45-8-317
x45-8-317 x45-8-322 x45-8-322 * }

Insert: "NEW SECTION. Section 3. {standard} Repealer. The following sections of the Montana Code Annotated are repealed:

- 45-3-110. No duty to summon help or flee.
- 45-3-111. Openly carrying weapon -- display -- exemption.
- 45-3-112. Investigation of alleged offense involving claim of justifiable use of force.
- 46-5-313. Firearm not to be destroyed.
- 46-16-131. Justifiable use of force -- burden of proof.
- 70-24-110. Landlords and tenants -- no firearm prohibition allowed.

{ Internal References to 45-3-110: None.

Internal References to 45-3-111: None.