

HOUSE BILL NO. 340

INTRODUCED BY WELLS, JORE, MENDENHALL, CURTISS, W. JONES, RICE, MCGILLVRAY, EVERETT,
BUTCHER, WARD, MACLAREN, KOOPMAN, JACKSON, CAMPBELL, KLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-8-315, 45-8-316, 46-6-502, AND 46-11-201, MCA; AND REPEALING SECTION 45-8-317, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The legislature declares that:

- (1) the right of people to defend themselves from harm or loss of life is fundamental and beyond 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 1-2-104 and is included in 49-1-101 and 49-1-103;
- (4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;
- (5) if self-defense is asserted by a defendant in a criminal action, the state has the burden to prove the absence of justification beyond a reasonable doubt;
- (6) the use of firearms for self-defense discourages violent crime and prevents victimization; and
- (7) the purpose of [sections 1 through 5 4] is to clarify and secure the ability of the people to protect themselves from wrongful assault.

NEW SECTION. **Section 2. No duty to summon help or flee.** Except as provided in 45-3-105, a person threatened with bodily injury or loss of life has no duty to summon law enforcement assistance prior to acting in self-defense or to retreat from the threat.

NEW SECTION. **Section 3. Defensive display of firearm not crime.** (1) A person who displays or shows a firearm for a harmless defensive purpose may not be held accountable for a criminal act.

- (2) Displaying or showing includes but is not limited to:
 - (a) openly wearing, carrying, or possessing a firearm;

- (b) verbally informing another that one possesses a firearm; and
- (c) holding a firearm in a position so that the firearm does not point directly at another person.
- (3) The right to show or display a firearm does not include:
 - (a) pointing a firearm directly at another person or sweeping another person with the muzzle of a firearm;
 - (b) discharging a firearm in the direction of another person; or
 - (c) deliberately provoking another person into threatening words or actions when possessing a firearm.

NEW SECTION. Section 4. Investigation of self-defense claim. When an investigation is conducted by a peace officer of an incident in which a firearm was used and the use of a firearm appears to have been or is alleged to have been in self-defense, the investigation must be conducted so as to disclose all evidence, including testimony, that might support the apparent or alleged self-defense.

~~NEW SECTION. Section 5. Award of attorney fees and costs -- charge dismissed -- person found not guilty.~~ In a criminal prosecution of a person who is accused of an offense and who asserts the right of self-defense under Article II, section 12, of the Montana constitution, if the charge is dismissed or the person is found not guilty, the court shall award the person reasonable attorney fees and costs specific to the defense of the charge.

NEW SECTION. Section 5. Conditions for seizure of firearm -- return of seized firearm. (1) A peace officer may seize a legally possessed firearm only:

(a) at an incident in which a firearm is present and a peace officer on the scene has probable cause to believe that the firearm was used to commit a crime. However, the peace officer may take only that firearm and no other into temporary custody; for up to 2 72 hours; ~~to secure the safety of persons at the scene.~~ If an arrest is not made, the firearm must be returned to the person from whom it was seized or to the rightful owner if that is determined to be another person no later than the end of the ~~2-hour~~ 72-HOUR custody period UNLESS A COURT ORDER IS OBTAINED TO RETAIN THE FIREARM.

(b) if a person is arrested because of probable cause to believe that the person has committed a crime and it is alleged with probable cause that a firearm has been used to further that crime. The firearm alleged to have been used may be seized as evidence of commission of the crime. The firearm must be returned to the person from whom it was seized or to the rightful owner if that is determined to be a different person within 2 weeks of the seizure if no criminal charge has been filed against the person from whom the firearm was seized.

(2) If a criminal charge against a person from whom a firearm has been seized is dismissed or the person is found not guilty, the firearm must be returned to the person or to the rightful owner if that is determined to be a different person within 48 hours of the dismissal or of a verdict of not guilty.

(3) A person from whom a firearm is seized or kept in a manner that is not consistent with this section may compel the return of the firearm by demanding the return in writing, without regard to the form of the writing, delivered to a representative of the law enforcement agency that initially seized the firearm. The demand must be honored within 24 hours. This process does not require an order of any court to be effective. If the firearm is not returned, the person may seek an immediate writ of mandamus from the district court judge or justice of the peace to compel the return. The person may also seek judicial sanctions against a law enforcement agency that has failed to comply with the initial demand for return. A person who may not legally possess any firearm or the type of firearm seized is not authorized to demand the return of a firearm under this subsection.

(4) A peace officer or law enforcement agency in possession of a firearm under this section shall exercise due care to prevent loss of or damage to the firearm and may be held liable for any loss or damage.

(5) If a peace officer or law enforcement agency seizes a firearm under this section, the person from whom the firearm was seized must immediately be given a receipt for the firearm by the officer who seized the firearm or by another officer from the seizing officer's agency.

NEW SECTION. **Section 6. Firearms not to be destroyed.** If a firearm possessed by a law enforcement agency was not purchased by the agency for agency use, if it is legal for a private person to own and possess the firearm, and if the legal owner cannot be determined by the agency, the agency may not destroy the firearm and shall sell the firearm TO A LICENSED DEALER. The proceeds of the sale must be deposited in the general fund of the governmental entity of which the agency is a part.

NEW SECTION. **Section 7. Landlords and hotels -- no firearm prohibition allowed.** A landlord or operator of a hotel or motel may not, ~~by contract or otherwise,~~ prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess.

~~NEW SECTION. **Section 9. Employer prohibition of means of self-defense.** (1) An employer who as a condition of employment prohibits an employee from possessing the means of defending the employee in the workplace, including the possession of firearms, shall provide a level of security and safety for the employee equal to that which the employee could have provided without the prohibition. An employer who violates this~~

~~requirement is liable for injury to the employee caused by a criminal act against the employee at the workplace if the injury would not have occurred but for the employer's prohibition. This subsection does not apply to an employee of the government of the United States or of a school district of this state.~~

~~————(2) An employer may not prohibit an employee from keeping a firearm in a vehicle owned by the employee and parked at the workplace.~~

Section 8. Section 45-8-315, MCA, is amended to read:

"45-8-315. Definition. "Concealed weapon" means any weapon mentioned in 45-8-316, through 45-8-318, and 45-8-321 through 45-8-328 that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon."

Section 9. Section 45-8-316, MCA, is amended to read:

"45-8-316. Carrying concealed weapons. (1) ~~Every~~ A person who carries or bears concealed upon ~~his~~ the person, just prior to using it to commit a criminal offense, a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding \$500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon ~~his~~ the person, just prior to using it to commit a criminal offense, any of the weapons described in subsection (1) shall be punished by a fine not exceeding \$1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both."

Section 10. Section 46-6-502, MCA, is amended to read:

"46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest. The private person may use reasonable force to detain the arrested person. Force likely to cause death or serious bodily harm may be used only under the conditions specified in 45-3-101 through 45-3-106.

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

Section 11. Section 46-11-201, MCA, is amended to read:

"46-11-201. Leave to file information. (1) The prosecutor may apply directly to the district court for permission to file an information against a named defendant. If the defendant named is a district court judge, the prosecutor shall apply directly to the supreme court for leave permission to file the information.

(2) An application must be by affidavit supported by evidence that the judge or chief justice may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge or chief justice shall grant leave permission to file the information, ~~otherwise.~~ Otherwise the application is must be denied. Pursuant to Article II, section 17, of the Montana constitution, if the defendant asserts the right of self-defense under Article II, section 12, of the Montana constitution and 45-3-102, permission to file an information may not be granted until a preliminary examination has been held in court to determine probable cause to believe that the offense sought to be charged has been committed by the defendant. The prosecutor shall give the defendant 10 days' written notice of the hearing, and the defendant has the right to appear and be heard at the hearing.

(3) When leave permission to file an information has been granted, a warrant or summons may issue for the defendant's arrest or appearance.

(4) When leave permission is granted to file an information against a district court judge, the chief justice shall designate and direct a judge of the district court of another district to preside at the trial of the information and hear and determine all pleas and motions affecting the defendant under the information before and after judgment. All necessary records must be transferred to the clerk of the district court of the district in which the action arose."

NEW SECTION. **Section 12. Repealer.** Section 45-8-317, MCA, is repealed.

NEW SECTION. **Section 13. Codification instruction.** (1) [Sections 1 through 5 4] are intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45 apply to [sections 1 through 5 4].

(2) [Section 6 5] is intended to be codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46 apply to [section 6 5].

(3) [Section 7 6] is intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46 apply to [section 7 6].

(4) [Section 8 7] is intended to be codified as an integral part of Title 70, chapter 1, part 4, and the provisions of Title 70, chapter 1, part 4, apply to [section 8 7].

~~————(5) [Section 9] is intended to be codified as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [section 9].~~

- END -