

HOUSE BILL NO. 302

INTRODUCED BY K. KERNS

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE ENFORCEMENT OF A POTENTIAL FEDERAL BAN ON SEMIAUTOMATIC WEAPONS AND LARGE MAGAZINES; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Montana Federal Semiautomatic Firearm and Large Magazine Ban Enforcement Prohibition Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Federal ban" means a federal law or executive order enacted or signed on or after January 1, 2013, that prohibits, restricts, or requires individual licensure for ownership, possession, transfer, or use of any self-loading rifle, pistol, revolver, or shotgun, any manually loaded rifle, pistol, revolver, or shotgun, or any magazine or other ammunition feeding device.

(2) "Peace officer" has the meaning provided in 45-2-101, except [sections 1 through 4] do not apply to federal employees.

(3) "Political subdivision" means a city, town, county, or consolidated government.

NEW SECTION. **Section 3. Prohibition of enforcement -- exceptions.** (1) A peace officer, state employee, or employee of any political subdivision is prohibited from enforcing, assisting in the enforcement of, or otherwise cooperating in the enforcement of a federal ban on semiautomatic weapons or large magazines and is also prohibited from participating in any federal enforcement action implementing a federal ban on semiautomatic weapons or large magazines.

(2) An employee of the state or any political subdivision may not expend public funds or allocate public resources for the enforcement of a federal ban on semiautomatic weapons or large magazines. Any expenditure of public funds or public resources, including paying the salaries of personnel, to enforce or participate in the

1 enforcement of a federal ban on semiautomatic weapons or large magazines is an unauthorized use of public
2 resources and is considered theft as provided in 45-6-301.

3 (3) [Sections 1 through 4] do not apply to the possession or use of fully automatic firearms or the
4 enforcement of any federal or state laws prohibiting people with felony convictions from possessing firearms.
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6 **NEW SECTION. Section 4. Enforcement of prohibition.** (1) A peace officer, state employee, or
7 employee of any political subdivision who violates the provisions of [sections 1 through 4] commits the offense
8 of official misconduct as provided in 45-7-401. A person violating the provisions of [sections 1 through 4] includes:

9 (a) a person who authorized any act prohibited by [section 3];

10 (b) a person who had the authority to prevent a violation and failed to prevent a violation; and

11 (c) a person who committed any of the acts prohibited by [section 3] under the direction of a supervisor.

12 (2) If the county attorney of the county where a violation occurs fails to prosecute a peace officer, state
13 employee, or employee of a political subdivision who has committed a violation of [sections 1 through 4] within
14 90 days of the violation, any 100 registered electors of the county may sign a petition requiring the county attorney
15 to prosecute under [sections 1 through 4] and deliver the petition to the chief county election administrator. If
16 sufficient qualified signatures on the petition are verified by the chief county election administrator, the county
17 attorney loses prosecutorial discretion in the matter and is compelled to prosecute.

18 (3) The failure of a county attorney to prosecute under subsection (2) within 90 calendar days of
19 verification of the petition by the election administrator constitutes official misconduct as provided in 45-7-401.
20 A private attorney licensed to practice law in the state may bring the prosecution required by the petition and a
21 prosecution of the county attorney for official misconduct. Any attorney fees or costs associated with such a
22 prosecution by a private attorney must be paid by the county where the violations occurred.

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24 **NEW SECTION. Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable
25 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
26 remains in effect in all valid applications that are severable from the invalid applications.

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28 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

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30 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified

1 as an integral part of Title 45, chapter 7, and the provisions of Title 45, chapter 7, apply to [sections 1 through 4].

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