

1 HOUSE BILL NO. 302

2 INTRODUCED BY KERNS, EDMUNDS, HAGSTROM, HARRIS, JACKSON, LEWIS, F. MOORE, PRIEST,
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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE ENFORCEMENT OF A POTENTIAL FEDERAL
6 BAN ON SEMIAUTOMATIC WEAPONS AND LARGE MAGAZINES; PROVIDING PENALTIES; AND
7 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

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

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

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

23
24 NEW SECTION. **Section 3. Prohibition of enforcement -- exceptions.** (1) A peace officer, state
25 employee, or employee of any political subdivision is prohibited from enforcing, assisting in the enforcement of,
26 or otherwise cooperating in the enforcement of a federal ban on semiautomatic weapons or large magazines and
27 is also prohibited from participating in any federal enforcement action implementing a federal ban on
28 semiautomatic weapons or large magazines.

29 (2) An employee of the state or any political subdivision may not expend public funds or allocate public
30 resources for the enforcement of a federal ban on semiautomatic weapons or large magazines. Any expenditure

1 of public funds or public resources, including paying the salaries of personnel, to enforce or participate in the
 2 enforcement of a federal ban on semiautomatic weapons or large magazines is an unauthorized use of public
 3 resources and is considered theft as provided in 45-6-301.

4 (3) [Sections 1 through 4] do not apply to the possession or use of fully automatic firearms or the
 5 enforcement of any federal or state laws prohibiting people with felony convictions from possessing firearms.

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 7 **NEW SECTION. Section 4. Enforcement of prohibition.** ~~(1)~~ A peace officer, state employee, or
 8 employee of any political subdivision who violates the provisions of [sections 1 through 4] commits the offense
 9 of official misconduct as provided in 45-7-401. A person violating the provisions of [sections 1 through 4] includes:

10 ~~(a)~~(1) a person who authorized any act prohibited by [section 3];

11 ~~(b)~~(2) a person who had the authority to prevent a violation and failed to prevent a violation; and

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

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

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

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

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

