

## 1 SENATE BILL NO. 143

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10 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY AFFIRMING AN INDIVIDUAL'S CONSTITUTIONAL  
11 GUARANTEES; CREATING THE HIGHER EDUCATION RIGHTS RESTORATION ACT; PROHIBITING THE  
12 BOARD OF REGENTS AND UNIVERSITY SYSTEM EMPLOYEES FROM INFRINGING ON AN INDIVIDUAL'S  
13 CONSTITUTIONAL RIGHTS; PROHIBITING THE BOARD OF REGENTS AND UNITS OF THE UNIVERSITY  
14 SYSTEM FROM REGULATING OR RESTRICTING THE POSSESSION OF FIREARMS ON UNIVERSITY  
15 PROPERTY WITH CERTAIN EXCEPTIONS; ALLOWING THE AWARD OF TREBLE DAMAGES FOR CERTAIN  
16 VIOLATIONS; AMENDING ~~SECTIONS 45-3-111 AND~~ SECTION 45-8-351, MCA; AND PROVIDING A DELAYED  
17 EFFECTIVE DATE."  
18

19 WHEREAS, the Board of Regents is given significant authority to manage the affairs of the Montana  
20 University System in Article X, section 9, of the Montana Constitution; and

21 WHEREAS, the people of Montana have reserved certain rights to themselves in Article II of the Montana  
22 Constitution; and

23 WHEREAS, although the Board of Regents is given considerable authority to manage the Montana  
24 University System, it is not given the power to amend, suspend, or abrogate any part of the Montana Constitution  
25 or to deny individuals the rights that the people have reserved to protect themselves from government  
26 interference under the Montana Constitution; and

27 WHEREAS, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United State Supreme Court  
28 affirmed that the Second Amendment to the United States Constitution reserves to individuals the fundamental  
29 right to keep and bear arms for self-defense and that infringement upon this fundamental right may no longer be  
30 justified by a rational basis level of judicial scrutiny; and

1           WHEREAS, in McDonald v. City of Chicago, 561 U.S. 3025 (2010), the United States Supreme Court  
2 affirmed that the Second Amendment to the United States Constitution is applicable as a restriction upon state  
3 and local governments and all political subsets of state and local government through the Fourteenth  
4 Amendment; and

5           WHEREAS, while the Board of Regents is given considerable authority to manage the Montana  
6 University System, it is not given the power to amend, suspend, or abrogate any part of the United States  
7 Constitution or to deny individuals the rights they have reserved to protect themselves from government  
8 interference under the United States Constitution; and

9           WHEREAS, the Board of Regents and the Montana University System, being created by the Montana  
10 Constitution and the laws of Montana, are government institutions, and the employees of the Board of Regents  
11 and those subject to the authority of the Board are government agents and employees; and

12           WHEREAS, the Legislature finds that "shall not be called into question", "shall not be infringed", and "no  
13 law shall be passed" establish a standard of judicial review for any government curtailment of the rights that the  
14 people have reserved to themselves under the Montana and United States Constitutions.

15

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

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18           NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Higher Education  
19 Rights Restoration Act".

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21           NEW SECTION. **Section 2. Legislative authority and findings.** (1) The legislature finds that any  
22 significant prohibition on the possession of firearms at or on the various campuses of the Montana university  
23 system is an infringement on the rights that the people have reserved to protect themselves from government  
24 interference under the second amendment to the United States constitution.

25           (2) The legislature finds that any significant prohibition on the possession of firearms at or on the various  
26 campuses of the Montana university system calls into question the rights that the people have reserved to protect  
27 themselves from government interference under Article II, section 12, of the Montana constitution.

28           (3) The legislature finds that purported "gun-free zones" are dangerous to the health and safety of  
29 citizens because these zones create an unreasonable expectation of government-provided safety in these zones,  
30 while that safety cannot be provided or ensured.

1 (4) The legislature wishes to allow university system prerogatives by asserting new legislative policy  
2 supporting the university system's use of carefully crafted supervisory policy designed to withstand a  
3 constitutional challenge.

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5 **NEW SECTION. Section 3. Prohibition on infringement of constitutional rights.** The board of  
6 regents and all university system employees subject to the authority of the board of regents are prohibited from  
7 enforcing or coercing compliance with any rule or regulation that diminishes or restricts the rights the people have  
8 reserved to protect themselves from government interference in Article II of the Montana constitution, especially  
9 those rights reserved in Article II, sections 4 through 12.

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11 **NEW SECTION. Section 4. Regulation of firearms prohibited for certain individuals -- exceptions.**

12 (1) Except as provided in subsection (2), the board of regents and units of the university system may not regulate  
13 or restrict the possession, transportation, or storage of firearms on or within university system property by a  
14 person with a permit issued pursuant to 45-8-321 or recognized pursuant to 45-8-329.

15 (2) The board of regents or a unit of the university system may prohibit or regulate the following:

16 (a) the discharge of a firearm on or within university system property unless the discharge is done in  
17 self-defense;

18 (b) the removal of a firearm from a gun case or holster unless the removal is done in self-defense or  
19 within the domicile on campus of the lawful possessor of the firearm;

20 (c) the pointing of a firearm at another person unless the lawful possessor is acting in self-defense;

21 (d) the carrying of a firearm outside of a domicile on campus unless the firearm is within a case or  
22 holster;

23 (e) the failure to secure a firearm with a locking device whenever the firearm is not in the possession of  
24 or under the immediate control of the lawful possessor of the firearm;

25 (f) the possession or storage of a firearm in a dormitory situation without the express permission of any  
26 roommate of the lawful possessor of the firearm;

27 (g) the possession or storage of a firearm by any individual who has been subject to university system  
28 discipline or has a history of completed disciplinary action arising out of the individual's interpersonal violence or  
29 substance abuse; and

30 (h) the possession of a firearm at an event on campus where campus authorities have authorized alcohol

1 to be served and consumed.

2

3 **NEW SECTION. Section 5. Remedy for violations.** Any person whose constitutional rights protected  
4 under [sections 1 through 5] are denied, diminished, or delayed has a cause of action against any employee of  
5 the university system who denied, diminished, or delayed these rights or who was responsible for the denial,  
6 diminishment, or delay. A cause of action must be filed in district court. If a person asserting a denial,  
7 diminishment, or delay of rights prevails, that person must be awarded reasonable costs and attorney fees and  
8 compensatory damages. If the jury hearing the case, in the sole discretion of the jury, finds that the denial,  
9 diminishment, or delay is willful and wanton misconduct or is done with arbitrary and capricious disregard of  
10 [sections 1 through 5], the jury may award treble damages.

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12 ~~Section 6. Section 45-3-111, MCA, is amended to read:~~

13 ~~"45-3-111. Openly carrying weapon -- display -- exemption. (1) Any person who is not otherwise~~  
14 ~~prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another~~  
15 ~~person the fact that the person has a weapon.~~

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

19 ~~(3) This section does not limit the authority of the board of regents or other private postsecondary~~  
20 ~~institutions to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on their campuses."~~

21

22 **Section 6.** Section 45-8-351, MCA, is amended to read:

23 **"45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in  
24 subsection (2), a county, city, town, consolidated local government, or other local government unit may not  
25 prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale,  
26 or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including  
27 a rifle, shotgun, handgun, or concealed handgun.

28 (2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and  
29 handguns. A county, city, town, consolidated local government, or other local government unit has power to  
30 prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned

1 building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated  
2 mental incompetents, illegal aliens, and minors.

3 (b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms  
4 at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms  
5 through any jurisdiction, whether in airports or otherwise.

6 (c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who  
7 has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided  
8 in 45-8-317.

9 (d) Any restrictions on the possession of firearms enacted by a county, city, town, consolidated local  
10 government, or other local government unit do not apply to any buildings or property owned by the state that are  
11 part of any unit of the university system."

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13 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified  
14 as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 1 through  
15 5].

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17 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
18 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
19 remains in effect in all valid applications that are severable from the invalid applications.

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21 **NEW SECTION. Section 9. Effective date.** [This act] is effective January 1, 2016.

22 - END -