

HOUSE BILL NO. 102

INTRODUCED BY S. BERGLEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING GUN LAWS; PROVIDING A LEGISLATIVE PURPOSE, INTENT, AND FINDINGS; PROVIDING LOCATIONS WHERE CONCEALED WEAPONS MAY BE CARRIED AND EXCEPTIONS; ~~PROHIBITING THE MONTANA UNIVERSITY SYSTEM AND BOARD OF REGENTS FROM INFRINGING ON CONSTITUTIONAL RIGHTS AND PROVIDING EXCEPTIONS~~; PROVIDING A SEPARATE CIVIL CAUSE OF ACTION FOR VIOLATIONS OF THIS ACT; AMENDING SECTIONS ~~45-3-111~~, 45-8-316, 45-8-328, AND 45-8-351, MCA; REPEALING SECTIONS 45-8-317 AND 45-8-339, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through ~~41.8~~] is to enhance the safety of people by expanding their legal ability to provide for their own defense by reducing or eliminating government-mandated places where only criminals are armed and where citizens are prevented from exercising their fundamental right to defend themselves and others.

NEW SECTION. Section 2. Legislative intent. It is the intent of the legislature to reduce or remove provisions of law that limit or prohibit the ability of citizens to defend themselves by restricting with prior restraint the right to keep or bear arms that the people have reserved to themselves in the Montana constitution, and to further establish that the right to defense of a person's life, liberty, or property is a fundamental right.

NEW SECTION. Section 3. Legislative findings. The legislature declares and finds as follows:

~~(1) Nowhere in Article X, section 9(2)(a), of the Montana constitution is any power granted to amend, suspend, alter, or abolish the Montana constitution, nor is any power granted to affect or interfere with the rights the people have reserved to themselves specifically from interference by government entities and government actors in Article II of the Montana constitution.~~

~~(2) The schools and the Montana university system were created and are controlled by the Montana constitution and the land and buildings occupied by schools and the university system are public property and not private property and are therefore clearly government entities.~~

~~(3) Any significant prohibition upon the possession of firearms at or on the various campuses of the Montana university system calls into question the rights that the people have reserved to protect themselves from government interference under Article II, section 12, of the Montana constitution.~~

~~(4)(1)~~ Zones where guns are prohibited provide an increased risk to the health and safety of citizens because these zones create an unreasonable expectation of government-provided safety, while that safety cannot be provided or ensured.

~~(5)(2)~~ In *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the United States supreme court affirmed that the second amendment to the United States constitution reserves to individuals the fundamental right to keep and bear arms for self-defense and is applicable as a restriction upon state and local governments and all political subdivisions of state and local government through the 14th amendment to the United States constitution.

NEW SECTION. Section 4. Where concealed weapon may be carried -- exceptions. A person with a current and valid permit issued pursuant to 45-8-321 or recognized pursuant to 45-8-329 may not be prohibited or restricted from exercising that permit anywhere in the state, except:

(1) in a correctional, detention, or treatment facility operated by or contracted with the department of corrections;

(2) in a detention facility owned and operated by a city or county;

(3) at or beyond a security screening checkpoint regulated by the transportation security administration in a publicly owned, commercial airport;

(4) in a building owned and occupied by the United States;

(5) on a military reservation owned and managed by the United States; ~~or~~

(6) on private property where the owner of the property expressly prohibits firearms; or

(7) on university system property where the board of regents or a unit of the university system expressly prohibits firearms.

1

2 ~~NEW SECTION. Section 5.—Prohibition on infringement of constitutional rights.~~ The board of
3 regents and all university system employees subject to the authority of the board of regents are prohibited from
4 enforcing or coercing compliance with any rule or regulation that diminishes or restricts the rights of the people
5 to keep or bear arms as reserved to them in Article II of the Montana constitution, especially those rights
6 reserved in Article II, sections 4 through 12, notwithstanding any authority of the board of regents under Article
7 X, section 9(2)(a), of the Montana constitution.

8

9 ~~NEW SECTION. Section 6.—Regulation of firearms prohibited for certain people -- exceptions.~~

10 (1) Except as provided in subsection (2), the board of regents and any unit of the university system may not
11 regulate, restrict, or place an undue burden on the possession, transportation, or storage of firearms on or
12 within university system property by a person eligible to possess a firearm under state or federal law.

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

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

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

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

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

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

23 (f) the possession or storage of a firearm in an on-campus dormitory or housing unit without the
24 express permission of any roommate of the lawful possessor of the firearm;

25 (g) the possession or storage of a firearm by any individual who has a history of adjudicated university
26 system discipline arising out of the individual's interpersonal violence or substance abuse; and

27 (h) the possession of a firearm at an event on campus where campus authorities have authorized
28 alcohol to be served and consumed.

1

2 NEW SECTION. Section 5, Section 7. **Remedy for violations.** Any person whose constitutional
3 rights protected under [sections 1 through ~~7.5~~] that are denied, diminished, or intentionally delayed has a cause
4 of action against any private entity or employee of any private entity, the state of Montana or a subdivision of
5 the state, including local government, or an employee of the state of Montana or subdivision of the state,
6 including local government, who denied, diminished, or intentionally delayed these rights or who was
7 responsible for the denial, diminishment, or intentional delay. A cause of action must be filed in district court. If
8 a person asserting a denial, diminishment, or intentional delay of rights prevails, the person must be awarded
9 reasonable costs and attorney fees and damages.

10

11 ~~Section 8. Section 45-3-111, MCA, is amended to read:~~

12 ~~"45-3-111. **Openly carrying weapon -- display -- exemption.** (1) Any person who is not otherwise~~
13 ~~prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another~~
14 ~~person the fact that the person has a weapon.~~

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

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

20

21 Section 6, Section 9. Section 45-8-316, MCA, is amended to read:

22 **"45-8-316. Carrying concealed firearms -- exemption.** (1) A person who carries or bears concealed
23 upon the individual's person a firearm shall be punished by a fine not exceeding \$500 or by imprisonment in the
24 county jail for a period not exceeding 6 months, or both.

25 (2) A person who has previously been convicted of an offense, committed on a different occasion
26 than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of
27 imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon the
28 individual's person a firearm shall be punished by a fine not exceeding \$1,000 or be imprisoned in the state

1 prison for a period not exceeding 5 years, or both.

2 (3) This section does not apply to a person eligible to possess a firearm under state or federal law."

3

4 ~~Section 7.~~~~Section 10.~~ Section 45-8-328, MCA, is amended to read:

5 **"45-8-328. Carrying concealed weapon in prohibited place -- penalty.** (1) Except for a person
6 issued a permit pursuant to 45-8-321 or a person recognized pursuant to 45-8-329 ~~legislative security officers~~
7 ~~authorized to carry a concealed weapon in the state capitol as provided in 45-8-317(1)(k)~~, a person commits the
8 offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a
9 concealed weapon in:

10 (a) portions of a building used for state or local government offices and related areas in the building
11 that have been restricted;

12 ~~(b) a bank, credit union, savings and loan institution, or similar institution during the institution's~~
13 ~~normal business hours. It is not an offense under this section to carry a concealed weapon while:~~

14 ~~(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or~~

15 ~~(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person~~
16 ~~is inside the enclosure used for the institution's financial services or is using the institution's financial services.~~

17 ~~(e)~~(b) a room in which alcoholic beverages are sold, dispensed, and consumed under a license
18 issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

19 (2) ~~It is not a defense that the person had a valid permit to carry a concealed weapon.~~ A person
20 convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an
21 amount not to exceed \$500, or both."

22

23 ~~Section 8.~~~~Section 11.~~ Section 45-8-351, MCA, is amended to read:

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

1 (2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and
2 handguns. A county, city, town, consolidated local government, or other local government unit has power to
3 prevent and suppress the carrying of unpermitted concealed weapons or the carrying of unconcealed weapons
4 to a publicly owned and occupied building under its jurisdiction.

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

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

11

12 NEW SECTION. ~~Section 9, Section 12.~~ Repealer. The following sections of the Montana Code
13 Annotated are repealed:

14 45-8-317. Exceptions.

15 45-8-339. Carrying firearms on train -- penalty.

16

17 NEW SECTION. ~~Section 10, Section 13.~~ Severability. If a part of [this act] is invalid, all valid parts
18 that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid applications.

20

21 NEW SECTION. ~~Section 11, Section 14.~~ Codification instruction. [Sections 1 through ~~7~~5] are
22 intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8,
23 part 3, apply to [sections 1 through ~~7~~5].

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25 NEW SECTION. ~~Section 12, Section 15.~~ Effective date. [This act] is effective on passage and
26 approval.

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