

HOUSE BILL NO. 436

INTRODUCED BY S. KERNS, S. BERGLEE, C. HINKLE, J. HINKLE, B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WEAPONS LAWS; PROVIDING THAT THE CARRYING OF A CONCEALED WEAPON IN A PUBLICLY OWNED AND OCCUPIED BUILDING MAY NOT BE LIMITED BY LOCAL GOVERNMENT; REMOVING THE PENALTY FOR CARRYING A CONCEALED WEAPON IN A PROHIBITED PLACE; AMENDING SECTIONS 45-8-317, 45-8-321, AND 45-8-351, MCA; AND REPEALING SECTION 45-8-328, MCA."

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

Section 1. Section 45-8-317, MCA, is amended to read:

"45-8-317. Exceptions. ~~(1)~~ Section 45-8-316 does not apply to:

~~(a)~~(1) any peace officer of the state of Montana or of another state who has the power to make arrests;

~~(b)~~(2) any officer of the United States government authorized to carry a concealed weapon;

~~(c)~~(3) a person in actual service as a member of the national guard;

~~(d)~~(4) a person summoned to the aid of any of the persons named in subsections (1)(a) through (1)(c);

~~(e)~~(5) a civil officer or the officer's deputy engaged in the discharge of official business;

~~(f)~~(6) a probation and parole officer authorized to carry a firearm under 46-23-1002;

~~(g)~~(7) a person issued a permit under 45-8-321 or a person with a permit recognized under 45-8-329;

~~(h)~~(8) an agent of the department of justice or a criminal investigator in a county attorney's office;

~~(i)~~(9) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection;

~~(j)~~ (10) the carrying of arms on one's own premises or at one's home or place of business; or

1 ~~(k)(11)~~ the carrying of a concealed weapon in the state capitol by a legislative security officer who has
2 been issued a permit under 45-8-321 or with a permit recognized under 45-8-329.

3 ~~(2) With regard to a person issued a permit under 45-8-321, the provisions of 45-8-328 do not apply~~
4 ~~to this section."~~

5

6 **Section 2.** Section 45-8-321, MCA, is amended to read:

7 **"45-8-321. Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the
8 filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4
9 years from the date of issuance. An applicant must be a United States citizen or permanent lawful resident who
10 is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued
11 by the state that has a picture of the person identified. An applicant must have been a resident of the state for
12 at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless
13 the applicant:

14 (a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

15 (b) has been charged and is awaiting judgment in any state or federal crime that is
16 punishable by incarceration for 1 year or more;

17 (c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:

18 (i) a crime punishable by more than 1 year of incarceration; or

19 (ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime
20 an act, attempted act, or threat of intentional homicide, serious bodily harm, unlawful restraint, sexual abuse, or
21 sexual intercourse or contact without consent;

22 (d) has been convicted under 45-8-327 ~~or 45-8-328~~, unless the applicant has been pardoned or 5
23 years have elapsed since the date of the conviction;

24 (e) has a warrant of any state or the federal government out for the applicant's arrest;

25 (f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful
26 user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation,
27 suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is
28 otherwise under state supervision;

1 (g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally
2 ill, mentally disordered, or mentally disabled and is still subject to a disposition order of that court; or

3 (h) was dishonorably discharged from the United States armed forces.

4 (2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has
5 reasonable cause to believe that the applicant is mentally ill, mentally disordered, or mentally disabled or
6 otherwise may be a threat to the peace and good order of the community to the extent that the applicant should
7 not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the
8 applicant is the subject of an active criminal investigation, give the applicant a written statement of the
9 reasonable cause upon which the denial is based.

10 (3) An applicant for a permit under this section must, as a condition to issuance of the permit, be
11 required by the sheriff to demonstrate familiarity with a firearm by:

12 (a) completion of a hunter education or safety course approved or conducted by the department of
13 fish, wildlife, and parks or a similar agency of another state;

14 (b) completion of a firearms safety or training course approved or conducted by the department of
15 fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement
16 agency, an institution of higher education, or an organization that uses instructors certified by a national
17 firearms association;

18 (c) completion of a law enforcement firearms safety or training course offered to or required of public
19 or private law enforcement personnel and conducted or approved by a law enforcement agency;

20 (d) possession of a license from another state to carry a firearm, concealed or otherwise, that is
21 granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

22 (e) evidence that the applicant, during military service, was found to be qualified to operate firearms,
23 including handguns.

24 (4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from
25 the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other
26 document that attests to completion of the course and can be verified through contact with the entity or
27 instructor that conducted the course creates a presumption that the applicant has completed a course
28 described in subsection (3).

1 (5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity
 2 with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or
 3 entity to which the sheriff delegates authority to give the test, a physical test in which the applicant
 4 demonstrates the applicant's familiarity with a firearm.

5 (6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony
 6 and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to
 7 issuance of a concealed weapons permit if otherwise eligible."

8

9 **Section 3.** Section 45-8-351, MCA, is amended to read:

10 **"45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in
 11 subsection (2), a county, city, town, consolidated local government, or other local government unit may not
 12 prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale,
 13 or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon,
 14 including a rifle, shotgun, handgun, or concealed handgun.

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

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

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

25

26 **NEW SECTION. Section 4. Repealer.** The following section of the Montana Code Annotated is
 27 repealed:

28 45-8-328. Carrying concealed weapon in prohibited place -- penalty.

