

HOUSE BILL NO. 631

INTRODUCED BY J. HINKLE, C. GLIMM, D. ZOLNIKOV, B. BROWN, M. NOLAND, D. LOGE, D. BARTEL, J. DOOLING, B. LER, J. CARLSON, P. FIELDER, S. KERNS, S. GIST, J. SCHILLINGER, M. MALONE, C. HINKLE, T. SMITH, G. PARRY, N. NICOL, G. NIKOLAKAKOS, N. HASTINGS

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE GUN OWNERS ACCESS TO JUSTICE ACT; PROVIDING THAT THE RIGHT TO BEAR ARMS MAY NOT BE RESTRICTED BY THE STATE UNLESS A COMPELLING STATE INTEREST EXISTS; PROVIDING FOR A RIGHT TO A JUDICIAL PROCEEDING; PROVIDING FOR AN AWARD OF ATTORNEY FEES AND COSTS; AND PROVIDING DEFINITIONS."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 3] may be cited as the "Gun Owners Access to Justice Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 3], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Burden" means to directly or indirectly constrain, inhibit, curtail, or deny a person's right to bear arms or to compel any action contrary to a person's right to bear arms. The term includes but is not limited to withholding benefits, excluding the person from government programs, and assessing criminal, civil, or administrative penalties.

(2) "Compelling state interest" means a government interest of the highest magnitude that cannot otherwise be achieved without burdening a person's right to bear arms.

(3) "Person" means an individual, association, partnership, corporation, estate, trust, foundation, or other legal entity.

(4) "Right to bear arms" means the right defined by Article II, section 12, of the Montana constitution.

(5) "State" means the state of Montana or any political subdivision or local government,

1 municipality, or instrumentality of the state ~~as well as any person acting under color of state law.~~

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3 NEW SECTION. Section 3. Right to bear arms protected -- remedies. (1) The state may not
4 burden a person's right to bear arms unless the state proves that burdening the person's right to bear arms
5 furthers a compelling state interest and is the least restrictive means to further that interest.

6 (2) A person whose right to bear arms has been burdened BY THE STATE, or is likely to be burdened
7 BY THE STATE, in violation of subsection (1) may assert the violation or impending violation as a claim or defense
8 AGAINST THE STATE in a judicial proceeding, ~~regardless of whether the state is a party to the proceeding.~~ The
9 person asserting the claim or defense may obtain appropriate relief, including but not limited to injunctive relief,
10 declaratory relief, and compensatory damages.

11 (3) A person who prevails on a claim to enforce the person's rights under Article II, section 12, of
12 the Montana constitution or [sections 1 through 3] must be awarded reasonable attorney fees and costs.

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14 NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be
15 codified as an integral part of Title 49, chapter 1, part 2, and the provisions of Title 49, chapter 1, part 2, apply
16 to [sections 1 through 3].

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

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