

1 HOUSE BILL NO. 102

2 INTRODUCED BY S. BERGLEE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING GUN LAWS; PROVIDING A
5 LEGISLATIVE PURPOSE, INTENT, AND FINDINGS; PROVIDING LOCATIONS WHERE CONCEALED
6 WEAPONS MAY BE CARRIED AND EXCEPTIONS; PROHIBITING THE MONTANA UNIVERSITY SYSTEM
7 AND BOARD OF REGENTS FROM INFRINGING ON CONSTITUTIONAL RIGHTS AND PROVIDING
8 EXCEPTIONS; PROVIDING A SEPARATE CIVIL CAUSE OF ACTION FOR VIOLATIONS OF THIS ACT;
9 AMENDING SECTIONS 45-3-111, 45-8-316, 45-8-328, AND 45-8-351, MCA; REPEALING SECTIONS 45-8-
10 317 AND 45-8-339, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 11] is to enhance the
15 safety of people by expanding their legal ability to provide for their own defense by reducing or eliminating
16 government-mandated places where only criminals are armed and where citizens are prevented from
17 exercising their fundamental right to defend themselves and others.

18
19 NEW SECTION. Section 2. Legislative intent. It is the intent of the legislature to reduce or remove
20 provisions of law that limit or prohibit the ability of citizens to defend themselves by restricting with prior restraint
21 the right to keep or bear arms that the people have reserved to themselves in the Montana constitution, and to
22 further establish that the right to defense of a person's life, liberty, or property is a fundamental right.

23
24 NEW SECTION. Section 3. Legislative findings. The legislature declares and finds as follows:

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

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

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

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

10 (5) In District of Columbia v. Heller, 554 U.S. 570 (2008), and McDonald v. City of Chicago, 561 U.S.
 11 742 (2010), the United States supreme court affirmed that the second amendment to the United States
 12 constitution reserves to individuals the fundamental right to keep and bear arms for self-defense and is
 13 applicable as a restriction upon state and local governments and all political subdivisions of state and local
 14 government through the 14th amendment to the United States constitution.

15
 16 NEW SECTION. Section 4. Where concealed weapon may be carried -- exceptions. A person
 17 with a current and valid permit issued pursuant to 45-8-321 or recognized pursuant to 45-8-329 may not be
 18 prohibited or restricted from exercising that permit anywhere in the state, except:

19 (1) in a correctional, detention, or treatment facility operated by or contracted with the department of
 20 corrections OR A SECURE TREATMENT FACILITY OPERATED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
 21 SERVICES;

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

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

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

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

27 (6) on private property where the owner of the property OR THE PERSON WHO POSSESSES OR IS IN
 28 CONTROL OF THE PROPERTY, INCLUDING A TENANT OR LESSEE OF THE PROPERTY, expressly prohibits firearms;

1 (7) WITHIN A COURTROOM PURSUANT TO AN ORDER OF A JUSTICE OF THE PEACE OR JUDGE; OR

2 (8) IN A SCHOOL BUILDING AS DETERMINED BY A SCHOOL BOARD PURSUANT TO 45-8-361.

3

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

10

11 **NEW SECTION. Section 6. Regulation of firearms prohibited for certain people -- exceptions.**
12 (1) Except as provided in subsection (2), the board of regents and any unit of the university system may not
13 regulate, restrict, or place an undue burden on the possession, transportation, or storage of firearms on or
14 within university system property by a person eligible to possess a firearm under state or federal law AND
15 MEETING THE MINIMUM SAFETY AND TRAINING REQUIREMENTS IN 45-8-321(3).

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

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

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

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

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

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

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

28 (g) the possession or storage of a firearm by any individual who has a history of adjudicated university

1 system discipline arising out of the individual's interpersonal violence or substance abuse; and
 2 (h) the possession of a firearm at an event on campus where campus authorities have authorized
 3 alcohol to be served and consumed.

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

13
 14 **Section 8.** Section 45-3-111, MCA, is amended to read:

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

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

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

23
 24 **Section 9.** Section 45-8-316, MCA, is amended to read:

25 **"45-8-316. Carrying concealed firearms -- exemption.** (1) A person who carries or bears concealed
 26 upon the individual's person a firearm shall be punished by a fine not exceeding \$500 or by imprisonment in the
 27 county jail for a period not exceeding 6 months, or both.

28 (2) A person who has previously been convicted of an offense, committed on a different occasion

1 than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of
 2 imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon the
 3 individual's person a firearm shall be punished by a fine not exceeding \$1,000 or be imprisoned in the state
 4 prison for a period not exceeding 5 years, or both.

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

6

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

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

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

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

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

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

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

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

25

26 **Section 11.** Section 45-8-351, MCA, is amended to read:

27 **"45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in
 28 subsection (2), a county, city, town, consolidated local government, or other local government unit may not

1 prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale,
2 or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon,
3 including a rifle, shotgun, handgun, or concealed handgun.

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

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

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

14
15 **NEW SECTION. Section 12. Repealer.** The following sections of the Montana Code Annotated are
16 repealed:

17 45-8-317. Exceptions.

18 45-8-339. Carrying firearms on train -- penalty.

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

23
24 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through 7] are intended to be
25 codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply
26 to [sections 1 through 7].

27
28 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

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