

HOUSE BILL NO. 385

INTRODUCED BY S. BERGLEE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA SCHOOL SAFETY ACT; ALLOWING A SCHOOL DISTRICT EMPLOYEE WITH A VALID CONCEALED WEAPONS PERMIT TO CARRY A CONCEALED HANDGUN IN A SCHOOL; PROHIBITING A SCHOOL DISTRICT FROM SPENDING PUBLIC FUNDS TO IMPLEMENT THE ACT; PROVIDING DEFINITIONS; PROVIDING A REMEDY; AND AMENDING SECTIONS 45-8-328, 45-8-351, AND 45-8-361, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana School Safety Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 7] is to allow any school district employee to possess and carry a concealed handgun in a school so the employee can defend and protect any students at the school as needed if that employee has a concealed weapon permit issued pursuant to 45-8-321.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 7], the following definitions apply:

- (1) "Employee" means a person who is employed full-time by a school district.
- (2) "Permit" means a permit to carry a concealed weapon issued pursuant to 45-8-321.
- (3) "School" means a building, grounds, or property of a school operating under the authority of a school district within the state.
- (4) "School district" means a public school district as provided for in 20-6-101 and 20-6-701.

NEW SECTION. **Section 4. Prohibitions.** (1) An employee who possesses a handgun must carry the handgun concealed at all times and is responsible for the security of the handgun while the employee is at school.

(2) A school district may not punish an employee who holds a valid permit and possesses or carries a



1 concealed handgun at school under [sections 1 through 7]. Prohibited punishments include negative performance
2 evaluation, failure to promote, or demotion.

3 (3) Nothing in this section prohibits a school district from enforcing its regular disciplinary measures
4 against an employee who fails to comply with the provisions of [section 1 through 7] when possessing a handgun
5 while the employee is at school.

6

7 **NEW SECTION. Section 5. Remedy.** (1) A person who has been burdened or is likely to be burdened
8 in violation of [sections 1 through 7] may assert the violation or impending violation as a claim against the school
9 district or the person creating the burden. The person asserting the claim may obtain appropriate relief, including
10 but not limited to injunctive relief, declaratory relief, and compensatory damages.

11 (2) A person who prevails on a claim to enforce the person's rights under [sections 1 through 7] must be
12 awarded reasonable costs and attorney fees.

13

14 **NEW SECTION. Section 6. Spending prohibited.** A school district affected by [sections 1 through 7]
15 is prohibited from spending public funds to implement the provisions of [sections 1 through 7].

16

17 **NEW SECTION. Section 7. Entire policy.** [Sections 1 through 7] are intended to occupy the entire area
18 of public policy concerning the ability of a school district employee to legally possess firearms in a school.

19

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

21 **"45-8-328. Carrying concealed weapon in prohibited place -- penalty.** (1) Except as provided in
22 [sections 1 through 7] and except for legislative security officers authorized to carry a concealed weapon in the
23 state capitol as provided in 45-8-317(1)(k), a person commits the offense of carrying a concealed weapon in a
24 prohibited place if the person purposely or knowingly carries a concealed weapon in:

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

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

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

30 (ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person

1 is inside the enclosure used for the institution's financial services or is using the institution's financial services.

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

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

7

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

9 **"45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in
10 subsection (2), a county, city, town, consolidated local government, or other local government unit may not
11 prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale,
12 or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including
13 a rifle, shotgun, handgun, or concealed handgun.

14 (2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and
15 handguns. ~~A Except as provided in [sections 1 through 7], a~~ county, city, town, consolidated local government,
16 or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed
17 weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession
18 of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

19 (b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms
20 at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms
21 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 who
23 has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided
24 in 45-8-317."

25

26 **Section 10.** Section 45-8-361, MCA, is amended to read:

27 **"45-8-361. Possession or allowing possession of weapon in school building -- exceptions --**
28 **penalties -- seizure and forfeiture or return authorized -- definitions.** (1) ~~A~~ Except as provided in [sections
29 1 through 7], a person commits the offense of possession of a weapon in a school building if the person purposely
30 and knowingly possesses, carries, or stores a weapon in a school building.

1 (2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school
2 building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon
3 in a school building.

4 (3) (a) Subsection (1) does not apply to law enforcement personnel.

5 (b) The trustees of a district may grant persons and entities advance permission to possess, carry, or
6 store a weapon in a school building.

7 (4) (a) A person convicted under this section shall be fined an amount not to exceed \$500, imprisoned
8 in the county jail for a term not to exceed 6 months, or both. The court shall consider alternatives to incarceration
9 that are available in the community.

10 (b) (i) A weapon in violation of this section may be seized and, upon conviction of the person possessing
11 or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

12 (ii) If a weapon seized under the provisions of this section is subsequently determined to have been
13 stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the
14 lawful owner.

15 (5) As used in this section:

16 (a) "school building" means all buildings owned or leased by a local school district that are used for
17 instruction or for student activities. The term does not include a home school provided for in 20-5-109.

18 (b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a
19 straight razor, a throwing star, nun-chucks, or brass or other metal knuckles. The term also includes any other
20 article or instrument possessed with the purpose to commit a criminal offense."

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

25
26 **NEW SECTION. Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are
27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
28 the part remains in effect in all valid applications that are severable from the invalid applications.

29 - END -