

1 HOUSE BILL NO. 320

2 INTRODUCED BY C. GLIMM, BALLANCE, G. BENNETT, BERGLEE, BRODEHL, B. BROWN, CUFFE,
3 DOANE, EHLI, FISCUS, GARNER, GREEF, HAGSTROM, HARRIS, HERTZ, HESS, HOLLANDSWORTH,
4 HOLMLUND, D. JONES, LAMM, LANG, LASZLOFFY, LAVIN, MANDEVILLE, MANZELLA, MCKAMEY,
5 MEYERS, MILLER, MONFORTON, D. MOORE, MORTENSEN, NOLAND, OLSZEWSKI, OSMUNDSON,
6 PINOCCI, RANDALL, REDFIELD, REGIER, RICCI, RICHMOND, SCHWADERER, SHAW, STAFFANSON,
7 TSCHIDA, WAGONER, WHITE, D. ZOLNIKOV

8
9 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING EXPULSION OF A STUDENT FOR BRINGING OR
10 POSSESSING A FIREARM AT SCHOOL DISCRETIONARY; CLARIFYING WHAT CONSTITUTES A
11 VIOLATION; REQUIRING SCHOOL OFFICIALS TO PROVIDE NOTICE OF CERTAIN RIGHTS; REQUIRING
12 THE OFFICE OF PUBLIC INSTRUCTION TO MAKE PUBLIC CERTAIN INFORMATION; PROVIDING THAT
13 A KNOWING VIOLATION BY A SCHOOL EMPLOYEE CONSTITUTES GOOD CAUSE FOR TERMINATION OF
14 EMPLOYMENT; AND AMENDING SECTION 20-5-202, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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18 **Section 1.** Section 20-5-202, MCA, is amended to read:

19 **"20-5-202. Suspension and expulsion.** (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil
20 may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy
21 defining the authority and procedure to be used by a teacher, superintendent, or principal in the suspension of
22 a pupil and in defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is
23 any removal of a pupil for more than 20 school days without the provision of educational services and is a
24 disciplinary action available only to the trustees. A pupil may be suspended from school for an initial period not
25 to exceed 10 school days. Upon a finding by a school administrator that the immediate return to school by a pupil
26 would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process,
27 a pupil may be suspended for one additional period not to exceed 10 school days if the pupil is granted an
28 informal hearing with the school administrator prior to the additional suspension and if the decision to impose the
29 additional suspension does not violate the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

30 (2) (a) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to

1 have brought a firearm, ~~as defined in 18 U.S.C. 921,~~ to school or to have possessed a firearm at school and for
 2 referring the matter to the appropriate local law enforcement agency. A student who is determined to have
 3 brought a firearm to school or to have possessed a firearm at school under this subsection ~~must~~ may be expelled
 4 from school ~~for a period of time set by the trustees~~ FOR A PERIOD OF UP TO 1 YEAR not less than 1 year, ~~except that~~
 5 ~~the trustees may authorize the school administration to modify the requirement for expulsion of a student on a~~
 6 ~~case-by-case basis.~~ The trustees shall annually review the district's weapons policy and any policy adopted under
 7 this subsection (2)(a) and update the policies as determined necessary by the trustees based on changing
 8 circumstances pertaining to school safety.

9 (b) A decision to change the placement of a student with a disability who has been expelled pursuant
 10 to this section must be made in accordance with the Individuals With Disabilities Education Act.

11 (3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a
 12 superintendent, or a principal ~~shall suspend~~ may immediately ~~for good cause~~ suspend a student ~~who is~~
 13 ~~determined to have~~ if, prior to an evidentiary hearing conducted pursuant to subsection (6), there is probable
 14 cause to believe the student brought a firearm to school or possessed a firearm at school.

15 (4) Nothing in this section prevents a school district from:

16 (a) offering instructional activities related to firearms or allowing a student to bring a firearm ~~to be brought~~
 17 to school for instructional activities sanctioned by the district if:

18 (i) the district has appropriate safeguards in place to ensure student safety; and

19 (ii) the firearm is secured in a locked container approved by the school district when the firearm is at
 20 school and is not in use for the instructional activity; or

21 (b) providing educational services in an alternative setting to a student who has been expelled from the
 22 student's regular school setting.

23 (5) Before holding an evidentiary hearing as required under subsection (6) to determine if a student has
 24 violated this section, the trustees shall, in a clear and timely manner, notify the student if the student is an adult
 25 or notify the parent or guardian of a student if the student is a minor that the student may waive the student's
 26 privacy interest by requesting that the evidentiary hearing be held in public.

27 (6) Before expelling a student under this section, the trustees must hold an evidentiary hearing. The
 28 trustees of a school district may not find that a student has brought a firearm to school or possessed a firearm
 29 at school unless, after due notice and an evidentiary hearing, the trustees find by a preponderance of the
 30 evidence that the student knowingly, as defined in 1-1-204, brought a firearm to school or possessed a firearm

1 at school.

2 (7) For a student who undergoes an evidentiary hearing and is found not to have violated this section,
3 the student's school record must clearly indicate that the student was found not to have violated this section and
4 was not disciplined under this section.

5 (8) The office of public instruction shall make available on its website the information gathered from
6 school districts that is provided annually to the federal government under the reporting requirements of 20 U.S.C.
7 7151, provided that any personally identifiable information is redacted.

8 (9) A knowing violation of this section by a state or local employee of the K-12 school system constitutes
9 good cause, as defined in 39-2-903, for termination of employment.

10 (10) The provisions of this section do not apply to a student who has brought a firearm to school or
11 possesses a firearm at school as long as the firearm is secured in a locked container approved by the school
12 district or in a locked motor vehicle the entire time the firearm is at school, except while the firearm is in use for
13 a school-sanctioned instructional activity.

14 (11) For purposes of this section, the following definitions apply:

15 (a) "Firearm" has the same meaning as provided in 18 U.S.C. 9201-921. The term does not include:

16 (i) a picture of a firearm;

17 (ii) a fractional-sized replica of a firearm, such as on a toy soldier, a charm bracelet, a necklace, or a lapel
18 pin;

19 (iii) a person imitating the sound of a firearm discharge; or

20 (iv) a person forming the person's hand into the shape of a firearm.

21 (b) "School" means a building, grounds, or property of a school as defined in 20-6-501 K-12 PUBLIC
22 SCHOOL."

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- END -