

1 HOUSE BILL NO. 240

2 INTRODUCED BY C. SMITH, BALLANCE, G. BENNETT, BLASDEL, D. BROWN, DOANE, FIELDER,
 3 FISCUS, GALT, HALVORSON, HANSEN, HOWARD, JACKSON, KARY, KERNS, KNUDSEN, LANG, LENZ,
 4 MCNIVEN, MILLER, D. MOORE, OSMUNDSON, RANDALL, REDFIELD, REGIER, SALES, VANCE,
 5 WAGONER, WARBURTON, WASHBURN, WEBB, WHITE, ZOLNIKOV
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7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY AFFIRMING AN INDIVIDUAL'S CONSTITUTIONAL
 8 GUARANTEES; CREATING THE HIGHER EDUCATION RIGHTS RESTORATION ACT; PROHIBITING THE
 9 BOARD OF REGENTS AND UNIVERSITY SYSTEM EMPLOYEES FROM INFRINGING ON AN INDIVIDUAL'S
 10 CONSTITUTIONAL RIGHTS; ~~PROHIBITING THE BOARD OF REGENTS AND UNITS OF THE UNIVERSITY~~
 11 ~~SYSTEM FROM REGULATING AN INDIVIDUAL'S SPEECH WITH CERTAIN EXCEPTIONS;~~ PROHIBITING
 12 THE BOARD OF REGENTS AND UNITS OF THE UNIVERSITY SYSTEM FROM REGULATING OR
 13 RESTRICTING THE POSSESSION OF FIREARMS ON UNIVERSITY PROPERTY WITH CERTAIN
 14 EXCEPTIONS; ALLOWING THE AWARD OF TREBLE DAMAGES FOR CERTAIN VIOLATIONS; AMENDING
 15 SECTIONS 45-3-111 AND 45-8-351, MCA; AND PROVIDING AN ~~IMMEDIATE~~ A DELAYED EFFECTIVE DATE."
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17 WHEREAS, the Board of Regents is given significant authority to manage the affairs of the Montana
 18 University System in Article X, section 9, of the Montana Constitution; and

19 WHEREAS, the people of Montana have reserved certain rights to themselves in Article II of the Montana
 20 Constitution; and

21 WHEREAS, although the Board of Regents is given considerable authority to manage the Montana
 22 University System, it is not given the power to amend, suspend, or abrogate any part of the Montana Constitution
 23 or to deny individuals the rights that the people have reserved to protect themselves from government
 24 interference under the Montana Constitution; and

25 WHEREAS, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United State Supreme Court
 26 affirmed that the Second Amendment to the United States Constitution reserves to individuals the fundamental
 27 right to keep and bear arms for self-defense; and

28 WHEREAS, in *McDonald v. City of Chicago*, 561 U.S. 3025 (2010), the United States Supreme Court
 29 affirmed that the Second Amendment to the United States Constitution is applicable as a restriction upon state
 30 and local governments and all political subsets of state and local government through the Fourteenth

1 Amendment; and

2 WHEREAS, while the Board of Regents is given considerable authority to manage the Montana
3 University System, it is not given the power to amend, suspend, or abrogate any part of the United States
4 Constitution or to deny individuals the rights they have reserved to protect themselves from government
5 interference under the United States Constitution; and

6 WHEREAS, the Board of Regents and the Montana University System, being created by the Montana
7 Constitution and the laws of Montana, are government institutions, and the employees of the Board of Regents
8 and those subject to the authority of the Board are government agents and employees; and

9 WHEREAS, the Legislature finds that "shall not be called into question", "shall not be infringed", and "no
10 law shall be passed" establish a standard of judicial review for any government curtailment of the rights that the
11 people have reserved to themselves under the Montana and United States Constitutions.

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

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15 NEW SECTION. Section 1. Short title. [Sections 1 through 6 5] may be cited as the "Higher Education
16 Rights Restoration Act".

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18 NEW SECTION. Section 2. Legislative authority and findings. (1) The legislature finds that any
19 significant prohibition upon the possession of firearms at or upon the various campuses of the Montana university
20 system is an infringement upon the rights that the people have reserved to protect themselves from government
21 interference under the second amendment to the United States constitution.

22 (2) The legislature finds that any significant prohibition upon the possession of firearms at or upon the
23 various campuses of the Montana university system calls into question the rights that the people have reserved
24 to protect themselves from government interference under Article II, section 12, of the Montana constitution.

25 (3) The legislature finds that purported "gun free zones" are dangerous to the health and safety of
26 citizens because these zones create an unreasonable expectation of government-provided safety in these zones,
27 while that safety cannot be provided or ensured.

28 (4) The legislature wishes to allow university system prerogatives by asserting new legislative policy
29 supporting the university system's use of carefully crafted supervisory policy designed to withstand constitutional
30 challenge.

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 2 **NEW SECTION. Section 3. Prohibition on infringement of constitutional rights.** The board of
 3 regents and all university system employees subject to the authority of the board of regents are prohibited from
 4 enforcing or coercing compliance with any rule or regulation that diminishes or restricts the rights the people have
 5 reserved to protect themselves from government interference in Article II of the Montana constitution, especially
 6 those rights reserved in Article II, sections 4 through 12.

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 8 ~~**NEW SECTION. Section 4. Regulation of speech prohibited -- exceptions.**~~ (1) Except as provided
 9 in subsection (2), the board of regents and units of the university system may not regulate or restrict, including
 10 by contract, any rights of speech, of expression, or of the press. This includes the right to freely seek, receive,
 11 and impart information and ideas of all kinds, whether orally, in writing, in print, electronically, in the form of art,
 12 or through any other media:

13 ~~(2) The board of regents and units of the university system may impose restrictions on:~~
 14 ~~(a) speech or expression that is intended or designed to incite violence or that causes actual injury to~~
 15 ~~another person. This exception does not apply to speech that may be seen as merely offensive;~~
 16 ~~(b) slander, libel, and speech or expression that is subject to the criminal laws of Montana;~~
 17 ~~(c) the release of copyrighted material or technical or trade secrets that are the property of a university~~
 18 ~~or one or more of its employees;~~
 19 ~~(d) speech or expression that occurs within a classroom during classroom activities and that has been~~
 20 ~~disruptive or is observed to be disruptive by persons actually present; and~~
 21 ~~(e) speech or expression that is made by an employee of the board of regents or a unit of the university~~
 22 ~~system while acting or having the appearance of acting in that employee's official capacity as a representative~~
 23 ~~of the board of regents or a unit of the university system.~~

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 25 **NEW SECTION. Section 4. Firearms permitted REGULATION OF FIREARMS PROHIBITED FOR CERTAIN**
 26 **INDIVIDUALS -- exceptions.** (1) Except as provided in ~~subsection (2)~~ ~~SUBSECTIONS (2) AND (3)~~ SUBSECTION (2), the
 27 board of regents and units of the university system may not regulate or restrict the possession, transportation,
 28 or storage of firearms upon or within university system property BY A PERSON WITH A PERMIT ISSUED PURSUANT TO
 29 45-8-321 OR RECOGNIZED PURSUANT TO 45-8-329.

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

1 (a) the discharge of a firearm upon or within university system property unless the discharge is done in
2 self-defense;

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

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

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

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

10 (f) the possession or storage of a firearm in a dormitory situation without the express permission of any
11 roommate of the lawful possessor of the firearm;

12 (g) the possession or storage of a firearm by any individual who has been subject to university system
13 discipline or has a history of completed disciplinary action arising out of the individual's interpersonal violence or
14 substance abuse; and

15 (h) the possession of a firearm at an event on campus where campus authorities have authorized alcohol
16 to be served and consumed.

17 ~~(3) THE BOARD OF REGENTS OR A UNIT OF THE UNIVERSITY SYSTEM MAY REGULATE OR RESTRICT THE~~
18 ~~POSSESSION, CARRYING, TRANSPORTATION, OR STORAGE OF FIREARMS UPON OR WITHIN UNIVERSITY SYSTEM PROPERTY~~
19 ~~IF THE BOARD OF REGENTS OR A UNIT OF THE UNIVERSITY SYSTEM DESIGNS AND IMPLEMENTS A "CAMPUS CARRY"~~
20 ~~PROGRAM IN WHICH A PERSON WHO APPLIES FOR AND IS GRANTED A "CAMPUS CARRY" PERMIT IS ALLOWED TO POSSESS,~~
21 ~~CARRY, TRANSPORT, AND STORE A FIREARM UPON OR WITHIN UNIVERSITY SYSTEM PROPERTY.~~

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23 NEW SECTION. **Section 5. Remedy for violations.** Any person whose constitutional rights protected
24 under [sections 1 through 6 5] are denied, diminished, or delayed has a cause of action against any employee
25 of the university system who denied, diminished, or delayed these rights or who was responsible for the denial,
26 diminishment, or delay. A cause of action must be filed in district court. If a person asserting a denial,
27 diminishment, or delay of rights prevails, that person must be awarded reasonable costs and attorney fees and
28 compensatory damages. If the jury hearing the case, in the sole discretion of the jury, finds that the denial,
29 diminishment, or delay is willful and wanton misconduct or is done with arbitrary and capricious disregard of
30 [sections 1 through 6 5], the jury may award treble damages.

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Section 6. Section 45-3-111, MCA, is amended to read:

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

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

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

Section 7. Section 45-8-351, MCA, is amended to read:

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

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

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

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

(d) Any restrictions on the possession of firearms enacted by a county, city, town, consolidated local government, or other local government unit do not apply to any buildings or property owned by the state that are

1 part of any unit of the university system."

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3 NEW SECTION. Section 8. Codification instruction. [Sections 1 through 6 5] are intended to be
4 codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections
5 1 through 6 5].

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7 NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable
8 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
9 remains in effect in all valid applications that are severable from the invalid applications.

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11 NEW SECTION. Section 10. Effective date. [This act] is effective ~~on passage and approval~~ JANUARY
12 1, 2014.

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