HOUSE BILL NO. 809

INTRODUCED BY B. MITCHELL, V. RICCI, L. SCHUBERT, M. VINTON, S. KELLY, S. KLAKKEN, E. ALBUS, K. LOVE, A. NICASTRO, G. OVERSTREET, T. SHARP, E. BYRNE, R. GREGG, C. SCHOMER, T. MILLETT, E. TILLEMAN, D. EMRICH, J. FULLER, S. GIST, C. HINKLE, R. MARSHALL, N. NICOL, A. REGIER, S. VANCE, M. REGIER, S. FITZPATRICK, C. GLIMM, B. LER, G. OBLANDER, K. ZOLNIKOV, J. ETCHART, F. NAVE, B. USHER, J. GILLETTE, L. BREWSTER, N. DURAM, T. FALK, P. FIELDER, G. KMETZ, F. MANDEVILLE, T. MCGILLVRAY, M. NOLAND, K. SEEKINS-CROWE, Z. WIRTH, S. MANESS, K. BOGNER, B. BEARD, S. ESSMANN, J. HINKLE, B. PHALEN

A BILL FOR AN ACT ENTITLED: “AN ACT PROHIBITING LOCAL GOVERNMENTS FROM ENACTING OR ENFORCING AN EXTREME RISK PROTECTION ORDER; PROHIBITING LOCAL GOVERNMENTS FROM RECEIVING FUNDS RELATED TO EXTREME RISK PROTECTION ORDERS; AND AMENDING SECTION 7-1-111, MCA.”

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

NEW SECTION. **Section 1. Legislative finding -- extreme risk protection order prohibition.** (1) The legislature finds that extreme risk protection orders violate a person's right to bear arms under the second amendment of the United States constitution and under Article II, section 12, of the Montana constitution.

(2) A local government may not:

(a) enact, adopt, or implement a resolution, ordinance, rule, regulation, or policy that would have the effect of enforcing an extreme risk protection order against a resident of the state; or

(b) accept a grant or other source of funding for the purpose of aiding in the adoption, implementation, or enforcement of an extreme risk protection order.

(3) A local government that violates this section is subject to a civil penalty of up to $10,000, payable to the state general fund. Each instance of enforcement or attempted enforcement constitutes a separate offense.

(4) (a) As used in this section, "extreme risk protection order" means a directive, also known as a

red flag law, that is an executive order or a written order or warrant issued by a judge, magistrate, or other judicial officer, with the primary purpose of reducing the risk of firearm-related death or injury by doing one or more of the following:

(i) prohibiting a named individual from having under the individual's custody or control, owning, possessing, or receiving a firearm; or

(ii) removing a firearm from or requiring the surrender of a firearm by a named individual.

(b) The term does not include an order of protection issued under Title 40, chapter 15.

Section 2. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) (a) any power that applies to or affects landlords, as defined in 70-24-103 and 70-33-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24, 25, and 33; or

(b) any power to deviate from or add to the exclusive application of the provisions of:

(i) the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24;

(ii) residential tenants' security deposit law in Title 70, chapter 25; or

(iii) the Montana Residential Mobile Home Lot Rental Act, Title 70, chapter 33.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(4);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv);

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1);

(26) any power to control the amount of rent charged for private residential or commercial property. Private residential property does not include property in which the local government unit has a property interest or in which the local government unit has an interest through a housing authority.

(27) any power to require additional licensing when the state is the original issuer of the license;

(28) any power to prohibit or impede the connection or reconnection of an electric, natural gas, propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or other energy or fuel provider;

(29) any power to prohibit the purchase or use of any fuel derived from petroleum, including but not limited to methane, propane, gasoline, and diesel fuel, or the installation or use of any vehicles, vessels, tools, or commercial and residential appliances that burn or transport petroleum fuels; ~~or~~

(30) any power to require that buildings be constructed to have solar panels or wiring, batteries, or other equipment for solar panels or electric vehicles; or

(31) any power related to an extreme risk protection order pursuant to [section 1]."

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 1, part 1, and the provisions of Title 7, chapter 1, part 1, apply to [section 1].

NEW SECTION. **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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