

Unofficial Draft Copy - CJOC 1

For review by the Criminal Justice Oversight Council on 6/28/2022

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Drafter: Milly Allen, 406-444-9280

67th Legislature

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**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SENTENCING LAWS FOR THEFT, FAILURE TO RETURN RENTED OR LEASED PERSONAL PROPERTY, ISSUING A BAD CHECK, DECEPTIVE PRACTICES, AND FORGERY; AMENDING SECTIONS 45-6-301, 45-6-309, 45-6-316, 45-6-317, AND 45-6-325, MCA."

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

Section 1. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

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1 (a) has the purpose of depriving the owner of the property;

2 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
3 owner of the property; or

4 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
5 probably will deprive the owner of the property.

6 (4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts
7 unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county
8 agency, regardless of the original source of assistance, by means of:

9 (a) a knowingly false statement, representation, or impersonation; or

10 (b) a fraudulent scheme or device.

11 (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or
12 helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter
13 71, by means of:

14 (a) a knowingly false statement, representation, or impersonation; or

15 (b) deception or other fraudulent action.

16 (6) A person commits the offense of theft when the person:

17 (a) purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302;

18 (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102;

19 or

20 (c) purposely or knowingly receives small business health insurance premium incentive payments or
21 premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not
22 entitled.

23 (7) A person commits the offense of theft of property by embezzlement when, with the purpose to
24 deprive the owner of the property, the person:

25 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's
26 employer or over property entrusted to the person; or

27 (b) purposely or knowingly obtains by deception control over property of the person's employer or
28 over property entrusted to the person.

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1 ~~(87)~~ (a) Except as provided in subsections ~~(87)(b) and (7)(d)~~, a person convicted of a first offense of
2 the offense of theft of property not exceeding \$1,500 in value shall be fined an amount not to exceed ~~\$500~~
3 \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a
4 second offense shall be fined \$1,500 ~~an amount not to exceed \$500~~ or be imprisoned in the county jail for a
5 term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined ~~an~~
6 ~~amount not to exceed \$1,500~~ and be imprisoned in the county jail for a term of not less than 530 days or more
7 than 6 months-1 year.

8 (b) (i) Except as provided in subsection ~~(87)(c)~~, a person convicted of the offense of theft of property
9 that exceeds \$1,500 in value ~~and does not exceed \$5,000 in value shall be fined an amount not to exceed~~
10 ~~\$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a~~
11 ~~second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term~~
12 ~~not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the~~
13 ~~state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed~~
14 ~~\$5,000.~~

15 ~~(ii) A person convicted of the theft of property exceeding \$5,000 in value or as part of a common~~
16 ~~scheme as defined in 45-2-101, or the theft of any amount of anhydrous ammonia for the purpose of~~
17 manufacturing dangerous drugs, shall be fined an amount not to exceed \$50,000 ~~\$10,000~~ or be imprisoned in a
18 state prison for a term not to exceed 10 years, or both.

19 (iii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an
20 amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to
21 exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of
22 community service during a 1-year period, in the offender's county of residence. In addition to the fine and
23 imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

24 (c) A person convicted of the offense of theft of property exceeding \$10,000 in value by
25 embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years
26 and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on
27 probation with the requirement that restitution be made under terms set by the court. If the terms are not met,
28 the required prison term may be ordered.

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1 ~~(d)—A person convicted of a first offense for the offense of theft of property not exceeding \$1,500 in~~
2 ~~value and who utilized an emergency exit in furtherance of that offense shall be fined an amount not to exceed~~
3 ~~\$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. On a second conviction, the~~
4 ~~offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to~~
5 ~~exceed 1 year, or both. On a third conviction, the offender shall be fined an amount not to exceed \$5,000 and~~
6 ~~be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.~~

7 (98) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
8 whether from the same person or several persons, may be aggregated in determining the value of the property.

9 ~~(9)—A person convicted of the offense of theft of property not exceeding \$100 in value is presumed to~~
10 ~~qualify for a deferred imposition of sentence as long as the person has not been convicted of a misdemeanor or~~
11 ~~felony offense in the past 5 years."~~

12
13 **Section 2.** Section 45-6-309, MCA, is amended to read:

14 **"45-6-309. Failure to return rented or leased personal property.** (1) A person commits the offense
15 of failure to return rented or leased personal property if, without notice to and permission of the lessor, the
16 person purposely and knowingly fails to return the property within 48 hours after the time provided for return in
17 the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the
18 property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

19 (2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a
20 rental or lease agreement constitutes prima facie evidence of commission of the offense.

21 (3) After the rental or lease period specified in the rental or lease agreement has expired, failure to
22 return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail
23 to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes
24 prima facie evidence of commission of the offense.

25 (4) (a) A person convicted of failure to return rented or leased personal property not exceeding
26 \$1,500 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the county jail for a term not
27 to exceed 6 months, or both.

28 (b) A person convicted of failure to return rented or leased personal property that exceeds \$1,500 in

1 ~~value and does not exceed \$5,000 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in~~
 2 ~~the state prison for a term not to exceed 3 10 years, or both. A person convicted of a second offense shall be~~
 3 ~~fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or~~
 4 ~~both. A person convicted of a third or subsequent offense shall be imprisoned in the state prison for a term of~~
 5 ~~not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.~~

6 ~~(c) A person convicted of failure to return rental or leased personal property exceeding \$5,000 in~~
 7 ~~value or part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in the~~
 8 ~~state prison for a term not to exceed 10 years, or both."~~

9

10 **Section 3.** Section 45-6-316, MCA, is amended to read:

11 **"45-6-316. Issuing a bad check.** (1) A person commits the offense of issuing a bad check when the
 12 person issues or delivers a check or other order upon a real or fictitious depository for the payment of money
 13 knowing that it will not be paid by the depository.

14 (2) If the offender has an account with the depository, failure to make good the check or other order
 15 within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that
 16 the offender knew that it would not be paid by the depository.

17 (3) ~~(a) A person convicted of issuing a bad check not exceeding \$500 in value shall be fined an~~
 18 ~~amount not to exceed \$1,500 \$500. A person convicted of a second offense shall be fined an amount not to~~
 19 ~~exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. If the offender has~~
 20 ~~engaged in issuing bad checks that are part of a common scheme or if the value of any property, labor, or~~
 21 ~~services obtained or attempted to be obtained exceeds \$1,500, the offender shall be fined not to exceed~~
 22 ~~\$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both. A person convicted of a~~
 23 ~~third or subsequent offense shall be imprisoned in the county jail for a term of not less than 5 days or more than~~
 24 ~~1 year and may be fined an amount not to exceed \$500.~~

25 ~~(b) A person convicted of issuing a bad check that exceeds \$500 in value and does not exceed~~
 26 ~~\$5,000 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term~~
 27 ~~not to exceed 3 years, or both. A person convicted of a second offense shall be fined an amount not to exceed~~
 28 ~~\$1,500 or be imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a~~

1 ~~third or subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more~~
2 ~~than 5 years and may be fined an amount not to exceed \$5,000.~~

3 ~~(c) A person convicted of issuing a bad check exceeding \$5,000 in value or as part of a common~~
4 ~~scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to~~
5 ~~exceed 10 years."~~

6

7 **Section 4.** Section 45-6-317, MCA, is amended to read:

8 **"45-6-317. Deceptive practices.** (1) A person commits the offense of deceptive practices when the
9 person purposely or knowingly:

10 (a) causes another, by deception or threat, to execute a document disposing of property or a
11 document by which a pecuniary obligation is incurred;

12 (b) makes or directs another to make a false or deceptive statement addressed to the public or any
13 person for the purpose of promoting or procuring the sale of property or services;

14 (c) makes or directs another to make a false or deceptive statement to any person respecting the
15 financial condition of the person making or directing another to make the statement for the purpose of procuring
16 a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan
17 or credit regarding that person's financial condition; or

18 (d) obtains or attempts to obtain property, labor, or services by any of the following means:

19 (i) using a credit card that was issued to another without the other's consent;

20 (ii) using a credit card that has been revoked or canceled;

21 (iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

22 (iv) using the pretended number or description of a fictitious credit card; or

23 (v) using a credit card that has expired when the credit card clearly indicates the expiration date.

24 (2) ~~(a) A person convicted of the offense of deceptive practices if the value of any property, labor, or~~
25 ~~services obtained or attempted to be obtained does not exceed \$1,500 in value shall be fined an amount not to~~
26 ~~exceed \$1,500 \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. If the~~
27 ~~deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or~~
28 ~~attempted to be obtained exceeds \$1,500, the offender shall be fined an amount not to exceed \$50,000 or be~~

1 ~~imprisoned in the state prison for a term not to exceed 10 years, or both. A person convicted of a second~~
 2 ~~offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed~~
 3 ~~6 months, or both. A person convicted of a third or subsequent offense shall be imprisoned in the county jail for~~
 4 ~~a term of not less than 5 days or more than 1 year and may be fined an amount not to exceed \$500.~~

5 ~~(b) A person convicted of the offense of deceptive practices if the value of any property, labor, or~~
 6 ~~services obtained or attempted to be obtained exceeds \$1,500 in value and does not exceed \$5,000 in value~~
 7 ~~shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3~~
 8 ~~years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be~~
 9 ~~imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or~~
 10 ~~subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5~~
 11 ~~years and may be fined an amount not to exceed \$5,000.~~

12 ~~(c) A person convicted of the offense of deceptive practices if the value of any property, labor, or~~
 13 ~~services obtained or attempted to be obtained exceeds \$5,000 in value or as part of a common scheme shall~~
 14 ~~be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10~~
 15 ~~years, or both."~~

16
 17 **Section 5.** Section 45-6-325, MCA, is amended to read:

18 **"45-6-325. Forgery.** (1) A person commits the offense of forgery when with purpose to defraud the
 19 person knowingly:

20 (a) without authority makes or alters a document or other object apparently capable of being used to
 21 defraud another in a manner that it purports to have been made by another or at another time or with different
 22 provisions or of different composition;

23 (b) issues or delivers the document or other object knowing it to have been thus made or altered;

24 (c) possesses with the purpose of issuing or delivering any such document or other object knowing it
 25 to have been thus made or altered; or

26 (d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment,
 27 or article specifically designed for use in counterfeiting or otherwise forging written instruments.

28 (2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or

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1 terminate any right, obligation, or power with reference to any person or property.

2 (3) A document or other object capable of being used to defraud another includes but is not limited to
3 one by which any right, obligation, or power with reference to any person or property may be created,
4 transferred, altered, or terminated.

5 (4) ~~(a) A person convicted of the offense of forgery if the value of the property, labor, or services~~
6 ~~obtained or attempted to be obtained does not exceed \$1,500 shall be fined an amount not to exceed \$1,500~~
7 ~~\$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. If the forgery is part of a~~
8 ~~common scheme or if the value of the property, labor, or services obtained or attempted to be obtained~~
9 ~~exceeds \$1,500, the offender shall be fined an amount not to exceed \$50,000 or be imprisoned in the state~~
10 ~~prison for a term not to exceed 20 years, or both. A person convicted of a second offense shall be fined an~~
11 ~~amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A~~
12 ~~person convicted of a third or subsequent offense shall be fined an amount not to exceed \$500 and be~~
13 ~~imprisoned in the county jail for a term of not less than 5 days or more than 1 year.~~

14 (b) ~~A person convicted of the offense of forgery for which the value of the property, labor, or services~~
15 ~~obtained or attempted to be obtained exceeds \$1,500 and does not exceed \$5,000 in value shall be fined an~~
16 ~~amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A~~
17 ~~person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the~~
18 ~~state prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall~~
19 ~~be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an~~
20 ~~amount not to exceed \$5,000.~~

21 (c) ~~A person convicted of the offense of forgery for which the value of the property, labor, or services~~
22 ~~obtained or attempted to be obtained exceeds \$5,000 in value or is part of a common scheme shall be fined an~~
23 ~~amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."~~

24

25

- END -