

1 HOUSE BILL NO. 142

2 INTRODUCED BY J. LYNCH

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO UNEMPLOYMENT INSURANCE
6 AND FALSE CLAIMS; ENSURING APPROPRIATE RESTITUTION FOR FALSE CLAIMS; CLARIFYING THAT
7 THEFT FROM UNEMPLOYMENT INSURANCE IS THEFT FROM A PUBLIC AGENCY; AND AMENDING
8 SECTIONS 39-51-3202 AND 45-6-301, MCA."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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12 **Section 1.** Section 39-51-3202, MCA, is amended to read:

13 **"39-51-3202. Making false statement or representation or failing to disclose material fact in**
14 **order to obtain or increase benefits -- criminal penalty.** (1) A person who, in order to obtain or increase for
15 personal gain or for any other person benefits under this chapter or under an employment security law of any
16 other state or territory or the federal government, knowingly makes a false statement or representation or
17 knowingly fails to disclose a material fact is guilty of a crime under 45-7-203 and 45-7-210, and the department
18 may cause criminal proceedings to be initiated against the person.

19 (2) A person will be required to repay to the department an amount as determined by 39-51-
20 3201(1)(a).

21 (3) For purposes of this section, restitution awarded under this section must include a sum equal to
22 the amount wrongfully received, plus the department may assess a penalty not to exceed 100% of the amount
23 wrongfully received. All money accruing from the penalty must be deposited in the federal special revenue
24 account. Money deposited in that account may be appropriated to the department to be used to detect and
25 collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for
26 these purposes. Money in the account not appropriated for these purposes must be transferred by the
27 department to the unemployment insurance trust fund at the end of each fiscal year."
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1 **Section 2.** Section 45-6-301, MCA, is amended to read:

2 **"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or knowingly
3 obtains or exerts unauthorized control over property of the owner and:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) a fraudulent scheme or device.

28 (5) A person commits the offense of theft when the person purposely or knowingly obtains or

1 exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title
2 39, chapter 51 or 71, by means of:

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

4 (b) deception or other fraudulent action.

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

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

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

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

17 (b) (i) Except as provided in subsection (7)(c), a person convicted of the offense of theft of property
18 that exceeds \$1,500 in value and does not exceed \$5,000 in value shall be fined an amount not to exceed
19 \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person convicted of a
20 second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term
21 not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be imprisoned in the
22 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
23 \$5,000.

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

28 (iii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an

1 amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to
2 exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of
3 community service during a 1-year period, in the offender's county of residence. In addition to the fine and
4 imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

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

10 (d) A person convicted of a first offense for the offense of theft of property not exceeding \$1,500 in
11 value and who utilized an emergency exit in furtherance of that offense shall be fined an amount not to exceed
12 \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. On a second conviction, the
13 offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to
14 exceed 1 year, or both. On a third conviction, the offender shall be fined an amount not to exceed \$5,000 and
15 be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

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

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

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