

SENATE BILL NO. 359

INTRODUCED BY C. KAUFMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PENALTIES FOR CERTAIN MISDEMEANOR AND FELONY OFFENSES; ELIMINATING JAIL TIME FOR CERTAIN MISDEMEANORS; REDUCING POTENTIAL JAIL TIME FOR CERTAIN FELONIES; AMENDING SECTIONS 45-6-301, 45-6-302, 45-6-305, 45-6-316, 45-8-101, 45-8-111, 61-5-102, AND 61-6-304, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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:

- (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

1 owner of the property; or

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

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

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

8 (b) a fraudulent scheme or device.

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

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

13 (b) deception or other fraudulent action.

14 (6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance  
15 fraud as provided in 33-1-1202 or 33-1-1302;

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

17 or

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

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

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

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

27 (8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not  
28 exceeding \$1,500 in value shall be fined an amount not to exceed \$1,500 ~~or be imprisoned in the county jail for~~  
29 ~~a term not to exceed 6 months, or both.~~ A person convicted of a second offense shall be fined \$1,500 or be  
30 imprisoned in the county jail for a term not to exceed ~~6~~ 3 months, or both. A person convicted of a third or

1 subsequent offense shall be fined \$1,500 and be imprisoned in the county jail for a term of ~~not less than 30 days~~  
 2 ~~or more than~~ not to exceed 6 months.

3 (b) (i) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property  
 4 exceeding \$1,500 in value or theft of any amount of anhydrous ammonia for the purpose of manufacturing  
 5 dangerous drugs shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term  
 6 not to exceed ~~40~~ 2 years, or both.

7 (ii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an amount  
 8 of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to exceed ~~40~~ 2  
 9 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community  
 10 service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the  
 11 offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

12 (c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement  
 13 shall be imprisoned in a state prison for a term of not less than 1 year or more than ~~40~~ 3 years and may be fined  
 14 an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the  
 15 requirement that restitution be made under terms set by the court. If the terms are not met, the required prison  
 16 term may be ordered.

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

19

20 **Section 2.** Section 45-6-302, MCA, is amended to read:

21 **"45-6-302. Theft of lost or mislaid property.** (1) A person who obtains control over lost or mislaid  
 22 property commits the offense of theft when the person:

23 (a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of  
 24 identifying the owner;

25 (b) fails to take reasonable measures to restore the property to the owner; and

26 (c) has the purpose of depriving the owner permanently of the use or benefit of the property.

27 (2) (a) A ~~Except as provided in subsection (2)(b), a~~ person convicted of theft of lost or mislaid property:

28 (i) not exceeding \$1,500 in value shall be fined an amount not to exceed \$500; or

29 (ii) exceeding \$1,500 in value shall be fined an amount not to exceed \$500 or be imprisoned in the county  
 30 jail for a period not to exceed ~~6~~ 3 months.

1 (b) A person convicted of a second or subsequent offense of theft of lost or mislaid property exceeding  
 2 \$1,500 in value shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a period not  
 3 to exceed 6 months."

4  
 5 **Section 3.** Section 45-6-305, MCA, is amended to read:  
 6 **"45-6-305. Theft of labor or services or use of property.** (1) A person commits the offense of theft  
 7 when the person obtains the temporary use of property, labor, or services of another that are available only for  
 8 hire, by means of threat or deception or knowing that the use is without the consent of the person providing the  
 9 property, labor, or services.

10 (2) (a) Except as provided in subsection (2)(b), a A person convicted of theft of labor or services or use  
 11 of property shall be fined an amount not to exceed \$500 ~~or be imprisoned in the county jail for a term not to~~  
 12 ~~exceed 6 months, or both.~~

13 (b) A person convicted of a second or subsequent offense of theft of labor or services or use of property  
 14 shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a period not to exceed 3  
 15 months."

16  
 17 **Section 4.** Section 45-6-316, MCA, is amended to read:  
 18 **"45-6-316. Issuing a bad check.** (1) A person commits the offense of issuing a bad check when the  
 19 person issues or delivers a check or other order upon a real or fictitious depository for the payment of money  
 20 knowing that it will not be paid by the depository.

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

24 (3) (a) Except as provided in subsection (3)(c), A person convicted of issuing a bad check shall be fined  
 25 not to exceed ~~\$1,500 or be imprisoned in the county jail for any term not to exceed 6 months, or both~~ \$500.

26 (b) A person convicted of a second or subsequent offense of issuing a bad check shall be fined an  
 27 amount not to exceed \$1,000 or be imprisoned in the county jail for a period not to exceed 3 months.

28 (c) If the offender has engaged in issuing bad checks that are part of a common scheme or if the value  
 29 of any property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be  
 30 fined not to exceed \$50,000 or be imprisoned in the state prison for any a term not to exceed 40 2 years, or both."

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2 **Section 5.** Section 45-8-101, MCA, is amended to read:

3 **"45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if the person  
4 knowingly disturbs the peace by:

- 5 (a) quarreling, challenging to fight, or fighting;
- 6 (b) making loud or unusual noises;
- 7 (c) using threatening, profane, or abusive language;
- 8 (d) rendering vehicular or pedestrian traffic impassable;
- 9 (e) rendering the free ingress or egress to public or private places impassable;
- 10 (f) disturbing or disrupting any lawful assembly or public meeting;
- 11 (g) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence  
12 would endanger human life;
- 13 (h) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;

14 or

15 (i) transmitting a false report or warning of an impending explosion in a place where its occurrence would  
16 endanger human life.

17 (2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall  
18 be fined an amount not to exceed \$100 or be imprisoned in the county jail for a term not to exceed ~~40~~ 3 days, or  
19 both.

20 (3) A person convicted of a violation of subsection (1)(i) shall be fined an amount not to exceed \$1,000  
21 or be imprisoned in the county jail for a term not to exceed ~~1-year~~ 6 months, or both."

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23 **Section 6.** Section 45-8-111, MCA, is amended to read:

24 **"45-8-111. Public nuisance.** (1) "Public nuisance" means:

- 25 (a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of  
26 property so as to interfere with the comfortable enjoyment of life or property by an entire community or  
27 neighborhood or by any considerable number of persons;
- 28 (b) any premises where persons gather for the purpose of engaging in unlawful conduct; or
- 29 (c) a condition that renders dangerous for passage any public highway or right-of-way or waters used  
30 by the public.

1 (2) A person commits the offense of maintaining a public nuisance if the person knowingly creates,  
2 conducts, or maintains a public nuisance.

3 (3) Any act that affects an entire community or neighborhood or any considerable number of persons,  
4 as specified in subsection (1)(a), is no less a nuisance because the extent of the annoyance or damage inflicted  
5 upon individuals is unequal.

6 (4) An agricultural or farming operation, a place, an establishment, or a facility or any of its  
7 appurtenances or the operation of those things is not or does not become a public nuisance because of its normal  
8 operation as a result of changed residential or commercial conditions in or around its locality if the agricultural  
9 or farming operation, place, establishment, or facility has been in operation longer than the complaining resident  
10 has been in possession or commercial establishment has been in operation.

11 (5) Noises resulting from the shooting activities at a shooting range during established hours of operation  
12 are not considered a public nuisance.

13 (6) A person convicted of maintaining a public nuisance shall be fined an amount not to exceed \$500  
14 ~~or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~ Each day of the conduct constitutes  
15 a separate offense. A person convicted of a second or subsequent offense of maintaining a public nuisance after  
16 abatement of a public nuisance constituting the first offense shall be fined an amount not to exceed \$500 or be  
17 imprisoned in the county jail for a period not to exceed 3 months."

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19 **Section 7.** Section 61-5-102, MCA, is amended to read:

20 **"61-5-102. Drivers to be licensed -- penalties.** (1) (a) Except as provided in 61-5-104, a person may  
21 not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A  
22 person may not receive a Montana driver's license until the person surrenders to the department all valid driver's  
23 licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's  
24 control more than one valid Montana driver's license at any time.

25 (b) Except as provided in subsection (1)(c), the penalty for a first violation of this section is a fine of not  
26 more than \$500, ~~imprisonment for not more than 6 months, or both a fine and imprisonment.~~ The penalty for  
27 second and subsequent violations of this section is a fine of not more than \$500 and imprisonment for not less  
28 than 2 days or more than ~~6~~ 3 months.

29 (c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has  
30 not renewed the license as provided in 61-5-111(3)(c) is not subject to the penalties in subsection (1)(b).

1 (2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a  
 2 motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been  
 3 clearly marked with the words "motorcycle endorsement".

4 (ii) A motorcycle endorsement is not required for the operation of a low-speed electric vehicle or a  
 5 motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the  
 6 motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is  
 7 equipped with a seat and seatbelts.

8 (b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license  
 9 has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial  
 10 driver's license", and the license bears the proper endorsement for:

11 (i) the specific vehicle type or types being operated; or

12 (ii) the passengers or type or types of cargo being transported.

13 (3) A low-speed restricted driver's license is not valid for the operation of a motor vehicle other than a  
 14 low-speed electric vehicle or a golf cart.

15 (4) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or  
 16 permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this  
 17 chapter."

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19 **Section 8.** Section 61-6-304, MCA, is amended to read:

20 "**61-6-304. Penalties.** (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a  
 21 fine of not less than \$250 or more than \$500 ~~or by imprisonment in the county jail for not more than 10 days, or~~  
 22 ~~both~~. A second conviction is punishable by a fine of \$350 or by imprisonment in the county jail for not more than  
 23 10 days, or both. A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the  
 24 county jail for not more than ~~6~~ 3 months, or both.

25 (2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall  
 26 order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of  
 27 the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate  
 28 family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall  
 29 report the surrender of the registration receipt and license plates to the department, which shall immediately  
 30 suspend the vehicle's registration. The vehicle's registration status may not be reinstated until proof of compliance

1 with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is  
2 entitled to register the vehicle. The surrendered license plates must be recycled or destroyed by the court unless  
3 the court decides to retain the license plates for the owner until the registration suspension has been completed  
4 or the requirements for a restricted registration receipt have been met. Upon proof of compliance with 61-6-301  
5 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under  
6 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction  
7 or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration  
8 receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of  
9 the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

10 (3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the  
11 surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered  
12 to the offender or a member of the offender's immediate family. The court shall send the driver's license, along  
13 with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the  
14 driver's license. The department may not reinstate a driver's license suspended under this subsection until the  
15 registered owner provides the department proof of compliance with 61-6-301 and the department determines that  
16 the registered owner is otherwise eligible for licensure.

17 (4) The court may suspend a required fine only upon a determination that the offender is or will be unable  
18 to pay the fine.

19 (5) A court may not defer imposition of penalties provided by this section.

20 (6) An offender is considered to have been previously convicted for the purposes of sentencing if less  
21 than 5 years have elapsed between the commission of the present offense and a previous conviction."  
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23 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2015.  
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25 NEW SECTION. **Section 10. Applicability.** [This act] applies to offenses committed on or after July 1,  
26 2015.  
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- END -