

Assembly Bill No. 2187

Passed the Assembly August 25, 2010

Chief Clerk of the Assembly

Passed the Senate August 24, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 1199.6 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2187, Arambula. Employment: payment of wages.

Existing law makes it a misdemeanor for a person or employer who, having the ability to pay, willfully refuses to pay wages due to a current employee, an employee who has resigned, or an employee who has been discharged. Under existing law, an aggrieved employee has the right to restitution for unpaid wages. Existing law also imposes civil penalties against a person or employer who wrongfully fails to pay wages.

This bill would create a separate prohibition against a person or an employer who, having the ability to pay, willfully fails to pay all wages due to an employee who has been discharged or who has quit within 90 days of the date of the wages becoming due, unless exempted, and would impose additional criminal penalties for that conduct. The bill would also require a person or employer who violates these provisions to pay restitution in an amount equal to the amount of unpaid wages to the aggrieved employee upon conviction.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) Many criminal fines and other penalties and California's statutory provisions that relate to the payment of wages have not been strengthened in decades and lag behind other jurisdictions,

which have both increased criminal penalties and enacted civil remedies to encourage employers to pay wages promptly when due.

(b) The development of a statutory scheme addressing the theft of wages and imposing significant penalties for committing such theft sends an appropriate message to prosecutors to aggressively pursue violators and ensures that restitution of unpaid wages to aggrieved employees is a central focus of prosecutions for theft of wages.

SEC. 2. Section 1199.6 is added to the Labor Code, to read:

1199.6. (a) In addition to any other penalty imposed, an employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000), or by imprisonment in a county jail for not more than six months, or by both, who, having the ability to pay, willfully fails to pay all wages due to an employee who has been discharged or who has quit within 90 days of the date that those wages became due. This section does not apply if the employee's entitlement to unpaid wages is disputed by the employer in a civil action or proceeding by the Labor Commissioner unless a final judgment is entered with respect to that dispute in favor of the employee.

(b) An employer or other person guilty of a misdemeanor under subdivision (a) shall pay, in addition to any criminal fines, restitution to the aggrieved employee in an amount equal to the total amount of unpaid wages.

(c) As used in this section, "willfully" has the same meaning as provided in Section 7 of the Penal Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2010

Governor