

Introduced by Senator StricklandFebruary 21, 2012

An act to amend Section 1197.2 of the Labor Code, and to amend Sections 19.8 and 1048 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1144, as introduced, Strickland. Crimes: public safety omnibus.

(1) Existing law requires that any employer who willfully fails to pay and has the ability to pay a final court judgment or final order issued by the Labor Commissioner for all wages due to an employee who has been discharged or who has quit within 90 days of the date that the judgment was entered or the order became final is guilty of a misdemeanor. If the total amount of wages due is less than \$1,000, upon conviction, the employer is required to be fined not less than \$1,000 nor more than \$10,000, or imprisoned in a county jail for not more than 6 months, for each offense. Under existing law, a misdemeanor, unless otherwise specified, is punishable by imprisonment in a county jail not exceeding 6 months, or a fine not exceeding \$1,000, or by both that fine and imprisonment.

This bill would, if the total amount of wages due is exactly \$1,000, increase the maximum fine from no more than \$1,000, to an amount not less than \$1,000, nor more than \$10,000.

(2) Existing law authorizes a prosecutor to file specified misdemeanors, such as illegal gaming, as infractions unless the defendant elects to have the case proceed as a misdemeanor, and authorizes the court, with the consent of the defendant, to determine that the offense is an infraction. Existing law requires that cases on a court's calendar be disposed of in a certain order, such as prosecution for felonies where the defendant is in custody being tried first.

This bill would make nontechnical changes to these provisions by updating cross-references and deleting obsolete provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 1197.2 of the Labor Code is amended to
2 read:

3 1197.2. (a) In addition to any other penalty imposed by law,
4 an employer who willfully fails to pay and has the ability to pay
5 a final court judgment or final order issued by the Labor
6 Commissioner for all wages due to an employee who has been
7 discharged or who has quit within 90 days of the date that the
8 judgment was entered or the order became final is guilty of a
9 misdemeanor. For purposes of this section, “final court judgment
10 or final order” means a court judgment or order as to which the
11 time to appeal has expired and there is no appeal pending. If the
12 total amount of wages due is ~~is less than~~ one thousand dollars
13 (\$1,000) *or less*, upon conviction therefor, the employer shall be
14 fined not less than one thousand dollars (\$1,000) nor more than
15 ten thousand dollars (\$10,000) or imprisoned in a county jail for
16 not more than six months, for each offense. If the total amount of
17 wages due is more than one thousand dollars (\$1,000) upon
18 conviction therefor, the employer shall be fined not less than ten
19 thousand dollars (\$10,000) nor more than twenty thousand dollars
20 (\$20,000), or imprisoned in a county jail for not less than six
21 months, nor more than one year, or both the fine and imprisonment,
22 for each offense. If there are multiple failures to pay wages
23 involving more than one employee, the total amount of wages due
24 to all employees shall be aggregated together for purposes of
25 determining the level of fine and the term of imprisonment.

26 (b) As used in this section, “willfully” has the same meaning
27 as provided in Section 7 of the Penal Code.

28 (c) Nothing in this section precludes prosecution under any
29 other provision of law.

30 SEC. 2. Section 19.8 of the Penal Code is amended to read:

31 19.8. The following offenses are subject to subdivision (d) of
32 Section 17: Sections 193.8, 330, 415, 485, 490.7, 555, 602.13;
33 ~~652~~, and 853.7 of this code; subdivision (c) of Section 532b, and

1 subdivision~~(n)~~ (o) of Section 602 of this code; subdivision (b) of
2 Section 25658 and Sections 21672,~~25658.5~~, 25661, and 25662 of
3 the Business and Professions Code; Section 27204 of the
4 Government Code; subdivision (c) of Section 23109 and Sections
5 12500, 14601.1, 27150.1, 40508, and 42005 of the Vehicle Code,
6 and any other offense which the Legislature makes subject to
7 subdivision (d) of Section 17. Except where a lesser maximum
8 fine is expressly provided for a violation of any of those sections,
9 any violation which is an infraction is punishable by a fine not
10 exceeding two hundred fifty dollars (\$250).

11 Except for the violations enumerated in subdivision (d) of Section
12 13202.5 of the Vehicle Code, and Section 14601.1 of the Vehicle
13 Code based upon failure to appear, a conviction for any offense
14 made an infraction under subdivision (d) of Section 17 is not
15 grounds for the suspension, revocation, or denial of any license,
16 or for the revocation of probation or parole of the person convicted.

17 SEC. 3. Section 1048 of the Penal Code is amended to read:

18 1048. (a) The issues on the calendar shall be disposed of in
19 the following order, unless for good cause the court directs an
20 action to be tried out of its order:

21 (1) Prosecutions for felony, when the defendant is in custody.

22 (2) Prosecutions for misdemeanor, when the defendant is in
23 custody.

24 (3) Prosecutions for felony, when the defendant is on bail.

25 (4) Prosecutions for misdemeanor, when the defendant is on
26 bail.

27 (b) Notwithstanding subdivision (a), all criminal actions in
28 which (1) a minor is detained as a material witness or is the victim
29 of the alleged offense, (2) a person who was 70 years of age or
30 older at the time of the alleged offense or is a dependent adult, as
31 defined in subdivision~~(d)~~ (h) of Section 368, was a witness to, or
32 is the victim of, the alleged offense or (3) any person is a victim
33 of an alleged violation of Section 261, 262, 264.1, 273a, 273d,
34 285, 286, 288, 288a, or 289, committed by the use of force,
35 violence, or the threat thereof, shall be given precedence over all
36 other criminal actions in the order of trial. In those actions,
37 continuations shall be granted by the court only after a hearing
38 and determination of the necessity thereof, and in any event, the
39 trial shall be commenced within 30 days after arraignment, unless
40 for good cause the court shall direct the action to be continued,

1 after a hearing and determination of the necessity of the
2 continuance, and states the findings for a determination of good
3 cause on the record.

4 (c) Nothing in this section shall be deemed to provide a statutory
5 right to a trial within 30 days.

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