
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1003 **Hearing Date:** June 29, 2021
Author: Lorena Gonzalez
Version: May 4, 2021
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Wage theft: grand theft*

HISTORY

Source: Author

Prior Legislation: SB 588 (De Leon), Ch. 803, Stats. 2015
AB 469 (Swanson), Ch. 655, Stats. 2011
AB 2187 (Arambula), vetoed, 2010

Support: California Conference Board of the Amalgamated Transit Union; California Conference of Machinists; California District Attorneys Association; California Federation of Teachers AFL-CIO; California Nurses Association; California Statewide Law Enforcement Association; California Teamsters Public Affairs Council; Engineers and Scientists of California, IFPTE Local 20, AFL-CIO; Little Hoover Commission; Professional and Technical Engineers, IFPTE Local 21, AFL-CIO; San Diego County District Attorney's Office; Southwest Regional Council of Carpenters; Unite Here International Union, AFL-CIO; Utility Workers Union of America

Opposition: Independent Physical Therapists of California; PGK Dance Project

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to create a new type of grand theft for the intentional theft of wages in an amount greater than \$950 from any one employee, or \$2,350 in the aggregate from two or more employees, by an employer in any consecutive 12-month period.

Existing law divides theft into two degrees: petty theft and grand theft. (Pen. Code, § 486.)

Existing law states that grand theft is committed when the money, labor, or real or personal property taken is of a value exceeding \$950, except in specified cases of theft authorizing a lower threshold. (Pen. Code, § 487, subd. (a).)

Existing law states that any other case of theft is petty theft. (Pen. Code, § 488.)

Existing law states that petty theft is a misdemeanor punishable by a fine not exceeding \$1000 or by imprisonment in the county jail not exceeding 6 months. (Pen. Code, § 490.)

Existing law states that grand theft is generally punishable as an alternate felony-misdemeanor. (Pen. Code, § 489, subd. (c).)

Existing law makes it a crime to willfully divert money received for improvement construction from the payment of labors and materialmen on the project for a use other than that for which the money was received. The crime is punishable as an alternate felony-misdemeanor if the amount diverted is in excess of \$2,350, and a misdemeanor if the amount diverted is less than \$2,350. (Pen. Code, § 484b.)

Existing law provides that every person who defrauds any other person of money, labor, or property, whether real or personal, or who fraudulently obtains the labor or service of another, is punishable in the same manner and extent as theft of the money or property so obtained. (Pen. Code, § 532, subd. (a).)

Existing law makes it a misdemeanor offense to violate various sections of the labor code pertaining to employee compensation. (Lab. Code, § 215.)

Existing law states that any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor who:

- Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made; or,
- Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with the intent to annoy, harass, oppress, hinder, delay or defraud, the person to whom such indebtedness is due. (Lab. Code, § 216.)

Existing law states that in addition to, and entirely independent and apart from any other penalty provided, every person who fails to pay the wages of each employee shall be subject to the following penalties which shall either be recovered by the employee as a statutory penalty or by the Labor Commissioner as a civil penalty:

- For each initial violation, \$100 for each failure to pay each employee; and,
- For each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount willfully withheld. (Lab. Code, § 210.)

Existing law defines “wages” to include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. (Lab. Code, § 200.)

Existing law authorizes the Labor Commissioner to investigate employee complaints and provide for a hearing in any action to recover wages, penalties, and other demands for compensation, as provided. (Lab. Code, § 98, subd. (a).)

This bill states that notwithstanding sections of the Labor Code related to theft of failure to pay wages, the intentional theft of wages in an amount greater than \$95 from any one employee, or \$2,350 in the aggregate from two or more employees, by an employer in any consecutive 12-month period may be punished as grand theft.

This bill defines “theft of wages” as the intentional deprivation of wages, gratuities, benefits, or other compensation by fraudulent or other unlawful means with the knowledge that the wages, gratuities, benefits, or other compensation is due to the employee under the law.

This bill states that for purposes of this bill, “employee” includes an independent contractor and “employer” includes the hiring entity of an independent contractor.

This bill specifies that wages, gratuities, benefits, or other compensation that are subject of a prosecution under this section may be recovered in a civil action by the employee or the Labor Commissioner.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Wage theft occurs when employers fail to pay their workers all the earnings they are entitled. Examples of wage theft include paying less than minimum wage, not paying workers overtime, not allowing workers to take meal and rest breaks, requiring off the clock work, or taking workers' tips.

According to the Economic Policy Institute (EPI), young workers, women, people of color, and immigrant workers are more likely than other workers to report being paid less than the minimum wage, primarily because they work in low-wage jobs and industries with rampant wage theft. A 2017 EPI analysis found that in the 10 most populous states in the country, 2.4 million workers lose \$8 billion annually to minimum wage violations alone, impacting 17% of low wage workers. (Fn. omitted.) It is estimated that wage theft costs the country up to \$15 billion annually in minimum wage violations alone, compared to \$12.7 billion annually in robberies, burglary, larcenies and auto theft combined. In California, minimum wage violations cost workers close to \$2 billion annually.

Currently, workers can pursue wage claims through the Labor Commissioner’s office to seek recovery of unpaid wages and other damages, file smaller wage claims in the Small Claims Court, or bring a lawsuit in state or federal court for themselves or as part of a class action. Each year, over 30,000 workers in California file claims of wage theft, though the share of workers owed unpaid wages is likely greater. These workers face processes for recovering their wages that are lengthy, burdensome, or often unsuccessful in changing employer behavior.

Wage theft hurts California’s economy, responsible businesses, and workers, particularly low wage workers who can least afford to lose earnings. The COVID-19 pandemic has only further exacerbated the financial desperation low wage workers are facing, making many workers more vulnerable to wage theft. In order to protect all workers, AB 1003 will make the intentional theft of wages, tips, or compensation by employers by fraudulent or other unlawful means punishable as grand theft. This would apply to theft over \$950 for any one worker

and aggregated over \$2,350 for two or more workers, in any 12-month consecutive period, consistent with the current grand theft and larceny threshold.

2. Little Hoover Commission Report

The Little Hoover Commission conducted a year-long study on the underground economy and how it affects the employees themselves, but more broadly public health and safety and the overall economy as it robs the state of billions in uncollected tax revenue that could fund education, law enforcement, and investments in infrastructure. (Level the Playing Field: Put California's Underground Economy Out of Business, Little Hoover Commission Rep. No. 226, (Mar. 2015) < <https://lhc.ca.gov/report/level-playing-field-put-californias-underground-economy-out-business>> [as of June 17, 2021].) At the time of the report, it was estimated that California loses \$8.5 million or more annually in uncollected taxes. (Id. at p.) The underground economy generally includes “any activities that individuals and businesses try to hide from government licensing, regulatory, tax and law enforcement agencies.” (Id. at p. i.) This definition covers a broad range of activity including illegal activity such as human trafficking or drug dealing but the report only focused on legal activity that becomes illegal because all laws and regulations are not followed such as business owners who illegally underpay their employees, fail to pay taxes, or intentionally misclassify their employees as independent contractors so that the employee must pay the employer's share of payroll taxes. (Ibid.)

The report made several recommendations. The most relevant to this bill is that the Legislature should assess existing penalties for white collar crimes and make adjustments to ensure rewards do not outweigh the risks of participating in the underground economy. The Commission found that many businesses break the rules because getting caught is unlikely. If they are caught, few are charged in court. When found guilty, the profits from cheating often outweigh the fines and penalties. Collecting restitution is difficult or unlikely as the businesses hide assets to avoid paying and quickly set up shop again under new ownership. While this bill does not change specifically increase penalties, it makes an assessment that existing laws are not sufficient to effectively prosecute wage theft.

3. Effect of this Legislation

Generally, there are two levels of theft: petty theft and grand theft. (Pen. Code, § 486.) Grand theft requires that the value of the money, labor, or real or personal property stolen exceeds \$950, except when lower thresholds are specified in statute. (Pen. Code, § 487, subd. (a).) Existing law contains several statutes that specify a particular type of grand theft: grand theft of a dog (Pen. Code, § 487e); grand theft cargo (Pen. Code, § 487h); grand theft of copper materials (Pen. Code, § 487j); grand theft of agricultural equipment (Pen. Code, § 487k); and grand theft where an employee steals from an employer (Pen. Code, §487, subd. (b)(3)).

This bill would create a new type of grand theft: the intentional theft of wages in an amount greater than \$950 from any one employee, or \$2,350 in the aggregate from 2 or more employees, by an employer in any consecutive 12-month period. The bill requires that the act be intentional and done by fraudulent or other unlawful means, with the knowledge that the wages are due to the employee under the law. This bill defines “wages” to include wages, gratuities, benefits, or other compensation. This bill would cover independent contractors within the definition of “employee” and the hiring entity of an independent contractor as an “employer.”

It appears that the existing theft statutes could be used to prosecute an employer who fails to pay their employees such as the grand theft statute (Pen. Code, § 487, subd. (a)) and the separate crime of fraudulently obtaining the labor or service of another (Pen. Code, § 532e). Separately, the Labor Commissioner is tasked with enforcing labor standards by adjudicating claims including wage claims. According to the proponents of this bill, wage theft is often seen as a civil issue and existing penalties are difficult to enforce and often are seen as the cost of doing business. Also, in regards to the general grand theft statute, an issue that has been raised is that it may be difficult for an employee who has had small amounts unlawfully taken from their paycheck or gratuities to prove the \$950 threshold of grand theft without language expressly authorizing aggregation.

4. Argument in Support

According to the Little Hoover Commission:

The Little Hoover Commission supports AB 1003 (Gonzalez), which would make an employer's intentional theft of wages punishable as grand theft when collectively greater than \$950. In its 2015 report, *Level the Playing Field: Put California's Underground Economy Out of Business*, the Commission found that the consequences for Labor Code violations did not incentivize voluntary compliance: The rewards of breaking the law outweigh the risk, it learned. Prosecutors explained that, 'White collar crimes are treated as a nuisance,' and stakeholders from multiple industries and levels of government told the Commission that the penalties "are meaningless and unenforced."

Though the Commission encouraged the state to work with business owners to correct honest mistakes, and conduct outreach and education to prevent them in the first place, it also found that a small minority of business owners intentionally build their profit model off of the underground economy, viewing fees and penalties as the cost of doing business. This profit model comes at the expense of the people in their employ and law-abiding business owners who are unable to compete with the cost savings of breaking the law. To incentivize compliance with its laws, the Commission urged the Legislature to assess existing penalties for white collar crimes and, where appropriate, make adjustments to ensure that rewards of breaking the law do not outweigh the risk or the penalties imposed if caught breaking the law.

5. Argument in Opposition

According to the Independent Physical Therapists of California:

California already boasts the most complicated wage and hour laws in the nation. Not even our Labor Commissioner and the courts can agree on how to interpret them. Now comes AB 1003 to propose that 'any violation' of these confusing and ever-changing laws that aggregate over any number of employees and any length of time in an amount greater than \$950 is prosecuted as grand theft.

Do not misunderstand, oversight of criminal activity and suitable consequences are necessary for a safe society. However, AB 1003 puts a barrier of suspicion between employees and their employer before their relationship has even begun.

As our State and Nation begin to emerge from the stranglehold Covid-19 has cruelly and disproportionately imposed on society this is not the time for complicating what is already complicated.

-- END --