Legislative Analysis

WAGE THEFT PENALTIES

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House Bill 4402 as introduced
Sponsor: Rep. Regina Weiss

House Bill 4403 as introduced
Sponsor: Rep. Will Snyder

House Bill 4404 as introduced
Sponsor: Rep. Penelope Tsernoglou

Committee: Labor
Complete to 12-5-24

SUMMARY:

Together, House Bills 4402, 4403, and 4404 would increase the penalties for wage theft and other violations of 1978 PA 390, which regulates the payment of wages and fringe benefits to employees. The bills would take effect 90 days after enactment.

House Bill 4403 would amend 1978 PA 390 to provide that an employer who does not pay the wages and fringe benefits that are due to an employee, with the intent to defraud, is guilty of a crime. Currently, an employer's failure to pay employees with an intent to defraud is a misdemeanor punishable by up to one year's imprisonment, a fine of up to $1,000, or both, in all circumstances.

House Bill 4403 would prescribe violations and penalties based on the value of the wages and benefits due to an employee.

If the wages and benefits have a value of less than $200, a first violation would be a misdemeanor punishable by up to 93 days' imprisonment, a fine of up to the greater of $500 or three times the value of the wages and benefits, or both. A subsequent violation would be a misdemeanor punishable by up to one year's imprisonment, a fine of up to the greater of $2,000 or three times the value of the wages and benefits, or both.

If the wages and benefits have a value of at least $200 but less than $1,000, a first violation would be a misdemeanor punishable by up to one year's imprisonment, a fine of up to the greater of $2,000 or three times the value of the wages and benefits, or both. A subsequent violation would be a felony punishable by up to five years' imprisonment, a fine of up to the greater of $10,000 or three times the value of the wages or benefits, or both.

If the wages and benefits have a value of at least $1,000 but less than $20,000, a first or second violation would be a felony punishable by up to five years' imprisonment, a fine of up to the greater of $10,000 or three times the value of the wages and fringe benefits, or both. A third or subsequent violation would be a felony punishable by up to 10 years' imprisonment, a fine of up to the greater of $15,000 or three times the value of wages and benefits owed, or both.

If the wages and benefits have a value of at least $20,000 but less than $50,000, a violation would be a felony punishable by up to 10 years' imprisonment, a fine of up to three times the value of the wages or benefits owed, or both.

If the wages and benefits have a value of at least $50,000 but less than $100,000, a violation would be a felony punishable by up to 15 years' imprisonment, a fine of up to three times the value of the wages and benefits owed, or both.

Finally, if the wages and benefits have a value of $100,000 or greater, a violation would be a felony punishable by up to 20 years' imprisonment, a fine of up to three times the value of the wages and benefits, or both.

MCL 408.485

House Bill 4402 is a companion bill to HB 4403 that would add the felonies proposed by HB 4403 to the sentencing guidelines provisions of the Code of Criminal Procedure.

A second or subsequent violation involving wages and benefits with a value of more than $200 but less than $1,000, or any violation involving a value of more than $1,000 but less than $20,000, would be a class E felony against the public trust with a statutory maximum term of imprisonment of five years.

A second or subsequent violation involving a value of more than $1,000 but less than $20,000, or any violation involving a value more than $20,000 but less than $50,000, would be a class D felony against the public trust with a statutory maximum term of imprisonment of 10 years.

A violation involving a value of more than $50,000 but less than $100,000 would be a class C felony against the public trust with a statutory maximum term of imprisonment of 15 years.

A violation involving a value of $100,000 or more would be a class B felony against the public trust with a statutory maximum term of imprisonment of 20 years.

The bill is tie-barred to House Bill 4403, meaning that it cannot take effect unless HB 4403 is also enacted.

MCL 777.14b

House Bill 4404 would amend 1978 PA 390 to increase the penalty for an employer who violates sections 2 to 8 of the act. Currently, such an employer must pay a penalty at the rate of 10% annually on the wages and fringe benefits due to an employee, beginning at the time an employer is notified that a complaint has been filed with the Department of Labor and Economic Opportunity (LEO) and ending when the payment is made. The bill would increase this to 100% of those wages and benefits. (Employers must also pay any wages or benefits due to the employee.)

Generally speaking, sections 2 to 8 of the act do the following:

- Section 2 requires employers to pay their employees on a regular schedule.

- Section 3 requires employers to pay all benefits as outlined in employment contracts and policies.
- Section 4 prohibits employers from withholding compensation due to an employee to be paid at their termination date without the employee's consent.
- Section 5 requires an employer to pay all earned wages to a former employee as soon as possible.
- Section 6 governs the methods that an employer may use to pay wages to employees.
- Section 7 prohibits employers from deducting from an employee's wages without the employee's consent unless expressly permitted by law or a collective bargaining agreement.
- Section 8 prohibits employers and their agents or representatives from requiring or receiving from an employee a fee, gift, tip, gratuity, or other remuneration or consideration as a condition of employment or continuation of employment.

The civil fine that LEO could assess to an employer for a violation would be increased from $1,000 to $10,000.

In addition, the act now allows LEO to order a violating employer to pay up to two times the amount of wages and benefits due to an employee, if the violation is flagrant or repeated. The bill would increase this limit to three times the amount of wages and benefits due.

MCL 408.488

FISCAL IMPACT:

House Bill 4403 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result from employers not paying wages and fringe benefits due to employees is not known. Violations could be either misdemeanors or felonies, depending on the value of the wages and fringe benefits owed. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly $48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about $5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue collected would increase funding used to support public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4402 is a companion bill to House Bill 4403 and would amend the sentencing guidelines chapter of the Code of Criminal Procedure to include new classes of felonies for violating provisions of the Payment of Wages and Fringe Benefits Act with intent to defraud.

Offenses would be based on values and would be either Class B, C, D, or E felony offenses against the public trust and would be punishable by a statutory maximum ranging from 5 years to 20 years depending on the class. The bill would not have a direct fiscal impact on the state or on local units of government.

House Bill 4404 would have an indeterminate fiscal impact on the state and on local units of government. Currently, the department is authorized to assess a civil fine of not more than $1,000 against an employer that violates provisions of the Payment of Wages and Fringe Benefits Act. Civil fine revenue collected is credited to the state general fund. Under the bill, the civil fine amount would be increased from $1,000 to $10,000. Because there is no practical way to determine the number of employers that would violate and be assessed a fine, an estimate of additional revenue the state would collect cannot be made. The fiscal impact on local court systems would depend on the number of civil actions initiated by the department and/or the attorney general and how the number of civil actions initiated affects court caseloads and related administrative costs.

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