



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 6 and 7 (as introduced 1-8-25)
Sponsor: Senator Kevin Hertel (S.B. 6)
Senator Darrin Camilleri (S.B. 7)
Committee: Labor

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INTRODUCTION

The bills would prohibit a person from treating an employee as an independent contractor. Generally, "independent contractor" would mean an individual free from the payer's control, doing work outside of the payer's usual business, and engaging in an independent trade for the payer. The bills would prescribe a misdemeanor penalty for a violation of this prohibition and further misdemeanor and felony penalties for an employer that did not pay an employee owed wages or fringe benefits. The bills also would require an employer to provide an employee with wage information for similarly situated employees upon the employee's request and penalize an employer for failing to do so. Finally, the bills would create the Wages and Fringe Benefits Fund for enforcement of these requirements.

Senate Bill 7 is tie-barred to Senate Bill 6. Senate Bill 6 would take effect 90 days after its enactment.

FISCAL IMPACT

Senate Bill 6 would have a minimal fiscal impact on the Department of Labor and Economic Opportunity (LEO). The bill would require LEO to update information in its Wage and Hours Division; however, the bill would not change the current operations of the unit, and so costs would only be incurred one time and would likely be supported by current appropriations.

Senate Bill 7 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

MCL 408.471 et al. (S.B. 6)
777.14b (S.B. 7)

Legislative Analyst: Alex Krabill
Fiscal Analyst: Joe Carrasco, Jr.
Cory Savino, PhD
Michael Siracuse

CONTENT

Senate Bill 6 would amend Public Act (PA) 390 of 1978, which regulates the payment of wages and fringe benefits, to do the following:

- Prohibit a person from classifying an employee as an independent contractor and prescribe penalties for a violation of this provision.
- Prohibit an employer from withholding wage information from an employee requesting the information about similarly situated employees and prescribe penalties for a violation of this provision.
- Prescribe penalties for an employer that did not pay an employee owed wages or fringe benefits with intent to defraud that employee, depending on the amount of unpaid wages and benefits.
- Allow an employee to file a written complaint to LEO for perceived retaliation or discrimination under the Act and require LEO to conceal the employee's identity if possible.
- Allow the Attorney General to initiate a civil action to enforce a LEO order.
- Require an employer to provide an employee with a written explanation of a court-ordered garnishment deduction at least one pay period or 10 business days, whichever was greater, before the wage payment affected by the deduction was made.
- Create the Wages and Fringe Benefits Fund within the Department of Treasury.
- Transfer enforcement of the Act from the Department of Licensing and Regulatory Affairs (LARA) to LEO, in accordance with Executive Reorganization Order 2019-3.

Senate Bill 7 would add sentencing guidelines to the Code of Criminal Procedure for penalties prescribed by **Senate Bill 6**.

Senate Bill 6 is explained in further detail below.

Senate Bill 6

Prohibit Treatment of Employee as Independent Contractor

Generally, PA 390 requires an employer to pay an employee's wages on a set schedule and fringe benefits according to the terms of the employee's contract or employer's policy.

"Employer" means an individual, sole proprietorship, partnership, association, or corporation, public or private; the State or an agency of the State; a city, county, village, township, school district, or intermediate school district; an institution of higher education; or an individual acting directly or indirectly in the interest of an employer who employs one or more individuals. Except as specifically provided in the franchise agreement, as between a franchisee and franchisor, the franchisee is considered the sole employer of workers for whom the franchisee provides a benefit plan or pays wages.

"Employee" means an individual employed by an employer. The bill specifies that the term would not include an independent contractor.

Under the bill, a person could not classify, report, or treat an employee as an independent contractor. A person alleged to have violated this prohibition would have the burden of proving, by a preponderance of the evidence, that the person did not classify, report, or treat the employee as an independent contractor. A person that, with the intent to defraud, violated

this prohibition would be guilty of a misdemeanor punishable by a fine of up to \$1,000, or imprisonment for up to one year, or both.

"Independent contractor" would mean an individual who performs work for a payer for remuneration and to whom all the following apply:

- The individual is free from control and direction of the payer in connection with the performance of the work, both under a contract and in fact.
- The individual performs work that is outside the usual course of the payer's business.
- The individual is customarily engaged in an independently established trade, occupation, or business of the same work performed by the individual for the payer.

"Payer" would mean a person that pays remuneration to an independent contractor for the work the independent contractor performs for the payer.

Additionally, if LEO collected a penalty or damages from an employer for violating the bill's prohibition on treating an employee as an independent contractor, LEO would have to pay to the affected employee half of the money collected, unless otherwise prohibited by law.

The Department also would have to order an employer that violated the prohibition to pay a penalty in an amount equal to the estimated Federal taxes and Medicare payments, if any, that would have been due the employee if the employer had not violated the prohibition. Unless otherwise prohibited by law, money collected under this method would have to be deposited into the Wages and Fringe Benefits Fund, which the bill would create.

Finally, LEO would have to notify the Department of Treasury and the Unemployment Insurance Agency of the violation.

Require Employer to Provide Wage Information

Currently, an employer must not do any of the following:

- Require as a condition of employment nondisclosure by an employee of the employee's wages.
- Require an employee to sign a waiver or other document which purports to deny an employee the right to disclose the employee's wages.
- Discharge, formally discipline, or otherwise discriminate against for job advancement an employee who discloses the employee's wages.

Additionally, the bill would prohibit an employer from failing to provide an employee with wage information for similarly situated employees covering a period of not more than three years before the date of the request within 30 days after an employee's request for the information. The employer could redact the names of similarly situated employees but would have to provide information about the sex and seniority of similarly situated employees for whom wage information was provided.

"Similarly situated employees" would mean employees who are within the same job classification as the employee requesting the information or whose duties are comparable in skill, effort, responsibility, working conditions, and training to those of the requesting employee. "Wage information" would include salary and hourly wage information as well as information about bonus pay, overtime pay, and other forms of compensation provided by the employer.

Currently, an employer who violates the Act, including failure to pay the wages and fringe benefits due an employee as provided in the Act, is guilty of a misdemeanor. Instead, under the bill, an employer that violated the Act would be guilty of a misdemeanor.

Additionally, an employer that violated the current and proposed prohibitions described above a second or subsequent time would be guilty of a felony punishable by imprisonment for up to two years, a fine of up to \$10,000, or both, for each violation.

Penalties for Violations of PA 390

Currently, LEO must order an employer who violates PA 390's requirements to pay the following:

- Wages due the employee.
- Fringe benefits due or on behalf of the employee in accordance with the written contract or written policy.
- A penalty at the rate of 10% annually on the wages and fringe benefits due the employee, beginning at the time the employer is notified that a complaint has been filed and ending when payment is made.

The bill would change the penalty rate from 10% to 100% annually on the wages and fringe benefits due to the employee.

In addition, under PA 390, LEO may order an employer that violates PA 390's requirements to pay to the employee exemplary damages of up to twice the amount of the wages and fringe benefits that were due the employee, if the violation is flagrant or repeated. The bill would increase, from two to three times, the amount of wages and fringe benefits that were due the employee.

Finally, LEO may order an employer that violates PA 390's requirements to pay attorney costs, hearing costs, and transcript costs. It also may assess a civil fine of up to \$1,000 against an employer for a violation. The civil fine must be credited to the General Fund of Michigan. The bill would increase the \$1,000 fine to a \$10,000 fine.

Under the bill, the penalty provisions described above also would apply to a violation of the bill's prohibition on treating an employee as an independent contractor.

Penalties for Defrauding an Employee

Currently, an employer that, with intent to defraud, fails to make payment of wages and fringe benefits due to an employee as provided in PA 390, is guilty of a misdemeanor, punishable by a fine of up to \$1,000 or imprisonment for up to one year, or both. Instead, under the bill, an employer that, with the intent to defraud, did not pay wages and fringe benefits due to an employee as provided in PA 390 would be guilty of a crime punishable as prescribed in the table below.

Value of Unpaid Wages and Fringe Benefits	Criminal Offense	Maximum Imprisonment	Maximum Fine
Less than \$200	Misdemeanor	93 days	Up to \$500 or three times the value of the wages and fringe benefits, whichever was greater
For a second or subsequent offense of less than \$200	Misdemeanor	One year	Up to \$2,000 or three times the value of the wages and fringe benefits, whichever was greater
Between \$200 and \$1,000	Misdemeanor	One year	Up to \$2,000 or three times the value of the wages and fringe benefits, whichever was greater
For a second or subsequent offense of between \$200 and \$1,000	Felony	Five years	Up to \$10,000 or three times the value of the wages and fringe benefits, whichever was greater
Between \$1,000 and \$20,000	Felony	Five years	Up to \$10,000 or three times the value of the wages and fringe benefits, whichever was greater
For a third or subsequent offense of between \$1,000 and \$20,000	Felony	10 years	Up to \$15,000 or three times the value of the wages and fringe benefits
Between \$20,000 and \$50,000	Felony	10 years	Up to three times the value of the wages and fringe benefits
Between \$50,000 and \$100,000	Felony	15 years	Up to three times the value of the wages and fringe benefits
\$100,000 or more	Felony	20 years	Up to three times the value of the wages and fringe benefits

Employee Complaint to LEO

Generally, Section 11 of PA 390 allows an employee who believes that that employee's employer has violated the Act to file a written complaint with LEO within one year of the allegation. Section 11 prescribes the process for informal resolution of the complaint, and if informal resolution is not possible, the process for a contested case hearing to resolve the dispute. Under the bill, LEO could not disclose to the employer the identity of the employee, to the extent allowed by law, if requested by an employee who filed a complaint against an employer under Section 11.

Section 13 of PA 390 prohibits an employer from discharging an employee or discriminating against an employee because the employee filed a complaint, instituted a proceeding under or regulated by the Act, testified or is about to testify in a proceeding, or because of the exercise by the employee on behalf of an employee or others of a right afforded by the Act. An employee who believes that the employee is discharged or otherwise discriminated against by an employer in violation of the above provision may file a complaint with LEO alleging the discrimination within 30 days of the violation. Upon receipt of the complaint, LEO must cause an investigation to be made. Under the bill, Section 13 also would apply to retaliation against an employee.

Allow Attorney General to Initiate Civil Action

Currently, the Director of LEO must initiate, in the county where the violation occurred, in

Ingham County, or in the county where the employer has its principal office, the civil action necessary to enforce an order that has become a final agency order as prescribed in the Act.

The bill would allow the Attorney General to initiate the civil action listed above.

Regular Wage Payments for a Default Judgement

Currently, if an employee pays any amount of an employee's debt under a court-ordered garnishment of periodic payments, the employer may deduct that amount from the employee's regularly scheduled wage payment without the written consent of the employee if certain conditions are met.¹ Among other conditions, the employer must provide the employee with a written explanation of the deduction at least one pay period before the wage payment affected by the deduction is made. Instead, under the bill, the employer would have to provide the employee with a written explanation of the deduction at least one pay period *or 10 business days, whichever is greater*, before the wage payment affected by the deduction was made.

Wages and Fringe Benefits Fund

The bill would create the Wages and Fringe Benefits Fund in the State Treasury. The State Treasurer would have to deposit money and other assets received from any source into the Fund. The State Treasurer would have to direct the investment of the money in the Fund and credit interest and earnings from the investments to the Fund. Money in the Fund at the close of the fiscal year would have to remain in the Fund and not lapse to the General Fund.

The bill would establish LEO as the administrator of the Wages and Fringe Benefits Fund for auditing purposes and would require LEO to spend money from the Fund upon appropriation only to enforce the Act.

¹ Section 4012 of the Revised Judicature Act governs garnishment of periodic payments. Garnishment is a court process that allows a creditor to collect periodic payments out of a debtor's paycheck or bank account to pay down on a debt.