

Senate Bill No. 390

CHAPTER 718

An act to amend Section 227 of the Labor Code, relating to employment.

[Approved by Governor October 10, 2013. Filed with
Secretary of State October 10, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 390, Wright. Employee wage withholdings: failure to remit.

(1) Existing law makes it a crime for an employer to fail to make agreed-upon payments to health and welfare funds, pension funds, or various benefit plans. Existing law provides that the crime be punished as a felony or a misdemeanor, as specified, if the amount unpaid exceeds \$500, and as a misdemeanor, if the amount is less than \$500.

This bill would make it a crime, as described above, for an employer to fail to remit withholdings from an employee's wages that were made pursuant to state, local, or federal law. The bill would prescribe how recovered withholdings or court-imposed restitution, if any, are to be forwarded or paid. By broadening the definition of a crime, this bill would impose a state-mandated local program.

(2) 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. Section 227 of the Labor Code is amended to read:

227. If an employer has made withholdings from an employee's wages pursuant to state, local, or federal law, or has agreed with any employee to make payments to a health or welfare fund, pension fund, or vacation plan, or other similar plan for the benefit of the employees, or a negotiated industrial promotion fund, or has entered into a collective bargaining agreement providing for these payments, it shall be unlawful for that employer willfully or with intent to defraud to fail to remit the withholdings to the proper agency or to fail to make the payments required by the terms of that agreement. A violation of any provision of this section when the amount the employer failed to pay into the fund or funds exceeds five hundred dollars (\$500) shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for a period of not more than one year, by a fine of not more than one thousand

dollars (\$1,000), or by both that imprisonment and fine. All other violations shall be punishable as a misdemeanor. In a criminal proceeding under this section, any withholdings that are recovered from an employer shall be forwarded to the appropriate fund or plan and, if restitution is imposed, the court shall direct to which agency, entity, or person it shall be paid.

SEC. 2. 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.