



April 22, 2021

The Honorable Reginald Byron Jones-Sawyer Sr.
 Chair, Assembly Committee on Public Safety
 Legislative Office Building
 1020 N Street, Room 111
 Sacramento, CA 95814

Re: AB 1003 (Gonzalez): Wage theft: grand theft – OPPOSE

Dear Chair Jones-Sawyer:

On behalf of the above business organizations in the Inland Empire, we write to express our opposition to AB 1003, which would make the intentional theft of wages in an amount greater than \$950, in aggregate, by an employer from one or more employees, punishable as grand theft.

AB 1003 would subject employers of all sizes, including individual owners, to criminal liability/jail time for good faith wage disputes totaling \$950.00 or more, even when the employer is simply following the advice of the state Labor Commissioner. This broad criminalization of a failure to pay wages is overly vindictive and likely violates Article I, Section 10 of the California Constitution that prohibits criminal liability for failure to pay a debt without intent to commit fraud.

Although AB 1003 includes the phrase “intentional theft of wages”, “intentional” has been interpreted in the wage context to include actions where the employer made a good faith error. See, e.g., *Novoa v. Charter Communications, LLC*, 100 F. Supp. 3d 1013, 1027-28 (E.D. Cal. 2015)

(courts overwhelmingly agree that a defendant’s good faith belief that it was following the law is not a defense as to whether the employer acted knowingly and intentionally for penalties under Labor Code section 226). Further, it is evident from the cases cited in the author’s Fact Sheet that she intends to criminalize companies that are defendants in civil actions over wage disputes, not only those who act maliciously. To the extent that AB 1003 is seeking to impose imprisonment on employers for good faith mistakes, with no intent to commit fraud, it likely violates the Constitution.

California has the most onerous wage and hour laws in the country, and often differs from federal law. Their interpretation and application changes with court decisions, and the Labor Commissioner and courts often disagree on the proper interpretation. One of the most notable examples is the Dynamex decision issued in April 2018, that completely changed the analysis of who is an independent contractor versus an employee, and was applied retroactively to such analyses. Under this example, an employer was liable for failing to properly classify an individual as an employee under the ABC test in 2017, even though the employer never knew the ABC test existed in California until the Dynamex decision was issued, and the Labor Commissioner advised employers to follow the prior Borello test.

If AB 1003 had been in effect at the time the Dynamex decision was issued, employers could have been held criminally liable for “intentionally” applying the Borello test from 2014-2018, as advised to do so by the state Labor Commissioner. This ridiculous scenario will be repeated time and again, with vast consequences, from the viability of small businesses to decisions by employers to flee to other states – all with severe ramifications on job growth.

For these reasons and others, we urge you to oppose AB 1003. If you have any questions or would like to discuss our position in greater detail, please contact Luis Portillo at 909-944-2201 or by email at lportillo@ieep.com. Thank you.

Sincerely,

Bette Rader Beaumont Chamber of Commerce	Ellen Clarke Big Bear Chamber of Commerce	Zeb Welborn Chino Valley Chamber of Commerce
Bobby Spiegel Corona Chamber of Commerce	Andrea De Leon Fontana Chamber of Commerce	Joshua Bonner Greater Coachella Valley Chamber of Commerce

<p>Mark Creffield Greater High Desert Chamber of Commerce</p>	<p>Peggi Hazlett Greater Ontario Business Council</p>	<p>Cyndi Lemke Hemet San Jacinto Chamber of Commerce</p>
<p>Chris Nielsen Highland Chamber of Commerce</p>	<p>Paul Granillo Inland Empire Economic Partnership</p>	<p>Maneesha Jones Menifee Valley Chamber of Commerce</p>
<p>Oscar Valdepeña Moreno Valley Chamber of Commerce</p>	<p>Patrick Ellis Murrieta/Wildomar Chamber of Commerce</p>	<p>Ignacio Valdivia Perris Valley Chamber of Commerce</p>
<p>Monique Manzanares Pomona Chamber of Commerce</p>	<p>Robert Hufnagel Rancho Cucamonga Chamber of Commerce</p>	<p>John Mills Redlands Chamber of Commerce</p>
<p>Emily Falappino Temecula Valley Chamber of Commerce</p>	<p>Peggy Robertson Upland Chamber of Commerce</p>	

Cc: Assembly Member Lorena Gonzalez