

Honolulu, Hawaii

MAR 21 2014

RE: H.B. No. 1814
H.D. 2
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 1814, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PAYMENT OF WAGES,"

begs leave to report as follows:

The purpose and intent of this measure is to clarify and
provide alternative methods for the payment of wages.
Specifically, this measure:

- (1) Adds definitions of "pay card" and "pay card account" to
chapter 388, Hawaii Revised Statutes, relating to the
payment of wages and other compensation;
- (2) Authorizes an employer to pay all wages due to the
employer's employees by:
 - (A) Direct deposit to the employee's account at a
financial institution;
 - (B) An electronic funds transfer or similar means of
direct deposit to the employee's account a
financial institution under certain conditions; and
 - (C) Use of a pay card or similar means of an electronic
payment card onto which an employer, or an entity
on an employer's behalf, transfers or loads the
employee's wages under certain conditions;



- (3) Clarifies that pay cards are not subject to the Money Transmitters Act under chapter 489D, Hawaii Revised Statutes, if the pay card does not permit funds to be transmitted internationally, transfers between or among users within the arrangement, or loading additional funds from non-depository sources; and
- (4) Amends section 388-5.5, Hawaii Revised Statutes, to clarify that whenever an employee receives the employee's wages from the employee's employer by direct deposit for which insufficient amounts are available in the bank account of the employer, the employer is liable for any resultant bank special handling fees the employee may incur.

Your Committee received testimony in support of this measure from the Hawaii Bankers Association, Americans for Democratic Action/Hawaii, Progressive Democrats of Hawaii, Hawaii Financial Services Association, and one individual. Your Committee received testimony in opposition to this measure from Chamber of Commerce Hawaii and Retail Merchants of Hawaii. Your Committee received comments on this measure from the Department of Labor and Industrial Relations; Office of Consumer Protection, Department of Commerce and Consumer Affairs; Division of Financial Institutions, Department of Commerce and Consumer Affairs; American Payroll Association; Visa, Inc.; and First Data.

Your Committee finds that the intent of chapter 388, Hawaii Revised Statutes (chapter 388), is to protect the payment of workers' wages and other compensation, encourage employers to pay wages promptly, and reduce workers' economic losses. Chapter 388 only addresses payment methods of cash or check convertible to cash but does not specify payment methods through direct deposits or pay cards.

Your Committee notes that the Department of Labor and Industrial Relations has long recognized the voluntary use of direct deposits as a method that satisfies the payment of wages. Under direct deposit, the employee's wages are directly deposited into the employee's personal bank account, which is similar to direct payment by cash or check in the hands of the employee. The Hawaii Bankers Association testified that approximately eighty-five percent of all employees in Hawaii are paid by direct deposit. This measure modernizes chapter 388 to reflect direct



deposit as a current practice in the payment of wages under certain conditions.

Your Committee further notes that there is an increasing number of employers who pay their employees through the use of a payroll card or pay card. The Hawaii Bankers Association testified that approximately fourteen thousand employees receive their wages through this method of payment. The use of pay cards is a far more expedient, more convenient, and less expensive wage payment method than the receipt of a paper paycheck twice or more per month. The Hawaii Bankers Association testified that pay cards serve two groups of employees, the unbanked (employees without a bank account) and under-banked (employees with a bank account that is not used by the employee). A pay card will allow unbanked or under-banked employees to receive wages without having to cash their paper paychecks at a check cash establishment and pay a service charge. This measure provides the unbanked or under-banked workforce the benefits of electronic wage payment even though these employees do not have or rarely use their bank accounts.

Your Committee notes the concerns raised in testimony submitted by various stakeholders, including the Department of Labor and Industrial Relations, Department of Commerce and Consumer Affairs, Hawaii Bankers Association, and Hawaii Financial Services Association. Your Committee appreciates these entities developing language to address these concerns but recognizes that this measure continues to be a work in progress. Your Committee further notes that the Director of Labor and Industrial Relations recently issued a notice that the Department is suspending its policy allowing the use of payroll or debit cards until the Legislature address this policy issue. Therefore, your Committee believes the concerns regarding this measure merit further discussion as it moves through the legislative process so that employees may take advantage of the electronic payment of wages.

Accordingly, your Committee has amended this measure by adopting the language suggested by the Department of Labor and Industrial Relations, Department of Commerce and Consumer Affairs, Hawaii Bankers Association, and Hawaii Financial Services Association to:

- (1) Add a definition of "electronic transfer";



- (2) Amend the definition of "pay card" as a prepaid card issued by a depository institution authorized to accept deposits and whose deposits are federally insured, among other requirements;
- (3) Clarify that an employer shall not pay wages dues to the employer's employees by use of a pay card onto which an employer, or an entity on an employer's behalf, transfers or loads the employee's wages unless certain conditions are met, including:
 - (A) An employer shall not require an employee to use a pay card, provided that the employer does not require participation in a pay card program as a condition for hire or continual employment and the employer offers direct deposit or paper check as a payment method;
 - (B) The employee voluntarily authorizes in writing to accept payment of wages via the pay card or pay card account, which shall be indicated in a separate form with an itemized list of any fees assessed for the use of the pay card;
 - (C) The pay card is a prepaid card issued by a depository institution authorized to accept deposits and whose deposits are federally insured;
 - (D) The employee shall have the ability to withdraw the employee's full net wages at least three times per payroll period without incurring any costs or fees;
 - (E) The employee's pay card account shall be separate from all other employees, for the sole benefit of the named employee, and not subject to the claims of the employer's creditors;
 - (F) The funds on a pay card shall not expire, and if the pay card account is closed for inactivity the remaining funds shall be refunded to the employee at no cost to the employee;
 - (G) The employer shall ensure that the pay card account provides one free replacement pay card per year at

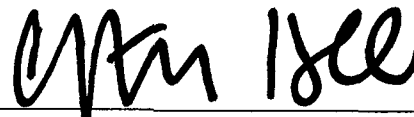


no cost to the employee before the pay card's expiration date, under certain conditions; and

- (H) At least thirty days prior to any change to the pay card program taking effect, the employer shall provide the employee written notice of any terms and conditions of the pay card account, including any changes in the itemized list of fees;
- (4) Delete references to "similar means of an electronic payment card" to ensure that pay cards are subject to Regulation E and its many consumer protections;
- (5) Delete language that made pay cards not subject to the Money Transmitters Act under chapter 489D, Hawaii Revised Statutes, because the issuance of pay cards does not involve money transmission; and
- (6) Make technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1814, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1814, H.D. 2, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



