

STAND. COM. REP. NO. **3350**

Honolulu, Hawaii

APR 04 2014

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

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

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 1814, H.D. 2, S.D. 1, 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:

- (1) Clarify that employers may pay wages by direct deposit under certain conditions;
- (2) Allow employers to pay wages by pay cards under certain circumstances; and
- (3) Make employers responsible for any fees incurred if an employer has insufficient funds in the employer's bank account for an electronic transfer.

Your Committee received testimony in support of this measure from the Hawaii Bankers Association. Your Committee received testimony in opposition to this measure from the Department of Labor and Industrial Relations, Hawaii Financial Services Association, Chamber of Commerce Hawaii, and Hawaii Regional Council of Carpenters. Your Committee received comments on this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs, Division of Financial Institutions of the Department of Commerce and Consumer Affairs,



Progressive Democrats of Hawai'i, American Payroll Association, and Visa, Inc.

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 further finds 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. According to testimony from the Hawaii Bankers Association, 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 additionally finds from testimony of the Hawaii Bankers Association that approximately fourteen thousand employees in Hawaii receive their wages through a pay card. 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 allows 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.

Your Committee also finds that numerous consumer protection concerns have been raised throughout the nation over the use of pay cards. These concerns deal primarily with the lack of regulation on the number and type of fees imposed when the pay cards are used and a lack of transparency associated with inadequate or nonexistent disclosure of fees and conditions to unsuspecting employees who are paid via pay card. This measure provides employers with the option to pay their employees by pay cards. However, amendments to this measure are necessary to ensure additional protections for employees who voluntarily authorize the payment of their wages via a pay card.

Accordingly, your Committee has amended this measure by:



- (1) Moving provisions that established requirements for paying wages to an employee by use of a pay card from section 388-2, Hawaii Revised Statutes, into a new section in chapter 388, Hawaii Revised Statutes, relating to payment of wages by pay card, and further clarifying that an employer shall not pay wages due to an employer's employee by use of a pay card unless certain requirements are satisfied, including:
 - (A) Specifying that an employee must be given the option of receiving the employee's wages by direct deposit or paper check and the option of receiving payment by pay card before the employee selects either direct deposit or paper check;
 - (B) Clarifying that the employee's voluntary authorization of the payment of wages using a pay card shall be in writing or via electronic signature;
 - (C) Requiring the employer to provide the employee, in plain language in at least ten-point font, with a description of the employee's options for receiving wages; a disclosure of fees from the pay card; written notice that states whether third parties may assess additional fees relating to the use of the pay card; and a list of services available to the employee;
 - (D) Requiring the employer to select an issuer that offers employees a process for disputing pay card account fees that have been assessed in a manner inconsistent with the pay card fee schedule;
 - (E) Requiring the employer to honor a written request by the employee to change the method of receiving wages from a pay card to another method within two pay periods of the written request;
 - (F) Clarifying that the pay card on which the employee may receive wages will not charge for the application, initiation, transfer, loading, privilege of participation, or distribution or delivery of the initial pay card;



- (G) Clarifying that the employee has the ability to make at least three free withdrawals from the pay card, one of which permits withdrawal of the full amount of the balance on the card at a federally insured depository institution or at that institution's affiliated automated teller machines;
- (H) Clarifying that the employee must have the means to access balance or other account information online or via other automated system at all times and without charging a fee and the ability to close a pay card account and obtain payment of the balance remaining on the card;
- (I) Specifying that the pay card shall not impose fees based on an employee's account balance;
- (J) Clarifying that the one free replacement card per year must be provided to the employee at no cost at least fifteen days before the pay card's expiration date;
- (K) Specifying that pooled pay card accounts shall be permitted; provided that each subaccount shall be for the sole and exclusive benefit of the named employee, and not subject to the claims of the employer's creditors; provided further that each employee's pay card account shall be eligible for deposit insurance on a pass through basis;
- (L) Clarifying that a pay card account may be closed after six continuous months of inactivity and with reasonable notice to the employee;
- (M) Requiring an employer to deposit all wages owed to an employee into the employee's pay card account on or before the employee's designated payday and specifying that the employee shall be deemed to have been paid wages owed at the time the wages are deposited and the employee has access to those wages;
- (N) Specifying that the employer shall not be held liable for a delay of an employee's access to wages due to an error by the issuer, as long as the



employer deposited the proper amount of wages into the employee's account on or before the designated payday and the employer is otherwise in compliance with the pay card requirements of the new section in chapter 388, Hawaii Revised Statutes;

- (O) Specifying that an employer shall be liable for any wages due and not timely paid onto a pay card or other elected method of payment;
 - (P) Requiring the employer to provide twenty-one days prior notice, rather than thirty days, to any change to the pay card program, and requiring this notice to be provided in plain language in at least ten-point font; and
 - (Q) Specifying that the employer's obligation shall cease sixty days after the employer-employee relationship ends and the employee has been paid the employee's final wages;
- (2) Adding definitions for "issuer", and "pay card fee schedule";
 - (3) Clarifying the definitions of "pay card" and "pay card account";
 - (4) Inserting a purpose section;
 - (5) Retaining the defective date of this measure but providing that the provisions of this measure applicable to pay cards shall take effect with the payroll period beginning September 1, 2014, and the provisions of this measure applicable to direct deposit and electronic transfer shall take effect upon approval; and
 - (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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



Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



