



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 19, 2014

To: The Honorable Angus L.K. McKelvey, Chair,
The Honorable Derek S.K. Kawakami, Vice Chair, and
Members of the House Committee on Consumer Protection and Commerce

Date: February 19, 2014
Time: 3:00 p.m.
Place: Conference Room 325, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 1814 H.D. 1 Relating to Payment of Wages

I. OVERVIEW OF PROPOSED LEGISLATION

HB1814 HD1 proposes to amend Chapter 388, Hawaii Revised Statutes (HRS), to clarify that wages may be paid through electronic transfer by direct deposit into the employee's personal bank account on a voluntary basis. Prohibits the use of debit cards or similar pay card methods unless the employee is not required to use it, any costs connected to the card are paid by the employer, the employee can cancel the card, and has access to the balance and history of the card and the employer provides liability protection against fraud and identity theft associated with the use of the card.

The department strongly supports this proposal and suggests amendments that will help modernize Hawaii's Wage and Hour Law and help protect workers' hard-earned pay.

II. CURRENT LAW

The intent of chapter 388, HRS, is to protect the payment of workers' wages and other compensation. The intent of the Legislature in chapter 388, which is clear and unambiguous in its plain language, is also to encourage employers to pay wages promptly and reduce workers' economic losses.

§388-6 Withholding of wages only permits two kinds of specific deductions from employee's paychecks:

1. "...except where required by federal or state statute or by court process..."

2. " or when such deductions or retentions are authorized in writing by the employee," This provision was intended for deductions for fringe benefits like health insurance, retirement payments, etc.

Moreover, under §388–10, a violation of §388–6 subjects the employer to a civil penalty of twice the unpaid wages, plus interest at 6% per year. Clearly, the statute provides very strong protections for the wages due workers.

However, chapter 388 currently only addresses payment methods of cash or checks convertible to cash. The law does not explicitly address payment of wages through direct deposits or pay cards.

III. COMMENTS ON THE HOUSE BILL

Although not stated, the department has long recognized voluntary use of direct deposits as satisfying the required method for wage payments. The bank in which the wages are directly deposited is the employee's personal bank account that is similar to direct payment by cash or check in the hands of the employee. The employee may write as many checks as they wish to pay bills or other expenses, and withdraw as much or as little as they choose. This proposal, if enacted, will make clear such arrangements for direct deposit are permitted within reasonable accommodations.

The department began allowing the payment of wages by electronic means under the previous administration.

The DLIR offers two amendments for the Committee's consideration:

1. It is important that the pay card/debit card account must be for the sole and exclusive benefit of the named employee and not subject to the claims of the employer's creditors as in direct deposits. This will ensure that wages paid to the employee will go to the employee as intended. The department suggests that the following language be inserted in SECTION 1, page 3, starting on Line 12 of the bill to address this concern: (only the suggested amendment is underlined)

(e) An employer shall not pay wages due to the employer's employees by use of a pay card, debit card, automated teller machine 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 unless the following conditions are met:

(1) The employee's debit card account must be separate from all other employees, for the sole and exclusive benefit of the named employee and not subject to the claims of the employer's creditors.

~~[(1)]~~ (2) The employer shall not mandate an employee's use of a pay card, debit card, automated teller machine card, or similar means of electronic payment card and the employee authorizes in writing deposit to the means of electronic payment.

As mentioned above in regards to §388-6, the intent of the existing statute is for workers to elect in to deductions from their paychecks through written authorization, therefore, to maintain the consistency and intent of the statute the DLIR suggests the employee should have to authorize this alternative method of payment in writing.

2. The department also has a concern when the employer has insufficient funds to cover the electronic transfer of funds into an employee's account. In Section 2, we recommend including deposits by "electronic transfer" into the protection against fees that is currently available for payment by checks.

The suggested amendment would read:

§388-5.5 Payment of wages by check[.] or electronic transfer. Whenever an employee receives the employee's wages from the employee's employer in the form of a check or by electronic transfer for which insufficient amounts are available in the bank account of the employer, the employer shall be liable for any bank's special handling fee which the employee may incur by reason of negotiating the check[.] or the electronic transfer."

In light of this legislation to clarify the law, as of April 1, 2014, the State is reconsidering its current policy on the use of pay cards instituted by the previous administration.

NEIL ABERCROMBIE
GOVERNOR



DWIGHT TAKAMINE
DIRECTOR

JADE T. BUTAY
DEPUTY DIRECTOR

MILA KA'AHANUI
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 18, 2014

To: The Honorable Angus L.K. McKelvey, Chair,
The Honorable Derek S.K. Kawakami, Vice Chair, and
Members of the House Committee on Consumer Protection and Commerce

Date: Wednesday, February 19, 2014
Time: 3:00 p.m.
Place: Conference Room 325, State Capitol

From: Mila Kaahanui, Executive Director
Office of Community Services

POSITION: Strong Support

Re: H.B. No. 1814 H.D. 1 Relating to Payment of Wages

The Office of Community Services (OCS) joins the Department of Labor and Industrial Relations (DLIR) in expressing strong support for the passage of this consumer protection measure, as amended.

OCS is the State agency tasked by law, under HRS Chapter 371K, to take a lead responsibility for advancing the interests of immigrants, refugees, and economically disadvantaged people in Hawaii. Our client communities often lack adequate financial literacy to protect themselves from predatory banking or credit services. This measure would provide protections and safeguards for employees who choose to receive their wages by electronic payment cards.

Thank you for the opportunity to testify in support of this measure.



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-SEVENTH
REGULAR SESSION OF 2014

FEBRUARY 19, 2014
3:00 PM

TESTIMONY IN SUPPORT OF H. B. 1814, H.D. 1, RELATING TO PAYMENT OF WAGES.

TO THE HONORABLE ANGUS L. K. McKELVEY, CHAIR,
AND TO THE HONORABLE DEREK S. K. KAWAKAMI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify in support of H.B. 1814, H.D. 1, Relating to Payment of Wages. My name is Bruce B. Kim and I am the Executive Director of OCP.

H.B. 1814, H.D. 1 precludes an employer from mandating that an employee be paid exclusively by electronic payment card. It provides that employees shall not bear any of the costs or fees for the withdrawal of earned wages. It requires that the employer assume or otherwise absorb fees or costs imposed by a financial institution

for the use of the electronic payment card. It provides that an employee may cancel the use of an electronic payment card with reasonable notice to the employer. It requires the employer to make available to the employee the employee's balance by telephone, a readily accessible electronic history of the employee's account transactions covering at least sixty days preceding the date the employee accesses the account and provide a written history of the account covering sixty days prior to the request. It further provides that the employer shall provide liability protections against fraud and identity theft associated with the use of an employer-issued electronic payment card.

OCP notes that numerous consumer concerns have been raised throughout the nation over the use of payroll cards. These concerns deal primarily with the lack of regulation on the number and type of fees imposed when the cards are used and inadequate or non-existent disclosures of fees incurred by unsuspecting workers who are paid via payroll cards.

The federal Electronic Funds Transfer Act ("EFTA") and Regulation E, which implements EFTA, stipulates the conditions under which a payroll card can be offered to employees. See 12 CFR § 1005.1, et seq. Regulation E prohibits employers from making employees accept payment of wages via payroll card and mandates a number of fee disclosure requirements at the time the employee's account is opened. Regulation E is enforced by Consumer Financial Protection Bureau ("CFPB") which, in September of 2013, issued guidance on the use of payroll cards, noting that state laws are not considered inconsistent with the EFTA and Regulation E if the state law affords

Testimony on H. B. 1814, H.D. 1
February 19, 2014
Page 3

consumers greater protections than afforded by EFTA and Regulation E,” and that EFTA and Regulation E do not prevent states from adopting such additional protections. A copy of the CFPB’s Bulletin 2013-10 (Sept. 12, 2013) is attached hereto.

OCP believes H.D. 1 addresses important consumer protection concerns consistent with Regulation E, including making payroll cards optional, and protecting employees who elect to be paid via payroll card from having fees and charges deducted from their earnings each time they withdraw earnings through the payroll card.

Thank you for allowing me to testify today. If members of the committee have any questions, I would be happy to answer them.



Consumer Financial
Protection Bureau

1700 G Street NW, Washington, DC 20552

CFPB Bulletin 2013-10

Date: September 12, 2013

Subject: Payroll Card Accounts (Regulation E)

The Consumer Financial Protection Bureau (CFPB or the Bureau) is issuing this bulletin to reiterate the application of the Electronic Fund Transfer Act (EFTA) and Regulation E, which implements the EFTA, to payroll card accounts. Payroll card accounts are accounts that are established directly or indirectly through an employer, and to which transfers of the consumer's salary, wages, or other employee compensation are made on a recurring basis.¹

The EFTA generally covers the electronic transfer of funds to and from consumers' accounts.² Since 2006, Regulation E,³ which implements the EFTA, has defined the term "account" to include a "payroll card account" and covers such accounts "whether ... operated or managed by the employer, a third party payroll processor, a depository institution or any other person."⁴ Thus, employees whose wages are deposited onto a payroll card are entitled to the protections of the EFTA generally, and Regulation E's provisions applicable to payroll cards specifically.

The protections in Regulation E for consumers who receive wages on a payroll card mirror those available to consumers who make electronic fund transfers (EFTs) generally with some exceptions. These protections include the following:⁵

- **Disclosures:** Under Regulation E, payroll card holders are entitled to receive initial disclosures of any fees imposed by the financial institution for EFTs or for the right to make such transfers. The financial institution must also provide to cardholders initial

¹ 12 CFR 1005.02(b)(2).

² See EFTA §§ 901 *et seq.*, 15 USC 1693 *et seq.*

³ 12 CFR part 1005.

⁴ 12 CFR 1005.2(b)(2).

⁵ See 12 CFR 1005.18(a).

disclosures containing, among other things, details regarding limitations on liability and the types of EFTs they may make with the card.⁶

Regulation E requires that these disclosures be made at account opening or before the first transfer occurs,⁷ although some state laws dictate that certain information be provided before an employee elects to receive wages via payroll card. Regulation E also provides that the disclosures be “clear and readily understandable, in writing, and in a form the consumer may keep.”⁸

- **Access to account history:** A payroll card issuer must either provide periodic statements as required by Regulation E generally, or alternatively must make available to the consumer (1) the consumer’s account balance, by telephone; (2) an electronic history, such as through an Internet web site, of the consumer’s account transactions covering at least 60 days preceding the date the consumer electronically accesses the account; and (3) upon the consumer’s oral or written request, promptly provide a written history of the consumer’s account transactions covering at least 60 days prior to the request. The history of account transactions provided electronically or upon request must set forth the same type of information required on periodic statements under Regulation E generally, including transaction information and the amount of any fees imposed during the 60 day period for EFTs, the right to make EFTs, or account maintenance.⁹
- **Limited liability for unauthorized transfers:** With limited exceptions regarding the period within which an unauthorized transfer must be reported, Regulation E’s limited liability protections fully apply to payroll cards.¹⁰
- **Error resolution rights:** Financial institutions must respond to a consumer’s report of errors regarding a payroll card account if the report is received within 60 days of the consumer either accessing account history or receiving a written account history on which the error appears, whichever is earlier, or within 120 days after the alleged error occurs.¹¹

⁶ 12 CFR 1005.7 and 1005.18(c)(1).

⁷ 12 CFR 1005.7(a).

⁸ 12 CFR 1005.4(a)(1).

⁹ 12 CFR 1005.9(b), 1005.18(b) and (c).

¹⁰ 12 CFR 1005.6 and 1005.18(c)(3).

¹¹ 12 CFR 1005.11 and 1005.18(c)(4).

In addition to these protections for holders of payroll cards, Regulation E states clearly that no “financial institution *or other person*” can mandate that an employee receive direct deposit into an account at a particular institution.¹² Said another way, Regulation E prohibits employers from mandating that employees receive wages only on a payroll card of the employer’s choosing.

Regulation E permits an employer to require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit.¹³ Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.¹⁴ Thus, an employer may not require that its employees receive their wages by electronic transfer to a payroll card account at a particular institution. An employer may, however, offer employees the choice of receiving their wages on a payroll card or receiving it by some other means. Permissible alternative wage payment method(s) are governed by state law, but may include direct deposit to an account of the employee’s choosing, a paper check, cash, or other evidence of indebtedness.

Most states’ laws contain additional restrictions on the manner in which employers may make wages available to their employees, sometimes specifically addressing payment of wages via payroll card, or calling for particular alternatives to payroll cards. The Bureau notes that the EFTA and Regulation E preempt state laws “relating to” EFTs, among other things, only to the extent of any inconsistency between the state laws and the EFTA / Regulation E. A state law is not considered inconsistent with the EFTA and Regulation E if the state law affords consumers greater protections than afforded by the EFTA and Regulation E.¹⁵

Finally, the Bureau notes that it has supervisory authority over larger depository institutions engaged in, among other things, providing payroll cards.¹⁶ That authority includes the ability to examine supervised entities’ use of third-party service providers, to assess both the supervised

¹² 12 CFR 1005.10(e)(2) and comment 10(e)(2)-1 (emphasis added). As the Federal Reserve Board explained in 2006, Regulation E’s compulsory use provisions “apply to payroll card accounts because they are established as accounts for the receipt of EFTs of salary.” 71 FR 1473, 1476 (Jan. 10, 2006).

¹³ 12 CFR 1005.10(e)(2) and comment 10(e)(2)-1.

¹⁴ *Id.*

¹⁵ EFTA § 922, 15 USC 1693q, 12 CFR 1005.12(b).

¹⁶ The Bureau also has supervisory authority over, among others, non-depository larger participants in consumer financial product or service markets, as defined by rule, and over non-depository covered persons engaging, or who have engaged, in conduct posing risks to consumers with regard to the offering or provision of consumer financial products or services. 12 USC 5514(a)(1)(B) and (C). *See also* 12 CFR parts 1090 and 1091.

entity's and service provider's compliance with federal consumer financial laws, including the EFTA and Regulation E.¹⁷

The Bureau is also authorized, subject to certain exceptions, to enforce the EFTA and Regulation E against any person subject to the Regulation, including financial institutions *and* employers.¹⁸ In addition, subject to certain exceptions, the Bureau has enforcement authority over covered persons offering or providing certain consumer financial products or services – including payroll cards – under the Consumer Financial Protection Act.¹⁹ In exercising our enforcement authority, our goals are to be proactive about identifying violations, stopping violations before they grow into systemic problems, maximizing remediation to consumers, and deterring future violations.

This bulletin and other information related to Regulation E are available on the CFPB's website at www.consumerfinance.gov.

¹⁷ See CFPB Bulletin 2012-03, *available at* http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

¹⁸ EFTA § 918(a)(5), 15 USC 1693o(a)(5).

¹⁹ 12 USC 5515.



LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 368



PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

ALFONSO OLIVER
President

JOBY NORTH II
Vice President

TONI FIGUEROA
Recording Secretary

THOMAS CATHCART
Executive Board

JAMES DRUMGOLD JR.
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LEIMOMI JOHNSON
Executive Board

MARK MAGUSARA
Auditor

MARK TRAVALINO
Auditor

JOSEPH YAW
Auditor

LEUMA L. LEATUMAUGA
Sergeant-At-Arms

February 17, 2014

Honorable Angus McKelvey, Chair
Honorable Derek Kawakami, Vice Chair
Members of the Consumer Protection and Commerce Committee

RE: **HB1814 HD1** RELATING TO PAYMENT OF WAGES

Date: February 19, 2014

Time: 3:00 P.M.

Place: Room 325

Dear Chair McKelvey, Vice Chair Kawakami and members of the
Consumer Protection and Commerce Committee:

The Hawaii Laborers' Union supports HB1814 HD1. This measure clarifies that employers may pay wages by direct deposit under certain conditions. It allows employers to pay wages by credit cards, pay cards, debit cards, automated teller machine cards, or similar means of electronic payment card under certain conditions. The measure further imposes the responsibility on the employer for any fees incurred if an employer has insufficient funds for the direct deposit.

We recommend an additional amendment that allows the employee to withdraw up to 100% of his or her earned wages without closing the account.

Thank you for the opportunity to submit this testimony.

Sincerely,

Al Lardizabal
Hawaii Laborers' Union, Local 368
Government Relations



American Payroll Association

Government Relations • Washington, DC

House Committee on Consumer Protection and Commerce
February 19, 2014 at 3:00 PM
State Capitol Conference Room 325

Written Testimony for House Bill 1814, HD1

TO: The Honorable Angus L.K. McKelvey, Chair
The Honorable Derek S.K. Kawakami, Vice Chair
Members of Committee

The American Payroll Association ([APA](#))¹ appreciates the opportunity to express its deep concern for H.B. 1814, HD1. We thank the House Committee on Labor & Public Employment for amending the bill to authorize the use of payroll cards in Hawaii. We remain concerned, however, that the bill's restrictive provisions requiring employers to absorb their employees' discretionary banking costs would continue to serve as a *de facto* ban on this beneficial wage payment method. In addition to our testimony below, please find a legislative analysis attached hereto as Exhibit A and a proposed House Draft 2 as Exhibit B.

No employee should have to pay to receive his or her wages. Unfortunately, however, many employees are forced to do just that because they have little or no access to mainstream financial services. These underserved workers spend as much as \$40,000 in check cashing fees over a life time.² Many well respected policymakers, consumer advocates and government regulators agree that payroll cards offer a valuable solution to these workers. For example, earlier this month, Javier Palomarez, President and CEO of the United States Hispanic Chamber of Commerce, published an Op-Ed emphasizing that "Payroll cards offer those with no banking access a dependable option for protecting their finances. Empowering our citizens with this much needed access, security, and convenience of prepaid payroll cards allows the unbanked to save more of what they earn and helps them build a solid financial foundation."

According to the FDIC, 3.8% of all households in Hawaii are unbanked (having no checking or savings account) and another 20% of households in Hawaii are under-banked (having a checking or savings account, but still reliant on alternative financial services such as check cashing).³

Check cashers in Hawaii may charge employees five percent of their paycheck⁴ – or, \$754 over the course of the year. This is enough to pay for 335 elementary school lunches.⁵

¹ The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Affairs Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

² Metropolitan Policy Program at Brookings, *Banking on Wealth: America's New Retail; Banking Infrastructure and Its Wealth-Building Potential* (January 2008).

³ 2011 FDIC National Survey of Unbanked and Underbanked Households.

⁴ See. Hawaii Rev. Stat. § 480F-3 allowing check cashers to charge fees equal to 5% of the face amount of the check or \$5, whichever is greater.

Branded payroll cards guarantee participating workers a means of accessing their full wages in cash each pay period without cost. Branded payroll cards (i.e., those bearing the logo of a major payment brand) can be used anywhere that the payment brand is accepted. In fact, **employees can take their payroll card to any financial institution that is a member of the payment brand – not just the financial institution that issued the card – and receive their full wages from the teller at least once each pay period without cost.**⁶ In Hawaii, Visa has 264 member bank branches locations⁷ and 60 member credit union locations. MasterCard has more than 300 member bank branch locations in the state.⁸

This functionality allows employees to treat their payroll cards like plastic paychecks and cash out their full net wages each pay period without cost. Employees can choose instead to leave some or all of their wages in the card account and use the card to make point-of-sale purchases, receive cash back from point-of-sale transactions, make purchases by mail, phone or Internet and pay bills online. Most of these are things that underserved employees cannot do when they only carry cash. Employees also are provided with many ways of accessing their account balances without fees and with budgeting tools such as mobile applications and low-balance text alerts.

Payroll cards are already subject to a number of consumer protections. Payroll cards are subject to federal [Regulation E](#)⁹, which limits cardholder liability when a lost or stolen card is used fraudulently so long as the cardholder reports the lost or stolen card within a specified period of time. Regulation E also requires that dispute resolution procedures be available to cardholders and that all terms, conditions and fees be clearly disclosed. In addition, it requires card issuers to make account information and transaction histories available to employees. Finally, although overdrafts on payroll cards are uncommon, Regulation E prohibits fees for overdrafts without prior consent.

In addition to the above listed protections and those imposed under Hawaii's wage and hour laws, all of the benefits and protections offered on debit products by the major payment brands also are available on payroll cards and are free of charge. These include purchase protection, dispute resolution procedures and zero liability programs.

Employers are likely to stop offering payroll cards if HB 1814, HD1 is enacted in its current form. This is because employers would be required to pay any and all costs incurred by employees using payroll cards even though the fees were not necessarily incurred to access wages and were easily avoidable. Employers are not required to absorb their employees' discretionary expenses with respect to any other payment method. In fact, we are concerned that the payment of these costs would constitute the payment of a personal expense on behalf of employees which would need to be reported on the employees' W-2 forms and be taxable as wages. By comparison, if an employee fails to take advantage of the free methods provided to cash his or her paycheck but instead voluntarily incurs fees at a check cashing establishment, the employer would not be obligated to reimburse the employee such fees as taxable wages.

If employers stop offering payroll cards in Hawaii, thousands of employees who currently benefit from payroll cards would face the prospect of returning to the inconvenience of paper paychecks and paying high fees at check cashing stores. *To ensure that this does not happen, we recommend that the following revisions be made to HB 1814, HD1:*

1. **HB 1814 should be revised to ensure full and free access to wages without requiring employers to pay the costs associated with discretionary card use.** This means that

⁵ According to the Hawaii Department of Education's website, school lunches cost \$2.25 for students in grades 9-12. Hawaii schools are required to have 180 instructional days per year.

⁶ This includes more than 90,000 financial institution locations nationwide.

⁷ Including American Savings Bank, Bank of Hawaii, Central Pacific Bank, First Hawaii and Hawaii National Bank.

⁸ Some of these locations accept both Visa and MasterCard.

⁹ Regulation E implements the federal Electronic Funds Transfer Act and is located at 12 CFR Part 1005.

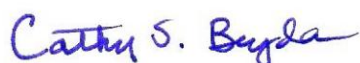
employees must be able to withdraw their full net pay, without cost, at least once each pay period. Employers should be prohibited from passing on to their employees any of their own costs in implementing or maintaining the payroll card program.

2. **Appropriate disclosures should be required to ensure that employees can make informed decisions regarding their payment options.** The disclosures also should ensure that employees who select the payroll card are provided with information necessary for them to use their cards to their best advantage and in a manner that promotes financial wellbeing.¹⁰
3. **The bill should be limited to payroll cards; other types “electronic payment cards” should be removed.** Automated teller machine cards and debit cards are, by definition, connected to an employee’s checking account. Unlike [payroll cards](#),¹¹ they are not issued or distributed through the employer channel but are components of traditional direct deposit. To avoid confusion, “debit card” and “automated teller machine card” should be removed from the bill. It is not clear what types of cards are covered by “similar electronic payment card.”
4. **The bill should be revised to require that payroll cards be branded.** This will help to ensure that the cards offered by employers are widely accepted and that employees are provided several locations to access their wages in cash for free.
5. **The employer’s obligations under HB 1814 must be clarified.** Employers should be required to select programs that limit employee liability for fraudulent use and provide access to account information and transaction histories. For privacy reasons, however, employers cannot provide these services directly. HB 1814 should be revised to clarify the employer’s obligations.

Conclusion

We would welcome the opportunity discuss the above issues with you further. In this regard, please feel free to contact Cathy Beyda (650-320-1824) or Bill Dunn (202-232-6889) with any questions or concerns that you may have.

Sincerely,



Cathy Beyda, Esq.
American Payroll Association
Chair, Paycard Subcommittee, Government Affairs Task Force



William Dunn, CPP
American Payroll Association
Director of Government Relations

¹⁰ Specifically, we recommend revising HB 1814 to require employers to provide notice of the following: (1) all of the employee’s wage payment options, (2) the terms and conditions of the payroll card program, including any fees that may be assessed by the card issuer; (3) the method(s) available to the employee to access his or her wages from the card without cost, (4) the methods available to employees for checking the balance in the payroll card account without cost; and (5) a statement as to whether third parties may assess additional fees (e.g., out-of-network ATM provider, telecom carrier if opt-in to text alerts, etc.).

¹¹ Federal banking law defines a “payroll card account” as “an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, ...” Regulation E, 12 CFR 1005.2(b)(2).

EXHIBIT A
American Payroll Association
Written Testimony in Opposition to HB 1814, HD1

House Committee on Consumer Protection and Commerce
February 19, 2014

EXHIBIT A

HB 1814, HD1 LEGISLATIVE ANALYSIS, with RECOMMENDED REVISIONS

We thank the House Committee on Labor & Public Employment for amending HB 1814, HD1 to authorize the use of payroll cards in Hawaii. We remain concerned, however, that the bill's restrictive provisions would serve as a *de facto* ban on this beneficial wage payment method. Through these talking points, we hope to facilitate dialogue with the goal of developing a sensible set of standards for the use of payroll cards in Hawaii that are not prohibitive to employers.

1. *Employees should not have to pay to receive their wages.* Many workers today are denied full and free access to their net wages because mainstream financial services are beyond their reach. According to the FDIC¹, 23.8% of all households in Hawaii are unbanked² or under-banked³. Workers who are unbanked or under-banked (i.e., collectively referred to as “underserved”) spend as much as \$40,000 in check cashing fees over a lifetime,⁴ and often incur additional expense purchasing money orders to pay their bills. Check cashers in Hawaii may charge employees a fee equal to five percent of the employee's paycheck⁵-- or \$754 a year.

2. *Payroll cards offer a valuable solution for Hawaii's underserved workers.* Payroll cards offer a valuable solution for underserved workers by guaranteeing them a means of accessing their full wages in cash each pay period without cost. Employees can take a branded payroll card (i.e., card bearing a Visa or MasterCard logo) to any financial institution that is a member of the brand and receive their full wages for free from the teller at least once each pay period.⁶ In Hawaii, Visa has over 320 financial institution branches and MasterCard has over 300.⁷

This functionality allows employees to treat their payroll cards like “plastic paychecks” and cash out their wages each pay period without cost. Or, employees can store funds in the account and use the card to make store purchases, receive cash back with purchase, make purchases by mail, phone or internet and pay bills online. Payroll cards offer employees increased security and convenience, and ensure prompt delivery of wages when unexpected events (such as severe weather) impede paycheck delivery.

3. *HB 1814, HD1 goes beyond providing employees with full and free access to their net wages each pay period.* Hawaii's wage payment statute requires that paychecks be “convertible into cash on demand at full face value...”⁸ The Hawaii DLIR guidelines⁹ state that employees who voluntarily choose a payroll card must be “given the opportunity to withdraw or transfer [their] wages to a personal bank account in full, without a fee, each pay period.” This is consistent with the approach taken by other states.

¹ 2011 FDIC National Survey of Unbanked and Underbanked Households.

² Unbanked: having no checking or savings account

³ Underbanked: having a checking or savings account, but still reliant on alternative financial services such as check cashing.

⁴ Metropolitan Policy Program at Brookings, *Banking on Wealth: America's New Retail; Banking Infrastructure and Its Wealth-Building Potential* (January 2008).

⁵ See. Hawaii Rev. Stat. § 480F-3.

⁶ This includes more than 90,000 financial institution locations nationwide.

⁷ Some of the locations accept both Visa and MasterCard.

⁸ Haw. Rev. Stat. § 388-2(a).

⁹ <http://labor.hawaii.gov/wsd/direct-deposits-debit-cards-electronic-pay-statements/>.

As currently written, HB 1814, HD1 would require employers to pay *any and all* fees incurred by the employee using his or her payroll card, regardless of whether those fees could have been avoided or were necessarily incurred to access wages. In other words, employers would be required to assume responsibility for the discretionary banking costs of their workers. This is not required with respect to any other wage payment method. Not surprisingly, a bill with similar restrictions was vetoed in 2011 by California Governor Jerry Brown who, in his veto message, recognized that the bill went “too far.”¹⁰

4. *Employees can, and many employees do, use payroll cards without ever incurring a fee.* A recent study by the Payment Card Center of the Federal Reserve Bank of Philadelphia confirmed that many employees use payroll cards without ever incurring a fee, and those who do incur fees could have avoided them.¹¹

5. *Payroll cards are subject to significant consumer protections.* Payroll cards are subject to federal Regulation E¹² which limits cardholder liability when a lost or stolen card is used fraudulently so long as the cardholder reports the lost or stolen card within a specified period of time. Regulation E also requires that dispute resolution procedures be available to cardholders and that all terms, conditions and fees be clearly disclosed. In addition, card issuers must provide employees with account information and transaction histories. Finally, although overdrafts on payroll cards are uncommon, Regulation E prohibits fees for overdrafts without prior consent.

In addition, all of the benefits and protections offered on debit products by the major payment brands also are available on payroll cards and are free of charge. These include purchase protection, dispute resolution procedures and zero liability programs.

6. *If enacted in its current form, HB 1814 would deprive thousands of Hawaii employees who currently receive their wages on a payroll card of a valuable payment solution.* If HB 1814, HD1 is enacted in its current form, employers are likely to stop offering payroll cards. Thousands of employees who currently benefit from them would have to return to the inconvenience of paper paychecks and paying fees at check cashing stores. The exact number of employees in Hawaii who use payroll cards is not known although the three program managers who were contacted alone support more than 7,000 payroll cardholders in Hawaii.

7. *Simple revisions can be made to HB 1814 to ensure that employees are provided strong protection, while allowing employers to offer the cards on reasonable terms.*

a. *The bill should be revised to require full and free access to wages, consistent with other methods of wage payment.* HB 1814 should be revised to ensure employees are able to withdraw their full net pay, without cost, at least once each pay period. In addition, any fees for the receipt of the initial card, activation of the card or the deposit of wages into the payroll card should be prohibited. Employers also should be prohibited from passing on to their employees any of their own costs in implementing or maintaining the payroll card program.

b. *Appropriate disclosures should be required to ensure that employees can make informed decisions.* Employees must be provided with the information necessary for them to make informed decisions regarding their wage payment options, as well as the information necessary

¹⁰ SB 931 Veto Message (Oct. 10, 2011).

¹¹ S. Wilshusen, R. Hunt, J. van Opstal, and R. Scheider, Consumer's Use of Prepaid Cards: A Transaction-Based Analysis (Federal Reserve Bank of Philadelphia Payment Cards Center, August 2012).

¹² Regulation E implements the federal Electronic Funds Transfer Act and is located at 12 CFR Part 1005.

for them to use their cards to their best advantage and in a manner that promotes financial wellbeing.

- c. ***Employers should be required to offer a widely accepted program, and the distinction between “direct deposit” and “electronic payment cards” must be clarified.*** HB 1814, HD1 recognizes two forms of electronic payment – direct deposit and electronic payment card – each with its own set of requirements. The payment methods in these two sections overlap, however. “Debit cards” and “automated teller machine cards,” by definition, are connected to an employee’s checking account and, therefore, are a component of traditional direct deposit. As such, “debit card” and “automated teller machine card” should be removed from subparagraph (e). In fact, we would prefer that subparagraph (e) be limited to payroll cards¹³ as it is unclear what is meant by the term “similar electronic payment card.” Finally, to ensure that the payroll cards offered are widely accepted, employers should be permitted to offer branded cards only.
- d. ***The employer’s obligations under HB 1814 must be clear.*** HB 1814, HD1 would require employers to: (1) make account balance and transaction data available to employees who use payroll cards and (2) protect employees against liability for fraudulent use of their cards. For privacy reasons, employers are denied access to balance information and information about where and how their employees spend their wages. As such, the employer’s obligation should not be to provide these services but to ensure that the program it selects does so.

¹³ Federal banking law (i.e., Regulation E) defines a “payroll card account” as “an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions), are made on a recurring basis,…” 12 CFR 1005.2(b)(2).

EXHIBIT B
American Payroll Association
Written Testimony in Opposition to HB 1814, HD1

House Committee on Consumer Protection and Commerce
February 19, 2014

A BILL FOR AN ACT

RELATING TO PAYMENT OF WAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 388-1, Hawaii Revised Statutes, is
2 amended by adding new definitions to be appropriately inserted
3 and to read as follows:

4 "Pay Card" means a network branded prepaid card used by an
5 employee to access wages from a pay card account.

6 "Pay Card Account" means an account that is directly or
7 indirectly established through an employer and to which
8 transfers of the employee's wages, salary or other compensation
9 are made."

10 SECTION 2. Section 388-2, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§388-2 Semimonthly payday[-]; method of payment of wages.

13 (a) Every employer shall pay all wages due to the employer's
14 employees at least twice during each calendar month, on regular
15 paydays designated in advance by the employer, in lawful money
16 of the United States [€], with checks convertible into cash on
17 demand at full face value thereof[+], by direct deposit to the
18 employee's account at a financial institution as provided in

1 subsection (d), or by other means as provided in subsection (e);
2 provided that when a majority of an employer's employees or a
3 majority of the employees in a collective bargaining unit
4 recognized by an employer or established by law elect, in a
5 secret ballot election under procedures approved by the director
6 of labor and industrial relations, to be paid once a month on a
7 regularly scheduled basis, the employees shall be paid on such
8 monthly basis. The elections shall not be held more frequently
9 than once in every two years and each election shall be valid
10 for a period of two years.

11 (b) The earned wages of all employees shall be due and
12 payable within seven days after the end of each pay period.

13 (c) The director may, upon application showing good and
14 sufficient reasons, permit an employer to:

15 (1) Establish regular paydays less frequently than
16 semimonthly; provided that the employee shall be paid
17 in full at least once each calendar month on a
18 regularly established schedule; or

19 (2) Pay earned wages within fifteen days after the end of
20 each pay period.

21 (d) An employer may pay wages due to the employer's
22 employees by electronic funds transfer or similar means of

- 1 direct deposit to the employee's account at a financial
2 institution; provided that:
- 3 (1) The employee has voluntarily authorized, in writing,
4 the direct deposit to the account and financial
5 institution of the employee's choice;
- 6 (2) The deposits and accounts of the financial institution
7 selected are insured by the Federal Deposit Insurance
8 Corporation or any other comparable federal or state
9 agency;
- 10 (3) The employee may cancel the direct deposit at any time
11 with reasonable notice;
- 12 (4) The employer shall provide a pay statement as required
13 under section 388-7(4);
- 14 (5) No employee shall be required to pay any costs or fees
15 for the deposit of wages into the employee's account;
16 and
- 17 (6) No employee may be disciplined or otherwise penalized
18 for authorizing or refusing to authorize direct deposit
19 of wages;
- 20 (e) An employer may pay wages due to the employer's
21 employees by use of a pay card, or similar means of an
22 electronic payment card onto which an employer, or an entity on

1 an employer's behalf, transfers or loads the employee's wages;
2 provided that:

3 (1) The employer shall not mandate an employee's use of a
4 pay card, or similar means of electronic payment card;

5 (2) The employee has voluntarily authorized, in writing or
6 other verifiable form, the payment of wages using a pay
7 card, or similar means of electronic payment card;

8 (3) The pay card issued to the employee shall be a network
9 branded pay card;

10 (4) The employee shall be provided at least one means of
11 withdrawing his or her full net wages each pay period
12 without cost or fees;

13 (5) The employer shall assume or otherwise absorb any fees
14 or costs imposed by a financial institution for the
15 following services:

16 (A) The transfer or loading of the employee's net
17 wages into the account associated with the pay
18 card or similar means of electronic payment card;

19 (B) Activation of the pay card or similar means of
20 electronic payment card; and

21 (C) Distribution and delivery of the initial pay card
22 or similar means of electronic payment card;

- 1 (6) None of the employer's costs associated with the pay
2 card account may be passed on to its employees;
- 3 (7) The employer shall comply with all applicable
4 recordkeeping requirements under this chapter and of
5 section 387-6;
- 6 (8) The employee may cancel the use of a pay card, or
7 similar means of an electronic payment card with
8 reasonable notice;
- 9 (9) The employer shall ensure that the following services
10 are available to the employee:
- 11 (A) The employee's balance by telephone;
- 12 (B) A readily accessible electronic history of the
13 employee's account transactions covering at least
14 sixty days preceding the date the employee
15 electronically accesses the account; and
- 16 (C) Upon oral or written request by the employee, a
17 written history of the account transactions
18 covering at least sixty days prior to the
19 employee's request;
- 20 (10) The employer shall ensure that the employee is
21 provided liability protections against fraud
22 associated with the use of an employer-issued pay

1 card, or similar means of an electronic payment card
2 in accordance with section 909 of the Electronic Fund
3 Transfer Act, 15 U.S.C. §1693g, and Regulation E, 12
4 C.F.R. §1005.6; and

5 (11) When offering an employee the option of receiving
6 wages using a pay card or similar electronic payment
7 card, the employer must provide the employee with
8 notice of the following items in written or printable
9 form:

10 (A) All of the employee's wage payment options;

11 (B) The terms and conditions relating to use of the
12 pay card or similar payment card, including a list of
13 fees that may be assessed by the card issuer;

14 (C) The methods available to employees for accessing
15 wages from the pay card or similar electronic payment
16 account without cost;

17 (D) The methods available to employees for checking
18 the balance in the pay card account without cost; and

19 (E) A statement as to whether third parties may
20 assess additional fees."

21 SECTION 3. Section 388-5.5, Hawaii Revised Statutes, is
22 amended to read as follows:

1 " ~~§388-5.5~~ Payment of wages by check~~[-]~~ or direct
2 deposit. Whenever an employee receives the employee's wages from
3 the employee's employer in the form of a check or by direct
4 deposit for which insufficient amounts are available in the bank
5 account of the employer, the employer shall be liable for any
6 bank's special handling fee which the employee may incur by
7 reason of negotiating the check~~[-]~~ or the electronic transfer."

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.

11



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Consumer Protection and Commerce
Wednesday, February 19, 2014 at 3:00 P.M.
Conference Room 325, State Capitol**

RE: HOUSE BILL 1814, HD1 RELATING TO PAYMENT OF WAGES

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 1814, HD1 Relating to Payment of Wages.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber believes that the restrictions in the current bill will force employers to stop offering the payroll card, which would in turn leave little alternative to the employee but to receive a paper paycheck. This would result in a less convenient and much more costly option for the employee. Many in Hawaii do not maintain bank accounts, or they opt for non-bank options to handle their financial needs. A recent FDIC study revealed that 3.8% of Hawaii households do not have bank accounts and another 20% utilize non-bank services, such as check cashers and money orders. For these consumers, the most convenient and least expensive option to receive their wages is a payroll card.

HB 1814, HD1 seeks to require the employer to absorb all of the incidental bank fees that the employee might incur. The employer has no control over how the employee chooses to manage the funds and how the employee chooses to use the payroll card. These incidental bank convenience fees are paid by all consumers today, should they choose to take advantage of the conveniences available today with certain electronic banking alternatives. Asking the employer to bear these costs would be like asking an employer to also be responsible for the bank service fees of an employee who receives their wages in their bank account via direct deposit. We do agree that the employer should be responsible for any fees associated with disbursement of the funds into the account, or any other fees related to the administration of the payroll card program.

It is important to note that accepting the payroll card as the means to receive their wages is completely voluntary. All existing payroll card programs provide full and complete disclosure of any usage fees before the employee enrolls in such a program. The employee can also terminate their enrollment at any time. Therefore, the employee has utmost control over the acceptance and use of the product. You will find that the vast majority of consumers who have chosen this product value it greatly and sing praises for the conveniences it provides.



Chamber of Commerce HAWAII

The Voice of Business

Many employers are unwilling to absorb the avoidable bank fees and have indicated that they will terminate their payroll card programs should they be required to do so. That means the only alternative left for the employee is to receive a paper paycheck. If that employee does not have a bank account, they may have to resort to utilizing a check casher to cash their paycheck which **charges fees**.

Should this bill move forward we ask for amendments that would eliminate this onerous and unreasonable requirement on employers.

Thank you for the opportunity to testify.



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Presentation To
House Committee on Consumer Protection and Commerce
February 19, 2014 at 3:00 PM
State Capitol Conference Room 325

Testimony for House Bill 1814, HD1

TO: The Honorable Angus L. K. McKelvey, Chair
The Honorable Derek S. K. Kawakami, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions operating in the State of Hawaii.

The Hawaii Bankers Association appreciates the intent of HB 1814, HD1, but have concerns with the requirements imposed for the issuance of the payroll card as a means of paying wages to an employee. We believe that the restrictions in the current bill will force employers to stop offering the payroll card, which would in turn leave little alternative to the employee but to receive a paper paycheck. This would result in a less convenient and much more costly option for the employee.

The Hawaii Bankers Association opposes this bill as drafted, and asks that it be amended.

The best alternative for an employee to receive their wages is by electronic direct deposit to the employee's bank account. The employee then can choose to manage the funds in whatever manner is appropriate for the individual. But, surprisingly, many in Hawaii do not maintain bank accounts, or they choose to utilize non-bank options to handle their financial needs. A recent FDIC study revealed that 3.8% of Hawaii households do not have bank accounts, and another 20% use non-bank services, such as check cashers and money orders. For these consumers, the most convenient, and least expensive option for them is a payroll card.

A payroll card is like a bank debit card, which can be used to withdraw cash or to purchase merchandise at a retail establishment. So, the payroll card offers great flexibility for the cardholder. Like the bank debit card, there can be incidental fees for certain convenience oriented uses, the most common of which is a fee to use an out of network Automated Teller Machine (ATM) to withdraw cash. But, this fee can be completely avoided by visiting a bank branch teller to request the withdrawal. Like the bank debit card, there is no fee to use the payroll card to purchase food at a grocery store, or to buy tickets to see a movie, or to purchase merchandise at Amazon, or eBay.

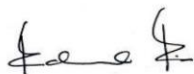
HB1814, HD1 seeks to require the employer to absorb all of the incidental bank fees that the employee might incur. The employer has no control over how the employee chooses to manage the funds and how the employee chooses to use the payroll card. These incidental bank convenience fees are paid by all consumers today, should they choose to take advantage of the conveniences available today with certain electronic banking alternatives. Asking the employer to bear these costs would be like asking an employer to also be responsible for the bank service fees of an employee who receives their wages in their bank account via direct deposit. We do agree that the employer should be responsible for any fees associated with loading the funds into the account, or any other fees related to the administration of the payroll card program. But, it is unreasonable to hold them responsible for incidental usage fees after the employee receives the funds.

It is important to note that accepting the payroll card as the means to receive their wages is completely voluntary. All existing payroll card programs provide full and complete disclosure of any usage fees before the employee enrolls in such a program. And, the employee can terminate their enrollment at any time. So, the employee has utmost control over the acceptance and use of the product. You will find that the vast majority of consumers who have chosen this product value it greatly and sing praises for the conveniences it provides.

We have spoken with employers, as well as payroll vendors who service employers, to solicit their feedback on HB 1814, HD1. The employers are unwilling to absorb the avoidable bank fees and have indicated that they will terminate their payroll card programs should they be required to do so. That means the only alternative left for the employee is to receive a paper paycheck. If that employee does not have a bank account, they may have to resort to utilizing a check casher to cash their paycheck. Hawaii statutes allow check cashers to charge a fee for their service up to 5% of the face amount of the check. For someone earning minimum wage in Hawaii, working 40 hours per week, the fees paid to a check casher would amount to \$754 for the year. That is considerably more than the incidental bank convenience fees they might otherwise willingly pay.

We urge passage of this bill with amendments that would eliminate this onerous and unreasonable requirement to the employer. There are a few other technical flaws with the language in HD1 that can easily be remedied. We have worked closely with the Hawaii Financial Services Association (HFSA) and the American Payroll Association (APA) and support the language they propose to amend this bill.

Thank you for the opportunity to submit this testimony on this important measure and we urge passage with the amendments as proposed by HFSA and APA. We would be happy to answer any questions you may have.



Edward Y. W. Pei
(808) 524-5161

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

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February 19, 2014

Rep. Angus L.K. McKelvey, Chair, and
Rep. Derek S.K. Kawakami, Vice Chair
and members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 1814, H.D. 1 (Payment of Wages)**
Hearing Date/Time: Wednesday, February 19, 2014, 3:00 P.M.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA opposes this Bill as drafted, and asks that it be amended.

The purposes of this Bill are to: (1) clarify that employers may pay wages by direct deposit under certain conditions; (2) allow employers to pay wages by pay cards, debit cards, automated teller machine cards, or similar means of electronic payment card under certain circumstances; and (3) make employers responsible for any fees incurred if an employer has insufficient funds for the direct deposit.

Why this Bill should be amended.

The problematic provisions in this Bill concern “pay cards”, which are also known as “payroll cards”. (This testimony uses the words “payroll cards” in referring to “pay cards”.) The references in this Bill to payroll cards are in the new subsection (e) of Hawaii Revised Statutes Sec. 388-2, beginning on page 3, line 12.

This Bill would require that employees have full access to their wages each pay period if the wages are paid through a payroll card. We agree with that requirement.

However, this Bill would require that employers additionally provide various free banking services to their employees if wages are paid through a payroll card. We object to this overly broad requirement. Similar restrictions are not imposed on any other method of wage payment. As written, these sweeping restrictions on payroll cards would be so cost prohibitive that employers are likely to stop offering this beneficial wage payment method to Hawaii employees.

What are payroll cards.

A payroll card is a reloadable prepaid (i.e., stored value) card issued to an employee through a bank or credit union on behalf of an employer. Each payday, the payroll card is electronically loaded with the full amount of the employee’s net pay.

With a payroll card, an employee has a guaranteed means of accessing his or her entire net wages without cost. Most payroll cards have a major payment card brand. This means that the payroll card has a Visa or MasterCard logo. The branded cards can be used anywhere that payment brand is accepted. The employee can take the payroll card to a financial institution that is a member of the brand and receive his or her full net wages at no cost from the bank teller at least once per pay period. There are over 300 financial institution branch locations in Hawaii and more than 90,000 branch locations on the mainland that accept either Visa or MasterCard.

Benefits of payroll cards.

Studies have shown that payroll cards are one of the least expensive and safest ways for an employee to receive their wages.

Payroll cards provide a valuable benefit to an “unbanked” employee or an “under-banked” employee (collectively called an “underserved employee”). Without payroll cards, an underserved employee, who receives a paper paycheck, might use expensive alternative financial services, such as check cashers, to access his or her wages. The underserved employee could also incur additional costs to buy money orders to pay bills.

An employee with a payroll card can use it exactly like a paper paycheck and can “cash out” the net pay that was earned during the payroll period. But by using a payroll card, the employee can easily avoid check cashing fees.

With a payroll card, the employee can: make point of sale purchases; receive cash back from point of sale transactions; make purchases by mail, phone, or the internet; and pay bills online.

Additionally, all the benefits offered on debit products by the major payment card brands are available on payroll cards ... and these benefits are free of charge. These include purchase protection, dispute resolution procedures, and zero liability programs.

The employee who gets paid through a payroll card is provided with clear notice about fees and how to avoid paying fees when using the payroll card. The employee is informed that he or she could incur fees for not using the many access methods that are offered free of charge.

Payroll cards are subject to significant consumer protections.

Payroll cards are already subject to significant consumer protection regulations. The Federal Reserve Board’s Regulation E, which implements the federal Electronic Funds Transfer Act, includes many important consumer protections. For example, if a payroll card is used fraudulently, the cardholder is only liable for up to \$50 in fraud losses if the cardholder timely reports the loss or theft. Regulation E also mandates dispute resolution procedures to protect cardholders. It also requires that all terms, conditions, and fees be clearly disclosed, permitting payroll cardholders to easily understand how to use the card to their best advantage.

A legislative analysis of this Bill is attached.

Attached as Exhibit “A” is a “Legislative Analysis” regarding this Bill. It provides more details about payroll cards and the problems with the wording in this Bill.

Suggested revisions to this Bill.

As stated in the attached Exhibit “A”, revisions need to be made to this Bill to ensure that employees are provided strong protections, while allowing employers to offer the cards on reasonable terms.

We agree with the testimony submitted by the American Payroll Association (“APA”), which expresses “deep concern” about this Bill’s restrictive provisions. The APA testimony lists the following revisions that are needed to this Bill:

1. This Bill should be revised to require full and free access to wages, without requiring employers to pay the costs associated with “discretionary” payroll card use.
2. Appropriate disclosures should be required to ensure that employees can make informed decisions regarding their payment options.
3. Subsection (e) in this Bill should be limited to “pay cards”. “Debit cards” and “automated teller machine cards” should be deleted because they are not methods of paying wages.
4. This Bill should be revised to require that payroll cards be “branded”.
5. The employer’s obligations under this Bill must be clarified.

A proposed House Draft 2 is attached.

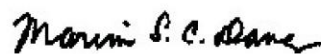
Consistent with and to implement the revisions described above, a proposed House Draft 2 for this Bill has been prepared. See attached Exhibit “B”. We ask that your Committee consider adopting the proposed amendments.

Conclusion.

We believe that employers should have the option to pay their employees using electronic payment methods, such as payroll cards. We also believe that employees should be able to decide if they want to be paid their wages through payroll cards. We support reasonable restrictions that ensure that employees are provided with full and free access to their entire net wages each payroll period without cost. Unfortunately, if this Bill passes without the amendments that we are proposing, this Bill would hurt the very employees that it seeks to help because employers would likely stop offering payroll cards in Hawaii.

Accordingly, we ask that this Bill be amended.

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

HB 1814, HD1 LEGISLATIVE ANALYSIS, with RECOMMENDED REVISIONS

We thank the House Committee on Labor & Public Employment for amending HB 1814, HD1 to authorize the use of payroll cards in Hawaii. We remain concerned, however, that the bill's restrictive provisions would serve as a *de facto* ban on this beneficial wage payment method. Through these talking points, we hope to facilitate dialogue with the goal of developing a sensible set of standards for the use of payroll cards in Hawaii that are not prohibitive to employers.

1. *Employees should not have to pay to receive their wages.* Many workers today are denied full and free access to their net wages because mainstream financial services are beyond their reach. According to the FDIC¹, 23.8% of all households in Hawaii are unbanked² or under-banked³. Workers who are unbanked or under-banked (i.e., collectively referred to as “underserved”) spend as much as \$40,000 in check cashing fees over a lifetime,⁴ and often incur additional expense purchasing money orders to pay their bills. Check cashers in Hawaii may charge employees a fee equal to five percent of the employee's paycheck⁵-- or \$754 a year.

2. *Payroll cards offer a valuable solution for Hawaii's underserved workers.* Payroll cards offer a valuable solution for underserved workers by guaranteeing them a means of accessing their full wages in cash each pay period without cost. Employees can take a branded payroll card (i.e., card bearing a Visa or MasterCard logo) to any financial institution that is a member of the brand and receive their full wages for free from the teller at least once each pay period.⁶ In Hawaii, Visa has over 320 financial institution branches and MasterCard has over 300.⁷

This functionality allows employees to treat their payroll cards like “plastic paychecks” and cash out their wages each pay period without cost. Or, employees can store funds in the account and use the card to make store purchases, receive cash back with purchase, make purchases by mail, phone or internet and pay bills online. Payroll cards offer employees increased security and convenience, and ensure prompt delivery of wages when unexpected events (such as severe weather) impede paycheck delivery.

3. *HB 1814, HD1 goes beyond providing employees with full and free access to their net wages each pay period.* Hawaii's wage payment statute requires that paychecks be “convertible into cash on demand at full face value...”⁸ The Hawaii DLIR guidelines⁹ state that employees who voluntarily choose a payroll card must be “given the opportunity to withdraw or transfer [their] wages to a personal bank account in full, without a fee, each pay period.” This is consistent with the approach taken by other states.

As currently written, HB 1814, HD1 would require employers to pay *any and all* fees incurred by the employee using his or her payroll card, regardless of whether those fees could have been avoided or were necessarily incurred to access wages. In other words, employers would be required to assume

¹ 2011 FDIC National Survey of Unbanked and Underbanked Households.

² Unbanked: having no checking or savings account

³ Underbanked: having a checking or savings account, but still reliant on alternative financial services such as check cashing.

⁴ Metropolitan Policy Program at Brookings, *Banking on Wealth: America's New Retail; Banking Infrastructure and Its Wealth-Building Potential* (January 2008).

⁵ See. Hawaii Rev. Stat. § 480F-3.

⁶ This includes more than 90,000 financial institution locations nationwide.

⁷ Some of the locations accept both Visa and MasterCard.

⁸ Haw. Rev. Stat. § 388-2(a).

⁹ <http://labor.hawaii.gov/wsd/direct-deposits-debit-cards-electronic-pay-statements/>.

responsibility for the discretionary banking costs of their workers. This is not required with respect to any other wage payment method. Not surprisingly, a bill with similar restrictions was vetoed in 2011 by California Governor Jerry Brown who, in his veto message, recognized that the bill went “too far.”¹⁰

4. *Employees can, and many employees do, use payroll cards without ever incurring a fee.* A recent study by the Payment Card Center of the Federal Reserve Bank of Philadelphia confirmed that many employees use payroll cards without ever incurring a fee, and those who do incur fees could have avoided them.¹¹

5. *Payroll cards are subject to significant consumer protections.* Payroll cards are subject to federal Regulation E¹² which limits cardholder liability when a lost or stolen card is used fraudulently so long as the cardholder reports the lost or stolen card within a specified period of time. Regulation E also requires that dispute resolution procedures be available to cardholders and that all terms, conditions and fees be clearly disclosed. In addition, card issuers must provide employees with account information and transaction histories. Finally, although overdrafts on payroll cards are uncommon, Regulation E prohibits fees for overdrafts without prior consent.

In addition, all of the benefits and protections offered on debit products by the major payment brands also are available on payroll cards and are free of charge. These include purchase protection, dispute resolution procedures and zero liability programs.

6. *If enacted in its current form, HB 1814 would deprive thousands of Hawaii employees who currently receive their wages on a payroll card of a valuable payment solution.* If HB 1814, HD1 is enacted in its current form, employers are likely to stop offering payroll cards. Thousands of employees who currently benefit from them would have to return to the inconvenience of paper paychecks and paying fees at check cashing stores. The exact number of employees in Hawaii who use payroll cards is not known although the three program managers who were contacted alone support more than 7,000 payroll cardholders in Hawaii.

7. *Simple revisions can be made to HB 1814 to ensure that employees are provided strong protection, while allowing employers to offer the cards on reasonable terms.*

a. *The bill should be revised to require full and free access to wages, consistent with other methods of wage payment.* HB 1814 should be revised to ensure employees are able to withdraw their full net pay, without cost, at least once each pay period. In addition, any fees for the receipt of the initial card, activation of the card or the deposit of wages into the payroll card should be prohibited. Employers also should be prohibited from passing on to their employees any of their own costs in implementing or maintaining the payroll card program.

b. *Appropriate disclosures should be required to ensure that employees can make informed decisions.* Employees must be provided with the information necessary for them to make informed decisions regarding their wage payment options, as well as the information necessary for them to use their cards to their best advantage and in a manner that promotes financial wellbeing.

¹⁰ SB 931 Veto Message (Oct. 10, 2011) .

¹¹ S. Wilshusen, R. Hunt, J. van Opstal, and R. Scheider, Consumer’s Use of Prepaid Cards: A Transaction-Based Analysis (Federal Reserve Bank of Philadelphia Payment Cards Center, August 2012).

¹² Regulation E implements the federal Electronic Funds Transfer Act and is located at 12 CFR Part 1005.

- c. ***Employers should be required to offer a widely accepted program, and the distinction between “direct deposit” and “electronic payment cards” must be clarified.*** HB 1814, HD1 recognizes two forms of electronic payment – direct deposit and electronic payment card – each with its own set of requirements. The payment methods in these two sections overlap, however. “Debit cards” and “automated teller machine cards,” by definition, are connected to an employee’s checking account and, therefore, are a component of traditional direct deposit. As such, “debit card” and “automated teller machine card” should be removed from subparagraph (e). In fact, we would prefer that subparagraph (e) be limited to payroll cards¹³ as it is unclear what is meant by the term “similar electronic payment card.” Finally, to ensure that the payroll cards offered are widely accepted, employers should be permitted to offer branded cards only.
- d. ***The employer’s obligations under HB 1814 must be clear.*** HB 1814, HD1 would require employers to: (1) make account balance and transaction data available to employees who use payroll cards and (2) protect employees against liability for fraudulent use of their cards. For privacy reasons, employers are denied access to balance information and information about where and how their employees spend their wages. As such, the employer’s obligation should not be to provide these services but to ensure that the program it selects does so.

¹³ Federal banking law (i.e., Regulation E) defines a “payroll card account” as “an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions), are made on a recurring basis,…” 12 CFR 1005.2(b)(2).

A BILL FOR AN ACT

RELATING TO PAYMENT OF WAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 388-1, Hawaii Revised Statutes, is
2 amended by adding new definitions to be appropriately inserted
3 and to read as follows:

4 "Pay Card" means a network branded prepaid card used by an
5 employee to access wages from a pay card account.

6 "Pay Card Account" means an account that is directly or
7 indirectly established through an employer and to which
8 transfers of the employee's wages, salary or other compensation
9 are made."

10 SECTION 2. Section 388-2, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§388-2 Semimonthly payday[-]; method of payment of wages.**

13 (a) Every employer shall pay all wages due to the employer's
14 employees at least twice during each calendar month, on regular
15 paydays designated in advance by the employer, in lawful money
16 of the United States [~~or~~], with checks convertible into cash on
17 demand at full face value thereof[+], by direct deposit to the
18 employee's account at a financial institution as provided in

1 subsection (d), or by other means as provided in subsection (e);
2 provided that when a majority of an employer's employees or a
3 majority of the employees in a collective bargaining unit
4 recognized by an employer or established by law elect, in a
5 secret ballot election under procedures approved by the director
6 of labor and industrial relations, to be paid once a month on a
7 regularly scheduled basis, the employees shall be paid on such
8 monthly basis. The elections shall not be held more frequently
9 than once in every two years and each election shall be valid
10 for a period of two years.

11 (b) The earned wages of all employees shall be due and
12 payable within seven days after the end of each pay period.

13 (c) The director may, upon application showing good and
14 sufficient reasons, permit an employer to:

15 (1) Establish regular paydays less frequently than
16 semimonthly; provided that the employee shall be paid
17 in full at least once each calendar month on a
18 regularly established schedule; or

19 (2) Pay earned wages within fifteen days after the end of
20 each pay period.

21 (d) An employer may pay wages due to the employer's
22 employees by electronic funds transfer or similar means of

1 direct deposit to the employee's account at a financial
2 institution; provided that:

3 (1) The employee has voluntarily authorized, in writing,
4 the direct deposit to the account and financial
5 institution of the employee's choice;

6 (2) The deposits and accounts of the financial institution
7 selected are insured by the Federal Deposit Insurance
8 Corporation or any other comparable federal or state
9 agency;

10 (3) The employee may cancel the direct deposit at any time
11 with reasonable notice;

12 (4) The employer shall provide a pay statement as required
13 under section 388-7(4);

14 (5) No employee shall be required to pay any costs or fees
15 for the deposit of wages into the employee's account;
16 and

17 (6) No employee may be disciplined or otherwise penalized
18 for authorizing or refusing to authorize direct deposit
19 of wages;

20 (e) An employer may pay wages due to the employer's
21 employees by use of a pay card, or similar means of an
22 electronic payment card onto which an employer, or an entity on

1 an employer's behalf, transfers or loads the employee's wages;
2 provided that:

3 (1) The employer shall not mandate an employee's use of a
4 pay card, or similar means of electronic payment card;

5 (2) The employee has voluntarily authorized, in writing or
6 other verifiable form, the payment of wages using a pay
7 card, or similar means of electronic payment card;

8 (3) The pay card issued to the employee shall be a network
9 branded pay card;

10 (4) The employee shall be provided at least one means of
11 withdrawing his or her full net wages each pay period
12 without cost or fees;

13 (5) The employer shall assume or otherwise absorb any fees
14 or costs imposed by a financial institution for the
15 following services:

16 (A) The transfer or loading of the employee's net
17 wages into the account associated with the pay
18 card or similar means of electronic payment card;

19 (B) Activation of the pay card or similar means of
20 electronic payment card; and

21 (C) Distribution and delivery of the initial pay card
22 or similar means of electronic payment card;

- 1 (6) None of the employer's costs associated with the pay
2 card account may be passed on to its employees;
- 3 (7) The employer shall comply with all applicable
4 recordkeeping requirements under this chapter and of
5 section 387-6;
- 6 (8) The employee may cancel the use of a pay card, or
7 similar means of an electronic payment card with
8 reasonable notice;
- 9 (9) The employer shall ensure that the following services
10 are available to the employee:
- 11 (A) The employee's balance by telephone;
- 12 (B) A readily accessible electronic history of the
13 employee's account transactions covering at least
14 sixty days preceding the date the employee
15 electronically accesses the account; and
- 16 (C) Upon oral or written request by the employee, a
17 written history of the account transactions
18 covering at least sixty days prior to the
19 employee's request;
- 20 (10) The employer shall ensure that the employee is
21 provided liability protections against fraud
22 associated with the use of an employer-issued pay

1 card, or similar means of an electronic payment card
2 in accordance with section 909 of the Electronic Fund
3 Transfer Act, 15 U.S.C. §1693g, and Regulation E, 12
4 C.F.R. §1005.6; and

5 (11) When offering an employee the option of receiving
6 wages using a pay card or similar electronic payment
7 card, the employer must provide the employee with
8 notice of the following items in written or printable
9 form:

10 (A) All of the employee's wage payment options;

11 (B) The terms and conditions relating to use of the
12 pay card or similar payment card, including a list of
13 fees that may be assessed by the card issuer;

14 (C) The methods available to employees for accessing
15 wages from the pay card or similar electronic payment
16 account without cost;

17 (D) The methods available to employees for checking
18 the balance in the pay card account without cost; and

19 (E) A statement as to whether third parties may
20 assess additional fees."

21 SECTION 3. Section 388-5.5, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "~~§~~388-5.5~~§~~ **Payment of wages by check~~[-]~~ or direct**
2 **deposit.** Whenever an employee receives the employee's wages from
3 the employee's employer in the form of a check or by direct
4 deposit for which insufficient amounts are available in the bank
5 account of the employer, the employer shall be liable for any
6 bank's special handling fee which the employee may incur by
7 reason of negotiating the check~~[-]~~ or the electronic transfer."

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.

11

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OF
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February 19, 2014

Rep. Angus L.K. McKelvey, Chair, and
Rep. Derek S.K. Kawakami, Vice Chair
and members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 1814, H.D. 1 (Payment of Wages)**
Hearing Date/Time: Wednesday, February 19, 2014, 3:00 P.M.

I am Marvin Dang, and I represent **Visa, Inc.** ("Visa"). Visa operates the world's largest retail electronic payments network providing processing services and payment product platforms. This includes consumer credit, debit, prepaid and commercial payments. Visa facilitates global commerce through the transfer of value and information among financial institutions, merchants, consumers, businesses, and government entities.

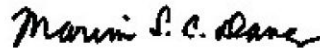
VISA opposes this Bill as drafted, and respectfully requests that it be amended.

The purposes of this Bill are to: (1) clarify that employers may pay wages by direct deposit under certain conditions; (2) allow employers to pay wages by pay cards, debit cards, automated teller machine cards, or similar means of electronic payment card under certain circumstances; and (3) make employers responsible for any fees incurred if an employer has insufficient funds for the direct deposit.

Visa shares the concerns of the American Payroll Association and the Hawaii Financial Services Association about the restrictive provisions concerning pay cards in the current version of this Bill. Visa agrees with the points raised in the attached "Legislative Analysis" (Exhibit "A").

Visa respectfully requests that this Bill be amended in the form attached as Exhibit "B".

Thank you for considering our testimony.



MARVIN S.C. DANG
for Visa, Inc.

(MSCD/Visa)

HB 1814, HD1 LEGISLATIVE ANALYSIS, with RECOMMENDED REVISIONS

We thank the House Committee on Labor & Public Employment for amending HB 1814, HD1 to authorize the use of payroll cards in Hawaii. We remain concerned, however, that the bill's restrictive provisions would serve as a *de facto* ban on this beneficial wage payment method. Through these talking points, we hope to facilitate dialogue with the goal of developing a sensible set of standards for the use of payroll cards in Hawaii that are not prohibitive to employers.

1. *Employees should not have to pay to receive their wages.* Many workers today are denied full and free access to their net wages because mainstream financial services are beyond their reach. According to the FDIC¹, 23.8% of all households in Hawaii are unbanked² or under-banked³. Workers who are unbanked or under-banked (i.e., collectively referred to as “underserved”) spend as much as \$40,000 in check cashing fees over a lifetime,⁴ and often incur additional expense purchasing money orders to pay their bills. Check cashers in Hawaii may charge employees a fee equal to five percent of the employee's paycheck⁵-- or \$754 a year.

2. *Payroll cards offer a valuable solution for Hawaii's underserved workers.* Payroll cards offer a valuable solution for underserved workers by guaranteeing them a means of accessing their full wages in cash each pay period without cost. Employees can take a branded payroll card (i.e., card bearing a Visa or MasterCard logo) to any financial institution that is a member of the brand and receive their full wages for free from the teller at least once each pay period.⁶ In Hawaii, Visa has over 320 financial institution branches and MasterCard has over 300.⁷

This functionality allows employees to treat their payroll cards like “plastic paychecks” and cash out their wages each pay period without cost. Or, employees can store funds in the account and use the card to make store purchases, receive cash back with purchase, make purchases by mail, phone or internet and pay bills online. Payroll cards offer employees increased security and convenience, and ensure prompt delivery of wages when unexpected events (such as severe weather) impede paycheck delivery.

3. *HB 1814, HD1 goes beyond providing employees with full and free access to their net wages each pay period.* Hawaii's wage payment statute requires that paychecks be “convertible into cash on demand at full face value...”⁸ The Hawaii DLIR guidelines⁹ state that employees who voluntarily choose a payroll card must be “given the opportunity to withdraw or transfer [their] wages to a personal bank account in full, without a fee, each pay period.” This is consistent with the approach taken by other states.

As currently written, HB 1814, HD1 would require employers to pay *any and all* fees incurred by the employee using his or her payroll card, regardless of whether those fees could have been avoided or were necessarily incurred to access wages. In other words, employers would be required to assume

¹ 2011 FDIC National Survey of Unbanked and Underbanked Households.

² Unbanked: having no checking or savings account

³ Underbanked: having a checking or savings account, but still reliant on alternative financial services such as check cashing.

⁴ Metropolitan Policy Program at Brookings, *Banking on Wealth: America's New Retail; Banking Infrastructure and Its Wealth-Building Potential* (January 2008).

⁵ See. Hawaii Rev. Stat. § 480F-3.

⁶ This includes more than 90,000 financial institution locations nationwide.

⁷ Some of the locations accept both Visa and MasterCard.

⁸ Haw. Rev. Stat. § 388-2(a).

⁹ <http://labor.hawaii.gov/wsd/direct-deposits-debit-cards-electronic-pay-statements/>.

responsibility for the discretionary banking costs of their workers. This is not required with respect to any other wage payment method. Not surprisingly, a bill with similar restrictions was vetoed in 2011 by California Governor Jerry Brown who, in his veto message, recognized that the bill went “too far.”¹⁰

4. *Employees can, and many employees do, use payroll cards without ever incurring a fee.* A recent study by the Payment Card Center of the Federal Reserve Bank of Philadelphia confirmed that many employees use payroll cards without ever incurring a fee, and those who do incur fees could have avoided them.¹¹

5. *Payroll cards are subject to significant consumer protections.* Payroll cards are subject to federal Regulation E¹² which limits cardholder liability when a lost or stolen card is used fraudulently so long as the cardholder reports the lost or stolen card within a specified period of time. Regulation E also requires that dispute resolution procedures be available to cardholders and that all terms, conditions and fees be clearly disclosed. In addition, card issuers must provide employees with account information and transaction histories. Finally, although overdrafts on payroll cards are uncommon, Regulation E prohibits fees for overdrafts without prior consent.

In addition, all of the benefits and protections offered on debit products by the major payment brands also are available on payroll cards and are free of charge. These include purchase protection, dispute resolution procedures and zero liability programs.

6. *If enacted in its current form, HB 1814 would deprive thousands of Hawaii employees who currently receive their wages on a payroll card of a valuable payment solution.* If HB 1814, HD1 is enacted in its current form, employers are likely to stop offering payroll cards. Thousands of employees who currently benefit from them would have to return to the inconvenience of paper paychecks and paying fees at check cashing stores. The exact number of employees in Hawaii who use payroll cards is not known although the three program managers who were contacted alone support more than 7,000 payroll cardholders in Hawaii.

7. *Simple revisions can be made to HB 1814 to ensure that employees are provided strong protection, while allowing employers to offer the cards on reasonable terms.*

a. *The bill should be revised to require full and free access to wages, consistent with other methods of wage payment.* HB 1814 should be revised to ensure employees are able to withdraw their full net pay, without cost, at least once each pay period. In addition, any fees for the receipt of the initial card, activation of the card or the deposit of wages into the payroll card should be prohibited. Employers also should be prohibited from passing on to their employees any of their own costs in implementing or maintaining the payroll card program.

b. *Appropriate disclosures should be required to ensure that employees can make informed decisions.* Employees must be provided with the information necessary for them to make informed decisions regarding their wage payment options, as well as the information necessary for them to use their cards to their best advantage and in a manner that promotes financial wellbeing.

¹⁰ SB 931 Veto Message (Oct. 10, 2011) .

¹¹ S. Wilshusen, R. Hunt, J. van Opstal, and R. Scheider, Consumer’s Use of Prepaid Cards: A Transaction-Based Analysis (Federal Reserve Bank of Philadelphia Payment Cards Center, August 2012).

¹² Regulation E implements the federal Electronic Funds Transfer Act and is located at 12 CFR Part 1005.

- c. ***Employers should be required to offer a widely accepted program, and the distinction between “direct deposit” and “electronic payment cards” must be clarified.*** HB 1814, HD1 recognizes two forms of electronic payment – direct deposit and electronic payment card – each with its own set of requirements. The payment methods in these two sections overlap, however. “Debit cards” and “automated teller machine cards,” by definition, are connected to an employee’s checking account and, therefore, are a component of traditional direct deposit. As such, “debit card” and “automated teller machine card” should be removed from subparagraph (e). In fact, we would prefer that subparagraph (e) be limited to payroll cards¹³ as it is unclear what is meant by the term “similar electronic payment card.” Finally, to ensure that the payroll cards offered are widely accepted, employers should be permitted to offer branded cards only.
- d. ***The employer’s obligations under HB 1814 must be clear.*** HB 1814, HD1 would require employers to: (1) make account balance and transaction data available to employees who use payroll cards and (2) protect employees against liability for fraudulent use of their cards. For privacy reasons, employers are denied access to balance information and information about where and how their employees spend their wages. As such, the employer’s obligation should not be to provide these services but to ensure that the program it selects does so.

¹³ Federal banking law (i.e., Regulation E) defines a “payroll card account” as “an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions), are made on a recurring basis,…” 12 CFR 1005.2(b)(2).

A BILL FOR AN ACT

RELATING TO PAYMENT OF WAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 388-1, Hawaii Revised Statutes, is
2 amended by adding new definitions to be appropriately inserted
3 and to read as follows:

4 "Pay Card" means a network branded prepaid card used by an
5 employee to access wages from a pay card account.

6 "Pay Card Account" means an account that is directly or
7 indirectly established through an employer and to which
8 transfers of the employee's wages, salary or other compensation
9 are made."

10 SECTION 2. Section 388-2, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§388-2 Semimonthly payday[-]; method of payment of wages.**

13 (a) Every employer shall pay all wages due to the employer's
14 employees at least twice during each calendar month, on regular
15 paydays designated in advance by the employer, in lawful money
16 of the United States [~~or~~], with checks convertible into cash on
17 demand at full face value thereof[+], by direct deposit to the
18 employee's account at a financial institution as provided in

1 subsection (d), or by other means as provided in subsection (e);
2 provided that when a majority of an employer's employees or a
3 majority of the employees in a collective bargaining unit
4 recognized by an employer or established by law elect, in a
5 secret ballot election under procedures approved by the director
6 of labor and industrial relations, to be paid once a month on a
7 regularly scheduled basis, the employees shall be paid on such
8 monthly basis. The elections shall not be held more frequently
9 than once in every two years and each election shall be valid
10 for a period of two years.

11 (b) The earned wages of all employees shall be due and
12 payable within seven days after the end of each pay period.

13 (c) The director may, upon application showing good and
14 sufficient reasons, permit an employer to:

15 (1) Establish regular paydays less frequently than
16 semimonthly; provided that the employee shall be paid
17 in full at least once each calendar month on a
18 regularly established schedule; or

19 (2) Pay earned wages within fifteen days after the end of
20 each pay period.

21 (d) An employer may pay wages due to the employer's
22 employees by electronic funds transfer or similar means of

1 direct deposit to the employee's account at a financial
2 institution; provided that:

3 (1) The employee has voluntarily authorized, in writing,
4 the direct deposit to the account and financial
5 institution of the employee's choice;

6 (2) The deposits and accounts of the financial institution
7 selected are insured by the Federal Deposit Insurance
8 Corporation or any other comparable federal or state
9 agency;

10 (3) The employee may cancel the direct deposit at any time
11 with reasonable notice;

12 (4) The employer shall provide a pay statement as required
13 under section 388-7(4);

14 (5) No employee shall be required to pay any costs or fees
15 for the deposit of wages into the employee's account;
16 and

17 (6) No employee may be disciplined or otherwise penalized
18 for authorizing or refusing to authorize direct deposit
19 of wages;

20 (e) An employer may pay wages due to the employer's
21 employees by use of a pay card, or similar means of an
22 electronic payment card onto which an employer, or an entity on

1 an employer's behalf, transfers or loads the employee's wages;
2 provided that:

3 (1) The employer shall not mandate an employee's use of a
4 pay card, or similar means of electronic payment card;

5 (2) The employee has voluntarily authorized, in writing or
6 other verifiable form, the payment of wages using a pay
7 card, or similar means of electronic payment card;

8 (3) The pay card issued to the employee shall be a network
9 branded pay card;

10 (4) The employee shall be provided at least one means of
11 withdrawing his or her full net wages each pay period
12 without cost or fees;

13 (5) The employer shall assume or otherwise absorb any fees
14 or costs imposed by a financial institution for the
15 following services:

16 (A) The transfer or loading of the employee's net
17 wages into the account associated with the pay
18 card or similar means of electronic payment card;

19 (B) Activation of the pay card or similar means of
20 electronic payment card; and

21 (C) Distribution and delivery of the initial pay card
22 or similar means of electronic payment card;

- 1 (6) None of the employer's costs associated with the pay
2 card account may be passed on to its employees;
- 3 (7) The employer shall comply with all applicable
4 recordkeeping requirements under this chapter and of
5 section 387-6;
- 6 (8) The employee may cancel the use of a pay card, or
7 similar means of an electronic payment card with
8 reasonable notice;
- 9 (9) The employer shall ensure that the following services
10 are available to the employee:
- 11 (A) The employee's balance by telephone;
- 12 (B) A readily accessible electronic history of the
13 employee's account transactions covering at least
14 sixty days preceding the date the employee
15 electronically accesses the account; and
- 16 (C) Upon oral or written request by the employee, a
17 written history of the account transactions
18 covering at least sixty days prior to the
19 employee's request;
- 20 (10) The employer shall ensure that the employee is
21 provided liability protections against fraud
22 associated with the use of an employer-issued pay

1 card, or similar means of an electronic payment card
2 in accordance with section 909 of the Electronic Fund
3 Transfer Act, 15 U.S.C. §1693g, and Regulation E, 12
4 C.F.R. §1005.6; and

5 (11) When offering an employee the option of receiving
6 wages using a pay card or similar electronic payment
7 card, the employer must provide the employee with
8 notice of the following items in written or printable
9 form:

10 (A) All of the employee's wage payment options;

11 (B) The terms and conditions relating to use of the
12 pay card or similar payment card, including a list of
13 fees that may be assessed by the card issuer;

14 (C) The methods available to employees for accessing
15 wages from the pay card or similar electronic payment
16 account without cost;

17 (D) The methods available to employees for checking
18 the balance in the pay card account without cost; and

19 (E) A statement as to whether third parties may
20 assess additional fees."

21 SECTION 3. Section 388-5.5, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "~~§~~388-5.5~~§~~ **Payment of wages by check~~[-]~~ or direct**
2 **deposit.** Whenever an employee receives the employee's wages from
3 the employee's employer in the form of a check or by direct
4 deposit for which insufficient amounts are available in the bank
5 account of the employer, the employer shall be liable for any
6 bank's special handling fee which the employee may incur by
7 reason of negotiating the check~~[-]~~ or the electronic transfer."

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.

11

House Committee on Consumer Protection and Commerce
February 19, 2014 at 3:00 PM
State Capitol Conference Room 325

Written Testimony for House Bill 1814, HD1

TO: The Honorable Angus L.K. McKelvey, Chair
The Honorable Derek S.K. Kawakami, Vice Chair
Members of Committee

HB 1814, HD1, as written, would impose a number of restrictions on the use of payroll cards that are not imposed on any other methods of wage payment. If enacted, our company would almost certainly stop offering this beneficial payment method in Hawaii, and our employees who currently benefit from their voluntary decision to receive wages on a payroll card would be forced to return to the inconvenience and expense of paper paychecks.

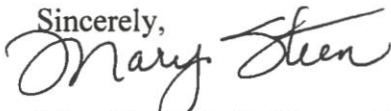
There are several reasons why our company offers payroll cards to our employees [*optional*: in accordance with the DLIR's guidelines]. Payroll cards help ensure that our company is able to deliver wages to all employees on a timely basis, even to employees who are unable to participate in direct deposit. This can be challenging for companies like ours that process paychecks on the mainland, especially when roadways and airports are shut down due to severe weather conditions. With payroll cards, wages are electronically deposited into our employees' payroll card accounts and are available to employees on or before payday. Branded payroll cards allow our employees to access their full net wages in cash each payday at hundreds of locations in Hawaii, making them much more convenient than paper paychecks for many workers.

If HB 1814, HD1 becomes law, however, our company will likely stop offering payroll cards in Hawaii. This is because the bill would impose burdensome requirements on employers and make payroll card programs both expensive and unnecessarily difficult to offer. For example, the bill would require our company to pay any and all fees incurred by our employees who voluntarily sign up for the card, even though the fees could easily have been avoided and were not necessarily incurred by the employees to access wages.

We also are concerned that the payment of fees for discretionary banking services would constitute the payment of a personal expense on behalf of our employees which would need to be reported on our employees' W-2 forms and be taxable as wages. By comparison, we are not required to pay discretionary banking fees for any of our other employees who are paid by check or direct deposit. While we do not believe this is the intent of the legislation, as written this unintended consequence would effectively make payroll cards unusable in Hawaii.

The testimony of the American Payroll Association being submitted for the hearing on February 19, 2014 before the House Committee on Consumer Protection & Commerce explains in more detail what revisions need to be made to this Bill. We urge you to support the revisions.

Sincerely,



Mary Steen, Sally Beauty Holdings, Vice President of Employee Services

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 17, 2014 12:52 PM
To: CPCtestimony
Cc: joycemcharles@gmail.com
Subject: *Submitted testimony for HB1814 on Feb 19, 2014 15:00PM*

HB1814

Submitted on: 2/17/2014

Testimony for CPC on Feb 19, 2014 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joyce Midori Charles	Individual	Support	No

Comments:

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LATE

The Twenty-Seventh Legislature
Regular Session of 2014

HOUSE OF REPRESENTATIVES
Committee on Consumer Protection and Commerce
Rep. Angus L.K. McKelvey, Chair
Rep. Derek S.K. Kawakami, Vice Chair
State Capitol, Conference Room 325
Wednesday, February 19, 2014; 3:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1814, HD1
RELATING TO PAYMENT OF WAGES**

The ILWU Local 142 supports H.B. 1814, HD1, which clarifies that employers may pay wages by direct deposit under certain conditions and allows employers to pay wages by pay cards, debit cards, automated teller machine cards, or similar means of electronic payment card under circumstances.

The law for payment of wages intends that employees who are promised certain wages should be paid those wages in a form that is readily accessible. Some employers may justify paying their employees with debit or other pay cards by saying that the employees may not have an account with a bank that will cash their checks or to which direct deposits can be made. If the employee voluntarily chooses this method of payment, the practice should be permitted. However, the choice should be the employee's, not the employer's. H.B. 1814, HD1 also rightfully protects wages by ensuring that no fees are deducted from these pay cards and that the employee receives the full value of their wages, less taxes and legally authorized deductions.

While credit and debit cards are a convenience in today's world, a recent article in the Star-Advertiser (February 17, 2014) points out that there is a fee associated with use of these cards. These fees are no doubt passed on to customers in the form of higher prices as a cost of doing business. Consumers need to become more aware of these additional costs that increase what they pay for goods and services.

Although H.B. 1814, HD1 does not address the general issue of fees for credit and debit card use, lawmakers may want to consider legislation that will require businesses and banks that use and issue credit and debit cards to inform consumers about the fees associated with card use. The public seems enamored by the use of plastic in today's world, but the recent problems with hackers and identity theft may be sufficient to steer business and the public toward rethinking their love of plastic and disdain for cash.

The ILWU urges passage of H.B. 1814, HD1 and supports the amendments in HD1 that will protect the rights of employees and their wages. Thank you for the opportunity to share our views and concerns.



LATE



February 19, 2014

The Honorable Angus McKelvey
Chair, House Committee on Consumer Protection & Commerce
Hawaii State Legislature
State Capitol
Honolulu, HI 96813

RE: First Data's Concerns with HB 1814 HD1 (Payroll Cards)

Dear Chairman McKelvey:

On behalf of First Data, I appreciate the opportunity to share our concerns with language in HB 1814 HD1, a bill that that would authorize an employer in the state to pay an employee's wages by means of a payroll card. While we support the state's tacit endorsement of this form of payment by formally authorizing it via statute, as it is currently written, we believe the bill may devastate the payroll card market.

By way of background, First Data is a Fortune 300 company that is a leading provider of electronic payment processing services. Our products and services facilitate the ability of businesses and government agencies to accept consumer payment card transactions (e.g. credit, debit, prepaid and loyalty cards) at the point of sale. We also own Money Network, a leading payroll solutions provider that enables paperless pay for employers while providing employees a safe, convenient and cost-effective alternative to receiving paper checks.

Our Money Network subsidiary's package of payroll solutions to employers includes the Money Network Payroll Card and the Money Network Check. The card is a PIN-secured debit pay card that functions like a traditional PIN debit card and can be used to make purchases at retail locations. Funds are deposited directly onto the card and provide immediate access for withdrawals at ATMs throughout the country. The Money Network Check is a negotiable check that can be cashed for the full amount of the employee's net pay or can function like checks or money orders to pay bills or purchase goods or services.

We ask your consideration to amend the bill by removing two provisions in Section 6(e) – paragraphs (2) and (3) - which would eliminate any and all fees associated with payroll cards or require employers to absorb all fees associated with the payment of wages via payroll card. We believe that language is too restrictive and would serve as a disincentive for employers (and state agencies) that want to convert their paper-based paycheck program into an electronic payroll program for the benefit of their employees.

It's important to understand the history behind payroll card programs. They were designed to provide a low-cost and efficient alternative to individuals who chose to avoid or were unable to access traditional banking accounts. Before payroll cards emerged in the market, the primary option for unbanked and underbanked individuals to receive their pay was through paper paychecks, and they often had to rely on check cashers to

beyond the transactionsm

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access these wages, often at considerable cost.

As payroll cards became more readily available to employers, they quickly grew in popularity, as they provide clear benefits to employees and employers. For example, employees benefit from personal financial empowerment, a safer pay source than cash/check, the security of FDIC insurance, the ability to more efficiently manage their money, 24-hour access to their funds and an overall less expensive option of receiving their wages compared to cash or checks. Meanwhile, employers benefit by efficiently and accurately providing a reliable pay source to their employees, are able to avoid problems associated with check fraud and stolen check stock and offer uninterrupted pay in times of disaster.

First Data / Money Network is proud to offer a program that we believe provides such distinct advantages to the end consumer. While we and the rest of the industry firmly believe that employees should always have at least one opportunity per pay period to access net wages in full without any fees, the revenue generated from other types of usage fees are critical in helping financial institutions and payroll card providers recoup costs associated with administering and maintaining payroll card programs.

These costs include things like managing the accounts, transaction authorization and settlement, embossing and printing the plastic cards, complying with federal anti-money laundering requirements, complying with the federal Bank Secrecy Act requirements to know your customer, maintaining web sites and mobile apps that provide transaction history and loading of funds, etc. As payroll debit card programs have evolved and grown in popularity, the typical types of fees have also evolved (and decreased), but we believe the viability of these programs depend on flexibility for the issuers and program providers to decide which fees may be appropriate in order to sustain a competitive and consumer-friendly program.

While we understand and commend the state for seeking to protect its constituents, we believe that this bill goes too far. By restricting virtually every type of fee associated with a payroll card product, the bill may end up legislating the product entirely out of the Hawaii marketplace. The bill takes a program that has worked very well across the country – by private employers and state agencies alike – and mandates that payroll card providers offer the programs with no material opportunity to recoup their costs.

If payroll card providers leave the state en masse, then those individuals who do not have access to or choose not to participate in traditional bank relationships will have to return to paper checks and the cash system, incurring extensive fees and other complications. Under that scenario, we believe that Hawaii residents would be in worse shape than if the legislation didn't exist at all.

For all the reasons outlined above, we respectfully request that you amend HB 1814 HD1 to remove paragraphs (2) and (3) in sections 6(e). Thank you for your consideration, and please don't hesitate to contact me with any questions or concerns.

Sincerely,
Kimberly Ford
Vice President of Public Affairs

CC: Vice Chair Derek Kawakami
Members of the House Committee on Consumer Protection & Commerce

LATE

Written Testimony Against House Bill 1814, HD1

TO: The Honorable Angus L.K. McKelvey, Chair
The Honorable Derek S.K. Kawakami, Vice Chair
Members of Committee

HB 1814, HD1, as written, would impose a number of restrictions on the use of payroll cards that are not imposed on any other methods of wage payment, and would effectively eliminate the ability for employers to offer this beneficial payment method in Hawaii.

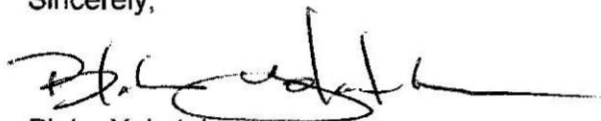
There are several reasons why our company would like to be able to offer payroll cards to our employees if we choose to do so. Payroll cards help ensure that employers are able to deliver wages to all of their employees on a timely basis, even those who are unable to participate in traditional direct deposit. This can often be challenging for companies like ours that process paychecks on the mainland, especially when roadways and airports are shut down due to severe weather conditions. With payroll cards, wages are electronically deposited into the employee's payroll card account and are available to the employee on or before payday. Branded payroll cards also allow employees to access their full net wages in cash each payday at hundreds of locations in Hawaii, making them much more convenient than paper paychecks for many workers.

If HB 1814, HD1 becomes law, however, our company is unlikely to offer payroll cards to our employees. This is because the bill would impose burdensome requirements on employers making payroll card programs both expensive and unnecessarily difficult to offer. For example, the bill would require employers to pay any and all fees incurred by employees who voluntarily sign up for the card, even though the fees could easily have been avoided and were not necessarily incurred by the employees to access wages.

We also are concerned that the payment of fees for discretionary banking services would constitute the payment of a personal expense on behalf of our employees which would need to be reported on the employee's W-2 form and be taxable as wages. By comparison, we are not required to pay discretionary banking fees for any of our other employees who are paid by check or direct deposit. While we do not believe this is the intent of the legislation, as written this unintended consequence would effectively make payroll cards unusable in Hawaii.

The testimony of the American Payroll Association being submitted for the hearing on February 19, 2014 before the House Committee on Consumer Protection & Commerce explains in more detail what revisions need to be made to this Bill. We urge you to support the revisions.

Sincerely,



Blake Yokotake
Human Resources Manager
Seven-Eleven Hawaii, Inc.
1755 Nuuanu Avenue
Honolulu, HI 96817