

HB1814

HD2



American Payroll Association

Government Relations • Washington, DC

House Committee on Judiciary and Labor
March 18, 2014, 10:00 a.m.
State Capitol Conference Room 016

Written Testimony for House Bill 1814, HD2

TO: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of Committee

The American Payroll Association ([APA](#))¹ thanks the House for amending HB 1814 to authorize the use of payroll cards in Hawaii. If enacted, HB 1814, House Draft 2 (HD2) would allow employers to offer this beneficial payment method to employees, so long as a number of consumer protections are in place.

The APA recommends that HD2 be amended in three ways:

1. Employers who offer payroll cards should be required to use payroll cards that are issued by banks or credit unions whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Association (NCUA). This will protect employees who select the payroll card option in the unlikely event that the issuing financial institution becomes insolvent.
2. The bill should be limited to payroll cards. It should not authorize the payment of wages using "similar means of electronic payment card" that are unidentified and may or may not carry the same consumer protections as payroll cards. Currently, only payroll cards are subject to Regulation E and its many consumer protections.
3. We urge the committee to remove the provisions added to HD2 relating to money transmission. Simply put, the issuance of payroll cards does not involve money transmission.

In addition to our testimony below, please find a legislative analysis attached hereto as Exhibit A.

Electronic wage payment offers significant benefits

Electronic wage payment provides numerous benefits to employees and employers alike. These benefits include increased security and convenience, as well as prompt access to full wages regardless of employee location. Unfortunately, a surprisingly large number of employees are unable to participate in direct deposit because they do not have bank accounts or have limited access to traditional banking

¹The 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.

services. These workers, commonly referred to as “underserved” workers, often rely on expensive alternative financial services, such as check cashers, to access their wages. Payroll cards bring the benefit of electronic wage payment to the underserved workforce.

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).² Check cashers in Hawaii may charge employees five percent of their paycheck³ – or, \$754 over the course of the year. This is enough to pay for 335 elementary school lunches.⁴

Many consumer advocates and government regulators agree that payroll cards can be a very beneficial option for these underserved workers. For example, Javier Palomarez, President and CEO of the United States Hispanic Chamber of Commerce, recently 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.”⁵

Payroll cards are subject to a number of consumer protections

Payroll cards carry a number of consumer protections beyond those required by HD2. For example, only payroll cards are currently subject to federal Regulation E and its many consumer protections. Among other things, Regulation E limits cardholder liability when a lost or stolen card is used fraudulently so long as the cardholder reports the cards as lost or stolen within a specified period of time.⁶ 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 provide 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.

House Draft 2 added a number of additional consumer protections to HB 1814

The House added a number of consumer protections to HB 1814. Most importantly, HD2 ensures that employees who select payroll cards are able to access their full net wages in cash each pay period, without cost, at hundreds of locations throughout Hawaii. In addition, employers are prohibited from passing on to employees their own costs in implementing or maintaining a pay card program, and fees for the receipt of the initial card, activation of the card, or the deposit of wages into the payroll card account are strictly prohibited.⁷

²2011 FDIC National Survey of Unbanked and Underbanked Households.

³See, 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.

⁴According 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.

⁵See, http://www.huffingtonpost.com/javier-palomarez/payroll-cards-a-valuable-b_4555801.html#; For another excellent discussion of payroll cards from an organization committed to protecting low wage earners, see Benjamin Mangan, *Stop Blacklisting Payroll Cards for Worker*, <http://www.linkedin.com/today/post/article/20130710205603-132220-stop-blackballing-payroll-cards-for-workers>.

⁶Regulation E implements the federal Electronic Fund Transfer Act and is located at 12 CFR Part 1005.

⁷Prohibitive provisions of House Draft 1 that would have required employers to assume responsibility for the discretionary banking costs of their workers have been removed. Not surprisingly, a bill with similar restrictions as

To ensure widespread acceptance, HD2 requires that all payroll cards offered in Hawaii be branded by a major payment network. Network branded payroll cards (e.g., 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 cards 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.*⁸ In Hawaii, Visa has 264 member bank branches locations⁹ and 60 member credit union locations. MasterCard has more than 300 member bank branch locations in the state.¹⁰

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 on the card 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.

HD2 also added a number of important disclosure requirements to HB 1814. For example, under HD2, employers offering payroll cards must notify their employees of: (1) all of their wage payment options, (2) the terms and conditions of the payroll card option including possible fees, (3) the methods of using the card to access wages in cash without incurring fees, and (4) the methods for accessing the employee’s account balance without fees. These disclosures will help employees make informed decisions regarding their wage payment options, and will allow employees to use their cards to their best advantage and in a manner that promotes financial wellbeing.

Finally, HB was amended 1814 to protect employees in the event that a lost or stolen card is used fraudulently. For example, HD2 requires that an employee’s liability be limited in such instances in accordance with the Electronic Fund Transfer Act (EFTA) and Regulation E.¹¹ In addition, the requirement that all payroll cards be network branded provides further protection against fraud. This is because the payment brands have zero-liability rules that often provide additional protection beyond federal law. There is no cost to the employer or the employee for providing this protection.

Recommended Revisions to House Draft 2

1. The bill should be limited to payroll cards; “similar means of electronic payment card” should be removed

HB 1814 HD 2 authorizes the payment of wages using payroll cards and “similar means of electronic payment card.” The bill defines “pay card” narrowly to ensure that payment cards offered in Hawaii are widely accepted and carry abundant consumer protections. “Similar means of electronic payment card” is not defined. The term should be removed to avoid any confusion, and to ensure that all payment cards used for the payment of wages in Hawaii are widely accepted and carry important consumer protections. Currently, only payroll cards are subject to Regulation E and required to carry its many consumer protections.

those set forth in the initial version of HB 1814 was vetoed in 2011 by California Governor Jerry Brown who, in his veto message, recognized that the bill went “too far.”

⁸This includes more than 90,000 financial institution locations nationwide.

⁹These include American Savings Bank, Bank of Hawaii, Central Pacific Bank, First Hawaiian Bank and Hawaii National Bank.

¹⁰Some of these locations accept both Visa and MasterCard.

¹¹Under the EFTA and Regulation E, an employee’s liability is limited to \$50 (if the loss or theft is reported within two business days of learning of the loss or theft) or \$500 (if reported after), with the possibility of unlimited liability for untimely notice to the financial institution (normally after 60 days of learning of the loss or theft).

2. Provisions relating to money transmission should be removed

A payroll card is a prepaid card issued by a bank or credit union that allows the cardholder to access funds held by the financial institution – it does not involve money transmission. Indeed, no other state treats the issuance of a payroll card as a form of money transmission. We believe that paragraph (f) was added to HB 1814 HD2 to make this point; however, as drafted, HD2 would have the unintended consequence of requiring certain payroll card providers to become licensed as money transmitters. The likely impact is that reputable payroll card providers may stop issuing payroll cards in Hawaii.

It should be noted that the primary purpose of money transmission regulation is to make sure that consumers are protected in the event that a money transmitter becomes insolvent. This protection is not necessary in the context of payroll cards because all payroll cards are issued by banks or credit unions that are heavily regulated and subject to periodic examination. Moreover, as discussed below, employees are protected in the event of insolvency by FDIC or NCUA insurance.

3. The bill should require deposit insurance on payroll card accounts

Deposit insurance protects employees from loss in the event that the bank or credit union that issues the card fails. The FDIC protects funds deposited into banks. Currently, the standard deposit insurance amount is \$250,000 per depositor, per insured bank for each account ownership category. Federal law expressly limits the amount of insurance that the FDIC can pay to depositors when an insured bank fails. No representation made by a person or organization can modify that amount.¹² The National Credit Union Share Insurance Fund, administered by the National Credit Union Association, similarly protects deposits at insured credit unions in the United States. To ensure that the funds in the employee's payroll card account are eligible for deposit insurance to the maximum extent permitted by law, we recommend that the following provision be added to HB 1814:

Wages credited to an employee's pay card account shall be eligible to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration to the maximum amount in accordance with applicable law.

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

¹²Federal Deposit Insurance Corporation, *Your Insured Deposits* (Updated 2013), available at <http://www.fdic.gov/deposit/deposits/insured/print/vid-hi-res.pdf>.

EXHIBIT A

HB 1814, HD2 LEGISLATIVE ANALYSIS, with RECOMMENDED REVISIONS

We appreciate the House's amendments to HB 1814 in House Draft 2 (HD2). The amendments added a number of important consumer protections to HB 1814 and removed a couple of restrictive provisions that would have made it difficult if not impossible for employers to offer pay cards in Hawaii. We remain concerned that HD2 is overbroad to the extent that it authorizes the payment of wages using "similar electronic payment cards." We also are concerned that a provision added to HD2 will inadvertently subject many pay card providers, who are not engaged in money transmission, to the state's money transmitter rules. Through these talking points, we hope to facilitate dialogue with the goal of developing a sensible set of standards for the use of pay cards in Hawaii.

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 FDIC¹³, 23.8% of all households in Hawaii are unbanked¹⁴ or under-banked¹⁵. 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,¹⁶ 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 paycheck¹⁷-- or \$754 a year.

2. Pay cards offer a valuable solution for Hawaii's underserved workers. Pay cards offer a valuable solution for underserved workers by guaranteeing them a means of accessing their full net wages in cash each pay period without cost. *A recent study by the Payment Card Center of the Federal Reserve Bank of Philadelphia confirmed that many employees use pay cards without ever incurring a fee, and those who do incur fees could have avoided them.*¹⁸

Employees can take a network branded pay card (e.g., a card bearing a Visa or MasterCard logo) to any financial institution that is a member of the brand and receive their full net wages for free from the teller at least once each pay period.¹⁹ In Hawaii, Visa has over 320 financial institution branches and MasterCard has over 300.²⁰ This functionality allows employees to treat their pay cards like "plastic paychecks" and cash out their wages each pay period without cost. Alternatively, 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. Pay cards offer employees increased security and convenience, and ensure prompt delivery of wages when unexpected events (such as severe weather) impede paycheck delivery.

Thousands of workers in Hawaii already use pay cards. While the exact number is not known, *the six program managers who were contacted alone support about to 12,000 pay cards in Hawaii.*

3. Pay cards are subject to significant consumer protections. In addition to the consumer protections provided in HD2, federal Regulation E²¹ limits cardholder liability when a lost or stolen card

¹³ 2011 FDIC National Survey of Unbanked and Underbanked Households.

¹⁴ Unbanked: having no checking or savings account

¹⁵ Underbanked: having a checking or savings account, but still reliant on alternative financial services such as check cashing.

¹⁶ Metropolitan Policy Program at Brookings, *Banking on Wealth: America's New Retail; Banking Infrastructure and Its Wealth-Building Potential* (January 2008).

¹⁷ See. Hawaii Rev. Stat. § 480F-3.

¹⁸ 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).

¹⁹ This includes more than 90,000 financial institution locations nationwide.

²⁰ Some of the locations accept both Visa and MasterCard.

²¹ Regulation E implements the federal Electronic Fund Transfer Act and is located at 12 CFR Part 1005.

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 pay 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 pay cards and are free of charge. These include purchase protection, dispute resolution procedures and zero liability programs.

4. Federal restrictions on the release of non-public personal information apply to pay cards.

The Gramm–Leach–Bliley Act (the “Act”) requires “financial institutions” to protect the security and confidentiality of their customers’ nonpublic personal information. Among other things, the Act limits the circumstances under which financial institutions may disclose a consumer’s “nonpublic personal information” to nonaffiliated third parties.²² The Act applies to financial institutions that issue pay cards as well as to third party program managers (if not directly as a financial institution then pursuant to their agreement with the issuing financial institution).

Most payment methods, including checks and direct deposits, expose workers to some risk of identity theft and fraud. It should not be assumed that pay cards pose a greater risk than these other payment methods. According to a 2012 study by the Association for Financial Professionals, “[c]hecks continue to be the most popular target for criminals committing payments fraud. This is remarkable given the precipitous decline in corporate use of checks in recent years.”²³

5. Employers retain the ability to determine what payment options they will offer, and employees retain the ability to select among those options. HD2 does not tell employers how to pay their employees, it just authorizes another payment option that an employer may or may not choose to offer. Similarly, employees will remain free to select among the payment methods offered by their employers. HD2 requires that employees who select a pay card must be allowed to cancel the use of the card with reasonable notice to the employer.

6. House Draft 2 made a number of important improvements to HB 1814, placing Hawaii at the forefront of advancing consumer protections on pay cards. If enacted, HD 2 would:

- a. Require full and free access to wages, consistent with other methods of wage payment.* HD2 prohibits employers from passing on to their employees any of their own costs in implementing or maintaining a pay card program. It also ensures that employees are able to withdraw their full net pay, without cost, at least once each pay period and prohibits any fees for the receipt of the initial card, activation of the card or the deposit of wages into the pay card account. Prohibitive provisions of House Draft 1 that would have required employers to assume responsibility for the discretionary banking costs of their workers have been removed.²⁴
- b. Require that employees be provided with appropriate disclosures so that they can make informed decisions.* HD2 added a number of disclosure requirements to ensure that employees are provided with the information necessary for them to: (1) make informed decisions regarding their wage payment options, and (2) use their cards to their best advantage and in a manner that promotes financial wellbeing. Among other things, the employer must notify the employee of

²² 15 U.S.C. § 6802; 12 CFR §§ 216.1, *et seq.*

²³ Association for Financial Professional, *2012 AFP Payments Fraud and Control Survey: Introduction and Key Findings* (March 2012) available at <http://www.afponline.org/fraud/>.

²⁴ Not surprisingly, a bill with similar restrictions as those set forth in the initial version of HB 1814 was vetoed in 2011 by California Governor Jerry Brown who, in his veto message, recognized that the bill went “too far.”

all his or her wage payment options, the terms and conditions of the pay card option including possible fees, the methods of using the card to access wages in cash without incurring fees, and the methods for accessing the employee's account balance without fees.

- c. *Require that pay cards offered to employees in Hawaii be widely accepted.* To ensure widespread acceptance, HD2 requires that all pay cards offered in Hawaii be network branded pay cards. Employees can use network branded pay cards at hundreds of locations in Hawaii to access their net wages in cash without cost, and also to make purchase and pay bills in person, online and over the telephone.
- d. *Ensure that employees are protected if a lost or stolen pay card is used fraudulently.* HD2 requires that an employee's liability be limited, in accordance with the Electronic Fund Transfer Act (EFTA) and Regulation E, when a lost or stolen card is used fraudulently.²⁵ The employee's liability is further protected by HD 2's requirement that all pay cards be network branded as the network brands have zero liability rules that often provide additional protection beyond federal law. There is no cost to the employer or the employee for providing this protection.

7. Two additional revisions should be made to HD2 to ensure that consumer protection are provided on all payment cards and that unnecessary restrictions are not imposed.

- a. *HB 1814 should be limited to pay cards; the reference to other types of "electronic payment cards" should be removed.* HB 1814 HD 2 authorizes the payment of wages using pay cards and "similar means of electronic payment card." The bill defines "pay card" narrowly to ensure that cards offered in Hawaii are widely accepted and carry abundant consumer protections. "Similar means of electronic payment card" is not defined. The term should be removed to avoid any confusion, and to ensure that all payment cards used for the payment of wages in Hawaii are widely accepted and carry important consumer protections. Currently, only pay cards are required to carry Regulation E's consumer protections.
- b. *The money transmitter provisions that were added in HD2 should be removed.* A pay card is a bank issued card that allows the cardholder to access funds held by the financial institution – it does not involve money transmission. Indeed, no other state treats the issuance of a pay card as a form of money transmission. While we believe that paragraph (f) was added to HB 1814 HD2 to make this point; as drafted, HD2 would have the unintended consequence of requiring certain pay card providers to become licensed as money transmitters. The likely impact is that reputable payroll card providers may stop issuing pay cards in Hawaii.

It should be noted that the primary purpose of money transmission regulation is to make sure that consumers are protected in the event that a money transmitter becomes insolvent. This protection is not necessary in the context of pay cards because all pay cards are issued by banks or credit unions that are heavily regulated and subject to periodic examination. Moreover, employees are protected in the event of insolvency since the funds in a payroll card account are eligible for FDIC or NCUA insurance to the maximum amount in accordance with law.

²⁵ Under the EFTA and Regulation E, an employee's liability is limited to \$50 (if the loss or theft is reported within 2 business days of learning of the loss or theft) or \$500 (if reported after), with the possibility of unlimited liability for untimely notice to the financial institution (normally after 60 days of learning of the loss or theft).

Presentation To
Senate Committee on Judiciary and Labor
March 18, 2014 at 10:00AM
State Capitol Conference Room 016

Testimony in Support of House Bill 1814, HD2

TO: The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, 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 supports the intent of HB 1814, HD2, which will modernize state statutes to reflect current practices in the payment of wages to employees. Approximately 85% of all employees in Hawaii today are paid by direct deposit to their bank account. Another approximately 14,000 employees are receiving their wages through a payroll card, or pay card. Both alternatives are far more expedient, convenient, and less expensive than receiving a paper paycheck twice or more per month. We firmly believe that employees should be given a choice when it comes to how they receive their wages, with full disclosure as to the rules and fees associated with each alternative.

There are some technical amendments advocated by the Division of Financial Institutions of the Department of Commerce and Consumer Affairs, the American Payroll Association, and the Hawaii Financial Services Association. We agree with these amendments and support the clarifications it offers.

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



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



HAWAII

AMERICANS FOR DEMOCRATIC ACTION

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MAILING ADDRESS

PO. Box23404
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March 17, 2014

TO: Chair Clayton Hee, Vice Chair Maile Shimabukuro
Members of the Senate Committee on Judiciary and Labor

FROM: John Bickel, President
Americans for Democratic Action/Hawai'i

RE: Support and Comments on HB 1814 HD2 Relating to Payment of Wages

Americans for Democratic Action/Hawaii support HB 1814 HD 2. We are especially concerned that employees may not have the choice but to accept a certain type of debit card in lieu of their wages in cash or check. Employees should not have to pay a fee to get their wages nor should they be heavily inconvenienced to cash a debit card such as having only one place on the island to redeem it. Please keep the provisions requiring that such cards be optional and that all fees to redeem would be paid by the employer.



**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, March 18, 2014 at 10:00 A.M.
Conference Room 016, State Capitol**

RE: HOUSE BILL 1814 HD2 RELATING TO PAYMENT OF WAGES

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 1814 HD2, which clarifies that employers may pay wages by direct deposit under certain conditions; allows employers to pay wages by pay cards or similar means of electronic payment card under certain circumstances; makes employers responsible for any fees incurred if an employer has insufficient funds for the direct deposit; and creates an exception to the State's Money Transmitters Act for use of pay cards that cannot be used internationally, be used for transfers from person to person, or be reloaded from a non-depository source.

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 HD2 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.



Chamber of Commerce HAWAII

The Voice of Business

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.

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.



Progressive Democrats of Hawai'i

<http://pd-hawaii.com>

1418 Mokuna Pl. Pl, Honolulu, HI 96816

email: info@pd-hawaii.com

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SENATE COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice Chair

Date: Tuesday, March 18, 2014

Time: 10 am

Place: Conference room 016

HB1814, HD2, RELATING TO PAYMENT OF WAGES

In SUPPORT, with Amendments

My name is Bart Dame and I am testifying on behalf of Progressive Democrats of Hawaii and, indirectly, on behalf of Kimberly Langley, whose written testimony who should already have.

We submitted testimony in the first hearing on this bill. We agreed the original draft would benefit from some amendments in order to clarify its provisions. We were also did not support as broad a prohibition on the use of debit cards as the original draft appeared to have done. We even found ourselves agreeing with the Bankers Association on a proposed amendment!

Unfortunately, the bill has been amended in ways destructive to the original purpose. It appears as if language from the credit card companies has been inserted into the bill in order to render it almost useless. On its face, the amendment's meaning may not be evident. But these provisions are largely lifted from legalistic fine print which has already appeared on brochures provided by the companies and employers using these cards. They conceal at least as much as they reveal.

There is no language in the amended language which solves the problem which first caused this bill be drafted.

We first became aware of the abuse of these payroll debit cards last year, when Kim Langley shared with me the experience of her son, who was employed by a company we had considered to be a responsible company. He was being paid his wages in the form of a debit card and there was only one location, on the entire island of Oahu, where he could redeem his pay without paying a transaction fee. We were surprised to learn this.

WE SEE NO LANGUAGE IN THE CURRENT, AMENDED BILL WHICH WOULD PREVENT AN EMPLOYER FROM USING A PAYROLL DEBIT CARD WHICH CAN ONLY BE CASHED OUT, AT FULL VALUE, AT A SINGLE LOCATION.

In our view, when an employee provides their labor in exchange for a paycheck, it is the OBLIGATION of the employer to pay them by a means that is easily redeemable for the full amount, whether that be cash or through a check which the employee can, with minimal inconvenience, take to a bank and cash, without incurring any expense. Electronic transfers, direct deposit, even the use of debit cards can be a means for doing this. We recognize the technology is changing. But whatever method the employer chooses to use, any costs should be borne by the employer, not the employee.

It appears that there are third party, payroll processing companies which are promoting the use of these debit cards. It further appears that at least some of these companies may have a direct financial interest in the cards and profit from the transaction fees being borne by the employees. If this is the motivation, above and beyond any claim of increased efficiency or cost-savings, this is improper. Even if this is not the motivation for some payroll companies, the transaction costs for processing payroll should not be shifted to the employees.

WE STRONGLY URGE THIS BILL BE AMENDED TO PROTECT THE RIGHT OF AN EMPLOYEE TO BE PAID BY A MEANS EASILY NEGOTIABLE, WITH NO EXPENSE TO THEMSELVES.

Thank you for this opportunity to testify.

LAW OFFICES
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March 18, 2014

Sen. Clayton Hee, Chair
Sen. Maile S. L. Shimabukuro, Vice Chair
and members of the Senate Committee on Judiciary and Labor
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 1814, House Draft 2 (Payment of Wages)**
Hearing Date & Time: Tuesday, March 18, 2014, 10:00 a.m.

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 offers comments on this Bill, and respectfully requests that this Bill 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 or similar means of electronic payment card under certain circumstances; (3) make employers responsible for any fees incurred if an employer has insufficient funds for the direct deposit; (4) create an exception to the State's Money Transmitters Act for use of pay cards that cannot be used internationally, be used for transfers from person to person, or be reloaded from a non-depository source

Visa urges your Committee to consider the testimonies about pay cards that we understand will be submitted on this Bill by the **American Payroll Association** and the **Hawaii Financial Services Association**. Visa agrees with the descriptions in those testimonies about the consumer protection provisions in the House Draft 2 version of this Bill. Additionally, Visa concurs with the proposed revisions.

Thank you.



MARVIN S.C. DANG
for Visa, Inc.

(MSCD/Visa)