

HB1814

HD2

LATE

TESTIMONY



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

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March 18, 2014

To: The Honorable Clayton Hee, Chair,
The Honorable Maile S. L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary & Labor

Date: Tuesday, March 18, 2014
Time: 10:00 a.m.
Place: Conference Room 016, State Capitol

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

Re: H.B. No. 1814 H.D. 2 Relating to Payment of Wages

I. OVERVIEW OF PROPOSED LEGISLATION

HB1814 HD2 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 or a pay card on a voluntary basis. The proposal prohibits the use of pay cards unless the employee is not required to use it and has authorized so in writing.

The employee must also have the ability to withdraw the employee's full net wages at least once per payroll, the employer must absorb the fees or costs imposed by financial institutions for using the card as a means of payment, and requires the employer to provide the employee a written notice specifying certain information when providing the employee the option of receiving wages through a pay card.

The department prefers the HD1 with amendments and also offer amendments to the HD2.

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 with reasonable limitations.

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

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

1. The department suggests that "network branded" is unnecessarily vague and that issuance of pay cards should fall under the protections of federally insured institutions as suggested by the Division of Financial Industries (DFI) at the Department of Commerce & Consumer Affairs and recommends the following for the definition of pay card:

"Pay card" means a prepaid card issued by a depository institution authorized to accept deposits and whose deposits are federally insured and used by an employee to access wages from a pay card account."

For similar reasons, the department believes "or similar means of an electronic payment card" should be stricken from the entirety of the proposal.

2. 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 2, page 3, starting on Line 21 of the bill to address this concern:

(e) An employer shall not pay wages due to the employer's employees by use of a pay card onto which an employer, or an entity on an employer's behalf, transfers or loads the employee's wages unless the following conditions are met:

- (1) The employee's pay card 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.
- (2) The employer shall not mandate an employee's use of a pay card, provided that:
 - (A) The employer does not make participation in the pay card program a condition of hire or of continued employment;
 - (B) The employer also offers the employee the options of:
 - (i) direct deposit to a depository account of the employee's choosing, and
 - (ii) a paper check.

As mentioned above in regards to §388-6, the intent of the existing statute is for workers to elect in to allow 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:

(3) The employee has voluntarily authorized in writing the payment of wages using a pay card in a separate form the employee may keep consisting of a clear, conspicuous and complete itemized list of any fees assessed for the use of a pay card in which the dollar amount of each fee must be stated; provided that:

- (A) This consent must be obtained without intimidation, coercion, or fear of discharge

- or reprisal for refusal to accept the pay card or pay card account;
- (B) Shall be provided to the employee in the employee's primary language or in a language the employee understands in plain language in at least 10-point font.

3. 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."

4. The department suggests issuer should be defined:

"Issuer" means the pay card issuer, and any person acting directly or indirectly on behalf of the pay card issuer."

5. DLIR recommends deleting (3) on page 4, line 9 and replacing it with the following language also recommended for the definition of pay card:

- (3) The pay card issued to the employee shall be a prepaid card issued by a depository institution authorized to accept deposits and whose deposits are federally insured.

6. The ceiling for pulling funds out of ATMs is usually several hundred dollars even if an individual has an account. Further, the department is concerned that employees' pulling full paychecks out of ATMs creates a safety hazard, therefore, the department suggests making funds available at least three times per payroll period free of fees as is the law in Vermont. The department believes the Vermont statute requiring three free withdrawals per payroll period is a reasonable provision that should be included in the Hawaii law.

7. The intent of Hawaii's Wages and Other Compensation Law is to preserve the integrity of the employee's pay; therefore, the department suggests the following amendment:

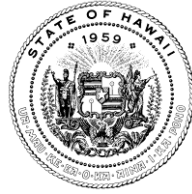
- ✓ (6) None of the employer's or issuer's costs or fees associated with the pay card account may be passed on to its employees, including any of the following:
 - (a) Point of sale transactions and other ordinary transactions;
 - (b) Overdraft, shortage, or low balance status;
 - (c) Declined transactions;
 - (d) Account inactivity;
 - (e) Written statements or transaction histories;
 - (f) Closing an account or issuing payment of the remaining balance by check or other means; or
 - (g) Any fee not explicitly identified by type and by amount in the contract between the employer and/or the pay card issuer and the employee.

8. The department concurs with DFI and believes (F) on page 7 and section 4 should be deleted from the measure.

The department additionally offers the following amendments:

- ✓ (?) The funds on a pay card shall not expire. The account may be closed for inactivity, with reasonable notice to the cardholder, provided that the remaining funds are refunded to the employee at no cost to the employee.
- ✓ (?) The employer ensures that the pay card account provides one free replacement pay card per year at no cost to the employee before the card's expiration date. A replacement card need not be provided if the pay card has been inactive for a period of at least 12 months or the employee is no longer employed by the employer.
- ✓ (?) At least 30 days before any change to the pay card program takes effect, the employer shall provide the employee with written notice in plain language, in at

least 10 point type, of any change to any of the terms
and conditions of the pay card account, including
any changes in the itemized list of fees.



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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

TUESDAY, MARCH 18, 2014
10:00 A.M.

COMMENTS ON HOUSE BILL NO. 1814, H.D. 2,
RELATING TO PAYMENT OF WAGES.

TO THE HONORABLE CLAYTON HEE, CHAIR,
AND TO THE HONORABLE MAILE S.L. SHIMABUKURO, 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 offer comments on H.B. 1814, H.D. 2, Relating to Payment of Wages. My name is Bruce B. Kim and I am the Executive Director of OCP.

H.B. 1814, H.D. 2 prevents an employer from mandating that an employee be paid by electronic payment card. It provides that an employer must disclose in writing or in "printable form" the payment options available to the employee; the fees and costs associated with the use of the card; whether third-parties may assess additional fees;

and a description of the methods available to the employee to determine the current balance on the payroll card. It provides that employees shall not bear any of the costs or fees for the withdrawal of earned wages at least once per payroll period. 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 under certain enumerated circumstances. 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 associated with the use of an employer-issued electronic payment card.

OCP notes that numerous consumer protection 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 lack of transparency associated with inadequate or non-existent disclosures of fees and conditions to 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 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. 2 attempts to address some of these consumer protection concerns consistent with Regulation E. However, OCP notes its continuing concerns over the following issues:

1. The term "network branded card" at subsection (e)(3) at page 4, lines 9-10 should be defined.
2. Subsection (e)(5) at page 4, line 13 needs another subsection to cover any fees incurred by the employee if the employer has insufficient funds to cover the deposit of wages into the card. Language should be added directing that the employee should not be assessed overdraft fees. Reg. E forbids charging overdraft fees on payroll cards. 12 CFR § 1005.17(b).
3. Subsection (e)(11) at page 6, line 8, "written" should be amended to "writing" and the phrase "or printable form" should be deleted.

4. Subsection (e)(11) should direct that the written disclosure must be given to the employee before she elects in writing to be paid by payroll card, 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.



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.



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TO THE
SENATE COMMITTEE ON
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THE TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION OF 2014

March 18, 2014
10:00 a.m.

TESTIMONY ON H.B. NO. 1814, H.D. 2
RELATING TO PAYMENT OF WAGES

THE HONORABLE CLAYTON HEE, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions (“Commissioner”), testifying on behalf of the Division of Financial Institutions (“DFI”) on House Bill No. 1814, H.D. 2. DFI takes no position on the merits of this bill, but offers these comments regarding its application and the effect it may have on money transmission.

DFI regulates money transmitters pursuant to Chapter 489D, Hawaii Revised Statutes (“HRS”). Money transmitters engage in the business of money transmission, which includes “issuing payment instruments.” HRS §489D-4. The money transmitter

law is designed to regulate the activity of entities that are not “traditional” financial institutions, and to provide for the safety and soundness of these activities.

House Bill No. 1814, H.D. 2 exempts issuers of pay cards from the requirements of the Money Transmitter Act. DFI recommends that pay cards should be exempted from the Money Transmitter Act if they are issued by a depository institution that is authorized to receive deposits and is insured by a federal agency. Such institutions are already exempted from the Money Transmitter Act because they are subject to more stringent State and federal oversight. To that end, the DFI recommends the following:

1. Change the definition of “pay card” (page 1, lines 4-5).

Specify that pay cards shall be “issued by a depository institution authorized to accept deposits and whose deposits are federally insured”.

Depository institutions authorized to accept deposits are regularly examined by State and federal banking agencies to ensure that the depository institution operates in a safe and sound manner and provides protections to consumers. Consequently, these institutions are exempt from Money Transmitter Act licensing and examination provisions under current law. See HRS §489D-9.5(a).

Remove the “network branded” requirement for pay cards (pp. 1:4; 4:9-10). “Network branded” is undefined in the House Draft 2. Network branded cards are not necessarily issued by banks. Non-bank issued cards may have a voluntary “zero liability” policy for card holders, but this is not the same as mandatory federal insurance that covers the safety of deposits in federally insured financial institutions. Payroll

safety should not be compromised given that payroll is the primary if not only source of income for most employees.

DFI suggests that the employer can analyze the features and benefits of each brand of pay card that complies with statutory requirements. An employer that wants to encourage card use can consider “network branding” which may refer to well known credit card issuers in its decision which pay card issuer to choose.

Remove references to “or similar means of an electronic payment card” throughout the bill (pp. 3:21-22; 4:4; 4:7-8; 4:19-21; 5:2; 5:9; 6:4; 6:9-10; 6:15-16; 6:19-20). This language appears to be a redundant reference to a pay card, which may be an electronic payment card.

2. Delete the language exempting pay cards from the Money Transmitter Law (pp. 7:5-13; 8:1-22).

House Bill No. 1814, H.D. 2 would exempt pay cards that meet certain safety-related requirements from the Money Transmitter Act. DFI agrees with the safety concern, but recommends that this be addressed by requiring that pay cards be issued by depository institutions whose deposits are federally insured. As noted above, such depository institutions are already exempt from the Money Transmitter Act’s licensing and examination provisions.

DFI’s recommended changes to House Bill No. 1814, H.D. 2 are marked on the attached copy of the bill.

Conclusion

DFI's mission is to ensure the safety and soundness of State-chartered and State-licensed financial institutions in order to protect the rights and funds of depositors and consumers. Deposits on pay cards issued by federally insured depository financial institutions would be protected by a plethora of federal and State laws with which banks must comply. Federally insured depository institutions are regularly examined, which would protect both the employer and employee. DFI's examination of State-chartered depository institutions includes compliance with regulations such as Regulation E governing electronic funds transfers ("EFTs") and consumer rights there under.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.

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 two new definitions to be appropriately
3 inserted and to read as follows:

issued by a
depository institution
authorized to accept
deposits and whose
deposits are federally
insured and

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 direct deposit of wages into the employee's
16 account; and

17 (6) No employee may be disciplined or otherwise penalized
18 for authorizing or refusing to authorize direct
19 deposit 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 electronic~~
22 ~~payment card~~ onto which an employer, or an entity on an



1 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
7 pay card or ~~other similar means of electronic payment~~
8 ~~card;~~

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

11 (4) The employee shall have the ability to withdraw the
12 employee's full net wages at least once per payroll
13 period without incurring any costs or fees;

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

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

20 (B) Activation of the pay card or ~~similar means of~~
21 ~~electronic payment card, and~~



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



1 (10) The employer shall ensure that the employee is
2 provided liability protections against fraud
3 associated with the use of an employer-issued pay card
4 ~~or similar means of an electronic payment card in~~
5 accordance with section 909 of the Electronic Fund
6 Transfer Act, 15 U.S.C. 1693g, and Regulation E, 12
7 C.F.R. §1005.6; and

8 (11) When offering an employee the option of receiving
9 wages using a pay card ~~or similar means of an~~
10 ~~electronic payment card,~~ the employer shall provide
11 the employee with notice of the following items in
12 written or printable form:

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

14 (B) The terms and conditions relating to use of the
15 pay card ~~or similar means of an electronic~~
16 ~~payment card,~~ including a list of fees that may
17 be assessed by the card issuer;

18 (C) The methods available to employees for accessing
19 wages from the pay card ~~or similar means of an~~
20 ~~electronic payment card~~ without cost;

21 (D) The methods available to employees for checking
22 the balance in the pay card account without cost;



- 1 (E) A list of any fees assessed for use of the pay
2 card; and
- 3 (F) A statement as to whether third parties may
4 assess additional fees.

5 ~~(F) As used in this section, "pay cards" shall not be~~
6 included in the definition of "money transmission" or licensing
7 requirements of chapter 489D; provided that the pay card does
8 not permit:

- 9 (1) Funds or value to be transmitted internationally;
10 (2) Transfers between or among users within the
11 arrangement; or
12 (3) Loading additional funds or the value of funds from
13 ~~non depository sources."~~

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

16 "~~+~~§388-5.5~~+~~ **Payment of wages by check~~-~~ or direct**
17 **deposit.** Whenever an employee receives the employee's wages
18 from the employee's employer in the form of a check or by direct
19 deposit for which insufficient amounts are available in the bank
20 account of the employer, the employer shall be liable for any
21 bank's special handling fee which the employee may incur by
22 reason of negotiating the check~~-~~ or the electronic transfer."



1 ~~SECTION 4. Section 489D-5, Hawaii Revised Statutes, is~~
2 amended by amending subsection (a) to read as follows:

3 "(a) This chapter shall not apply to:

4 (1) The United States or any department, agency, or
5 instrumentality thereof;

6 (2) The United States Postal Service;

7 (3) The State or any political subdivisions thereof; ~~and~~

8 (4) The electronic transfer of government benefits for any
9 federal, state, or county governmental agency as
10 defined in Federal Reserve Board Regulation E, by a
11 contractor for, and on behalf of the United States or
12 any department, agency, or instrumentality thereof, or
13 any state or any political subdivisions thereof~~[-]~~;

14 and

15 (5) The use of pay cards as a means of paying wages under
16 section 388-2; provided that the pay card does not
17 permit:

18 (A) Funds or value to be transmitted internationally;

19 (B) Transfers between or among users within the
20 arrangement; or

21 (C) Loading additional funds or the value of funds

22 ~~from non-depository sources."~~



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2112.



Report Title:

Direct Deposit; Wages; Methods of Wage Payment

Description:

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. 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. Effective July 1, 2112. (HB1814 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



HAWAII FINANCIAL SERVICES ASSOCIATION

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

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

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, H.D. 2 (Payment of Wages)**
Hearing Date/Time: Tuesday, March 18, 2014, 10:00 A.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 supports the intent of the H.D. 2 version of this Bill, but asks that this Bill be further amended.

The stated 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.

What are pay cards.

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

With a pay card, an employee has a guaranteed means of accessing his or her entire net wages without cost. Most pay cards have a major payment network brand. This means that the pay card has, for example, a Visa or MasterCard logo. The branded cards can be used anywhere that payment brand is accepted. The employee can take the pay 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 pay cards.

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

Pay cards also provide a valuable benefit to an “unbanked” employee or an “under-banked” employee (collectively called an “underserved employee”). Without pay 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 pay card can use it similar to a paper paycheck and can “cash out” the net pay that was earned during the pay period. By using a pay card, the employee can easily avoid check cashing fees.

With a pay card, the employee can make point-of-sale purchases, receive cash back from point-of-sale transactions, do 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 pay cards ... and these benefits are free of charge. These include purchase protection, dispute resolution procedures, and zero liability programs.

Pay cards are already subject to consumer protections.

Pay cards are already subject to significant consumer protection regulations. The Federal Reserve Board’s Regulation E, which implements the federal Electronic Fund Transfer Act, includes many important consumer protections. For example, if a pay 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. Regulation E also requires that all terms, conditions, and fees be clearly disclosed, permitting pay cardholders to easily understand how to use the card to their best advantage.

Consumer protection provisions in this Bill.

Under this Bill, the employee who gets paid through a pay card must be informed in writing how to access his or her net wages free of charge. The employee must be provided with a written disclosure about fees that could be incurred if the employee doesn’t use any of the methods to access the net wages without cost.

Those are only some of the consumers’ protection provisions in this Bill.

We understand that the **American Payroll Association** (“APA”) is submitting testimony about the pay card provisions in this Bill. The APA’s testimony includes a “Legislative Analysis.” The APA testimony and the “Legislative Analysis” describe the numerous consumer protections in this Bill.

We incorporate into our testimony, by reference to the APA testimony, the descriptions of the consumer protection provisions in H.D. 2.

Suggested amendments to this Bill.

The APA testimony recommends that this Bill be amended. We agree.

This Bill should be amended as described below:

1. There should be a definition of “network branded pay card”. Additionally, the existing definition of “pay card” should be revised.

Pay cards should be issued by a “depository institution” as defined under Chapter 412 of the

Hawaii Revised Statutes (“HRS”) which is the Code of Financial Institutions. (The deposits of depository institutions are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.)

Pay cards used for the payment of wages in Hawaii should be widely accepted by banks, credit unions, and merchants. The definition revisions will ensure that happens.

2. H.D. 2 is unnecessarily broad when it authorizes the payment of wages using “similar means of an electronic payment card.” This Bill defines “pay card” narrowly. However, the phrase “similar means of an electronic payment card” is not defined.

To avoid any confusion, the phrase “similar means of an electronic payment card” should be deleted throughout this Bill.

3. Provisions were included in H.D. 2 by the House Committee on Consumer Protection & Commerce which will inadvertently subject many pay card providers, who are not engaged in money transmission, to Hawaii’s money transmitter law (HRS Chapter 489D).

A pay card which is issued by a depository institution allows the cardholder to access funds held by that institution. Such an issuance of a pay card is not a form of money transmission.

The money transmitter provisions in this Bill could have the unintended consequence of unnecessarily requiring certain pay card providers to become licensed as money transmitters. The likely impact is that reputable payroll card providers might stop issuing pay cards in Hawaii.

Accordingly, the money transmitter provisions should be removed from H.D. 2.

4. H.D. 2 should be amended to specifically state that the 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. This provision benefits and protects employees,

That was the intent of the proponents of the H.D. 2 version. The proposed amendment will make that intent clear.

A proposed Senate Draft 1 is attached.

Consistent with and to implement the suggested amendments described above, a proposed Senate Draft 1 for this Bill has been prepared. See attached Exhibit “A”.

We ask that your Committee consider adopting the proposed amendments.

Conclusion.

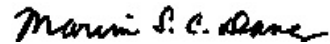
We believe that besides paying employees through paper checks, employers should have the option to pay their employees by pay cards or by direct deposits to bank accounts. We also believe that employees should be able to decide, after full disclosure, if they want to be paid their wages through pay cards. We support reasonable provisions concerning pay cards which ensure that (1) employees are provided with full and free access to their entire net wages each pay period without cost, and (2) consumer protections are in place.

Sen. Clayton Hee, Chair
Sen. Maile S. L. Shimabukuro, Vice Chair
and members of the Senate Committee on Judiciary and Labor
House Bill 1814, H.D. 2 (Payment of Wages)
Page 4

If H.D. 2 is amended in the form of the proposed S.D. 1, we believe that those objectives will be achieved.

Accordingly, we ask that this Bill be so amended.

Thank you for considering our testimony.



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

(MSCD/hfsa)

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 two new definitions to be appropriately
3 inserted and to read as follows:

"Network branded pay card"
(see attached wording)

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

pay

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 direct deposit of wages into the employee's
16 account; and

17 (6) No employee may be disciplined or otherwise penalized
18 for authorizing or refusing to authorize direct
19 deposit 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 electronic~~
22 ~~payment card~~ onto which an employer, or an entity on an



1 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
7 pay card ~~or other similar means of electronic payment~~
8 ~~card~~;

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

11 (4) The employee shall have the ability to withdraw the
12 employee's full net wages at least once per payroll
13 period without incurring any costs or fees;

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

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

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



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



1 (10) The employer shall ensure that the employee is
2 provided liability protections against fraud
3 associated with the use of an employer-issued pay card
4 ~~or similar means of an electronic payment card~~ in
5 accordance with section 909 of the Electronic Fund
6 Transfer Act, 15 U.S.C. 1693g, and Regulation E, 12
7 C.F.R. §1005.6; ~~and~~

8 (11) When offering an employee the option of receiving
9 wages using a pay card ~~or similar means of an~~
10 ~~electronic payment card~~, the employer shall provide
11 the employee with notice of the following items in
12 written or printable form:

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

14 (B) The terms and conditions relating to use of the
15 pay card ~~or similar means of an electronic~~
16 ~~payment card~~, including a list of fees that may
17 be assessed by the card issuer;

18 (C) The methods available to employees for accessing
19 wages from the pay card ~~or similar means of an~~
20 ~~electronic payment card~~ without cost;

21 (D) The methods available to employees for checking
22 the balance in the pay card account without cost;



1 (E) A list of any fees assessed for use of the pay
2 card; and

3 (F) A statement as to whether third parties may
4 assess additional fees ; and

5 ~~[(f) As used in this section, "pay cards" shall not be~~
6 ~~included in the definition of "money transmission" or licensing~~
7 ~~requirements of chapter 489D; provided that the pay card does~~
8 ~~not permit:~~

9 ~~(1) Funds or value to be transmitted internationally;~~

10 ~~(2) Transfers between or among users within the~~
11 ~~arrangement; or~~

12 ~~(3) Loading additional funds or the value of funds from~~
13 ~~non-depository sources."]~~

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

16 " ~~[+]~~**§388-5.5** ~~[+]~~ **Payment of wages by check ~~[-]~~ or direct**
17 deposit. Whenever an employee receives the employee's wages
18 from the employee's employer in the form of a check or by direct
19 deposit for which insufficient amounts are available in the bank
20 account of the employer, the employer shall be liable for any
21 bank's special handling fee which the employee may incur by
22 reason of negotiating the check ~~[-]~~ or the electronic transfer."

; and

(12) See attached



1 ~~SECTION 4. Section 489D-5, Hawaii Revised Statutes, is~~
2 ~~amended by amending subsection (a) to read as follows:~~

3 ~~"(a) This chapter shall not apply to:~~

4 ~~(1) The United States or any department, agency, or~~
5 ~~instrumentality thereof;~~

6 ~~(2) The United States Postal Service;~~

7 ~~(3) The State or any political subdivisions thereof; [and]~~

8 ~~(4) The electronic transfer of government benefits for any~~
9 ~~federal, state, or county governmental agency as~~
10 ~~defined in Federal Reserve Board Regulation E, by a~~
11 ~~contractor for, and on behalf of the United States or~~
12 ~~any department, agency, or instrumentality thereof, or~~
13 ~~any state or any political subdivisions thereof[-];~~

14 ~~and~~

15 ~~(5) The use of pay cards as a means of paying wages under~~
16 ~~section 388-2, provided that the pay card does not~~
17 ~~permit:~~

18 ~~(A) Funds or value to be transmitted internationally;~~

19 ~~(B) Transfers between or among users within the~~
20 ~~arrangement; or~~

21 ~~(C) Loading additional funds or the value of funds~~
22 ~~from non depository sources."]~~



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

approval

3 SECTION 6. This Act shall take effect on ~~July 1, 2112~~.



Report Title:

Direct Deposit; Wages; Methods of Wage Payment

Description:

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. ~~[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. Effective July 1, 2112.]~~ (HB1814 HD2)

SD1

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WORDING TO BE INSERTED
H.B. 1814, H.D. 2, Proposed S.D. 1 (Payment of Wages)

Page 1, line 4:

“Network branded pay card” means a prepaid card which (1) is issued by a depository institution as defined in chapter 412, (2) provides an employee with access to funds previously deposited into the employee’s pay card account, and (3) allows the employee to make purchases at multiple unaffiliated merchants.

Page 7, line 5

(12) 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. ”

March 17, 2014

The Honorable Clayton Hee
Chair, Senate Judiciary and Labor Committee
Hawaii State Capitol, Room 407
Honolulu, Hawaii 96813

The Honorable Maile Shimabukuro
Vice Chair, Senate Judiciary and Labor Committee
Hawaii State Capitol, Room 222
Honolulu, Hawaii 96813

HEARING: Tuesday, March 18, 2014
10:00 a.m.
Conference Room 016
State Capitol, Honolulu, HI 96813

RE: HB 1814 HD2 – Relating to Payment of Wages

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

On behalf of the Retail Merchants of Hawaii (RMH), thank you for the opportunity to provide testimony in opposition to HB 1841 HD 2 – Relating to Payment of Wages.

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts statewide. The retail industry is one of the largest employers in the state, employing nearly 25% of the State's labor force. Our goal is to improve and foster the growth of the retail industry by working with multi-agency partners to accomplish goals and objectives.

RMH believes that state law should permit employers to utilize this technology so long as it does not hurt the employees. Therefore, it seems unnecessary to place employee protections in the bill, yet still make it voluntary on the employee's part. If as the bill requires, the employee can designate the accounts for direct deposit and they must be FDIC insured and there is no cost to the employee for making the deposit and the employee is entitled to a statement, then there is no risk of employer overreach on direct deposit.

Additionally, if an employee does not want or have an account for direct deposit, the employee would be paid in cash or check convertible into cash on demand at full face value or via paycard subject to the bill's restrictions (the employee can access his/her money via a network branded pay card, at least once per period without cost of fees and there is no charge to the employee for loading the card, activating the card, and delivering the card to the employee, and the employee has all rights to request balance by phone, the history and the pay statement).

RMH believes in this way, the employee would not be prejudiced by the direct/deposit / pay card requirement and employers are empowered to take advantage of the technology, reduce the potential for fraud and realize the economic synergies.



We respectfully request this Committee to either oppose HB1814 SD2 or amend it by:

1. Prohibit the employer from requiring direct deposit UNLESS the stated conditions are met.
2. If the employee chooses not to designate a financial institution and an account number the employer may not use direct deposit, and may not require the use of a paycard UNLESS the stated conditions are met. (The employee's written authorization would not be one of the conditions.
3. By elimination, this means the employer can require the paycard if it complies with all the employee restrictions specific in the bill. Stated in the alternative, the employer cannot require the paycard UNLESS it complies with the employee protections specified in the bill. If the employer chooses not to offer a paycard that complies, the employee is entitled to cash money or a check convertible into cash on demand at full face value.
4. We respectfully request the removal of section (e)(10) that incorporates the Electronic Fund Transfer Act. As we understand a "network branded prepaid card" almost always would be subject to this requirement anyway.

Thank you for your consideration and the opportunity to comment. Should you have any questions, please feel free to contact Sheri Sakamoto at (808) 592-4200 or ssakamoto@rmhawaii.org.

Sincerely;

Sheri N. Sakamoto

Sheri N. Sakamoto
President



American Payroll Association

Government Relations • Washington, DC


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

Addendum to Written Testimony for House Bill 1814, HD2

The following is a partial list of APA members with a presence in Hawaii who support the APA's position on HB 1814, HD2, as submitted on March 17, 2014:

- **Beauty Systems Group**
- **Costco**
- **Foster Farms**
- **GNC**
- **Labor Ready, a True Blue Company**
- **Sally Beauty**
- **Starbucks**
- **UltraDent Products, Inc.**

1601 18th Street, NW, Suite 1, Washington, DC 20009 • Phone 202-232-6889 • Fax 210-630-4385

A decorative graphic in the top left corner consisting of several overlapping, angled rectangular shapes in shades of orange, red, and blue.

Chairman Hee and the Honorable Maile Shimabukuro
Senate Committee on Judiciary and Labor
Honorable

First Data's Concerns with HB 1814 HD2 (Payroll Cards)

Dear Chairman Hee and Vice Chair Shimabukuro:

On behalf of First Data, I appreciate the opportunity to share our concerns with language in HB 1814 HD2, a bill that would authorize an employer in the state to pay an employee's wages by means of a payroll card. We believe this bill has been continually improved as it has traversed the legislative process, and we appreciate the attention afforded it by your committee and your colleagues in the state legislature.

With that said, during the most recent round of negotiations, language was added relating to money transmission that we must oppose. If that language is not removed from the bill, we believe it will pose significant problems for employers in the state as well as providers of payroll card services.

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 Section 2(f) and its related provision, Section 4(5). Simply put, we believe that money transmission obligations don't belong in a payroll card environment. Keeping that language intact would serve as a severe 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.

beyond the transaction™

From the perspective of consumer protection, we support money transmission laws. Furthermore, we absolutely agree that money transmission requirements should be triggered when a third party custodian is holding a consumer's money in order to send it to someone else (like a typical wire transfer service). Essentially, money transmission laws require capital and bonding so that there is some way for consumers to recoup their money if that third party custodian were to leave the business, declare bankruptcy, etc.

However, in a payroll card environment, there is no "custodian" holding the money. The funds flow from an employer to a financial institution (that is FDIC-insured under our program). Moreover, when employees are using network-branded cards (as are used in our payroll card program), those payment networks have a zero liability guarantee for any unauthorized transactions that occur on the accounts. So the consumer is protected by FDIC insurance if the financial institution were to fold and protected against any unauthorized transactions by network rules.

If the language above were to pass with these money transmission requirements, it would completely disrupt the normal payroll chain. As already stated, today, payroll money flows from an employer to the financial institution holding the account. Simply put, that activity is not money transmission.

Yet, the provisions in Sections 2(f) and 4(5) would turn this payroll service into money transmission. Doing so would needlessly complicate the process, as it would require every employer offering payroll cards in the state to complete a contractual arrangement with a licensed money transmitter in the state. The funds would then flow from the employer to the licensed money transmitter to the financial institution. This process would be expensive (due to extra reporting obligations or capital requirements) and could interfere with the timeframe for an employee to receive the funds.

We believe there is very little consumer benefit to insert a middleman (money transmitter) into a process that is already working well between financial institutions and employers. Consumers who use payroll cards are already protected by federal law, the Electronic Funds Transfer Act; the federal government because their funds are sent to FDIC-insured financial institutions; and by the payment card networks due to their zero-liability guarantee for unauthorized transactions.

First Data / Money Network is proud to offer a payroll card program that we believe provides distinct advantages to the end consumer. We believe that employees enrolled in our program 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.

While we commend your colleagues and you for seeking to protect your constituents, we respectfully request that the money transmission language be struck from the bill, as it really has no place in the payroll card environment.

Thank you for your consideration of this request, and please don't hesitate to contact me with questions or concerns.

Sincerely,
Kimberly Ford
Vice President of Public Affairs
303.967.7174 / kim.ford@firstdata.com

CC: Members of the Senate Committee on Judiciary and Labor

47-393 Hui Iwa Street
Kaneohe, Hawaii

March 17, 2014

Aloha,

Testimony in support Bill HB1814 HD2

I want to clearly state that the draft before the committee is an aberration that looks as if it was written by the payroll industry. The original draft was clear and to the point, payroll debit cards are not acceptable. I support the original draft without reservation. The current draft muddies the water with paragraphs that do not address the key issues. These debit cards exploit people, generally the young and low wage earners, by trapping them into a high fee structure. HB1814 HD2 reads as if it was written by the payroll industry, or someone who had the brochure close to hand. I support this draft with reservations, because while it provides some protections for employees, it will be difficult to enforce and leaves young, low wage earners open to exploitation.

Yes, it is good that the current draft states that employees must agree to the payroll cards in writing and they have the right to rescind that agreement. The bill also states that the employer shall not mandate the employees use of a paycard. My research and experience has shown that these paycards are used for low wage workers, as in the food service industry. These people, often young or with limited skills, are generally not empowered to say no to an employer telling them that if they want the job, this is how you get paid.

The section below is really the heart of the issue.

(4) The employee shall have the ability to withdraw the employee's full net wages at least once per payroll period without incurring any costs or fees;

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

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

- (B) Activation of the pay card or similar means of electronic payment card;
and
- (C) Distribution and delivery of the initial pay card or similar means of
electronic payment card;

When I last read the brochure for these paycards, the language proposed would not effect the use of the paycard at all. In fact the language quoted above from HB1814 HD2 could have come from the brochure that my son was given with the paycard he received. But it is the last paragraph on the last page of the brochure that was the most interesting. You can withdraw your pay in cash every pay period with no fee, but you have to go to the Walmart on Keeaumoku Street to do this, one place on all of Oahu. There were also a few ATMs where the paycard could be used without being charged a fee, none were located near Kahaluu. There was also the option of transferring ones earnings each payperiod from the paycard to the employees bank account, but if you are forced to do this, why not just have direct deposit? Which makes me think that the employer is shifting the costs of payroll to the employee.

While HB1814 HD2 has some protections for workers, I believe that the initial draft was a better bill.

Mahalo,


Kim Langley