

# HOUSE BILL REPORT

## HB 2505

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**As Reported by House Committee On:**  
Business & Financial Services

**Title:** An act relating to payroll cards.

**Brief Description:** Concerning payroll cards.

**Sponsors:** Representatives G. Hunt, Kirby, Shea and Ormsby.

**Brief History:**

**Committee Activity:**

Business & Financial Services: 1/26/16, 2/3/16 [DPS].

### Brief Summary of Substitute Bill

- Prohibits telephone and Internet balance inquiry fees and certain maintenance fees on payroll deposit accounts.
- Prohibits issuance of cards violating these requirements.

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### HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kirby, Chair; Stanford, Vice Chair; McCabe, Assistant Ranking Minority Member; Blake, Dye, Hurst, Kochmar, Ryu and Santos.

**Minority Report:** Do not pass. Signed by 1 member: Representative Vick, Ranking Minority Member.

**Staff:** David Rubenstein (786-7153).

**Background:**

Payroll Cards Generally.

Under the Wage Payment Act, an employer may not deduct any portion of an employee's wages, unless the deduction is required by state or federal law, the employee agrees to the

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deduction, or the deduction is for medical care or service. Deductions may also be made to satisfy a court order or other legal requirement including child support.

The Department of Labor and Industries interprets the wage laws to allow a business to require employees to sign up for direct deposit if there is no cost to the employee. An employer may also pay by debit or payroll card, but if there is a fee for using the card, the employer must provide an alternative method that allows employees to obtain their wages without any fees or costs.

#### Electronic Fund Transfer Act.

The federal Electronic Fund Transfer Act (EFTA) regulates transactions and the transfer of funds through electronic transactions. Among other things, the EFTA addresses the terms and conditions of transfers, error resolution, the issuance of access cards (such as debit cards), and the execution of preauthorized transfers. The federal Consumer Financial Protection Bureau (CFPB) has issued regulations under the EFTA requiring employers to offer their employees an alternative to payroll cards.

The federal Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act) amended the EFTA to include a provision limiting certain fees on gift cards. The limitation applies to cards that are preloaded with a cash value and redeemable at multiple merchants or automated teller machines (ATMs), but only if the card is labeled and marketed as a gift card.

#### National Bank Act.

A "national bank" is a bank that is federally chartered by the Office of the Comptroller of Currency (OCC) under the National Bank Act (NBA). The NBA sets out the rights and duties of national banks, and the OCC has issued rules to implement the NBA. Among the rules issued by the OCC is one granting national banks the right to charge its customers non-interest charges and fees, including deposit account service charges. Many payroll cards are issued by national banks.

The EFTA preempts state laws to the extent of any inconsistency unless the state law affords consumers greater protection than is contemplated under federal law. The NBA preempts state laws more broadly than the EFTA. Under the NBA, a state consumer financial law is preempted if it discriminates against national banks, if the OCC determines that the law "prevents or significantly interferes" with national banks' powers under the Supreme Court's ruling in *Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner*, 517 U.S. 25 (1996), or the law is preempted by another federal law. The NBA does not, however, preempt state laws applicable to national bank subsidiaries.

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#### **Summary of Substitute Bill:**

Definitions are created for, among other things, "payroll deposit account" and "payroll card." A payroll deposit account is any account established at the request of an employer in which

wages are deposited. A payroll card is a prepaid card or other access device used to access wages in a payroll deposit account.

A financial institution holding a payroll deposit account must provide balance inquiries over the Internet or telephone at no cost to the employee. Financial institutions may not charge maintenance periodic maintenance fee to a consumer if the payroll deposit account has received an electronic deposit of wages from the employer in the previous 60 days. A payroll card may not be issued if the terms of the card violate any of these provisions.

Agreements made in violation of the above provisions or requiring any person to violate those provisions are void and unenforceable, but only as to agreements made on or after January 1, 2017.

**Substitute Bill Compared to Original Bill:**

The substitute bill removes the intent section. Definitions for "balance inquiry fee," "issuer," and "declined transaction fee" are struck. The definition of "financial institution" is modified to remove references to money transmitters and payroll service providers and to include any person who holds a payroll deposit account.

The substitute bill strikes the prohibition on declined transaction fees and on balance inquiry fees in general. It includes a requirement that the consumer be permitted to check the balance of the payroll deposit account by telephone or Internet free of charge.

The substitute bill strikes the requirement that consumers have access to their accounts through an ATM free of charge.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is the second attempt to pass this bill. It made it through the House last year before dying in the Senate. Over the interim the prime sponsor worked to target the bill narrowly instead of the broad approach taken last year. Although there may be opportunity to perfect it, this bill is a big improvement over last year's.

Consumers need transparency and access to their funds without fees. Sometimes employees are charged as much as \$3 to make a withdrawal, and when the withdrawal amount is low, this can be a substantial hardship.

Payroll cards are often used by temporary employment agencies and offered to youth and the unbanked. They are different from traditional bank accounts insofar as consumers are typically charged for use of the card or access to funds. Sometimes maintenance fees are charged simply for carrying a balance and declined transaction fees even when no money has changed hands. The intent of this bill is to carve out protections for those consumers using just the basic services on payroll cards.

(Opposed) This bill is well intentioned, but it can have serious unintended consequences. Employees benefit from these cards because they provide instant access to their wages, whereas checks are time consuming and cash is risky. This bill could harm employees and unbanked people by restricting the market for payroll cards.

Banks have four major concerns about this bill. First, due to a high degree of regulatory burden arising from the federal government, retail banking services have been constricting recently. Adding burdensome state regulations would exacerbate the problem. Second, the CFPB is set to release new rules relating to payroll cards very soon. The Legislature should wait until those regulations are released. Third, there is a serious risk of federal preemption that could put smaller banks at a competitive disadvantage. Finally, this could negatively impact product offerings. The costs must be borne somehow and this bill threatens the structure currently used.

Employees already have significant protections from federal and state regulation, and most programs don't charge a fee for basic services like point-of-sale transactions. Industry is willing to work this out, but ask that the bill not be passed this year.

(Other) There needs to be more protection for employees. Employees receiving payroll cards should be protected from account withdrawal fees, online balance inquiry fees, enrollment fees, fees for paper statements, and other fees.

**Persons Testifying:** (In support) Patrick Connor, National Federation of Independent Business of Washington.

(Opposed) Joanie Deutsch, Washington Retail Association; Denny Eliason, Washington Bankers Association and United Financial Lobby.

(Other) Thomas O'Ban, Columbia Legal Services.

**Persons Signed In To Testify But Not Testifying:** None.