
Business & Financial Services Committee

HB 2505

Brief Description: Concerning payroll cards.

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

Brief Summary of Bill

- Requires that a financial institution issuing a payroll card must provide access to automated teller machines that do not charge a fee for withdrawals from a payroll deposit account.
- Prohibits maintenance fees, declined transaction fees, and balance inquiry fees on payroll deposit accounts.
- Prohibits issuance of cards violating these requirements.

Hearing Date: 1/26/16

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 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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.

Summary of Bill:

Definitions are created for, among other things, "payroll deposit account" and "payroll card." A payroll deposit account is any account directly or indirectly established through 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 access to ATMs that offer withdrawals at no cost to the employee. Financial institutions may not charge maintenance, declined transaction, or balance inquiry fees to consumers. 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.

Appropriation: None.

Fiscal Note: Requested on January 22, 2016.

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