

By: Hochberg

H.B. No. 1196

A BILL TO BE ENTITLED

AN ACT

relating to the payment of wages by an employer through an electronic transfer of funds to a payroll card account.

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

SECTION 1. Chapter 61, Labor Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. PAYMENT OF WAGES THROUGH PAYROLL CARD ACCOUNT

Sec. 61.151. DEFINITIONS. In this subchapter:

(1) "Fee" includes any fee, charge, surcharge, or cost.

(2) "Offers a payroll card" includes:

(A) a direct offer of a payroll card to an employee by an employer; and

(B) the distribution by an employer to employees of material describing a payroll card program prepared by a payroll card issuer other than the employer.

(3) "Payroll card" means a card issued to an employee by an employer or other entity on behalf of the employer used to access the employee's wages.

(4) "Payroll card account" means an account that is established by an employer to pay each participating employee's wages by making an electronic funds transfer to the account, and under which the employee receives a payroll card to access the funds in the account.

1 (5) "Payroll card issuer" means:

2 (A) an employer who issues a payroll card to an
3 employee; or

4 (B) a bank or other financial institution that
5 issues a payroll card to an employee on behalf of an employer.

6 Sec. 61.152. ELECTION TO PAY THROUGH PAYROLL CARD ACCOUNT.

7 An employer may elect to pay wages through an electronic transfer of
8 funds to a payroll card account established at a federally insured
9 depository institution.

10 Sec. 61.153. INITIAL DISCLOSURE TO EMPLOYEES. (a) Before

11 instituting a payroll card account program, an employer who elects
12 to use such a program shall provide to each employee a written
13 disclosure, in plain language, that describes all of the employee's
14 options regarding payment of wages. The disclosure must meet the
15 requirements of this section.

16 (b) The disclosure must state the terms of the payroll card
17 account option, including:

18 (1) a complete itemized list of all fees that may be
19 deducted from the employee's payroll card account by the employer
20 or payroll card issuer;

21 (2) that third parties may assess transaction fees in
22 addition to the fees assessed by the employee's payroll card
23 issuer; and

24 (3) for fees that may be deducted or charged by the
25 employer or payroll card issuer, the dollar amount of each fee.

26 Sec. 61.154. EMPLOYEE CONSENT REQUIRED. (a) An employer

27 who elects to use a payroll card account system may initiate payment

1 of wages to an employee by electronic funds transfer to a payroll
2 card account only after the employee has voluntarily consented in
3 writing to that method of payment. Consent to payment of wages by
4 electronic funds transfer to a payroll card account may not be a
5 condition of hire or of continued employment.

6 (b) The written consent signed by an employee under this
7 section must include the terms of the payroll card account.

8 (c) The employer must:

9 (1) provide a copy of the signed written consent to the
10 employee; and

11 (2) retain the signed written consent during the
12 period that the employer uses a payroll card account system
13 affecting that employee.

14 (d) As long as each employee is given a written form that
15 meets all the requirements of this section on which to provide
16 consent to payment through electronic funds transfer, an employer
17 may comply with the employee consent requirements of this section
18 by giving the employee the option of receiving wages through a
19 payroll card account, a direct deposit plan, or any other method
20 offered by the employer.

21 Sec. 61.155. NOTICE OF CHANGES. An employer who elects to
22 use a payroll card account system shall provide to each employee
23 participating in the system written notice of any change to any of
24 the terms of the payroll card account that includes an itemized list
25 of any fee that may have changed.

26 Sec. 61.156. USE OF EMPLOYEE INFORMATION. Unless the
27 employee consents in writing to the use, information generated by

1 the employee's possession or use of a payroll card or payroll card
2 account may only be used to process transactions and administer the
3 payroll card and the payroll card account.

4 Sec. 61.157. CHANGE IN METHOD OF PAYMENT. (a) An employee
5 who has consented under Section 61.154 to be paid wages by
6 electronic funds transfer to a payroll card account may request
7 that the employer pay wages to the employee by another method
8 allowed by law and offered by the employer.

9 (b) The employee may make the request:

10 (1) on a written form provided by the employer; or

11 (2) if provided through the employer, through an
12 electronic format.

13 (c) Not later than the 30th day after the date of the
14 employee request, the employer shall begin payment of wages by the
15 method requested by the employee under Subsection (a).

16 Sec. 61.158. OPERATION OF PAYROLL CARD ACCOUNT. (a) An
17 employer shall provide each employee participating in the payroll
18 card account system with access to one free transaction history
19 each month, which must include each deposit, withdrawal, deduction,
20 or charge made by any person from or to the employee's payroll card
21 account.

22 (b) An employer shall provide each participating employee
23 at least one transaction per pay period at no cost to the employee
24 for an amount up to and including the total amount of the employee's
25 entire net pay, as stated on the employee's earnings statement. The
26 free transaction must be available to the employee on and after the
27 employee's regular payday.

1 (c) With the exception of the cost required to replace a
2 lost, stolen, or damaged card, an employer may not charge a
3 participating employee:

4 (1) any initiation, participation, maintenance,
5 loading, or other fee to receive wages payable in an electronic
6 funds transfer to a payroll card account;

7 (2) any inactivity or dormancy fee; or

8 (3) any fee for use of customer service.

9 (d) An employer may not deduct from a participating
10 employee's payroll card or charge to the employee any fee imposed by
11 the payroll card issuer that was not disclosed to the employee
12 before the fee was initiated.

13 (e) An employer who offers a payroll card account option to
14 an employee by using materials in a language other than English must
15 provide the written disclosure, written consent form, and all
16 payroll card account agreements required by this subchapter in the
17 other language.

18 Sec. 61.159. PAYROLL CARD ACCOUNT NOT CREDIT. (a) A
19 payroll card or payroll card account may not be linked to any form
20 of credit, including a loan against future pay or a cash advance on
21 future pay.

22 (b) The prohibition in Subsection (a) does not apply to:

23 (1) an inadvertent overdraft that occurs
24 notwithstanding procedures designed to avoid overdrafts; or

25 (2) overdraft protection on the payroll card account
26 that is specifically agreed to by the employee.

27 Sec. 61.160. DEPOSITORY INSTITUTION REQUIREMENTS. (a) An

1 employer, or another entity on behalf of the employer, may not issue
2 payroll cards other than from a federally insured depository
3 institution.

4 (b) The agreement between the employer and the depository
5 institution must specify that:

6 (1) the insured depository institution maintain
7 account records that disclose the existence of a custodial
8 relationship between the employer and the participating employees;

9 (2) the employer, the insured depository institution,
10 or any other third party maintain records that disclose the
11 identities of the actual owners of the funds and the amount owned by
12 each actual owner;

13 (3) the deposits must be owned by the named owner
14 listed in the account; and

15 (4) the insured depository institution may not allow
16 overdrafts on the payroll card, with or without a fee, unless
17 overdraft service is requested by the named owner.

18 Sec. 61.161. APPLICATION TO BANKS AND OTHER FINANCIAL
19 INSTITUTIONS. A requirement or restriction imposed on an employer
20 under Section 61.153, 61.155, 61.156, 61.158, or 61.159 applies to
21 a payroll card issuer that is a bank or other financial institution
22 as if the bank or financial institution were the employer.

23 SECTION 2. Section 61.016(a), Labor Code, is amended to
24 read as follows:

25 (a) An employer shall pay wages to an employee:

26 (1) in United States currency;

27 (2) by a written instrument issued by the employer

1 that is negotiable on demand at full face value for United States
2 currency; or

3 (3) by the electronic transfer of funds to:

4 (A) a direct deposit plan as described by Section
5 61.017; or

6 (B) a payroll card account established under
7 Subchapter G.

8 SECTION 3. Section 61.017, Labor Code, is amended by adding
9 Subsection (d) to read as follows:

10 (d) An employer may elect to pay wages to an employee
11 through a payroll card account system that uses electronic funds
12 transfer to deposit the wages in the employee's payroll card
13 account. An employer who desires to pay wages through a payroll
14 card account system shall comply with Subchapter G.

15 SECTION 4. This Act takes effect September 1, 2009.