

By: Hochberg

H.B. No. 1196

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 61.001, Labor Code, is amended by adding subdivisions (8), (9), (10), (11), and (12) to read as follows:

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

(9) "Payroll card account" means an account established by the employer to pay each participating employee's wages by making an electronic fund transfer to an account, and from which participating employees receive a payroll card to access their funds.

(10) "Payroll card issuer" means an employer that issues a payroll card to an employee or a bank or other entity that issues a payroll card to an employee on behalf of the employer.

(11) "Offers a payroll card" includes both the direct offers by the employer and the employer distribution to employees of material describing a payroll card program prepared by a payroll card issuer other than the employer.

(12) "Fee" means any and all fees, charges, surcharges, or costs.

SECTION 2. Section 61.016, Labor Code, is amending

1 Subsection (a)(3) to read as follows:

2 (3) by the electronic transfer of funds to a direct deposit
3 plan or payroll card account.

4 SECTION 3. Section 61.017, Labor Code, is amended by adding
5 Subsections (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n)
6 to read as follows:

7 (d) An employer may elect to pay wages through an electronic
8 transfer of funds to a payroll card account at a federally insured
9 depository institution. An employer who desires to pay wages
10 through a payroll card account shall provide to the employee
11 written disclosure in plain language of all the employee's wage
12 options, including:

13 (1) the terms and conditions of the payroll card
14 account option, including, but not limited to, the requirements set
15 forth in this section and a complete itemized list of all fees that
16 may be deducted from the employee's payroll card account by the
17 employer or card issuer. The disclosure must also state that third
18 parties may assess transaction fees in addition to the fees
19 assessed by the employee's payroll card issuer or issuers. For fees
20 that may be deducted or charged by the employer or payroll card
21 issuer, the dollar amount of each fee must be stated. A copy of the
22 written disclosure must be provided to the employee; and

23 (2) written notice of any change to any of the terms
24 and conditions of the payroll card or payroll card account,
25 including but not limited to an itemized list of all fees that may
26 have changed.

27 (e) The employer may initiate payment of wages to an

1 employee by electronic fund transfer to a payroll card account only
2 after the employee has voluntarily consented in writing to that
3 method of payment. Consent to payment of wages by electronic fund
4 transfer to a payroll card account shall not be a condition of hire
5 or of continued employment. The written consent signed by the
6 employee must include the terms and conditions of the payroll card
7 account. A copy of the signed written consent must be provided to
8 the employee and be retained by the employer.

9 (f) The payroll card or payroll card account shall not
10 be linked to any form of credit including, but not limited to, a
11 loan against future pay or a cash advance on future pay.

12 (g) Unless the employee consents in writing to the
13 use, information generated by the employee's possession or use of a
14 payroll card or payroll card account may only be used to process
15 transactions and administer the payroll card and the payroll card
16 account.

17 (h) An employee who elects to be paid wages by
18 electronic fund transfer to a payroll card account may request to be
19 paid wages by another method that is allowed by law on a written
20 form provided by the employer or in an electronic format if provided
21 by the employer. The employer shall, within thirty days of the
22 employee's request, begin payment by the method requested.

23 (i) An employer shall provide each employee with
24 access to one free transaction history each month which includes
25 all deposits, withdrawals, deductions, or charges by any entity
26 from or to the employee's payroll card account.

27 (j) An employer shall provide employees at least one

1 transaction per pay period at no cost to the employee for an amount
2 up to and including the total amount of the employee's entire net
3 pay, as stated on the employee's earning statement. The free
4 transaction must be available to the employee on and after the
5 employee's regular payday.

6 (k) An employer may not charge an employee, with the
7 exception of the cost required to replace a lost, stolen or damaged
8 card:

9 (1) any initiation, participation, maintenance,
10 loading or other fee to receive wages payable in an electronic fund
11 transfer to a payroll card account;

12 (2) any inactivity or dormancy fee; or

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

14 (l) Fees imposed by the payroll card issuer that were
15 not disclosed to the employee shall not be deducted from the
16 employee's payroll card or charged to the employee.

17 (m) An employer who offers a payroll card account
18 option to an employee using materials in a language other than
19 English shall provide the written disclosure and written consent
20 and all payroll card account agreements in that other language.

21 (n) An employer, or other entity on behalf of the
22 employer, may not issue payroll cards other than from an insured
23 depository institution, and the agreement between the employer and
24 the institution must specify that:

25 (1) The insured depository institution maintain
26 account records which disclose the existence of a custodial
27 relationship between the employer and the employees;

1 (2) The employer, the insured depository
2 institution or other third party maintain records that disclose the
3 identities of the actual owners of the funds and the amount owned by
4 each such owners;

5 (3) The deposits actually must be owned by the
6 named owners listed in the account; and

7 (4) The insured depository institution shall not
8 allow overdrafts on the payroll card with or without a fee unless
9 this service is requested by the named owner.

10 SECTION 5. This Act takes effect September 1, 2009.