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## S.B. 155 -- Payroll Cards

Labor Committee public hearing -- February 28, 2012  
Testimony of Raphael L. Podolsky

S.B. 155 incorporates all changes that were made in last year's bill, which passed the House but was not taken up by the Senate. While the bill is not perfect, from a consumer perspective it does include a significant number of protections related to its use. For that reason, the consumer attorneys with whom I work do not oppose the bill in its present form.

Payroll cards, if structured properly, can have advantages for employees without bank accounts. The three most important advantages are that the cards (1) allow the employee to avoid expensive check-cashing services, (2) protect employee wages from execution (wage executions will continue to be implemented before the transfer of wages to the payroll card), and (3) can be used as debit cards for retail point of service transactions, including receiving cash to the extent that the store permits cash advances on debit cards. There is the danger, however -- as with debit cards generally -- that credit card issuers can impose usage fees that have the practical effect of preventing employees from having full use of their wages. It is important that any law authorizing payment by payroll card minimize that risk.

### Positive aspects of S.B. 155:

- Direct deposit: The employee can opt at any time, without fee, to switch from payroll card to direct deposit (l. 23-26; l. 88-95).
- Protection from creditors: Creditors cannot attach an employee's payroll card account (l. 134-137).
- Payday loans: The payroll card cannot be linked to payday loans or any other credit extension (l. 81-82).
- No expiration of funds: Funds in the payroll card do not expire (l. 50-54).
- Labor Department regulations: The Labor Commissioner may promulgate regulations to ensure compliance with the act (l. 148-150).
- Restrictions on fees: No fees may be imposed for:
  - One withdrawal per pay period (l. 34-38);
  - Overdrafts or declined transactions (l. 82-83). An overdraft must either be rejected or, if an overdraft is permitted, the employee cannot be charged either a fee or interest.
  - Checking the account balance by phone (automated response) or electronically (l. 57-59, l. 74-75);
  - A 60-day transaction history of the account (l. 122-129). The employer must provide either an electronic record that can be printed without cost to the employee or a free monthly written transaction history.
  - Inactivity, dormancy, or non-use of funds on the card (l. 48-49);
  - One replacement card per year (l. 45-48);

(continued on reverse side...)

Problematic aspects of S.B. 155:

- Limitations on free withdrawals: The bill does not prevent the imposition of ATM or other fees for a second or subsequent use of the card during a pay period (l. 34-38).
- Elimination of paper checks: An employer can eliminate the use of paper checks for new hires (l. 15-17).
- No general prohibition on fees: Although certain specific fees are prohibited, there is no general prohibition against all service, maintenance, or usage fees.
- ATM availability: There is no requirement that the employer use a bank with a large ATM network in the area of the place of employment (and no prohibition on the imposition of ATM fees for the use of an out-of-network ATM).