

# Legal Assistance Resource Center

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### H.B. 5315 -- Payroll Cards

Labor and Public Employees Committee public hearing -- March 11, 2014  
Testimony of Raphael L. Podolsky

**Recommended Committee action: MODIFICATION OF THE BILL**

Payroll cards, if structured properly, can have advantages for employees without bank accounts. The three most important ones are that the cards (1) let the employee avoid expensive check-cashing services, (2) protect employee wages from execution (after any wage executions are satisfied), and (3) are usable 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 wage payment by payroll card minimize that risk. The sponsors of H.B. 5315, to their credit, have taken into consideration a number of consumer concerns; and it is fair to say that, as compared with the first payroll card bill that was introduced in 2011, this is a much better bill. Nevertheless, it is important that a number of key changes still be made to the bill:

*First*, it is my understanding that the sponsors of H.B. 5315 intended to incorporate into the bill all consumer protective provisions contained in the bill that passed the House in 2011. These are found in House "A" to H.B. 6407 (LCO #8595), a "strike-all" amendment (<http://www.cga.ct.gov/2011/amd/h/pdf/2011HB-06407-R00HA-AMD.pdf>). However, a number of those protections were left out of H.B. 5315, probably inadvertently. It is essential that they be restored.

*Second*, it is also my understanding that the sponsor of this year's bill intended to make the use of payroll cards voluntary for the employee. We support that intent, but we believe that the bill does so only partially. Additional language is needed. A voluntary payroll card system requires employees to opt into the system in order to receive a payroll card, not to have to opt out, and should also allow employees to return to a paper check without cost. Those provisions are missing from H.B. 5315.

*Third*, the bill should require (1) a more reasonable number of free withdrawals and (2) assurance of a broad-based system that will give employees easy accessibility to their wages anywhere in the state (i.e., widespread networks through which the employee's full wages can be withdrawn without charge from a bank and through which withdrawals can be made from ATMs).

(A detailed statement of the specific changes requested is attached. A full mark-up of the suggested changes can also be provided.)

## **Provisions of S.B. 5315 that should be modified**

### **Part I -- Items from the 2011 bill (LCO 8595) that should have been in H.B. 5315:**

- Clear and conspicuous notices: Section 1(p) of LCO 8595, requiring that all notices be clear and conspicuous, should be restored.
- Collective bargaining agreements: Section 1(q) of LCO 8595, allowing collective bargaining agreements to include additional protections, should be restored.
- Department of Labor regulations: Section 1(s) of LCO 8595, authorizing the Labor Commissioner to adopt regulations, should be restored.
- Prior disclosure: The mandatory disclosures required by the bill should be made before the employee can sign up for a payroll card. That requirement comes from LCO 8595 but was omitted in H.B. 5315. For clarity and proper sequencing, this section should also be moved up to become subsection 1(c) of H.B. 5315.
- No deduction for employer costs: Section 1(d) of H.B. 5315 is missing the introductory paragraph from LCO 8595. It should be restored.
- Deduct or charge: Section 1(d)(1) of H.B. 5315 (l. 32) uses the term "deduct" while the equivalent language in LCO 8595 is "shall be deducted from or charged against" (l. 41 of LCO 8595). The language from LCO 8595 should be used.

### **Part II -- Items needed to make the payroll card effectively voluntary for unbanked employees**

- \* Opting in: The bill should require employees to opt in to a payroll card. Instead, it switches them automatically to a payroll card if they fail to respond to a notice within 14 days, i.e., it forces them to opt out in order to avoid an automatic transfer. LCO 8595, on which the bill is based, used opting out only for non-voluntary payroll cards. For voluntary employees, it used opting in.
- \* The right to switch out: H.B. 5315 fails to permit employees to switch back from a payroll card to a paper check. Once in the payroll card system, the employee is permitted only to transfer to direct deposit and not back to a paper check. Most payroll card employees, however, are "unbanked" and therefore cannot switch to direct deposit. For them, if they are unhappy with a payroll card, the only realistic switch is to paper check. If the bill is meant to be voluntary for employees, then it should be possible and easy to return to paper check.

### **Part III -- Free withdrawals and extensiveness of the network**

Our remaining principal concern about the bill is that it promises only one free withdrawal or transfer per pay period (which may well be two weeks in length) and does not provide any assurance that even this minimal number of free withdrawals will be at a location that the employee can easily get to. The issuing bank may have few branches (or even no branches) in the state. It may have no ATM network or only a very small one. It is also important to recognize that branded card networks (such as

VISA or MasterCard) are not the same as ATM networks. We suggest the following modifications to the bill to minimize this problem:

- \* Number of guaranteed free withdrawals: The bill should require that the employee be allowed, without charge, at least one free withdrawal per payroll period for an amount up to the full amount of earnings for that period (presumably from a bank teller) AND at least one free withdrawal per week (regardless of the duration of the pay period) from an in-network ATM. Note that an employee who withdraws the entire payroll deposit at once (much like cashing a paper paycheck) will get no free ATM withdrawals, since there will be no money left in the payroll account to withdraw.
- \* Extensiveness of networks: The bill should require that the card be a major branded card to maximize the number of bank locations at which a withdrawal can be made from a teller window (which is the way in which a full payroll withdrawal will have to be made) and that at least one such withdrawal be available without charge. The bill should also require a sufficiently large ATM network so the employee will be able to find a reasonably convenient ATM.

If these changes are made, the Committee will have a good bill that it can move forward.