Legislative Analysis

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WAGES: ALLOW EMPLOYERS TO REQUIRE PAYMENT BY ELECTRONIC MEANS

House Bill 5821 (Substitute H-1)
Sponsor: Rep. Dan Scripps
Committee: Banking and Financial Services

First Analysis (6-8-10)

BRIEF SUMMARY: The bill would allow employers to require their employees to receive wages only through direct deposit or a payroll debit card under certain conditions; revise the definition of "payroll debit card," and restrict the use of payroll debit cards to those with certain characteristics.

FISCAL IMPACT: The bill would have no significant state or local government fiscal implications. A more detailed discussion follows later in the analysis.

THE APPARENT PROBLEM:

The manner in which employers may pay wages to their employees is regulated by state law. In Michigan, employers may pay their employees in cash, by paper check, direct deposit into a checking or savings account at a bank or credit union, or by a payroll card. Payroll cards are stored value cards and act much like a debit card. (See ***Background Information***.)

Over the past decade, paying workers by electronic means has become increasingly popular with employers. It is often cheaper than issuing, processing, and distributing paper checks; provides detailed records for tax purposes; and avoids the costs associated with lost or stolen paychecks. Complying with federal and state laws regarding wage payment is also easier when payment can be done via electronic methods. For instance, payment by direct deposit or payroll card enables employers to release payment for wages on time whereas inclement weather, natural disasters, power failures, or the recent termination of an employee can interfere with or prevent the timely distribution of wages by paychecks or cash. Moreover, with direct deposit or a payroll card, an employee who is ill, hospitalized, or on vacation can still have access to pay on payday.

In recent years, there has been a trend by states to allow employers to restrict payment of wages to a choice between electronic methods, thus dispensing with the option of offering cash or paper checks. Because of the benefit to both employers and workers, some feel that Michigan law should likewise be amended.

THE CONTENT OF THE BILL:

House Bill 5821 would amend Public Act 390 of 1978 (MCL 408.476), which regulates the way that wages and fringe benefits are paid to employees, to revise the requirements for issuing payroll debit cards and to allow employers to require their employees to receive wages either by direct deposit or by payroll debit card.

Now under the law, an employer (or agent of an employer) can pay wages to an employee by U.S. currency, negotiable check or draft, direct deposit, or payroll debit card. (As used in this section, "payroll debit card" means a stored-value debit card that provides an employee access to wages, for withdrawal or transfer by the employee, through a network of automatic teller machines. The term includes cards commonly known as payroll debit cards, payroll cards, and pay-cards.)

House Bill 5821 would retain these options but modify the payroll debit card provision to say that an employer could not pay wages to any employee with a payroll debit card unless the card had the following characteristics:

- Allowed the employee to make at least one withdrawal or transfer per pay period without charge for any amount the employee elects up to the balance accessible through the card.
- Allowed no changes in fees or terms of service unless the employee had received a written notice at least 21 days in advance of the date that the changes took effect identifying the changes and including a statement of the employee's right to request the employer to change the employee's payment method.
- Provided a method for the employee to make an unlimited number of balance inquiries without charge, either electronically or by telephone.
- Was not linked to any form of credit, including a loan against future pay or a cash advance on future pay.

The definition of "payroll debit card" would be revised to mean a stored-value card issued by a federally insured financial institution that provided an employee with immediate access for withdrawal or transfer of wages through a network of automatic teller machines. The term would include a card commonly known as a payroll debit card, payroll card, and paycard.

The bill also specifies that an employer or agent of an employer may require employees to receive wages only through direct deposit or a payroll debit card (that complied with the characteristics listed above) if the employer had provided the employee with all of the following:

- A written form that allowed the employee the option to receive wages either by direct deposit to the employee's account at a financial institution or through a payroll debit card.

- A statement indicating that failure to return the form within 30 days with the account information necessary to implement direct deposit would be presumed to indicate consent to receiving wages through a payroll debit card. This provision would not apply to employees currently paid by direct deposit. If an employee was currently paid by direct deposit, the method of payment could not be changed to a payroll debit card without written consent of the employee.

- Written disclosure of the terms and conditions for use, including an itemized list of any and all fees; methods for accessing wages without a charge and a statement that fees may be imposed for using the payroll debit card outside of the specified network of ATMs; methods to obtain free balance inquiries; the right to elect to change to direct deposit at any time; and that the payroll debit card would not provide access to a savings or checking account.

An employee could request a change in the method of receiving wages electronically at any time, meaning the employee could change from direct deposit to payroll debit card, or from payroll debit card to direct deposit. The change would have to be implemented by the employer no longer than one pay period after receiving the request and any information necessary for implementation. Further, an employer would have to allow an employee to select payment by direct deposit or electronic transfer freely, without intimidation, coercion, or fear of discharge or reprisal for the choice.

BACKGROUND INFORMATION:

Payroll cards

In general, an employer contracts with a financial institution or vendor for a payroll card program. An employee is issued a plastic card with his or her name on it, similarly to a credit or debit card. Wages can be loaded on the card either by having the employee swipe the card at a central station or by electronic means. How an employee accesses wages stored on a payroll card, where the card can be used (ATMs, banks, retail stores), the types of services available to the employee (checking on balances, making online purchases, receiving cash back on retail purchases), and the types of fees associated with use of the payroll card depend on the program and the financial institution or vendor hired by the employer to operate the payroll card system. Branded payroll cards (those with the *MasterCard, Visa,* or *Discover* logo) have the greatest flexibility; besides greater point of sale access, users can reserve hotel rooms and car rentals online, purchase plane tickets, and even pay bills online. In the case of a lost card or fraudulent purchase, a branded payroll card caps the employee’s liability to $50 similarly to credit cards. In addition, funds in the employee’s account are protected by FDIC insurance.

In addition, for persons who do not have a bank or credit union account, payroll cards can be a cheaper alternative to cashing a paper check at a check cashing business and paying bills with money orders and is safer than carrying around (or storing in the house) a large amount of cash. According to the American Payroll Association, branded payroll cards even allow withdrawals at any bank or credit union that issues that brand of card without a fee.

FISCAL INFORMATION:

The bill would have no material fiscal impact on the state. The Department of Energy, Labor, and Economic Growth-Wage and Hour Division, is charged with the responsibility of enforcing 1978 PA 390. The division's responsibilities under the act include receiving, investigating, and resolving complaints alleging a violation of the act, which include nonpayment of wages, and would include failure to comply with the notice and protest requirement provided for under the bill regarding the mandatory use of direct deposit or payroll debit cards. Accordingly, the division could potentially see an increase in the number of complaints it must investigate if employers fail to comply with the notice requirements under the bill for using direct deposit or payroll debit cards. (The substitute bill expands the protest period from 3 days to 30 days, which significantly diminishes the likelihood of there being a significant number of complaints made to the division.) For FY 2010, the appropriation for the Wage and Hour Division is $3.2 million Gross ($336,000 GF/GP), supporting 35.0 FTE positions.

Local units of government would be impacted through the provision in the bill easing the requirements on implementing the use of direct deposit or payroll debit cards for employers. To the extent that transitioning away from traditional paper payroll checks proves to be more economical for the local unit (and to the extent it hasn't already occurred), the bill could potentially result in some cost savings to local units of government.

ARGUMENTS:

For:

The bill would benefit employers in the state by allowing them to require their workers to choose to receive wages either by direct deposit into a checking or savings account at a financial institution **or** via a payroll card; payment by cash or paper check would no longer have to be offered by an employer. Depending on the size of the business and how many employees currently are paid in cash or by check, the savings to a business could be significant. For example, it costs about 20 cents to reload a paycard with an employee's wages, while the cost to issue and distribute a paper check is about $1 to $2. Though an employer may have other administrative costs associated with offering a paycard program, it generally costs less than paying workers in cash or by check.

Employers who elected to pay workers only by electronic means could do so only as specified in House Bill 5821. For instance, an employee currently paid by direct deposit could not be switched to a payroll card without written consent. In addition, certain information would have to be given to employees regarding payroll cards which include an itemized list of any and all fees (such as for withdrawals after the one free withdrawal per pay period or transactions at ATMs outside of the authorized network) and that the employee may switch to direct deposit at any time.

For:

Most people are familiar with direct deposit, in which an employee designates the accounts in one or more financial institutions in which wages are to be deposited. However, not all people have accounts in a bank or credit union. For those "unbanked" individuals, a payroll card provides a less expensive way for workers to access their wages and pay bills than paying high fees at check cashing establishments or for paying bills by money order. Payroll cards also minimize the chance a paycheck would be lost or large amounts of cash stolen, cap an employee's liability for fraudulent uses to $50, and extends the protection of FDIC insurance to the unused funds just like for bank accounts. Use of a payroll card also appears to encourage unbanked persons to open accounts with financial institutions. The bill would provide some important safeguards to ensure employees were familiar with the ins and outs of using payroll cards and know their rights regarding the ability to switch to direct deposit or vice versa.

Against:

In essence, the bill sacrifices the personal choice of the employee, who has earned the wages, for the convenience of and cost savings to the employer. Most workers do find that direct deposit or payroll cards to be a desirable manner in which to receive their pay, but not all do. Regardless of the reasons why, some just are more comfortable with a paper check and the right to choose this form of payment should not be removed solely for the desire of the employer.

Against:

Though promoted as having enhanced consumer protections, the bill as substituted does little more than require certain information to be disclosed to employees regarding payroll cards. For instance, the bill requires a notice that use of an out-of-network ATM could result in additional fees, but doesn't ensure that the authorized network of ATMs are geographically convenient for employees to access. In addition, one free withdrawal a pay period is insufficient to discourage the scenario paycards are meant to eliminate – that is, an employee carrying around a large amount of cash and purchasing money orders to pay rent or bills. Employers have to notify their workers of fee increases at least three weeks in advance, but the bill doesn't restrict the amount of or types of fees that employers can pass to their employees. Other questions are simply left unanswered by the bill; for example, if the first transaction of a pay period is a purchase at a store and the employee receives some cash back, would that count as the one free withdrawal?

Until and unless the consumer protection elements are enhanced in regards to payroll cards, payment by electronic means should be a voluntary, not a mandated, choice.

POSITIONS:

The Department of Energy, Labor, and Economic Growth indicated support for the bill. (5-6-10)

A representative of the Community Economic Development Association (CEDAM) testified and submitted testimony in support of the bill. (5-6-10)
A representative of VISA, Inc., testified and submitted testimony in support of the bill. (5-6-10)

The American Payroll Association, whose members include 7-Eleven, Herman Miller, Inc., and Starbucks Coffee Company, submitted testimony in support of the bill. (4-27-10)

The Michigan Chamber of Commerce indicated support for the bill. (5-6-10)

The Michigan Restaurant Association indicated support for the bill. (5-6-10)

MasterCard Worldwide indicated support for the H-1 substitute with amendments. (5-6-10)

The Michigan Health & Hospital Association indicated support for the bill. (5-6-10)

The Michigan Credit Union League indicated neutrality on the bill. (5-6-10)

The Michigan Bankers Association indicated neutrality on the bill and said that the bill needs additional amendments. (5-6-10)

Bank of America indicated neutrality on the bill. (5-6-10)

AARP Michigan submitted testimony opposing the bill. (5-6-10)

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