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BILL ANALYSIS

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House Bill 5821 (Substitute H-3 as reported without amendment)
Sponsor: Representative Dan Scripps
House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

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RATIONALE

Michigan law governs the methods that an employer may use to pay wages to employees. In addition to paying by cash or check, employers may make a direct deposit or electronic transfer to an employee's account at a financial institution, or issue a payroll debit card. A payroll debit card, also called a payroll card or paycard, is a prepaid card that the employer can "load" with additional funds periodically. The employee then can use his or her card to obtain cash at automatic teller machines (ATMs), to make debit purchases from merchants, or to make purchases and receive cash back. Both direct deposit and payroll cards are considered advantageous to employers because they avoid the costs associated with paper-based payment, such as check printing and handling fees. Under current law, however, an employer may not use either of these methods to pay an employee unless the employee gives his or her written consent. In order to help employers cut payroll costs, it has been suggested that they should have the authority to require employees to receive their wages by direct deposit or payroll card.

CONTENT

The bill would amend Public Act 390 of 1978 (which deals with the payment of wages and fringe benefits) to do the following:

-- **Permit an employer to require employees to receive wages only through direct deposit or a payroll debit card if the employer provided the employee with certain information.**
-- **Permit an employer to pay wages by issuing a payroll debit card only if the card allowed at least one weekly withdrawal or transfer without charge, provided for an unlimited number of free balance inquiries, and met other requirements.**
-- **Permit an employee to request a change in the method of receiving wages at any time.**

Currently, an employer may not deposit an employee's wages in a financial institution or issue a payroll debit card without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal. Under the bill, this would apply except as described below.

The bill would allow an employer or agent of an employer to require employees to receive wages only through direct deposit or a payroll debit card if the employer had provided the employee with a written form giving him or her the option to receive wages by either of those methods.

In addition, the employer would have to give the employee a statement indicating that failure to return the form within 30 days would be presumed to indicate consent to receiving wages through a payroll debit card, unless the employee were currently paid by direct deposit. In that case, the method of payment could not be changed to payroll debit card without the employee's written consent.

The employer also would have to give to the employee written disclosure of all of the following concerning the payroll debit card:

-- The terms and conditions for use, including an itemized list of any and all fees.
-- The methods for gaining access to wages without charge.
-- A statement that, if the card were used outside of the specified network of ATMs, both the card issuer and the ATM operator could impose charges.
-- The methods to obtain free balance inquiries.
-- The employee's right to elect to change the method of receiving wages at any time.
-- That the payroll debit card would not provide access to a savings or checking account.

An employer could not pay wages by issuing a payroll debit card unless the card allowed the employee to make at least one withdrawal or transfer each week without charge at a teller window of any financial institution participating in the payment network identified on the card or at an ATM within the financial institution's network of ATMs.

The card could not allow changes in fees or terms of service unless the employee had received a written notice identifying the changes at least 21 days in advance.

The card would have to provide a method for the employee to make an unlimited number of balance inquiries without charge, either electronically or by telephone.

In addition, the card could not be linked to any form of credit, including a loan against future pay or a cash advance on future pay.

An employee could request a change in the established method of receiving wages at any time. The employer could not take longer than one pay period to implement the change after receiving the request and any information needed to implement it. An employer would have to allow an employee to select the payment method freely, without intimidation, coercion, or fear of discharge or reprisal for the choice.

Currently, "payroll debit card" means a stored-value card that provides an employee with immediate access for withdrawal or transfer of his or her wages through a network of ATMs. The term includes a card commonly known as a payroll debit card, payroll card, and paycard. The bill would refer to a stored-value card "issued by a federally insured financial institution".

"Federally insured financial institution" would mean a State or nationally chartered bank or a State or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office in Michigan under the laws of this State or the United States.

MCL 408.476

BACKGROUND

An employer can contract with a financial institution or vendor to operate a payroll card program. Funds are either transferred to an individual account for each employee or commingled into one company account, with subaccounts that identify how much money belongs to each employee. An employee is issued a plastic card with his or her name on it, similar to a credit or debit card. How an employee obtains wages stored on the card, where the card may be used, the types of services available to the employee, and the fees associated with use of the card depend on the program and the financial institution or vendor that operates the payroll card program.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Electronic wage payment methods are increasingly popular among employers trying to reduce costs and streamline operations. The expense of issuing and distributing paper checks can be significant, but this cost can be avoided through electronic payment. According to a 2007 article in *Benefits & Compensation Solutions*, "An effective payroll card program can, on average, help reduce costs associated with traditional paper-based payment systems by more than 85 percent" ("Payroll Card Best Practices Cut Costs and Time").

Presumably, the potential savings from direct deposit are at least equivalent. In addition to eliminating check printing, bank processing, and check handling fees, as well as postage, electronic payment avoids the costs of reconciling checks and replacing lost or stolen checks. While paying wages through direct deposit or payroll cards can be especially advantageous for large employers, small businesses also can benefit from electronic payment methods.

Under current Michigan law, however, employers can give employees the option of receiving their wages through direct deposit or payroll cards, but may not require them to do so. As a result, unless all of an employer's workers consent, the employer cannot fully realize the savings associated with electronic wage payment. The bill would remedy this by allowing employers to require their employees to be paid only through direct deposit or a payroll debit card, as long as the required notices were given and a payroll card met the criteria in the bill. An employee who already used direct deposit could not be switched to a payroll card without his or her consent, and employees who chose one method of electronic payment could request a change at any time. These provisions would enable employers to reap the benefits of electronic wage payment while protecting the interests of employees.

Supporting Argument

Electronic wage payment can be beneficial to employees, especially if they do not have an account with a financial institution. If workers are paid by check, "unbanked" employees must resort to check-cashing businesses each pay period in order to obtain their wages. In addition to paying high fees to cash their checks, these individuals incur costs when purchasing money orders to pay bills or traveling to a payment location to pay in cash. In addition, the employees risk losing their money or becoming a target for theft once their paychecks are cashed.

Requiring employees to receive their wages electronically could encourage unbanked individuals to open an account with a financial institution in order to take advantage of direct deposit. Those who did not do so, and were issued payroll debit cards, still would be protected by the Federal Electronic Fund Transfer Act. That law sets limits on the amount of money that can be lost when a credit or debit card is stolen, and requires the bank or credit union to return funds removed by theft or mistake. Several years ago, these protections were extended to payroll cards.

In addition, many payroll cards now carry a VISA or MasterCard brand, which enables employees not only to withdraw funds at an ATM, but also to make purchases and receive cash back from numerous retailers, using the payroll card like a traditional debit card. The national branding also adds prestige and utility to the payroll card. Employees can use the card, for example, to make on-line purchases or hotel reservations, or to pay bills on-line.

Opposing Argument

Employees should not be mandated to receive their wages electronically. Under current law, employers already can use direct deposit or payroll cards for employees who consent. Individuals who are not comfortable with electronic banking should still be able to receive their wages by check.

Response: Moving to an all-electronic means of paying employers could save businesses considerable sums, perhaps even creating jobs or preventing layoffs. Even if only a few employees continue to receive checks, however, the potential savings are undermined.

Opposing Argument

Payroll debit cards can present pitfalls to employees, especially in terms of the fees that may be charged. These include a monthly fee, a fee after a certain number of transactions, a fee for using the card at an ATM, a point-of-sale fee, an inactivity fee, a fee to replace the card, and a fee when funds are loaded onto the card. When these fees accumulate, they can easily surpass the amount paid to check-cashing businesses. Although the bill would require unlimited free balance inquiries, employees could be limited to only one free withdrawal or transfer per week—far fewer than many consumers make.

Response: Employers would have to give their employees an itemized list of any and all fees, as well as other information about use of a payroll card.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.