

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5821

(As amended, December 3, 2010)

A bill to amend 1978 PA 390, entitled

"An act to regulate the time and manner of payment of wages and fringe benefits to employees; to prescribe rights and responsibilities of employers and employees, and the powers and duties of the department of labor; to require keeping of records; to provide for settlement of disputes regarding wages and fringe benefits; to prohibit certain practices by employers; to prescribe penalties and remedies; and to repeal certain acts and parts of acts,"

by amending section 6 (MCL 408.476), as amended by 2004 PA 534.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 6. (1) An employer or agent of an employer may pay wages
- 2 to an employee by any of the following methods <<THAT PROTECT THE
- 3 EARNINGS OF THE EMPLOYEE FROM GARNISHMENT AS REQUIRED BY 15 USC 1673,
- 4 TO THE SAME EXTENT THEY WOULD BE EXEMPT WHILE HELD BY THE EMPLOYER>>:
- 5 (a) Payment in United States currency.
- 6 (b) Payment by a negotiable check or draft payable on
- presentation at a financial institution or other established place
- of business without discount in United States currency.

1 (c) Direct deposit or electronic transfer to the employee's
2 account at a financial institution.

3 (d) ~~Issuance of ISSUING a payroll debit card to the employee~~
4 **THAT COMPLIES WITH SUBSECTION (6)**. ~~As used in this section,~~
5 ~~"payroll debit card" means a stored value debit card that provides~~
6 ~~an employee access to his or her wages, for withdrawal or transfer~~
7 ~~by the employee, through a network of automatic teller machines.~~
8 ~~The term includes cards commonly known as payroll debit cards,~~
9 ~~payroll cards, and paycards.~~

10 (2) Except as provided in section 283a of the management and
11 budget act, 1984 PA 431, MCL 18.1283a, **OR IN SUBSECTION (4)**, an
12 employer or agent of an employer shall not deposit an employee's
13 wages in a bank, credit union, or savings and loan association
14 without the full, free, and written consent of the employee,
15 obtained without intimidation, coercion, or fear of discharge or
16 reprisal for refusal to permit the deposit.

17 (3) ~~An~~ **EXCEPT AS PROVIDED IN SUBSECTION (4)**, **AN** employer or
18 agent of an employer shall not issue a payroll debit card to an
19 employee under subsection (1)(d) without the full, free, and
20 written consent of the employee, obtained without intimidation,
21 coercion, or fear of discharge or reprisal for refusal to accept
22 the payroll debit card. However, an employer paying wages by
23 payroll debit card to 1 or more of its employees as of January 1,
24 2005 may pay wages to any of its employees by payroll debit card
25 without obtaining the consent described in this ~~subsection~~ **ACT**.

26 **(4) AN EMPLOYER OR AGENT OF AN EMPLOYER MAY REQUIRE EMPLOYEES**
27 **TO RECEIVE WAGES ONLY THROUGH DIRECT DEPOSIT OR A PAYROLL DEBIT**

1 CARD THAT COMPLIES WITH SUBSECTION (6) IF THE EMPLOYER HAS PROVIDED
2 THE EMPLOYEE WITH ALL OF THE FOLLOWING:

3 (A) A WRITTEN FORM THAT ALLOWS THE EMPLOYEE THE OPTION TO
4 RECEIVE WAGES EITHER BY DIRECT DEPOSIT TO THE EMPLOYEE'S ACCOUNT AT
5 A FINANCIAL INSTITUTION OR THROUGH A PAYROLL DEBIT CARD.

6 (B) A STATEMENT INDICATING THAT, EXCEPT FOR AN EMPLOYEE
7 CURRENTLY PAID BY DIRECT DEPOSIT OR ANY EMPLOYEE OF AN EMPLOYER
8 PAYING WAGES BY PAYROLL DEBIT CARD TO 1 OR MORE OF ITS EMPLOYEES ON
9 JANUARY 1, 2005, FAILURE TO RETURN THE FORM WITHIN 30 DAYS WITH THE
10 ACCOUNT INFORMATION NECESSARY TO IMPLEMENT DIRECT DEPOSIT WILL BE
11 PRESUMED TO INDICATE CONSENT TO RECEIVING WAGES THROUGH A PAYROLL
12 DEBIT CARD. IF AN EMPLOYEE IS CURRENTLY PAID BY DIRECT DEPOSIT, THE
13 METHOD OF PAYMENT SHALL NOT BE CHANGED TO PAYROLL DEBIT CARD
14 WITHOUT WRITTEN CONSENT OF THE EMPLOYEE.

15 (C) WRITTEN DISCLOSURE OF ALL OF THE FOLLOWING CONCERNING THE
16 PAYROLL DEBIT CARD:

17 (i) THE TERMS AND CONDITIONS FOR USE, INCLUDING AN ITEMIZED
18 LIST OF ANY AND ALL FEES.

19 (ii) THE METHODS FOR ACCESSING WAGES WITHOUT CHARGE.

20 (iii) A STATEMENT THAT, IF THE PAYROLL DEBIT CARD IS USED
21 OUTSIDE OF THE SPECIFIED NETWORK OF AUTOMATIC TELLER MACHINES, BOTH
22 THE PAYROLL CARD ISSUER AND THE OPERATOR OF THE AUTOMATIC TELLER
23 MACHINE MAY IMPOSE CHARGES.

24 (iv) THE METHODS TO OBTAIN FREE BALANCE INQUIRIES.

25 (v) THE EMPLOYEE'S RIGHT TO ELECT TO CHANGE THE METHOD OF
26 RECEIVING WAGES AT ANY TIME, AS PROVIDED IN SUBSECTION (5).

27 (vi) THAT THE PAYROLL DEBIT CARD DOES NOT PROVIDE ACCESS TO A

1 SAVINGS OR CHECKING ACCOUNT.

2 (5) AN EMPLOYEE MAY REQUEST A CHANGE IN THE METHOD OF
3 RECEIVING WAGES ESTABLISHED UNDER SUBSECTION (4) AT ANY TIME. THE
4 EMPLOYER SHALL TAKE NO LONGER THAN 1 PAY PERIOD TO IMPLEMENT THE
5 CHANGE AFTER THE EMPLOYER RECEIVES THE REQUEST AND ANY INFORMATION
6 NECESSARY TO IMPLEMENT THE REQUEST. AN EMPLOYER SHALL ALLOW AN
7 EMPLOYEE TO SELECT PAYMENT BY DIRECT DEPOSIT OR ELECTRONIC TRANSFER
8 UNDER SUBSECTION (4) FREELY, WITHOUT INTIMIDATION, COERCION, OR
9 FEAR OF DISCHARGE OR REPRISAL FOR THE CHOICE.

10 (6) AN EMPLOYER SHALL NOT PAY WAGES BY ISSUING A PAYROLL DEBIT
11 CARD UNLESS THE PAYROLL DEBIT CARD HAS ALL OF THE FOLLOWING
12 CHARACTERISTICS:

13 (A) ENTITLES THE EMPLOYEE TO MAKE AT LEAST 1 WITHDRAWAL OR
14 TRANSFER WITHOUT CHARGE EACH PAY PERIOD, BUT NOT MORE FREQUENTLY
15 THAN ONCE PER WEEK, FOR ANY AMOUNT THE EMPLOYEE ELECTS UP TO THE
16 BALANCE ACCESSIBLE THROUGH THE CARD.

17 (B) ALLOWS NO CHANGES IN FEES OR TERMS OF SERVICE UNLESS THE
18 EMPLOYEE HAS RECEIVED A WRITTEN NOTICE AT LEAST 21 DAYS IN ADVANCE
19 OF THE DATE THAT THE CHANGES TAKE EFFECT IDENTIFYING THE CHANGES.

20 (C) PROVIDES A METHOD FOR THE EMPLOYEE TO MAKE AN UNLIMITED
21 NUMBER OF BALANCE INQUIRIES WITHOUT CHARGE, EITHER ELECTRONICALLY
22 OR BY TELEPHONE.

23 (D) IS NOT LINKED TO ANY FORM OF CREDIT, INCLUDING A LOAN
24 AGAINST FUTURE PAY OR A CASH ADVANCE ON FUTURE PAY.

25 (7) ~~(4)~~ An employer shall not require an employee to pay any
26 fees or costs incurred by the employer in connection with paying
27 wages or establishing a process for paying wages ~~under~~ BY A METHOD

1 DESCRIBED IN subsection (1)(c) or (d).

2 (8) AS USED IN THIS SECTION:

3 (A) "FEDERALLY INSURED FINANCIAL INSTITUTION" MEANS A STATE OR
4 NATIONALLY CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS
5 AND LOAN ASSOCIATION, SAVINGS BANK, OR CREDIT UNION WHOSE DEPOSITS
6 ARE INSURED BY AN AGENCY OF THE UNITED STATES GOVERNMENT AND WHICH
7 MAINTAINS A PRINCIPAL OFFICE OR BRANCH OFFICE LOCATED IN THIS STATE
8 UNDER THE LAWS OF THIS STATE OR THE UNITED STATES.

9 (B) "PAYROLL DEBIT CARD" MEANS A STORED-VALUE CARD ISSUED BY A
10 FEDERALLY INSURED FINANCIAL INSTITUTION THAT PROVIDES AN EMPLOYEE
11 WITH IMMEDIATE ACCESS FOR WITHDRAWAL OR TRANSFER OF HIS OR HER
12 WAGES THROUGH A NETWORK OF AUTOMATIC TELLER MACHINES. THE TERM
13 INCLUDES A CARD COMMONLY KNOWN AS A PAYROLL DEBIT CARD, PAYROLL
14 CARD, AND PAYCARD.