

- SUBJECT:** Regulating private employer payroll cards
- COMMITTEE:** Technology, Economic Development and Workforce — committee substitute recommended
- VOTE:** 6 ayes — Strama, Button, Eissler, Gattis, Harless, Ritter
- 0 nays
- 3 absent — Parker, F. Brown, Rodriguez
- WITNESSES:** For — Don Baylor, Center for Public Policy Priorities; Celeste May, Texas Bankers Association; Ben Steffy; (*Registered, but did not testify:* Rick Levy, Texas AFL-CIO)
- Against — None
- On — Jerry Ramos, Texas Workforce Commission
- BACKGROUND:** Labor Code, ch. 61 outlines provisions for the payment of wages with enforcement authority provided to the Texas Workforce Commission.
- DIGEST:** CSHB 1196 would amend Labor Code, ch. 61 to provide regulations for the payment of wages through a payroll card account and to provide that an employer could pay employee wages by the electronic transfer of funds to a direct deposit plan or a payroll card account.
- The bill would define a payroll card account as an account established by an employer to pay a participating employee's wages through electronic funds transfer to the account, and under which the employee received a payroll card to access the employee's wages in the account.
- Option for a payroll card account.*** The bill would allow an employer to pay wages through an electronic transfer of funds to a payroll card account only if the account was established at a federally insured depository institution. Participation in this payment method by employees would be voluntary, would require the employee's written consent with the terms of the payroll card account included, and could not be a condition for hire or continuing employment.

Prior to instituting a payroll card account program, an employer would have to provide to each employee a written disclosure, in plain language, that described all the employee's options regarding payment of wages. The disclosure would have to state the terms of the payroll card account option, including:

- a complete itemized list of all fees that could be deducted from the employee's payroll card account by the employer or payroll card issuer;
- that third parties could assess transaction fees in addition to fees assessed by the employer's payroll card issuer; and
- the dollar amount for each fee that could be deducted or charged.

An employer would comply with the employee consent requirements by giving the employee the option of receiving wage payment via payroll card account, direct deposit, or another offered method, as long as the written consent form met the outlined requirements.

An employee electing to use a payroll card account could request that the employer pay the employee's wages by another offered method. Within 30 days after receiving the request, the employer would have to begin payment of wages by the requested method. The employer would have to provide a copy of the consent form to the employee and retain the form while using a payroll card account system affecting the employee.

***Account operation.*** An employer would have to provide each employee electing to use the payroll card account system with:

- one free transaction history each month that would have to include each deposit, withdrawal, deduction, or charge made by any person from or to the employee's payroll card account; and
- at least one transaction per pay period, free to the employee, for an amount up to and including the total amount of the employee's entire net pay as provided on the employee's earning statement.

An employer could not charge an employee for any fee for use of the payroll card other than the card's replacement cost. Additionally, an employer could not deduct from or charge an employee's payroll card a fee from the card issuer that was not disclosed prior to the fee being initiated.

The payroll card or related account could not be linked to any form of credit, including a loan against or cash advance on future wages. This would not apply to an inadvertent overdraft or overdraft protection agreed to by the employee.

***Depository requirements.*** An employer, or an entity acting on the employer's behalf, could not issue payroll cards other than from a federally insured depository institution. The agreement between the employer and depository institution would have to specify that:

- the insured depository institution maintained account records that disclosed the existence of a custodial relationship between the employer and the participating employees;
- the employer, depository institution, or other third party maintained records that disclosed the identities of the fund owners and the amount owned by each owner;
- deposits would be owned by the named owner listed in the account; and
- the insured depository institution would not allow overdrafts on the payroll card, with or without a fee, unless the service was requested specifically by the account owner.

***Other provisions.*** The bill also would require that:

- unless the employee provided consent, information from the payroll card or related account could only be used to process transactions and administer the payroll card and account;
- an employer would have to provide to each employee electing to use a payroll card written notice of any changes in the terms of the payroll card account, including an itemized list of any changed fee; and
- an employer offering a payroll card account using materials in a language other than English would have to provide related payroll card account documents in the other language.

The bill would take effect September 1, 2009.

SUPPORTERS  
SAY:

CSHB 1196 would provide a regulatory structure for private employer payroll cards to ensure that they are used in a transparent manner and offer appropriate safeguards for employees. Due to the low cost involved and the increased ease of use, more and more employers are opting to use

electronic transfer of funds to pay employees' wages, rather than by traditional paper check. If employees did not have a bank account for direct deposit and were instead paid via a debit card-like payroll card, they could possibly face a number of fees and charges to access their wages if the cards were not fairly administered. CSHB 1196 would provide regulatory structure to private employer cards by bringing them in line with existing state agency guidelines.

The bill would give employees portable and fair access to their wages without being charged unnecessarily by providing a number of safeguards. These include requiring that payroll cards could be issued only through a federally insured depository institution, requiring that fees be disclosed prior to a card being issued, limiting the number of fees that could be charged, and allowing limited, but free, account access.

**OPPONENTS  
SAY:**

CSHB 1196 could be strengthened by leveraging the relationship with a financial institution that the bill would require for a payroll card as a vehicle to "bank the unbanked." Through this relationship, a bank or credit union could offer traditional financial services, such as savings accounts, to payroll card holders.