



# Ohio Legislative Service Commission

## Bill Analysis

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### **Sub. H.B. 253**

(LSC 130 1319-1)

130th General Assembly

(As Pending in H. Commerce, Labor, and Technology)

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## **BILL SUMMARY**

- Requires a private sector employer to obtain an employee's written consent prior to paying the employee's wages through a payroll card.
- Requires the employer to offer the employee the option of receiving the employee's wages through another method, including by direct deposit into a depository account (a bank account) selected by the employee, in lieu of being paid through a payroll card.
- Requires the employer to disclose specified information to the employee prior to obtaining the employee's written consent.
- Requires the issuer to provide at least one method to withdraw the entire amount of wages for each pay period without the employee incurring a fee.
- Lists additional requirements the employer must satisfy to pay wages via payroll card and requirements for the agreement entered into between the employer and the card issuer.
- Prohibits a card issuer from charging fees to access certain account information unless the issuer is otherwise permitted to do so under federal law.
- Requires an issuer to issue a new payroll card prior to a card's expiration date.
- Requires the Director of Commerce to administer and enforce the bill with respect to employers.
- Prohibits payroll card funds from expiring and a payroll card from being linked to any abusive form of credit or credit practice as defined in rules adopted by the Director.

- Allows an employee or a person acting on an employee's behalf to file a complaint regarding an employer's alleged violations of the bill with the Director.
- Allows the Director, an employee, or a person acting on an employee's behalf to sue an employer if the employer violates the bill's prohibitions.
- Specifies remedies for employer or card issuer violations of the bill.

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## CONTENT AND OPERATION

### Use of payroll cards

The bill establishes requirements with which a private sector employer must comply if the employer wishes to pay the employer's employees' wages via payroll card. A "payroll card" is an access mechanism issued to an employee by an employer or by another entity through an arrangement with the employee's employer, through which the employer provides the employee access to the employee's wages on a continuing basis. "Payroll card" includes a prepaid card, debit card, code, or device used to provide that access.<sup>1</sup>

Under the bill, a payroll card is not considered a gift card for purposes of Ohio's law governing the sale and expiration of gift cards.<sup>2</sup>

### Requirements for paying wages via payroll card

The bill prohibits a private sector employer from paying wages through a payroll card unless all of the following occur:

(1) The employer obtains an employee's written consent for the employee to receive the employee's wages through a payroll card.

(2) The employer offers the employee the option of receiving the employee's wages through another method, including by direct deposit into a depository account (a bank account) selected by the employee, in lieu of being paid through a payroll card.

(3) The agreement the employer enters into with the issuer of the payroll card includes the contract terms specified under "**Agreement**," below.

(4) The employee is able to access balance or other account information through an automated telephonic system and at least one electronic method.

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<sup>1</sup> R.C. 4113.80(A), (B), and (E).

<sup>2</sup> R.C. 1349.61.



(5) The payroll card program is designed to maintain funds placed in the program in an account insured through the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) on a pass-through basis to the individual cardholder.

The bill prohibits the card issuer from charging a fee for accessing the information described in (4), above, unless otherwise permitted by federal law (see "**Background – federal law**," below).<sup>3</sup>

### **Agreement**

In order for an employer to pay wages through a payroll card, the bill requires that the agreement between the employer and the issuer of the card contain a requirement that the issuer provide at least one method to withdraw the entire amount of wages for each pay period without the employee incurring a fee. Additionally, the agreement must include a requirement that the issuer prevent withdrawals in excess of the account balance and, to the extent possible, protects against the account being overdrawn.<sup>4</sup>

### **Notice**

Under the bill, an employer that offers a payroll card to the employer's employees must provide both of the following to each employee prior to seeking the employee's consent:

(1) A plain language description, in the language the employer normally communicates information to the employee, of the employee's options for the methods in which the employer will pay the employee the employee's wages;

(2) The terms and conditions of the payroll card, including a clear, conspicuous, and complete itemized list of any fees that may be deducted from the employee's payroll card account, including the specific dollar amounts of the fees (the employer must provide this information on a separate form that the employee may keep).<sup>5</sup>

### **Requirements for cards and payroll card accounts**

The bill prohibits payroll card funds from expiring. However, this prohibition does not prevent a financial organization or an issuer from complying with Ohio's

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<sup>3</sup> R.C. 4113.81(A) and (C).

<sup>4</sup> R.C. 4113.81(A)(3).

<sup>5</sup> R.C. 4113.81(B).



Unclaimed Funds Law.<sup>6</sup> The bill also prohibits a payroll card from being linked to any abusive form of credit or credit practice as defined in rules adopted by the Director of Commerce.<sup>7</sup>

If a payroll card has an expiration date, under the bill the issuer must provide to the employee to whom the card was issued a new card prior to that date. The bill prohibits any issuer from failing to comply with this requirement.<sup>8</sup>

## **Enforcement – employers**

The bill prohibits an employer from paying employees via payroll card without complying with the requirements described under "**Requirements for paying wages via payroll card**," above, including the requirements described under "**Notice**," above. An employer also is prohibited from violating the prohibitions described under "**Requirements for cards and payroll card accounts**," above.<sup>9</sup>

### **Director of Commerce authority**

The bill authorizes the Director of Commerce to administer and enforce the bill with respect to employers. To exercise that authority, the Director has the same powers as enumerated in Ohio's Minimum Fair Wage Standards Law. Under that Law, the Director has the authority to do all of the following:

(1) Investigate and ascertain the wages of persons employed in any occupation in Ohio;

(2) Enter and inspect the place of business or employment of any employer for the purpose of inspecting any records of the employer that relate to the wages, hours, and other conditions of employment of any employee (the inspections are to be done in a coordinate effort with the U.S. Department of Labor, the federal agency that enforces the federal Fair Labor Standards Act);

(3) Question the employees for the purpose of ascertaining whether wage laws have been and are being obeyed;

(3) If the Director is prohibited by any employer from carrying out the Director's authority under that Law, issue subpoenas and compel attendance of witnesses and

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<sup>6</sup> R.C. 4113.82(A), by reference to R.C. Chapter 169., not in the bill.

<sup>7</sup> R.C. 4113.82(B) and 4113.83.

<sup>8</sup> R.C. 4113.82(C).

<sup>9</sup> R.C. 4113.84(A).



production of records and testimony relating and relevant to the Director's investigation.<sup>10</sup>

### **Administrative or civil action**

An employee or a person acting on behalf of an employee, if that employee or person believes that an employer has violated the prohibitions described under "**Enforcement – employers**," above, may file a complaint with the Director stating the alleged violation. The complaint must be filed within one of the time periods listed below, whichever is later. The Director must promptly investigate and resolve the complaint to the Director's satisfaction.

If the Director, an employee, or a person acting on behalf of an employee believes that an employer has violated those prohibitions, the Director, employee, or person may sue the employer in a court of competent jurisdiction. The suit must be filed within one of the time periods listed below, whichever is later. Neither an employee nor a person acting on behalf of an employee is required to file a complaint with the Director to filing suit.<sup>11</sup>

The employee or person (in an administrative action) or the Director, employee, or person (in a civil action) must file the complaint within the following time periods:

(1) Three years after the date of the violation;

(2) Three years after the date the violation ceased if the violation was of a continuing nature;

(3) One year after notification to the employee of final disposition by the Director of a complaint for the same violation (civil action only).<sup>12</sup>

### **Remedy**

If an employer is found by the Director or a court to have violated the prohibitions described under "**Enforcement – employers**," above, the employer, within 30 days after the date of that finding, must pay the employee three times the employee's back wages and the employee's costs and reasonable attorney's fees. The bill prohibits a court from staying any payment required under this provision pending any appeal. Additionally, an employee cannot incur liability for costs or attorney's fees

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<sup>10</sup> R.C. 4113.83, by reference to R.C. 4111.04, not in the bill.

<sup>11</sup> R.C. 4113.84(C) and (D).

<sup>12</sup> R.C. 4113.84(B) and (C).



except upon a finding that the action filed by the employee was frivolous. A court must determine whether an action is considered "frivolous" in accordance with the same standards that apply generally in civil suits.<sup>13</sup>

## **Enforcement – issuers**

Under the bill, if an issuer violates the prohibition against failing to issue a new payroll card prior to the expiration of the current card, the issuer is liable to the payroll card holder for all of the following:

- (1) Any amount that remains in the holder's payroll card account after the payroll card expires;
- (2) Any court costs incurred;
- (3) Reasonable attorney's fees.<sup>14</sup>

If an issuer otherwise violates the bill's prohibitions, the issuer may be subject to a civil penalty assessed by the Superintendent of Financial Institutions under continuing law, to the extent that law applies to the issuer (the issuer must be a state bank, foreign bank or trust company subject to Ohio law; see "**Background – federal law**," below).<sup>15</sup>

## **Definitions**

The bill defines the following terms:

(1) "Employee" means any person who performs a service for wages or other remuneration for an employer.

(2) "Employer" means any person who has one or more employees and includes any agent of an employer, but does not include: (a) the state, (b) any state agency or instrumentality, (c) any municipal corporation, county, township, school district, or other political subdivision, or (d) any municipal corporation, county, township, school district, or other political subdivision agency or instrumentality.

(3) "Financial institution" means a bank, trust company, savings and loan association, savings bank, or credit union authorized to do business in Ohio.

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<sup>13</sup> R.C. 4113.84(D).

<sup>14</sup> R.C. 4113.85(A).

<sup>15</sup> R.C. 4113.85(B), by reference to R.C. 1121.35, not in the bill.



(4) "Wages" includes wages, salary, or any unrestricted form of monetary compensation.<sup>16</sup>

## **Background – federal law**

As a form of electronic funds transfer, payroll cards are subject to the federal Electronic Funds Transfer Act (EFTA) and the regulations adopted pursuant to the EFTA.<sup>17</sup> Thus, issuance and use of those cards are subject to the requirements of the EFTA and those regulations. For example, a financial institution offering a payroll card must either provide periodic statements similar to those required for other electronic fund transfers, or provide the following information:

- The account balance;
- An electronic history of a consumer's account transactions that covers at least the 60 days immediately preceding the date the consumer electronically accesses the account;
- A written transaction history that is provided promptly in response to an oral or written request and that covers at least the 60 days immediately preceding the date the financial institution receives the request.<sup>18</sup>

A financial institution also must make initial disclosures concerning account information, error resolution, contact information, days of operation, fees, confidentiality and liability issues, and methods to stop payment.<sup>19</sup>

The EFTA prohibits any person from requiring a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.<sup>20</sup> Official interpretations of this prohibition state that an employer may directly deposit salary by electronic means if the employer's employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give an employee the choice of having

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<sup>16</sup> R.C. 4113.80.

<sup>17</sup> 12 United States Code (U.S.C.) 1693 *et seq.* and 12 Code of Federal Regulations (C.F.R.) Part 1005.

<sup>18</sup> 12 C.F.R. 1005.18 and 1005.9(b).

<sup>19</sup> 12 C.F.R. 1005.7, 1005.11, and 1005.18.

<sup>20</sup> 15 U.S.C. 1693k and 12 C.F.R. 1005.10(e).



the employee's salary deposited at a particular institution (designated by the employer) or receiving the employee's salary by another means, such as by check or cash.<sup>21</sup>

Additionally, nationally chartered banks are regulated under federal law. Federal law expressly allows national banks to charge fees and prescribes requirements with respect to overdraft programs for payroll cards and other electronic funds transfers.<sup>22</sup>

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<sup>21</sup> 12 C.F.R. Pt. 1005, Supp. I.

<sup>22</sup> *See* 12 C.F.R. 7.4002 and 1005.17.

