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S.58

Introduced by Senators Carris, Ayer, Brock, Hartwell, Illuzzi and Mullin

Referred to Committee on Economic Development, Housing and General

Affairs

Date: February 3, 2009

Subject: Labor; employment practices; payment of wages

Statement of purpose: This bill proposes to authorize the payment of wages by
debit card.

An act relating to electronic payment of wages

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 21 V.S.A. §§ 342 and 343 are amended to read:~~

~~§ 342. WEEKLY PAYMENT OF WAGES~~

~~(a) Any person having employees in his service doing and transacting
business within the state shall pay:~~

~~(1) Pay to those employees each week, in lawful money or checks, each
of his employees, the wages earned by such each employee to a day not more
than six days prior to the date of such payment.~~

~~(b)(2) After giving written notice to his the employees, any person having
employees in his service doing and transacting business within the state may,
notwithstanding subsection (a) of this section, pay bi-weekly or semi-monthly~~

1 ~~in lawful money or checks, each of his employees, employee the wages earned~~
2 by the employee to a day not more than six days prior to the date of the
3 payment. If a collective bargaining agreement so provides, the payment may
4 be made to a day not more than 13 days prior to the date of payment.

5 ~~(e)(1)(b)~~ An employee who ~~voluntarily~~:

6 (1) Voluntarily leaves ~~his~~ employment shall be paid on the last regular
7 pay day, or if there is no regular pay day, on the following Friday.

8 ~~(2) An employee who is~~ Is discharged from employment shall be paid
9 within 72 hours of ~~his~~ discharge.

10 ~~(3) If an employee is~~ Is absent from his or her regular place of
11 employment on the employer's regular scheduled date of wages or salary
12 payment ~~such employee~~ shall be entitled to ~~such~~ payment upon demand.

13 ~~(d)(c)~~ With the written authorization of an employee, an employer may pay
14 wages due the employee by ~~deposit~~:

15 (1) Deposit through electronic funds transfer or other direct deposit
16 systems to a checking, savings, or other deposit account maintained by or for
17 the employee in any financial institution within or without the state.

18 (2) Credit to a payroll card account directly or indirectly established by
19 an employer to which electronic fund transfers of the employee's wages,
20 salary, or other employee compensation is made on a recurring basis, other

1 ~~than a checking, savings, or other deposit account described in subdivision (1)~~

2 of this subsection, provided:

3 (A) the employer provides the employee written disclosure in plain
4 language, in at least 10-point type, of all the employee's wage payment
5 options;

6 (B) the employer provides the employee written disclosure in plain
7 language, in at least 10-point type, of the terms and conditions of the payroll
8 card account option, including a complete list of all known fees that may be
9 deducted from the employee's payroll card account by the employer or the
10 card issuer and whether third parties may assess fees in addition to the fees
11 assessed by the employer or issuer;

12 (C) the employee voluntarily consents in writing to receipt of
13 payment by payroll card account after receiving the disclosures described in
14 subdivisions (A) and (B) of this subdivision (2);

15 (D) consent to payment of wages by electronic fund transfer to a
16 payroll card account shall not be a condition of hire or a condition of continued
17 employment;

18 (E) the employer shall provide the employee at least one free means
19 to withdraw the full amount of the employee's balance on the employee's
20 payroll card during each pay period at a financial institution, credit union, or
21 other location convenient to the place of employment; additionally, the

1 ~~employer shall provide the employee with one free ATM transaction each pay~~
2 ~~period to access funds from the payroll card account without incurring any~~
3 ~~fees;~~

4 ~~(F) none of the employer's costs associated with the payroll card~~
5 ~~account shall be passed on to the employee;~~

6 ~~(G) the employer provides prior written notice in plain language, in at~~
7 ~~least 10 point type, of any change to any of the terms and conditions of the~~
8 ~~payroll card account, including any change in the itemized list of fees, and~~
9 ~~obtains voluntary written consent from the employee to continue receiving~~
10 ~~wages on the payroll card account subject to the changes. The employer shall~~
11 ~~be responsible for any increase in fees charged to the employee before the~~
12 ~~employer provides written notice of such changes to the employee;~~

13 ~~(H) in no event, shall the employer provide payment to a payroll card~~
14 ~~that has an expiration date, unless the employer agrees to provide a~~
15 ~~replacement payroll card at no cost to the employee before the expiration date;~~

16 ~~(I) the employer provides the employee the option to discontinue~~
17 ~~receipt of wages by a payroll card account at any time, without penalty to the~~
18 ~~employee;~~

19 ~~(J) the payroll card issued to the employee is a branded type payroll~~
20 ~~card that can be used at PIN-based and signature-based outlets;~~

1 ~~(K) the payroll card account shall be set up so that the account cannot~~
2 ~~be overdrawn;~~

3 (L) the payroll card issuer has filed a notice with the commissioner of
4 the department of labor containing the entity's true name, any other names
5 under which the entity conducts business, the entity's address, which address
6 cannot be a post office box, and the entity's telephone number.

7 § 343. FORM OF PAYMENT

8 ~~Such~~ An employer shall not pay its employees with any form of evidence of
9 indebtedness, including, ~~without limitation,~~ all scrip, vouchers, due bills, or
10 store orders, unless:

11 (1) the employer is a cooperative corporation in which the employee is a
12 stockholder. However, ~~such~~ a cooperative corporation shall, upon request of
13 any ~~such~~ shareholding employee, pay ~~him~~ the shareholding employee as
14 provided in section 342 of this title; or

15 (2) payment is made by check as defined in Title 9A or by electronic
16 fund transfer as provided in section 342 of this title.

17 Sec. 2. 8 V.S.A. § 2707(6) is added to read:

18 (6) A payroll card account issued pursuant to and in full compliance
19 with 21 V.S.A. § 342(c).

20 Sec. 3. EFFECTIVE DATE

21 This act shall take effect upon passage.

~~Sec. 1. 21 V.S.A. §§ 342 and 343 are amended to read:~~

~~§ 342. WEEKLY PAYMENT OF WAGES~~

~~(a) Any person having employees in his service doing and transacting business within the state shall pay:~~

~~(1) Pay to those employees each week, in lawful money or checks, each of his employees, the wages earned by such each employee to a day not more than six days prior to the date of such payment.~~

~~(b)(2) After giving written notice to his the employees, any person having employees in his service doing and transacting business within the state may, notwithstanding subsection (a) of this section, pay bi-weekly or semi-monthly in lawful money or checks; each of his employees, employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.~~

~~(c)(1)(b) An employee who voluntarily:~~

~~(1) Voluntarily leaves his employment shall be paid on the last regular pay day, or if there is no regular pay day, on the following Friday.~~

~~(2) An employee who is Is discharged from employment shall be paid within 72 hours of his discharge.~~

~~(3) If an employee is Is absent from his or her regular place of employment on the employer's regular scheduled date of wages or salary payment such employee shall be entitled to such payment upon demand.~~

~~(d)(c) With the written authorization of an employee, an employer may pay wages due the employee by deposit any of the following methods:~~

~~(1) Deposit through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by or for the employee in any financial institution within or without the state.~~

~~(2) Credit to a payroll card account directly or indirectly established by an employer in a financial institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation are made on a recurring basis, other than a checking, savings, or other deposit account described in subdivision (1) of this subsection, provided all the following:~~

~~(A) The employer provides the employee written disclosure in plain language, in at least 10-point type of both the following:~~

~~(i) All the employee's wage payment options.~~

~~(ii) The terms and conditions of the payroll card account option, including a complete list of all known fees that may be deducted from the employee's payroll card account by the employer or the card issuer and whether third parties may assess fees in addition to the fees assessed by the employer or issuer.~~

~~(B) The employee voluntarily consents in writing to payment of wages by payroll card account after receiving the disclosures described in subdivision (A) of this subdivision (2), and this consent is not a condition of hire or continued employment.~~

~~(C) The employer provides that during each pay period the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance, at a financial institution, credit union, or other location convenient to the place of employment.~~

~~(D) None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense.~~

~~(E) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees. The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.~~

~~(F) The employer provides the employee the option to discontinue receipt of wages by a payroll card account at any time and without penalty to the employee.~~

~~(G) The payroll card issued to the employee shall be a branded-type payroll card that complies with all the following:~~

~~(i) Can be used at a PIN-based or a signature-based outlet.~~

~~(ii) The payroll card agreement prevents withdrawals in excess of the account balance and to the extent possible protects against the account being overdrawn.~~

~~(iii) The payroll card has no expiration date, unless the employer agrees to provide a replacement payroll card at no cost to the employee before the expiration date.~~

~~(H) A nonbranded payroll card may be issued for temporary purposes and shall be valid for no more than 60 days.~~

~~§ 343. FORM OF PAYMENT~~

~~Such An employer shall not pay its employees with any form of evidence of indebtedness, including, without limitation, all scrip, vouchers, due bills, or store orders, unless the employer is in compliance with one or both of the following:~~

~~(1) the The employer is a cooperative corporation in which the employee is a stockholder. However, such, in which case, the cooperative corporation shall, upon request of any such shareholding employee, pay him the shareholding employee as provided in section 342 of this title; or .~~

~~(2) payment Payment is made by check as defined in Title 9A or by electronic fund transfer as provided in section 342 of this title.~~

~~Sec. 2. 8 V.S.A. § 2707(6) is added to read:~~

~~(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).~~

~~Sec. 3. EFFECTIVE DATE~~

~~This act shall take effect upon passage.~~

~~Sec. 1. 21 V.S.A. §§ 342 and 343 are amended to read:~~

~~§ 342. WEEKLY PAYMENT OF WAGES~~

~~(a)(1) Any person having employees in his or her service doing and transacting business within the state shall pay each week, in lawful money or checks, each of his or her employees, the wages earned by such each employee to a day not more than six days prior to the date of such payment.~~

~~(b)(2) After giving written notice to his or her the employees, any person having employees in his or her service doing and transacting business within the state may, notwithstanding subsection (a) of this section subdivision (1) of this subsection, pay bi-weekly or semi-monthly in lawful money or checks, each of his or her employees, employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.~~

~~(c)(1)(b) An employee who voluntarily:~~

~~(1) Voluntarily leaves his employment shall be paid on the last regular pay day, or if there is no regular pay day, on the following Friday.~~

~~(2) An employee who is Is discharged from employment shall be paid within 72 hours of his discharge.~~

~~(3) If an employee is~~ Is absent from his or her regular place of employment on the employer's regular scheduled date of wages or salary payment ~~such employee shall be entitled to such payment upon demand.~~

~~(d)~~(c) With the written authorization of an employee, an employer may pay wages due the employee by ~~deposit~~ any of the following methods:

(1) Deposit through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by or for the employee in any financial institution within or without the state.

(2) Credit to a payroll card account directly or indirectly established by an employer in a federally insured depository institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation is made on a recurring basis, other than a checking, savings, or other deposit account described in subdivision (1) of this subsection, provided all the following:

(A) The employer provides the employee written disclosure in plain language, in at least 10-point type of both the following:

(i) All the employee's wage payment options.

(ii) The terms and conditions of the payroll card account option, including a complete list of all known fees that may be deducted from the employee's payroll card account by the employer or the card issuer and whether third parties may assess fees in addition to the fees assessed by the employer or issuer.

(B) Copies of the written disclosures required by subdivisions (A) and (F) of this subsection and by subsection (d) of this section shall be provided to the employee in the employee's primary language or in a language the employee understands.

(C) The employee voluntarily consents in writing to payment of wages by payroll card account after receiving the disclosures described in subdivision (A) of this subdivision (2), and this consent is not a condition of hire or continued employment.

(D) The employer ensures that the payroll card account provides that during each pay period, the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance at a federally insured depository institution or other location convenient to the place of employment.

(E) None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense.

(F)(i) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of the following:

(I) any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees;

(II) the employee's right to discontinue receipt of wages by a payroll card account at any time and without penalty.

(ii) The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.

(G) The employer provides the employee the option to discontinue receipt of wages by a payroll card account at any time and without penalty to the employee.

(H) The payroll card issued to the employee shall be a branded-type payroll card that complies with both the following:

(i) Can be used at a PIN-based or a signature-based outlet.

(ii) The payroll card agreement prevents withdrawals in excess of the account balance and to the extent possible protects against the account being overdrawn.

(I) The employer ensures that the payroll card account provides one free replacement payroll card per year at no cost to the employee before the card's expiration date. A replacement card need not be provided if the card has been inactive for a period of at least 12 months or the employee is no longer employed by the employer.

(J) A nonbranded payroll card may be issued for temporary purposes and shall be valid for no more than 60 days.

(K) The payroll card account shall not be linked to any form of credit, including a loan against future pay or a cash advance on future pay.

(L) The employer shall not charge the employee an initiation, loading, or other participatory fee to receive wages payable in an electronic fund transfer to a payroll card account, with the exception of the cost required to replace a lost, stolen, or damaged payroll card.

(M) The employer shall ensure that the payroll card account provides to the employee, upon the employee's written or oral request, one free written transaction history each month which includes all deposits, withdrawals, deductions, or charges by any entity from or to the employee's payroll card account for the preceding 60 days. The employer shall also ensure that the

account allows the employee to elect to receive the monthly transaction history by electronic mail.

(d)(1) If a payroll card account is established with a financial institution as an account that is individually owned by the employee, the employer's obligations and the protections afforded under subsection (c) of this section shall cease 30 days after the employer-employee relationship ends and the employee has been paid his or her final wages.

(2) Upon the termination of the relationship between the employer and the employee who owns the individual payroll card account:

(A) the employer shall notify the financial institution of any changes in the relationship between the employer and employee; and

(B) the financial institution holding the individually owned payroll card account shall provide the employee with a written statement in plain language describing a full list of the fees and obligations the employee might incur by continuing a relationship with the financial institution.

(e) The department of banking, insurance, securities, and health care administration may adopt rules to implement subsection (c) of this section.

§ 343. FORM OF PAYMENT

~~Such~~ An employer shall not pay its employees with any form of evidence of indebtedness, including, without limitation, all scrip, vouchers, due bills, or store orders, unless the employer is in compliance with one or both of the following:

(1) ~~the~~ The employer is a cooperative corporation in which the employee is a stockholder. However, such, in which case, the cooperative corporation shall, upon request of any such shareholding employee, pay him the shareholding employee as provided in section 342 of this title; or.

(2) ~~payment~~ Payment is made by check as defined in Title 9A or by an electronic fund transfer as provided in section 342 of this title.

Sec. 2. 8 V.S.A. § 2707(6) is added to read:

(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).

Sec. 3. LEGISLATIVE INTENT; REPORT

The intent of this act is to provide employees with a convenient, safe, and flexible way to receive wages and to reduce employers' payroll costs by allowing for the transfer of wages to a payroll card account. The general assembly recognizes that unforeseen issues regarding the use of payroll accounts may arise. The department of banking, insurance, securities, and

health care administration and the department of labor shall report to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs if they identify any problems associated with the use of payroll card accounts.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.