

SENATE No. 1008

The Commonwealth of Massachusetts

PRESENTED BY:

Eileen M. Donoghue

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting employees who receive wages by payroll debit cards.

PETITION OF:

NAME:

Eileen M. Donoghue

DISTRICT/ADDRESS:

First Middlesex

SENATE No. 1008

By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 1008) of Eileen M. Donoghue for legislation to protect employees who receive wages by payroll debit cards. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act protecting employees who receive wages by payroll debit cards.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 149 of the General Laws is hereby amended by inserting after section 148D the
2 following new section:-

3 Section 148E. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:

5 “Payroll debit card,” a card that provides access to an account with a financial institution
6 established directly or indirectly by the employer, and to which transfers of the employee’s
7 wages are made on an isolated or recurring basis.

8 “Consent,” an express, advance, written authorization given voluntarily by the employee
9 and only given following receipt by the employee of written notice of all terms and conditions of
10 the method of payment. Consent may be withdrawn at any time, provided however, that the
11 employer shall be given a reasonable period of time, but no longer than two full pay periods, to
12 finalize such change.

13 “Employee”, as provided in subsection (h) section 1 of chapter 151A.

14 “No cost,” an employee can access his or her wages, in full, without encumbrances, costs,
15 charges, or fees.

16 “Local access” the employee is provided with access to his or her wages, at a facility or
17 machine which is located within a reasonable travel distance to the employee’s work location or
18 home, and without unreasonable restraint by the employer or its agent.

19 “Reasonable interval,” not less frequently than annually.

20 (b) An employer who uses methods of payments other than cash or check shall provide
21 employees with a written notice that identifies the following:

22 (1) a plain language description of all of the employee’s options for receiving wages;

23 (2) a statement that the employer may not require the employee to accept wages by
24 payroll debit card;

25 (3) a statement that the employee may not be charged any fees for services that are
26 necessary for the employee to access his or her wages in full; and

27 (4) a list of locations where employees can access and withdraw wages at no charge to
28 the employees within reasonable proximity to their place of residence or place of work.

29 (c) An employer shall obtain consent from an employee in writing before paying the
30 employee’s wages by payroll debt card and shall ensure that:

31 (1) It obtains the employee’s informed consent without intimidation, coercion, or fear of
32 adverse action by the employer for refusal to accept payment of wage by payroll debit card; and

33 (2) does not make payment of wage by payroll debit card a condition of hire or of
34 continued employment.

35 (d) The written notice and written consent may be provided and obtained electronically
36 so long as an employee is provided with the ability to view and print both the notice and the
37 consent while the employee is at work and without cost to the employee, and the employee is
38 notified of his or her right to print such materials by the employer through such electronic
39 process.

40 (e) The written notice and written consent shall be provided in English and in the primary
41 language of the employee when a template notice and consent in such language is available from
42 the commissioner.

43 (f) An employer and its agent shall not engage in unfair, deceptive or abusive practices in
44 relation to the method or methods of payment of wages. No employer or his agent, or the officer
45 or agent of any corporation, shall discharge, penalize or in any other manner discriminate against
46 any employee because such employee has not consented to receive his or her wages through
47 payroll debit card.

48 (g) When paying wages by payroll debit card, an employer shall ensure that it receives
49 consent from the employee at least seven business days prior to taking action to issue the
50 payment of wages by payroll debit card.

51 (h) An employer shall not deliver payment of wages by payroll debit card unless each of
52 the following is provided:

53 (1) local access to one or more automated teller machines that offers withdrawals at no
54 cost to the employee;

55 (2) at least one method to withdraw up to the total amount of wages for each pay period
56 or balance remaining on the payroll debit card without the employee incurring a fee.

57 (i) An employer or agent shall not charge, directly or indirectly, an employee a fee for
58 any of the items listed in this subsection. Inclusion in this subsection does not impose any
59 separate or independent obligation to provide services, nor does it relieve an employer or agent
60 from compliance with this section or any federal or state law or regulations:

61 (1) Application, initiation, loading, participation or other action necessary to receive
62 wages or to hold the payroll debit card;

63 (2) point of sale transactions;

64 (3) overdraft, shortage, or low balance status;

65 (4) account inactivity;

66 (5) maintenance;

67 (6) telephone or online customer service;

68 (7) accessing balance or other account information online, by Interactive Voice Response
69 through any other automated system offered in conjunction with the payroll debit card, or at any
70 ATM in network made available to the employee;

71 (8) providing the employee with written statements, transaction histories or the issuer's
72 policies;

73 (9) replacing the payroll debit card at reasonable intervals;

74 (10) closing an account or issuing payment of the remaining balance by check or other
75 means; or

76 (11) declined transactions at an Automated Teller Machine that does not provide free
77 balance inquiries; and

78 (12) any fee not explicitly identified by type and by dollar amount in the contract
79 between the employer and the issuer or in the terms and conditions of the payroll debit card
80 provided to the employee.

81 (j) An employer or its agent shall not deliver payment of wages by payroll debit card
82 account that is linked to any form of credit, including a loan against future pay or a cash advance
83 on future pay. Nothing in this subsection shall prohibit an issuer from covering an occasional
84 inadvertent overdraft transaction if there is no charge to the employee.

85 (k) An employer shall not pass on any of its own costs associated with a payroll debit
86 card account to an employee, nor may an employer receive any kickback or other financial
87 remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll
88 debit card.

89 (l) An employer or its agent shall not deliver payment of wages by payroll debit card
90 unless the agreement between the employer and issuer requires that the funds on a payroll debit
91 card shall not expire. Notwithstanding this requirement, the agreement may provide that the
92 account may be closed for inactivity provided that the issuer gives reasonable notice to the
93 employee and that the remaining funds are refunded within seven days.

94 (m) At least thirty days before any change in the terms and conditions of a payroll debit
95 card takes effect, an employer must provide written notice in plain language, in the employee's
96 primary language or in a language the employee understands, and in at least 12-point font of any
97 change to the terms or conditions of the payroll debit card account including any changes in the
98 itemized list of fees. If the issuer charges the employee any new or increased fee before thirty
99 days after the date the employer has provided the employee with written notice of the change in
100 accordance with the provisions of this subsection, the employer must reimburse the employee for
101 the amount of that fee.

102 (n) Where an employee is covered by a valid collective bargaining agreement that
103 expressly provides the method or methods by which wages may be paid to employees, an
104 employer must also have the approval of the union before paying the employee by payroll debit
105 card.