

SENATE No. 2447

The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court
(2017-2018)
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SENATE, Thursday, April 19, 2018

The committee on Labor and Workforce Development, to whom was referred the petition (accompanied by bill, Senate, No. 1008) of Eileen M. Donoghue for legislation to protect employees who receive wages by payroll debit cards,- reports the accompanying bill (Senate, No. 2447).

For the committee,
Jason M. Lewis

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 SECTION 1. Chapter 149 of the General Laws is hereby amended by inserting after
2 section 148D the 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 “Automated Teller Machine”, also called ATM, is a computerized electronic machine
6 that dispenses cash or performs other basic banking functions.

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 Consent may be withdrawn at any time, provided however,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

12 “Electronic fund transfer”, any transfer of funds that is initiated through an electronic
13 terminal, telephone, computer or magnetic tape for the purpose of ordering, instructing or

14 authorizing a financial institution to debit or credit a consumer's account. The term includes but
15 is not limited to: (i) point of sale transfers; (ii) automated teller machine transfers; (iii) direct
16 deposits or withdrawals of funds; (iv) transfers initiated by telephone; and (v) transfers resulting
17 from debit card transactions, whether or not initiated through an electronic terminal.

18 "Employee", as provided in subsection (h) section 1 of chapter 151A. "Local access", the
19 employee is provided with access to his or her wages, at a financial institution, facility or
20 machine without charge by deduction from the face amount, as shall be deemed by the attorney
21 general to be reasonable, , and without unreasonable restraint by the employer or its agent. "No
22 cost", an employee can access his or her wages, in full, without encumbrances, costs, charges, or
23 fees.

24 "Payroll debit card", a card that provides access to an account with a financial institution
25 established directly or indirectly by the employer, and to which transfers of the employee's
26 wages, salary or other compensation are made on an isolated or recurring basis.

27 "Reasonable interval", not less frequently than annually.

28 (b) An employer who offers methods of payment by payroll debit card shall provide
29 employees with a written notice that includes:

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

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

33 (3) a statement that an employee must be able to access his or her net wages in full at
34 least once each pay period without any fees; and

35 (4) access to a written or electronic list of locations, facilities or financial institutions
36 where employees can gain local access to funds and withdraw wages at no charge to the
37 employees.

38 (c) An employer shall obtain consent from an employee in writing before paying the
39 employee's wages by payroll debit card and shall ensure that:

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

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

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

49 (e) The written notice and written consent shall be provided in English and in any other
50 language that is spoken by 5% or more of the employer's workforce and for which a translated
51 notice and consent in that language is available from the Department of Labor Standards. If the
52 Department of Labor Standards cannot provide a template notice and consent in the primary
53 language of the employee, then notice and consent must be given in the regular manner in which
54 the employer communicates with the employee.

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

60 (g) Any employer paying wages by a payroll debit card shall provide the employee with:

61 (1) local access to one or more financial institutions, facilities or automated teller
62 machines that offer at least one withdrawal in each pay period for any amount up to and
63 including the total amount of wages for each pay period or balance remaining on the payroll
64 debit card at no cost to the employee; and

65 (2) a means of identifying the balance available through his or her payroll debit card, at
66 no cost to the employee, in at least one of the following ways: online, an interactive voice
67 response system, through any other automated system offered in conjunction with the payroll
68 debit card or at an in network ATM made available to the employee.

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

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

75 (2) shortage or low balance status;

- 76 (3) account inactivity for up to a year;
- 77 (4) maintenance;
- 78 (5) telephone or online customer service;
- 79 (6) providing the employee with written or electronic statements or the issuer's policies;
- 80 (7) replacing the payroll debit card at reasonable intervals;
- 81 (8) closing an account or issuing payment of the remaining balance by check or other
- 82 means; or

83 (9) any fee not explicitly identified by type and by either dollar amount or percentage in

84 the contract between the employer and the issuer or in the terms and conditions of the payroll

85 debit card provided to the employee, except that the employer is not responsible for disclosing

86 third party fees that are not within control of the employer.

87 (i) For a payroll debit card account to or from which electronic fund transfers can be

88 made, a financial institution shall send a periodic statement for each monthly cycle in which an

89 electronic fund transfer has occurred and shall send a periodic statement at least quarterly if no

90 transfer has occurred. The statement shall set forth the following information: (i) for each

91 electronic fund transfer occurring during the cycle: the amount of the transfer; the date the

92 transfer was credited or debited to the consumer's account, the type of transfer and type of

93 account to or from which funds were transferred, for a transfer initiated by the consumer at an

94 electronic terminal (except for a deposit of cash or a check, draft or similar paper instrument) the

95 terminal location, and the name of any third party to or from whom funds were transferred; (ii)

96 the number of the account; (iii) the amount of any fees assessed against the account during the

97 statement period for electronic fund transfers, the right to make transfers or account
98 maintenance; (iv) the balance in the account at the beginning and at the close of the statement
99 period; and (v) the address and telephone number to be used for inquiries or notice of errors,
100 preceded by “Direct inquiries to” or similar language.

101 Provided, however, that a financial institution need not furnish periodic statements if the
102 institution makes available to the consumer (i) the consumer’s account balance, through a readily
103 available telephone line; (ii) an electronic history of the consumer’s account transactions, such as
104 through a website, that covers at least 12 months preceding the date the consumer electronically
105 accesses the account; and (iii) a written history of the consumer’s account transactions that is
106 provided promptly in response to an oral or written request and that covers at least 24 months
107 preceding the date the financial institution receives the consumer’s request.

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

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

116 (l) An employer or its agent shall not deliver payment of wages by payroll debit card
117 unless the agreement between the employer and issuer requires that the funds on a payroll debit
118 card shall not expire. Notwithstanding this requirement, the agreement may provide that the

119 account may be closed for inactivity provided that the issuer gives reasonable notice to the
120 employee by sending that notice to the employee's last known postal or email address,
121 whichever was previously used as the usual form of communication with the employee. The
122 remaining funds must be refunded within seven days after the employee's request for receipt of
123 funds, or if the employee does not request the funds, then the remaining funds may escheat in
124 accordance with state law.

125 (m) At least twenty-one days before any change in the terms and conditions of a payroll
126 debit card takes effect, a financial institution must provide written notice in plain language, in the
127 employee's primary language or in a language the employee understands and in at least 12-point
128 font of any change to the terms or conditions of the payroll debit card if the change would result
129 in: (i) increased fees for the consumer; (ii) increased liability for the consumer; (iii) fewer types
130 of available electronic fund transfers; or (iv) stricter limitations on the frequency or dollar
131 amount of transfers. If the issuer charges the employee any new or increased fee before twenty-
132 one days after the date the financial institution has provided the employee with written notice of
133 the change in accordance with the provisions of this subsection, the financial institution must
134 reimburse the employee for the amount of that fee. Provided, however, that a financial institution
135 need not give prior notice if an immediate change in terms or conditions is necessary to maintain
136 or restore the security of an account or an electronic fund transfer system. If the institution makes
137 such a change permanent and disclosure would not jeopardize the security of the account or
138 system, the institution shall notify the consumer in writing on or with the next regularly
139 scheduled periodic statement or within 30 days of making the change permanent.

140 (n) Where an employee is covered by a valid collective bargaining agreement that
141 expressly provides the method or methods by which wages may be paid to employees, an

142 employer must also have the approval of the union before paying the employee by payroll debit
143 card.

144 (o) Whoever violates the provisions of this section shall be punished by a fine of not less
145 than \$100 nor more than \$1,000.

146 (p) This section shall be enforced by the Office of the Attorney General.

147 (q) The attorney general may file a civil action for injunctive relief and for any damages
148 incurred on behalf of an employee or multiple, similarly situated employees. Such action must be
149 brought within 3 years after the violation is discovered or by the exercise of reasonable diligence
150 should have been discovered.

151 (r) The Attorney General's Office shall have 60 days after receiving a report of a
152 violation of this section to consider the complaint. If the Attorney General's Office decides in the
153 60 day time period to not proceed with a civil action, an individual shall have a private right of
154 action for injunctive relief, for any damages incurred and for reasonable attorney's fees on such
155 employee's own behalf.

156 SECTION 2. This act shall take effect on January 1, 2020.