

# SENATE BILL REPORT

## ESHB 1211

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As of March 27, 2015

**Title:** An act relating to fees and costs related to methods of wage payment.

**Brief Description:** Addressing fees and costs related to methods of wage payment.

**Sponsors:** House Committee on Labor (originally sponsored by Representatives G. Hunt, Reykdal, Sawyer, Manweller, Vick, S. Hunt and Buys).

**Brief History:** Passed House: 3/11/15, 98-0.

**Committee Activity:** Commerce & Labor: 3/25/15.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Staff:** Susan Jones (786-7404)

**Background:** Deductions from Wages. Under the Wage Payment Act, an employer may not deduct any portion of an employee's wages, unless:

- the deduction is required by state or federal law;
- the employee agrees to the deduction;
- the deduction is for medical care or service; or
- the deduction is made to satisfy a court order or other legal requirement, including child support.

Failure to Pay Wages. An employee who is not paid wages may file a complaint with the Department of Labor and Industries (Department). The Department must investigate, and if a violation is found, may order the employer to pay all wages owed, including interest. The Department may also assess a civil penalty for a willful violation. An employee also may alternatively pursue a private right of action. Willfully and intentionally depriving an employee of the employee's wages is a misdemeanor under a separate law.

Wage Payment Options. Some employers pay employees by payroll card. The federal Consumer Financial Protection Bureau has interpreted the federal Electronic Fund Transfer Act to require employers to offer their employees at least one alternative to payroll cards. Permissible alternatives are governed by state law. The Department has also interpreted the law to provide that:

- an employer may require employees to sign up for direct deposit if there is no cost to the employee; and

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- an employer may pay by debit or payroll card, but if there are fees for using the cards, the employer must provide an alternative method that allows employees to obtain their wages without any fees or costs.

**Summary of Bill:** Wage Payment Method Without Fees. An employer must offer a method of wage payment that allows an employee to obtain any part, or all, of the employee's wages without any fees or costs for the transaction. The following are not fees or costs under the act:

- a check-cashing fee imposed by someone other than the employer; and
- a fee or cost imposed by someone other than the employer or engaged by the employer for purposes of direct deposit of wages in an institution of the employee's choosing and at the employee's request.

Alternative to Payroll Card. An employer who credits employee wages to a payroll card account must offer an employee at least one other option for receiving wages that does not require the employee to maintain or open an account for purposes of direct deposit. However, direct deposit is permitted as the other option if the employee requests direct deposit.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill means a lot to a lot of people. As of 2013, 5.8 million workers receive their pay on a payroll card. That number is expected to grow to 10.8 million by 2017. Not all payroll card companies charge fees. Seventy-five percent do charge fees for services such as ATM use, balance inquiries, and clean-up or monthly maintenance fees. These fees are charged by some of the same financial companies that won't allow the workers to have bank accounts. This may not be a large fee, some may be around \$20, but to a minimum-wage worker that could be the difference in providing meals. One provider charged \$70,000 in fees for fewer than 5000 workers, of which \$60,000 was for ATM charges alone. This bill is trying to provide a way for the worker to get their money free of charge.

CON: The bill restricts the employers' ability to offer payroll cards. The payroll card is a reloadable card used by employers to pay wages electronically to employees as an alternative to direct deposit or paper check. The payroll card benefits include allowing employees immediate access to wages even if they are sick or out due to inclement weather, and avoiding having to track and replace stolen or lost checks. This helps employees who lack traditional bank accounts. As drafted there are technical and policy challenges, including requiring issuance of paper checks and requiring an employer to arrange for an employee to have free a banking relationship. The requested amendment would be similar to a national standard related to payroll cards, allowing one free access to the entire balance per pay period and requiring employee notice and carrying federal protections of Regulation E which is

found in many states. The amendment would strike a proper balance between employee protections and ability of small businesses to offer affordable and efficient payroll cards. With a paper check, 95 percent of the time if the employee goes to their own bank or the bank on which the check is drawn, the employee is not charged a fee. When fees are charged, they are around \$7. The bill will increase the fees to some employees paid by check. A lot of employees are unbanked and so businesses use the payroll card. Some payroll cards are accessible at many locations for most employees, including ATM cards at convenience stores, locations where VISA is accepted, and some additional locations. There can be decline fees if there are not enough funds in the payroll card account for the transaction. There is a concern about requiring that there must be a no-fee wage payment option. The bill allows for fees for some payment options but not for payroll cards.

**Persons Testifying:** PRO: Representative Hunt.

CON: Joanie Deutsch, WA Retail Assn.; Denny Eliason, WA Bankers Assn., WA Restaurant Assn.; Lisa Harris, Natalie McNair, Bill Stauffacher, TrueBlue.

**Persons Signed in to Testify But Not Testifying:** No one.