



American Payroll Association

Government Relations • Washington, DC

January 27, 2016

STATEMENT IN OPPOSITION TO SENATE BILL 290, as amended

The American Payroll Association¹ (APA) appreciates the opportunity to submit the following statement in opposition to Senate Bill 290 (SB 290), as amended. Earlier today, the House voted to adopt an amendment to SB 290 introduced by Senator Kessler (the “Kessler Amendment”). The Kessler Amendment would make the issuance of payroll cards in West Virginia economically unsustainable and act as a *de facto* ban on this beneficial payment method. The very workers that the amendment seeks to protect would suffer as a result.

The APA Supports SB 290 as Introduced

Payroll cards have been a legislatively authorized method of wage payment in West Virginia since 2008. Since that time, many employers and employees in West Virginia have enjoyed the security, reliability and cost-savings that this payment method has to offer. Payroll cards are a particularly valuable solution for workers without bank accounts and those who have limited access to traditional financial services. According to the FDIC, 11% of all households in West Virginia are unbanked and another 19% are underbanked (having a checking or savings account but still reliant on alternative financial services such as check cashing).² These workers often use check cashing services to access their wages, and pay additional fees purchasing money orders to pay their bills.

As initially introduced, SB 290 would simply have revised the provisions of section 21-5-3 of the West Virginia Code governing methods of payment by removing the requirement that both the employer and employee agree in writing to the use of payroll cards. Federal law would continue to require at least one alternative method of wage payment such as direct deposit, however.³ Thus, if enacted as introduced, West Virginia would join a growing majority of states that allow employers to pay their employees using electronic means only, thereby avoiding the perils and inefficiencies of paper paychecks.

The Kessler Amendment Requirements Are Harmful and Impossible to Satisfy

The Kessler Amendment would make it impossible for financial institutions and employers to offer payroll cards in West Virginia. This is because the amendment would prohibit employers from utilizing a payroll card that charges any fees for using or withdrawing funds from the card. In other words, the bill would prohibit arguably all fees associated with a payroll card. Such a

¹The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Relations Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

² 2013 FDIC National Survey of Unbanked and Underbanked Households.

³ The Electronic Fund Transfer Act and its implementing regulation, Regulation E, require that employers who offer payroll cards also offer at least one other payment option. 15 U.S.C. § 1693k; 12 C.F.R. § 1005.10(e)(2).

requirement would be economically unsustainable and is not required with respect to any other method of wage payment.

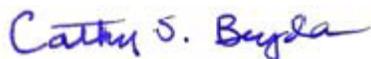
The fee prohibition is also unnecessary. The West Virginia Division of Labor already interprets state law as prohibiting excessive user fees or charges on payroll cards and direct deposit.⁴ Indeed, all payroll cards provide employees with several ways of using their cards and accessing their full net wages without incurring fees. In fact, the Operating Regulations of both Visa and MasterCard require that employees have the ability to access their full net wages each pay period without cost. Like employees who receive paychecks or have their wages directly deposited, employees who receive their wages using a payroll card may incur fees if they choose not to take advantage of the free methods of cash access provided. These fees are for services that are not essential to full and free access to wages and should not violate state wage and hour law.

The Kessler Amendment also would prohibit employers from offering payroll cards that limit the daily amount an employee may withdraw from the payroll card account. Withdrawal limits reduce losses in the rare event that a lost or stolen card is used fraudulently. Moreover, to comply with the Bank Secrecy Act, financial institutions are required to adopt policies, procedures and controls that are designed to protect against money laundering. Daily withdrawal limits are a standard control designed to mitigate these risks and are imposed on most debit cards connected to a checking account as well as prepaid card accounts. A financial institution that fails to impose daily withdrawal limits on payroll card accounts would risk having its anti-money laundering program found to be inadequate by federal regulators. Again, such a requirement is unnecessary since employees are able to make a withdrawal of their full net wages without cost each pay period.

Conclusion

The Kessler Amendment would constitute a *de facto* ban on payroll cards since financial institutions would be unable to satisfy its provisions and continue to offer payroll cards. Employees who currently benefit from payroll cards would face the prospect of returning to the inconvenience of paper paychecks and paying high fees at check cashing stores. For this reason, the APA strongly opposes SB 290, as revised by the Kessler Amendment.

We would welcome the opportunity to discuss the above issues with you further. In this regard, please feel free to contact Bill Dunn (202-232-6889) or Cathy Beyda (650-320-1824).



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⁴ West Virginia Division of Labor, Fact Sheet on Direct Deposit & Payroll Card Accounts, available at http://www.wvlabor.com/newwebsite/Documents/wageforms/Direct_Deposit.pdf.