



American Payroll Association

Government Relations • Washington, DC

August 14, 2006

Senator Joseph L. Bruno
President and Majority Leader
Chairman, Senate Rules Committee
Room 909
Legislative Office Building
Albany, NY 12247

Re: Assembly Bill 5456, The New York State Banking and Payroll Card Protection Act
Referred to Senate Rules Committee June 14, 2006

Dear Senator Bruno,

The American Payroll Association has several significant concerns with New York Assembly Bill 5456, which relates to payroll cards. In particular, we would like to direct your attention to sections of the bill that we feel are not in the best interests of the general public or the actual users of the paycards as well as sections that will severely limit the use of this relatively new but growing technology in the state of New York. We understand that the substance of the bill was proposed and possibly sponsored on behalf of the check-cashing industry in an effort to protect check-cashing fees.

About the American Payroll Association

The APA is a nonprofit professional association representing more than 22,000 individuals and their companies in the United States and Canada. The APA's central mission is to educate its members about best practices associated with paying America's workers, including compliance with all relevant federal, state, and local laws. As part of this mission, the APA works with legislative and executive branches of government to find ways for employers to meet their obligations under the law and support public policy initiatives, while minimizing administrative burden.

With growing employer interest in the use of paycards in the United States, the APA formed a Paycard Subcommittee to monitor the use of these cards within the employer community and to help educate policy makers and regulators about their benefits and uses. This subcommittee is made up of 40 active and knowledgeable APA members representing large and mid-size employers, payroll service providers, and other third-party vendors specializing in the support of payroll debit card programs.

Assembly Bill 5456

The APA believes that several issues need to be addressed to enable New York workers to enjoy the many benefits of payroll debit cards. We have provided a background paper entitled "State Recognition of Paycards" for your review. The paper outlines the many benefits of payroll debit cards. The sections of concern follow with explanations of the various conflicts raised:

§ 272. Payroll card without a fee. An employer may not contract for or offer a payroll card for which the employee shall be charged in connection with the issuance, replacement, use, maintenance or inactivity of a payroll card; such fees prohibited shall include, but not be limited to, a card issuance fee, activation fee, card replacement fee, fee to close the payroll card and receive a check for the remaining funds owed, monthly fee, balance inquiry fee, fee per transaction, fee for excess transactions, inactivity or dormancy fee, load fee, fee for a statement or a transaction history, or fee related to the provision of customer service.

We feel that Section 272 is overly restrictive on card providers. The fees related to card issuance (e.g., for optional secondary cards), card replacement, monthly fees, transaction fees (or per excess transaction), balance inquiry, and customer service are among the most costly components of the services provided in connection with paycards. Employers will be less likely to offer these cards to their employees if they face unlimited cost commitments while employees have no incentive to manage their use of such resources.

One APA member's direct experience with maintaining a toll-free Interactive Voice-Response (IVR) system for payroll debit card holders is that, on average, the cardholders make about four calls to the system per month to obtain their latest card balance, which costs the company roughly \$.30 per month per card. While \$3.60 per cardholder annually is not an exorbitant amount, it is a significant concern in part because it is unbounded, and because there is no incentive for cardholders to minimize the associated administrative expense. We believe that it would be appropriate to establish a reasonable limitation as to the number of calls cardholders can make without charge, after which a nominal fee should be permitted. Any such limitations and associated fees would have to be disclosed in program materials. The bill should be altered to permit fees after a certain number of balance inquiry and/or customer service calls (e.g., two per pay period).

Paycard providers can offer a number of cost-free options for obtaining or transferring funds from the cards. For example, nearly all card programs currently allow card holders one free ATM withdrawal each pay period, while many allow for free over-the-counter withdrawals at banks, and some provide courtesy checks for cardholders to use in order to access the amounts left on the card that cannot be withdrawn from an ATM (i.e., change and amounts less than \$20).

The APA believes that employees should have access to their pay without discount, and we find that the current practices of the card providers do, in fact, allow employees access to their full wages without paying a fee. However, every electronic transaction generally incurs a fee from the bank. When an employer makes paycards available to workers, the employer pays some of those fees. We do not believe that the employer should be responsible for paying for an unlimited number of transactions by the employee. Employers are generally responsible for providing employees with a convenient way to access their wages without fees. Once they have done so, if an employee chooses to incur additional fees for his or her convenience or for any

other reason of his or her choosing, this should be the employee's responsibility. This is true whether the employee is paid by cash, direct deposit, or payroll debit card.

Here is another way of looking at these fees, observing the typical behavior of employees receiving wages by other means:

Example 1: Every two weeks, Mrs. Smith has her wages deposited directly into her bank account. Each payday she is in the habit of stopping by her bank and withdrawing cash from an ATM. While on a business trip in another part of the country she is unable to withdraw money from her own bank, and so withdraws money from the ATM of another bank. That bank charges Mrs. Smith a \$2 transaction fee for the privilege of using its network, while her own bank charges her another \$2 for using an ATM outside its own network. Mrs. Smith has just been charged \$4 for accessing her wages, but there is no expectation – by the employee or by the state – that Mrs. Smith's employer should reimburse that fee.

Example 2: Mr. Jones is paid by check every pay period but does not have a bank account. Once Mr. Jones receives his check, his employer has completed its obligations regarding his pay for that pay period. Each pay period Mr. Jones goes to a check-cashing establishment where he pays an average of 2%–3% of the face value of the check¹ to cash it and leaves with large amounts of cash on his person. Although Mr. Jones has not personally been accosted, he knows that others have been robbed outside such establishments. Mr. Jones pays cash for his rent and certain utilities. When he cannot pay cash, he travels to the Post Office to purchase money orders, each costing approximately \$1 apiece more than their face value.

These examples are meant to compare and contrast the reality of the fees that the average employee may incur with those that an employee bearing a paycard may incur. We feel that, once employees avail themselves of the free transactions (however many are ultimately allowed), they should be expected to pay for the services that they use for their own convenience at banks or other cash outlets.

Employers should be permitted to offer payroll cards to workers as a voluntary option, with full disclosure of any applicable fees. A recent Federal Reserve study concluded that, for consumers without bank accounts, paycards are the most cost-effective transaction accounts available.² But employers are unlikely to offer paycards if they would have to pay unlimited amounts for associated services, and employees should have an incentive to manage their use of such resources.

§ 273. Protection by contract and employer responsibility. 1. If an employer contracts for payroll card services such employer shall require, by such contract, that the payroll card issuer provides all the protections for loss, theft, unauthorized uses, the right to dispute charges made using the payroll card or payroll card number, and the right of re-credit of disputed funds to the same extent as if the card were linked to a consumer demand deposit account.

¹ Wall Street Journal, page C3, July 6, 2006

² Federal Reserve Bank of Philadelphia: [The Cost Effectiveness of Stored-Value Products for Unbanked Consumers](#), May 2005

Section 273 is unnecessary. The protections addressed in this section have already been addressed by Federal Regulation E. See Federal Reserve Regulation E, Electronic Fund Transfers, 12 C.F.R. 205, implementing the Electronic Fund Transfer Act, P.L. 95-630 (1978), 15 U.S.C. §1693, et. seq. Regulation E consumer protections include: (1) initial disclosures of the terms and conditions, (2) change-in-terms notices, (3) error resolution notices, (4) mandatory receipts at electronic terminals, (5) mandatory periodic statements, and (6) procedures for resolving EFT errors. The Federal Reserve Board recently issued an Interim Final Rule providing that effective July 1, 2007, Regulation E applies to “payroll card accounts” established by an employer on behalf of a consumer to which EFTs of the consumer’s wages, salary or other compensation are made on a recurring basis. See, <http://www.federalreserve.gov/boarddocs/press/bcreg/2005/20051230/attachment2.pdf>

§ 274. Free statement. The employer’s contract for a payroll card shall provide for each payroll card holder to receive, without charge, a statement or a transaction history showing at least the prior thirty days of transaction activity, within three business days of an employee making such request. A payroll card product that includes a periodic monthly statement, without a request from the employee, is exempt from the requirement of this section. Nothing in this section shall prohibit a contract from providing for more than one free statement or transaction history per month.

It is not necessary to address this issue in state law. The Federal Reserve conducted extensive research to determine that monthly statements are not wanted by all cardholders. Federal Reserve Regulation E was recently amended by the Interim Final Rule Addressing Payroll Cards³, which provides that financial institutions need not furnish periodic statements under §205.9(b) if the following are made available:

- (i) The consumer’s account balance, through a readily available telephone line;*
- (ii) An electronic history, such as through an Internet Web site, of the consumer’s account transactions that covers at least 60 days preceding the date the consumer electronically accesses the account; and*
- (iii) A written history of the consumer’s account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of receipt of a request by the consumer.*

As written, Section 274 would unnecessarily increase costs for New York employers, who may not be able to guarantee that a cardholder would “receive” a requested statement within three business days. It would require costly overnight mail to those who wish to receive it by mail. We recommend that this section be omitted.

§ 275. ATM access. An employer who enters into a contract for a payroll card shall require that such contract provide for reasonable access to surcharge free automated teller machines (ATMs) convenient to the home or work of the employees. If a payroll card contract does not provide for reasonable surcharge free ATM access then the employer shall reimburse, by deposit of funds into the payroll card account established by the issuer and without a request, each employee holding a payroll card for two ATM surcharge fees at the prevailing ATM surcharge fee amount in the local area per pay period or in an amount set by statute at one dollar and fifty cents or two dollars each per pay period.

³ Docket No. R-1247; §205.18(b) Alternative to Periodic Statement

Section 275 is vague, and may generate substantial workload and expense for the Departments of Labor and/or Banking, employers, and the courts to settle controversies as to whether available ATMs at any point in time were “convenient” to the home or work of employees.

§ 276. Separate individual accounts. Funds represented by the right to claim on a payroll card shall be kept either in separate individual accounts in the name of each payroll cardholder or in a separate account containing the funds owed to all cardholders of that employer.

In practice, payroll debit cards do not work this way. Payroll card issuers and payroll service organizations typically maintain omnibus bank accounts to fund all debit cards, just as pension and 401(k) administrators often use omnibus accounts, with internal records of participants. It is also unclear what benefits policymakers sought to generate by this section, which necessitates the added expense of separate accounts. If separate bank accounts were necessary for each employer, it would eliminate debit cards as an option for many employees, because the cost of such payroll programs to employers would increase to cover the additional expense of separate bank accounts.

§ 277. Prohibition of credit products. 1. An employer contracting for a payroll card product shall prohibit by contract that the payroll card issuer link the payroll card to any form of credit including, but not limited to, a loan against future pay, a cash advance on future pay, or any overdraft for which a fee is charged.

The payments system cannot prevent cardholder overdrafts in certain circumstances. Although almost all transactions must be authorized in advance to confirm that funds are available, payroll debit cards may be “overdrawn” when the transaction amount is below a certain threshold, and no preauthorization is required under the VISA/ MasterCard system rules. Similarly, some retailers may make card imprints/payment authorizations on paper for subsequent (“off-line”) processing. These situations are rare and cardholders must agree not to spend more than the amount available to them, but such overdrafts are unavoidable within the debit card payments system.

This is not an extension of credit – meaning that overdrafts are not charged interest and there is no expectation that a cardholder could maintain a deficit balance on the card for more than one pay period. However, there is an overdraft fee associated with such instances, as there should be to provide an incentive for card holders to avoid overdrafts.

§ 278. Privacy from employer. An employer who enters into a contract for payroll cards shall require by contract that the employer is not entitled to any information generated by the use of the payroll card. The employer shall also require such contract provide that the payroll card issuer, and any bank where the payroll card maintains the account holding the payroll funds, agrees not to use any information generated by the possession or use of the payroll card for any purpose except to process transactions made with the payroll card and to administer the payroll card program.

The provision limiting the information generated by the use of the card to card processing and card administration may actually conflict with other laws and requirements. For example, it might prohibit compliance with lawful subpoenas or requirements to report “suspicious activity” under

the USA PATRIOT Act. It may also impose more severe restrictions than those set forth in key privacy statutes such as Gramm-Leach-Bliley. A 5456 should clarify that disclosures and other applications otherwise required or permitted by federal or state law are permissible. Since this issue is already addressed by the Gramm-Leach-Bliley Act, we would suggest removing the section. If New York policymakers believe there is a need to enact law covering the same subject matter, an effort should be made to mirror the exceptions for disclosure permitted under the GLB Act, which would allow for certain types of disclosures, for example, disclosures required by law or to prevent fraud.

§ 280. Notice of basic banking services. Any employer who offers a payroll card, under the provisions of this article, shall also offer information to his or her employee on the provisions of the basic banking services made available pursuant to section fourteen-f of this chapter.

This section would impose additional costs on employers to publicize basic banking services specific to New York. Additionally, the principal beneficiaries of payroll cards include hundreds of thousands of Americans who cannot get a conventional bank account because of prior banking problems.⁴

§ 3. The labor law is amended by adding a new section 135-a to read as follows:

§ 135-a. Prohibit certain employers from issuing a payroll card to minors fourteen to eighteen years of age. 1. No employer of a minor fourteen to eighteen years of age shall issue a payroll card for the payment of stipends, wages or other forms of payment to such minors.

Although this section would only affect summer youth employment programs, it would eliminate the use of paycards for a population that is most likely to use them as adults and therefore needs to understand their use. In 2003 the American Banking Association reported that debit cards had surpassed cash, checks, and credit as the preferred method of payment in consumer transactions. Further, debit cards have been cited as a useful tool in promoting financial literacy by financial experts as well as the Federal Office of the Comptroller of the Currency. Many young people do not have, and in some cases cannot obtain, bank accounts. Paycards are ideal for these workers, as the cards provide the convenience and security afforded by a bank account while promoting healthy spending habits.

Lastly, we note that Senate Bill 7869 addresses more appropriately the payment of wages by payroll cards. It was introduced on May 9 and referred to the Senate Labor committee. This bill would make changes to New York's Labor law rather than the Banking law, and strikes a far more appropriate balance in fostering an environment in which employers will be willing to offer paycards, while protecting workers' interests. We urge the Senate to concentrate on SB 7869 rather than Assembly Bill 5456.

⁴ National Community Reinvestment Coalition, *ChexSystems: Disenfranchisement or Risk Management Tool?* 2001 <http://www.ncrc.org>

We would welcome the opportunity to work with the legislature to develop appropriate revisions to this important bill. Please let us know how you would like to proceed, or call me at (202) 857-1476 if you have any questions. Thank you.

Sincerely,

William Dunn, CPP
Manager of Government Relations
American Payroll Association

Cathy Beyda, Esq.
Chair, Paycard Subcommittee
APA Government Affairs Task Force

Cc: Assemblywoman Catherine Nolan, Co-sponsor
Assemblymember Alexander B. Pete Grannis, Co-sponsor
Assemblymember William F. Boyland, Jr., Co-sponsor
Assemblymember Darryl C. Towns, Chair, Committee on Banks