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I N S E N A T E

June 9, 2014

Introduced by Sen. GALLIVAN -- (at request of the Attorney General) --
read twice and ordered printed, and when printed to be committed to
the Committee on Labor

AN ACT to amend the labor law, in relation to authorizing and regulating
the use of payroll cards

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 190 of the labor law is amended by adding eight new
2 subdivisions 10, 11, 12, 13, 14, 15, 16 and 17 to read as follows:
3 10. "ACCOUNT" MEANS A DEMAND DEPOSIT (CHECKING), SAVINGS, OR OTHER
4 CONSUMER ASSET ACCOUNT (OTHER THAN AN OCCASIONAL OR INCIDENTAL CREDIT
5 BALANCE IN A CREDIT PLAN) HELD DIRECTLY OR INDIRECTLY BY A FINANCIAL
6 INSTITUTION AND ESTABLISHED PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD
7 PURPOSES.
8 11. "ELECTRONIC FUND TRANSFER" MEANS ANY TRANSFER OF FUNDS THAT IS
9 INITIATED THROUGH AN ELECTRONIC TERMINAL, TELEPHONE, COMPUTER, OR
10 MAGNETIC TAPE FOR THE PURPOSE OF ORDERING, INSTRUCTING, OR AUTHORIZING A
11 FINANCIAL INSTITUTION TO DEBIT OR CREDIT AN EMPLOYEE'S PAYROLL CARD
12 ACCOUNT. ELECTRONIC FUND TRANSFER INCLUDES, BUT IS NOT LIMITED TO:
13 A. POINT-OF-SALE TRANSFERS;
14 B. AUTOMATED TELLER MACHINE TRANSFERS;
15 C. DIRECT DEPOSITS OR WITHDRAWALS OF FUNDS;
16 D. TRANSFERS INITIATED BY TELEPHONE; AND
17 E. TRANSFERS RESULTING FROM DEBIT CARD TRANSACTIONS, WHETHER OR NOT
18 INITIATED THROUGH AN ELECTRONIC TERMINAL.
19 12. "PAYROLL CARD ACCOUNT" MEANS AN ACCOUNT THAT IS DIRECTLY OR INDI-
20 RECTLY ESTABLISHED THROUGH OR BY AN EMPLOYER AND INTO WHICH AN EMPLOYER
21 DIRECTLY OR INDIRECTLY DEPOSITS AN EMPLOYEE'S WAGES THROUGH AN ELECTRON-
22 IC FUNDS TRANSFER.
23 13. "PAYROLL CARD ISSUER" MEANS ANY EMPLOYER, BANK, FINANCIAL INSTITU-
24 TION, THIRD-PARTY PAYROLL PROCESSOR, OR ANY OTHER PERSON OR ENTITY THAT
25 ISSUES A PAYROLL CARD TO AN EMPLOYEE ON BEHALF OF AN EMPLOYER.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 14. "PAYROLL CARD" MEANS A CARD ISSUED TO AN EMPLOYEE BY AN EMPLOYER
2 OR OTHER PAYROLL CARD ISSUER AS A MEANS OF ACCESSING THE EMPLOYEE'S
3 PAYROLL CARD ACCOUNT.

4 15. "CARDHOLDER EMPLOYEE" MEANS ANY EMPLOYEE THAT HAS PROVIDED HIS OR
5 HER EMPLOYER WITH ADVANCE WRITTEN CONSENT AND HAS ELECTED TO RECEIVE HIS
6 OR HER WAGES THROUGH A PAYROLL CARD ACCOUNT.

7 16. "PAYMENT OF WAGES THROUGH A PAYROLL CARD ACCOUNT" MEANS PAYMENT OF
8 WAGES BY MEANS OF ELECTRONIC FUND TRANSFER, OR DEPOSIT OR TRANSFER
9 THROUGH OTHER MEANS, TO A PAYROLL CARD ACCOUNT.

10 17. "RECEIPT OF WAGES THROUGH A PAYROLL CARD ACCOUNT" MEANS THE
11 RECEIPT OF WAGES BY MEANS OF ELECTRONIC FUND TRANSFER, OR DEPOSIT OR
12 TRANSFER THROUGH OTHER MEANS, TO A PAYROLL CARD ACCOUNT.

13 S 2. Section 192 of the labor law, as amended by chapter 301 of the
14 laws of 1974, subdivision 1 as added by chapter 475 of the laws of 1981
15 and as renumbered by chapter 170 of the laws of 1994 and subdivision 2
16 as amended by chapter 304 of the laws of 2007, is amended to read as
17 follows:

18 S 192. [Cash payment] PAYMENT of wages. 1. [No] AN EMPLOYER MAY PAY OR
19 TRANSFER THE NET WAGE OR SALARY OF AN EMPLOYEE IN THE FORM OF CASH, A
20 PAPER CHECK, A DIRECT DEPOSIT TO A BANK OR OTHER FINANCIAL INSTITUTION,
21 OR A DIRECT DEPOSIT TO A PAYROLL CARD ACCOUNT, PROVIDED, HOWEVER, NO
22 employer shall, without the advance written consent of any employee
23 [directly], pay or [deposit] TRANSFER the net wage or salary of such
24 employee in THE FORM OF A DIRECT DEPOSIT TO a bank or other financial
25 institution OR TO A PAYROLL CARD ACCOUNT.

26 2. AN EMPLOYER SHALL NOT INITIATE PAYMENT OF WAGES TO THE EMPLOYEE BY
27 ELECTRONIC FUNDS TRANSFER TO A PAYROLL CARD ACCOUNT UNLESS THE EMPLOYER
28 ALSO OFFERS THE EMPLOYEE THE OPTIONS OF PAYMENT BY PAPER CHECK AND BY
29 DIRECT DEPOSIT TO A DEPOSITORY ACCOUNT DESIGNATED BY THE EMPLOYEE. FOR
30 PURPOSES OF THIS ARTICLE, A PAPER CHECK SHALL NOT INCLUDE A CONVENIENCE
31 CHECK OR ANY OTHER CHECK DRAWN UPON AN EMPLOYEE'S PAYROLL CARD ACCOUNT
32 AND WHICH MUST BE COMPLETED BY THE EMPLOYEE.

33 3. AT ANY TIME, AN EMPLOYEE MAY, IN WRITING, WITHDRAW PREVIOUSLY
34 GRANTED WRITTEN CONSENT TO BE PAID HIS OR HER WAGES IN THE FORM OF A
35 DIRECT DEPOSIT TO A BANK OR OTHER FINANCIAL INSTITUTION OR TO A PAYROLL
36 CARD ACCOUNT. AN EMPLOYER SHALL, WITHIN TWO PAY PERIODS OF SUCH EMPLOY-
37 EE'S WRITTEN NOTIFICATION, CEASE PAYING THE EMPLOYEE'S WAGES IN THE FORM
38 OF A DIRECT DEPOSIT TO A BANK OR OTHER FINANCIAL INSTITUTION OR TO A
39 PAYROLL CARD ACCOUNT.

40 4. AN EMPLOYER SHALL MAINTAIN AND PRESERVE, FOR THE TIME PERIOD
41 PRESCRIBED FOR PAYROLL RECORDS UNDER SUBDIVISION FOUR OF SECTION ONE
42 HUNDRED NINETY-FIVE OF THIS ARTICLE, A COPY OF ANY WRITTEN AUTHORIZATION
43 OBTAINED UNDER THIS SECTION.

44 5. This section shall not apply to any person employed in a bona fide
45 executive, administrative, or professional capacity whose earnings are
46 in excess of nine hundred dollars a week[, nor to employees working on a
47 farm not connected with a factory].

48 S 3. The labor law is amended by adding three new sections 192-a,
49 192-b and 192-c to read as follows:

50 S 192-A. PAYMENT OF WAGES TO A PAYROLL CARD ACCOUNT. 1. EVEN WHERE AN
51 EMPLOYER MEETS THE REQUIREMENTS OF SECTION ONE HUNDRED NINETY-TWO OF
52 THIS ARTICLE, AN EMPLOYER MUST, PRIOR TO OBTAINING AN EMPLOYEE'S WRITTEN
53 CONSENT AS REQUIRED BY SECTION ONE HUNDRED NINETY-TWO OF THIS ARTICLE,
54 PROVIDE SUCH EMPLOYEE WITH WRITTEN NOTICE OF THE TERMS AND CONDITIONS OF
55 THE PAYROLL CARD PROGRAM IN ENGLISH AND IN THE LANGUAGES THAT THE

1 EMPLOYER PRIMARILY USES TO COMMUNICATE EMPLOYMENT RELATED POLICIES TO
2 ITS EMPLOYEES. SUCH NOTICE MUST INCLUDE, BUT IS NOT LIMITED TO:

3 A. A CLEAR, CONSPICUOUS AND ITEMIZED LIST, IN AT LEAST 14 POINT FONT,
4 OF ANY AND ALL FEES THAT MAY BE ASSESSED BY THE PAYROLL CARD ISSUER;

5 B. A CLEAR, CONSPICUOUS AND ITEMIZED LIST, IN AT LEAST 14 POINT FONT,
6 OF ANY AND ALL FEES THAT MAY BE ASSESSED BY THIRD PARTIES;

7 C. A PLAIN LANGUAGE DESCRIPTION OF ALL OF THE METHODS AVAILABLE TO A
8 CARDHOLDER EMPLOYEE TO ACCESS HIS OR HER WAGES WITHOUT INCURRING A FEE;

9 D. A PLAIN LANGUAGE DESCRIPTION OF ALL OF THE METHODS AVAILABLE TO A
10 CARDHOLDER EMPLOYEE TO CHECK THE BALANCE OF HIS OR HER PAYROLL CARD
11 ACCOUNT WITHOUT INCURRING A FEE;

12 E. A LIST OF LOCATIONS WITHIN TEN MILES OF THE PLACE OF EMPLOYMENT
13 WHERE A CARDHOLDER EMPLOYEE MAY ACCESS HIS OR HER WAGES WITHOUT INCUR-
14 RING A FEE;

15 F. TIME LIMITATIONS TO DISPUTE A CHARGE OR EXPENDITURE TO AN EMPLOY-
16 EE'S PAYROLL CARD ACCOUNT; AND

17 G. A PLAIN LANGUAGE DESCRIPTION OF THE METHODS AVAILABLE TO A CARD-
18 HOLDER EMPLOYEE TO CLOSE HIS OR HER PAYROLL CARD ACCOUNT AND OBTAIN ALL
19 FUNDS AT NO CHARGE.

20 2. AN EMPLOYER SHALL PROVIDE A CARDHOLDER EMPLOYEE WITH THIRTY DAYS OF
21 WRITTEN NOTICE PRIOR TO ANY CHANGES IN THE TERMS AND CONDITIONS, INCLUD-
22 ING ANY CHANGES IN FEES, TO HIS OR HER PAYROLL CARD ACCOUNT. SUCH NOTICE
23 SHALL BE IN ADDITION TO ANY OTHER NOTICE REQUIREMENT IN THIS ARTICLE AND
24 SHALL INCLUDE ALL INFORMATION PROVIDED IN SUBDIVISION ONE OF THIS
25 SECTION.

26 3. AN EMPLOYER SHALL NOT PAY ITS EMPLOYEES THROUGH A PAYROLL CARD
27 ACCOUNT UNLESS CARDHOLDER EMPLOYEES ARE PROVIDED WITH:

28 A. AT LEAST ONE NETWORK OF ATMS, LOCATED IN REASONABLE PROXIMITY TO
29 THE CARDHOLDER EMPLOYEE'S PLACE OF EMPLOYMENT OR PLACE OF RESIDENCE.
30 FOR CARDHOLDER EMPLOYEES WHOSE PLACE OF EMPLOYMENT IS LOCATED OUTSIDE OF
31 A CITY WITH A POPULATION IN EXCESS OF ONE MILLION, AT LEAST ONE ATM
32 WITHIN THE NETWORK OF ATMS MUST BE LOCATED NO MORE THAN TEN MILES FROM
33 THE CARDHOLDER EMPLOYEE'S PLACE OF EMPLOYMENT OR PLACE OF RESIDENCE. FOR
34 CARDHOLDER EMPLOYEES WHOSE PLACE OF EMPLOYMENT IS LOCATED INSIDE OF A
35 CITY WITH A POPULATION IN EXCESS OF ONE MILLION, AT LEAST ONE ATM WITHIN
36 THE NETWORK OF ATMS MUST BE LOCATED NO MORE THAN ONE MILE FROM THE CARD-
37 HOLDER EMPLOYEE'S PLACE OF EMPLOYMENT OR PLACE OF RESIDENCE. SUCH A
38 NETWORK OF ATMS MUST PERMIT:

39 (I) UNLIMITED CASH WITHDRAWALS AT NO COST TO THE CARDHOLDER EMPLOYEE;
40 AND

41 (II) UNLIMITED BALANCE INQUIRIES AT NO COST TO THE CARDHOLDER EMPLOY-
42 EE.

43 B. AT LEAST TWO ATM WITHDRAWALS PER PAY PERIOD OUTSIDE OF A NETWORK OF
44 ATMS, AS REQUIRED BY PARAGRAPH A OF THIS SUBDIVISION, AT NO COST TO THE
45 CARDHOLDER EMPLOYEE; HOWEVER, THIS PROHIBITION ON COSTS DOES NOT APPLY
46 TO ANY COSTS INDEPENDENTLY IMPOSED BY NON-NETWORK ATMS;

47 C. AT LEAST ONE REASONABLY CONVENIENT METHOD, IN ADDITION TO THE
48 REQUIREMENT OF PARAGRAPH A OF THIS SUBDIVISION, FOR A CARDHOLDER EMPLOY-
49 EE TO WITHDRAW HIS OR HER ENTIRE NET PAY, AS STATED ON AN EMPLOYEE'S
50 EARNING STATEMENT, FOR EACH PAY PERIOD WITHOUT INCURRING A FEE. SUCH
51 METHOD SHALL BE AVAILABLE TO THE CARDHOLDER EMPLOYEE ON AND AFTER SUCH
52 EMPLOYEE'S REGULAR PAYDAY AND LOCATED IN REASONABLE PROXIMITY TO THE
53 CARDHOLDER EMPLOYEE'S PLACE OF EMPLOYMENT OR PLACE OF RESIDENCE;

54 D. A HARD COPY PERIODIC STATEMENT, FREE OF CHARGE, FOR EACH MONTHLY
55 CYCLE IN WHICH ELECTRONIC FUNDS TRANSFER HAS OCCURRED; AND A PERIODIC
56 STATEMENT FREE OF CHARGE, AT LEAST QUARTERLY IF NO TRANSFER HAS

1 OCCURRED. IN THE ALTERNATIVE, AN EMPLOYER MAY COMPLY WITH THIS SECTION
2 IF THE PAYROLL CARD ISSUED MAKES ACCOUNT INFORMATION AVAILABLE TO CARD-
3 HOLDER EMPLOYEES FREE OF CHARGE THROUGH THE FOLLOWING MEANS:

4 (I) A READILY AVAILABLE TELEPHONE LINE OPERATED TWENTY-FOUR HOURS PER
5 DAY, SEVEN DAYS PER WEEK. SUCH LINE MAY BE AUTOMATED, PROVIDED, HOWEVER;
6 SUCH AUTOMATION SHALL BE AVAILABLE IN THE LANGUAGE OR LANGUAGES THE
7 EMPLOYER NORMALLY COMMUNICATES HIS OR HER EMPLOYMENT-RELATED POLICIES TO
8 HIS OR HER EMPLOYEES;

9 (II) AN ELECTRONIC HISTORY OF A CARDHOLDER'S PAYROLL CARD ACCOUNT
10 TRANSACTIONS, SUCH AS THROUGH AN INTERNET WEBSITE, THAT COVERS AT LEAST
11 TWENTY-FOUR MONTHS PRECEDING THE DATE OF A CARDHOLDER'S ACCESS TO HIS OR
12 HER PAYROLL CARD ACCOUNT ELECTRONIC HISTORY; AND

13 (III) A NON-ELECTRONIC, WRITTEN HISTORY OF A CARDHOLDER PAYROLL CARD
14 ACCOUNT TRANSACTIONS THAT IS PROVIDED PROMPTLY IN RESPONSE TO AN ORAL OR
15 WRITTEN REQUEST AND THAT COVERS AT LEAST SIXTY DAYS PRECEDING THE DATE
16 THAT A PAYROLL CARD ISSUER RECEIVES THE CARDHOLDER EMPLOYEE'S REQUEST;

17 E. FREE CUSTOMER SERVICE, VIA A LIVE AGENT;

18 F. ONE FREE REPLACEMENT PAYROLL CARD PER YEAR UPON REQUEST OF THE
19 CARDHOLDER EMPLOYEE, PROVIDED, HOWEVER; A FEE MAY BE CHARGED FOR THE
20 ACTUAL COST OF AN EXPEDITED DELIVERY OF A REPLACEMENT PAYROLL CARD, IF A
21 CARDHOLDER EMPLOYEE REQUESTS SUCH DELIVERY.

22 4. AN EMPLOYER MAY PAY WAGES THROUGH A PAYROLL CARD ACCOUNT ONLY IF
23 THE PAYROLL CARD ACCOUNT IS:

24 A. FULLY INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE
25 NATIONAL CREDIT UNION ADMINISTRATION, OR ANY OTHER INSURER RECOGNIZED BY
26 THE DEPARTMENT OF FINANCIAL SERVICES, ON A PASS THROUGH BASIS TO THE
27 EMPLOYEE;

28 B. HELD AT A DEPOSITORY INSTITUTION OR OTHER ENTITY WHICH HAS IN PLACE
29 A WRITTEN IDENTITY THEFT PROGRAM TO DETECT, PREVENT, AND MITIGATE IDEN-
30 TITY THEFT IN CONNECTION WITH PAYROLL CARD ACCOUNTS, AS REQUIRED BY 12
31 C.F.R. S 41.90; AND

32 C. IN COMPLIANCE WITH THE REQUIREMENTS OF FEDERAL RESERVE REGULATION
33 E, 12 C.F.R. PARTS 205 AND 1005, TO THE EXTENT REQUIRED FOR PAYROLL CARD
34 ACCOUNTS AS SET FORTH IN 12 C.F.R. SS 205.18 AND 1005.18.

35 5. AN EMPLOYER MAY NOT USE A PAYROLL CARD PROGRAM IN WHICH THE PAYROLL
36 CARD OR PAYROLL CARD ACCOUNT IS LINKED TO ANY FORM OF CREDIT INCLUDING,
37 BUT NOT LIMITED TO, A LOAN AGAINST FUTURE PAY OR A CASH ADVANCE ON
38 FUTURE PAY.

39 6. AN EMPLOYER MAY USE A PAYROLL CARD PROGRAM THAT ALLOWS FOR THE
40 PROVISION OF A SECOND, ADDITIONAL PAYROLL CARD TO A CARDHOLDER EMPLOYEE
41 UPON THE CARDHOLDER EMPLOYEE'S WRITTEN REQUEST. A SINGLE, ONE-TIME FEE,
42 NOT TO EXCEED FIVE DOLLARS, MAY BE CHARGED FOR ISSUANCE AND MAINTENANCE
43 OF A SECONDARY CARD.

44 7. UPON TERMINATION OF A CARDHOLDER EMPLOYEE'S EMPLOYMENT, OR UPON
45 RECEIVING NOTICE OF THE CARDHOLDER EMPLOYEE'S SEPARATION FROM EMPLOY-
46 MENT, THE EMPLOYER SHALL PROVIDE THE EMPLOYEE WITH A WRITTEN NOTICE
47 ADVISING THE EMPLOYEE THAT HE OR SHE MAY, AT NO COST, TERMINATE THE
48 PAYROLL CARD AND RECEIVE THE FULL BALANCE PAYABLE BY CHECK WITHIN FIVE
49 BUSINESS DAYS. THE EMPLOYER SHALL DISCLOSE, IN THE MANNER PROVIDED BY
50 THIS SECTION, THE TERMS AND CONDITIONS, INCLUDING ANY AND ALL FEES AND
51 COSTS, RELATED TO MAINTAINING A PAYROLL CARD ACCOUNT THE UPON THE TERMI-
52 NATION OF THE EMPLOYMENT RELATIONSHIP.

53 S 192-B. CONFIDENTIALITY OF EMPLOYEE INFORMATION. 1. AN EMPLOYER SHALL
54 NOT DISCLOSE AN EMPLOYEE'S PERSONAL IDENTIFYING INFORMATION TO A PAYROLL
55 CARD ISSUER UNLESS SUCH EMPLOYER HAS RECEIVED ADVANCE WRITTEN CONSENT
56 FROM SUCH EMPLOYEE. FOR THE PURPOSES OF THIS SUBDIVISION, "PERSONAL

1 IDENTIFYING INFORMATION" SHALL INCLUDE THE EMPLOYEE'S NAME, SOCIAL SECUR-
2 RITY NUMBER, HOME ADDRESS, TELEPHONE NUMBER (HOME, MOBILE, OR OTHER),
3 PERSONAL ELECTRONIC MAIL ADDRESS, INTERNET IDENTIFICATION NAME OR PASS-
4 WORD, EMPLOYEE'S OR PARENT'S SURNAME PRIOR TO MARRIAGE, OR DRIVER'S
5 LICENSE NUMBER.

6 2. NO EMPLOYER SHALL RECEIVE, ACCEPT, MAINTAIN, OR POSSESS ANY INFOR-
7 MATION OBTAINED BY THE PAYROLL CARD ISSUER REGARDING ANY TRANSACTION
8 MADE BY AN EMPLOYEE CARDHOLDER INCLUDING, BUT NOT LIMITED TO:

9 A. SERVICES OR GOODS PURCHASED;

10 B. THE NAME OR TYPE OF THE BUSINESS IN WHICH A SERVICE OR GOOD IS
11 PURCHASED;

12 C. TIME, DATE OR LOCATION OF ANY AND ALL PURCHASES, WITHDRAWALS OR
13 BALANCE INQUIRIES; AND

14 D. FEES OR PENALTIES ASSESSED BY THE PAYROLL CARD ISSUER. HOWEVER,
15 THIS INFORMATION MAY BE PROVIDED IN THE AGGREGATE OR SUMMARIZED FORM
16 WITHOUT IDENTIFYING INDIVIDUAL EMPLOYEES.

17 3. EACH CARDHOLDER EMPLOYEE SHALL BE PROVIDED WITH A COPY OF ANY AND
18 ALL "CONSUMER PRIVACY" POLICIES AND/OR NOTICES REQUIRED BY LAW. CARD-
19 HOLDER EMPLOYEES MAY NOT BE AUTOMATICALLY SENT ANY DIRECT MARKETING
20 MATERIALS OR ENROLLED IN ANY MARKETING PROGRAMS, ALTHOUGH THEY MAY BE
21 GIVEN THE OPTION TO "OPT IN" TO RECEIVING DIRECT MARKETING MATERIALS.

22 4. A PAYROLL CARD ISSUER SHALL DISCLOSE ANY BREACH OF SECURITY TO ALL
23 AFFECTED CARDHOLDER EMPLOYEES AND THE EMPLOYER OF SUCH EMPLOYEES WITHIN
24 TWENTY-FOUR HOURS OF SUCH BREACH.

25 S 192-C. PROHIBITED ACTS. NO EMPLOYER SHALL:

26 1. INTIMIDATE, THREATEN, COERCE, OR OTHERWISE PRESSURE AN EMPLOYEE
27 INTO CONSENTING TO BE PAID WAGES THROUGH A PAYROLL CARD ACCOUNT;

28 2. OBTAIN AN EMPLOYEE'S CONSENT TO BE PAID THROUGH A PAYROLL CARD
29 ACCOUNT THROUGH MEANS THAT ARE UNFAIR, DECEPTIVE, OR ABUSIVE;

30 3. REQUIRE AS A CONDITION OF ANY EMPLOYEE'S HIRE OR CONTINUED EMPLOY-
31 MENT THAT SUCH EMPLOYEE BE PAID WAGES THROUGH A PAYROLL CARD ACCOUNT;

32 4. RETALIATE OR TAKE ADVERSE EMPLOYMENT ACTION AGAINST ANY EMPLOYEE
33 WHO DOES NOT CHOOSE TO BE PAID THROUGH A PAYROLL CARD ACCOUNT;

34 5. RETALIATE OR TAKE ADVERSE EMPLOYMENT ACTION AGAINST ANY CARDHOLDER
35 EMPLOYEE BASED UPON ANY CARDHOLDER EMPLOYEE TRANSACTIONS MADE THROUGH OR
36 ANY INFORMATION GENERATED BY THE CARDHOLDER EMPLOYEE'S POSSESSION OR USE
37 OF A PAYROLL CARD;

38 6. PAY WAGES TO AN EMPLOYEE THROUGH A PAYROLL CARD ACCOUNT THAT CHARG-
39 ES A FEE TO A CARDHOLDER EMPLOYEE FOR ANY OF THE FOLLOWING:

40 A. INITIATION, PARTICIPATION, LOADING, OR OTHER FEES TO RECEIVE WAGES
41 PAYABLE IN AN ELECTRONIC FUND TRANSFER TO A PAYROLL CARD ACCOUNT;

42 B. INACTIVITY, DORMANCY, OR OTHER FEE RESULTING FROM A CARDHOLDER
43 EMPLOYEE'S NON-USE OF HIS OR HER PAYROLL CARD ACCOUNT;

44 C. ACCOUNT MAINTENANCE OR MONTHLY MAINTENANCE;

45 D. ANY POINT OF SALE DEBIT OR SIGNATURE TRANSACTION;

46 E. DECLINED SALES OR ATM TRANSACTIONS;

47 F. CLOSING AN ACCOUNT;

48 G. THE ISSUANCE OF A REPLACEMENT CARD IN ACCORDANCE WITH PARAGRAPH F
49 OF SUBDIVISION THREE OF SECTION ONE HUNDRED NINETY-TWO-A OF THIS ARTI-
50 CLE; OR

51 H. UNDISCLOSED FEES IMPOSED BY THE EMPLOYER OR PAYROLL CARD ISSUER
52 THAT WERE NOT PREVIOUSLY DISCLOSED TO THE CARDHOLDER EMPLOYEE;

53 7. RECEIVE ANY CONSIDERATION FROM A PAYROLL CARD ISSUER INCLUDING, BUT
54 NOT LIMITED TO COMPENSATION, BONUS, OR REWARD BASED UPON:

55 A. A PORTION OF ANY PAYROLL CARD-RELATED FEES PAID BY SUCH EMPLOYER'S
56 CARDHOLDER EMPLOYEES, OR

1 B. THE NUMBER OF EMPLOYEES WHO ARE PAID WAGES THROUGH A PAYROLL CARD
2 ACCOUNT. NOTHING IN THIS SECTION SHALL PRECLUDE EMPLOYERS FROM RECEIV-
3 ING A BULK RATE OR VOLUME DISCOUNT BASED ON THE NUMBER OF EMPLOYEES THAT
4 CHOOSE TO RECEIVE WAGES THROUGH A PAYROLL CARD ACCOUNT;

5 8. PAY WAGES TO AN EMPLOYEE THROUGH A PAYROLL CARD ACCOUNT THAT CHARG-
6 ES ANY CARDHOLDER EMPLOYEE AN OVERDRAFT FEE UNDER ANY CIRCUMSTANCES.

7 S 4. Section 197 of the labor law, as amended by chapter 564 of the
8 laws of 2010, is amended to read as follows:

9 S 197. Civil penalty. 1. Any employer who fails to pay the wages of
10 his employees or shall differentiate in rate of pay because of sex, as
11 provided in this article, shall forfeit to the people of the state the
12 sum of five hundred dollars for each such failure, to be recovered by
13 the commissioner in any legal action necessary, including administrative
14 action or a civil action.

15 2. ANY EMPLOYER WHO VIOLATES OR FAILS TO COMPLY WITH THE REQUIREMENTS
16 OF SECTION ONE HUNDRED NINETY-TWO-A, ONE HUNDRED NINETY-TWO-B, OR ONE
17 HUNDRED NINETY-TWO-C OF THIS ARTICLE, SHALL FORFEIT TO THE PEOPLE OF THE
18 STATE THE SUM OF FIVE HUNDRED DOLLARS FOR EACH SUCH FAILURE, TO BE
19 RECOVERED BY THE COMMISSIONER IN ANY LEGAL ACTION NECESSARY, INCLUDING
20 ADMINISTRATIVE ACTION OR A CIVIL ACTION, OR BY AN EMPLOYEE IN A CIVIL
21 ACTION.

22 S 5. Subdivisions 1-a and 3 of section 198 of the labor law, as
23 amended by chapter 564 of the laws of 2010, are amended and a new subdi-
24 vision 5 is added to read as follows:

25 1-a. On behalf of any employee paid less than the wage to which he or
26 she is entitled under the provisions of this article, OR ALLEGING ANY
27 OTHER VIOLATION OF THIS ARTICLE, the commissioner may bring any legal
28 action necessary, including administrative action, to collect such claim
29 and as part of such legal action, in addition to any other remedies and
30 penalties otherwise available under this article, the commissioner shall
31 assess against the employer the full amount of any such underpayment,
32 and an additional amount as liquidated damages, unless the employer
33 proves a good faith basis for believing that its underpayment of wages
34 was in compliance with the law. Liquidated damages shall be calculated
35 by the commissioner as no more than one hundred percent of the total
36 amount of wages found to be due. In any action instituted in the courts
37 [upon a wage claim] by an employee or the commissioner FOR A VIOLATION
38 OF THIS ARTICLE in which the employee prevails, the court shall allow
39 such employee to recover the full amount of any underpayment, ANY OTHER
40 APPROPRIATE RELIEF, INCLUDING INJUNCTIVE RELIEF, all reasonable attor-
41 ney's fees, prejudgment interest as required under the civil practice
42 law and rules, and, unless the employer proves a good faith basis to
43 believe that its underpayment of wages was in compliance with the law,
44 an additional amount as liquidated damages equal to one hundred percent
45 of the total amount of the wages found to be due.

46 3. Notwithstanding any other provision of law, an action to recover
47 upon a liability imposed by this article must be commenced within six
48 years. The statute of limitations shall be tolled from the date an
49 employee files a complaint with the commissioner or the commissioner
50 commences an investigation, whichever is earlier, until an order to
51 comply issued by the commissioner becomes final, or where the commis-
52 sioner does not issue an order, until the date on which the commissioner
53 notifies the complainant that the investigation has concluded. Investi-
54 gation by the commissioner shall not be a prerequisite to nor a bar
55 against a person bringing a civil action under this section. All employ-
56 ees shall have the right to recover full wages, DAMAGES, benefits and

1 wage supplements and liquidated damages accrued during the six years
2 previous to the commencing of such action, whether such action is insti-
3 tuted by the employee or by the commissioner.

4 5. A COURT OF COMPETENT JURISDICTION MAY ENJOIN AN EMPLOYER WHO HAS
5 COMMITTED REPEAT OR WILLFUL VIOLATIONS OF ANY PROVISION OF SECTION ONE
6 HUNDRED NINETY-TWO-A, ONE HUNDRED NINETY-TWO-B OR ONE HUNDRED
7 NINETY-TWO-C OF THIS ARTICLE FROM PAYING EMPLOYEES' WAGES BY PAYROLL
8 CARD FOR A PERIOD OF TWO YEARS. THE COMMISSIONER MAY ISSUE AN ORDER
9 PROHIBITING AN EMPLOYER WHO HAS COMMITTED REPEAT OR WILLFUL VIOLATIONS
10 OF ANY PROVISIONS OF THIS SECTION FROM PAYING EMPLOYEES' WAGES BY
11 PAYROLL CARD FOR A PERIOD OF TWO YEARS. THE TWO YEAR PERIOD OF PROHIBI-
12 TION SHALL COMMENCE SIXTY DAYS FROM THE DATE OF THE COMMISSIONER'S
13 ORDER, OR SIXTY DAYS AFTER FINAL DISPOSITION OF ANY APPEAL, WHICHEVER IS
14 LATER.

15 S 6. Severability clause. The provisions of this act are severable. If
16 any phrase, clause, sentence, or provision of this act is declared to be
17 invalid or preempted in whole or in part by any federal law or regu-
18 lation, the validity of the remainder of this act shall not be affected.

19 S 7. This act shall take effect on the one hundred eightieth day after
20 it shall have become a law.