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I N A S S E M B L Y

June 10, 2014

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Morelle) -- (at request of the Department of Law) -- read once and referred 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 190 of the labor law is amended by adding eight new subdivisions 10, 11, 12, 13, 14, 15, 16 and 17 to read as follows:

10. "ACCOUNT" MEANS A DEMAND DEPOSIT (CHECKING), SAVINGS, OR OTHER CONSUMER ASSET ACCOUNT (OTHER THAN AN OCCASIONAL OR INCIDENTAL CREDIT BALANCE IN A CREDIT PLAN) HELD DIRECTLY OR INDIRECTLY BY A FINANCIAL INSTITUTION AND ESTABLISHED PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

11. "ELECTRONIC FUND TRANSFER" MEANS ANY TRANSFER OF FUNDS THAT IS INITIATED THROUGH AN ELECTRONIC TERMINAL, TELEPHONE, COMPUTER, OR MAGNETIC TAPE FOR THE PURPOSE OF ORDERING, INSTRUCTING, OR AUTHORIZING A FINANCIAL INSTITUTION TO DEBIT OR CREDIT AN EMPLOYEE'S PAYROLL CARD ACCOUNT. ELECTRONIC FUND TRANSFER INCLUDES, BUT IS NOT LIMITED TO:

A. POINT-OF-SALE TRANSFERS;

B. AUTOMATED TELLER MACHINE TRANSFERS;

C. DIRECT DEPOSITS OR WITHDRAWALS OF FUNDS;

D. TRANSFERS INITIATED BY TELEPHONE; AND

E. TRANSFERS RESULTING FROM DEBIT CARD TRANSACTIONS, WHETHER OR NOT INITIATED THROUGH AN ELECTRONIC TERMINAL.

12. "PAYROLL CARD ACCOUNT" MEANS AN ACCOUNT THAT IS DIRECTLY OR INDIRECTLY ESTABLISHED THROUGH OR BY AN EMPLOYER AND INTO WHICH AN EMPLOYER DIRECTLY OR INDIRECTLY DEPOSITS AN EMPLOYEE'S WAGES THROUGH AN ELECTRONIC FUNDS TRANSFER.

13. "PAYROLL CARD ISSUER" MEANS ANY EMPLOYER, BANK, FINANCIAL INSTITUTION, THIRD-PARTY PAYROLL PROCESSOR, OR ANY OTHER PERSON OR ENTITY THAT 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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14. "PAYROLL CARD" MEANS A CARD ISSUED TO AN EMPLOYEE BY AN EMPLOYER OR OTHER PAYROLL CARD ISSUER AS A MEANS OF ACCESSING THE EMPLOYEE'S PAYROLL CARD ACCOUNT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. A LIST OF LOCATIONS WITHIN TEN MILES OF THE PLACE OF EMPLOYMENT WHERE A CARDHOLDER EMPLOYEE MAY ACCESS HIS OR HER WAGES WITHOUT INCURRING A FEE;

F. TIME LIMITATIONS TO DISPUTE A CHARGE OR EXPENDITURE TO AN EMPLOYEE'S PAYROLL CARD ACCOUNT; AND

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

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

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

A. AT LEAST ONE NETWORK OF ATMS, LOCATED IN REASONABLE PROXIMITY TO THE CARDHOLDER EMPLOYEE'S PLACE OF EMPLOYMENT OR PLACE OF RESIDENCE. FOR CARDHOLDER EMPLOYEES WHOSE PLACE OF EMPLOYMENT IS LOCATED OUTSIDE OF A CITY WITH A POPULATION IN EXCESS OF ONE MILLION, AT LEAST ONE ATM WITHIN THE NETWORK OF ATMS MUST BE LOCATED NO MORE THAN TEN MILES FROM THE CARDHOLDER EMPLOYEE'S PLACE OF EMPLOYMENT OR PLACE OF RESIDENCE. FOR CARDHOLDER EMPLOYEES WHOSE PLACE OF EMPLOYMENT IS LOCATED INSIDE OF A CITY WITH A POPULATION IN EXCESS OF ONE MILLION, AT LEAST ONE ATM WITHIN THE NETWORK OF ATMS MUST BE LOCATED NO MORE THAN ONE MILE FROM THE CARDHOLDER EMPLOYEE'S PLACE OF EMPLOYMENT OR PLACE OF RESIDENCE. SUCH A NETWORK OF ATMS MUST PERMIT:

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

(II) UNLIMITED BALANCE INQUIRIES AT NO COST TO THE CARDHOLDER EMPLOYEE.

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

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

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

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

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

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

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

E. FREE CUSTOMER SERVICE, VIA A LIVE AGENT;

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

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

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

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

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

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

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

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

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

IDENTIFYING INFORMATION" SHALL INCLUDE THE EMPLOYEE'S NAME, SOCIAL SECURITY NUMBER, HOME ADDRESS, TELEPHONE NUMBER (HOME, MOBILE, OR OTHER), PERSONAL ELECTRONIC MAIL ADDRESS, INTERNET IDENTIFICATION NAME OR PASSWORD, EMPLOYEE'S OR PARENT'S SURNAME PRIOR TO MARRIAGE, OR DRIVER'S LICENSE NUMBER.

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

A. SERVICES OR GOODS PURCHASED;

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

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

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

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

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

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

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

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

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

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

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

6. PAY WAGES TO AN EMPLOYEE THROUGH A PAYROLL CARD ACCOUNT THAT CHARGES A FEE TO A CARDHOLDER EMPLOYEE FOR ANY OF THE FOLLOWING:

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

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

C. ACCOUNT MAINTENANCE OR MONTHLY MAINTENANCE;

D. ANY POINT OF SALE DEBIT OR SIGNATURE TRANSACTION;

E. DECLINED SALES OR ATM TRANSACTIONS;

F. CLOSING AN ACCOUNT;

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

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

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

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

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

8. PAY WAGES TO AN EMPLOYEE THROUGH A PAYROLL CARD ACCOUNT THAT CHARGES ANY CARDHOLDER EMPLOYEE AN OVERDRAFT FEE UNDER ANY CIRCUMSTANCES.

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

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

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

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

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

3. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this section. All employees shall have the right to recover full wages, DAMAGES, benefits and

wage supplements and liquidated damages accrued during the six years previous to the commencing of such action, whether such action is instituted by the employee or by the commissioner.

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

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

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