

4685--A

2015-2016 Regular Sessions

I N S E N A T E

April 7, 2015

Introduced by Sens. GALLIVAN, O'MARA -- (at request of the Attorney General) -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

- 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

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

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1 DIRECTLY OR INDIRECTLY DEPOSITS AN EMPLOYEE'S WAGES THROUGH AN ELECTRON-
2 IC FUNDS TRANSFER.

3 13. "PAYROLL CARD ISSUER" MEANS ANY BANK, FINANCIAL INSTITUTION,
4 THIRD-PARTY PAYROLL PROCESSOR, OR ANY OTHER PERSON OR ENTITY THAT ISSUES
5 A PAYROLL CARD TO AN EMPLOYEE ON BEHALF OF AN EMPLOYER.

6 14. "PAYROLL CARD" MEANS A CARD ISSUED TO AN EMPLOYEE BY AN EMPLOYER
7 OR OTHER PAYROLL CARD ISSUER AS A MEANS OF ACCESSING THE EMPLOYEE'S
8 PAYROLL CARD ACCOUNT.

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

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

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

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

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

31 2. AN EMPLOYER SHALL NOT INITIATE PAYMENT OF WAGES TO THE EMPLOYEE BY
32 ELECTRONIC FUNDS TRANSFER TO A PAYROLL CARD ACCOUNT UNLESS THE EMPLOYER
33 ALSO OFFERS THE EMPLOYEE THE OPTIONS OF PAYMENT BY PAPER CHECK AND BY
34 DIRECT DEPOSIT TO A DEPOSITORY ACCOUNT DESIGNATED BY THE EMPLOYEE. FOR
35 PURPOSES OF THIS ARTICLE, A PAPER CHECK SHALL NOT INCLUDE A CONVENIENCE
36 CHECK OR ANY OTHER CHECK DRAWN UPON AN EMPLOYEE'S PAYROLL CARD ACCOUNT
37 AND WHICH MUST BE COMPLETED BY THE EMPLOYEE, UNLESS THE EMPLOYER TAKES
38 ALL STEPS TO RENDER THE CONVENIENCE CHECK ABLE TO BE IMMEDIATELY DEPOS-
39 ITED OR CASHED, INCLUDING FILLING OUT THE CHECK ITSELF PROPERLY AND
40 ACCURATELY WITH THE CORRECT NET WAGE DOLLAR AMOUNT.

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

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

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

1 S 3. The labor law is amended by adding three new sections 192-a,
2 192-b and 192-c to read as follows:

3 S 192-A. PAYMENT OF WAGES TO A PAYROLL CARD ACCOUNT. 1. EVEN WHERE AN
4 EMPLOYER MEETS THE REQUIREMENTS OF SECTION ONE HUNDRED NINETY-TWO OF
5 THIS ARTICLE, AN EMPLOYER MUST, PRIOR TO OBTAINING AN EMPLOYEE'S WRITTEN
6 CONSENT AS REQUIRED BY SECTION ONE HUNDRED NINETY-TWO OF THIS ARTICLE,
7 PROVIDE SUCH EMPLOYEE WITH WRITTEN NOTICE OF THE TERMS AND CONDITIONS OF
8 THE PAYROLL CARD PROGRAM IN ENGLISH AND IN THE LANGUAGES THAT THE
9 EMPLOYER PRIMARILY USES TO COMMUNICATE EMPLOYMENT RELATED POLICIES TO
10 ITS EMPLOYEES. SUCH NOTICE MUST INCLUDE, BUT IS NOT LIMITED TO:

11 A. A CLEAR, CONSPICUOUS AND ITEMIZED LIST, IN AT LEAST 12 POINT FONT,
12 OF ANY AND ALL FEES THAT MAY BE ASSESSED BY THE PAYROLL CARD ISSUER;

13 B. A CLEAR, CONSPICUOUS AND ITEMIZED LIST, IN AT LEAST 12 POINT FONT,
14 OF ANY AND ALL FEES THAT MAY BE ASSESSED BY THIRD PARTIES;

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

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

20 E. A LIST OF FIVE LOCATIONS REASONABLY PROXIMATE TO THE PLACE OF
21 EMPLOYMENT WHERE A CARDHOLDER EMPLOYEE MAY ACCESS HIS OR HER WAGES WITH-
22 OUT INCURRING A FEE;

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

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

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

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

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

50 C. A HARD COPY PERIODIC STATEMENT, FREE OF CHARGE, FOR EACH MONTHLY
51 CYCLE IN WHICH ELECTRONIC FUNDS TRANSFER HAS OCCURRED; AND A PERIODIC
52 STATEMENT FREE OF CHARGE, AT LEAST QUARTERLY IF NO TRANSFER HAS
53 OCCURRED. IN THE ALTERNATIVE, AN EMPLOYER MAY COMPLY WITH THIS SECTION
54 IF THE PAYROLL CARD ISSUED MAKES ACCOUNT INFORMATION AVAILABLE TO CARD-
55 HOLDER EMPLOYEES FREE OF CHARGE THROUGH THE FOLLOWING MEANS:

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

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

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

14 D. FREE CUSTOMER SERVICE, VIA A LIVE AGENT;

15 E. ONE FREE REPLACEMENT PAYROLL CARD PER YEAR UPON REQUEST OF THE
16 CARDHOLDER EMPLOYEE, PROVIDED, HOWEVER; A FEE MAY BE CHARGED FOR THE
17 COST OF AN EXPEDITED DELIVERY OF A REPLACEMENT PAYROLL CARD, IF A CARD-
18 HOLDER EMPLOYEE REQUESTS SUCH DELIVERY.

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

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

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

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

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

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

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

50 S 192-B. CONFIDENTIALITY OF EMPLOYEE INFORMATION. 1. AN EMPLOYER SHALL
51 NOT DISCLOSE AN EMPLOYEE'S PERSONAL IDENTIFYING INFORMATION TO A PAYROLL
52 CARD ISSUER UNLESS SUCH EMPLOYER HAS RECEIVED ADVANCE WRITTEN CONSENT
53 FROM SUCH EMPLOYEE. FOR THE PURPOSES OF THIS SUBDIVISION, "PERSONAL
54 IDENTIFYING INFORMATION" SHALL INCLUDE THE EMPLOYEE'S NAME, SOCIAL SECU-
55 RITY NUMBER, HOME ADDRESS, TELEPHONE NUMBER (HOME, MOBILE, OR OTHER),
56 PERSONAL ELECTRONIC MAIL ADDRESS, INTERNET IDENTIFICATION NAME OR PASS-

WORD, 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, OR AS SOON AS REASONABLY PRACTICABLE.

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. THE FIRST TWO DECLINED SALES OR ATM TRANSACTIONS OF EACH MONTH;

F. CLOSING AN ACCOUNT;

G. THE ISSUANCE OF A REPLACEMENT CARD IN ACCORDANCE WITH PARAGRAPH E 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 RECEIV-

1 ING A BULK RATE OR VOLUME DISCOUNT BASED ON THE NUMBER OF EMPLOYEES THAT
2 CHOOSE TO RECEIVE WAGES THROUGH A PAYROLL CARD ACCOUNT;

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

5 S 4. Subdivisions 1-a and 3 of section 198 of the labor law, subdivi-
6 sion 1-a as amended by chapter 362 of the laws of 2015, subdivision 3 as
7 amended by chapter 2 of the laws of 2015, are amended and a new subdivi-
8 sion 5 is added to read as follows:

9 1-a. On behalf of any employee paid less than the wage to which he or
10 she is entitled under the provisions of this article, OR ALLEGING ANY
11 OTHER VIOLATION OF THIS ARTICLE, the commissioner may bring any legal
12 action necessary, including administrative action, to collect such claim
13 and as part of such legal action, in addition to any other remedies and
14 penalties otherwise available under this article, the commissioner shall
15 assess against the employer the full amount of any such underpayment,
16 and an additional amount as liquidated damages, unless the employer
17 proves a good faith basis for believing that its underpayment of wages
18 was in compliance with the law. Liquidated damages shall be calculated
19 by the commissioner as no more than one hundred percent of the total
20 amount of wages found to be due, except such liquidated damages may be
21 up to three hundred percent of the total amount of the wages found to be
22 due for a willful violation of section one hundred ninety-four of this
23 article. In any action instituted in the courts [upon a wage claim] by
24 an employee or the commissioner FOR A VIOLATION OF THIS ARTICLE in which
25 the employee prevails, the court shall allow such employee to recover
26 the full amount of any underpayment, ANY OTHER APPROPRIATE RELIEF,
27 INCLUDING INJUNCTIVE RELIEF, all reasonable attorney's fees, prejudgment
28 interest as required under the civil practice law and rules, and, unless
29 the employer proves a good faith basis to believe that its underpayment
30 of wages was in compliance with the law, an additional amount as liqui-
31 dated damages equal to one hundred percent of the total amount of the
32 wages found to be due, except such liquidated damages may be up to three
33 hundred percent of the total amount of the wages found to be due for a
34 willful violation of section one hundred ninety-four of this article.

35 3. Notwithstanding any other provision of law, an action to recover
36 upon a liability imposed by this article must be commenced within six
37 years. The statute of limitations shall be tolled from the date an
38 employee files a complaint with the commissioner or the commissioner
39 commences an investigation, whichever is earlier, until an order to
40 comply issued by the commissioner becomes final, or where the commis-
41 sioner does not issue an order, until the date on which the commissioner
42 notifies the complainant that the investigation has concluded. Investi-
43 gation by the commissioner shall not be a prerequisite to nor a bar
44 against a person bringing a civil action under this section. All employ-
45 ees shall have the right to recover full wages, DAMAGES, benefits and
46 wage supplements and liquidated damages accrued during the six years
47 previous to the commencing of such action, whether such action is insti-
48 tuted by the employee or by the commissioner.

49 5. A COURT OF COMPETENT JURISDICTION MAY ENJOIN AN EMPLOYER WHO HAS
50 COMMITTED REPEAT OR WILLFUL VIOLATIONS OF ANY PROVISION OF SECTION ONE
51 HUNDRED NINETY-TWO-A, ONE HUNDRED NINETY-TWO-B OR ONE HUNDRED
52 NINETY-TWO-C OF THIS ARTICLE FROM PAYING EMPLOYEES' WAGES BY PAYROLL
53 CARD FOR A PERIOD OF TWO YEARS. THE COMMISSIONER MAY ISSUE AN ORDER
54 PROHIBITING AN EMPLOYER WHO HAS COMMITTED REPEAT OR WILLFUL VIOLATIONS
55 OF ANY PROVISIONS OF THIS SECTION FROM PAYING EMPLOYEES' WAGES BY
56 PAYROLL CARD FOR A PERIOD OF TWO YEARS. THE TWO YEAR PERIOD OF PROHIBI-

1 TION SHALL COMMENCE SIXTY DAYS FROM THE DATE OF THE COMMISSIONER'S
2 ORDER, OR SIXTY DAYS AFTER FINAL DISPOSITION OF ANY APPEAL, WHICHEVER IS
3 LATER.

4 S 5. Severability clause. The provisions of this act are severable. If
5 any phrase, clause, sentence, or provision of this act is declared to be
6 invalid or preempted in whole or in part by any federal law or regu-
7 lation, the validity of the remainder of this act shall not be affected.

8 S 6. This act shall take effect on the one hundred eightieth day after
9 it shall have become a law.