



## 2013 BILL

1     **AN ACT to amend** 109.09 (1), 111.322 (2m) (a) and 111.322 (2m) (b); and **to create**  
2             103.453 and 106.54 (10) of the statutes; **relating to:** payment of wages by  
3             electronic fund transfer to a payroll card account.

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### *Analysis by the Legislative Reference Bureau*

#### ***Current law***

Under current law, if an employer pays wages in a form other than cash, the wages must be payable at the employer's office, if within the state, at any bank within the state, or at a place of business within the county in which the work was performed.

#### ***The bill***

***Payment of wages by payroll card.*** This bill regulates the payment of wages in the form of an electronic fund transfer to a payroll card account, which under current regulations issued under the federal Electronic Fund Transfer Act, is defined as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person (payment of wages by payroll card).

***Employee consent required.*** Specifically, the bill prohibits an employer from paying an employee his or her wages by payroll card unless all of the following apply:

1. The employer obtains the employee's consent to receive his or her wages by payroll card. That consent must be given knowingly and voluntarily and not as a

**BILL**

condition of employment, must be given before the performance of the work for which the employee is receiving wages, and must be affirmed by a written or otherwise verifiable record maintained by the employer.

2. The employer also offers the employee the option of receiving his or her wages in cash, in the form of a check, or by means of direct deposit to a depository account of the employee's choosing.

**Disclosure requirements.** Before an employer may seek the consent of an employee to receive his or her wages by payroll card, the employer must provide all of the following information to the employee:

1. A plain-language description of the employee's options for receiving his or her wages.

2. A statement of the terms and conditions governing the employer's payment of wages by payroll card and the employee's use of a payroll card to access those wages. That statement must include a clear, conspicuous, and easily understandable list of all fees that may be charged to the employee and the amount of those fees.

**Fees.** Under the bill, an employer may not pay an employee his or her wages by payroll card unless the employer, if the employer itself issues payroll cards to its employees, or a third-party processor, depository institution, or other person contracted by the employer to issue those cards (payroll card issuer) does all of the following:

1. Permits the employee to make at least two withdrawals per pay period at no cost to the employee from an automated teller machine in a network designated by the payroll card issuer, unless the employee's pay period is weekly, in which case the payroll card issuer may permit the employee to make only one such withdrawal per pay period at no cost to the employee.

2. Provides at least one method by which the employee may withdraw his or her entire wages for each pay period at no cost to the employee.

The bill permits a payroll card issuer to charge a reasonable fee for any discretionary or optional service that the issuer provides to an employee, except that a payroll card issuer may not charge an employee a fee for any of the following: 1) establishing or maintaining a payroll card account or obtaining or holding a payroll card; 2) a point-of-sale transaction or any other ordinary transaction; 3) a low balance in the employee's payroll card account; 4) a declined transaction.; 5) inactivity or dormancy in the employee's payroll card account; 6) one replacement payroll card issued in each calendar year; or 7) closing a payroll card account or issuing payment of the remaining balance in a payroll card account by check or any other means.

**Provision of account information.** The bill requires a payroll card issuer to provide all of the following at no cost to an employee:

1. On the employee's one-time written or oral request, a monthly statement specifying all deposits to, withdrawals from, fees charged to, and other transactions involving the employee's payroll card account since the date of the last monthly statement.

2. Two telephone calls from the employee to a live customer service representative of the payroll card issuer during each pay period.

**BILL**

3. Access to balance or other account information by way of an automated telephone system and not less than one additional automated option.

**No link to credit.** The bill prohibits an employer or other payroll card issuer from linking a payroll card account to any form of credit, including a loan against future pay, a cash advance on future pay, or any fee-based overdraft protection program, except that the bill does not prohibit a payroll card issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.

**Change in method of wage payment.** The bill permits an employee who is receiving his or her wages by payroll card to request his or her employer to change the method by which the employee receives those wages at any time and requires the employer to honor such a request.

**Insured accounts required.** Finally, the bill permits an employer to pay an employee his or her wages by payroll card only if the employee's payroll card account is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 103.453 of the statutes is created to read:
- 2           **103.453 Payroll cards. (1) DEFINITIONS.** In this section:
- 3           (a) “Automated teller machine” has the meaning given in s. 134.85 (1) (a).
- 4           (b) “Payroll card” means a prepaid card or any other code or device through  
5 which an employer provides an employee with access to his or her wages.
- 6           (c) “Payroll card account” has the meaning given in 12 CFR 205.2 (b) 2.
- 7           (d) “Payroll card issuer” means an employer that operates and manages the  
8 payroll card accounts of its employees and that issues payroll cards to those  
9 employees or a third-party payroll processor, depository institution, or any other  
10 person contracted by an employer to operate and manage those accounts and to issue  
11 those cards.
- 12           (e) “Wages” has the meaning given in s. 109.01 (3).

**BILL**

1           **(2) CONSENT REQUIRED.** An employer may not pay an employee his or her wages  
2 in the form of an electronic fund transfer to a payroll card account unless all of the  
3 following apply:

4           (a) The employer, after providing the information specified in sub. (3) to the  
5 employee, obtains the employee's consent to receive his or her wages in the form of  
6 an electronic fund transfer to a payroll card account. That consent must be given  
7 knowingly and voluntarily and not as a condition of employment, must be given  
8 before the performance of the work for which the employee is receiving wages, and  
9 must be affirmed by a written or otherwise verifiable record maintained by the  
10 employer in accordance with s. 104.09.

11           (b) The employer also offers the employee the option of receiving his or her  
12 wages in cash, in the form of a time check or other paper under s. 103.45, or by means  
13 of direct deposit to a depository account of the employee's choosing.

14           **(3) DISCLOSURE.** (a) Before an employer may seek the consent of an employee  
15 to receive his or her wages in the form of an electronic fund transfer to a payroll card  
16 account, the employer shall provide all of the following information to the employee:

17           1. A plain-language description of the employee's options under sub. (2) (a) and  
18 (b) for receiving wages.

19           2. A statement of the terms and conditions governing the employer's payment  
20 of wages in the form of an electronic fund transfer to a payroll card account and the  
21 employee's use of a payroll card to access those wages. That statement shall include  
22 a clear, conspicuous, and easily understandable list of all fees that may be charged  
23 to the employee by the payroll card issuer and the amount of those fees.

**BILL**

1           (b) The employer shall provide the information specified in par. (a) in the  
2 language that the employer normally uses to communicate employment-related  
3 information to the employee.

4           (4) FEES. (a) An employer may not pay an employee his or her wages in the  
5 form of an electronic fund transfer to a payroll card account unless the payroll card  
6 issuer does all of the following:

7           1. Permits the employee to make at least 2 withdrawals per pay period at no  
8 cost to the employee from an automated teller machine in a network designated by  
9 the payroll card issuer, unless the employee's pay period is weekly, in which case the  
10 payroll card issuer may permit the employee to make only one such withdrawal per  
11 pay period at no cost to the employee.

12           2. Provides at least one method by which the employee may withdraw his or  
13 her entire wages for each pay period at no cost to the employee.

14           (b) Except as provided in par. (c), a payroll card issuer may charge a reasonable  
15 fee for any discretionary or optional service that the issuer provides to an employee.

16           (c) A payroll card issuer may not charge an employee a fee for any of the  
17 following:

18           1. Establishing or maintaining a payroll card account or obtaining or holding  
19 a payroll card. Fees prohibited under this subdivision include application fees,  
20 initiation fees, loading fees, participation fees, and maintenance fees.

21           2. A point-of-sale transaction or any other ordinary transaction.

22           3. A low balance in the employee's payroll card account.

23           4. A declined transaction.

24           5. Inactivity or dormancy in the employee's payroll card account.

25           6. One replacement payroll card issued in each calendar year.

**BILL**

1           7. Closing a payroll card account or issuing payment of the remaining balance  
2 in a payroll card account by check or any other means.

3           **(5) ACCOUNT INFORMATION.** A payroll card issuer shall provide all of the  
4 following at no cost to an employee:

5           (a) On the employee's one-time written or oral request, a monthly statement  
6 specifying all deposits to, withdrawals from, fees charged to, and other transactions  
7 involving the employee's payroll card account since the date of the last monthly  
8 statement. The employee may choose to receive those monthly statements  
9 electronically or on paper.

10          (b) Two telephone calls from the employee to a live customer service  
11 representative of the payroll card issuer during each pay period.

12          (c) Access to balance or other account information by way of an automated  
13 telephone system and not less than one additional automated option, which options  
14 may include the Internet, any automated teller machine in the network of the payroll  
15 card issuer, or any other automated system offered in conjunction with the payroll  
16 card.

17          **(6) NO LINK TO CREDIT.** No employer or other payroll card issuer may link a  
18 payroll card account to any form of credit, including a loan against future pay, a cash  
19 advance on future pay, or any fee-based overdraft protection program. This  
20 subsection does not prohibit a payroll card issuer from covering an occasional  
21 inadvertent overdraft transaction if there is no charge to the employee.

22          **(7) CHANGE IN METHOD OF WAGE PAYMENT.** An employee who is receiving his or  
23 her wages in the form of an electronic fund transfer to a payroll card account may  
24 request the employer to change the method by which the employee receives those  
25 wages at any time and the employer shall honor that request.

**BILL**

1           **(8) INSURED ACCOUNTS.** An employer may pay an employee his or her wages in  
2           the form of an electronic fund transfer to a payroll card account only if that account  
3           is insured by the Federal Deposit Insurance Corporation or the National Credit  
4           Union Administration.

5           **(9) ACTIONS PROHIBITED.** (a) No employer, other payroll card issuer, or other  
6           person may interfere with, restrain, or deny any right of an employee under this  
7           section.

8           (b) No employer may discharge or otherwise discriminate against an employee  
9           for exercising a right specified in par. (a), opposing a practice prohibited under par.  
10          (a), filing a complaint or attempting to enforce any right under par. (a), or testifying  
11          or assisting in any action or proceeding to enforce any right under par. (a).

12          **(10) ENFORCEMENT.** (a) An employee whose rights under this section are  
13          interfered with, restrained, or denied in violation of sub. (9) (a) or who is discharged  
14          or otherwise discriminated against in violation of sub. (9) (b) may file a complaint  
15          with the department, and the department shall process the complaint in the same  
16          manner as employment discrimination complaints are processed under s. 111.39. If  
17          the department finds that a violation of sub. (9) (a) or (b) has been committed, the  
18          department may order the employer to take such action authorized under s. 111.39  
19          as will remedy the violation. Section 111.322 (2m) applies to a discharge or other  
20          discriminatory act arising in connection with any proceeding under this paragraph.

21          (b) An employee who is owed wages or a refund of any fee not authorized under  
22          sub. (4) may file a wage claim with the department under s. 109.09 (1) or may bring  
23          an action under s. 109.03 (5) without first filing a wage claim with the department.

**BILL**

1           **(11) PENALTY.** Any employer, payroll card issuer, or other person who fails to  
2 comply with this section is subject to a forfeiture of not less than \$10 nor more than  
3 \$100.

4           **SECTION 2.** 106.54 (10) of the statutes is created to read:

5           **106.54 (10)** The division shall receive complaints under s. 103.453 (10) (a) and  
6 shall process the complaints in the same manner as employment discrimination  
7 complaints are processed under s. 111.39.

8           **SECTION 3.** 109.09 (1) of the statutes is amended to read:

9           **109.09 (1)** The department shall investigate and attempt equitably to adjust  
10 controversies between employers and employees as to alleged wage claims. The  
11 department may receive and investigate any wage claim which is filed with the  
12 department, or received by the department under s. 109.10 (4), no later than 2 years  
13 after the date the wages are due. The department may, after receiving a wage claim,  
14 investigate any wages due from the employer against whom the claim is filed to any  
15 employee during the period commencing 2 years before the date the claim is filed.  
16 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.453, 103.49,  
17 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the  
18 employer on behalf of the employee to collect any wage claim or wage deficiency and  
19 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions  
20 under s. 109.10, the department may refer such an action to the district attorney of  
21 the county in which the violation occurs for prosecution and collection and the  
22 district attorney shall commence an action in the circuit court having appropriate  
23 jurisdiction. Any number of wage claims or wage deficiencies against the same  
24 employer may be joined in a single proceeding, but the court may order separate  
25 trials or hearings. In actions that are referred to a district attorney under this



**BILL**

1 subsection, any taxable costs recovered by the district attorney shall be paid into the  
2 general fund of the county in which the violation occurs and used by that county to  
3 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office  
4 of the district attorney who prosecuted the action.

5 **SECTION 4.** 111.322 (2m) (a) of the statutes is amended to read:

6 111.322 (2m) (a) The individual files a complaint or attempts to enforce any  
7 right under s. 103.02, 103.453, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455,  
8 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599  
9 or 103.64 to 103.82.

10 **SECTION 5.** 111.322 (2m) (b) of the statutes is amended to read:

11 111.322 (2m) (b) The individual testifies or assists in any action or proceeding  
12 held under or to enforce any right under s. 103.02, 103.453, 103.10, 103.13, 103.28,  
13 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, or 146.997  
14 or ss. 101.58 to 101.599 or 103.64 to 103.82.

15 **SECTION 6. Initial applicability.**

16 (1) PAYROLL CARDS; COLLECTIVE BARGAINING AGREEMENTS. This act first applies to  
17 wages paid on the effective date of this subsection, except that this act first applies  
18 to wages paid to an employee who is affected by a collective bargaining agreement  
19 that contains provisions inconsistent with this act on the day on which the collective  
20 bargaining agreement expires or is extended, modified, or renewed.

21 **SECTION 7. Effective date.**

22 (1) PAYROLL CARDS. This act takes effect on the first day of the 4th month  
23 beginning after publication.

24 (END)