

Senate Bill No. 931

Passed the Senate September 9, 2011

Secretary of the Senate

Passed the Assembly September 8, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 215 and 225.5 of, and to add Section 213.5 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 931, Evans. Payroll cards.

Existing law prohibits an employer from issuing in payment of wages due certain instruments, including an order, check, draft, note, memorandum, scrip, coupon, card, or other acknowledgment of indebtedness or redeemable instrument, unless specified requirements are satisfied.

This bill would authorize an employer to pay an employee's wages by means of a payroll card, as defined, provided that specified requirements are satisfied. In addition, the bill would make a violation of its provisions a misdemeanor and would subject a violator to specified civil penalties. By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 213.5 is added to the Labor Code, to read:

213.5. (a) For purposes of this section, the following definitions apply:

(1) "Cardholder agreement" means the terms and conditions of the agreement between the issuer and the employee with regard to the use of a payroll card.

(2) "Employer" means a person who directly or indirectly, or through an agent or any other person, employs, or exercises control over the wages, hours, or working conditions of, another person.

(3) “Issuer” means the payroll card issuer, and includes a person acting as an agent or administrator of an issuer, directly or indirectly. Issuer does not include an employer or his or her employees unless the employer is also the payroll card issuer.

(4) “Payroll card” means a prepaid card, code, or other device, issued or distributed to an employee by an employer, or by another entity by arrangement with the employer, through which the employer provides the employee access to his or her wages.

(5) “Payroll card account” means an account that holds funds drawn upon by a payroll card.

(6) “Payroll card contract” means a contract entered into by an employer with an issuer to provide employees with payroll cards as a means to pay wages.

(7) “Payroll card fee schedule” means a written list of fees that may be charged to an employee by an issuer in connection with a payroll card account, or an explanation of how the fees will be determined. A payroll card fee schedule shall be set forth in, and may be subject to change in accordance with the terms of, the cardholder agreement.

(8) “Regulation E” means Part 205 of Title 12 of the Code of Federal Regulations, implementing the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693 et seq.), or any successor regulation, as amended from time to time.

(b) Notwithstanding Section 212, an employer may pay wages to an employee using a payroll card if all of the following requirements are satisfied:

(1) The employer gives the employee the option of receiving his or her wages by direct deposit to a depository account of the employee’s choosing, the option of receiving payment by paper check, and the option of receiving payment by payroll card before the employee selects one of those options.

(2) The employer obtains the employee’s written consent to receive wages by payroll card. Prior to obtaining the employee’s consent, the employer shall provide the employee, in the language the employer normally uses to communicate employment-related information to the employee, all of the following information:

(A) A description, stated in plain language, of the employee’s options for receiving wages.

(B) The cardholder agreement, including a clear, conspicuous, and complete itemized payroll card fee schedule in a form that the

employee may retain for his or her records. The schedule shall state the dollar amount of all fees.

(C) A list of the services available to the employee pursuant to paragraph (6).

(3) The employer does not make participation in the payroll card program a condition of hire or continued employment.

(4) The employer selects an issuer that offers employees a process for disputing payroll card account fees that have been assessed in a manner inconsistent with the payroll card fee schedule. The dispute process shall treat a fee dispute as if it were an error under Section 205.11 or, if applicable, 205.18(c) of Regulation E.

(5) The employer agrees to honor a written request by the employee to change the method of receiving wages from a payroll card to another method offered by the employer within two pay periods from the time of the request.

(6) The payroll card contract provides for all of the following, at no cost to the employee:

(A) A payroll card on which the employee may receive wages, with no charges for application, initiation, loading, or participation.

(B) One replacement payroll card per year.

(C) The ability to make at least one withdrawal per pay period from an automated teller machine (ATM) that is outside the network of the issuer without incurring a fee charged by the issuer. The issuer shall not be held responsible for any fees imposed on an employee by the financial institution whose ATM is accessed by the employee.

(D) A minimum of four withdrawals per pay period from an ATM within the network of the issuer.

(E) The ability to withdraw the entire amount of wages stored on the card a minimum of once per pay period.

(F) The ability to use the payroll card for a minimum of two point-of-sale transactions per pay period without incurring a fee charged by the issuer. The issuer shall not be held responsible for any fees imposed on an employee by a retailer in connection with a point-of-sale transaction.

(G) The means to access balance or other account information online, by way of an interactive voice response system or another automated system offered in conjunction with the payroll card, in

a manner that allows access to account information 24 hours a day, 7 days a week.

(H) At least three telephone calls per month to a live customer service representative.

(I) The option to receive ongoing periodic statements once every two months if there has been activity on the card during either month, or at least once every three months if there is a balance on the payroll card but there has been no activity on the card account during that three-month period. The employee shall be provided with a choice of receiving statements in either electronic or paper form, and shall have the right to decline to receive statements. Each statement provided to an employee shall include all transactions during the statement period, including deposits, withdrawals, fees charged, and other transactions affecting the payroll card account.

(J) The ability to close a payroll card account and obtain payment of the balance remaining on the card.

(7) The payroll card agreement prevents withdrawals in excess of the account balance and, to the extent possible, protects against the account being overdrawn.

(8) The payroll card agreement does not impose fees based on an employee's account balance or fees that are triggered by declined transactions or overdrafts.

(9) The funds in the payroll card account do not expire. The payroll card account may be closed after 24 continuous months of inactivity, with reasonable notice to the employee, provided that the remaining funds in the payroll card account are refunded to the employee at no cost to the employee. If the payroll card has an expiration date, the issuer shall provide a new replacement card to the employee at least 15 days before the expiration date at no charge to the employee.

(10) The payroll card account is not linked to any form of credit, including a loan against future wages or a cash advance on future wages. This paragraph does not prohibit an issuer from honoring an overdraft transaction at no additional cost to the employee or prohibit an employer from providing an advance on wages already earned to increase the frequency of the pay period of a classified employee, as defined in Section 41401 of the Education Code, at no additional charge to the employee.

(11) The payroll card account is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration on a passthrough basis to the employee.

(c) An employer that executes a payroll card contract that complies with this section shall not be liable for any fee charged against an employee under a payroll card fee schedule, provided that the employer does not receive any portion of any fee charged to an employee, except when the employer is also the issuer.

(d) An employer that pays wages to employees through payroll cards without a payroll card contract that meets the requirements of this section shall reimburse its employees for all fees charged by the issuer that may have been assessed in a manner inconsistent with paragraph (6) of subdivision (b).

(e) Any dispute between the issuer and the employee that is not resolved to the satisfaction of both parties pursuant to the dispute resolution process referenced in paragraph (4) of subdivision (b) shall be resolved pursuant to the terms of the cardholder agreement.

(f) An employer shall deposit all wages owed to an employee who has elected in writing to receive his or her wages through a payroll card, or a portion thereof as arranged in writing between the employer and the employee, into the employee's payroll card account on or before the employee's designated payday. The employee shall be deemed to have been paid wages owed at the time the wages are deposited into the employee's payroll card account and the employee has access to those wages. If there is any delay of an employee's access to wages due to an error by the issuer, the employer shall not be held liable for this delay as long as the employer deposited the proper amount of wages into the account on or before the designated payday.

(g) An employer shall be liable for any wages due and not timely paid onto a payroll card or other elected method of payment pursuant to subdivision (f).

(h) A claim made by an employee against the issuer under this section shall not affect the right of an employer to pursue any claims or remedies it may have against the issuer.

(i) Nothing in this section shall relieve the employer of his or her obligations under subdivision (a) of Section 226.

(j) A payroll card contract entered into before the effective date of the act adding this section need not be renegotiated to reflect

the provisions of this section until the contract's expiration or renewal date, but in no event later than January 1, 2013.

SEC. 2. Section 215 of the Labor Code is amended to read:

215. A person, or the agent, manager, superintendent, or officer thereof, who violates any provision of Section 201.3, 204, 204b, 205, 207, 208, 209, 212, or 213.5 is guilty of a misdemeanor. A failure to keep posted any notice required by Section 207 is prima facie evidence of a violation of these sections.

SEC. 3. Section 225.5 of the Labor Code is amended to read:

225.5. In addition to, and entirely independent and apart from, any other penalty provided in this article, a person who unlawfully withholds wages due an employee in violation of Section 212, 213.5, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

(a) For an initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2011

Governor