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Memorandum

TO: The Honorable Dan Scripps, Chair & Members

House Banking and Financial Services Committee

FROM: Felicia Turrentine Wasson, Associate State Director-Government Affairs

DATE: May 6, 2010

RE: HB 5821 – Payroll debit cards

We appreciate the opportunity to provide comment on House Bill 5821 which would allow employers to mandate the use of payroll cards for their employees. While we can appreciate the intent of the sponsor and the efforts to improve it from the original, AARP remains opposed to the Bill as it currently stands. We provide for you the following reasons for our current opposition:

• **The revision lengthens the time within which an employee may select among available alternatives for payment of wages, but still permits an employer to mandate use of a payroll debit card for those who do not have bank accounts.** While it is true that this card may be used by people who do not have a banking relationship, and that such an option may well benefit them, it is imperative that employees not be forced to use one if they do not want to. AARP believes that the card must be provided as an option from which they may select, not a mandate to employers and employees. Ultimately, it is desirable to encourage unbanked employees to access full service banking services that also provide them an opportunity to build savings, not only to steer them into a "lite" version of banking services offered by debit cards which is as expensive, if not more so, and which does not provide them the same level of access to financial services.

• **AARP believes that providing only one free withdrawal a month is unacceptably limited.** AARP believes that providing only one free transaction, especially if it must be accessed through a bank teller, is simply unreasonable. Employees may be better off withdrawing their entire paycheck at the first withdrawal than using the debit card for numerous transactions and incurring usage fees that are completely unlimited by the language contained herein. States that have permitted card issuers to levy fees to access unemployment compensation, for example, have rightfully been criticized for failing to protect recipients from excessive fees and other costs and terms of the debit cards used.

• **Employees are not sufficiently protected from the imposition of high fees.** Currently, many retailers do not charge customers a transaction fee at a point of sale, but some do. Moreover, there is no legal impediment to a vendor passing such transaction fees along to the customer, either directly or through higher prices. AARP believes that employees should be protected from such a possibility. Moreover, employees using a payroll debit card likely will still need to purchase cashiers checks or money orders to pay their rent and utilities, among other bills. The costs associated with bill payment must be considered. It is likely an overstatement to claim the employees will save the entire amount of any check cashing fees they may incur using a demand draft. One can anticipate the payroll debit card users will simply take their cards to the local check cashier as they would a demand draft.

• **Free Access to written account statements is vital**. In fact, pursuant to federal regulation, consumer legal protections for loss, theft, and unauthorized use of debit cards are waived if not raised within a set time that begins to run on the date of their statements. Debit cards provide less protection in this regard than demand drafts. Thus, the entire amount of a person's paycheck may be at risk of loss if a person chooses to forego receiving a statement to avoid a fee. AARP believes that employees using payroll debit cards must be offered multiple alternatives to receive statements and access their financial information, and that statements must be provided free of charge to give them an incentive to diligently monitor their account. They must be provided with protections equivalent to those provided by demand drafts, at a minimum, and must be informed of their rights and obligations with respect to the card. Debit cards are not identical to either ATM cards or credit cards, which are subject to varying degrees of protection, so employees will need significant education to understand the differences. Confusing differences between the legal protections militate against mandating the use of such cards and weigh in favor of providing a demand draft option among the available alternatives.

- The amendments to the payroll debit card bill appear to improve consumer protections, but in fact do not significantly alter the product or protections offered compared to those in the initial Bill. Rather than provide actual protection, the bill now provides disclosure that the employee has limited protections, if any. For example,
    - The method provided to obtain one free withdrawal is not described. Must a person use an ATM, or must they use a teller at a participating bank in order to access the withdrawal? If they use a point of sale as their first withdrawal, does that count as their free withdrawal? The bill does not provide protection or mandate how a free withdrawal will be guaranteed.
    - There is no prohibition on imposing a surcharge for the "free" withdrawal.
    - While the card must be associated with an ATM network that provides one free withdrawal, the employer is not required to choose one that is readily accessible to the employee. If the employee cannot access the network, fees and surcharges will be higher and the "free" withdrawal will be illusory.
    - Free access to a written statement is not provided – only unlimited "balance inquiries" are provided. A balance inquiry may be insufficient to alert a person to unauthorized use or account fraud. Because Regulation E protections run based on the time the debit card user receives the statement, this oversight puts employees at risk of unknowingly waiving important rights to limit loss resulting from unauthorized use or fraud.
    - Fees and surcharges for use of the payroll debit card may be charged without any limitation at either: point of sale; bank tellers, and/or ATM's. While it is reasonable to permit a fee for the use of

such services, the current card provisions do not require that such a fee be reasonable in relation to the cost of providing such services or by any other commercially reasonable measure.

- The provisions would permit unlimited fees, as well as the shifting of all costs for transactions -- typically borne by the merchant -- onto the employee. A payroll debit card that provides cost savings for employers and profit for debit card providers should also reduce transaction costs for the employee and prohibit shifting of associated transaction costs onto the employee. The provisions as written only prohibit shifting of the employer costs onto the employee.
- The provision that the card may not be linked to any form of credit is laudable, because it prohibits payday and other high cost loans. But the provision does not specifically prohibit the imposition of overcharge fees, or set-off of fees or charges related to other accounts owned by the provider. For example, financial institutions regularly collect balances or fees due on one account from another. There is no protection against such practices related to the payroll debit card.
- The required disclosure does not address point of sale charges at all. The disclosure also fails to alert employees that authorization holds may be placed on funds for some transactions, such as gasoline point of sale, car rental, or internet purchases, which may significantly restrict access to actual funds remaining.
- The debit card provisions do not prevent the provider from requiring employees to waive important legal rights, including access to courts to resolve disputes, class actions, jury trials, and damages available under state laws. Nor do the provisions require that Michigan laws apply to the cards. The protections provided to employees of Michigan employers may be altered depending on the payroll system and provider to which employees are deemed to consent under this bill.
- The debit card provider is permitted to make unilateral changes to the terms of the card, and such changes may be made without providing sufficient opportunity for the employee to change payroll methods. If the pay period is monthly, or even bi-weekly, a 21 day notice is insufficient for the employee to make a change in the method of receiving wages, especially because the employer is provided one full pay period to make requested changes and processing time will typically add an additional pay period before a change is effective. Some providers may impose conditions in the change of terms that have a broad impact on the rights of the employees which the employees will be unable to avoid under the bill as written.
- The provisions fail to protect employee privacy. When an employer writes a check, the personal information used to pay the employee is not used to sell products or services. If payroll cards are used, they must protect against the use of personal information by the provider.
- Payroll cards should not permit the sale or cramming of services and products which do not provide significant benefit to the employees, including insurance, ID theft, or payment protection products, among others.

Debit card providers stand to reap enormous profits from the shift to electronic-only transactions. AARP believes that if Michigan permits debit cards to be used for payroll, the protections should be set high enough to prevent the myriad abuses that have plagued the financial services industries in the past decade, especially in the credit card, prepaid card, and gift card industries.

In addition to these concerns relating to the lack of consumer protection provisions, AARP believes that payroll cards may provide a unique opportunity to encourage automatic savings. This may be accomplished, for example, by permitting a free electronic transfer to a savings account or by establishing a low balance alert mechanism at a level which the employee may set. Financial management skills may also be fostered, for example by providing balance information at point of sale and ATM transactions, as well as linking the payroll debit cards to budgeting software. Employees should be encouraged to use such features by building in incentives, not by charging fees which penalize them for accessing the information and improving their financial management skills. The bill is bereft of such incentives and squanders the opportunities.

As the nation's largest membership organization representing the interests of those age 50 and over, AARP believes it is imperative that if payroll debit cards are permitted to be provided as an alternative, they must not be the only alternative. While such cards offer certain potential benefits to employees, employers, and others, their use also presents the potential for abuse. AARP believes that federal protections are far from comprehensive and they require consumers to be vigilant and engaged in monitoring their use. Moreover, if issued by a national bank, the debit cards will be outside Michigan legal protections enjoyed by employees who receive direct deposit or demand drafts. At least until such cards have been in use for a significant period of time and have been subject to adequate evaluation and subsequent improvement, if warranted, it is unreasonable to permit use of such cards to be mandated to the exclusion of demand drafts. We encourage members of the House Banking and Financial Services Committee to require much stricter consumer protection elements when considering HB 5821. Thank you for the opportunity to provide comments.