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Pay Cards as a Payroll Option

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Requested by Assembly Member John J. Benoit

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SUMMARY

Assemblymember John J. Benoit requested that the California Research Bureau (CRB) examine the implications of allowing the use of Pay Cards for payroll purposes. His bill, AB 822, would amend the Labor Code to permit an employer to pay wages using a Pay Card if it can be used to access funds at an ATM in California with at least one free withdrawal per pay period. As we show in this report, there are a number of fees associated with Pay Cards that may be levied on employers and employees, as well as issues such as replacement costs and ensuring access to the full amount stored in the card. Several states have allowed Pay Cards but required full disclosure of fees to the employee.

INTRODUCTION

Pay Cards, also known as Payroll Cards, are a distinct type of a stored value card. The card acts as if it were a debit card but without the need for a banking account. An employee who is issued a Pay Card, as a payroll option is able to access cash through an ATM or other device, such as at a grocery store.

Pay Cards work as follows. An employer establishes an account with a Pay Card program. The Pay Card program does not handle the employer's actual funds, but establishes a partnership with a bank and the bank handles the financial transactions. Money from the employer is deposited into the bank and the bank disburses the funds to the employees through the Pay Card program. The Pay Card program issues each employee a plastic card, similar in appearance to a credit or debit card, which stores the amount of money the employee has earned from the processed pay period. The employee can use this card for any financial transaction such as purchasing merchandise, cash withdrawal, or paying bills. Pay Cards give an employee who does have a bank account an alternative to carrying cash or cashing a check, which may require a fee. Employees who do not have bank accounts gain the convenience of using a debit card. However, depending on the program chosen by an employer, Pay Cards may or may not reduce payroll costs for the business and/or for the employees.

BACKGROUND

Stored Value Cards were introduced in the early 1970s with "closed loop systems" on college campuses. Students used these cards for meals, bookstore purchases and other campus-related expenses. In a closed system (close-loop), the card can only be used for restricted purposes. More recently, there are gift certificates and gift cards that can only be used at the sponsoring merchants' locations. Other examples include mass transit cards and pre-paid phone cards.

"Open loop systems," another category of stored value card, were introduced in the mid-1990s in Manhattan, New York, when Visa Cash, Mondex, and MasterCard branded cards were introduced into the market. Open system (open-loop) cards are widely used beyond the issuer's location through a universal network for PIN-based or signature-based transactions.[1] Open loop systems were further developed and used during the 1996 Olympic games in Atlanta, by participants using a stored value card with the different merchants. According to industry estimates, more than 2,000 stored value programs are available, with roughly seven million Visa- or MasterCard- branded stored value cards in the marketplace today.[2]

Pay Cards, also known as Payroll Cards, use open loop systems. This gives the cardholder the ability to purchase items wherever merchants participate in the brand of card, whether it is Visa or MasterCard. Once a purchase has been made, the funds stored within the card are automatically deducted. The cards may also be used at ATMs to withdraw cash or get cash back from retailers.

HOW PAY CARDS WORK

Pay Cards are being marketed by third party vendors and financial institutions to employers as a means of reducing the cost of processing paper payroll checks. In general, an employer establishes an account with a selected program and the program issues the Pay Cards, although some Pay Card companies have business partners that actually issue the physical card.

In order to establish an account with a Pay Card program, an employer pays an initial fee. The continuing monthly costs of Pay Cards are largely dependant on the volume of employees using the cards and the fees imposed by the program and bank (see Table 3, page 10). The employer deposits funds into a bank account that is managed by the Pay Card company, which issues individual Pay Cards credited with the proper payroll amount for each employee. Each cardholder is issued a Personal Identification Number (PIN) to use with the card. An employee has the choice to withdraw the funds all at once as cash or to use the card as a debit card, without needing to establish a personal banking account.

Depending on the Pay Card program's cardholder fee schedules, the employee may or may not get charged a monthly fee, ATM withdrawal fee, and other fee (See Table 3 on page 10). Pay Cards may be used at an ATM to withdraw cash or to get cash-back from participating retail stores. The purchasing power of the cardholder can extend to online payments, bill payments, and any other financial transaction. For every processed pay period, the card is either recharged physically at a designated station or electronically. A payroll program can also issue disposable cards loaded with a fixed sum instead of reloadable cards. Some programs offer the option of unnamed cards to protect the identity of the cardholder.

Depending on the features of the Pay Card program, the cardholder has access to account balance and other transaction activity via the Internet or through a 1-800 number, and can transfer funds between two cards. Pay Cards generally are used wherever Visa or MasterCard is accepted (depending on the card issuer and the brand of card). These cards may be used internationally to withdraw funds or make payments if the merchant accepts the branded card. In the event that the card is lost or stolen, cardholders are usually issued a replacement card in five to ten business days.

CALIFORNIA LAW

California law currently only allows three types of payment for employment: cash, check, and direct deposit. California Labor Code §§ 213 and 226

- Authorize employers to pay employee wages in cash, as long as accompanied by a written itemized statement.
- Authorize employers to pay employee wages by check or similar instrument, as long as it is negotiable and payable in cash, on demand, without discount, at an established place of business in the state, and is accompanied by a written itemized statement.
- Authorize employers to deposit employee wages directly into an account in any bank, savings and loan association, or credit union of the employee's choice in the state, provided that the employee has voluntarily authorized the deposit.

The California Labor Code does not expressly allow nor restrict the usage of Pay Cards, or stored value cards, in compensating employee wages.

Labor Code §§ 221, 224 and 226 prohibit employers from charging employees to access their payroll money or from withholding any amount of an employee's wages. Under Labor Code §212, employers are required to provide a location for employees to cash out paychecks at face value, without a discount. Section 212 legally obligates the employer to issue paychecks that are "negotiable and payable in cash, on demand, without discount, at some established place of business in the state." Employers are held liable if the chosen location imposes a fee on the employees. Since some banks have been charging employees to cash payroll checks, employers can be held responsible for the actions of those banks.

Several lawsuits in California have been settled pertaining to banks charging employee check cashing fees. Karis House, a teenage group home in Visalia, filed a lawsuit against Bank of America in April 2004. The lawsuit was initiated when the controller of Karis House, which had an established payroll account with Bank of America, with paychecks issued by the bank, was notified by an employee of a five dollar charge by the Bank of America on a $13 paycheck. Karis House asserted that Bank of America gave California employers with payroll accounts at the bank no time to switch banks or warn employees, and thus violated California's unfair business practices law.[3] The lawsuit was settled for $295,000 to pay for litigation fees, and the bank also agreed not to charge small businesses for direct deposit services for 12 months and to continue to give employees who had direct deposit free checking accounts.[4]

Chaffee Enterprises, an answering service, filed a lawsuit against Wells Fargo for imposing check-cashing fees on its employees when Chaffee maintained a payroll account with Wells Fargo. The lawsuit has recently been settled. The terms of the settlement required Wells Fargo to notify employers of the check-cashing fee and to provide a free checking account to all small business employees statewide with a minimum monthly balance of $100.[*]

Other states have tried to curtail bank payroll check-cashing fees. In 2003, Texas Banking Commissioner Randall S. James was party to a lawsuit heard in the Fifth Circuit Court of Appeals against petitioners Wells Fargo, Bank of America, Chase Manhattan, and Comerica Bank. Texas Business and Commerce Code §4.112(a) was under contention, as it prohibited banks from charging a fee to non-account holding individuals when the bank held the account from which the check was drawn. Appellees argued that under the National Bank Act, federally chartered national banks are authorized to, "exercise all such incidental powers to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt."[5] The Fifth Circuit ruled that under the Supremacy Clause, banks are allowed to charge fees since federal law supersedes the Texas law.

[*] Nick Roxborough of Roxborough, Pomerance & Nye, litigated both cases.

COMPARING THE COST OF PAPER CHECKS AND PAY CARDS

Pay Cards can reduce the cost of obtaining the funds incurred by employees without bank accounts in obtaining the funds. According to the Office of the Comptroller of the Currency, Americans without bank accounts spend roughly $8 billion annually in check cashing and related financial services.[6] For example, if a check cashing fee of five dollars is charged by the bank, an employee who is paid twice a month will likely pay $120 a year to cash his/her paycheck.

The following table shows the cost to cash a $200 payroll check; the sampled data came from a 2004 survey of local check cashing services in the San Fernando Valley.

Table 1
Check Cashing Fees, San Fernando Valley, 2004

Check Cashier	Cost to Cash Payroll Check per $100
CashWorks, Inc	$1.50 to $3, depending on location of store
Cash It Quick	$2.50
Popular Cash Express	$1.45 + $1.50
City Market	$2
Money Machine	$2
Continental Currency	$2
Money Mart	$2
Cash 4 Checks	$2
Nix Check Cashing	$1.95
Cash Plus	$1.85
Alpine Check Cashing	$1.25 + $1.00
City Check Cashiers	$1.50
Major Liquor & Check Cashing	$1.50
Wal-Mart	$1.50
Vons	$1.25
Ace America's Cash Express	$1
Bancomer Financial Svcs	$1
Source: Valley Economic Development Center, 2004.[7]	

Depending on the amount, according to the San Fernando Valley survey, cashing a check can vary from one to three percent of the face value of the check.[8] The average fee is 2.34 percent of face value.[9] Check-cashing services may be less costly than banks if the value of the check is fairly small (i.e. less than $500) since fees are based on a percentage. Check cashing from banks is less costly if the value of the check is more than $500, since bank fees are generally a flat rate. A lower income employee who earns roughly $1000 a month and is paid twice a month ($500 per paycheck) will likely spend

$10 per paycheck (two percent rate), or $20 in a month, at local check cashers, or five dollars per paycheck, and $10 a month at a bank.

The cost of replacing a single lost or stolen payroll check is $8 to $10, which is paid by the employer.[10] With an estimated four million payroll checks lost or stolen every year, employers collectively lose an estimated $48 million annually.[11] There is a cost to replacing a lost Pay Card as well, ranging from $8 to $25, but that generally becomes the employee's responsibility.

The main financial benefit to employers of offering Pay Cards is lower internal costs. The typical cost to an employer of a direct deposit transaction is 20 cents, the cost of a paper check is estimated at $1 to $2, and the cost of posting money to a payroll card is somewhere in between.[12]

We conducted a telephone survey to obtain sample quotes for employer payroll services costs. A comparison was made between the costs associated with three payroll services in Sacramento that issue paper checks and three national Pay Card programs, based on a hypothetical small business with 15 employees and a twice-a-month pay period. These quotes do not include other fees such as the cost to replace lost checks or cards, check cashing fees, cardholder fees, and such.

Table 2
Monthly Cost to Employers to Pay 15 Employees
Twice a Month (August 2005)

Local Payroll Services/ Checks	*Nationwide Pay Card Services*
$124 ($57 per payroll. Includes audits)	**$60** ($15 monthly fee plus $1 per card)
$150 (Includes quarterlies and W-2)	**$10.50** ($0.35 per card. Start-up fee of $4.95 per employee and $150 administration set up fee)
$150 ($5 a check per payroll. Does not include $25 quarterly fee)	**No Charge** *if money is deposited via website* ($250 Account Set Up Fee. $100 load fee if money deposited via customer service)

Source: CRB telephone survey, 2005

The substantial cost difference between payroll services issuing checks and Pay Card programs is that Pay Card programs do not offer payroll services such as auditing and tax assistance. If an employer wishes to have Pay Cards with payroll services, then the employer must sign up for both programs, increasing the costs. Currently, only two national Pay Card programs offer Pay Cards in conjunction with payroll services.

PAY CARD FEE SCHEDULES

Informa Research Services, a market research firm, conducted a survey in 2004 of various payroll card programs. The in-depth study gathered data from 75 financial companies that offered payroll cards. Fees, features, and other relevant information were surveyed. The following table is constructed from the data provided by Informa Research Services, and is re-published here with their permission. Table 3 shows the average, median, minimum and maximum values for all 75 companies, including the different fee schedules imposed on cardholders and the employers. (Individual company pricing is not disclosed to protect propriety information).

Table 3

Cardholder: Pricing	***Average***	***Max***	***Min***	***Median***
Monthly Maintenance Fee	$2.09	$15.00	$0.00	$0.00
ATM Balance Inquiry Fee Waived (number of transactions per month)	1.75	2	1	0
ATM Balance Inquiry Fee (per transaction)	$0.44	$1.50	$0.00	$0.00
ATM Withdrawal Domestic Within Network Fee Waived (number of transactions per month)	1.81	4	1	0
ATM Withdrawal Domestic Within Network Fee (per transaction)	$1.29	$2.00	$0.00	$1.00
ATM Withdrawal Outside Network (Foreign) Fee Waived (number of transactions per month)	1	1	1	0
ATM Withdrawal Outside Network (Foreign) Fee (per transaction)	$2.56	$4.00	$0.00	$2.00
ATM Withdrawal International Fee (per transaction)	$4.27	$6.00	$0.00	$3.50
ATM Transaction Decline Fee Waived (number of transactions per month)	0	0	0	0
ATM Transaction Decline Fee (per transaction)	$0.43	$1.50	$0.00	$0.00
VRU Domestic Calls Fee Waived (number of calls per month)*	3.50	4	2	0
VRU Domestic Calls Fee (per call)	$0.10	$1.00	$0.00	$0.00
CSR Domestic Calls Fee Waived (number of calls per month)†	1.33	2.00	1.00	0.00
CSR Domestic Calls Fee (per call)	$0.34	$3.00	$0.00	$0.00
CSR Foreign Calls Fee Waived (number of calls per month)	1	1	1	0
CSR Foreign Calls Fee (per call)	$0.51	$5.00	$0.00	$0.00
POS: Pinless Signature Based Purchase‡	$0.21	$1.50	$0.00	$0.00
POS: Pinned Purchases Fee Waived (number of transactions per month)	4.60	10.00	1.00	0.00
POS: Pinned Purchases Fee (per transaction)	$0.36	$1.50	$0.00	$0.00
POS Cashback Fee	$0.16	$2.75	$0.00	$0.00
Emergency Cash Transfer Fee Waived (annually)§	0.67	1	0	0
Emergency Domestic Cash Transfer Fee (per transaction)	$0.57	$15.00	$0.00	$0.00

* Voice Response Unit (VRU): customer service helps line, but named differently.
† Customer Service Representative (CSR): customer service help line.
‡ Point Of Sale (POS): the physical location where a transaction takes place.
§ Emergency Transfer Fee: in the event funds are immediately needed when the card is lost.

Table 3 (cont.)

Cardholder: Pricing	***Average***	***Max***	***Min***	***Median***
Emergency International Cash Transfer Fee (per transaction)	$0.00	$0.00	$0.00	$0.00
Bill Payment (per transaction)	$0.00	$0.00	$0.00	$0.00
Funds Transfer	$0.50	$4.00	$0.00	$0.00
PIN Change Fee Waived (number of changes)	1	1	0	0
PIN Change Fee*	$0.03	$0.50	$0.00	$0.00
Card Replacement Fee	$8.04	$25.00	$0.00	$0.00
Card Replacement Fee - Express Delivery	$14.89	$35.00	$0.00	$0.00
Negative Balance Fee†	$5.45	$45.00	$0.00	$0.00
Account Closure Fee	$0.75	$15.00	$0.00	$0.00
Duplicate Statement Fee	$0.19	$10.00	$0.00	$0.00
Research Fee (per hour)	$1.14	$10.00	$0.00	$0.00
Tax Levy or Garnishments Fee (per occurrence)	$0.75	$20.00	$0.00	$0.00
Company: Pricing	**Average**	**Max**	**Min**	**Median**
Program Set-Up Fee	$131.43	$1,500.00	$0.00	$0.00
Payroll Card Design/Private Logo Fee	$300.00	$300.00	$300.00	$0.00
Minimum Number of Cards Required	250	250	250	0
Employee Enrollment Fee Fax/Phone	$0.26	$7.00	$0.00	$0.00
Employee Enrollment Fee Electronic	$0.15	$4.00	$0.00	$0.00
Instant Issue Card Fee	$0.15	$5.00	$0.00	$0.00
Monthly Maintenance Fee	$2.46	$25.00	$0.00	$0.00
Card Loading Fee	$0.36	$1.99	$0.00	$0.00
Emergency Funding Fee	$0.00	$0.00	$0.00	$0.00

Source: Informa Research Services, 2005 ‡

Employers are charged initial start up fees and for the enrollment of new employees into the Pay Card program. Once the start up process has been established, the principal monthly fees for employers are the monthly maintenance fee and the card-loading fee, which electronically transfers funds to the card.

Employers may benefit from Pay cards due to lower payroll processing costs. Generally, large businesses and corporations will benefit more than small businesses due to lower costs based on the volume of Pay Cards. For instance, one Pay Card program offers free

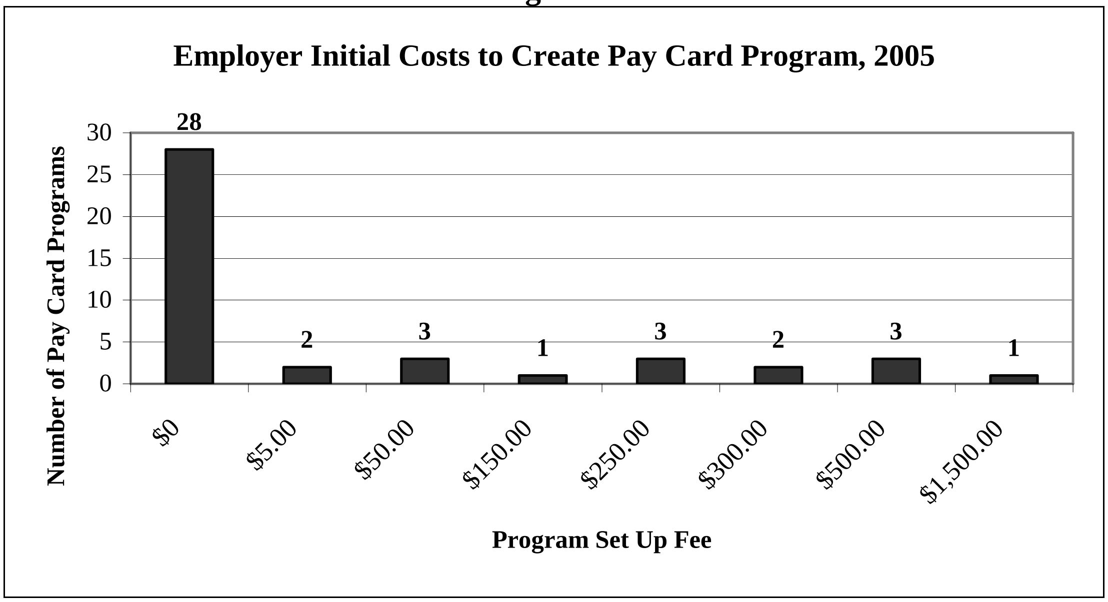
* Personal Identification Number (PIN): a set of unique numbers that identifies the proper cardholder.

† Negative Balance Fee: purchasing items worth more than funds available on the card, which can happen, for example, if a second purchase is made before the withdrawal for a first purchase is posted to the account.

‡ In depth coverage of the surveyed data by company is available from Informa Research Services. A 2005 survey of Payroll Cards is slated to be published in October 2005, but the data is not significantly different from 2004. See "2004 Payroll Cards Review," *Informa Research Services.* http://www.infomars.com/2004_payroll.asp

Pay Cards for companies with more than 100 employees, while another program requires a minimum of 200 employees to qualify for no initial set-up fee.

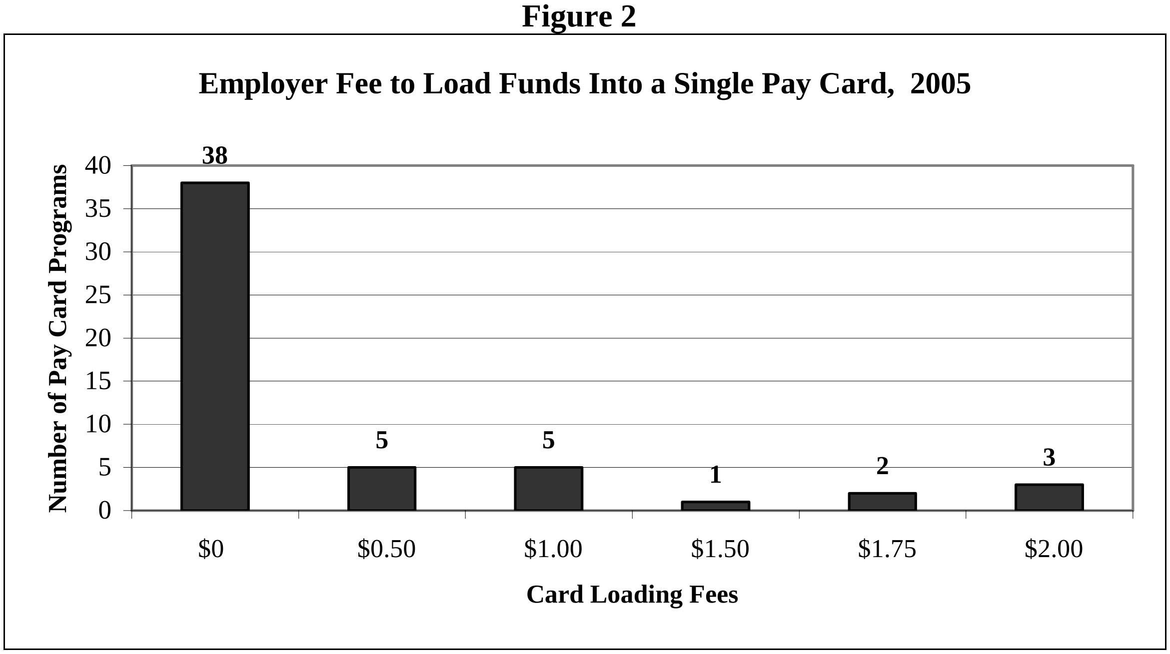
Figure 1



*California Research Bureau based on data provided by Informa Research Services.

Figure 1 shows the number of employers in the survey paying different set-up fees for Pay Card programs. While the initial costs vary between $5 and $1,500, the majority of Pay Card programs do not charge set-up fees. After paying the initial set-up cost, the employer must pay card-loading fees per single card for every pay period (Figure 2).

Figure 2



*California Research Bureau based on data provided by Informa Research Services.

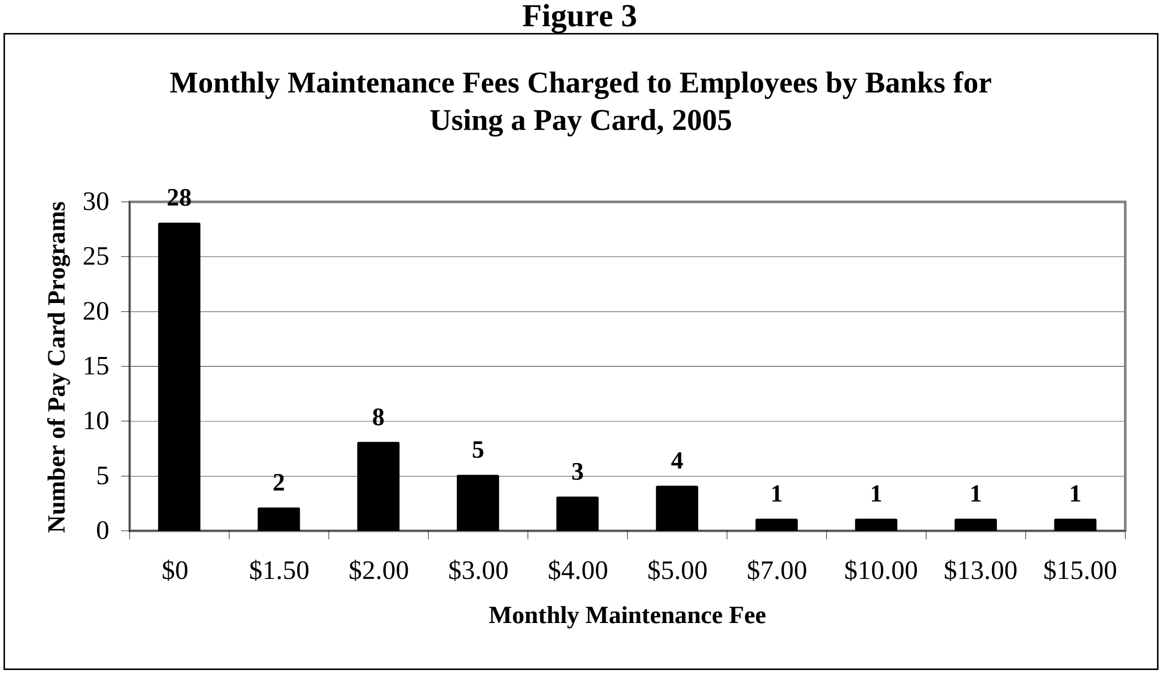
Figure 2 shows the range of card loading fees charged by Pay Card providers. The fees range between $0.50 to $2 per card. However, the majority of programs do not charge card loading fees.

As the Informa Research Survey indicates, the majority of the scheduled fees are charged to the cardholder. The most important factors affecting cardholder costs are the monthly maintenance fee, the number of waived ("no fee") ATM transactions per month and the cost of ATM transactions. The monthly maintenance fee is presented for both the cardholder and the employer because, depending on the program, the employer may choose to pay the monthly maintenance fee instead of the cardholder.

The average number of monthly ATM withdrawals per customer is two.[13] In a study conducted in Alameda and Yolo counties, the number of ATM transactions-per-household over a six-month period averaged 2.1.[14] Thus, if a Pay Card program does not waive ATM withdrawal fees, the average cardholder would have to pay $2.58 ($1.29 average ATM withdrawal fee times two average monthly ATM withdrawals) and the average monthly maintenance fee of $2.09, totaling $4.67 per month. However, the majority of pay card programs do waive at least one ATM transaction.

Employees who choose to use Pay Cards as a payment option can enjoy the benefits of using debit cards without the need to maintain a banking account. However, employees have no choice in choosing which Pay Card program they can use, and therefore have no control over fee amounts, which can vary considerably. The number of "hidden fees," as detailed in Table 3, may become significant, especially if the cardholder is not fully aware of them. For this reason, the cardholder should be adequately informed of the fees that may be incurred with each usage of the card.

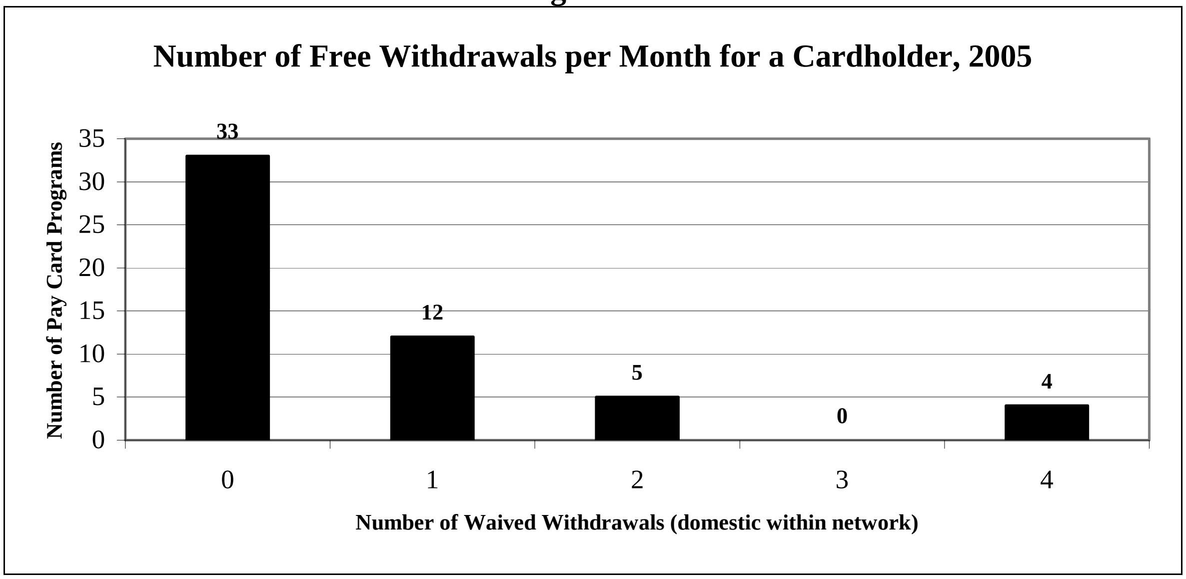
Figure 3



*California Research Bureau based on data provided by Informa Research Services.

Employees who wish to use a Pay Card may have to pay a monthly premium just to use the card, a practice that would violate the California Labor Code. Figure 3 shows the range of fees. The majority of the programs do not charge employees. However, since the employer decides which Pay Card program is implemented, the employee may not have a choice but to pay the fees ranging from $1.50 to $15 a month to use the card.

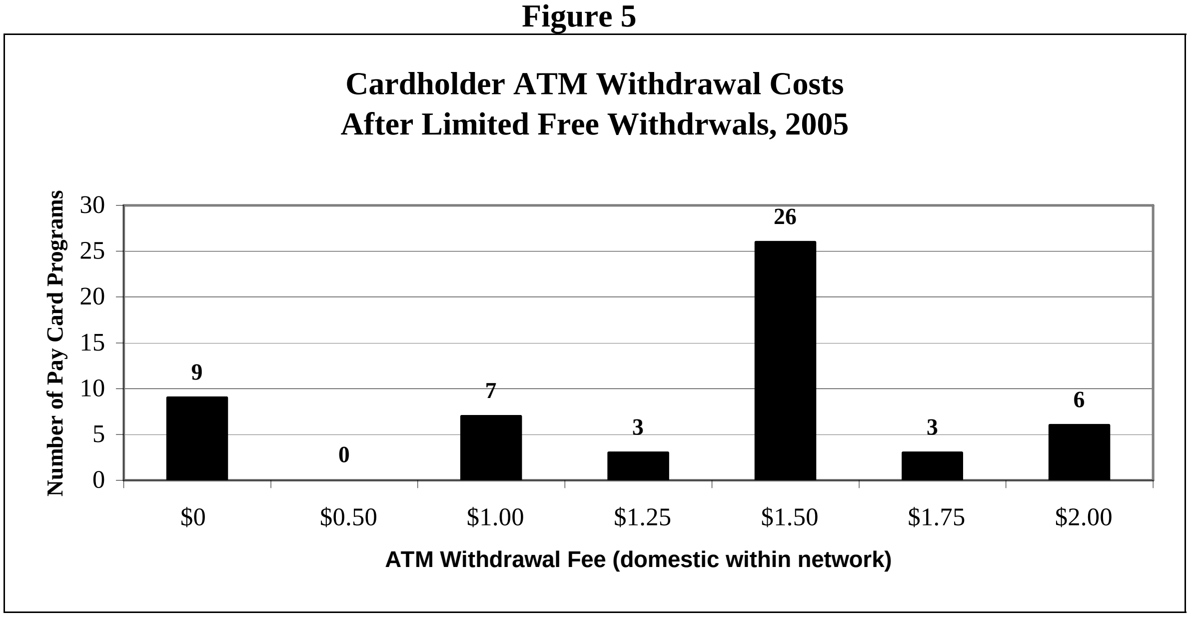
Figure 4



*California Research Bureau based on data provided by Informa Research Services.

Figure 4 reveals that the majority of the Pay Card programs do not allow a single free-of-charge withdrawal. Although 12 programs in the survey offer at least one free withdrawal, 33 do not. The employee may have no choice but to pay fees every time a withdrawal is needed.

Figure 5



*California Research Bureau based on data provided by Informa Research Services.

Figure 5 shows the various ATM withdrawal fees charged by Pay Card programs. The majority of the programs charge $1.50 per withdrawal. Thus the average consumer who withdraws twice a month will likely pay $3 a month. However, depending on the ATM withdrawal habits of the cardholder, the financial transaction fees may be less than check cashing services.

In the event that a Pay Card is either lost or stolen, replacement cards usually arrive between five to 10 business days of being reported. The replacement time is a concern. If the cardholder's primary funds are invested into a single card, the time it takes to replace the card could become critical.

Since Pay Cards are not linked to banking accounts, the primary cardholder does not gain any interest on the funds or any other benefits that bank accounts offer. The cardholder is not able to build a credit score, which affects loan and other applications, with the sole usage of Pay Cards.

FINANCIAL INSTITUTIONS

Banks stand to gain revenue streams from Pay Card interchange fees, monthly or service fees, other fees and earnings from float. Merchants pay interchange fees to Visa, MasterCard, or one of the regional networks. When a consumer makes a purchase, the merchant is charged an interchange fee by the processing network, most of which is eventually paid to the bank that issued the card.[15] The retailer absorbs the interchange fee as a cost of doing business. In addition, the banks charge monthly maintenance fees to either the cardholder or the employer. Monthly maintenance fees for Pay Card programs range from $0 to $15 for cardholders and $0 to $25 for employers (see Table 3). Other fees, as indicated on Table 3, may be levied to increase the profitability of Pay Card programs.

The "float" is the time lapse between when a check is deposited and when the money becomes available.[16] Until the check clears and settles, the writer of the check can earn interest on the funds in the account on which the check is written.[17] Similarly, banks may gain interest from the funds deposited into Pay Card accounts until all the funds are depleted. The interest rate return is insignificant per single Pay Card, but multiplied by thousands or even millions of Pay Cards, could be very significant.[18]

Employees who use their Pay Cards like a debit card may find that there are limitations on drawing down the final $20 due to limits on ATM withdrawal amounts and minimum purchase requirements set by retailers. The remaining funds may be inaccessible for some time or stranded, especially for short time employees who do not have a bank or other ongoing account. Alternatively, overdrafts may occur if two separate items are purchased within a short time frame and the first purchase is not debited before a second purchase is made. The total of both purchases could exceed the remaining balance on the card. This may result in negative balance fees for the consumer, as detailed in Table 3.

SECURITY

Pay Cards are a relatively new product so federal regulations on their usage are fairly limited. Since employers deposit funds into bank accounts managed by Pay Card programs, the programs are considered non-bank entities. Banks are not liable for fraudulent withdrawals on the cards since the monetary value is stored in the card itself. The stored value card contains the actual value, just like gift cards used in stores, and is considered a 'non-bank financial activity' by the Federal Reserve. Fraudulent withdrawal may or may not be insured or covered by the banks.[*] In addition, federal and state banking laws generally are not applicable to prepaid services.[19]

It is not clear whether Pay Cards are covered under the protections that apply to bank-issued debit cards. These protections are important for consumers and include the right to have funds "re-credited," that is, returned to the account, within ten business days after a theft or error, unless the bank can show within the time frame that there was no theft or error.[20] Federal regulations also restrict the amount of loss when the debit card is stolen, and gives consumers the right to a periodic statement.[21] Until federal or state regulations are amended to extend these protections to the consumers of Pay Cards, they are at risk of fraud with little protection.

As with cash and credit cards, the main responsibility to protect assets falls upon the end user or the primary cardholder. Safeguards may be required to provide some protection to cardholders. Similar to some checking cards, photo IDs can be printed on Pay Cards to prevent fraud, along with other forms of identification. Protecting the user's PIN number is particularly important. An efficient means to quickly replace lost or stolen cards, and to immediately freeze the funds of lost reported cards is also important. In the event of fraudulent usage, the primary cardholder loses only the amount of money within the card. However, as discussed above, that loss may not be insured or covered by the banks.[†]

OTHER ISSUES

Pay Cards are widely marketed to the unbanked or underbanked population. Industry reports estimate that there are between 10-14 million households in the U.S. that do not have bank accounts. A survey of low-income households found that over 90 percent of the unbanked population is composed of ethnic minorities. Close to half of this population earns less than $10,000 a year. The main reason that they do not establish bank accounts is that they do not have enough money to start an account.[22] The majority of these consumers are also likely to be unfamiliar with card-based products.[23]

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[*] The FDIC has been considering whether stored value cards constitute deposits are therefore subject to deposit regulations, which would include protections of against fraud. The FDIC discussed this issue on at a meeting on July 19, 2005, but the outcome of the meeting had not been published at the time of this writing.

[†] The FDIC has been commenting on whether stored value cards constitute deposits, therefore subject to deposit regulations. This would include protections of against fraud. The FDIC is set to discuss this issue on an upcoming meeting in July 19, 2005. The outcome of the meeting has not been published at the time of this writing.

Consequently, if they are not informed as to the appropriate uses and fees associated with Pay Cards, they may be subject to high fees.

California state unclaimed property laws do not currently address the issue of stored value cards. The state acquires unclaimed property through California's Unclaimed Property Law, which requires "holders" such as corporations, business associations, financial institutions, and insurance companies to annually report and deliver the unclaimed property to the Controller's office after there has been no customer contact for three years.[24] The most common types of unclaimed property are bank accounts, stocks, mutual funds, bonds, and uncashed cashier's checks or money orders. Stored value cards are not currently included.

WHAT OTHER STATES ARE DOING

A number of states currently have amended their money transmission laws to allow stored value cards for commercial transactions: Connecticut, Illinois, Louisiana, Maryland, Minnesota, Mississippi, North Carolina, Oregon, Texas, Vermont, Virginia, West Virginia, Washington and Wyoming.[25] Some of these states also have laws prohibiting expiration dates on stored value cards, meaning cardholders can use the card until all the funds in the card are depleted without time restriction.

Oregon, Maryland and Virginia have enacted legislation to allow payment of employee wages by stored value cards. The pertinent code sections follow.

OREGON SECTION 1 ORS 652.110

(4) An employer and an employee may agree to authorize the employer to issue a debit card to the employee for the payment of wages if the employee can use the debit card without fee or discount at a bank or other established place of business in the county where the card is issued and where a sufficient amount of funds have been provided and are or will be available for the payment of the wages when due.

MARYLAND ARTICLE- LABOR AND EMPLOYMENT § 2 3-502

(c) Each employer shall pay a wage:

(1) in United States currency; or

(2) by a check that, on demand, is convertible at face value into United States currency.

(d) This section does not prohibit the:

(1) direct deposit of the wage of an employee into a personal bank account of the employee in accordance with an authorization of the employee; OR

(2) credit of the wage of an employee to a debit card or card account from which the employee is able to access the funds through withdrawal, purchase, or transfer if:

(i) authorized by the employee; and

(ii) any fees applicable to the debit card or card account are disclosed to the employee in writing *in* a least 12 point font.

VIRGINIA PAYMENT OF WAGE ACT §40.1-29

B. Payment of wages or salaries shall be (i) in lawful money of the United States, (ii) by check payable at face value upon demand in lawful money of the United States, (iii) by electronic automated fund transfer in lawful money of the United States into an account in the name of the employee at a financial institution designated by the employee, or (iv) by credit to a prepaid debit card or card account from which the employee is able to withdraw or transfer funds with full disclosure by the employer of any applicable fees and affirmative consent thereto by the employee.

In order to conform to §40.1-29 pay cards must allow employees at least one free transaction in which they are able to withdraw all or substantially all of their wages. In addition, employees cannot be charged fees for establishing the pay card account or monthly service fees on the account. Other fees, such as those associated with debit transactions or ATM transaction after the initial free transaction or off-network ATM transactions are permitted.[26]

ENDNOTES

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