

February 20, 2019

The Honorable Dereck E. Davis
Chairman, House Economic Matters Committee
Maryland State House
House Office Building #231
Annapolis, MD 21401

RE: ETA Comments on Maryland House Bill 777 (Commercial Law - Credit Card Processors - Service Agreement)

Dear Chairman Davis:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our concerns with HB 777. ETA is concerned with the bill as written because it would impose redundant notification requirements, would needlessly increase compliance costs, and seeks to regulate business-to-business agreements. However, we are committed to working with the author on this issue.

As background, ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include all parts of the electronic payments ecosystem including financial institutions, acquiring banks, merchants, merchant service providers and processors, and payment card networks. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, secure, and rewarding payment solutions.

Executive Summary

- **This bill is duplicative and would require processors to restate information the merchant already has.**
- **The renewal notifications would be an increased compliance cost, particularly because it would require tracking the specific day each contract was initiated and would restate information the merchant is already provided and has access to through their contract.**
- **This bill contains a provision which does not apply these requirements to merchants with more than 50 employees. This distinction raises several additional questions, issues, and administrative challenges for implementation.**

Bill Summary

This bill would require credit card processors and their affiliates to provide summaries of their processing services agreements to small businesses prior to entering into a services agreement. The summary must be signed by the small business and include the following:

- The interest rate authorized under the services agreement;
- The amount and purpose of each fee, fine, or penalty that the processor may charge or assess under the services agreement;
- The expiration of the services agreement;
- The services agreement renewal date;
- The name, telephone number, mailing address, and email address of an authorized representative of the processor.

HB 777 would add an additional step that requires merchants to sign, date, and return a copy of the summary of the services to the processor before entering into a services agreement.

This bill would also require that processors provide written notice, 90 days before a contract will automatically renew, that the merchant must cancel the services agreement to prevent auto renewal. The notice must include:

- That the services will automatically renew unless the merchant cancels it;
- The date that the agreement must be canceled to prevent auto renewal;
- Procedures to cancel; and
- That the services agreement has changed, if applicable.

HB 777 authorizes the Commissioner of Financial Regulation to investigate complaints in this area and use investigative and enforcement powers. It establishes civil penalties of \$100 for each violation and \$500 per violation for repeat violations.

Finally, this bill does not apply to services agreements between a processor and a merchant with more than 50 employees.

Payment System Overview

HB 777 intends to regulate complex business-to-business agreements in the electronic payments ecosystem. To understand the significant challenges posed by this legislation it is useful to understand the primary entities in the payments ecosystem, these include:

- **Merchant**: The entity where the cardholder makes a purchase.
- **Acquiring bank**: The bank that facilitates transaction clearing and funds movement on the merchant's behalf (known as "acquirer" because it acquires card transactions from the merchant).
- **Acquirer processor**: Hired by an acquiring bank to perform day-to-day payment card operations and send transaction data across the payments infrastructure or "rails."
- **Payment card network**: A governing organization that owns brands, such as the MasterCard and Visa brand. The network licenses its brand to issuing financial institutions so that the banks' cards can carry the brands.

- Issuing bank/credit union: A financial institution that issues a debit or credit card to a consumer.

Merchant processing service agreements are typically negotiated between a merchant, acquiring bank, and acquirer processor. In most instances, the agreements are negotiated on an individual merchant basis and the terms are based on characteristics unique to that merchant. Merchant characteristics taken into consideration include goods and services offered, anticipated volume of debit and credit card transactions, and the complexity of the merchant's business model. This allows for negotiation flexibility for the merchant to tailor the services to what would work best for the merchant. For example, one merchant may want a longer-term contract with lower rates for processing, while another merchant may prefer a shorter contract length but higher processing fees.

Once service agreement terms are negotiated between the merchant, acquiring bank and acquirer processor continued analysis of the merchant and a formal onboarding processes is initiated. The process to provide a merchant with access to electronic payments is not accomplished through simply flipping a switch. Merchants go through an extensive onboarding process that can include validation of the merchant's business model, risk assessments, and credit and financial evaluations. The onboarding processes requires a significant amount of time, employee resources, and cost to conduct a holistic analysis and review of the merchant.

In addition to the cost and time of the onboarding process, there is a cost to maintain merchant processing services. Many merchants receive numerous services from acquirer processors, such as customer tech support, online portals to access account information, and dedicated account managers. There are also costs incurred by processors for regulatory compliance and general operations.

Specific Challenges of The Bill

The separate summary requirements are information the merchant is provided and has access to through their initial agreement/contract and in many cases much of that information is available in monthly statements. This bill would needlessly require processors to restate information the merchant already has and add additional complexity to the onboarding process. In a marketplace where merchants ask for simplicity and less duplicative paperwork, this bill needlessly complicates the onboarding process with information already available as part of the initial agreement and increases compliance costs for small merchants.

The bill would require tracking, for renewal notice requirements, the specific day each contract was initiated. This is not currently done in all instances because of the large number of merchants in the system. This type of tracking would not only be extremely difficult to put into effect, but also costly. It is especially egregious to add these requirements because merchants already have access to this information through their contract. Those costs would in turn be passed on to merchants.

This bill contains a provision which does not apply these requirements to merchants with more than 50 employees. While we would normally support the idea of removing a segment of the

population from receiving duplicative and unnecessary notifications, this distinction raises several additional questions and issues. Payment processors do not currently track or ask merchants the number of employees at their business. This bill would require it and processors would need to add it to the sign-up process to determine which type of onboarding and renewal notifications would be required. What happens is a business goes over or under the 50-employee threshold after the contract is entered into? Would retroactive notifications need to be made? Would contract provisions no longer be valid? The 50-employee threshold would also require a dual track for notifications which is more complicated and costly to maintain than the current system.

Finally, this bill only affects one type of business to business contract. It's unclear why this type of contract is singled out. This bill would make Maryland the only state in the country which would regulate these types of business to business contracts in this manner, making it disproportionately more expensive for Maryland small businesses.

Conclusion

The numerous provisions of HB 777 may result in several negative effects to merchants, particularly small merchants, and will eventually trickle down to consumers through decreased access to electronic payments and potentially increased costs of goods. If small merchants are shut out of the electronic payments system, consumers will have fewer payment options and small businesses may suffer with fewer customers and smaller transaction amounts.

To summarize, the bill aims to increase Maryland merchants' protections; however, it ultimately leads to negative impacts on Maryland merchants, consumers, and disproportionately affects Maryland's small business owners. Thank you for the opportunity to comment on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at stalbott@electran.org.

Sincerely,



PJ Hoffman
Director of Regulatory Affairs
Electronic Transactions Association
PJHoffman@electran.org
(202) 677-7417

Cc: Members of the Maryland House Economic Matters Committee