

February 22, 2019

Senate President Mitch Carmichael
West Virginia Senate
Room 227M, Building 1
State Capitol Complex
Charleston, WV 25305

Re: SB 603 – Money Transmission

Dear President Carmichael:

The Electronic Transactions Association (“ETA”) asks that you support SB 603, which provides a statutory exclusion from the money transmission license for payment processors and agents of the payee.

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 financial institutions, mobile payment service providers, mobile wallet providers, and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions and lending alternatives.

- Many states have expressly recognized an agent of the payee exemption through statute. Under general principles of agency law, an agent acts on behalf of its principal and is not an independent legal actor. A payment processor or agent of a payee should not be deemed a money transmitter because they do not accept funds from one person for the purposes of transmitting them to another party. Instead, they are only involved in accepting funds while standing in the shoes of the principal.
- Money Transmission licensure should not apply to payment processing for agent-of-payee transactions because in those cases, funds are not received for the purpose of transmitting them. Instead, funds are received as complete and final payment in exchange for goods and/or services.
- The variations in definitions and related exemptions, as well as varied licensing and supervision regimes among states lead to operational challenges that hinder innovation, drive up the cost to customers, and limit access to financial services. These impacts are particularly significant for money transmitters that operate or offer products to consumers on a nationwide basis.
- The U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) has specifically excluded payment processors from its definition of money transmission.

- Currently, payment processors must look to various exemptions, whether established by law or by regulatory interpretation, but that approach is suboptimal in a modern, competitive, innovative, and national landscape.
- The Conference of State Bank Supervisors recently released a series of action items to implement recommendations as part of their Vision 2020 initiative, through which state regulators are working to modernize and harmonize financial regulation of nonbanks. One of those recommendations from the FinTech Advisory Panel is addressing exemption for payment processors and agent of the payee from licensing requirements of money transmission in states.

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We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any issues, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

Respectfully submitted,



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