

***Payments Pros – The Payments Law Podcast*****2024 State Legislative Review: Key Payment Laws and Their Impacts****Host: Keith Barnett****Date Aired: September 4, 2024****Keith Barnett:**

Welcome to another episode of [Payments Pros](#), a Troutman Pepper podcast, focusing on the highly regulated and ever-evolving payment processing industry. This podcast features insights from members of our Fintech and Payments practice, as well as guest commentary from business leaders and regulatory experts in the payments industry. My name is Keith Barnett, and I am one of the hosts of the podcast. And before we jump into today's episode, let me remind you to visit and subscribe to our blog, [TroutmanPepperFinancialServices.com](https://www.troutmanpepper.com/financial-services). And don't forget to check out our other podcasts on [troutman.com/podcast](https://www.troutman.com/podcast). We have episodes that focus on trends that drive enforcement activity, digital assets, consumer financial services, and more. So be sure to subscribe to hear the latest episodes.

Today, I will discuss what some of the state legislatures have done so far this year with respect to passing laws related to payments. Think of this as a year-end review for the states. I say this because most states have completed their legislative sessions for the 2024 year, so now is a good time to let you know what is ahead for you and the states if you are in the payments industry. Only nine states are in session as of the date of this recording. North Carolina finishes off its legislative session on July 31st, and California finishes its session on August 30th. The states of Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, and Wisconsin are year-round. In any event, we do believe that now is a good time to do a podcast on the significant things that the states have done during the 2024 legislative session. For today's episode, I will discuss the Money Transmission Modernization Act, better known as MTMA. I will also discuss earned wage access, also known as EWA. So lots of alphabet soup and acronyms here today. And then, finally, I will wrap up by discussing peer-to-peer payments.

So let's start by talking about the MTMA, the conference of state banking supervisors attempt to bring uniformity to state money transmitter laws. 17 states voted on the MTMA in some form or another during the 2024 legislative session. And before I get into the substance, by way of background, 49 states plus the District of Columbia require money transmitters to have licenses. These laws generally state that a money transmitter is a person who is in the business of receiving money for the purpose of transmitting the same, or a person who sells or issues payment instruments. And there are five key points about the MTMA in general. First, the MTMA removes the language of "in the business of" from state money transmitter statutes. State laws before MTMA stated that you are a money transmitter if you are in the business of money transmission. That allowed for people to make an argument that you could transmit money but not be in the business of money transmission specifically, your business could be something else, but you happen to transmit money as a part of the business. One would argue that they are not in the money transmission business.

For example, I'm in the business of being a lawyer, but I'm not in the business of being a podcaster, but doing this podcast is a part of my business, that is one of the ways my firm and I market ourselves. That is one of the key issues from MTMA. The removal of "in the business

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of". The second issue concerns the inclusion of the agent of the payee exemption. And as many of you know, many states before MTMA had already amended their money transmitter laws to include an agent of the payee exemption. This is just CSBS's way of formally recognizing the exemption through its model law. The agent of the payee exemption states that a person is not required to get a money transmitter license in that state if there's a contract between the payee and the processor stating that the payor's payment obligation to the payee is satisfied upon the payor's act of affecting the payment to the processor.

The third thing I want to mention is that the MTMA includes an agent of an exempt entity exemption. I know that's a lot of words salad there and it's something relatively new, so I just call it the agent of the bank exemption. And I say this because this exemption states that a person is not required to get a money transmitter license in that state if there is a contract between the exempt entity, such as a bank, and the processor stating that the processor is acting as an agent of the bank with respect to affecting the transactions. And the exempt entity assumes responsibility for the payments that are being affected. The fourth key point is that payroll processors are included within the definition of money transmission. This is unprecedented because before this, no state had expressly included payroll in its definition of money transmission. And in fact, the states of California, North Carolina, Ohio, and Washington expressly exempted payroll processors from their money transmitter statutes.

Maine did provide for the licensing of payroll processors, but not as money transmitters. They were just simply payroll processors. For what it is worth within the MTMA, businesses doing their own payroll, and in some instances, PEOs are exempt from licensure under MTMA. Finally, with respect to MTMA, it does include bonding requirements, but these bonding requirements are not uniform as to what the minimum and maximums are in the states. You will see that if you do some sort of survey or review of all the states that have adopted MTMA. Now, there are a couple of other issues that are not in the model law that I want to bring up because I've noticed a trend in the states that have enacted the model law. The first thing that I noticed is that the states are requiring NMLS registration. And as many of you know, NMLS registration is a uniform way of licensure, and also by way of background, CSBS owns NMLS.

And so while it might make it easier for those who apply for a license in multiple states, it may not be as beneficial to those who do not apply for a license in multiple states because the practical effect of registering through NMLS is that each state regulator can see where you are licensed, and even if you are not licensed in that particular state. Second, the states are doing this on their own. They are requiring registration, at least some of them, with FinCEN as a money services business. And this is potentially problematic because a company may not be an MSB, notwithstanding that they are a money transmitter under state law. For example, a business may be a money transmitter under state law but fall within the payment process or exemption under federal law. And if a company is registered as an MSB, as many of you know, it must have certain compliance policies in place and make filings to the federal government that it otherwise would not be required to file.

I won't go deeply into that because this episode concerns state laws that were passed in 2024. That provides a perfect segue for me to specifically talk about the states that passed MTMA in one form or another in 2024. Let's begin with the states that fully or at least substantively passed MTMA in 2024. There are eight states there. I will discuss six of them together because these states passed substantive parts of MTMA. These six states are Illinois, Kansas, South Carolina, South Dakota, Vermont, and Wisconsin. These states have another thing in common

besides passing substantive portions of MTMA, they made modifications that are significant to the payroll processing industry. For example, although the Illinois law states that payroll processors must be licensed as money transmitters, the Illinois law allows for a safe harbor for payroll processors who engaged in money transmission before the law was passed. The other thing that I want to mention that is pretty significant in the payroll industry is that Kansas and South Dakota have an agent of the payor exemption for payroll processors.

Think of it as agent of the payee, but for employment here, the employer is the payor and the payroll processor is the agent. Payroll processors are not required to get a license if they have a contract with the employer stating that they are the agents of the employers, so that's important to know. The other thing that's important to know along this payroll processing theme is that South Carolina and Wisconsin have expressly exempted payroll processors from licensure altogether. And so that leaves Vermont as the only state that passed MTMA in full. During this legislative session, I mentioned there were eight total, but I only specifically went into six, and that is because the other two states, Connecticut and Rhode Island, passed some parts of MTMA, but none of the substantive parts we discussed, like changing the definition of money transmitter or any of the exemptions. The Connecticut and Rhode Island adoption were more along the lines of ministerial things.

Also, during the 2024 legislative session, four states revisited and amended MTMA after they had passed it in full during a prior year, so before 2024. These states are Iowa, Minnesota, Missouri, and New Hampshire, and all of these amendments concerned the issue of payroll processors, specifically Minnesota, Missouri, and New Hampshire, voted to expressly exempt payroll processors from their definition of money transmission. And Iowa amended its law to have the agent of the payor exemption for payroll. Three states proposed adopting MTMA in 2024, but there was never a vote. These states are Alaska, Idaho, and Virginia, but it's also important to note that Idaho and Virginia, their state laws already recognize agent of the payee, so they just don't have the other exemptions that I mentioned. There are two states that are still in session that are awaiting a vote, and those states are Massachusetts and Michigan. Those are the states that I mentioned earlier that are in session all year long.

Before I move on to earned wage access, I want to talk about the other significance of the states adopting or proposing to adopt the substantive portions of MTMA. We are now down to 13 states that do not have the agent of the payee exemption. And as I mentioned earlier, some states already had agent of the payee before MTMA, but it's also helpful that MTMA includes agent of the payee, and these states have been passing them. So now the only remaining states that do not have the agent of the payee exemption are Alabama, Alaska, Delaware, and I'll count D.C. as a state. So Washington, D.C. does not have the agent of the payee exemption along with Florida, Mississippi, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, Utah, and Wyoming, and that is as of the date of this recording. We don't know what will happen later on this year or next year.

Next, I'll move on to earned wage access, but it will not be that long of a discussion. Certainly not like MTMA. During the 2024 legislative session, four states mentioned or proposed EWA-related laws, but nothing passed. And I know that I said at the beginning of this podcast that I would not discuss laws that did not pass, and I'm sticking to that. I'm mentioning EWA because Ohio is one of the four states looking at EWA, and Ohio is still in session. But not much has progressed with respect to Ohio and EWA over the course of the past few months. So we'll see

if that ever passes before the end of the year, and we will certainly revisit this if necessary at the end of the year.

Now, let's move on to peer-to-peer payments to wrap up this podcast. This falls within the category of not yet passed and may not pass, but I'm bringing this up because it is a proposed law in a state that is still in session, New Jersey. And this is also pretty interesting. Here, the New Jersey State lawmakers are considering a law that will make it a crime if one fails to return an erroneous person-to-person electronic payment following notification. The current version of the bill states that, "A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake is guilty of theft if the recipient converts the property for their own use." The current version of this bill goes on to say that, "An individual who knows or should have known that the individual erroneously received an electronic payment from another individual through a payment processor and who was properly notified that the payment was erroneous and does not return within 30 days, the funds that were transferred shall give rise to a permissive inference that the individual committed theft."

The last part of this proposed bill that I wanted to discuss with you is that the proposed bill says, "It shall be an affirmative defense to a prosecution for theft if an individual who erroneously received an electronic payment from another individual through a payment processor returns the funds within 30 days of receipt of the funds or of notification that the funds were erroneously transferred." I have a few comments related to this proposed law. My first one is actually, I hope and assume that it will not pass as currently drafted for the following reasons. First, the law is not limited to transactions that begin or end with New Jersey residents, processors, or banks. So I think you run the risk of a purely, maybe California transaction, somewhat and possibly arguing that the New Jersey law applies. Now, for what it's worth, I don't think that would actually really happen because I'd like to believe that the Attorney General in New Jersey is not going to attempt to prosecute actions that occur outside of the state. But my point here is that the law is not expressly limited to New Jersey.

The second thing is that the law puts payment processors in a difficult bind. For example, what if the recipient denies that the payment was erroneous? What is the payment processor to do, right? You don't want to be viewed as aiding and abetting any type of crime, so there has to be some form of exemption in there for payment processors. I would also like to know whether the proposed law places some duty on the ODFIs or the RDFIs. They're also a part of the payments ecosystem, and also how does this law mesh with the upcoming NACHA rules that were enacted to address the manner in which ODFIs and RDFIs should deal with erroneous payments? There's just a lot of moving parts going on here that this law does not appear to take into consideration. In any event, we will keep you posted on whether this law passes and whether the New Jersey lawmakers are able to reconcile it with the territorial legal and NACHA issues that I just raised.

That is it for today's podcast. Thank you to our audience for listening to today's episode. And don't forget to visit our blog, [TroutmanPepperFinancialServices.com](https://www.troutmanpepper.com/blog), and subscribe so you can get the latest updates. Please be sure to subscribe to this podcast via Apple Podcast, Google Play, Stitcher, or whatever platform you use. We look forward to the next time.

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