

Keith J. Barnett

Testimony of Keith Barnett
Committee on Health Coverage, Insurance and Financial Services
Testifying in FAVOR of L.D. 2110
An Act to Amend the Laws Governing Licensing of Payroll Processors

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Senator Bailey, Representative Perry, and Honorable Members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services, my name is Keith Barnett. I lead the Payments law practice at the law firm of Troutman Pepper Hamilton Sanders. I have been practicing law for 24 years. I represent clients on money transmitter issues throughout the country. In doing so, I regularly interact with regulators concerning state and federal money transmitter laws. I am testifying before you today as outside legal counsel on behalf of The Payroll Group, in favor of **L.D. 2110, An Act to Amend the Laws Governing Licensing of Payroll Processors.**

In order for me to explain why NMLS does not work as a practical matter, I will begin by giving you the legal background as to why NMLS does not work for Maine licensed payroll processors.

Under Maine law, payroll processors and money transmitters are separately defined under separate statutes.

Payroll processing is defined in § 1495(2) of Title 10, Part 3, Chapter 222 of the Maine Revised Statutes. “A person that provides payroll processing service for one or more employers.”

Now let’s turn to money transmitters under Maine law. This is a completely separate statute, which, of course means a separate definition. § 6101 of title 32, chapter 80, subchapter 1 of the Maine Revised Statutes.

Money transmission is defined as follows: “‘Money transmission’ means the business of selling or issuing payment instruments or the business of receiving money, including virtual currencies, for transmission or transmitting money, including virtual currencies, within the United States or to locations abroad by any means, including, but not limited to, payment instrument, wire, facsimile or electronic transfer.”

Simply put, payroll processors are not money transmitters under Maine law.

A money transmitter is a type of money services business under federal law, and this definition has been accepted by the states. 31 CFR 1010.100(ff). “The term ‘money services business’ includes any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:.. (5) Money transmitter...”

Because payroll processors are not money transmitters, they also cannot be money services businesses given that the terms “money services business” and “money transmitter” are used interchangeably.

Registration through the NMLS, however, will require Maine licensed payroll processors to select the “money services business” or “money transmitter” option when they register as a Maine payroll processor through NMLS. This is factually and legal inaccurate for the reasons stated above.

If Maine licensed payroll processors are required to register on NMLS as “money services businesses”, there will be confusion as to whether payroll processors are money transmitters under federal law – which they are not.

In addition, because the NMLS registrations are visible to other state regulators, other states will see the incorrect designation and incorrectly conclude that Maine licensed payroll processors are money transmitters when they are not.

The other states will send inquiries to the Maine licensed payroll processors to try to force them to apply for money transmitter licenses in their states, or they will force the payroll processors to justify why they should not be licensed in their states as money transmitters.

Responding to the inquiries and otherwise defending themselves against these inquiries will be administratively and legally costly for Maine licensed payroll processors as they will have to spend their own time or hire counsel to defend them. NMLS registration should not be required as long as the only choices are inaccurate choices that will lead to undesirable results for Maine licensed payroll processors.

Thank you for your consideration and the opportunity to answer questions from the committee.