

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred Senate Bill No. 206 entitled "An act relating to business consumer
4 protection for point-of-sale equipment leases" respectfully reports that it has
5 considered the same and recommends that the House propose to the Senate that
6 the bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

8 Sec. 1. 9 V.S.A. chapter 63, subchapter 9 is added to read:

Subchapter 9. Credit Card Terminal Leases

10 § 2482h. SOLICITATION; MATERIAL MISREPRESENTATION

11 (a) As used in this subchapter, “credit card terminal” means physical
12 equipment used at the point of sale to accept payment by a payment card,
13 including a credit card, debit card, EBT card, prepaid card, or gift card.

14 (b) A person who solicits a lease for the use of a credit card terminal:

15 (1) shall accurately disclose, orally and in writing, the nature and scope
16 of his or her relationship to the person or persons who own, lease, service, and
17 finance the credit card terminal or provide related services, including whether
18 he or she is an employee, independent contractor, or agent of one or more of
19 those persons;

20 (2) shall accurately disclose the terms of a lease and whether oral
21 statements or commitments he or she makes to the prospective lessee while

1 soliciting a lease are included in the terms of the lease and enforceable against
2 a party to a lease; and

3 (3) shall not make a material misrepresentation to the prospective lessee
4 concerning the nature of his or her relationships pursuant to subdivision (1) of
5 this subsection, or concerning a lease and its terms pursuant to subdivision (2)
6 of this subsection.

7 § 2482i. CREDIT CARD TERMINAL; LEASE PROVISIONS

8 The following provisions apply to a lease for the use of a credit card
9 terminal:

10 (1) Plain language. The party primarily responsible for drafting the
11 lease shall use plain language designed to be understood by ordinary
12 consumers, presented in a reasonable format, typeface, and font.

13 (2) Lease; option to purchase; total cost; disclosure.

14 (A) The lease shall specify whether the consumer has an option to
15 purchase the credit card terminal that is the subject of the lease, and if so, the
16 purchase price and terms.

17 (B) If the lessor does not offer the option to purchase the credit card
18 terminal, the lease shall include a disclaimer that the lessee may be able to
19 purchase the same or a similar credit card terminal from another source.

20 (C) The lease shall specify the terms of the lease, and shall provide a
21 cap on the total cost the lessee is required to pay to use the credit card terminal,

1 which shall not exceed 300 percent of the lessor's original purchase price for
2 the credit card terminal or, if the lessor is the manufacturer of the credit card
3 terminal, its total cost of manufacture including a schedule of fees or charges
4 and the circumstances under which they may be imposed.

5 (3) Relationship to processing services and fees.

6 (A) The lease shall not include terms governing credit card
7 processing services or fees, which shall be the subject of a separate agreement
8 between the lessee of the credit card terminal and the processing service
9 provider.

10 (B) The lease shall clearly disclose that the lessee has no obligation
11 to contract or negotiate with the lessor, or any affiliate, for processing services
12 or fees.

13 (C) A lessor shall not condition the terms of the lease, or increase the
14 total cost to lease or purchase the credit card terminal, based on whether the
15 lessee agrees to contract with the lessor, or any affiliate, for processing
16 services.

17 (4) Contact information.

18 (A) The lease shall clearly and conspicuously identify the lessor of
19 the credit card terminal and the name, mailing address, telephone number,
20 email address or website, and relationship to the lessor of:

- 1 (i) the person to whom the lessee is required to make payments for
- 2 the credit card terminal;
- 3 (ii) the person whom the lessee should contact with questions or
- 4 problems concerning the credit card terminal;
- 5 (iii) the person to whom the lessee should deliver the credit card
- 6 terminal for return or repair; and
- 7 (iv) the sales representative or other person acting with actual or
- 8 apparent authority on behalf of the lessor to solicit the lease.

9 (B) A person named pursuant to subdivision (4)(A) of this subsection
10 shall be reasonably available to communicate with consumers during normal
11 business hours by telephone or electronic communication, or shall respond to a
12 communication from a consumer within a reasonable time.

13 (5) Record keeping. A lessor shall retain the following information in
14 electronic format or hard copy for not less than four years after the lease ends:

15 (A) the lease; and
16 (B) a record that establishes the lessor's original purchase price for
17 the credit card terminal or, if the lessor is the manufacturer of the credit card
18 terminal, its total cost of manufacture.

19 (6) Prohibited provisions.

20 (A) If the judicial forum chosen by the parties to the lease is a forum
21 that would not otherwise have jurisdiction over the lessee, the choice is not

1 enforceable. A provision of a lease that permits or requires a dispute to be
2 resolved in a judicial forum that would not otherwise have jurisdiction over the
3 lessee is against public policy and unenforceable.

4 (B) A lessor shall not collect any charge or fee for business personal
5 property tax on the credit card terminal unless the tax is actually imposed.

6 (7) Duty to provide lease; right to cancel.

7 (A) A lessor shall have the duty to provide a copy of the executed
8 lease to the lessee.

9 (B) A lessee shall have the right to cancel a lease not later than 45
10 days after the lessor provides a copy of the executed lease to the lessee,
11 provided that:

12 (i) the lessor may retain any payments made by the lessee prior to
13 cancellation; and

14 (ii) the lessee shall reimburse the lessor for his or her transaction
15 costs attributable to securing the lease.

16 § 2482j. VIOLATIONS

17 A person who violates this subchapter commits an unfair and deceptive act
18 in trade and commerce in violation of section 2453 of this title.

19 Sec. 2. RULEMAKING

1 On or before October 1, 2018, the Attorney General shall initiate
2 rulemaking to implement the provisions of this act, including rules to govern
3 minimum disclosure and formatting requirements.

4 Sec. 3. EFFECTIVE DATE

5 This act shall take effect on July 1, 2018.

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12 (Committee vote: _____)

14 Representative _____

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FOR THE COMMITTEE