

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:

9 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 shall  
15 accurately disclose:

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

1           (2) shall accurately disclose the terms of a lease and whether oral  
2           statements or commitments he or she makes to the prospective lessee while  
3           soliciting a lease are included in the terms of the lease and enforceable against  
4           a party to a lease; and

5           (3) shall not make a material misrepresentation to the prospective lessee  
6           concerning the nature of his or her relationships pursuant to subdivision (1) of  
7           this subsection, or concerning a lease and its terms pursuant to subdivision (2)  
8           of this subsection. whether the consumer has an option to purchase the credit  
9           card terminal that is the subject of the lease.

10       § 2482i. CREDIT CARD TERMINAL; LEASE PROVISIONS

11       The following provisions apply to a lease for the use of a credit card  
12       terminal:

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

16           (2) Lease; costs; disclosure. The lease shall specify:

17                   (A) the terms of the lease;

18                   (B) the total price of the lease;

19                   (C) the total monthly payment due, including any recurring monthly  
20           fees or charges; and

1            (D) any other penalties, charges, or fees and the conditions under  
2            which they may be incurred.

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

6            ~~(B) If the lessor does not offer the option to purchase the credit card~~  
7            ~~terminal, the lease shall include a disclaimer that the lessee may be able to~~  
8            ~~purchase the same or a similar credit card terminal from another source, and~~  
9            ~~shall provide a cap on the total cost the lessee is required to pay to use the~~  
10           ~~credit card terminal, which shall not exceed 300 percent of the lessor's original~~  
11           ~~purchase price for the credit card terminal or, if the lessor is the manufacturer~~  
12           ~~of the credit card terminal, its total cost of manufacture~~

13           (3) Relationship to processing services and fees. If the lease governs  
14           both the use of the credit card terminal and related services, such as credit card  
15           processing services, the lease shall include for each service a separate itemized  
16           statement of the terms, costs, fees, and potential penalties, as specified in  
17           subdivision (2) of this subsection.

18           ~~(A) The lease shall not include terms governing credit card~~  
19           ~~processing services or fees, which shall be the subject of a separate agreement~~  
20           ~~between the lessee of the credit card terminal and the processing service~~  
21           ~~provider.~~

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

4           ~~(C) A lessor shall not condition the terms of the lease, or increase the~~  
5           ~~total cost to lease or purchase the credit card terminal, based on whether the~~  
6           ~~lessee agrees to contract with the lessor, or any affiliate, for processing~~  
7           ~~services.~~

8           (4) Contact information.

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

12           (i) the person to whom the lessee is required to make payments for  
13           the credit card terminal;

14           (ii) the person whom the lessee should contact with questions or  
15           problems concerning the credit card terminal;

16           (iii) the person to whom the lessee should deliver the credit card  
17           terminal for return or repair; and

18           (iv) the sales representative or other person acting with actual or  
19           apparent authority on behalf of the lessor to solicit the lease.

20           (B) A person named pursuant to subdivision (4)(A) of this subsection  
21           shall be reasonably available to communicate with consumers during normal

1 business hours by telephone or electronic communication, or shall respond to a  
2 communication from a consumer within a reasonable time.

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

5 ~~(A) the lease; and~~

6 ~~(B) a record that establishes the lessor's original purchase price for~~  
7 ~~the credit card terminal or, if the lessor is the manufacturer of the credit card~~  
8 ~~terminal, its total cost of manufacture.~~

9 ~~(5) Prohibited provisions.~~

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

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

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

17 ~~(7) Duty to provide lease; right to cancel.~~

18 ~~(A) A lessor shall provide a copy of the executed lease to the lessee.~~

19 ~~(B) A lessee shall have the right to cancel a lease not later than 45~~  
20 ~~days after the lessor provides a copy of the executed lease to the lessee.~~

21 ~~(C) If the lessee exercises his or her right to cancel:~~

1                    (i) the lessor may retain any payments made by the lessee after the  
2                    lessor delivered a copy of the executed lease;

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

5                    § 2482j. VIOLATIONS

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

8                    Sec. 2. RULEMAKING

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

12                    Sec. 2. EFFECTIVE DATE

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

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20                    (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

FOR THE COMMITTEE