

BILL AS INTRODUCED AND PASSED BY SENATE

2018

S.206

Introduced by Senators Pearson, Sears, and Sirotkin

Referred to Committee on Economic Development, Housing and General Affairs

Date: January 3, 2018

Subject: Commerce and trade; consumer protection

Statement of purpose of bill as introduced: This bill proposes to create business consumer protections for point-of-sale equipment leases.

An act relating to business consumer protection for point-of-sale equipment leases

It is hereby enacted by the General Assembly of the State of Vermont:

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

Subchapter 9. Credit Card Terminal Leases

Section 2482h. SOLICITATION; MATERIAL MISREPRESENTATION

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

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

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

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

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

(4) shall accurately disclose whether the consumer has an option to purchase the credit card terminal that is the subject of the lease.

Section 2482i. CREDIT CARD TERMINAL; LEASE PROVISIONS

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

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

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

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

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

~~(A) The lease shall specify the terms of the lease, **the total price to lease, as well as additional fees that may be charged,** and shall provide a cap on the total cost the lessee is required to pay to use the credit card terminal, which shall not exceed 300 percent of the lessor's original purchase price for the credit card terminal or, if the lessor is the manufacturer of the credit card terminal, its total cost of manufacture.~~

(3) Relationship to processing services and fees.

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

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

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

(4) Contact information. The lease shall clearly and conspicuously identify the lessor of the credit card terminal and the name, mailing address, telephone number, ~~and relationship to the lessor of:~~

~~(A) the person to whom the lessee is required to make payments for the credit card terminal;~~

~~(B) the person whom the lessee should contact with questions or problems concerning the credit card terminal;~~

~~(C) the person to whom the lessee should deliver the credit card terminal for return or repair; and~~

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

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

~~(A) the lease; and~~

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

(6) Prohibited provisions.

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

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

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

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

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

Section 2482j. VIOLATIONS

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

Sec. 2. RULEMAKING

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

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.