

Comparison – S.206
An act relating to business consumer protection for point-of sale equipment leases

5/7/18 @ 10 am

Section/ Subject	As Passed Senate	As Passed House	Notes
New subchapter	Sec. 1. 9 V.S.A. chapter 63, subchapter 9 is added to read: <u>Subchapter 9. Credit Card Terminal Leases</u>	Sec. 1. 9 V.S.A. chapter 63, subchapter 9 is added to read: <u>Subchapter 9. Credit Card Terminal Finance Leases</u>	
Solicitation	<p>§ 2482h. SOLICITATION; MATERIAL MISREPRESENTATION</p> <p>(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.</p> <p>(b) A person who solicits a lease for the use of a credit card terminal:</p> <p>(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;</p> <p>(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</p> <p>(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.</p>	<p>§ 2482h. SOLICITATION; MATERIAL MISREPRESENTATION</p> <p>(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.</p> <p>(b) A person who solicits a finance lease for the use of a credit card terminal shall accurately disclose:</p> <p>(1) the nature and scope of his or her relationship to the person or persons who own, lease, service, and finance the credit card terminal and, if known, provide related services, including whether he or she is an employee, independent contractor, or agent of one or more of those persons;</p> <p>(2) the terms of a finance lease and whether oral statements or commitments he or she makes to the prospective lessee while soliciting a finance lease are included in the terms of the finance lease and enforceable against a party to a finance lease; and</p> <p>(3) whether the consumer has an option to purchase the credit card terminal that is the subject of the finance lease.</p>	
Lease Provisions	<p>§ 2482i. CREDIT CARD TERMINAL; LEASE PROVISIONS</p> <p>The following provisions apply to a lease for the use of a credit card terminal:</p>	<p>§ 2482i. CREDIT CARD TERMINAL; FINANCE LEASE PROVISIONS</p> <p>The following provisions apply to a finance lease for the use of a credit card terminal:</p>	
Plain language	<p>(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.</p>	<p>(1) Plain language. The party primarily responsible for drafting the finance lease shall use plain language designed to be understood by ordinary consumers, presented in a reasonable format, typeface, and font.</p>	

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Terms; Disclosure	<p>(2) Lease; option to purchase; total cost; disclosure.</p> <p>(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.</p> <p>(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.</p> <p>(C) The lease shall specify the terms of the lease 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.</p>	<p>(2) Finance lease; costs; disclosure. The finance lease shall specify:</p> <p>(A) the terms of the finance lease;</p> <p>(B) the total price of the finance lease;</p> <p>(C) the total monthly payment due, including any recurring monthly fees or charges; and</p> <p>(D) any other penalties, charges, or fees and the conditions under which they may be incurred.</p>	
Processing and fees	<p>(3) Relationship to processing services and fees.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	<p>(3) Relationship to processing services and fees. If a lessee who enters into a finance lease for a credit card terminal also agrees to receive bundled services for the terminal, such as credit card processing services, from the lessor or a business affiliated with the lessor, either the finance lease or a separate agreement for the bundled services shall include an itemized statement of the terms, costs, fees, and potential penalties for each service, as specified in subdivision (2) of this section.</p>	
Contact information	<p>(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:</p> <p>(A) the person to whom the lessee is required to make payments for the credit card terminal;</p> <p>(B) the person whom the lessee should contact with questions or problems concerning the credit card terminal;</p> <p>(C) the person to whom the lessee should deliver the credit card terminal for return or repair; and</p> <p>(D) the sales representative or other person acting with actual or apparent authority on behalf of the lessor to solicit the lease.</p>	<p>(4) Contact information. The finance lease shall clearly and conspicuously identify the lessor of the credit card terminal and the name, mailing address, telephone number, email address or website, and relationship to the lessor of:</p> <p>(A) the person to whom the lessee is required to make payments for the credit card terminal;</p> <p>(B) the person whom the lessee should contact with questions or problems concerning the credit card terminal;</p> <p>(C) the person to whom the lessee should deliver the credit card terminal for return or repair; and</p> <p>(D) the sales representative or other person acting with actual or apparent authority on behalf of the lessor to solicit the finance lease.</p>	

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Prohibited provisions	<p>(6) Prohibited provisions.</p> <p>(A) <u>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.</u></p> <p>(B) <u>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.</u></p>	<p>(5) Prohibited provisions.</p> <p>(A) <u>A provision of a finance lease that permits or requires a dispute to be resolved in a judicial forum that would not otherwise have jurisdiction over the lessee is against public policy and unenforceable.</u></p> <p>(B) <u>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.</u></p>	
Records Right to cancel	<p>(5) <u>Record keeping. A lessor shall retain the following information in electronic format or hard copy for not less than four years after the lease ends:</u></p> <p>(A) <u>the lease; and</u></p> <p>(B) <u>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.</u></p> <p style="text-align: center;">* * *</p> <p>(7) <u>Duty to provide lease; right to cancel.</u></p> <p>(A) <u>A lessor shall have the duty to provide a copy of the executed lease to the lessee.</u></p> <p>(B) <u>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.</u></p>	<p>(6) <u>Duty to retain and provide finance lease; right to cancel.</u></p> <p>(A) <u>A lessor shall provide a copy of the executed finance lease to the lessee and shall retain a written or electronic copy of the finance lease for not less than four years after the lease terminates.</u></p> <p>(B) <u>A lessee shall have the right to cancel a finance lease not later than 45 days after the lessor provides a copy of the executed finance lease to the lessee.</u></p> <p>(C) <u>If the lessee exercises his or her right to cancel:</u></p> <p>(i) <u>the lessor may retain any payments made by the lessee after the lessor delivered a copy of the executed finance lease;</u></p> <p>(ii) <u>the lessor may impose a reasonable cancellation fee, not to exceed the total monthly payment amount specified in subdivision (2)(C) of this section.</u></p>	
Enforcing subchapter	<p>§ 2482j. VIOLATIONS</p> <p><u>A person who violates this subchapter commits an unfair and deceptive act in trade and commerce in violation of section 2453 of this title.</u></p>	<p>§ 2482j. VIOLATIONS</p> <p><u>A person who violates this subchapter commits an unfair and deceptive act in trade and commerce in violation of section 2453 of this title.</u></p>	
Rulemaking	<p><u>Sec. 2. RULEMAKING</u></p> <p><u>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.</u></p>	-	
Effective date	<p>Sec. 3. EFFECTIVE DATE</p> <p><u>This act shall take effect on July 1, 2018.</u></p>	<p>Sec. 2. EFFECTIVE DATE</p> <p><u>This act shall take effect on July 1, 2018.</u></p>	