ELECTRONIC TRANSACTIONS ASSOCIATION

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January 31, 2018

Chairman Michael Sirotkin
State Capitol
115 State St.
Montpelier, VT 05633
msirotkin@leg.state.vt.us

Re: Senate Bill No. 206 (Credit Card Terminal Restrictions)

Dear Chairman Sirotkin,

The Electronic Transactions Association ("ETA") **opposes SB 206** because it would apply unduly restrictive requirements to point-of-sale terminal leases. If enacted, SB 206 would very likely lead to increased costs for Vermont small businesses to accept electronic payments.

ETA is the leading trade association for the payments industry, representing more than 500 companies worldwide involved in electronic transaction processing products and services. ETA's membership spans the breadth of the payments industry, and includes financial institutions, payment processors, independent sales organizations, online small business lenders, and equipment suppliers. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, secure, and rewarding payment solutions.

Senate Bill 206 Summary

As written, SB 206 would include a prohibition on the total cost of credit card terminal leases of 300% of the original purchase price or the total cost to manufacture. The bill would also prohibit a number of components of credit card terminal leases including prohibiting judicial forum clauses. Additionally, the bill would require additional disclosures, plain language in the contract, and recordkeeping requirements.

Harm to Small Businesses

SB 206 would harm small businesses in Vermont by creating market incentives for companies not to offer the most technologically advanced credit card terminals. The cap on total cost of credit card terminal leases which prohibits the total cost from exceeding 300% of the original purchase price or total cost to manufacture would make it economically unfeasible to offer the newest models of credit card terminals for lease.

Like many technological advancements, companies put a great deal of capital into innovation. While the actual cost to manufacture an individual credit card terminal may be nominal, the cost to recoup the money put into innovation, patents, testing, design, implementation,

compliance, and sales is calculated into the cost of leasing the credit card terminals to businesses. Any artificial cap on the cost to lease credit card terminals will incentivize those companies that provide credit card terminals for sale, not to offer newer models until those companies have recouped the cost of innovation.

Additionally, the price for access to electronic payments is derived from a number of costs for providing that service including a combination of hardware, onboarding, background checks, encryption and cybersecurity, ongoing support for merchants, and a multitude of other factors that are not tied directly to the cost of the hardware for point-of-sale terminals. Because these contracts between small businesses and processors are negotiated, this bill would limit the ability of small businesses to negotiate their price by setting a fixed cost.

SB 206 would create a setting in which small merchants in Vermont will ultimately pay more to accept electronic payments than other states. Judicial forum clauses are standard business practices for almost all retail contracts in the United States. These clauses allow for businesses to rely on the predictability of established law in a single jurisdiction. Judicial forum clauses create efficiencies for companies that can be passed onto customers in the form of lower costs. If this bill became law and prohibited judicial forum clauses in Vermont, companies that offer credit card terminals for lease would have two choices. The first would be not to do business in Vermont. The second would be to pass added costs of compliance onto businesses who lease credit card terminals. The hardest hit by this additional cost would be Vermont small businesses.

For the reasons discussed above, ETA opposed SB 206.

ETA thanks you for the opportunity to submit comments on this important issue. If you have any additional comments, please contact me or ETA Senior Vice President of Government Affairs, Scott Talbott at Stalbott@electran.org.

Respectfully submitted,

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Cc: Members of the Senate Economic Development, Housing and General Affairs Committee