STATE OF NEW YORK

S. 7748 A. 8593

SENATE - ASSEMBLY

January 10, 2022

IN SENATE -- Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

IN ASSEMBLY -- Introduced by M. of A. FALL -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to business consumer protection for point-of-sale equipment leases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 42 to read as follows:

ARTICLE 42
CREDIT CARD TERMINAL LEASES

Section 1100. Solicitation; material misrepresentation.
1101. Credit card terminal; lease provisions.
1102. Violations.

§ 1100. Solicitation; material misrepresentation. 1. As used in this article, "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.

2. A person who solicits a finance lease for the use of a credit card terminal shall accurately disclose, orally and in writing:

(a) 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 to the person or persons, if known, who provide services related to the credit card terminal, including whether he or she is an employee, independent contractor, or agent of one or more of those persons; and

(b) 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.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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3. The written disclosure should be in no less than twelve point font. The disclosure should be written in the primary language used to communicate with the prospective lessee and worded in the same or similar language used by the person soliciting the finance lease.

§ 1101. Credit card terminal; lease provisions. The following provisions apply to a finance lease for the use of a credit card terminal:

1. The finance lease shall be written in no less than twelve point font, in the primary language used to communicate with the lessee and shall be worded in the same or similar language used by the person soliciting the finance lease.

2. The finance lease shall specify: (a) the terms; (b) the total price; (c) the total monthly payment due, including any recurring monthly fees or charges; (d) any other penalties, charges, or fees and the conditions under which they may be incurred; (e) whether the consumer has the option to purchase the credit card terminal, and if so, the purchase price and terms; (f) if the lessor does not offer the option to purchase the credit card terminal, a disclaimer that the lessee may be able to purchase the same or a similar credit card terminal from another source; and (g) a cap on the total cost the lessee is required to pay to use the credit card terminal, which shall not exceed three hundred 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 to manufacture.

3. (a) If the lessor of a credit card terminal or an affiliated business offers to deliver services for the terminal, including credit card processing services, the delivery of services shall be the subject of a service agreement between the service provider and the consumer that is separate from the finance lease. The service agreement shall be written in no less than twelve point font, in the primary language used to communicate with the lessee, shall be worded in the same or similar language used by the person soliciting the service agreement and shall specify:

(i) the terms governing the delivery of services; (ii) the total price for such services; (iii) the total monthly payment due, including any recurring monthly fees or charges, for the services; and (iv) any other penalties, charges, or fees and the conditions under which they may be incurred.

(b) If the lessor or its affiliated business offers a discount for bundling the credit card terminal finance lease with the delivery of services, the lessor shall separately state in the finance lease and the service agreement that information required in subdivision two and paragraph (a) of this subdivision for each bundled and unbundled package offered.

4. The finance lease shall clearly and conspicuously identify the lessor of the credit card terminal and the name, mailing address, telephone number, e-mail address or website, 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 to 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 finance lease.

5. If at any time the contact information provided to the lessee changes, a notification of such change shall be provided to the lessee within five business days.

6. (a) A lessor shall provide a copy of the executed finance lease to the lessee and shall retain a written or electronic copy of such finance lease and proof of delivery of the executed lease for not less than four years after the lease terminates.

(b) A lessee shall have the right to cancel a finance lease not later than forty-five days after the lessor provides a copy of the executed finance lease to the lessee.

(c) If the lessee exercises his or her right to cancel: (i) the lessor may retain any payments made by the lessee after the lessor delivered a copy of the executed finance lease; and (ii) the lessor may impose a reasonable cancellation fee, not to exceed the total monthly payment amount specified in paragraph (c) of subdivision two of this section. A lessee is not required to pay a cancellation fee if there is evidence of fraud or illegality.

7. (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.

§ 1102. Violations. A person who violates the provisions of this article shall be deemed to have committed a deceptive act or practice in violation of article twenty-two-A of this chapter and shall be subject to penalties as set forth in such article.

§ 2. The attorney general is authorized to promulgate any rule or regulation necessary for the implementation of this act.

§ 3. This act shall take effect immediately.