

June 1, 2018

Governor Phil Scott  
109 State Street, Pavilion  
Montpelier, VT 05609

**Re: Senate Bill No. 2 Special Session (Point of Sale Lease)**

Dear Governor Scott,

The Electronic Transactions Association (“ETA”) **requests that you veto SB 2** because it would apply unduly restrictive requirements to point of sale terminal leases. If enacted, SB 2 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.

***Harm to Small Businesses***

This bill would impact small businesses in a negative way by eliminating their choice to lease vs. purchase point of sale terminals. The result runs counter to your focus on economic development and unfairly targets one specific type of lease. This is a highly competitive market with many small, medium, and large merchant payment providers competing on prices and quality of service. This bill will make it harder for merchant payment providers to customize their service offerings for small businesses. These types of contracts are already covered under general contract law in Vermont and this bill singles out one sub-category of a specific form or business to business contract unnecessarily.

***Ill-Fitting Processing Agreement Disclosures***

This bill would require a number of specific items, such as total cost or total monthly cost, in merchant processing agreements if offering lease and processing services. These are metrics that are variable based on the volume of the cards processed, the types of card used, and the category of service or product sold. Because these costs are variable, and can only be determined after a transaction, there is no way for companies to calculate this at the time the disclosure is required.

The bill also requires that the prices to purchase equipment must be included in a lease agreement. This is a significant challenge because there are thousands of configurations of equipment, each costing a different amount. Additionally, pricing could be different a few months into a contract when initial overhead costs have not yet been recouped versus years later when they have.

This bill requires written disclosure of relationships with the solicitor, lessor, and others. Given the many types of sales channels that exist and the fact that many small sales companies work with a number of payment processors, this would be extremely onerous and has the high likelihood of providing confusing disclosure to small business owners.

#### Judicial Forum Clauses

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.

#### Contract Rescission

This bill would provide for the right of rescission of contracts 45 days after a lessee is provided a copy of the executed lease. This right to cancel ignores that there are significant upfront costs for onboarding retailers so that they can access electronic payments services. These upfront costs combined with the right of rescission within 45 days can make it such that providing some services could become unprofitable if a retailer were to cancel a contract before the upfront costs could be recouped.

\* \* \*

**For the reasons discussed above, ETA requests that you veto SB 2.** Thank you for your attention to this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at [stalbott@electran.org](mailto:stalbott@electran.org).

Sincerely,



PJ Hoffman  
Director of Regulatory Affairs  
Electronic Transactions Association  
[PJHoffman@electran.org](mailto:PJHoffman@electran.org)  
(202) 677-7417