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NEW POINT-OF-SALE LEGISLATION IN TENNESSEE

The new legislation, which was passed under SB 0911 (and will be codified at Tenn. Code Ann. 47-22-401 *et seq.*) requires “any person that contracts with a merchant to lease” a POS terminal clearly and conspicuously state the following information:

- The monthly cost;
- The total cost to lease over the course of the lease;
- The minimum term; and
- If a purchase option is available, the total cost to purchase at the time the contract was entered into (or a toll-free number that the merchant may use to find such information).

This legislation raises a few questions:

Can the disclosures be hidden in the fine print?

No. The disclosures need to be in 14 point bold font.

When does the legislation go into effect?

The POS legislation goes into effect January 1, 2016. On the plus side, the delay gives POS vendors time to make sure their new contracts are in compliance. In doing so, it may also be a good time to ensure that their [boilerplate language is up to date](#).

Also, for better or worse, the law becomes effective after the October 1, 2015 EMV chip migration deadline, the date after which merchants who accept EMV capable cards – without using EMV capable POS systems – may be liable for many fraudulent transactions that occur as a result of the failure to have an EMV capable POS system. This is much more than a theoretical business risk for all concerned, as some estimates predict that a few as [11 percent of America’s small merchants will meet the migration deadline](#).

What about existing contracts?

The bill was amended to clarify that contracts that are entered into or renewed after the January 1, 2016 deadline. However, the legislation does not apply to contracts that *automatically* renew after the January 1, 2016 deadline.

Can we expect additional legislation in the future?

This legislation was approved unanimously. Additionally, sister legislation, that will be discussed in an upcoming post, sailed through both chambers as well. The legislature may be out of session for the time being, but the mood at the statehouse certainly seems to be pro-merchant, which is not much of a surprise in business-friendly Tennessee. Do not be surprised if similar or additional legislation gets proposed in future years.

If you have any questions about this article, please contact Joshua S. Rosenblatt with Frost Brown Todd at (615) 251-5590 or jrosenblatt@fbtlaw.com.

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