

VERMONT LEGAL AID, INC.

7 COURT STREET - P.O. Box 606
MONTPELIER, VERMONT 05601
(802) 223-6377 (VOICE AND TTY)
FAX (802) 223-7281
(800) 789-4195

OFFICES:

BURLINGTON
RUTLAND
ST. JOHNSBURY

OFFICES:

MONTPELIER
SPRINGFIELD

April 8, 2015

House Commerce and Economic Development Committee
Rep. Bill Botzow, Chair
Statehouse
115 State Street
Montpelier, Vermont 05602

Re: S.73; An Act Relating to State Regulation of Rent-to-Own Agreements

Dear Rep. Botzow and Members of the Committee,

Thank you for inviting testimony on Senate Bill 73 (“An act relating to State regulation of rent-to-own agreements for merchandise”). This important legislation provides new consumer protections for low-income and credit-poor Vermonters who seek to provide common household goods and merchandise for themselves and their families. The Senate bill is an important step forward that seeks to ensure three basic requirements are observed by the rent-to-own industry: 1) a fair, affordable limit on what the industry may charge for its products; 2) full disclosure of all terms and conditions so that consumers understand the nature of their purchase; and 3) regulation of industry collection practices. Vermont Legal Aid supports the goals set out in the Senate bill.

Vermont Legal Aid represents thousands of low-income Vermonters every year helping them to retain their housing, public benefits, and in consumer matters. We support this legislation because we know that for many low-income Vermonters “rent-to-own” is a common, complicating factor in their lives.

“Heads, I Win; Tails, You Lose.” The industry represents two sides of a coin: on one side, the industry promises to provide a service offering access to common household merchandise to some Vermonters who may lack access to some credit or loan providers. That promise brings poor consumers in the door. In a perfect world, this could be a desirable service for those who otherwise lack the basic comforts of a home and require a reasonable rate and period of time to secure them. Unfortunately, we know that on the flip-side the terms and conditions exacted for the service offered by the industry are, in fact, usurious and result in obscenely high rates that no Vermonter should have to pay. In essence, the industry is playing a

game that is uniquely tailored, some might say rigged, to buy low and sell high to consumers who are in a poor position to negotiate – and who are told they are getting a good deal.

These financed purchases are not a good deal for low-income Vermonters. You are now presented with an opportunity to strike a balance between the industry which has largely evaded regulation and Vermont consumers who desperately require your attention to this matter.

We applaud the Senate for its efforts and for passing meaningful reform of the industry. Still, we believe that the bill before you can be clarified and improved and we ask your committee to consider adding or amending the following elements of the bill:

- 1) **A fair, affordable limit on rent-to-own transactions is best achieved with an annual percentage rate (APR)**¹. A fixed APR has several advantages for consumers. First, it provides consumers with a clear and easy to understand mechanism for comparing merchandise at competing retail merchants. Second, it provides competing businesses with a level playing field. And, third recognizing these installment sales as credit transactions brings the industry within the ambit of the federal Truth in Lending Act (“TILA”) and the Equal Credit Opportunity Act (ECOA) which prohibits discrimination in lending based on race, gender, religion, marital status or other protected categories.

Finally, a fixed and conspicuous APR would restore the legislative mandate (set out in rule by the Vermont Attorney General) *almost 20 years ago* that rent-to-own enterprises disclose the effective annual percentage rate to all Vermonters engaged in rent-to-own transactions.² That rule has been rendered ineffective as a consequence of definitions that no longer apply, but that the bill before you would remedy. Vermont Legal Aid and others testified in support of an APR in the Senate and we do so again before your committee.

The Senate considered APR rates of 24% (currently the highest allowed APR in Vermont (for installment loan contracts) and 36% (recommended as a maximum allowable threshold by a Department of Defense report on predatory lending targeting military families).³ **Vermont Legal Aid supports a 24% APR consistent with**

¹ In a letter to the Senate, based on research from other states, we noted that another option is a flat cap on total charges. However, we argued for a more aggressive flat cap than the Senate was prepared to endorse at time of passage and it has since been brought to our attention that there may be problems with flat caps and “cash value” that do not result in the protections for consumers that would make this legislation as effective as it should be. <http://www.empirejustice.org/issue-areas/consumer/rent-to-own/articles/the-new-rent-to-own-law.html>

² <http://ago.vermont.gov/assets/files/CP%20115.pdf>.

³ U.S. Dept. of Defense Report to Congress, “*Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*,” at 50 (2006). Available at: http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf

Vermont Law. It is worth noting that at least one wholly owned subsidiary of Rent-A-Center operating in Wisconsin currently operates 24 stores offering 14.9% APR to qualified consumers.⁴

- a. **Ensure the effectiveness of fair limits** Even with a fixed APR over the life of these installment contracts, we urge your committee to act to include language that limits the ability of the industry to manipulate the wholesale or retail costs. The bill passed by the Senate addresses this in part with set limits that reflect what other states have done. **We ask that you consider language that ensures the cash value or retail price reflect the same or comparable cash value or retail cost for the same or similar merchandise available at other retailers** – whichever is lower. This essentially provides the consumer with an automatic price match guarantee that would ensure the industry is actually competing with other retailers to provide fair pricing, rather than left with the temptation to wring more from the pockets of consumers who are ill-equipped by geography or circumstance to take advantage of competitive pricing from other sources.

 - b. **Establish a fair price for used merchandise.** The senate bill includes requirements for clear disclosure to inform consumers when merchandise is “new” or “used.” The industry already concedes that used merchandise is not worth the same as used. It recognizes this by reducing the number of payments to acquire ownership of the item. A better practice would be to determine the percentage reduction the industry already uses and apply it to the weekly or monthly charge thereby reducing the expense to the consumer. This would ensure that consumers who default are not essentially charged the same for “used” as they would have been for “new” which is what occurs in the current industry practice. For example, if current practice is to reduce payments from 91 weeks to 52 weeks (e.g.) that recognizes a roughly 40% reduction in value to the consumer. **We propose a fixed reduction in cost to consumers for used merchandise based on industry custom, or at least 25%, whichever is more favorable to the consumer.**
- 2) **Disclosure Requirements.** Vermont Legal Aid supports strong disclosure requirements for Vermont consumers. We may provide minor suggestions or amendments to language to simplify, clarify, or otherwise add to or improve the Senate’s disclosure requirements.

 - 3) **Regulation of Collections Practices.** Vermont Legal Aid supports regulation of the industry’s collection practices to ensure consumers, their families, and other references

⁴ <http://www3.getitnowstores.com/company-info-gin>; <http://www3.getitnowstores.com/about-get-it-now>

are not harassed or threatened by the industry when disputes or disagreements over contract terms arise.

4) **Other Important Consumer Protections**

- a. **Prohibit mandatory arbitration.** Many rent-to-own contracts have provisions requiring a consumer to go to arbitration with a grievance. Language should be included to prohibit such clauses. This is a matter of fairness and judicial economy as it will allow the consumer to make a complaint or raise meritorious counterclaims immediately and have an impartial arbiter decide the matter with finality.

- b. **Attempt to circumvent clause.** In order for regulation to work you might consider an express provision ensuring that contracts cannot be amended to circumvent the law – it seems self-evident, yet recent history tells us such provisions may be advisable. Such a provision need not be lengthy and could mirror other such provisions, for example provisions akin to those in Title 9 could be included in a relevant section of the general provisions of the bill to read: “No rent-to-own agreement shall contain any provision which attempts to circumvent or circumvents obligations and remedies established by this chapter and any such provision shall be unenforceable and void.”

Vermont Legal Aid strongly supports legislation that ensures the industry plays by the same rules that other businesses observe: **fair prices with limits on interest rates, clear disclosure to inform and educate and regulated collection practices to protect Vermont consumers.** The legislature acted almost 20 years ago and yet its directive has been largely ignored or circumvented by the industry. The time to act for Vermont consumers is now. We urge you to support S.73 with amendments to improve consumer protections for all Vermonters. I would be happy to answer any questions you may have as a committee, or individually, and to provide you with suggestions for language to address these, and other, issues as they arise.

Thank you for your consideration of this important consumer protection legislation.

Sincerely,



Christopher J. Curtis
Staff Attorney