



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

From: David P. Hall, Legislative Counsel
Date: May 11, 2015
Subject: Section-by-section summary of House Proposal of Amendment to S.73, as passed by the House Committee on Commerce and Economic Development

This memorandum provides a summary of the House proposal of amendment to S.73, An act relating to State regulation of rent-to-own agreements for merchandise.

Sec. 1 – Rent-to-Own Agreements

This section amends 9 V.S.A. § 41b to replace the current law, which authorizes the Attorney General to adopt rules governing rent-to-own transactions, with a statutory regulatory framework.

§ 41b

(a) Definitions

Defined terms are: (1) advertisement; (2) cash price; (3) clear and conspicuous; (4) consumer; (5) merchandise; (6) merchant; (7) merchant's cost; (8) rent-to-own agreement; (9) rent-to-own charge; and (10) total cost.

(b) General requirements

Requires (1) that a consumer have the chance to review an agreement before signing; (2) that disclosures be clear and conspicuous; (3) that numerical amounts be written as figures in 12-point type; (4) that additional information not obscure required information; (5) that a merchant preserve copies of certain advertisements for 2 years; (6) that available merchandise be offered as advertised; (7) that a substantially modified agreement be considered a new agreement subject to this law; (8) that a merchant preserve an agreement and documentation on merchant's cost for four years; and (9) that an agreement is governed by Vermont law.

(c) Cash price; reduction for used merchandise; maximum limits

- (1) Cash price of an item is capped, determined by multiplying the merchant's cost by a factor set in law by the type of item, e.g., for an appliance, 1.75 times the merchant's cost
- (2) For a used item, cash price must be at least 10 percent less than calculated under (1)
- (3) Total cost is capped at two times the maximum cash price

(d) Disclosures required in advertising – (1) what must be disclosed; (2) merchant cannot advertise that no credit check is required, or performed, or that all consumers approved, if a consumer will be subject to a credit check

(e) Disclosures on site – disclosures in (d), and (1) whether an item is new or used; and (2) when the merchant required the item

(f) Disclosures in rent-to-own agreement – requires (1)(A) disclaimer; (B) contact info and description; (2) cost disclosures

(g) Required provisions: (1) due dates; (2) charges and fees; (3) that consumer won't own merchandise until all payments made; (4) right to receipt and statement of account; (5) who is responsible for service, maintenance, repair; (6) merchant's duty to replace during repair or service; (7) consumer's maximum liability for damage; (8) transfer of warranty; (9) description of damage waiver or insurance; (10) options to purchase; (11) right to repossess; (12) rights to terminate and reinstate

(h) Warranties – (1) duty to transfer any warranty; (2) implied warranties

(i) Maintenance and repairs – describes merchant's duty to maintain and repair items

(j) Prohibited provisions of agreement – (1) confession of judgment; (2) garnishment of wages; (3) requiring arbitration or mediation of small claims; (4) unlawful entry; (5) waiver of defenses or counterclaims; (6) damage waiver or insurance from merchant

(k) Option to purchase – consumer may purchase at any time by paying cash price minus 50% of previous payments made

(l) Payment; notice of default – 14 day notice to consumer prior to commencing civil action

(m) Collections; repossession; prohibited acts – list of forbidden acts during collections or repossessions

(n) Reinstatement of agreement – (1) after missed payment, consumer can reinstate by paying all past due payments and fees, 5 days for a monthly agreement or 3 days if less than monthly; (2) after voluntary return, reinstate for 180 days; (3) merchant can provide comparable item after reinstatement

(o) Reasonable charges and fees; late fees – (1) fee reasonably related to cost or hardship; (2) one late fee per payment due

(p) Prohibition on rent-to-own business and licensed lenders – cannot conduct both in same location

(q) Enforcement - consumer protection act

Secs. 2-3: Financial Literacy

Sec 3. adds 9 V.S.A. chapter 151, creating the Vermont Financial Literacy Commission

§ 6001 – Definitions – (1) financial capability; (2) financial literacy

§ 6002 – Financial Literacy Commission

(a) – created

(b) – composition – 13 members: (1) Treasurer; (2) Sec. Education; (3) executive branch from list; (4) k-12 public school financial literacy education by NEA; (5) k-12 public school administration by Governor from nominees; (6) (A) VSAC; (B) VSC/UVM; (C) independent colleges; (7) two nonprofits; (8) one bank and one credit union; (9) public member

(c) – Co-chairs: Treasurer and Governor appointee (non State employee)

(d) – 3-year terms

(e) – right to receive information from State and State-funded entities

§ 6003 – Powers and Duties – list to increase financial literacy, engage public and private sectors, oversee use of funding

§ 6004 – Financial Literacy Commission Fund

(a) – created within Office of Treasurer

(b) Consists of any funds appropriated or accepted

(c) Serves as repository for federal, State, or private funding for financial literacy

(d) Treasurer, supervised by Commission, has authority to expend and invest funds

Sec. 4 – Fees for Automatic Dialing Service

Creates 9 V.S.A. § 2466b, Disclosure of Fee for Automatic Dialing Service within consumer protection chapter

(a) Defined terms – (1) automatic dialing service; (2) emergency functions; (3) emergency service provider

(b) Disclosure - Before executing sale or lease of security, monitoring, alarm, or similar system that includes an automatic dialing service, seller or lessor of system shall disclose fees it charges and that buyer may be subject to additional fees imposed by others for use of service

Sec. 5 – Consumer Litigation Funding

Creates 8 V.S.A. § 2246 governing consumer litigation funding.

(a) – Findings

(b) – Definition – “consumer litigation funding” - a nonrecourse transaction in which a person provides personal expense funds to a consumer to cover personal expenses while the consumer is a party to a civil action or legal claim and, in return, the consumer assigns to such person a contingent right to receive an amount of the proceeds of a settlement or judgment obtained from the consumer’s action or claim

(c) Report - Directions Commissioner of Financial Regulation and Attorney General to report by December 1, 2015 on recommendation/draft legislation to balance (1) consumer access to funds and (2) protecting consumers against predatory practices

(d) Moratorium – Prohibits consumer litigation funding contract on or after July 1, 2015

(e) Enforcement – by DFR under Title 8 authority

Sec. 6 – Internet Dating Services

Creates new Subchapter 8 within 9 VSA chapter 63 (consumer protection act)

§ 2482a – Definitions – (1) account change; (2) banned member; (3) fraud ban; (4) internet dating service; (5) member; (6) Vermont member

§ 2482b – Requirements for internet dating services

(a) Notification - Service shall disclose to Vermont members (1) user name or identifier of banned member; (2) why banned member was banned; (3) never send money or personal financial info; (4) hyperlink to fraud information

(b) Notification – (1) clear and conspicuous; (2) by email, text, or other means; (3) sent within 24 hours of fraud ban or later if more effective, no later than 3 days

(c) Disclosure – within 24 hours, any change to a Vermont member’s account or profile

§ 2482c – Immunity

Service not liable to any person, other than State

(a) for disclosure it has banned a member and member's info

(b) for decision whether to ban a member or when and how to notify

§ 2482d – Violations

- enforced under consumer protection act

Sec. 7 – Discount Membership Program

Amends 9 V.S.A. § 2470hh to create a consumer protection act violation:

(c) – for any person to provide substantial assistance to a seller of a discount membership program that engages in an unfair or deceptive act in commerce when the person (1) receives notice from regulatory or law enforcement that the seller is in violation; (2) knows of a violation; or (3) consciously avoids knowing a violation

(d) No violation to provide only “incidental assistance” that does not further the sale of a discount membership program or who does not receive a benefit from providing assistance

Sec. 8 – Security Breach Notice Act

Amends 9 V.S.A. § 2435, Security Breach Notice Act to allow a data collector to provide notice of a security breach to a consumer through electronic notice.

Under current law, electronic notice is only allowed if the data collector does not have a consumer's address or telephone number.

Sec. 9 – Limitation of Liability for Advertisers

Amends 9 V.S.A. § 2452. Current law protects from liability under the consumer protection act an owner or publisher of print materials from liability for advertisements.

Amendment extends protection to electronic media.

Sec. 10 – Effective Dates

July 1: Secs 2-3 (Financial Literacy Commission); Sec. 4 (Auto Dialing Fees); Sec. 5 (Consumer Litigation Funding); Sec. 7 (Discount Membership); Sec. 8 (security breach); Sec. 9 (limitation of liability for advertisers)

September 1, 2015: Sec. 1 - Rent-to-Own Agreements

Passage: Sec. 6 - Internet Dating Scams, **except § 2482b** (requirements for internet dating services -- January 1, 2016)