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H.188

Introduced by Representatives Edwards of Brattleboro, Andrews of Rutland
City, Bohi of Hartford, Burke of Brattleboro, Cheney of
Norwich, Clarkson of Woodstock, Courcelle of Rutland City,
Davis of Washington, Deen of Westminster, Donovan of
Burlington, Evans of Essex, Fagan of Rutland City, Fisher of
Lincoln, Font-Russell of Rutland City, French of Randolph,
Haas of Rochester, Head of South Burlington, Klein of East
Montpelier, Larson of Burlington, Lorber of Burlington, Macaig
of Williston, Manwaring of Wilmington, Marek of Newfane,
Martin of Wolcott, McCullough of Williston, McFaun of Barre
Town, Mitchell of Barnard, Moran of Wardsboro, Mrowicki of
Putney, Nuovo of Middlebury, Partridge of Windham, Pearson
of Burlington, Poirier of Barre City, Pugh of South Burlington,
Ralston of Middlebury, Ram of Burlington, Savage of Swanton,
Sharpe of Bristol, Stevens of Waterbury, Stuart of Brattleboro,
Sweaney of Windsor, Taylor of Barre City, Webb of Shelburne,
Weston of Burlington and Wizowaty of Burlington

Referred to Committee on

Date:

Subject: Commerce and trade; rental-purchase transactions

1 Statement of purpose: This bill proposes to strengthen regulation of the
2 rental-purchase industry.

3 An act relating to regulating rental-purchase transactions

4 It is hereby enacted by the General Assembly of the State of Vermont:

5 Sec. 1. REPEAL

6 9 V.S.A. § 41b (rent-to-own agreements) is repealed.

7 Sec. 2. 9 V.S.A. chapter 60 is added to read:

8 CHAPTER 60. RENTAL-PURCHASE TRANSACTIONS

9 § 2371. DEFINITIONS

10 As used in this chapter:

11 (1) “Advertising” means a commercial message in any medium that
12 solicits a consumer to enter into a rental-purchase agreement.

13 (2) “Cash price” means the price at which a merchant would in good
14 faith offer to sell merchandise for cash on the date of the rental-purchase
15 agreement.

16 (3) “Clear and conspicuous” means that a statement or term being
17 disclosed is of such size, color, contrast, and audibility, as applicable, so that
18 the nature, content, and significance of the statement or term is reasonably
19 apparent to the person to whom it is disclosed.

20 (4) “Consumer” means a natural person who agrees to pay consideration

1 for merchandise for his or her personal use or benefit, or the use or benefit of a
2 member of his or her family or household.

3 (5) "Damage waiver" means the release of a consumer's obligation to
4 pay the value of merchandise or to continue payment pursuant to a
5 rental-purchase agreement in the event of accidental loss of or damage to the
6 merchandise beyond normal wear and tear.

7 (6) "Effective annual percentage rate" means the annual percentage rate
8 of the merchandise subject to a rental-purchase agreement, calculated in the
9 same manner as an annual percentage rate under section 107 of the federal
10 Truth in Lending Act, 15 U.S.C. § 1606, except that:

11 (A) in place of the finance charge, there shall be substituted the
12 difference between the total of payments to acquire ownership and the cash
13 price, less any amounts specifically excluded from the finance charge under
14 the Truth in Lending Act;

15 (B) in place of the amount financed, there shall be substituted the
16 cash price less any down payment; and

17 (C) it shall be assumed that the consumer will pay the total of
18 payments to acquire ownership in the merchandise.

19 (7) "Finance charge" means the difference between the cash price of
20 merchandise and the total cost for the merchandise.

21 (8) "Market area" means the geographic area in which a merchant's

1 store is located, which for purposes of this chapter shall be one of the
2 following five areas organized by county:

3 (A) Market Area I: Essex, Orleans, Lamoille, Caledonia, and
4 Washington.

5 (B) Market Area II: Orange, Windsor, and the New Hampshire
6 county of Grafton.

7 (C) Market Area III: Windham and the New Hampshire county of
8 Cheshire.

9 (D) Market Area IV: Franklin, Grand Isle, Chittenden, and Addison.

10 (E) Market Area V: Rutland, Bennington, and the New York county
11 of Rensselaer.

12 (9) “Merchandise” means an item of property that is the subject of a
13 rental-purchase agreement that is not real property under the laws of this state.

14 The term does not include:

15 (A) a mobile home, as defined in section 2601 of this title;

16 (B) a motor vehicle, as defined in 23 V.S.A. § 4;

17 (C) a musical instrument intended to be used primarily in an
18 elementary or secondary school.

19 (10) “Merchant” means a person who solicits, offers, or provides the use
20 of merchandise under a rental-purchase agreement.

21 (11) “Rental-purchase agreement” means an agreement between a

1 consumer and a merchant under which the consumer takes possession of
2 merchandise for personal, family, or household use in exchange for one or
3 more periodic payments, and under which the consumer has the right, but is
4 not required, to acquire ownership of the goods by paying the total cost
5 specified in the rental-purchase agreement.

6 (12) “Total cost” means the total amount of periodic payments and
7 mandatory taxes, charges, and fees that a consumer must pay to acquire
8 ownership of merchandise under a rental-purchase agreement. The term does
9 not include charges for optional services or charges due only upon the
10 occurrence of a contingency specified in the agreement.

11 § 2372. GENERAL DISCLOSURE REQUIREMENTS

12 (a) A disclosure required by this chapter shall be clear and conspicuous.
13 All numerical amounts and percentages shall be stated in figures and shall be
14 printed or legibly handwritten in not less than the equivalent of 12-point type.

15 (b) A disclosure in a television or Internet advertisement shall be displayed
16 in a size of print and for a period of time that would allow a person of average
17 reading ability to read and comprehend the disclosure.

18 (c) Information not required by this chapter may be supplied with the
19 disclosures required by this chapter, but shall not be stated or placed in such a
20 way as to cause the required disclosures to be misleading or confusing, or to
21 contradict, obscure, or detract attention from the required disclosures.

1 (d) A rental-purchase agreement that is substantially modified, including a
2 change that increases the consumer's payments or other obligations or
3 diminishes the consumer's rights, shall be considered a new agreement subject
4 to the disclosure requirements of this chapter.

5 (e) All terms and conditions required to be disclosed by this rule shall be
6 actually available to all consumers.

7 (f) A merchant shall preserve a copy of an advertisement and a copy of a
8 rental-purchase agreement for not less than two years after the date the
9 advertisement appeared or the agreement was signed. In the case of a radio,
10 television, or Internet advertisement, a merchant may preserve a copy of the
11 script or story board.

12 § 2373. DISCLOSURES IN ADVERTISING

13 An advertisement for merchandise available under a rental-purchase
14 agreement shall state:

15 (1) that the merchandise being advertised is available under a
16 rental-purchase agreement;

17 (2) that the consumer shall not own the merchandise until the total cost
18 is paid;

19 (3) the total cost, which shall be labeled "total cost"; and

20 (4) the effective annual percentage rate of the merchandise.

1 § 2374. DISCLOSURES ON SITE

2 An advertisement or display at a merchant's business site that is located in
3 proximity to, or affixed to, merchandise available under a rental-purchase
4 agreement shall state:

5 (1) that the merchandise being advertised is available under a
6 rental-purchase agreement;

7 (2) the cash price of the merchandise;

8 (3) the amount of a periodic payment and the total number of periodic
9 payments required for ownership;

10 (4) the total cost, which shall be labeled "total cost";

11 (5) that the consumer shall not own the merchandise until the total cost
12 is paid;

13 (6) the effective annual percentage rate;

14 (7) whether the merchandise is new or used; and

15 (8) in the case of used merchandise, the merchant's proposed
16 classification of the condition of the merchandise and the merchant's proposed
17 cash price.

18 § 2375. DISCLOSURES IN RENTAL-PURCHASE AGREEMENT

19 (a) Prior to initiating a rental-purchase agreement, a consumer shall be
20 provided a copy of the attorney general's pamphlet on rental-purchase
21 transactions.

1 **(b) The first page of a rental-purchase agreement shall contain:**

2 **(1) in the heading, in no less than 12-point, boldface type:**

3 **“IMPORTANT INFORMATION ABOUT THIS RENTAL-PURCHASE**
4 **AGREEMENT. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ**
5 **IT OR IF IT CONTAINS ANY BLANK SPACES. BEFORE YOU SIGN,**
6 **YOU MAY TAKE A COPY OF THE AGREEMENT, UNSIGNED, TO**
7 **REVIEW WITH FAMILY MEMBERS OR OTHERS”;** and

8 **(2) the following information in the following order:**

9 **(A) the name, address, and telephone number of the merchant;**

10 **(B) the name, address, and telephone number of the consumer;**

11 **(C) a description of the merchandise sufficient to identify that**
12 **particular item of merchandise to the consumer and the merchant, including**
13 **any applicable model and identification numbers;**

14 **(D) a statement whether the merchandise is new or used;**

15 **(E) a description of any damage to the merchandise; and**

16 **(F) the effective annual percentage rate, with a disclaimer that the**
17 **effective annual percentage rate, by law, cannot exceed 36 percent.**

18 **(c) A rental-purchase agreement shall include the following cost**
19 **disclosures, printed and grouped as indicated below in no less than 12-point**
20 **type, immediately preceding the signature lines:**

1 **Cash Price:**

2 (1) The cash price of this merchandise: _____ \$ _____

3 **(The cash price is required to be competitive with prices for the same or**
4 **similar merchandise at other stores in this market area.)**

5 **Total Cost to Become Owner Under Rental Purchase Agreement:**

6 (2) Periodic payments required to become owner:

7 \$ _____ / (weekly)(biweekly)(monthly) × (# of payments) = \$ _____

8 (3) Taxes, fees, and charges required to become owner (itemize):

9 _____ \$ _____

10 _____ \$ _____

11 _____ \$ _____

12 Total required taxes, fees, and charges: _____ \$ _____

13 (4) Total cost: _____ (2) + (3) = \$ _____

15 **Effective Annual Percentage Rate:** _____ %

16 **(The effective annual percentage rate may not exceed 36%.)**

18 (d) A rental-purchase agreement shall also provide:

19 (1) a line-item list of any other charges or fees the consumer could be
20 charged or have the option of paying in the course of acquiring ownership or
21 during or after the term of the agreement;

1 (2) that the consumer shall not own the merchandise until all necessary
2 payments have been made;

3 (3) that the consumer has the right to receive a receipt for a payment
4 and, upon reasonable notice, a written statement of account;

5 (4) that, except in the case of the consumer's negligence or abuse, the
6 merchant is responsible for maintaining, repairing, and servicing the
7 merchandise until the consumer acquires ownership;

8 (5) the maximum amount of the consumer's liability for damage or loss
9 to the merchandise in the case of the consumer's negligence or abuse;

10 (6) a description of a manufacturer's warranty or other warranty on the
11 merchandise, which may be in a separate document furnished to the consumer;

12 (7) if the merchandise has a cash price of \$1,000.00 or more, a
13 description of any damage waiver or insurance required, or a statement that the
14 consumer is not required to purchase a damage waiver or insurance;

15 (8) an explanation of options to purchase the merchandise;

16 (9) a statement of payment due dates;

17 (10) an explanation of the rights of the merchant to repossess the
18 merchandise;

19 (11) an explanation of the parties' respective rights to terminate the
20 agreement, and to reinstate the agreement;

21 (12) a statement that the consumer has received a copy of the attorney

1 general's pamphlet on rental-purchase transactions;

2 (13) in the case of used merchandise, the condition of the merchandise
3 as agreed by the consumer and the merchant; and

4 (14) the following notice: "NOTICE: THIS AGREEMENT IS
5 GOVERNED BY VERMONT LAW. IF YOU THINK A VIOLATION HAS
6 OCCURRED, CONTACT THE ATTORNEY GENERAL'S CONSUMER
7 ASSISTANCE PROGRAM AT 1-800-649-2424."

8 § 2376. PROHIBITED PROVISIONS OF A RENTAL-PURCHASE

9 AGREEMENT

10 (a) A rental-purchase agreement shall not contain any provision:

11 (1) requiring a confession of judgment;

12 (2) requiring a garnishment of wages;

13 (3) granting authorization to the merchant or a person acting on his or
14 her behalf to enter unlawfully upon the consumer's premises or to commit any
15 breach of the peace to repossess merchandise;

16 (4) requiring the consumer to waive any defense, counterclaim, or right
17 of action against the merchant or a person acting on his or her behalf to collect
18 payment under the rental-purchase agreement or to repossess merchandise;

19 (5) requiring purchase of a damage waiver or insurance for merchandise
20 with a cash price of less than \$1,000.00;

21 (6) requiring a cosignor;

1 (7) requiring the consumer to accept binding arbitration to resolve a
2 dispute under the agreement.

3 (b) A provision that is prohibited by this section shall be unenforceable
4 against the consumer.

5 (c) A rental-purchase agreement that contains a prohibited provision shall
6 be voidable by the consumer.

7 § 2377. RIGHT OF INSPECTION; ENFORCEABILITY

8 (a) Prior to execution of a rental-purchase agreement, the merchant shall
9 provide the consumer with a copy of the agreement that includes the
10 information required under this chapter. The consumer shall have the
11 opportunity to inspect the agreement, including the right to take the copy from
12 the merchant's premises prior to executing the agreement.

13 (b) Immediately upon execution of the agreement, the merchant shall
14 provide the consumer with a copy of the executed agreement. The agreement
15 shall not be enforceable against the consumer until the consumer has received
16 a copy of the executed agreement.

17 § 2378. CASH PRICE; RENTAL-PURCHASE OF USED MERCHANDISE

18 (a)(1) The cash price of merchandise shall not be artificially inflated, and
19 shall be representative of, and competitive with, the price of comparable
20 merchandise for sale in the market area.

21 (2) A consumer who enters into a rental-purchase agreement shall be

1 treated equally as a cash or credit buyer of similar merchandise available in the
2 market area.

3 (b) The cash price of used merchandise shall not exceed the following
4 limits:

5 (1) for merchandise with negligible wear that operates as new, 75
6 percent of the cash price for the same merchandise when new.

7 (2) for merchandise with noticeable wear that operates well, 50 percent
8 of the cash price for the same merchandise when new;

9 (3) for merchandise with substantial wear that operates adequately, 25
10 percent of the cash price for the same merchandise when new.

11 (c) The merchant and the consumer shall mutually determine the condition
12 and cash price of used merchandise, subject to the limitations under subsection
13 (a) of this section.

14 (d) A rental-purchase agreement shall provide for the same number of
15 payments for ownership of used merchandise as would be required for
16 ownership of the merchandise if new. A merchant shall not reduce the number
17 of payments to reflect the reduced cost of used merchandise, but shall reduce
18 the amount of each periodic payment.

1 § 2379. WARRANTIES

2 (a) Upon transfer of ownership of merchandise to a consumer, a merchant
3 shall transfer to the consumer any manufacturer's or other warranty on the
4 merchandise.

5 (b) A merchant creates an implied warranty to a consumer, which may not
6 be waived, in the following circumstances:

7 (1) an affirmation of fact or promise made by the merchant to the
8 consumer which relates to merchandise creates an implied warranty that the
9 merchandise will substantially conform to the affirmation or promise;

10 (2) a description of the merchandise by the merchant creates an implied
11 warranty that the merchandise will substantially conform to the description;
12 and

13 (3) a sample or model exhibited to the consumer by the merchant creates
14 an implied warranty that the merchandise actually delivered to the consumer
15 will substantially conform to the sample or model.

16 § 2380. MAINTENANCE AND REPAIRS

17 (a) During the term of a rental-purchase agreement the merchant shall
18 maintain the merchandise in good working condition.

19 (b) If a repair cannot be completed within three days, the merchant shall
20 provide a replacement to the consumer to use until the original merchandise is

1 repaired. Replacement merchandise shall be at least comparable in quality,
2 age, condition, and warranty coverage to the replaced original merchandise.

3 (c) A merchant is not required to repair or replace merchandise that has
4 been damaged as a result of negligence or an intentional act by the consumer.

5 § 2381. DAMAGE WAIVER; INSURANCE

6 (a) If the cash price of merchandise is less than \$1,000.00, a merchant may
7 not require a consumer to purchase any damage waiver or other form of
8 insurance of the value of the goods or of any payments or obligations of the
9 rental-purchase agreement in the event of loss or damage to the goods in
10 excess of normal wear and tear.

11 (b) If the cash price of the merchandise is \$1,000.00 or more, the merchant
12 may require purchase of a damage waiver or insurance, but only if the
13 merchant requires the same protection for all goods, and of all consumers of
14 goods, of that particular type and value.

15 (c) The total cost of a damage waiver or insurance shall not exceed five
16 percent of the cash price for the merchandise.

17 § 2382. PAYMENT; DEFAULT

18 (a) A periodic payment required by a rental-purchase agreement shall be
19 timely if postmarked or delivered to the merchant not later than the first day of
20 each period, or not later than the next business day following a Sunday or state
21 or national holiday.

1 (b) The merchant shall deliver to the consumer a notice of default and right
2 to cure no earlier than the fourth day after the due date.

3 (c) A notice of default shall state the amount and due date of payment
4 required to cure the default and shall explain the merchant's right to repossess
5 and the consumer's right, if the goods are repossessed, to reinstate the
6 agreement.

7 (d) If the consumer cures the default, the rental-purchase agreement shall
8 continue as if the payment had been made when due.

9 (e) In an action against a consumer to enforce a rental-purchase agreement,
10 a merchant shall file with the initial pleading:

11 (1) a photocopy of the notice of default and right to cure required by this
12 section;

13 (2) an affidavit confirming that the notice was delivered to the
14 consumer, or if the consumer cannot be located, to the address provided in the
15 rental-purchase agreement; and

16 (3) the date and means of delivery.

17 (f) The office of the attorney general shall adopt and publish a form for the
18 notice of default and right to cure.

1 § 2383. REPOSSESSION

2 If the consumer is in default, has been given notice of his or her right to
3 cure the default, and has failed to cure in the time allowed, the merchant is
4 entitled to return of the merchandise.

5 § 2384. REINSTATEMENT OF AGREEMENT

6 (a) A rental-purchase agreement shall permit the consumer to reinstate the
7 agreement during a period of not less than 30 days after the date of
8 repossession of the merchandise if the consumer promptly returned or
9 voluntarily surrendered the merchandise upon request by the merchant.

10 (b) If the consumer has paid at least 50 percent of the total cost to acquire
11 ownership, the reinstatement period shall be extended to a total of 90 days after
12 the date of the return of the merchandise.

13 § 2385. TRANSFER OF OWNERSHIP

14 (a) A consumer becomes the owner of merchandise:

15 (1) Upon payment of the total cost; or

16 (2) at any time after his or her first periodic payment by paying a buyout
17 amount, which shall equal the original cash price of the merchandise, minus at
18 least 50 percent of the total of the periodic payments made by the consumer. A
19 merchant shall provide a buyout amount upon request of the consumer.

20 (b) Upon transfer of ownership under this section, the rental-purchase
21 agreement shall terminate, the merchant shall provide the consumer written

1 acknowledgment of the transfer of ownership, and the merchant shall refund
2 to the consumer any payments that exceed the total cost or the buyout amount.

3 § 2386. FEES AND CHARGES

4 (a) In general.

5 (1) A merchant shall not impose any application fee.

6 (2) No other fee or charge may be assessed except as provided in the
7 rental-purchase agreement.

8 (3) A charge or fee assessed in a rental-purchase agreement shall be
9 reasonably related to the actual cost to the merchant of the service or hardship
10 for which it is charged.

11 (4) Payments received shall be applied first to the payment of the past
12 due periodic payment, then to applicable late fees and other charges.

13 (b) Late fee. A merchant may impose a late fee if, at the start of any
14 payment period, the consumer fails to make a payment due or to voluntarily
15 surrender or return the merchandise, subject to the following limitations:

16 (1) no late fee shall be imposed until the payment is more than three
17 days past due;

18 (2) late fees shall not exceed \$5.00, or 20 percent of the amount of one
19 periodic payment, whichever is greater; and

20 (3) only one late fee may be assessed for each renewal payment,
21 regardless of how long the payment remains past due.

1 (c) Delivery charge.

2 (1) No delivery charge may be levied if the merchandise is picked up by
3 the consumer at the merchant's premises or at another site designated by the
4 merchant.

5 (2) A delivery charge may not exceed \$10.00 for delivery of goods
6 within ten miles of the merchant's premises if no single item of merchandise
7 weighs more than 70 pounds, or \$20.00 for delivery of goods beyond ten miles
8 or if any single item of merchandise weighs more than 70 pounds.

9 § 2387. LIMITATION OF EFFECTIVE ANNUAL PERCENTAGE RATE

10 The effective annual percentage rate charged under a rental-purchase
11 agreement shall not exceed 36 percent.

12 § 2388. PENALTIES AND ENFORCEMENT

13 (a) A violation of this chapter shall be a deceptive act and practice in
14 commerce in violation of section 2453 of this title.

15 (b) The attorney general shall have the same authority to make rules,
16 conduct a civil investigation, enter into an assurance of discontinuance, and
17 bring a civil action, and a private party shall have the same rights and
18 remedies, as provided in subchapter 1 of chapter 63 of this title.

19 (c) The attorney general shall adopt by rule and publish on its website a
20 Tips for Smart Consumers pamphlet on the subject of rental-purchase
21 transactions and the requirements of this chapter.

1 § 2389. PROHIBITION OF PAYDAY LENDING AND OTHER
2 FINANCIAL SERVICES

3 A person shall not at the same physical location offer merchandise under a
4 rent-to-own agreement and engage in activity that would require a license
5 under chapter 73 of Title 8 (licensed lenders).

6 Sec. 3. EFFECTIVE DATES

7 (a) Secs. 1 (repeal of 9 V.S.A. § 41b) and 2 (creation of 9 V.S.A. chapter
8 60) of this act shall take effect July 1, 2012, except that 9 V.S.A. § 2389 shall
9 take effect on July 1, 2011.

10 (b) This section (effective date) shall take on effect July 1, 2011.