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February 4, 2015

Senate Economic Development, Housing & General Affairs Committee  
Sen. Kevin Mullin, Chair  
Statehouse  
115 State Street  
Montpelier, Vermont

## **Re: Proposed Rent-to-Own Legislation**

Dear Sen. Mullin and Members of the Committee,

Thank you for taking up proposed legislation to regulate the “rent-to-own” industry in Vermont. Regulation can help ensure fairness to Vermont consumers and provide better results for the industry. All Vermonters should know when they sign on the dotted line exactly what they are signing up for. They should know how much something will cost and they should know their rights and responsibilities if they – or the industry – do not meet their obligations. In addition, consumers should be treated fairly with respect to how much they can be charged. Consumers should not be charged multiple times the actual value of a product – particularly if it is a used product (as is often the case) – just because rent-to-own transaction is the only means to a purchase. A result ending in default helps nobody – the consumer loses all payments and the leased items; the industry loses out on any remaining payments and must initiate repossession actions and in some cases collections. **Everyone has an interest in reasonable disclosure and ensuring access to affordable goods** – especially for low-income Vermonters. It is good for consumers and it is good for the industry.

There are three primary reasons we support this legislation:

- 1) *Unregulated Markets Hurt Consumers*: Better informed consumers make better choices and greater affordability is good for consumers and the industry;
- 2) *Reduced Litigation*: Fewer defaults result in satisfied consumers and businesses, and reduces the need for litigation;
- 3) *Other States Regulate and The Industry Continues to Thrive*: Other states have shown regulation works without detriment to the growing \$8.5 billion rent-to-own industry.

## 1) An Unregulated Market Hurts Vermont Consumers

Vermont Legal Aid represents thousands of low-income Vermonters in civil legal matters every year including assistance with housing, public benefits and consumer transactions. **Rent-to-Own transactions are often a complicating detriment to our clients.** Anyone faced with the obligation of installment payments may be tempted to make other payments for food, shelter or utilities lapse for fear of losing their payments made to date, losing the items they are paying on and fear of repossession and being hauled into court. The long-term impact of that may be falling behind on rent – leading to risk of eviction (at a time when affordable housing is desperately in need and exceedingly hard to come by). Utility shut-offs threaten seniors, families, and children who need to stay warm in winter but may be at risk of shut-off if payments are not timely made. They also may be prohibited from receiving service in the future if a delinquency remains on their accounts. If judgment enters in small claims wages may be garnished, or even if a family is “judgment-proof” (because the sole source of income is public assistance or social security income), credit history is destroyed – again making housing and other future transactions – even employment – hard to come by.

You will hear testimony from consumers who have had to make these kinds of impossible choices. They can describe their experiences far better than Legal Aid. But, let me share with your committee just one example of how current practices affect Vermonters. One family from southern Vermont who called for help was ensnared in one of these rent-to-own agreements. In addition to falling behind on other essential expenses for necessities after looking at their finances they were struggling to figure out whether to make a payment on their rent-to-own contract, or to pay for their children’s Dr. Dynasaur premiums ensuring access to health care for their children. Guess which bill this family felt obligated to pay? The fear of facing collections or having their credit history destroyed was so strong this family opted to continue paying on their rent-to-own contract. Nobody sues you if you don’t pay your health insurance premiums. For many Vermonters these are the choices they face.

More information up front and conspicuously located, along with affordable interest rates or charges would help families like the one described above and thousands of others to make informed and affordable decisions.

## 2) Disclosure and Affordability Reduce the Need for Litigation

More information up front about the total cost over the life of a contract, and greater affordability in the short- and long-term for Vermont families will not only help families meet their obligations in satisfaction of industry terms, but it will reduce the likelihood that families will end up in court, or that the industry will need to pursue them there.

In fact, I discovered that over the last several years **more than 300 cases have been filed in Vermont small claims courts by the rent-to-own industry pursuing Vermonters for payment.** The vast majority of Vermonters are pro se and may not know how to defend against such claims even if the terms were unfair, the items were used, or other defenses or counterclaims should be available to them. The Vermont Judiciary is facing a significant deficit and budgetary cuts. Reducing the number of small claims cases through better disclosure and making terms more affordable with reduced interest rates or fees is one means of helping reduce caseloads in that division thereby creating systemic savings.

### **3) Vermont Should Join Other States – the Industry Continues to Thrive**

Other states have successfully pursued remedies similar to those brought before you. Minnesota, Wisconsin, New Jersey, and New Hampshire – to name just a few – have all enacted regulatory reform to address problems in the rent-to-own industry. And, **the industry continues to thrive, bringing in \$8.5 billion as recently as 2012.** Vermont attempted to follow-suit back in the 1990’s through enactment of 9 V.S.A. § 41b which authorized and empowered the Office of the Attorney General to promulgate rules for disclosure. Unfortunately, the industry simply changed its contracts to avoid the disclosure attempted by the Attorney General at that time. These regulations made sense then, and they make sense now. Your bill would address this problem and restore the disclosure requirements Vermont sought almost two decades ago.

A cap on interest rates (or charges) is also consistent with Vermont history and tradition. Making purchases reasonable and affordable is better for consumers and for the industry. In Vermont, the maximum interest rate on installment loans is pegged at 24%. 9 V.S.A. § 41a(b)(5). Vermont has determined this is a reasonable rate of return for regularly occurring loan payments. It makes sense to treat all industries equally within the scope of lending and to regulate the rent-to-own industry accordingly. On the other hand, interest rates can be confusing. One consideration might be to simply cap the total difference between the initial cash price and total payments to “no more than twice the initial cash price.” Several states have provisions limiting provisions on total payments including Connecticut, Ohio, and New York according to consumer reports.

### **Other Issues for Your Consideration**

- **Define and regulate the “initial cash price.”** This is important so that if you enact regulations to make products more affordable the initial cash price is not artificially inflated. Without a definition or regulation of what the initial cash price offered can be retailers will simply mark up the initial price.
- **Require reduced weekly rates for used merchandise.** Would you expect to pay the same installment rate for used products? Common sense tells you “no” because the value

to the consumer is not the same. However, in the rent-to-own industry currently new and used goods are generally rented at the same rates. The industry does reduce the number of total weeks or months a consumer pays for a used item. However, such provisions do not offer relief for consumers who either return the product or default prior to satisfaction of the contractual terms.

- **Waiver of arbitration clause.** Many rent-to-own contracts have provisions requiring a consumer to go to arbitration with a grievance. Language should be included to ensure that if the industry files a complaint in court against a consumer, the industry waives the arbitration condition placed on the consumer. This is a matter of fairness and judicial efficiency as it will allow the consumer to raise meritorious counterclaims immediately and have an impartial arbiter decide the matter with finality.
- **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 in Title 9: “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.”

Thank you for your time and attention to this important consumer protection legislation. Vermont Legal Aid strongly supports legislation that will ensure the industry abides by common sense disclosure rules – promulgated by rule almost 20 years ago – and by reasonable interest rates or charges to ensure fairness and affordability for Vermont consumers.

Sincerely,



Christopher J. Curtis  
Staff Attorney