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April 14, 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 proposed amendments to S.73 ("An act relating to State regulation of rent-to-own agreements"). Vermont Legal Aid proposes several amendments for your consideration.

The primary recommendation we offer is to require the industry to function as other consumer credit lenders or retailers offering financing do – specifically to abide by, and disclose an effective annual percentage rate (APR) for rent-to-own transactions. This will ensure a fair price in consumer transactions, reign in usurious interest rates, and provide essential disclosure to consumers.

At the outset, it is worth noting the Federal Deposit Insurance Corporation rules governing APR pursuant to the Truth in Lending Act sets out the rationale for its importance: Regulation z "requires that the terms 'finance charge' and 'annual percentage rate' be disclosed more conspicuously than any other required disclosure.... The finance charge and APR, more than any other disclosures, enable customers to understand the cost of the credit and to comparison shop...."[1]

Courts in **Minnesota, Wisconsin**, and most recently **New Jersey** all view rent-to-own transactions as consumer credit sales and treat them accordingly. The reasons for those decisions are well-reasoned and articulated in case law.

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[1] Specifically, referring to credit cards. Available at: https://www.fdic.gov/regulations/compliance/manual/pdf/V-1.1.pdf

Minnesota (1994):

In determining rent-to-own transactions are credit sales, the Supreme Court of Minnesota wrote:

> "The legislature has specifically defined the transactions at issue as sales, despite their terminable nature. ***Sales are ordinarily regarded as 'credit sales' where a buyer acquires possession but is allowed to defer full payment.*** See Black's Law Dictionary 369-70 (6th Ed. 1990). Accordingly, we hold that rent-to-own transactions are credit sales within the meaning [of the statute] because buyers of goods are not required to make full payment upon acquiring possession but are allowed to pay for goods sold over time."

And:

> "Because rent-to-own agreements are consumer credit sales for all purposes, they are subject to the same consumer protection laws as ordinary credit sales, including the general usury statute...
>
> The purpose of the usury law is to protect consumers by limiting the amount of interest which can be charged on a credit sale or loan.
>
> The legislature's decision to treat rent-to-own transactions as credit sales recognizes that although these transactions purport to be short-term leases, they operate in substance much like ordinary installment sales. Consumers who purchase goods through rent-to-own agreements may not incur debt, but they still implicitly pay interest in return for the ability to pay for goods over time. Moreover, rent-to-own customers may not have an absolute obligation to repay a principal amount, but ***their situation is analogous to that of ordinary buyers on credit in that they must either forfeit possession of a good or continue paying for it.***"

Miller v. Colortyme, Inc., 518 N.W. 2d 544, 548-549 (1994) (emphasis added).[2]

Wisconsin (1996)

> The Federal District Court for the Eastern District of Wisconsin similarly held:
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> "Regardless of traditional notions of debt, obligation, and forbearance, the Wisconsin legislature decided that some customers, even without incurring obligation, deserve the

[2] Available at: http://scholar.google.com/scholar_case?case=3878562336004801330&q=rent-to-own&hl=en&as_sdt=10000000000002.

> same protections as customers who enter traditional credit arrangements. Such a judgment makes sense if many rent-to-own customers enter those agreements with hopes of purchasing the goods. Precisely because the transaction falls beyond common law definition of debt and credit, the legislature had to explicitly expand the protections of the WCA [Wisconsin Consumer Act] to cover rent-to-own transactions."

Burney v. Thorn Associates, Inc., 944 F.Supp. 762, 767-768 (1996).[3] The same logic and opportunity present itself to you today in considering if rent-to-own transactions in Vermont are, in fact, consumer credit or finance operations. The Wisconsin court also found that **the industry was obligated, and failed, to disclose its annual percentage rate to consumers**. And, that reinstatement fees are, contrary to the industry's position, a delinquency fee, or penalty that should be limited to no more than $10 or 5% of the unpaid balance.

New Jersey (2006)

In 2006, the Supreme Court of New Jersey issued an opinion reversing both a trial court and the appellate division finding that rent-to-own contracts are subject to that states retail installment sales act, the interest rate caps set out in the criminal usury statute, and its consumer fraud act.[4] That state limits transactions to **no more than 30% annual percentage rate interest**. In coming to its conclusion, the New Jersey Court expressly referred to the Minnesota case and language cited above.

Perez v. Rent-A-Center, Inc., 892 A.2d 1255 (2006).

Other states, including New York and several others apply a **cap on total of payments**. This may be a useful tool, but it will be essential to meaningfully regulate the cash value of merchandise and the total of payments in the context of a reasonable APR. The language presented to you today is therefore a hybrid of APR and the bill as passed by the Senate. It would that would provide a set APR for financing rent-to-own transactions up to a total of payments no greater than two times the cash value of the merchandise. In this way, the industry is less able to circumvent the intent of the legislation which is plainly to establish reasonable limits on what the industry may charge for consumer goods. If only a hard cap is set, then amounts or rates may fluctuate. If only an APR is set, then contract terms may simply be extended. Ensuring both are included would set the gold standard among states and truly protect Vermont consumers.

Other key provisions include:

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[3] Available at: http://scholar.google.com/scholar_case?case=7169490628619912 36&q=rent-to-own+burney+rent-a-center&hl=en&as_sdt=10000000000002.

[4] Available at: http://scholar.google.com/scholar_case?case=16586755811312703630&q=perez+rent-a-center&hl=en&as_sdt=1000000000000.

Used Merchandise: A minimum 25% discount for used merchandise that must be applied to reduce the periodic payment of the consumer. Your committee heard testimony that some merchants apply a discount to the periodic payment, while others reduce weekly or monthly payments at the end of a contract. This would make standard the practice of the industry and commit a minimum discount to used merchandise, while leaving merchants and consumers free to negotiate larger discounts for older merchandise or merchandise with more wear and tear.

Fair Application of Payments: Ensures that payments apply to periodic payments (in essence "principal") before any other charges or fees. Limits late fees to one time per periodic payment.

Warranties and Insurance: New language ensures that warranties transfer at time of ownership, and that any damage waivers or insurance requirements are disclosed to the consumer.

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

Sincerely,

Christopher J. Curtis
Staff Attorney