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H.R. 1701—THE CONSUMER RENTAL PURCHASE AGREEMENT ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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H.R. 1701—THE CONSUMER RENTAL PURCHASE AGREEMENT ACT

THURSDAY, JULY 12, 2001

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Spencer Bachus, [chairman of the subcommittee], presiding.

Present: Chairman Bachus; Representatives Barr, W. Jones of North Carolina, Biggert, Tiberi, Waters, Watt, Sandlin, Moore, Gonzalez, Kanjorski, J. Maloney of Connecticut, Lucas and Shows.

Chairman BACHUS. At this time, we're going to convene the hearing so the hearing of the Subcommittee on Financial Institutions and Consumer Credit will come to order. Without objection, all Members' opening statements will be made a part of the record. In order to permit us to hear from our witnesses and engage in a meaningful question and answer session, I'm encouraging all Members to submit their statements for the record.

I'm going to recognize myself for an opening statement. Then we anticipate recessing, unless there are other Members that have opening statements at that time. There will be some floor votes, and then we will reconvene probably 5 minutes after the last vote on the floor.

The subcommittee meets here today, not for a mark-up, but for a hearing, and those of you familiar with the process know that there is a difference. Before we proceed to a mark-up, we want to hear from different parties representing diverse interests, and we will take your comments and at that time, or after considering your comments, we may or may not schedule a mark-up.

But, this is an important issue for Members of the subcommittee and I do anticipate at some point a mark-up in the future.

The subcommittee meets today to consider the merits of bipartisan legislation introduced by our colleague from North Carolina, Walter Jones, to establish uniform standards for so-called "rent-to-own" transactions.

The rent-to-own industry, which has experienced dramatic growth in recent years, provides consumers with immediate access to household durable goods, such as furniture, appliances and computers, usually with no downpayment required. In a standard rental purchase agreement, the customer leases the product for a week, or for a month, and at the end of that period, can do one of three

things: one, return the product without obligation or penalty; two, keep the goods and rent for another period; or three, purchase the item.

A customer who continues to lease the goods for a specific period of time eventually acquires ownership of the item, usually after 18 months. An estimated three million consumers enter into rent-to-own transactions every year. The typical customer for these services is someone who cannot afford to purchase the property outright, and may not qualify for credit.

In addition, some customers rent merchandise to meet short-term needs or for the purpose of trying out a product before deciding whether to buy it. Some consumer advocates have questioned whether the rent-to-own industry exploits consumers who may not have access to low-cost alternatives, either because of bad credit history, or because they live in neighborhoods forsaken by traditional retailers.

Prompted by these concerns, the Federal Trade Commission, (FTC), staff conducted a nationwide survey of rent-to-own customers, releasing its findings in April 2000.

While I will defer to the FTC representative who is here this morning to summarize the agency's work, it is worth noting that the FTC's staff's conclusions contradict some, if not many, of the claims of the industry critics.

For example, according to the survey, 75 percent of customers expressed satisfaction with their rent-to-own experience, causing the FTC staff to conclude that the rent-to-own industry, and I quote: "The rent-to-own industry provides a service that meets and satisfies the demands of most of its customers."

Currently, there is no Federal law governing rent-to-own transactions. While most States have enacted laws regulating the industry, the level of consumer protections afforded by these statutes varies widely from State to State.

I've looked at Mr. Jones' bill, and will tell you that the consumer protections in that bill exceed, by a great extent, the protections in my own State of Alabama.

Mr. Jones' bill, H.R. 1701, fills a void that presently exists in Federal law by imposing uniform standards requiring the merchant in rent-to-own transactions to make a comprehensive set of disclosures regarding the total cost of the transaction to the consumer. These disclosures must appear on product labels or tags, in advertising and the rental purchase agreement itself. The customer protections included in H.R. 1701 are drawn largely from the recommendations made by the FTC staff in its April 2000 report on the rent-to-own industry.

The bill also establishes, as a matter of Federal law, that rent-to-own transactions are leases, rather than credit sales, which is consistent with their treatment under the laws of 46 of the 50 States.

Consumer advocates take exception to this approach. And we will have testimony here today consistent with their position. They argue that rent-to-own arrangements should be considered credit sales, subject to the wide range of Federal and State consumer credit laws, including the Truth-In-Lending Act.

The subcommittee, in close, and I stress that, in close consultation with the Minority, has invited both proponents and opponents of H.R. 1701 to testify at today's hearing, as well as representatives of the Federal Reserve and the FTC, which would be responsible for interpreting and enforcing the legislation if enacted.

Before recognizing other Members for opening statements, let me commend the gentleman from North Carolina, Mr. Jones, and the gentleman from Connecticut, Mr. Maloney, for tackling what has historically been a contentious issue in this body and crafting a bipartisan bill, that to date has attracted 20 Democratic co-sponsors, including eight Members of this subcommittee.

At this time, I'll recognize any other Members who have opening statements. Are there any opening statements?

The gentleman from Connecticut.

[The prepared statement of Hon. Spencer Bachus can be found on page 34 in the appendix.]

Mr. MALONEY. Chairman Bachus, Ranking Member Waters, Members of the subcommittee, I want to thank you for holding this hearing today. I also want to thank Mr. Jones and his staff for all the work they've done to craft a bipartisan bill.

I am pleased to be the lead Democratic co-sponsor of this legislation. In April of 2000, the Federal Trade Commission issued a staff report that addressed many of the issues surrounding the rent-to-own industry. Generally speaking, the FTC report concluded that clear and comprehensive disclosures of the rental purchase transaction would benefit both the industry and consumers.

Additionally, the FTC made some specific recommendations regarding the types of disclosure that would benefit consumers. The Consumer Rental Purchase Agreement Act before us today is an effort to begin to implement those recommendations.

I would hope that everyone would agree that giving consumers the information they need to make informed decisions is both good public policy and ultimately, good economic policy as well.

I would also like to address a concern of some that H.R. 1701 would preempt State law. The legislation we are discussing is intended to provide consumers with a minimum level of protection. That is, we intend that H.R. 1701 serve as a uniform Federal floor for consumer protection.

States would maintain the right to offer additional consumer protections that they deem appropriate in their individual State circumstances.

This legislation both provides the protections to consumers and leaves the appropriate room in our Federal system for State legislatures to chart their own direction for the people they so diligently represent.

Thank you, Mr. Chairman. I am hopeful that we can reach consensus and make progress to improve consumer protection regarding rental purchase agreements. I look forward to hearing from our witnesses during the course of the day.

Thank you.

[The prepared statement of Hon. James H. Maloney can be found on page 39 in the appendix.]

Chairman BACHUS. Thank you.

At this time, I'm going to divert from the regular order, if I can, and recognize the Ranking Minority Member, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman. I'm sorry we're a little late. We, as you know, our whip Government is on Thursdays, and we ran a little bit over. But I would like to thank you for calling this hearing on the rent-to-own.

Virtually all first-year law students learn about the rent-to-own industry in contracts class when they study the case of *Williams* versus *Walker Thomas Furniture Company*. Walker Thomas sold furniture and electronics on an installment basis here in the District of Columbia. In the Walker Thomas case, customers who had purchased multiple items had their payments credited on a pro rata basis. This had the effect of keeping a balance due on every item as long as there was a balance due on any one of them. Therefore, if a customer defaulted on a debt, no matter how small, Walker Thomas would repossess every item that customer had ever purchased.

This case stands for the doctrine of an unconscionable contract. Unconscionability has been recognized as the absence of meaningful choice on the part of one party, along with contract terms which are unreasonably favorable to the other party.

In this case, the District of Columbia Court of Appeals found that when a party of little bargaining power signs a commercially-unreasonable contract with little or no knowledge of its terms, the court can determine that the terms of the contract are so unfair that enforcement should be withheld.

While Walker Thomas is no longer in business, the tradition continues today. According to the FTC study, 59 percent of rent-to-own customers have household incomes of $25,000 or less, and 73 percent have a high school education or less.

These consumers often cannot qualify for credit and have little bargaining power. Rent-to-own merchants generally do not permanently disclose the total cost of a purchase, and rarely disclose a cash price that is based on the reasonable price at which merchandise is sold by other dealers.

Customers today frequently pay effective annual percentage rates of 100 to 500 percent, and are often unaware of the true cost of the merchandise or what they would pay if they purchased it in a more traditional method.

The industry claims that these are primarily rental transactions and that only 25 to 30 percent of contracts end in ownership. However, the industry is counting paper and merchandise to determine customer behavior.

If this method were applied to the purchase of homes, the rate of homeownership would dramatically decline every time someone refinanced without paying off the debt in full.

In addition, if the industry's "keep rate" statistic is based on an accurate count of the disposition of merchandise, it is important to know that Rent Way, the second largest rent-to-own chain, has recently discovered that its corporate books show considerably more merchandise than in its store inventory system indicated in the stores.

Rent Way is now under investigation by the Securities and Exchange Commission, (SEC), and the Federal Bureau of

Investigaton, (FBI), after misstating their earnings by more than $125 million.

If the second largest company in the industry, representing 1,134 stores, can't trust its own numbers on this issue, how can we?

According to the FTC study, which to my knowledge has had no accounting irregularities, 70 percent of customer transactions end in ownership.

Furthermore, in a case against Rent-A-Center in 1997, the Minnesota Attorney General found that rent-to-own companies obtain 70 percent of their income from customers who obtain ownership of goods as opposed to those who do not. These transactions look like sales on credit, and act like sales on credit, and therefore should be regulated like sales on credit.

H.R. 1701 provides insufficient protection to consumers, and, in fact, preempts a number of protections that are in place in State law. But I will let the witnesses address those concerns.

I would like to place in the record a letter from the Attorney General of Vermont, strongly opposing H.R. 1701. Because I believe that rent-to-own consumers deserve strong Federal protection, I'm introducing legislation I previously co-sponsored that was originally introduced by Chairman Henry Gonzalez, the Rent-To-Own Reform Act.

I believe that the most effective way to protect consumers is to subject rent-to-own transactions to the same treatment as credit sales or retail installment sales under Federal and State laws.

The bill that I'm introducing today does that, thereby outlawing 300 percent interest rates and mandating disclosure of key contract terms. This bill recognizes a unique feature of rent-to-own contracts, the consumer's ability to unilaterally terminate the contract. This bill would permit a rent-to-own operator to charge a reasonable termination fee and in return provide the consumer with the unique right to terminate the contract without penalty. This bill also recognizes that rent-to-own operators may provide services that some customers find attractive. Under this bill, rent-to-own operators would be permitted to offer such services, but they would be required to disclose those services up front, and estimate their value.

By requiring such disclosure, the consumer will be able to determine the true cost of renting the product. In short, my bill will provide rent-to-own consumers with the moderate safeguards extended to consumers of credit sales, limits on interests and other fees, mandated disclosures, warranty protections, and prohibitions against abusive collection practices.

The rent-to-own industry, like other fringe banking industries, including payday lenders and pawnshops, has operated outside the boundaries of Federal law.

I agree with the proponents of H.R. 1701 that the time has come to federally regulate this industry. However, I believe that my legislation will provide real protection to consumers.

I look forward to hearing the testimony of the witnesses and, Mr. Chairman, I certainly appreciate the time that you have allotted me to get this full statement out, and I look forward to hearing from the witnesses. Thank you very much.

Chairman BACHUS. Thank you.

At this time, we'll hear from Mr. Jones.

Mr. JONES. Mr. Chairman, thank you. I will be brief. I would like to thank you first for holding this hearing. I would also like to thank the gentleman from Connecticut, Congressman Jim Maloney, and his staff for their leading role in bringing this bill forward.

Mr. WATT. We don't have many microphones in North Carolina, Mr. Chairman, that's the problem.

Mr. JONES. To the gentleman from Charlotte, thank you.

Mr. Chairman, I will be brief. I would like to thank you again for holding this hearing. I would like to thank the Congressman from Connecticut, Jim Maloney, and his staff for their leading role in bringing this bill forward.

H.R. 1701 is a common-sense approach to protecting the rights of consumers and to giving certainty to those involved in the now-mature rent-to-own industry.

The bill was first introduced by a Democrat, former Congressman Larry LaRico of Idaho, and has enjoyed a history of broad bipartisan support.

Today, the bill's cosponsorship, as you made reference to, reflects broad bipartisan, geographic, and ideological support. It is a balanced bill that is a win for all concerned, in my opinion.

H.R. 1701 provides for Federal regulation of the rent-to-own industry. It clarifies that the rent-to-purchase transaction is fundamentally different from a credit sale, as is now the case in Federal tax law, as well as in the law in 47 States. It also provides for tough consumer disclosure and protection.

Mr. Chairman, let me add that there are some who believe that this bill is intended to limit, or put a ceiling on, the rights of States to provide consumer protections. Nothing could be further from the truth. This bill is intended to set a minimum standard, or a floor, on protections. If there is legitimate concern that it may do something else, then I will be more than happy to work with all concerned to make sure that our intent is clearly reflected in this bill.

Mr. Chairman, I look forward to working with you, Mr. Maloney and the subcommittee and with everyone else who wants to make this bill even better than what I think it is.

Thank you.

Chairman BACHUS. Are there any other opening statements?

[No response.]

Chairman BACHUS. Let me stress what I did at the beginning of this hearing. This is not a markup on legislation. This is a hearing. The first witness, in fact, will be the Federal Trade Commission witness, who will testify as to their report.

There is no subcommittee text. We welcome any comments of the witnesses as to what may be needed, in addition to the only bill we have filed addressing this, and I think maybe now we'll have two pieces of legislation.

But, I hope to use the experience we had with the antifraud network to see if we can build consensus on this subcommittee for something that will protect consumers.

I think the appropriate starting point is to listen to the FTC and the Federal Reserve. We're going to recess at this time. Ten minutes after the last vote, we will reconvene. Some of you can follow

that on monitors, or you can listen for the second vote to go off and then 10 minutes later, we will reconvene.

And at that time, we will take the witnesses. The published text was that we would hear from the Federal Reserve first, but in fact, we're going to hear from the Federal Trade Commission first, Mr. Beales. And I think the Federal Reserve is more comfortable with that approach too.

So at this time, we're going to recess to meet 10 minutes after the last vote is posted on the House floor.

Thank you.

[Recess.]

Chairman BACHUS. The Subcommittee on Financial Institutions and Consumer Credit will come to order. I appreciate your patience as we went through two votes on the House floor. The first panel is made up of representatives from the Federal Trade Commission and the Federal Reserve System, the relevant divisions or bureaus of those two Federal agencies.

Our first witness will be Mr. Howard Beales, Director of the Bureau of Consumer Protection at the Federal Trade Commission.

The second witness will be Director Dolores Smith, Division of Consumer Affairs of the Board of Governors of the Federal Reserve.

We welcome both of you to the hearing, and look forward to hearing your testimony. At this time we will hear from Director Beales.

STATEMENT OF HOWARD BEALES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. BEALES. Mr. Chairman and Members of the subcommittee, thank you very much. I'm Howard Beales, Director of the Federal Trade Commission's Bureau of Consumer Protection.

I appreciate the opportunity to appear before you today on behalf of the Commission to discuss a recent report by the FTC's Bureau of Economics entitled "Survey of Rent-To-Own Consumers."

I will discuss the findings of the survey and the conclusions of the report, which I hope will be helpful in informing the discussion of rent-to-own issues and policies.

At this point I should add that the views in my prepared statement are the views of the Commission, but my oral statement and my responses to any questions you may have are my own, and are not necessarily those of the Commission or any individual Commissioner.

The rent-to-own industry consists of dealers that rent furniture, appliances, home electronics, jewelry, and other items to consumers. Rent-to-own transactions provide immediate access to household goods for a relatively low weekly or monthly payment, typically without any downpayment or credit check.

Customers enter into a self-renewing weekly or monthly lease for the rented merchandise, and are under no obligation to continue payments beyond the current period.

The lease also provides the option to purchase the goods. The terms are attractive to customers and consumers who cannot afford a cash purchase, who may be unable to qualify for credit, and are unwilling or unable to wait until they can save for a purchase.

It is estimated that there are approximately 8,000 rent-to-own stores in the United States serving nearly three million customers and producing $5 billion in annual revenues.

In the past decade, there has been debate regarding the rent-to-own industry. Noticeably absent, however, was an independent examination of the results of the typical rent-to-own transaction.

The FTC staff attempted to fill this gap by conducting a nationwide survey. The survey examined the results of rent-to-own transactions, rather than the transactions themselves. Thus, it did not examine whether rent-to-own customers were aware of the total cost of purchase of the rent-to-own item when they began renting, or whether they performed comparison shopping prior to entering the transaction. The current extent and format of actual industry disclosures were also outside of the scope of the survey.

Regarding customer demographics, as the chart over here shows, the survey found that rent-to-own customers were more likely to be African-American, to have a high school education or less, to live in the South, and to live in a non-suburban area compared to households that had not used rent-to-own transactions.

The financial characteristics of rent-to-own households are also different from most households. Fifty-nine percent had household incomes less than $25,000. Sixty-two percent rented their homes or their residences, compared to 35 percent of all U.S. households. Forty-four percent had a credit card compared to about two-thirds of all households, and 49 percent had a savings account.

A key factual issue in the debate over whether rent-to-own transactions are sales or leases has been the extent to which rent-to-own consumers purchase the rented merchandise. The industry has maintained that around 25 to 30 percent of rent-to-own merchandise is purchased, and that the rest is returned to the dealer after a relatively short rental period.

The FTC survey found that approximately 70 percent of the rent-to-own merchandise is purchased by the consumer. Regulation of the rent-to-own industry should recognize that important fact.

Regarding the products involved, the most commonly rented items were televisions, sofas, washers, VCRs and stereos. Together, those items were about half of all rented merchandise. Thirty-eight percent of rented items were home electronics products; 36 percent were furniture; and 25 percent were appliances.

In the end, 75 percent of rent-to-own customers were satisfied with their experience. They gave a wide variety of reasons for their satisfaction, noting many aspects of the transaction. Nineteen percent were dissatisfied. Most of those cited rent-to-own prices as the reason.

Federal legislation, which would specifically regulate rent-to-own transactions, has been proposed several times in the past decade. Currently, however, the transactions are not specifically regulated by the Federal laws that govern other credit or leasing transactions. Instead, they are governed by State law.

Given the high purchase rate that the Bureau of Economics Report found, the report concludes that it is important that consumers know the total cost of the purchase before entering an agreement. Information on the total cost, including all mandatory fees and charges, would allow consumers to compare the cost of a

rent-to-own transaction to alternatives, and would be most useful while the customer is shopping.

The best way to provide information at the shopping stage would be to provide it on product labels or tags. Other basic terms of the transaction, including the weekly or monthly payment amount, the number of payments required to obtain ownership, and whether merchandise is new or used, should also be provided on product labels.

The report does not recommend disclosure of cash price. Cash prices are largely arbitrary, because rent-to-own dealers make few cash sales.

Based on the Bureau of Economics Report, the Commission does not recommend Federal legislation regarding the rent-to-own industry at this juncture. Determining whether legislation is needed requires information regarding the transactions themselves in addition to the results of the transaction that were considered in our report.

The Commission needs to know, for example, whether consumers currently understand the total cost of rent-to-own transactions, what information they have available at present, and what alternatives to the rent-to-own option they typically consider.

We hope the survey results are helpful to the subcommittee and look forward to working with Congress on rent-to-own issues.

Thank you very much.

[The prepared statement of Howard Beales can be found on page 40 in the appendix.]

Chairman BACHUS. Thank you.

Director Smith.

STATEMENT OF DOLORES S. SMITH, DIRECTOR, DIVISION OF CONSUMER AFFAIRS, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM

Ms. SMITH. Chairman Bachus, Members of the subcommittee, I'm pleased to offer comments on H.R. 1701, the Consumer Rental Purchase Agreement Act, which would amend the Consumer Credit Protection Act.

H.R. 1701 would establish cost disclosures and substantive protections, among other provisions, for rental/purchase or rent-to-own transactions.

I am the Director of the Federal Reserve Board's Division of Consumer and Community Affairs. We administer a number of the laws that make up the Consumer Credit Protection Act.

The Federal Reserve Board has not taken a position on H.R. 1701, but I'm glad to share the Board staff's views. Rental purchase transactions, as has been described, involve short-term, renewable rentals of personal property, typically for less than 4 months initially.

Rental purchase transactions are not covered by the Consumer Leasing Act, which applies only to leases that initially exceed 4 months, and these transactions are not credit sales under the Truth-In-Lending Act, because the consumer is not obligated to purchase the property rented.

Since 1984, 47 States have adopted laws governing rental purchase transactions, 24 of these States, since 1990.

Given the existing body of law, the subcommittee is to be commended for holding this hearing to explore the need for Federal legislation with interested parties, including industry representatives, consumer advocates, and State agencies.

Much can be learned about the efficacy of the existing laws and about the States' experience in enforcing them. I expect you will find the FTC's report on rent-to-own customers particularly useful. It has been an important source of information for the Board staff.

Several provisions of H.R. 1701 focus on disclosing information to consumers. Disclosures are most effective when received early enough in the process that consumers can use them as a shopping tool and when they enable the consumer to focus on key costs and terms.

As to the content of disclosures, in this case, the fact that rental purchase transactions have characteristics of both sales and leases is important to keep in mind. Under H.R. 1701, merchandise tags would provide key cost disclosures for property displayed or offered in a dealer's place of business.

Only 18 States currently require merchandise disclosures, so this is one aspect in which Federal law could directly enhance State law protections. We concur with the FTC's assessment that, because many customers may purchase the property, merchandise tags should show the total cost to purchase the item, as H.R. 1701 provides, and not just the rental fee.

Besides merchandise tags, H.R. 1701 requires more detailed disclosures in connection with the rental purchase agreement. Most of the cost disclosures would be segregated from other information. We believe this approach is effective in calling the consumer's attention to the most important terms.

Let me next say something about preemption. In existing statutes under the Consumer Credit Protection Act, a specific provision in State law generally is preempted only to the extent that the provision is inconsistent with the Federal statute. H.R. 1701 adopts this language. It omits other language used in those statutes which says that a State law is not preempted if it gives greater protection to consumers.

H.R. 1701 would expressly preclude States from requiring an annual percentage rate disclosure, and from subjecting rental purchase transactions to State credit laws, including usury limits. Because of the omitted language, we have had a question about whether the bill intended to limit the State's ability to retain or adopt more protective rules on other aspects of rental/purchase transactions.

Both Congressman Jones and Congressman Maloney have stated this morning that it is not their intent to bar more protective laws; we encourage clarification on this point.

Finally, you asked us to comment on whether the Federal Trade Commission or the Federal Reserve Board should write the rules to implement H.R. 1701. The Federal Reserve Board has no supervisory relationship with rent-to-own firms. They are not generally subject to Board rules governing credit, leasing, or other financial services, and hence our staff has no direct knowledge of industry practices in the rental purchase market.

Given the Federal Trade Commission's long history in regulating trade practices of commercial firms, the FTC is, we believe, the more logical choice for writing regulations.

And, again, thank you for the opportunity to offer comments on H.R. 1701.

[The prepared statement of Dolores S. Smith can be found on page 49 in the appendix.]

Chairman BACHUS. Thank you. We very much appreciate your testimony.

And let me say, Ms. Smith, one thing you mentioned, which my staff had also mentioned to me, was the preemption. There is a question in my mind whether the text of H.R. 1701 provides that a State law is not inconsistent with the Federal statute if it is found to give greater protection to the consumer. I look forward to working with other Members of the subcommittee to make sure that, at least in their expressions, they do not wish to preempt statutes which give greater protection.

I appreciate you pointing that out.

Ms. SMITH. Thank you.

Chairman BACHUS. I'd also made note of that.

Consumer advocates argue that rent-to-own merchants should be required to disclose to consumers an APR equivalency interest rate prior to consummation of the transaction. Industry representatives contend that such disclosures would be misleading in the rent-to-own context.

Mr. Beales, what is your view on that?

And, then, Ms. Smith, I'll ask you.

Mr. BEALES. Well, Mr. Chairman, I think the primary difficulty with disclosure of something like an annual percentage rate is the starting point. I mean, it depends on the amount that's financed, or the principal, and the amount that is the additional charges or credit charges. That's very hard to separate out in this kind of a transaction, because the ability to stop payment at any time is an important part of the deal, and something that consumers would surely be willing to pay for, but very hard to price.

And the cash price that you can start with is not a price at which very many transactions actually occur, so it's not a real price in the sense that a market price typically is.

So the allocation between principal and interest is itself somewhat arbitrary and we think that makes the APR-kind of disclosure very difficult to implement and enforce.

Chairman BACHUS. And I think that the States that have looked at that have agreed with what you are saying.

Ms. SMITH. I would, first of all, agree with the technical difficulties that Mr. Beales has pointed out, and will just say by analogy that the Board did consider a similar question when we were in the process of revising the regulations to the Consumer Leasing Act. And there, after much deliberation, what the Board finally did decide to do was not to have a requirement for an annual lease rate, and further, we still then had to deal with the question of what if State law requires such a disclosure, what should the lessor be permitted or required to do?

And what the Board ultimately did was to permit the disclosure, if required by State law, but also to require that there be a disclo-

sure alongside to the effect that this percentage may not measure the overall cost of financing the lease. And moreover, the regulation prohibits the use of the terms "annual percentage rate," "annual lease rate," or "equivalent terms."

Chairman BACHUS. As you said, the Federal Reserve Board, I think what you're saying is that you don't want to write the regulations for the rental-purchase industry?

Ms. SMITH. That is what we said.

Chairman BACHUS. Would that change if you not only wrote the regulation, but you had the enforcement powers too?

Ms. SMITH. Well, that would be a little unusual in the sense that currently we enforce regulations through our bank examinations. We have regular examinations of banks. They take place with the frequency usually from once a year to one-and-a-half years and so forth.

With the rent-to-own firms, it would be difficult to envision an enforcement process where we would be venturing into new territory as far as this particular market is concerned.

Chairman BACHUS. Director Smith has testified, Mr. Beales, that your agency has more experience with rent-to-own. Do you agree with that assessment?

Mr. BEALES. Well, we have probably more experience with the transactions themselves and with the rent-to-own industry as it currently exists. Where the Federal Reserve would have a very clear advantage over us in writing regulations is in making sure that they fit with the rest of the consumer credit protection structure. I mean, those regulations need to use terms consistently and not create uncertainties under Truth-In-Lending, or under the Consumer Leasing Act, and the Fed's comparative advantage would be in making sure that regulations under rent-to-own legislation were consistent with the rest of the regulatory structure.

Our comparative advantage would be familiarity with the nature of the transactions and the nature of the industry, and I think wherever jurisdiction would write the rules, we would work together to figure out what they should look like.

Chairman BACHUS. And I'll just close with maybe a yes or no, and I don't like to ask that, and if you feel uncomfortable then you can decline. But, you're disinterested in writing some regulations, are you?

Mr. BEALES. No, we're not.

Chairman BACHUS. OK, thank you. I appreciate your testimony.

Ms. Waters.

Ms. WATERS. I guess this is for Howard Beales. You state in your testimony that the Board agrees with the FTC's conclusion that consumers need to know the total cost to purchase for purposes of comparison shopping. The bill before this subcommittee, H.R. 1701, proposes to provide consumers with a disclosure, which it terms the rental/purchase costs that it excludes, among other things, all charges or fees otherwise payable in a cash transaction for comparable property. Any insurance or liability waiver premiums are charges that are not a factor in the merchant's initial approval of the transaction, all initial payments to be paid up-front to initiate their agreement, and any sales or other taxes.

Can this be characterized in any way as meeting the Board's idea of providing the total cost of purchase to the consumer?

Ms. SMITH. I think that question was really directed to me rather than to Mr. Beales.

Ms. WATERS. OK, all right.

Ms. SMITH. And I would say that from my understanding—well, that you have a point about whether it represents the total cost of credit, and that is something that would have to be considered.

Ms. WATERS. I'm sorry. Are you saying that what is disclosed at this point is not adequate if you consider that the total cost of credit should be disclosed?

Ms. SMITH. I'm not sure I understand the question. But that may have to do more with my understanding of the exact wording of the text in the statute.

Ms. WATERS. You do state that, I suppose it was you who stated that consumers need to know the total cost to purchase. Is that correct?

Ms. SMITH. Yes.

Ms. WATERS. Both of you did. Does the bill, H.R. 1701, does it meet that test?

Ms. SMITH. Well, my understanding is that some of these items are items that are optional, or that are otherwise, even under Truth-In-Lending, are not included in the cost of credit. So that's the standpoint from which I am approaching it, which may be different from a general understanding of what total cost of credit means.

Ms. WATERS. What is your definition of total cost to purchase?

Ms. SMITH. Total cost to purchase to me would signify the costs, including all mandatory costs, that the consumer would be paying to the rent-to-own dealer.

Ms. WATERS. So if we look at H.R. 1701, can we make a determination about whether or not there is disclosure that would give the consumer all of the information that would determine total cost? Do we need to have more in H.R. 1701? If H.R. 1701 was to become law, do you think it should have more information in it so that consumers could know the total cost to purchase based on your definition?

Ms. SMITH. I would have to defer to witnesses on the next panel who have greater familiarity with this area and who would better tell you what exactly are the items that ought to be included in the total cost disclosure.

Ms. WATERS. OK, thank you.

[Ms. Smith subsequently provided the following information:

[Rep. Waters essentially asked whether the "rental purchase cost" as defined in the bill provided adequate disclosure to consumers of the total cost to purchase an item.

[Under Section 1002, the rental purchase cost would be disclosed to consumers on merchandise tags or labels for items displayed in a dealer's showrom and would be disclosed also in connection with each rental purchase contract. The term, as generally defined, is the sum of all charges payable as a condition of entering into a rental purchase agreement or acquiring ownership of the prop-

erty covered by the agreement. Under the bill, this general definition does, however, specifically exclude certain items from the rental purchase cost: (1), costs payable in a cash transaction for comparable property; (2), taxes and fees paid to public officials; (3), fees for optional products and services; and (4), fees paid for voluntary insurance or liability waivers if the consumer requests the coverage after receiving a cost disclosure.

[To the extent that the definition of "rental purchase cost" includes all charges required to purchase the property, the term is comparable to retail-store price tags (which similarly exclude taxes and optional amounts such as certain insurance protection). Thus, it could suffice for disclosures to consumers on merchandise tags or labels.

[Board staff believe the rental purchase cost disclosure would not suffice as a disclosure of total purchase cost under a particular rental-purchase agreement. We believe that, in that case, the required disclosure should include items such as taxes and optional fees, such as insurance premiums, that the consumer would be paying in the transaction.

[Under H.R. 1701, the total purchase price is disclosed as part of the payment schedule, which may not sufficiently highlight the information. It would probably be better given as a separate disclosure.

[Similarly, the multiple cost disclosures required under Section 1005, in connection with the rental-purchase agreement, may obscure key pieces of information that consumers need in deciding whether to enter into an agreement. Among items listed, for example, it may not be necessary to include the rental payment and rental purchase cost if the periodic payment and total sale price are disclosed. The bill would also require disclosure of the difference between the cash price and the rental-purchase cost. The significance of this disclosure is not clear.]

Mr. BARR: [PRESIDING]. Does the gentlelady yield back the balance of her time?

Ms. WATERS. OK, we have some other stuff here.

Your survey indicates that 70 percent of the merchandise leased by rent-to-own outlets is purchased by the customer, and that 67 percent of customers intended to purchase the merchandise at the outset of the transaction.

This corresponds to the finding of the Minnesota Attorney General that 70 percent of all the revenues received by rent-to-own operations in Minnesota came from individuals who acquired ownership of merchandise. If these findings show the overwhelming majority of rental/purchase transactions are, in fact, alternative installment purchases, why shouldn't they be regulated the same and have the same consumer protections as other rental installment sales transactions? Should they be on entirely different terms, as proposed in H.R. 1701. If they're purchasing, if really they end up as purchases, why wouldn't they be regulated in the same way?

Mr. BARR. The time of the gentlelady has expired, but certainly the witnesses can take time to respond to the question.

Mr. BEALES. Well, if we think about the purchase rate as indicating that this is credit, then I guess the ones that aren't purchased would be defaults, and that would be an extraordinarily high default rate in a credit kind of transaction.

There's clearly a credit element to these transactions, and the fact that 70 percent of them result in purchases, I think, demonstrates that. But there are also elements that aren't credit and that are very hard to fit into the credit framework.

Mr. BARR. Thank you.

The gentleman from North Carolina, Mr. Jones, is recognized for 5 minutes.

Mr. JONES. Thank you, Mr. Chairman.

Mr. Beales, how well do the consumer protections in H.R. 1701 address some of the concerns in your report?

Mr. BEALES. Well, I think conceptually, the approach that it takes is certainly the kind of approach that is consistent with what our report recommended. I think there are some issues about what's included and what's not included where we're not clear on which items should be part of the rental/purchase cost.

The language, for example, talks about taxes and other costs that are payable on sales would not be included. The taxes are clear, but the other costs that might be in or out, we're not sure about.

Some charges have to be taken into account under the statute, but under the approach in most of the credit legislation, a particular charge is either in or out, and we're not sure whether what's taken into account fits with that other legislation.

We're also not clear on how voluntary charges would be handled for optional kinds of services or add-ons, and whether those are in or out, or whether "voluntary" has the same kind of meaning and structure as it does under Truth-In-Lending, or whether there's something different here.

But conceptually, the approach is the kind we recommend. In the details we're not so clear.

Mr. JONES. Well, let me say, and again I want to thank Chairman Bachus, who is not here, this was the purpose that Mr. Maloney and I, in introducing this legislation, we realize that there is a problem that needs to be dealt with, and that starting with this hearing gives us an opportunity on both sides of this issue to see if we can move forward with legislation that does protect the consumer, but also, in my opinion, helps the rent-to-own business.

So, Mr. Chairman, I just wanted to get that statement from Mr. Beales and we'll look forward to going forward, and I yield back my time.

Mr. BARR. I thank the gentleman from North Carolina.

The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I want to focus on two separate things. One is the question of whether there ought to be a Federal standard or a Federal law on this. There has not, as I understand it historically, been any kind of Federal law in this area.

Is that correct?

Ms. SMITH. Right. There was mention of a Federal law for the first time in the early 1980s.

Mr. WATT. OK. I'm looking at page two of your testimony, Ms. Smith, your printed testimony, not necessarily the testimony you gave.

But you say in the middle of the page there, in the second full paragraph, "For firms operating in multiple States, a uniform regulatory framework eases the compliance costs."

I'm prepared to concede that, but I'm wondering whether that, in and of itself, creates a compelling Federal interest in having a Federal standard at all or whether this ought be left to the States?

Ms. SMITH. I was not offering that as a reason——

Mr. WATT. OK. I didn't mean to imply that you were offering it as a reason. I guess the point I'm trying to ask is, are there other compelling Federal interests that the Fed has identified that would justify having a Federal statute on this issue, other than the ease of compliance cost?

Ms. SMITH. We are not expressing support for a Federal law per se.

Mr. WATT. But——

Ms. SMITH. But are there other reasons.

Mr. WATT. This is a different question. The question is, are there any other compelling reasons for having a Federal standard?

Ms. SMITH. A compelling reason might exist if the Federal law provided greater consumer protections than are available under State law.

And our position basically, I think, coincides with this subcommittee's view or approach, which is that there is a balancing that needs to take place in considering the protections that consumers have under existing law, the potential effect of preemption if preemption were to occur of the State law, and then and balance that against benefits to the industry that would result from this.

But, it truly is a balancing of these factors before you could reach a conclusion that Federal legislation is warranted.

Mr. WATT. OK. I'm not sure I got exactly where I was trying to get to on that, but I'll go in another direction, because I'm going to run out of time.

On the report, or the study that you did, Mr. Beales, you indicate—and I'm on page five of your written testimony, the fifth bullet down—"merchandise purchased from the rent-to-own store was rented for an average of 14 months before it was purchased, with 47 percent purchased in less than a year. Merchandise returned to the rent-to-own store was rented for an average of 5 months before being returned, with 81 percent returned within 6 months." I presume these are the ones that were actually returned.

I'm wondering whether inside that time framework, there may be some rational basis for setting up two different standards, one for shorter-term rent-to-own situations and one for longer-term rent-to-own situations which typically result in purchase.

Mr. BEALES. I think the difficulty would be figuring out at the time the transaction occurs, whether it's short-term or long-term. I mean, we can look after the fact and say, if you didn't buy, you typically returned it fairly quickly, but we're looking after the fact.

To regulate the transactions differently, we'd have to look before the fact and figure out how we could tell whether this was a short-term transaction or a long-term transaction. And what may happen

in some chunk of cases is, they start out short-term, but people like the merchandise and don't want to replace it, keep it longer and longer, and then end up buying it. So it may switch from one to the other in midstream as well.

Mr. WATT. Thank you, Mr. Chairman.

Mr. BARR. The time of the gentleman from North Carolina has expired.

The gentleman from Connecticut, Mr. Maloney, is recognized for 5 minutes.

Ms. MALONEY. Thank you, Mr. Chairman.

I think what I'll do is just follow up on Mr. Watt's line of questioning in a sense. We have a number of States that have virtually no regulation at all so this legislation provides, as Mr. Jones and I had indicated earlier, a floor for that.

We also have, and this will be in the form of a question, we also have an industry which is certainly not localized to any State. This isn't necessarily done outside of interstate commerce. The merchandise is procured from the stream of interstate commerce is my understanding. And in fact, the industry is organized, if not on a fully national basis, it's certainly organized on a regional basis with companies that have outlets in a variety of States.

So, is it correct to say that certainly the rent-to-own industry is quite deeply engaged in interstate commerce?

Mr. BEALES. I would agree with that.

Ms. MALONEY. Any dispute over that?

Mr. BEALES. I don't think so.

Ms. MALONEY. Thank you. That's the only question I had, Mr. Chairman.

Mr. BARR. Thank you.

There being no further questions, we very much appreciate Mr. Beales and Ms. Smith, you both being with us today, and if there are any additional materials you wish to submit, the record will remain open for 5 days.

Ms. SMITH. Thank you very much.

Mr. BEALES. Thank you very much.

Mr. BARR. Thank you very much.

Now I would like to effect a transition here and invite our second panel of witnesses to come forward, taking their seats.

I would like at this time to introduce to the subcommittee, Mr. David J. Gilles, the Assistant Attorney General, Wisconsin Department of Justice;

Mr. James Byrd of Byrd's TV, d/b/a Curtis Mathes, Inc., a rent-to-own businessman;

Ms. Mamie Salazar Harper, Secretary, Board of Directors, Association for Progressive Rental Organizations—APRO—on behalf of the rent-to-own industry;

Ms. Margot Saunders, Managing Attorney with the National Consumer Law Center.

On behalf of Chairman Bachus and all Members of the subcommittee, I would like to extend a warm welcome to the four of you today. We appreciate your taking time from your very busy schedules to be with us today to provide background commentary and answers on this important piece of legislation, H.R. 1701.

As I think you all know from sitting through the previous panel, your statements, as submitted, will be included in their entirety in the record, and if each one of you would like to take 5 minutes or less to highlight those portions of your testimony which you believe are most important for purposes of discussion this morning, we certainly invite you to do so.

And then, as with the previous panel, for those Members of the subcommittee that are present and do have questions, each Member of the subcommittee will be recognized for 5 minutes of posing questions, making comments, and receiving your answers.

And with that, Mr. Gilles, if we could start with you, please?

STATEMENT OF DAVID J. GILLES, ASSISTANT ATTORNEY GENERAL, WISCONSIN DEPARTMENT OF JUSTICE

Mr. GILLES. Thank you very much, Mr. Chairman, Ranking Member Waters, and Members of the subcommittee, on behalf of Wisconsin Attorney General Jim Doyle, I would like to thank you for the invitation to appear before you today concerning Federal regulation of the rent-to-own industry.

General Doyle has asked me to testify today in opposition to the bill that's drafted, because it would take away significant and meaningful protections from Wisconsin consumers, and particularly from rent-to-own customers who are among low-income customers in our State who have very few other choices.

My name is David Gilles, and I am an Assistant Attorney General with the Wisconsin Department of Justice, and I work in the Office of Consumer Protection. For more than 25 years, I've prosecuted consumer protection cases, including a number of cases involving the rent-to-own business.

There are three main points I would like to make this morning to explain why the proposal that you're considering to provide Federal regulation for rent-to-own programs would take away existing protections from Wisconsin consumers.

Those three points are as follows:

First, Wisconsin is one of the three or four States that treats rent-to-own programs as consumer credit sales; this bill would preempt that.

Second, this Wisconsin law has helped consumers, and particularly rent-to-own customers in the past.

And third, from the perspective of a consumer prosecutor who enforces consumer protection laws, while well-intended, this proposal would not provide a meaningful tool for State Attorneys General to prosecute unscrupulous rent-to-own companies that are trying to circumvent the standards that you're looking to establish.

Turning then to the first point. In Wisconsin, and this is perhaps the most important point, rent-to-own transactions have been regarded as consumer credit sales under three Court of Appeals decisions that have been in place for almost 15 years. Under these decisions, rent-to-own companies have to disclose the annual percentage rate of interest. Illustrations of what this means are included as attachments to my prepared remarks, but let me give you an example.

In 1998, a customer obtained used living room furniture that cost a cash price of $525 under a rent-to-own program. After 24 months

of weekly payments of about $25, that customers wanted to own the merchandise and would have paid $2600. The effective rate of annual interest was 270 percent.

Now under the Consumer Act in Wisconsin, interest rates are not limited. Rent-to-own companies could continue to charge as much as they want. In fact, lenders in Wisconsin routinely disclose interest rates of 500 percent and they are doing a fairly good business, I understand.

For those consumers who intend to purchase, this would be very useful and helpful information. In Wisconsin, there is a rent-to-own contract form that is approved for use that includes interest rate disclosures so the industry would know exactly how to compute these requirements.

Turning to the second point. The Wisconsin Consumer Act has helped low-income customers in Wisconsin. Our office, in the mid-1990s, had a lot of complaints about overreaching and unfair collection practices. We had complaints that described rent-to-own collectors going into people's houses when they were gone and taking merchandise that they were late in paying.

We had complaints about people receiving letters from rent-to-own companies threatening criminal prosecution. We filed a case, a complaint against one of these companies and eventually settled the case where the company paid $25,000 in forfeitures and was subject to an injunction and made restitution. If we had not had the Consumer Act in place, we could not have done that.

In Wisconsin, under the Consumer Act, before someone goes out and repossesses merchandise, they have to go to court to get a judgment, or at least afford due process opportunity to the customer. This Act would take that away.

Another example of how the Consumer Act has helped is that rent-to-own customers who have allegedly suffered violations of the Consumer Act have been represented in private class actions that have returned over $16 million to thousands of rent-to-own customers in Wisconsin. These remedies that are used to help those people would be taken away by this Act.

The third point I wish to make is that the bill, in my opinion, does not provide very helpful useful tools to deal with unscrupulous practices by rent-to-own companies, setting aside the question of whether or not there should be interest rate disclosure. I want to point out three main problems.

The first is preemption. It's clear today that it is uncertain as to the scope of preemption under this bill, but what is certain, and I can assure you I can guarantee will happen, that any defense attorney faced with a prosecution by a State attorney general will raise preemption and that will delay prosecution.

The second point is that the bill does not provide traditional consumer protection remedies. There's no provision for a State attorney general to get an injunction. There's no provision authorizing restitution. There's no civil penalty involved and if the bill preempts all State law, then the attorney general really doesn't have many tools to go in to deal with fraudulent operations under this bill.

The third point is that particular provisions, some of them don't provide meaningful protections, and the example I would like to

give is the requirement that television commercials and radio announcements, when they make a specific statement about how much you have to pay, have to include other information. That's similar to what I call trigger terms in a credit transaction where someone says, if you pay so much a week, you can own a car or something like that. In that context, when those trigger terms are made, additional information has to be provided.

Well, if you look in this bill, although it says additional information has to be provided, the way it has to be provided, it's permitted to be provided by disclosing only an 800 number that someone has to call to get the other information. Now, if the initial information is deceptive, if a rent-to-own company says, "Own a TV for $5 a week or $10 a week, come visit us," and the only way you get the other information, well, the deception isn't cured, the harm has been done, someone has been influenced by that ad, without it having been put in a meaningful context.

And I submit that the only type of ads that you would see under this proposal are ads that say, rent to own this for $20 a week, and give an 800 number, and who is to know when you would get the meaningful information or the additional information when you call that 800 number?

In summary, and in conclusion, I would like to again say that this proposal does not set a floor, it certainly doesn't set a floor for consumer protection in Wisconsin. It would take away Wisconsin's Consumer Act prohibitions against deceptive advertising that require disclosure, it would take away protections against deceptive and overreaching sales practices, it would take away protection against unauthorized, involuntary repossession. It would take away protections against overreaching collection tactics, and it would eliminate remedies currently existing under Wisconsin law.

And for these reasons, the Wisconsin Department of Justice and Attorney General Jim Doyle oppose this bill.

Thank you very much. I again appreciate the opportunity to be here today, and I'd be happy to answer any questions that Members of the subcommittee may have.

[The prepared statement of David J. Gilles can be found on page 57 in the appendix.]

Mr. BARR. Thank you very much, Mr. Gilles.

They've called a vote on the floor so that we'll have to, hopefully very briefly, adjourn the hearing here so Members can go vote. I'm informed it is just a single vote, so it shouldn't take too long, certainly long enough if you all need to take a quick break, and we'll reconvene as soon as the vote is concluded.

[Recess.]

Mr. BARR. If we could reconvene please. Thank you again, Mr. Gilles.

Mr. Byrd, if you would please, sir.

STATEMENT OF JAMES E. BYRD, OWNER, BYRD'S TV SALES, SERVICE AND RENTAL, FLORENCE, SC

Mr. BYRD. Thank you.

Mr. Chairman, Members of the subcommittee, I would like to thank you for inviting me to testify today regarding H.R. 1701. My name is James Byrd and I am the owner and operator of Byrd's

TV Sales, Service and Rental in Florence, South Carolina. I'm also a member of the Association of Progressive Rental Organizations, (APRO).

I have been in the consumer electronics business for 42 years. I started in 1959 after graduating from Denmark Technical College with an electronics and television technician diploma. At first, I opened my business doing radio and television repair service only. In 1963, I expanded my business into radio and television sales and service, and I have been at the same location since that time.

Byrd's TV is a family business. Over the years, all four of my children and my grandson have worked in the business. By the early 1980s, increased competition from large electronic dealers and discount stores forced me to re-evaluate my business strategy. In 1982, I added furniture and appliances to my product mix. This helped me to make up the loss of the electronics business.

I found that some of my customers could not qualify for credit and some had temporary needs. To meet these special needs, I also began to offer rent-to-own. Since I began to offer rent-to-own in 1983, my business has grown substantially. Today, about 70 percent of my business is rent-to-own, and the other 30 percent is a combination of retail sales and repairs.

You might wonder why a rental dealer in South Carolina is interested in Federal rent-to-own legislation. This may seem like a matter that only the large companies would care about. I am supporting this legislation for two reasons. First, it will raise the standards in the rent-to-own industry. Because of my concern about the well-being of this industry, I have been an active member of APRO for approximately 15 years, and I have supported its effort to improve the industry through legislation and dealer education. I believe improving the standards in this industry will increase the public confidence in rent-to-own and help the industry grow and prosper.

Second, the long-term viability of this industry is of great importance to me. If you think about it, from my perspective, I have more at stake than large companies do. My entire livelihood and future and my whole life earnings are in my business in South Carolina.

Reclassification of the transaction as a credit sale, rather than a lease in South Carolina would destroy the business I have worked hard to build. That is why Federal recognition of the transaction as a lease is important to me.

I hope that someday my grandson, Derrick, will take over my business and continue to provide the high level of customer service and satisfaction that I have provided for 42 years. Passing H.R. 1701 would help ensure that is possible.

Thank you for your consideration. If you have any questions, I will be glad to answer.

[The prepared statement of James E. Byrd can be found on page 85 in the appendix.]

Chairman BACHUS. [Presiding] Thank you, Mr. Byrd. You actually almost gave a 5-minute statement, which is unusual, so I want to compliment you on that.

Very good.

Mr. BYRD. Thank you.

Chairman BACHUS. Ms. Harper.

STATEMENT OF MANUELA S. HARPER, SECRETARY, BOARD OF DIRECTORS, ASSOCIATION FOR PROGRESSIVE RENTAL ORGANIZATIONS, ON BEHALF OF THE RENT-TO-OWN INDUSTRY

Ms. HARPER. Thank you, Chairman Bachus and Members of the Financial Institutions Subcommittee. It is my pleasure to have this opportunity to talk to you today about my business and H.R. 1701.

My name is Manuela Salazar Harper, but my friends and customers call me "Mamie." I'm a businesswoman from El Paso, Texas. I own and operate four rent-to-own stores. I've had my own business for 10 years. My company employs 14 persons to work for me, and we've served the citizens of El Paso and Canutillo, Texas, and Sunland Park, New Mexico, during that time.

I'm extremely proud of the fact that I, a second-generation Hispanic-American woman, have built my own business from the ground up. I can provide my employees with a middle class lifestyle while offering a package of services and goods for my customers.

For many of you, the concept of rent-to-own may be unfamiliar. Basically, APRO members rent household durable goods such as appliances, furniture, electronics, and computers. We rent by the week or by the month on an agreement that's renewable at the option of the customer, but does not obligate the customer even to make another payment.

Our customers never go into debt with us. Likewise, other merchants use this transaction for other types of goods. For example, the music and band instrument business. If my son tells me he wants to learn how to play the trumpet, I'd rather not go out and spend a thousand dollars to purchase the instrument, when I can go on a rental/purchase transaction and, with the convenience and flexibility that it offers, I can rent that trumpet with no obligation to own, but with the option to own.

We also provide full service on the rented goods during the term of the agreements. If, for any reason, we are unable to repair the item in the customers homes, we provide temporary replacement items or loaners, while we repair the original rented item.

This commitment to provide full service and replacement merchandise extends as long as the agreement is in effect and additionally applies whether the merchandise is new or used.

When our customers choose to terminate their rental agreements, and they can do this at any time for any reason or for no reason, we simply pick up the merchandise and there are no charges to the customer.

The predominant portion of our business involves serving customers who need and want nice things for their home and their family, but they may not have the cash, the credit, or the present desire to go out and buy these directly. Due to past credit problems, financial instability, and future uncertainties that many of our customers face each and every day, they need and want quality products, financial flexibility and convenience that our transaction affords them.

APRO members support H.R. 1701, the Consumer Rental Purchase Agreement Act, because we believe that it balances the interest of the consumers and the concerns of the industry. H.R. 1701

incorporates consumer-oriented improvements over Federal bills introduced in prior years. It adopts the FTC policy recommendation on how best to disclose the total costs of a rental/purchase transaction.

For instance, we ensure that all rental merchandise would bear a label or tag that provides the price of the merchandise, if purchased for cash, the rental payment amount, the total number of payments required to acquire ownership, whether the merchandise is new or used, and the total cost of ownership that consists of the sum of all rental payments and any other mandatory fees or charges.

This is full disclosure that is also applicable to any of our advertising that in ads that we run, whether they are print, radio, or television, we disclose the cost outline for the merchandise, that it is a rental/purchase transaction, the amount, the timing, the number of the merchandise payments, and informing the customer whether the product is new or used. So this is full disclosure.

Also, H.R. 1701 strengthens the enforcement provisions in response to concerns raised by consumer advocates. H.R. 1701 would raise the standard for disclosure and other practices in many States. This enhanced, but fair regulation would add to the ongoing efforts of dealers like myself and Mr. Byrd, who are trying to upgrade the image of our industry.

Additionally, long-term benefits accrue of having a Federal stamp of legitimacy akin to a "Good Housekeeping Seal of Approval" that this bill would provide. For some of our dealers, this would provide better financing options for startup and expansion plans. The bill would provide stability and certainty for the five publicly-traded companies.

Enactment of H.R. 1701 would represent a final, unambiguous legal determination that our transaction is not properly characterized as a form of consumer credit, but is something entirely different and unique. Every day, we face the threat of lawsuits alleging that the Federal Truth-In-Lending Act or the Consumer Leasing Act, applies to our transactions.

Many of our members have operations in more than one State and this bill will help reduce the burden of regulatory compliance. Even if I'm doing business in one State, like I do in Texas, but I also have customers in New Mexico, with H.R. 1701, I can use one set of agreement forms and one version of advertising disclosures instead of two or more.

For these reasons, we ask you to support H.R. 1701.

Thank you, Mr. Chairman, and Members of the subcommittee.

[The prepared statement of Manuela S. Harper can be found on page 88 in the appendix.]

Chairman BACHUS. Thank you, Ms. Harper.

Ms. Saunders, we look forward to your testimony.

STATEMENT OF MARGOT SAUNDERS, MANAGING ATTORNEY, NATIONAL CONSUMER LAW CENTER

Ms. SAUNDERS. Thank you, Mr. Chairman, Members of the subcommittee. My name is Margot Saunders and I am here representing the low-income consumer clients of the National Con-

sumer Law Center, the Consumer Federation of America, Consumers Union, and the United States Public Interest Group.

Since I graduated from law school 23 years ago, I have had the privilege of representing low-income consumers almost consistently, first in legal services in North Carolina, and in the last 10 years, up here in DC with the National Consumer Law Center.

Something is wrong with this picture. The consumer advocates are not asking for this bill. In fact, if you would like our input on a truly consumer-oriented bill to protect the rent-to-own customers that we represent, we would be very happy to work on one.

But this is not a consumer protection bill. The one single purpose of this bill is to protect this industry from potential liability.

There are a myriad of things wrong with the bill, and I will go through the problems. There has been a lot of discussion about preemption. The language in the bill leads us to believe that it would preempt many better State laws. I went through the State laws of almost every State, and found, in the largest 15 States, which represent 55 percent of the population, that there are better consumer protection provisions in those State laws.

If the intent of this bill is not to preempt these better provisions, that's great, but the bill needs to be amended to say that. I think there's also a misconception about what the rent-to-own industry really is. There are 5,000 stores that are members are APRO.

According to the Association of Progressive Rental Organizations, 4400 of those stores are owned by five companies. This is not an industry that is all mom and pop shops. It is almost completely dominated by five large companies.

I would also like to address very quickly the difference between the FTC figure on the keep rate, how many rent-to-own customers actually achieve ownership, and the industry's statistic. The industry says 26 percent, the FTC says 70 percent.

We believe that the distinction is because the industry is counting contracts. They look at each contract and say, how many of these contracts result in an ownership? The FTC is counting customers. They asked the customers, when you entered this, how many of you did achieve ownership? Those two numbers are entirely consistent based on this different perspective, and the scary thing—when you realize the different perspective—is that 50 percent of rent-to-own customers are then paying more than the minimum required on a single rent-to-own contract to actually achieve ownership. So it costs them even more.

In terms of meaningful consumer protections, we do think that these transactions should be credit sales. However, even if we walk away from that position, we can develop significant consumer protections while treating these transactions as rent-to-own. But the first such protection requires a limit on the total of payments. There's got to be a definition of cash price, which actually means something. There's got to be reinstatement provisions that protect the consumer after a default.

There's been a lot of discussion about disclosures. My seat mate next to me, Ms. Harper, just talked about the tag disclosures. We agree. Tag disclosures that a consumer can look at right in the store, while they are deciding whether or not to buy or to rent-to-

own a particular item, are the single most valuable disclosures one can make.

It is very interesting that this House bill, H.R. 1701, provides no liability for failure to make tag disclosures unless the consumer can show actual damage for the failure to provide them. Now how can a consumer show actual damage for the lack of disclosures? That standard is impossible to meet.

I'd like to highlight one other point very quickly. This industry pushes on when a rent-to-own customer agrees to a number of additional charges over and above the simple cost of buying or renting to own the item.

One of those charges is LDW, Lost Damage Waiver coverage. This is a particularly heinous fee. The common law says that when a lessee rents a piece of property and the property is destroyed or lost through no fault of the lessee, there is no liability on the lessee; the loss falls to the lessor.

But this industry deliberately, by contract, switches the burden of loss, putting it on the lessee, the customer, and then says to the customer, if you want to avoid that potential for loss, you've got to pay an additional fee, the LDW fee, which is often a significant portion of the total cost. Under this bill, that fee itself would not even be included in the total of payments.

I represent a number of consumer groups in this town and many, many consumers across the country. We stand unalterably opposed to this bill, but we are very happy to work on a true consumer protection bill.

Thank you.

[The prepared statement of Margot Saunders can be found on page 92 in the appendix.]

Chairman BACHUS. I appreciate that.

Mr. Gilles, I was an Assistant Attorney General, too, from the State of Alabama. My question, reading your testimony, I take it you are here representing the consumers of the State of Wisconsin, or the people, citizens of Wisconsin.

Mr. GILLES. Well, I'm here at the direction of Wisconsin Attorney General Jim Doyle, who is responsible, as elected by the citizens of Wisconsin, and is responsible for enforcing Wisconsin's consumer protection laws.

Chairman BACHUS. And I know it sounds loud to you, but if you will pull those microphones closer to you. Just yank on them and pull them right up to you. You can't be too loud.

I know you are concerned about the enforcement of your existing Wisconsin law which, according to your testimony, is a strong law and is attempting to protect consumers as the people of Wisconsin have chosen.

Your main concern—or is this fair to say? Your main concern is that we don't do anything in this legislation which preempts Wisconsin law?

Mr. GILLES. That certainly is the primary concern that we have, Mr. Chairman.

Chairman BACHUS. And would you be willing to work with us to see that the bill does that?

I think also, Ms. Saunders, you mentioned, that you gave a figure that you believed 15 States, representing 52 percent of the con-

sumers, may have stronger laws today. I know you both expressed that this is major concern of yous.

Mr. GILLES. Mr. Chairman, we would certainly be willing to work with the subcommittee to ensure that Wisconsin's approach to rent-to-own practices is not preempted.

Chairman BACHUS. OK. Let me move on to another thing Ms. Saunders mentioned, and I actually had questions for the first panel, and I was limited to 5 minutes too. I'm not sure anyone asked, but there is a discrepancy in the purchase rate. The FTC says one thing, the industry says another.

Now I might say, Ms. Saunders, that maybe with my legal background, I would—as opposed to a survey which is the FTC, I think I would be more inclined to look at the hard data, the transactional data that the industry supplies, as opposed to a memory of a consumer over the phone. You know, a survey can misstate, depending on how the question is posed. How would you respond to that? Do you believe there's misrepresentation?

Ms. SAUNDERS. Mr. Chairman, I think the problem is not the memory of the customer, I think it's the different way they are counting. I think the FTC is counting, ask the customer, did you achieve ownership, and the answer is, yes, they achieved ownership. But the customer may not distinguish, and is probably not distinguishing between contracts. The fact is that the dealer is distinguishing the achievement of ownership between each separate contract. So that's a way to explain the discrepancy.

Also, in a number of lawsuits, and I can get you the citations for those lawsuits, the discovery indicated in Minnesota, and perhaps in Wisconsin, that the ownership keep rate is closer to the 70 percent rate rather than the 26 percent rate.

In other words, the discovery provided the plaintiffs in the lawsuits from the industry itself has showed the number is closer to the higher number.

Chairman BACHUS. Let me ask Ms. Saunders, and Ms. Harper can respond to this, the 15 States you mentioned, Texas or South Carolina, were they included in those 15 States?

Ms. SAUNDERS. Texas and South Carolina were not included, no.

Chairman BACHUS. Texas is?

Ms. SAUNDERS. I did not look at South Carolina. I'm sorry, I had only one day to prepare the testimony, so I didn't look at every State. I do not recall looking at South Carolina or Texas.

Chairman BACHUS. OK. The 15 States you're talking about, are any of them Southern States?

Ms. SAUNDERS. West Virginia, Tennessee. Actually Texas I did look at. I'm sorry. Texas includes limitations on late fees and fees for reinstatement that are not found in this bill. West Virginia has a limitation on total of payments and a definition of cash price, which is better than this bill. North Carolina has a much better bill than this bill, which is certainly a Southern State.

Chairman BACHUS. What about those States like Alabama, in which the law doesn't rise to H.R. 1701? What if we did put a provision in that said any State law that has stronger enforcement survived, then would not legislation of this type be a step forward?

Ms. SAUNDERS. Yes, sir. But then I don't think it satisfies the industry's need for certainty and uniformity.

Isn't the purpose of this bill——

Chairman BACHUS. I think what it provides is uniformity in those States which have very little law, and then at States going above that, at least there would be a floor of protection.

Ms. SAUNDERS. Well, if that's the intent, then that would be great, but what would the effect be in New York, New Jersey, California where there are higher——

Chairman BACHUS. No, I'm saying, if you've got a stronger statute like Wisconsin, and we craft language—and I'm not saying the industry, I don't speak for the industry, but I think there's bipartisan support for a uniform national protection of a floor on these transactions and some definition and a national standard.

Certainly, I would be very hesitant to disregard State law, and I will tell you the sponsors, in talking with them, they're saying that's not their intent. I'll take them at their word.

Sometimes the language in our bills, you know, we think that it does something, but Mr. Gilles has pointed out, and you pointed out, that the language may need to be strengthened.

Ms. SAUNDERS. That's great, Mr. Chairman. We appreciate that. What would happen, in your opinion, to those States that still called these transactions credit sales, like Wisconsin and Minnesota and New Jersey.

Chairman BACHUS. I think that's a harder question. I know we rely on the Federal Reserve and FTC on that, and I think that's going to be something that we're going to have to hash out as a subcommittee, and we look forward to your input.

Ms. Harper.

Ms. HARPER. I wanted to state on behalf of the Association that our intent is that H.R. 1701 does not preempt State law. If that's a concern my colleague has, we want to set the record straight. We aren't going to preempt stronger State laws, they'll be free to add more stringent regulations if they wish to.

We do know that H.R. 1701 sets that Federal floor, sets that Federal standard and the States have the ability to add more stringent regulations, more consumer protections in the areas of collection laws, rent-to-own pricing, cash price, and other fees and charges.

What H.R. 1701 really boils down to is that this transaction that we have, the rental purchase transaction, is a lease and not a sale. And we leave it up to the individual States to put in whatever consumer protections, disclosures and advertising pricing collection practices that they need to do to protect their citizens. We're in total agreement with that.

Chairman BACHUS. Thank you. What we are talking about, I think we all agree, is a floor, not a ceiling of protection. Thank you.

The gentleman from North Carolina.

Mr. WATT. Thank you, Mr. Chairman.

First of all, Ms. Waters asked me to please extend her apologies for having to leave. This is a terrible day for, as you probably see, it's a very important subject we are dealing with here, but few Members are able to come, because people are tied up in various meetings about campaign finance reform, trying to see whether some agreement can be reached, negotiations, other things.

And I want to applaud the Chairman for calling the hearing. You always take your chances around this place. You just don't know what competing things are going to be going on.

But, Ms. Waters had an absolutely important commitment to be in a meeting and I told her I would stay here and kind of hold down the fort in her absence, because I knew she needed to go to that meeting.

I, like the Chairman, would like to take Mr. Jones and Mr. Maloney at their word that this bill is not going forward, certainly will not be intended to preempt either substantive State law or procedural State law or even the law where there is a conflict between whether these are rental transactions or purchase transactions, all of which, if we did all of that, I think we would deal, I think, with what the State of Wisconsin is concerned about.

I take that to be the case. Am I correct in that?

Mr. GILLES. I believe so.

Mr. WATT. But beyond that, I still am not—and I don't have an opinion on this—I'm trying to figure out what my opinion should be. I'm still not convinced of the substantial Federal interest in legislation in this area.

I know that this industry is, to some extent, very highly concentrated and a number of companies that control the industry, or the bulk of the sales in the industry, operate interstate. Well, I take that back. They operate individual stores in different States, and may do some interstate operation.

But, I'm trying to find whether there is some other compelling Federal interest that we have here. And I don't have a handle on that or a brief for or against that. I'm just trying to find out what the compelling Federal interest is. Is there some compelling interest?

Mr. Gilles, you deal with this every day. I take it most of what you do is inside the State of Wisconsin, so what's the interstate commerce connection that I think would be one logical reason for having Federal regulations?

Mr. GILLES. Well, it's true that there are companies that operate in many States. The industry is very, very localized, and it's like any other industry, particularly those that are being considered for consumer protection purposes, as well as for credit purposes.

That has been a matter that's been traditionally subject to State regulation, and I don't see any overriding Federal concern beyond the commercial interests of these companies that would require this industry to be singled out specially for separate regulation, let's say, different than people who sell cars, different than people that sell stereos.

I mean, there's no reason to single out this particular industry that is providing consumer goods.

Mr. WATT. That's a double-edged sword there, I would think, if that is the case. Suppose we define this as a sales transaction or a credit transaction. What would be the compelling reason to have them subject to the fair credit reporting laws or the disclosure laws?

Mr. GILLES. I think if you view this as a credit sale, as we do in Wisconsin, then it is important to provide people information so that they can really compare these transactions, and it's not being

done throughout this country, other than in a couple of States. I believe that's a compelling interest in providing people with useful information.

Mr. WATT. Let me ask the question to Mr. Byrd, because he's my South Carolina neighbor right across the line there from North Carolina.

Do you have customers outside South Carolina typically regularly?

Mr. BYRD. All of my customers are within South Carolina.

Mr. WATT. Do you realize that if this statute——

Well, first of all, does South Carolina have a statute that governs rent-to-own at all?

Mr. BYRD. Yes, they do.

Mr. WATT. Do you realize that to the extent this is a stronger statute than the South Carolina statute, or even possibly even if it's not stronger, and litigation is brought under this Federal statute, you're probably going to have to defend all your lawsuits in Columbia, rather than Florence, in the Federal court, rather than the State court.

Mr. BYRD. That much is so, but what we are concerned about is South Carolina is pretty well close to this H.R. 1701.

Mr. WATT. I'm talking about convenience now. I'm not talking about substantive law. I'm just talking about in terms of your own personal convenience. I assume you periodically every once in a while, probably not often, get into some legal dispute. If this statute is in effect, a Federal statute, I presume that litigation is going to be brought in the Federal court, rather than in the State court of South Carolina, and the question I'm asking is, wouldn't that be less convenient for you, as a local business owner, dealing with local business customers, than having a State statue in place where the disputes would be litigated under State law in the State court?

Mr. BYRD. That wouldn't bother me any, but I can't foresee, in a sense, that happening because of the fact, as I mentioned with a sales contract, and I do both, I've been in business for 42 years. With any of my sales contracts that I had any litigation on or whatever, it was settled right there in Florence, and they do have a Federal court right there in Florence. I don't have to go to the State capital.

Mr. WATT. You do have Federal court in Florence? OK, I didn't realize that. I'm sorry. I just assumed that all your litigation in Federal court took place in Columbia or some place away from Florence. I didn't mean to misrepresent it. I just didn't understand that.

I'm still wrestling with this, Mr. Chairman, as you can see. I appreciate the Chairman having the hearing. I too have to leave.

Chairman BACHUS. I think this is a good place to wrestle with these issues.

Mr. Jones.

Mr. JONES. Thank you, Mr. Chairman.

Mr. Gilles, let me ask you, how many rent-to-own businesses do you have in Wisconsin?

Mr. GILLES. I'm not certain.

Mr. JONES. How many have you taken to court?

Mr. GILLES. The State of Wisconsin has had enforcement actions against four companies.

Mr. JONES. Are they still in business?

Mr. GILLES. Two of them are.

Mr. JONES. If you would, would you submit to the subcommittee how many rent-to-own businesses are in the State of Wisconsin?

Mr. GILLES. I can certainly try and get that information. I'll try and get it, they aren't required to file with the State, but I think I can get it from the trade association in Wisconsin.

Mr. JONES. Thank you.

Mr. Byrd, let me say to you, as a person who strongly supports the individual that can develop a business, you are to be commended, you and your family, for being in the business 42 years. And I would imagine in this 42 years, I can't imagine you remaining in business, quite frankly, for 42 years if you had not treated your customers fairly.

Mr. BYRD. That's right.

Mr. JONES. Maybe it's because you're from South Carolina, I don't know, but you just seem to be that type of person that you're going to treat your fellow man as fairly as you can and still try to make a profit and stay in business.

Mr. BYRD. That is right, Representative Jones. And that's why I am in business, I believe, by having satisfied customers. We treat the rent-to-own customers no different than I would treat a sales customer, because I predict right now about 85 percent of my customers in rent-to-own are repeat customers and sales. That's what keeps me in business, because advertising has got so high, I can hardly afford to advertise, so I have to keep the customers happy and keep them coming back.

Mr. JONES. Thank you.

Mr. Chairman, what Mr. Maloney and I were trying to do in working on this bill, this is the year 2001. I think the rent-to-own business has made so many advances over the past few years, to help improve their industry, and you can only improve your industry if you improve your customer base. You're not going to be in business if you don't have customers. And to Ms. Saunders, whom I know from my days in Raleigh, North Carolina, when I was in the General Assembly, we put this bill in a year ago, and one of the biggest pleasant surprises I had was then-Congressman, and now United States Senator Charles Schumer, came in on this bill.

I don't really believe there is a bigger advocate for the consumer than Charles Schumer. You might disagree or agree, but I think you see bipartisan support for this bill, and none of us would want to preempt States' rights, I am a States' rights Congressman.

Many times I voted against our leadership here in Washington. I'm a Republican simply because I don't want to take from the States. I think truthfully, wherever that might be a problem, we're going to work with the Democratic side and the Chairman, to make sure that we clarify anything that needs to be clarified.

I would like to say to Ms. Harper that when I hear some of the comments, is it not true that the industry was willing to work and improve consumer protection and expand disclosures so that maybe you could finally bring the question to a finality of whether the definition of lease versus sale?

Ms. HARPER. Absolutely. We have wanted to work with consumer advocates and everyone else to address the concerns, and we did take the FTC's recommendation that we add more information about the full disclosures, all the fees, all the other charges. That's what H.R. 1701 provides.

Mr. JONES. I think, Mr. Chairman, again, I want to thank each and every one that is on the panel and thank you for this hearing, because I really believe from this hearing that there is a need for this legislation.

Now, again, H.R. 1701 is the start, but I believe there is a problem that needs to be fixed and I want to thank you for holding this hearing, and we look forward to working with the Democrats on this subcommittee, we look forward to working with you in moving this bill forward.

So, I want each and every one on the panel who has a concern to know that Mr. Maloney and I are very sincere when we say that we are looking to work with you to make this bill so that each side on this issue comes out a winner.

With that, I yield back my time.

Chairman BACHUS. Thank you.

I'm going to start a second round of questioning, and I'll probably just ask one question.

Mr. Gilles, we've got the Truth-In-Lending Act, (TILA), and the Consumer Leasing Act. The rent-to-own industry predates that, but they're not covered in it. Do you think that was intentional?

Mr. GILLES. My understanding, Mr. Chairman, is that there were decisions applying Truth-In-Lending to the rent-to-own industry in the 1980s, and at some point in time, the rent-to-own industry was effective in securing an administrative determination that they were outside the scope of Truth-In-Lending.

So my understanding is that at the time Truth-In-Lending was enacted, it was intended to cover all sorts of transactions that had time-price differences, where people wound up owning merchandise, and it was intended to deal with a wide disparity of credit terms that were in the marketplace. So people, if they wanted to pay for something on time, would be able to compare the various offers out there.

But at the present time, it's my understanding of the current status of Federal law, and I believe that dates from a point in time in the 1980s, that there was a definitive ruling by Federal authorities that Truth-In-Lending did not apply to rental/purchase contracts.

Chairman BACHUS. That's my understanding.

Let me close by saying this. We have an industry that, at least according to the FTC, 75 percent of the people are satisfied with. And those that aren't, aren't satisfied with the price. You know, that to me would be pretty close to what, if you walk in the store and bought an item outright.

At least, that is according to what the FTC says. Now maybe what the FTC is saying is flawed, but that's what we're hearing. We are also hearing, and I am aware of this, that people make rent-to-own decisions and are repeat customers. They continue to come back.

Now, I won't have to tell you this. This is America and we give people choices. They make judgments and sometimes we question their judgments.

The Dave Matthews Band came to Birmingham a few weeks ago and about 300 students at the University of Alabama went to pawnshops and left items, and a lot of them didn't retrieve those items. Some of them did, and those that did paid a tremendous interest rate.

Yes, I wouldn't have done that, I'd have passed up on Dave Matthews if it took pawning something. But the talk, according to my son, is at the university that this is a great way in the future that more students are going to take advantage of pawnshops.

[Laughter.]

Chairman BACHUS. Most of them hock stuff, you know. That wouldn't have been my judgment, and there are three million Americans, poor Americans, that are making this judgment. I don't think it's the role of Congress to do what my sons also say. When I find they do something I disagree with, they say "Dad, don't give me another self-improvement book."

You know, I don't think it's our role to take away somebody's option or choice, even though we may disagree with it. I do think it's our role, and I think there is a Federal role in establishing a floor protection for those people.

And I will tell you at the same time, I feel very strongly that our role should not be preempting the States which want to offer stronger protections. But I don't think it's our role to say people shouldn't go to pawnshops; they shouldn't go to rent-to-own; they shouldn't make these transactions. That's part of freedom. That's part of what we enjoy in a democracy, the right to give people these choices and not condescend in our judgment.

So, I very definitely believe that we have a Federal role, and I believe that the bipartisan support on this bill reflects that this body believes that the right kind of legislation needs to address this.

And I think every industry, as long as it is a legitimate industry—and I don't question the legitimacy or legality of this industry—deserves predictability or some uniformity. Every other industry has it. I don't think this industry ought to be any exception. I want to work with all groups to see that consumers are treated fairly under any legislation we pass.

Again, I'm going to say that we don't preempt the citizens of Wisconsin and what they have chosen to do.

Thank you. We appreciate your testimony. The hearing is adjourned.

[Whereupon, at 1:00 p.m., the hearing was adjourned.]

A P P E N D I X

July 12, 2001

OPENING STATEMENT OF REP. SPENCER BACHUS JULY 12, 2001, HEARING ON H.R. 1701, THE CONSUMER RENTAL PURCHASE AGREEMENT ACT

The Subcommittee meets today to consider the merits of bipartisan legislation introduced by our colleague from North Carolina, Walter Jones, to establish uniform national standards for so-called rent-to-own transactions.

The rent-to-own industry, which has experienced dramatic growth in recent years, provides consumers with immediate access to household durable goods such as furniture, appliances, and computers, usually with no down payment required. In a standard rental-purchase agreement, a customer leases the product for a week or a month, and at the end of this period, can do one of three things: (a) return the product with no obligation or penalty, (b) keep the goods and rent for another period, or (c) purchase the item. A customer who continues to lease the goods for a specified period of time eventually acquires ownership of the item, usually after about 18 months.

An estimated 3 million consumers enter into rent-to-own transactions every year. The typical customer for these services is someone who cannot afford to purchase the property outright, and may not qualify for credit. In addition, some consumers rent merchandise to meet short-term needs, or for the purpose of trying out a product before deciding whether to buy it.

Some consumer advocates have questioned whether the rent-to-own industry exploits consumers who may not have access to lower-cost alternatives, either because of bad credit histories or because they live in neighborhoods forsaken by traditional retailers. Prompted by these concerns, the Federal Trade Commission staff conducted a nationwide survey of rent-to-own customers, releasing its findings in April 2000. While I will defer to the FTC representative who is here this morning to summarize the agency's work, it is worth noting that the FTC staff's conclusions contradict many of the claims of the industry's critics. For example, according to the survey, 75% of customers expressed satisfaction with their rent-to-own experience,

causing the FTC staff to conclude that "the rent-to-own industry provides a service that meets and satisfies the demands of most of its customers."

Currently, there is no Federal law governing rent-to-own transactions. While most states have enacted laws regulating the industry, the level of consumer protections afforded by those statutes varies widely from state-to-state.

Mr. Jones' bill, H.R. 1701, fills the void that presently exists in Federal law by imposing uniform standards requiring the merchant in a rent-to-own transaction to make a comprehensive set of disclosures regarding the total cost of the transaction to the consumer. These disclosures must appear on product labels or tags, and in advertising and the rental-purchase agreement itself. The consumer protections included in H.R. 1701 are drawn largely from recommendations made by the FTC staff in its April 2000 report on the rent-to-own industry.

The bill also establishes as a matter of Federal law that rent-to-own transactions are leases rather than credit sales, which is consistent with their treatment under the laws of 46 of the 50 states. Consumer advocates take exception to this approach, arguing that rent-to-own arrangements should be considered credit sales, subject to the wide range of Federal and State consumer credit laws, including the Truth in Lending Act.

The Subcommittee, in close consultation with the Minority, has invited both proponents and critics of H.R. 1701 to testify at today's hearing, as well as representatives of the Federal Reserve and the FTC, which would be responsible for interpreting and enforcing the legislation if enacted.

Before recognizing other Members for opening statements, let me commend the gentleman from North Carolina, Mr. Jones, and the gentleman from Connecticut, Mr. Maloney, for tackling what has historically been a contentious issue in this body, and crafting a bipartisan bill that has attracted 20 Democrat cosponsors, including eight Members of this Committee.

I am now pleased to recognize the Ranking Member, Ms. Waters, for any opening statement she would like to make.

Opening Statement (prepared, not delivered)

Chairman Michael G. Oxley

Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit
July 12, 2001 10:00 a.m.

"H.R. 1701, the Consumer Rental Purchase Agreement Act"

Good Morning. Chairman Bachus, thank you for holding this hearing today.

I am pleased that this Subcommittee is reviewing this issue. Congress has wrestled with the issue of regulating the rental-purchase industry for the past decade, including public hearings and the introduction of many legislative measures. It seems appropriate that the new Committee on Financial Services should try to tackle this issue.

I am particularly pleased with the bipartisan support this legislation has received. I would like to thank Messrs. Kanjorski, Ford, Sandlin, Shows and Sherman for their work on this issue and I look forward to working with Ms. Waters, Messrs. LaFalce and Jones and their staffs on this piece of legislation.

H.R. 1701 has come farther than any other attempt to bring together both the interests of the rental-purchase industry and consumers.

The consumer disclosures this bill provides are extensive. They provide the consumer with more information and clarity when shopping for and deciding to enter into these types of transactions.

This legislation will ensure greater price disclosures without restricting an industry that meets the demands of many customers.

This legislation does more than provide consumer protections and heightened disclosure by providing a federal floor for consumer disclosure, leaving the states free to enact stricter disclosure requirements. It also provides clarity and uniformity to the patchwork of state laws that currently exists.

Forty-six states have laws that regulate this industry, all with their own variation on what consumer protections, disclosures, liabilities and enforcement powers should apply to the industry. Three states base their regulation of the industry on case law. One state has no specific law that regulates this industry.

H.R. 1701 will provide uniformity and clarity for the industry and for consumers, while leaving states' rights intact.

I'd like to thank our witnesses for agreeing to appear today. I look forward to hearing your testimony and working with you further on this matter.

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JULIA CARSON
10th District, Indiana

COMMITTEE ON
BANKING AND FINANCIAL
SERVICES
Subcommittee on Housing and
Community Opportunity

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Congresswoman Julia Carson
Opening Statement - Subcommittee on Financial Institutions & Consumer Credit
Hearing on H.R. 1701
Thursday, July 12, 2001

JULIA CARSON

Mr. Chairman, thank you for convening this hearing today and thank you to the witnesses for attending. I look forward to listening to your comments.

As we are all aware, almost any household item can be obtained on a rent-to-own (RTO) basis including furniture, appliances, even dishes and pots and pans. For low-income individuals or people starting their own businesses, the rental market can sometimes offer a less-expensive way to get items they otherwise could not afford.

However, continued concerns over the rental-purchase transaction has made it a legislative issue with the federal government for more than a decade, including six public hearings since 1982 between both houses of Congress.

To date, 47 states have passed laws which require rental-purchase stores to disclose certain relevant information to consumers. My own state of Indiana passed such a law in 1987.

In 1995, an Internal Revenue Service ruling defined Rent-to-Own (RTO) transactions as a lease, not a sale. This decision was then incorporated into the Taxpayers Relief Act of 1997 by Congress.

While the industry welcomed this decision, claiming that it would save the industry and its customers an estimated $1 billion in additional taxes per year, many consumers groups do not agree. Many consumer protection groups argue that this change in language is the most dangerous part of RTO transactions.

Because a "rent to own" store will sell goods on credit by calling the transaction a "lease", when a consumer comes to actually purchasing the item the interest rates can be through the roof. Many RTO operators routinely charge the equivalent of 100, 200, or even 300 percent interest on their contracts. Through a rent-to-own , a poor woman may pay $1,200 for a $400 television set that a rich man could buy on credit for $450.

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This is an industry that clearly markets to the more needy and unsophisticated consumer, and with 31% of their customers being African-American, it is one that targets, be it intentionally or not, minorities.

For example, in a recent article on the pitfalls of rent-to-own transactions the author called a couple of national rental chains to get information about renting a microwave. Each quoted him a price of $7.99 a week for 78 weeks (18 months). After that point, the microwave was his to keep. He then compared paying cash against paying for the same microwave over 18 months. The cash price quoted was $339. That means at $7.99 a week for 78 weeks, the consumer would pay $623, or almost twice as much at an annual percentage rate of nearly 40%.

In addition, when he called the rent-to-own companies, and got these prices over the phone, no one he talked to was able to tell him the effective interest rate. He was told that he needed to come in and speak to a sales representative. Millions of hardworking Americans are not adequately protected from these practices, while more affluent consumers have no problem finding low-interest loans, or decent insurance.

Others are not so lucky, and as Representative Patrick Kennedy noted in a hearing on the issue in 1993, people are sometimes being thrown "into unregulated water and the sharks are circling." I am pleased that we have convened today to discuss a specific piece of legislation that seeks to disclose important information regarding rental-purchase agreements.

A description of the property, the cash price of the property, the amount of the rental payment, the rental-purchase cost, the total amount of the initial payment and the regular periodic payment, the difference between the cash price and the rental-purchase cost, the payment schedule, and the total amount the consumer will pay, all represent vital pieces of information that will help consumers make more informed decisions about rent-to-own purchases.

However, H.R. 1701 has some serious flaws. Consumers will be hurt. While many states do not adequately protect consumers, other states will actually end up with less protection than their current law provides if H.R. 1701 were enacted. If state laws are to be replaced or superceded by H.R. 1701, it should include provisions which are above all state laws, not just some.

The problems faced by the public in the rent-to-own business are some of the most pressing issues that face low-income consumers today. I hope that today's hearing will allow some thoughtful insight into how we can best deal with these problems, so that we can stop talking and get down to business.

REPRESENTATIVE JAMES H. MALONEY

Statement on HR 1701
House Financial Services Committee
Subcommittee on Financial Institutions
July 12, 2001

Chairman Bachus and Ranking Member Waters, I want to thank you for holding this hearing today. I also want to thank Mr. Jones and his staff for all of the work that they have done to craft a bipartisan bill. I am pleased to be the lead Democratic cosponsor of this legislation.

In April of 2000, the Federal Trade Commission (FTC) issued a staff report that addresses many of the issues surrounding the rent-to-own industry. Generally speaking, the FTC report concluded that clear and comprehensive disclosures of the rental-purchase transaction would benefit both the industry and consumers. Additionally, the FTC made some recommendations regarding the types of disclosure that would benefit consumers. The "Consumer Rental Purchase Agreement Act" is an effort to begin to implement those recommendations. I think that everyone will agree that giving consumers the information they need to make informed decisions is both good public policy and ultimately good economic policy as well.

I would also like to address a concern of some that HR 1701 would preempt state law. The legislation we are discussing is intended to provide consumers with a minimum level of protection. That is, we intend that HR 1701 serve as uniform federal floor for consumer protection. States would maintain the right to offer additional consumer protections that they deem appropriate for their individual state circumstances. This legislation, both provides protections to consumers, and leaves the appropriate room in our federal system for state legislatures' to chart their own direction for the people they so diligently represent.

Thank you Mr. Chairman, I am hopeful that we can reach consensus and make progress to improve consumer protection regarding rental purchase agreements. I look forward to hearing from our witnesses today.

**PREPARED STATEMENT OF THE
FEDERAL TRADE COMMISSION**

before the

FINANCIAL INSTITUTIONS AND CONSUMER CREDIT SUBCOMMITTEE,

HOUSE FINANCIAL SERVICES COMMITTEE

on

Rent-to-Own Transactions

July 12, 2001

I. INTRODUCTION

Mr. Chairman and members of the Committee: I am Howard Beales, Director of the Federal Trade Commission's Bureau of Consumer Protection.* I appreciate the opportunity to appear before you today on behalf of the Commission to discuss a recent report by the FTC's Bureau of Economics titled, "Survey of Rent-to-Own Customers." I will discuss the methodology and findings of the survey and the conclusions of the report, which I hope will be helpful in informing the discussion of rent-to-own issues and policies. The Commission has not had an opportunity to fully consider and analyze the bill to amend the Consumer Credit Protection Act that is currently before the Subcommittee and, therefore, believes it is inappropriate to comment on it at this time. Let me begin by speaking very briefly about the Commission's role in enforcing laws that bear on financial issues relevant to the rent-to-own industry.

As part of its mandate to protect consumers, the Commission enforces the Federal Trade Commission Act ("FTC Act"), which broadly prohibits unfair or deceptive acts or practices.[1] The Commission also enforces a number of laws specifically governing lending and leasing practices, including the Truth in Lending Act ("TILA")[2] and the Consumer Leasing Act ("CLA"),[3] which require disclosures and establish certain substantive requirements in connection with consumer credit or lease transactions, respectively.[4] The Commission has jurisdiction over most non-bank lenders.[5] In addition to its enforcement duties, the Commission also responds to requests for information about consumer financial issues and consumer financial laws from

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* The views expressed in this statement represent the views of the Commission. My oral statement and responses to questions you may have are my own and are not necessarily those of the Commission or any Commissioner.

consumers, industry, state law enforcement agencies, and the media.

II. THE RENT-TO-OWN INDUSTRY

The rent-to-own industry (also known as the rental-purchase industry) consists of dealers that rent furniture, appliances, home electronics, jewelry, and other items to consumers. Rent-to-own transactions provide immediate access to household goods for a relatively low weekly or monthly payment, typically without any down payment or credit check. Consumers enter into a self-renewing weekly or monthly lease for the rented merchandise, and are under no obligation to continue payments beyond the current weekly or monthly period. The lease provides the option to purchase the goods, either by continuing to pay rent for a specified period of time, usually 12 to 24 months, or by early payment of some specified proportion of the remaining lease payments. These terms are attractive to many consumers who cannot afford a cash purchase, may be unable to qualify for credit, and are unwilling or unable to wait until they can save for a purchase. Some consumers also may value the flexibility offered by the transaction, which allows return of the merchandise at any time without obligation for further payments or negative impact on the customer's credit rating. Other consumers may rent merchandise to fill a temporary need or to try a product before buying it. The Association of Progressive Rental Organizations ("APRO"), which is a rent-to-own industry trade association representing over half of the rent-to-own stores, estimated that in 2001 there are approximately 8,000 rent-to-own stores in the United States, serving nearly three million customers, and producing $5 billion in annual revenues.

III. KEY FINDINGS OF THE SURVEY OF RENT-TO-OWN CUSTOMERS

In the past decade, there has been considerable debate regarding the rent-to-own industry. For example, there have been allegations of serious consumer protection problems and proposals for federal regulation. Noticeably absent, however, was an independent, systematic examination of the typical rent-to-own transaction. The FTC staff attempted to fill this gap by conducting a nationwide survey of rent-to-own customers. From December 1998 to February 1999, over 12,000 randomly selected United States households were surveyed to identify rent-to-own customers. FTC staff then interviewed 532 households (out of the 12,000) that had engaged in rent-to-own transactions in the past five years. In addition to collecting data about these rent-to-own transactions, FTC staff also recorded demographic data on household members to get a better understanding of the typical rent-to-own customer.

The survey had three primary goals: (1) to examine which consumers use rent-to-own transactions and how they differ from consumers who do not; (2) to determine whether rent-to-own transactions typically result in the purchase of the rented merchandise; and (3) to determine whether abusive collection practices are widespread in the industry. The survey also examined the types of merchandise rented, customer purchase intentions, the duration of rentals, the reasons why merchandise was returned, and the extent to which customers lost merchandise through a return or repossession after making substantial payments towards ownership.

Some key findings from the survey include:

Demographics

- 2.3% of U.S. households had entered into rent-to-own transactions in the last year, and 4.9% had engaged in such transactions in the past five years.

- 31% of rent-to-own customers were African American, 79% were 18 to 44 years old, 73% had a high school education or less, 59% had household incomes less than $25,000, 67% had children living in the household, 62% rented their residence, 53% lived in the South, and 68% lived in non-suburban areas.

- 44% of rent-to-own customer households had a credit card; 49% had a savings account; and 64% had a checking account. 77% of customer households had at least one of the three types of credit card or bank accounts, while 23% had none.

Characteristics of a Rent-to-Own Transaction

- 70% of rent-to-own merchandise was purchased by the customer. The purchase rate was consistently high (at least 60%) across most demographic groups, and 70% of customers purchased at least one item of merchandise.

- 67% of customers intended to purchase the merchandise when they began the rent-to-own transaction, and 87% of customers who intended to purchase actually did so.

- Rent-to-own customers rented an average of 2.5 items of merchandise per customer over the last five years. 40% of rent-to-own customers rented merchandise on more than one occasion over that period.

- 38% of rented items were home electronics products, 36% were furniture, and 25% were appliances. The most commonly rented items were televisions, sofas, washers, VCRs, and stereos, which together accounted for over half of all rented merchandise.

- Merchandise purchased from the rent-to-own store was rented for an average of 14 months before it was purchased, with 47% purchased in less than a year. Merchandise returned to the rent-to-own store was rented for an average of five months before returned, with 81% returned within six months or less.

- 59% of the merchandise returned to the rent-to-own store was returned because the renter's need for the merchandise had changed, 24% was returned for financial reasons, and 8% was returned because of a problem with the merchandise or store.

- 90% of the merchandise on which customers had made substantial payments towards ownership (of six months or more) was purchased by the customer, and 10% was returned to the store.

Customer Satisfaction

- 75% of rent-to-own customers were satisfied with their experience with rent-to-own transactions. Satisfied customers gave a wide variety of reasons for their satisfaction, favorably noting many aspects of the transaction, the merchandise and services, and the treatment they received from store employees. 19% of rent-to-own customers were dissatisfied with their experience, and most cited rent-to-own prices as the reason. Complaints about high prices were made by 27% of rent-to-own customers, including nearly 70% of dissatisfied customers. Smaller percentages of customers (between one and eight percent) complained about problems with the merchandise or repair service, the treatment received from store employees, the imposition of hidden or added costs, and other miscellaneous issues.

- Nearly half of all rent-to-own customers had made at least one late payment. 64% of late customers reported that the treatment they received from the store when they were late was either "very good" or "good," and another 20% reported that the treatment was "fair." 15% of late customers reported being treated poorly when they were late, including 11% who indicated possibly abusive collection practices.

The survey did not examine whether rent-to-own customers were aware of the total cost of purchase of the rent-to-own item when they began renting, or whether they performed comparison shopping prior to engaging in rent-to-own transactions. The current extent and format of actual industry disclosures were also outside the scope of the survey. In addition, the survey did not assess the extent of dealer compliance with the disclosures required by the various state rent-to-own laws, the extent of state enforcement of these laws, or the extent to which some dealers may disclose information that exceeds state requirements.

IV. CONSUMER PROTECTION ISSUES

The Bureau of Economics' report noted that a number of consumer protection concerns have been raised about the rent-to-own industry by consumer advocates. These concerns include the prices charged by the industry (which can be two to three times retail prices, and sometimes

more), the treatment of customers during the collection of overdue rental payments, the repossession of merchandise after customers have paid substantial amounts towards ownership, the adequacy of information provided to customers about the terms and conditions of the rental agreement and purchase option, and the disclosure of whether merchandise is new or used. Consumer advocates also have argued that rent-to-own transactions are really credit sales, not leases, and should be subject to federal and state consumer credit laws.

Currently, rent-to-own transactions are not specifically regulated by the federal laws that govern other credit transactions, namely, the TILA and the CLA. Federal legislation that would specifically regulate rent-to-own transactions has been proposed several times in the past decade. Some of the proposed legislation would have applied federal and state credit laws to the rent-to-own industry, while other proposed legislation would have regulated rent-to-own transactions as leases.

The report noted that forty-six states had laws that regulated rent-to-own transactions in a manner similar to leases. It found that the laws varied from state to state, requiring a variety of disclosures related to the lease and the purchase option, and imposing a variety of other requirements and prohibitions on rent-to-own contracts and dealers. It further found that most states required that the disclosures be made in rental agreements and advertisements, but not on product labels. The report also found that no state had legislation regulating rent-to-own transactions as credit sales; however, courts in some states have ruled that rent-to-own transactions are credit sales and, therefore, are subject to state laws governing credit sales.

A key factual issue in the debate over whether rent-to-own transactions are sales or leases has been the extent to which rent-to-own customers purchase the rented merchandise. The

industry has maintained that about 25 to 30 percent of rent-to-own merchandise is purchased, and that the rest is returned to the dealer after a relatively short rental duration. Some consumer advocates have presented a sharply different view, maintaining that most rent-to-own transactions result in the purchase of the rented merchandise. The survey found that approximately 70% of rent-to-own merchandise is purchased by the customer, and recommends that regulation of the rent-to-own industry recognize this important fact.

Because of this high purchase rate, the Bureau of Economics' report concludes that it is important that consumers know about basic terms of the rent-to-own transaction, in particular the total cost of purchase, before entering an agreement.[6] According to the report, information on the total cost of purchase, including all mandatory fees and charges, would allow consumers to compare the cost of a rent-to-own transaction to alternatives, and would be most useful if it were available while the customer was shopping. The report also states that the best way to provide total cost information at the shopping stage would be to provide it on product labels on all merchandise displayed in the rent-to-own store. Finally, the report recommends that other basic terms of the transaction, including the weekly or monthly payment amount, the number of payments required to obtain ownership, and whether the merchandise is new or used, should be provided on product labels, and in advertisements that make representations regarding the weekly or monthly rent-to-own payments. The report also noted that all of the terms and conditions of the transaction should be disclosed in the agreement document.

In addition, the report concludes that because rent-to-own dealers typically do not use abusive practices in collecting overdue rental payments and because few customers lost merchandise through return or repossession after making substantial payments toward ownership,

federal regulation of industry collection practices and reinstatement rights may be unnecessary at this time.

V. CONCLUSION

Based on the Bureau of Economics' report, the Commission does not recommend federal legislation regarding the rent-to-own industry at this juncture. Determining whether legislation is needed requires information regarding these transactions in addition to that considered in the report. The Commission needs to know, for example, whether consumers currently understand the total cost of rent-to-own transactions, what information they have available at present, and what alternatives to the rent-to-own transaction they typically consider.

The Commission hopes that the survey results are helpful to the Subcommittee, and looks forward to working with Congress on rent-to-own issues.

ENDNOTES

1. See 15 U.S.C. § 45(a).
2. See 15 U.S.C. § 1601 et seq.
3. See 15 U.S.C. § 1667 et seq. The CLA is an amendment to the TILA.
4. The Commission also enforces various other financial statutes, including the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., which, inter alia, prohibits discrimination against applicants for credit on the basis of age, race, sex, or other prohibited factors; the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., which, inter alia, governs the use of consumer credit reports, and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., which, inter alia, prohibits certain abusive collection practices by debt collectors.
5. See, e.g., 15 U.S.C. § 45(a); 15 U.S.C. § 1607.
6. As the Bureau of Economics' report noted, disclosure of key terms such as the total cost of purchase could provide meaningful disclosures to consumers, would be less problematic than calculation of an Annual Percentage Rate ("APR") for rent-to-own transactions (which are hybrid arrangements that do not simply involve debt obligations), and would avoid the potentially difficult implementation and enforcement issues that an APR disclosure could entail in this context.

Statement of

Dolores S. Smith

Director, Division of Consumer and Community Affairs

Board of Governors of the Federal Reserve System

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

of the

U. S. House of Representatives

July 12, 2001

I appreciate the opportunity to appear before this subcommittee to offer staff comments on H.R. 1701, the Consumer Rental Purchase Agreement Act, which would amend the Consumer Credit Protection Act. I am the director of the Federal Reserve Board's Division of Consumer and Community Affairs, which carries out the Board's responsibilities for administering a number of the consumer protection laws that make up the Consumer Credit Protection Act, including the Truth in Lending Act and the Consumer Leasing Act.

H.R. 1701 would require cost disclosures for "rental-purchase" agreements, which are also known as "rent-to-own" transactions. The bill has substantive provisions. For example, it establishes consumers' right to reinstate an agreement after failing to make a timely payment. The bill also would prohibit certain provisions in rental-purchase contracts, such as confession-of-judgment clauses that prevent consumers from defending any legal action brought under the contract. H.R. 1701 treats rent-to-own transactions differently from both credit sales and traditional leases and would, therefore, cover them under a separate regulatory scheme altogether.

The Federal Reserve Board has not taken a position on H.R. 1701. However, I am glad to share the Board staff's observations—about the bill and some of the issues raised—in response to your request.

Rental-purchase transactions involve short-term, renewable rentals of personal property, typically on a week-to-week or month-to-month basis. For example, a consumer may rent a television set, major household appliances such as a washing machine or refrigerator, or home furnishings such as living room furniture. By renewing

the rental from one period to the next, a consumer can ultimately purchase the item after making a specified number of payments, but the consumer is not obligated to do so.

Rental-purchase transactions typically are for less than four months initially—although they often extend for longer periods. These agreements are not covered by the disclosure requirements of the federal Consumer Leasing Act, which applies to leases that initially exceed four months. Nor are these transactions generally credit sales for purposes of Truth in Lending Act disclosures. Contracts in the form of a lease are treated as credit under Truth in Lending only if the consumer is obligated to purchase the property and pay an amount equal to or exceeding the total value of the property; such an obligation does not typically exist in rent-to-own transactions.

Under the Consumer Leasing Act, consumers receive federally mandated disclosures concerning the cost of the transaction prior to entering into the lease. These disclosures include a description of the leased property, an itemization of any up-front payments, a payment schedule showing the amount of each periodic (typically monthly) payment, a listing of any other charges the consumer will have to pay, and the total of payments that the consumer will have paid by the end of the lease. There are also disclosures regarding early termination charges, late payment fees, property maintenance responsibilities, and the consumer's options for purchasing the property.

Under the Truth in Lending Act, consumers must receive disclosure of the key costs and terms of credit transactions before they become obligated for the extension of credit. Consumers receive disclosures that include the amount of credit extended (known as the amount financed), the cost of credit expressed as a dollar amount (the finance

charge) and as an annual percentage rate (APR), the total amount the consumer will pay, and a payment schedule showing the timing and amount of each payment.

Assessing the Need for Legislation

While, currently, there is no federal regulation of rental-purchase transactions, laws governing these transactions have been adopted in forty-seven states. These laws were enacted largely with the support of the industry. All of the state laws have been enacted since 1984 (twenty-four of them since 1990).

In the early 1980s, before any action was taken at the state level, representatives of the rental-purchase industry supported federal legislation to cover these transactions. For firms operating in multiple states, a uniform regulatory framework eases the compliance costs. At the time, federal legislation was also advocated by the industry to clarify that rental-purchase transactions are leases under the tax laws, and to preclude states from applying their credit laws and usury limits to these transactions. The subsequent enactment of state laws and other legal developments may have settled these issues to some extent.

In the early 1980s, some consumer advocates also favored federal legislation covering rental-purchase transactions, because of the lack of state law consumer protections. Since the mid-to-late 1980s, however, consumer advocates have generally objected to legislation proposed at the federal level for several reasons—because they believe the federal proposals provided insufficient consumer protections; because federal legislation might have preempted state laws that they viewed as more protective; and, in the case of some consumer advocates, because they continued to view rent-to-own transactions as credit sales under the Truth in Lending Act.

Given the existing body of state law, the subcommittee is to be commended for holding these hearings to explore—with industry representatives and consumer advocates—the need for federal legislation. The views of the state agencies charged with administering and enforcing the applicable state laws should also be helpful in this process. Much can be learned, for example, about the effectiveness and adequacy of the existing state laws and the states' experience in enforcing them. I expect you will find the Federal Trade Commission's survey on the rent-to-own industry particularly useful in identifying and discussing relevant issues. The FTC report on its survey of rent-to-own customers has been a primary—and important—source of information for the Board staff's consideration of these issues.

Effective Disclosures

Several provisions of H.R. 1701 focus on consumer disclosures in advertising, on price tags, in catalogues, and in contracts. Disclosures are most effective when consumers receive them early enough in the process to use them as a shopping tool, and when the disclosures are presented in a way that enables consumers to focus on the key costs and terms. We also offer the general observation that, while disclosure is important, too much information can sometimes obscure the basic, key information consumers may need to make an informed choice.

The fact that rent-to-own transactions have characteristics of both sales and leases is important to consider in determining what disclosures consumers need. Although there may be some disagreement about the purchase rate for rent-to-own merchandise, the percentage of purchases by customers who enter into these transactions appears to be substantial. The FTC's survey found that about seventy percent of rent-to-own

merchandise was purchased by consumers. But as the FTC report also notes, industry sources have consistently maintained that the purchase rate is considerably lower, about twenty-five to thirty percent.

Under H.R. 1701, key cost disclosures must be provided on merchandise tags or labels for property that is displayed or offered in a dealer's place of business. As the bill recognizes, such disclosures could be a useful shopping tool for consumers. Only eighteen states currently require merchandise disclosures, so this is one aspect in which federal law could directly enhance state-law protections, although some firms may voluntarily be providing these disclosures.

As to the content of merchandise tags, we concur with the FTC report's assessment about disclosure of total cost for purposes of comparison shopping. Because many customers may end up purchasing the property, merchandise tags and labels should show the total cost to purchase the item, as provided in H.R. 1701, and not just the rental fee. Of the states that require merchandise tags, all but a few require inclusion of the total purchase price. Consumers could use the total purchase cost disclosure while shopping, to compare the dealer's purchase price with the prices offered by other rent-to-own dealers.

In addition to the total rental-purchase cost, H.R. 1701 would require merchants also to disclose a "cash price" for the property covered by the rental-purchase agreement. This disclosure would enable consumers to compare the cash price from a rent-to-own dealer with the sale prices at traditional retail stores. In making this comparison, a consumer could judge whether the rent-to-own dealer's cash price is reasonable for the

goods and services being provided, and they can look at the difference between the dealer's cash price and the total purchase price under the rental-purchase agreement.

H.R. 1701 also requires that more detailed disclosures be made in connection with the rental-purchase agreement, at or before the date of consummation. Most of the cost disclosures would have to be grouped together and segregated from other information. Disclosures about other terms and conditions must be clearly and conspicuously included in the rental-purchase agreement. This segregation is consistent with the approach used in the Consumer Leasing Act and Truth in Lending Act, and is an approach that we believe is effective in calling the consumer's attention to the most important terms.

The Standard for Preemption of State Laws

You asked us to comment on the impact of H.R. 1701 on state law. A bill establishing federal minimum standards for consumer disclosures in rental-purchase transactions may offer some benefits to consumers and to the industry. The effect of any federal legislation on the ability of states to retain more protective statutory provisions, or adopt new consumer protections, should also be taken into account.

H.R. 1701 would amend the Consumer Credit Protection Act. But as drafted, the bill applies a standard for preemption that differs from the standard used under other titles of the Act. Under the existing federal statutes, a specific provision in state law is generally preempted only to the extent that the state provision is inconsistent with the federal statute. H.R. 1701 contains this language but omits other language used in the Consumer Credit Protection Act statutes. The omitted language provides that a state law is not inconsistent with the federal statute if it is found to give greater protection to the consumer.

The preemption provisions in H.R. 1701 would expressly preclude states from requiring an APR disclosure or subjecting rental-purchase transactions to state credit laws, including usury limits. It is not clear whether the preemption provisions in H.R. 1701 are intended to limit the states' ability to retain (or adopt) more protective rules on other aspects of rent-to-own transactions. For example, some states mandate longer reinstatement periods than the periods specified in H.R. 1701. The effect on these laws should be clarified.

Rulewriting Authority

You also have asked us to comment on whether the FTC or the Federal Reserve should write the regulations implementing H.R. 1701, and who should be responsible for enforcing these regulations. As drafted, the bill currently gives rulewriting authority to the Federal Reserve Board. We strongly urge that further thought be given to whether the Federal Reserve is the appropriate agency to regulate these transactions.

The Federal Reserve has no supervisory relationship with rent-to-own dealers, which are firms that are not generally subject to Board regulations governing financial services. These transactions are not covered by the existing credit or leasing regulations, and hence the Board's staff has no direct experience with industry practices and how rental-purchase transactions are conducted.

We believe the Federal Trade Commission's experience in regulating the trade practices of commercial firms makes that agency the more logical choice for writing regulations. As H.R. 1701 recognizes, the FTC is the most appropriate agency for purposes of enforcement because it is the principal agency charged with enforcing the Consumer Credit Protection Act with respect to companies that are not depository institutions. The Federal Reserve and other federal banking agencies have enforcement authority under that act only with respect to the depository institutions they supervise.

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Before the
Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
July 12, 2001

Testimony Of
David J. Gilles
Assistant Attorney General
Wisconsin Department Of Justice

Mr. Chairman and members of the Subcommittee on Financial Institutions and Consumer Credit, on behalf of Wisconsin Attorney General James E. Doyle, I appreciate the invitation to appear before you today regarding H.R. 1701, a proposal for federal regulation of rent-to-own programs. General Doyle asked me to testify today to oppose this measure because it would harm Wisconsin consumers.

This measure would take away state law protections from low-income consumers—particularly consumers who have few alternatives in the marketplace. In Wisconsin rent-to-own transactions are subject to the Wisconsin Consumer Act.[1] Under the Consumer Act, rent-to-own businesses must disclose interest rates--sometimes higher than 200 percent--and comply with other requirements that apply to their competitors that use installment payment or other credit plans to sell household furniture and appliances. The Consumer Act also restricts "unconscionable practices" and unfair collection tactics as well as extra-judicial repossession.

As has been the case in other states, in Wisconsin consumer complaints have documented unfair and abusive practices of the rent-to-own industry. The use of unfair collection tactics, excessive charges, implicit interest rates of more than 200 percent, ambiguous default terms and extra-judicial repossession are reminiscent of practices before truth-in-lending and other credit laws were enacted.[2] According to some complaints, rent-to-own stores have threatened criminal action against customers who are late with payments. Other complaints have reported that customers are forced to purchase damage waivers as part of the arrangement. Former sales agents have reported that penetration rates for "optional" waivers of 90 percent are expected.

[1] Wis. Stat. chs. 421-427.
[2] Attached is an illustration of the credit disclosures that should have been made for two rent-to-own contracts (Attachment 1).

The Wisconsin Consumer Act has provided a basis to stop some of these unfair and overreaching practices by the rent-to-own industry. When the Act was passed in 1973, both supporters and critics alike recognized this Act as "the most sweeping consumer credit legislation . . . enacted in any state."[3] The Wisconsin Legislature used Truth-in-Lending as a basis and expressly intended to comprehensively cover all types of consumer credit arrangement, whether or not required under federal law.[4] Three appellate courts in Wisconsin have upheld the Act's application to rent-to-own transactions. *Palaces v. ABC TV & Stereo Rental*, 123 Wis. 2d 79, 65 N.W.2d 882 (Ct. App. 1985); *Rent-A-Center v. Hall*, 181 Wis. 2d 143, 510 N.W.2d 789 (Ct. App. 1993); *Lebanon Rent-To-Own v. Warrens*, 223 Wis. 2d. 582, 589 N.W.2d 425 (Ct. App. 1998).

The Wisconsin Department of Justice has pursued enforcement actions to obtain compliance by the rent-to-own industry. In 1996, contempt charges were filed against Colortyme, Inc., for violation of a 1984 injunction with regard to the failure to disclose interest rates that allegedly exceeded 84 percent for used bedroom furniture, over 99 percent for a washing machine and more than 200 percent for a television set. The company settled the action with the payment of a forfeiture of $25,000. Since that action, two other companies settled enforcement actions and agreed to injunctions that require compliance with the Consumer Act including credit disclosures.[5] As a result of these enforcement efforts, a contract form that combines credit disclosures with a rent-to-own contract has been approved for use in Wisconsin.[6]

Wisconsin law provides meaningful private remedies for consumers who are injured by companies that violate these laws. During the last five years, there have been three class actions based on violations of state consumer laws that have settled. In one case, Rent-A-Center, Inc., paid $16,000,000 to settle a class action based on violations of the Wisconsin Consumer Act involving about 20,000 customers.[7]

Unfortunately the 1998 Rent-A-Center, Inc., settlement did not involve injunctive remedies similar to the judgments obtained by the state. Instead of making credit disclosures, Rent-A-Center, Inc., repackaged its rent-to-own program and renamed it "rental retail." Under this approach, Rent-A-Center, Inc., uses a printed form entitled "Rental Agreement" that does not have a purchase option. At the same time Rent-A-Center, Inc., assures its customers that the price to own merchandise will continue to decline if they continue the rental program for two years. By excluding the purchase option from the written agreement, Rent-A-Center, Inc., sought to circumvent the requirements of the Consumer Act.

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[3] Heiser, *Wisconsin Consumer Act – A Critical Analysis*, 57 Marq.L. Rev 389 (1974).
[4] Wis. Stat. § 422.301.
[5] Attached are copies of statements issued about enforcement actions filed by the Wisconsin Department of Justice (Attachment 2).
[6] Attached is a copy of a form that has been approved by the Wisconsin Department of Financial Institutions, the agency responsible for administering the Wisconsin Consumer Act (Attachment 3).
[7] Attached are newspaper articles that describe these actions (Attachment 4).

In August 1999, the state filed civil charges that Rent-A-Center, Inc., was engaging in "unconscionable practices" and other "knowing and willful" violations of the Consumer Act. If proven at trial, which is expected early next year, forfeitures up to $10,000 may be imposed for each "knowing and willful" violation of the Act.[8]

It is also important to note that the rent-to-own industry has actively lobbied to pass legislation to specifically regulate rent-to-own programs apart from the Wisconsin Consumer Act. Under these legislative proposals, rent-to-own programs would be excluded from the Consumer Act and regulated separately as rental-purchase transactions. These legislative proposals have failed.

If this bill is enacted, all these protections--the current state of the law for rent-to-own programs in Wisconsin--likely will be preempted under Section 1018. This section appears to "annul" "inconsistent" state laws and explicitly "supersedes" state law relating to cost disclosure for rent-to-own purchase programs.

The preemptive provisions of H.R. 1701 contradict the long-standing federal tradition of permitting states to go beyond minimum federal standards for consumer protection. Consumer protection and consumer credit are traditional and critical areas of state concern. States such as Wisconsin have established comprehensive regulatory systems to ensure fairness in the relationship between consumers and businesses. These laws reflect each state's own assessment of how best to balance protecting consumers with legitimate business interests.

If this measure is adopted, rent-to-own transactions will no longer be subject to the Wisconsin Consumer Act. Under the guise of consumer protection, the rent-to-own industry seeks to federalize its version of these transactions and displace the established law in Wisconsin and several other states. Public policy considerations do not support special federal treatment for the rent-to-own industry. The traditional state interest in consumer protection matters should be preserved for rent-to-own transactions.

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[8] A statement regarding the most recent enforcement action is attached (Attachment 2).

ATTACHMENT 1

	Customer A	Customer B
Contract Date	7/23/98	5/17/99
Total of Rental Payments (24 Months or 104 Weeks of Rent)	2599.48	2591.04
Downpayment	-49.99	-107.96
Net Rental Payments	2549.49	2483.08
Optional Purchase Price (20% of Cash Price)	105.00	130.50
Total of Payments (TOP)	2654.49	2613.58
Cash Price	525.00	652.50
Downpayment	-49.99	-107.96
Amount Financed	475.01	544.54
Finance Charge (TOP-AF)	2179.48	2069.04
APR	272.3%	234.8%

Agreement # [illegible]

RENTAL AGREEMENT

CUSTOMER A

SO BY

DATE: 7/23/98

II. LESSEE

[illegible]

[illegible] 7/23

[illegible] used in this agreement, "you" and "your" mean the person(s) signing the agreement as renter, "we" and "our" mean LESSOR (see item one above).

2. DESCRIPTION OF PROPERTY:

2 Pc Fam S/L Sec 1715
TABLES 30 Sec 1519

THE CONDITION OF THIS PROPERTY IS _____ NEW X USED

3. RENTAL RATE:

	RENT	WAIVER	TAX	TOTAL
MONTHLY	$ [illegible]	$ [illegible]	$ [illegible]	$ [illegible]
WEEKLY	$ 49.95	$ 3.50	$ 0.67	$ [illegible]

OTHER CHARGES:

1. IN-HOME COLLECTION CHARGE $10.00
2. REINSTATEMENT FEE $5.00
3. DAMAGE WAIVER $ 3.50
4. DELIVERY CHARGE N/A

THIS IS A RENTAL AGREEMENT ONLY. PAYMENTS WILL NOT APPLY TO PURCHASE.
90 DAYS SAME AS CASH $ [illegible]

SELF-RENEWING: You're renting from us the property described above. You may keep the property for the term covered by this lease payment. At your option, you may renew this lease for successive terms of one week or one month each. To do this, you must make a rental payment in advance for each week or month you wish to rent the property. The rental rates and first renewal date are shown above. Time is of the essence in this lease and there are no grace periods.

SELF-TERMINATING: In addition to your three (3) day right to rescind this agreement, you are not obligated to renew this lease and may voluntarily terminate it at the end of any weekly or monthly rental period. To do so, you must make arrangements with us for the timely return of the property and make all rental payments due through the date of return. If you do not renew this lease by making a weekly or monthly payment on or before the renewal date (or you breach any other important term of this lease) the lease will automatically terminate but you will remain liable for the rental value of the property until you make arrangements for us to have immediate possession of the property. All property returned must be in its present condition, fair wear and tear excepted.

DAMAGE WAIVER: ACCEPT X DECLINE _____: You may by initials hereon accept or decline the damage waiver benefits. If you pay the damage waiver charge (DWC) as specified, subject to the limitations and exclusions below, the Lessor agrees to modify the terms of this agreement and relieve you of liability for accidental damage to the rented item(s) in item two above, and for loss due to fire, flood, windstorm and burglary (provided there is evidence of forced entry). We exclude from this waiver, however, any loss or damage due to theft (other than by burglary), misuse or abuse. Theft by conversion, intentional damage, mysterious disappearance or other loss due to your failure to care for the rented item(s) as a prudent man would his own property, such as property securing your home. If any such loss tends to indicate a crime may have been committed, you must file a report to the proper law enforcement authorities and furnish us with a copy. In addition, if you have insurance for the loss or damage, you shall exercise, and empower us to exercise, all your rights to obtain recovery under insurance, and to obtain recovery and all insurance proceeds which will be given or assigned to Colortyme.

REINSTATEMENT FEE: If you retain possession of the leased goods beyond the rental term and should want to renew this lease, we at our option, may either (1) refuse to renew and collect rental due at that time, or (2) renew and charge reinstatement fee as provided herein. Should we, at our option, elect to allow you to renew for any additional rental term after you have failed to exercise your option to renew, we may charge a fee for this privilege or reinstatement not to exceed $5.00 for any reinstatement.

LOCATION OF PROPERTY: You agree to keep the property in your possession, at the residence shown above. You agree that you won't remove the property from that address without our written consent. If you remove the property without our consent, you'll have breached this lease and we'll have the immediate right to possession of the property.

LIABILITY: You are liable for damage to the property in excess of normal wear and tear, and for loss or destruction of the property by any cause, including but not limited to theft and vandalism. You must pay us the full value of the property if you fail to return it to us when this lease ends.

ASSIGNMENT: We may sell, transfer or assign this lease. You may not sell, transfer, assign or sublease your rights under this lease without our written consent.

TITLE MAINTENANCE AND TAXES: We retain title to the property at all times. We'll pay any personal property taxes on the property, and maintain it in good working order. We won't be responsible for costs or results of repair done by others. We will attempt to provide a unit for you to use while yours is being serviced by our service technician, based on availability.

FORBIDDEN ACTS: You may not pawn, sell or otherwise dispose of the property. If you do, this lease is terminated and you must pay us the full value of the property.

THIS IS A RENTAL AGREEMENT ONLY: This lease is for weekly or monthly rental of the property only. You won't acquire any ownership in the property by making rental payments. You have not agreed to purchase this property. If you want to purchase this or similar property now, you may be able to get cash or credit terms from other sources which may cost less than under the terms of this agreement.

ENTIRE AGREEMENT: This is our entire agreement. No oral statements or agreements will be valid or binding on you or on us. This agreement may not be changed or amended nor may any provision be waived except in writing signed by both parties.

EFFECT OF SIGNING: By signing this agreement you admit that you have read it and that you understand it. You also admit that you received the property in satisfactory condition. The property is not represented to be new.

TIME IS OF THE ESSENCE IN THIS LEASE

NOTICE TO RENTER: 1) Do not sign this agreement before you read and understand it, or if it contains any blank spaces. 2) You are entitled to a copy of this agreement completely filled in.

I HAVE READ AND UNDERSTAND THE ABOVE RENTAL AGREEMENT AND ACKNOWLEDGE RECEIPT OF A SIGNED COPY.

IMPORTANT NOTICE

If this Agreement is signed in your residence, we are giving you the following rights: YOU MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION (See attached form). [illegible]

[illegible] Date 7-23 Witness [illegible]

May 17 1999
MONTH DAY YEAR

RENTAL AGREEMENT NO.

RENTAL AGREEMENT

This is a Rental Agreement Only. Payment will not Apply to Purchase

CUSTOMER B

2. Lessee

As used in this agreement, "you" and "your" mean the person(s) signing the agreement as renter, "we" and "our" mean LESSOR (See item one above.)

2. DESCRIPTION OF PROPERTY:

Item #	DESCRIPTION	Serial #	CONDITION	MONTHLY	WEEKLY
P9400533	STEREO 7BACK STEREO	074H1910	NEW	107.96	26.99

THE CONDITION OF THE PROPERTY IS NEW XXX USED ___

3. RENTAL RATE:

	FIRST PAYMENT	AFTER THE FIRST PAYMENT WEEKLY	AFTER THE FIRST PAYMENT MONTHLY	
Rental Payment	$ 26.99	$ 26.99	$107.96	ADDITIONAL FEES:
Damage Waiver	$ 2.02	$ 2.02	$ 8.10	Reinstatement Fee 10.00
Sales Tax	$ 1.51	$ 1.51	$ 6.05	
TOTAL	$ 30.52	$ 30.52	$ [illegible]	

SELF-RENEWING: You're renting from us the property described above. You may keep the property for the term covered by this lease payment. At your option, you may renew this for successive terms of one week or one month each. To do this, you must make a rental payment in advance for each week or month you wish to rent this property. The rental rates and first renewal date are shown above. Time is of the essence in this lease and there is no grace periods.

SELF-TERMINATING: In addition to your three (3) day right to rescind this agreement, you are not obligated to renew this lease and may voluntarily terminate it at the end of any weekly or monthly rental period. To do so, you must make arrangements with us for the timely return of the property and make all rental payments due through the date of return. If you do not renew this lease by making a weekly or monthly payment on or before the renewal date, (or you breach any other important term of this lease) the lease will automatically terminate but you will remain liable for the rental value of the property until you make arrangements for us to have immediate possession of the property. All property returned must be in its present condition, fair wear and tear expected.

DAMAGE WAIVER; ACCEPT DECLINE. You may by initials hereon accept or decline the damage waiver benefits. If you pay the damage waiver charge (DWC) as specified; subject to the limitations and exclusions below, the Lessor agrees to modify the terms of his agreement and relieve you of liability for accidental damage to the rented item(s) in Item 2 above, and for the loss due to fire, flood, windstorm, and burglary (provided there is evidence of forced entry). We exclude from this waiver, however, any loss or damage due to theft (other than burglary) misuse or abuse, theft by conversion, intentional damage, mysterious disappearance or other loss due to your failure to care for the rented item(s) as a prudent man would his own property, such as properly securing your home. If any such loss tends to indicate a crime may be committed, you must file a report to the proper law enforcement authorities and furnish us a copy of the report. In addition, if you have insurance for the loss or damage, you shall exercise, and empower us to exercise, all your rights to obtain recovery under insurance, and to obtain recovery and all insurance proceeds which will be given or assigned to the Lessor.

REINSTATEMENT FEE: If you retain possession of leased goods beyond the rental term and should want to renew this lease, we at our option, may either (1) refuse to renew and collect rental due at that time, or (2) renew and charge a reinstatement fee as provided herein. Should we, at our option, elect to allow you to renew for any additional rental term after you failed to exercise your option to renew, we may charge a fee for this privilege of reinstatement not to exceed $10.00 for any reinstatement.

LOCATION OF PROPERTY: You agree to keep in your possession, at the residence shown above. You agree that you won't remove property from that address without written consent. If you remove the property without our consent, you'll have breached this lease and we'll have the immediate right to the possession of the property.

LIABILITY: You are liable for the damages to the property in excess of normal wear and tear, and for loss or damage of the property by any cause, including but not limited to theft and vandalism. You must pay us the Fair Market value of the property if you fail to return it to us when this lease ends. The Fair Market value of the property is $ 622.50

ASSIGNMENT: ~~We may sell, transfer~~ or assign this lease. You may not sell, transfer, assign or sublease your rights under this lease without written consent

TITLE MAINTENANCE AND TAXES: We retain title to the property at all times. We'll pay any personal property taxes on the property, and maintain it in good working order. We won't be responsible for costs or results of repair done by others. We will attempt to provide a unit for you to use while yours is being serviced by our service technician, based on availability.

FORBIDDEN ACTS: You may not pawn, sell or otherwise dispose of the property. If you do, this lease is terminated and you must pay us the full value of the property.

THIS IS A RENTAL AGREEMENT ONLY: This lease is for weekly or monthly rental of the property only. You won't acquire any ownership of the property by making rental payments. You have not agreed to purchase this property.

ENTIRE AGREEMENT: This is our entire agreement. No oral statements will be valid or binding on you or us. This agreement may not be changed or amended nor may any provisions be waived except in writing signed by both parties.

EFFECT OF SIGNING: By signing this agreement you admit that you have read it and that you understand it. You also admit that you received the property in satisfactory condition. The property is not represented to be new.

TIME IS OF THE ESSENCE IN THIS LEASE

NOTICE TO RENTER: 1. Do not sign this agreement before you read and understand it, or if it contains any blank spaces. 2. You are entitled to a copy of this agreement completely filled in.

I HAVE READ AND UNDERSTAND THE ABOVE RENTAL AGREEMENT and acknowledge receipt of a signed copy.

IMPORTANT NOTICE

If this Agreement is signed in your residence, we are giving you the following rights: YOU MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

Rental contract assigned to Chase Manhattan Bank as an administrator agent for the BANK group.

Renter _____ Date 5-14-99 Witness _____

Renter _____ Date _____

Signed at Home _____ Store _____

REV. 10/98 RAC-WI

ATTACHMENT 2

P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

JAMES E. DOYLE
ATTORNEY GENERAL

NEWS RELEASE

DOYLE OBTAINS JUDGMENT AGAINST RENT-TO-OWN COMPANY

For Immediate Release
November 23, 1999

For More Information Contact:
Jim Haney 608/266-1221

MADISON – Attorney General James Doyle announced today that his office has obtained a consent judgment against a rent-to-own company for violating the Wisconsin Consumer Act and the state's deceptive advertising law.

Doyle said the judgment has been entered against ATM Enterprises, Inc., doing business as First American Rental Center, Lithonia, Georgia. The company has stores located in Milwaukee, Kenosha and Racine.

Under the judgment, the company will make credit disclosures to all customers who enter rent-to-own transactions and must comply with all provisions of the Wisconsin Consumer Act. In addition, Doyle said the company must pay a civil forfeiture of $50,000.

According to the Department of Justice's complaint filed on August 4, 1999, ATM Enterprises "knowingly and willfully" violated the Wisconsin Consumer Act, which Wisconsin appellate courts have ruled applies to rent-to-own programs. The complaint alleged that ATM Enterprises had not provided credit disclosures including the finance charge and the annual interest rate (APR) for rent-to-own programs.

Doyle said that the judgment against ATM Enterprises is important because it requires credit disclosures, including APR, with rent-to-own programs. He said the information will allow consumers to compare costs in rent-to-own programs with the costs in traditional credit sales transactions.

Doyle said that this judgment is significant because it is the second time a rent-to-own company has agreed to disclose effective interest rates for rent-to-own programs. In June, Rent All Wisconsin, Inc., doing business as Appliance & Furniture Rent All, La Crosse, also agreed to make appropriate disclosures and comply with the Wisconsin Consumer Act.

The action against ATM Enterprises was based upon an investigation by the Department of Justice in cooperation with the Wisconsin Consumer Act Section of the Department of Financial Institutions. The judgment was entered in Milwaukee County Circuit Court.

A survey by the Public Interest Research Groups in 1997 found that rent-to-own stores nationally charged an average interest rate of 100%. The interest rate for some items was as much as 275%. Overall, the survey concluded that purchasing items via rent-to-own transactions costs two to five times as much as buying the same items at department and discount stores.

Lobbyists for the rent-to-own industry attempted to weaken Wisconsin law during the biennial budget process, but their efforts were unsuccessful.

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P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

JAMES E. DOYLE
ATTORNEY GENERAL

NEWS RELEASE

ATTORNEY GENERAL FILES ACTIONS AGAINST RENT-TO-OWN COMPANIES

For Immediate Release
August 4, 1999

For More Information Contact:
Jim Haney 608/266-1221

MILWAUKEE – Attorney General James Doyle announced today that his office has filed lawsuits against two major rent-to-own companies for violating the Wisconsin Consumer Act and the state's deceptive advertising law.

Doyle said one of the lawsuits is against Rent-A-Center, Inc., and its wholly owned subsidiary, ColorTyme, Inc., both of Plano, Texas. Rent-A-Center is the largest rent-to-own business in the country and operates 23 stores in Wisconsin including nine in Milwaukee. Other Rent-A-Center stores in the state are located in Beloit, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, Madison, Manitowoc, Menasha, Oshkosh, Racine, Sheboygan and West Allis. A subsidiary corporation also franchises ColorTyme stores located in Beloit and Madison.

The other action is against ATM Enterprises, Inc., doing business as First American Rental Center, Lithonia, Georgia. The company operates three rent-to-own stores in Milwaukee and one each in Kenosha and Racine.

Doyle said the complaints allege that the companies "knowingly and willfully" violated the Wisconsin Consumer Act and should pay civil penalties for the violations. Appellate courts in Wisconsin have ruled that rent-to-own programs are covered by the Wisconsin Consumer Act. According to the complaints, the companies have chosen not to provide credit disclosures including the finance charge and the annual rate of interest, which may exceed 100% over the typical two-year rent-to-own program.

Doyle said that the complaint against Rent-A-Center charges the company with:

- Engaging in deceptive and misleading advertising by failing to provide complete information about the cost of ownership;
- Failing to provide required credit disclosures including interest rate and finance charges applicable when merchandise is purchased under the programs;
- Failing to provide customers with notice of right to cure default; and
- Engaging in unconscionable practices by structuring contracts to withhold credit information from customers.

The lawsuit also seeks civil forfeitures from Rent-A-Center's subsidiary corporation for violation of a court injunction by ColorTyme stores in Beloit and Madison. The injunction, obtained by the Attorney General's Office in 1994, required that ColorTyme include credit disclosures such as finance charges and annual interest rates in all rental contracts where a customer had the opportunity to own the merchandise.

Rent-A-Center acquired the franchisor, ColorTyme, Inc., in 1996. The complaint alleges that Rent-A-Center has failed to require that ColorTyme franchises follow the injunction.

Doyle said that in addition to violations of the Wisconsin Consumer Act and the deceptive advertising law, First American is charged with using an unlawful referral sales program. The complaint alleges that First American has offered to pay a rebate or provide a discount to a customer to enter a consumer credit transaction if the customer provides the names of other consumers who will agree to rent merchandise in the future. Such referrals for consumer credit transactions are prohibited under Wisconsin law.

A survey by the Public Interest Research Groups in 1997 found that rent-to-own stores nationally charged an average interest rate (APR) of 100 percent. The interest rate for some items was as much as 275 percent. Overall, the survey concluded that purchasing items via rent-to-own transactions costs 2-5 times as much as buying the same items at department and discount stores.

"The unfair and abusive practices of the rent-to-own industry have been documented for years," Doyle said. "Rent-to-own stores have often victimized low-income citizens. We have laws in Wisconsin to protect consumers from deceptive practices and they should be followed."

The Attorney General said that both actions seek an injunction to require the corporations to comply with the law and civil forfeitures and penalties for past violations.

Doyle said both lawsuits were filed this morning (Wednesday, August 4, 1999) in Milwaukee County Circuit Court. The cases were investigated by the Attorney General's Office of Consumer Protection in cooperation with the Department of Financial Institutions which administers the Wisconsin Consumer Act.

According to Doyle, lobbyists for the rent-to-own industry have advanced a legislative proposal to remove rent-to-own transactions from the Wisconsin Consumer Act. The proposal was included in the 1999-2001 Budget Bill without the benefit of a public hearing. The Attorney General has called on legislative leaders to oppose the initiative and remove it from the proposed state budget. If the plan is enacted, the rent-to-own industry would obtain special treatment, and rent-to-own customers would be stripped of consumer protections afforded by Wisconsin law for over 25 years.

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P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

JAMES E. DOYLE
ATTORNEY GENERAL

NEWS RELEASE

DOYLE REACHES SETTLEMENT WITH RENT-TO-OWN COMPANY

For Immediate Release
June 3, 1999

For More Information Contact:
Jim Haney 608/266-1221

MADISON – Attorney General James Doyle today announced that his office has resolved an investigation into a rent-to-own company's business practices.

Doyle said that a consent judgment has been entered against Rent All Wisconsin, Inc., doing business as Appliance & Furniture Rent All, La Crosse. The company has stores located in Eau Claire, La Crosse, Madison, Oshkosh, Stevens Point, Superior and Wausau.

Under the judgment, the company will make credit disclosures to all customers who enter rent-to-own transactions and must comply with all provisions of the Wisconsin Consumer Act. In addition, Doyle said the company must pay a civil forfeiture of $25,000.

Doyle said the judgment is important because it requires credit disclosures, including "APR," with rent-to-own programs. He said the information will allow consumers to compare costs in rent-to-own programs with the costs in traditional credit sales transactions.

"This is the first time that a rent-to-own company has agreed to disclose effective interest rates for rent-to-own programs," Doyle said. "I hope it will serve as a model for other members of the rent-to-own industry."

The action was based upon an investigation by the Department of Justice in cooperation with the Wisconsin Consumer Act Section of the Department of Financial Institutions. The judgment was entered in Dane County Circuit Court.

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114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

JAMES E. DOYLE
ATTORNEY GENERAL

NEWS RELEASE

STATE SETTLES ACTIONS AGAINST COLORTYME

For Immediate Release
September 9, 1996

For More Information Contact:
Jim Haney 608/266-1221

MADISON - Attorney General James Doyle announced today that his office has settled two legal actions against a Texas-based rent-to-own corporation.

Doyle said that Colortyme, Inc., Athens, Texas, has agreed to pay $25,000 in civil forfeitures and comply with the Wisconsin Consumer Act. Colortyme must also refund all payments made by four consumers who filed complaints with the Department of Justice. The agreements settle a contempt proceeding and related civil forfeiture action that were filed last February. At that time, Colortyme operated stores in Madison, Milwaukee and Beloit. Colortyme has since sold its Milwaukee operations to Renter's Choice.

The enforcement action was based on a civil judgment against Colortyme obtained by the Attorney General's Office in May, 1994. Under that judgment, Colortyme was prohibited from using deceptive practices at its rent-to-own stores in Wisconsin. For rent-to-own transactions in which customers can own the merchandise after making more than four installment payments, Colortyme was required to:

* disclose credit terms, including an interest rate, for its rent-to-own agreements; and

* treat rent-to-own contracts as consumer credit transactions so that collection practices would comply with the Wisconsin Consumer Act.

Doyle said the agreements require Colortyme to comply with the 1994 injunction and make certain that franchisees also comply with the order in the future.

The settlements were filed today (Monday, September 9, 1996) in Milwaukee County Circuit Court.

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114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

JAMES E. DOYLE
ATTORNEY GENERAL

NEWS RELEASE

For Immediate Release
February 20, 1996

For More Information Contact:
Jim Haney 608/266-1221

MADISON - Attorney General James Doyle announced today that a contempt action has been filed against a Texas-based rent-to-own corporation alleging violations of an injunction that prohibited deceptive and unfair business practices.

Doyle said the contempt action and civil complaint are against Colortyme, Inc., Athens, Texas. Colortyme operates rent-to-own stores in Madison, Milwaukee and Beloit.

The action is based on a judgment the Attorney General's Office obtained against Colortyme in May, 1994. The judgment prohibited Colortyme from using deceptive practices at its rent-to-own stores in Wisconsin. For rent-to-own transactions in which customers can own the merchandise after making more than four installment payments, Colortyme was required under the judgment to:

* disclose credit terms including an interest rate for its rent-to-own agreements; and

* treat rent-to-own contracts as consumer credit transactions so that collection practices would comply with the Wisconsin Consumer Act.

According to the Department of Justice's complaint and contempt motion, Colortyme stores in Madison and Beloit violated the injunction by failing to disclose credit terms in at least three transactions. The rate of interest that should have been disclosed for each transaction allegedly exceeded 84% for used bedroom furniture, over 99% for a washing machine and more than 200% for a television set.

The contempt motion also alleges that Colortyme threatened to have a Beloit woman charged with criminal theft after accusing her of missing an installment payment.

The company also allegedly repossessed a washing machine from a Portage family without the customer's permission. According to the contempt motion, Colortyme employees convinced a baby-sitter to let them in the home while the parents were away. While removing the washing machine, the customer claims Colortyme employees damaged the floor of his home.

Colortyme was ordered to pay $25,000 in civil penalties as part of the 1994 judgment. The company could be ordered to pay civil forfeitures of up to $10,000 for each violation of the 1994 injunction.

The motion for contempt and the complaint were filed today (Tuesday, February 20, 1996) in Milwaukee County Circuit Court. The contempt hearing is scheduled before Judge Thomas P. Doherty on April 1, 1996.

###

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

:. DOYLE
EY GENERAL

.a L. Bridge
ıttorney General

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P.O. Box 7857
Madison, WI 5370
608/266-1221

NEWS RELEASE

For Immediate Release
May 25, 1994

For More Information Contact:
Jim Haney
608/266-1221

MADISON - Attorney General James Doyle announced today that his office has obtained a judgment against a Texas rent-to-own company which used contracts in violation of the Wisconsin Consumer Act.

Doyle said the judgment is against ColorTyme, Inc., Athens, Texas. ColorTyme has six company-owned and franchise rent-to-own outlets in Milwaukee, Madison and Beloit.

The judgment, which was approved today (Wednesday, May 25, 1994) by Milwaukee County Circuit Court Judge Thomas P. Doherty, requires ColorTyme to pay $25,000 in civil forfeitures and penalties. The company must also make restitution to customers who file complaints with the Attorney General's Office of Consumer Protection during the next 60 days.

Doyle said the judgment also prohibits ColorTyme from:

* failing to make credit disclosures including the interest rate for rent-to-own contracts;
* failing to make credit disclosures in advertisements promoting rent-to-own contracts; and
* misrepresenting the terms of a consumer rental or sale transaction.

The Department of Justice filed a lawsuit against ColorTyme in April, 1993. The suit alleged that the company's rent-to-own contracts violated the Wisconsin Consumer Act. According to the complaint, implicit interest on rent-to-own sales agreements exceed more than 80 percent per year.

According to Doyle, his office will continue to pursue enforcement actions against rent-to-own businesses which do not comply with state law.

Doyle said the action was taken in cooperation with the Office of the Commissioner of Banking which administers the Wisconsin Consumer Act.

###

The State of Wisconsin
Department of Justice
Madison
53702

For Release:
Friday
July 11, 1975

MADISON -- Attorney General Bronson C. La Follette said today that the Department of Justice, Office of Consumer Protection, has obtained a consent judgment in Milwaukee County Circuit Court against Community Stores Corp. and its officers, Harold Saichek and Richard B. Saichek.

The defendants operate retail furniture and appliance stores located at 1616 West Pierce Street and 4920 West Fond du Lac Avenue in Milwaukee.

The terms of the judgment, entered by Circuit Court Judge Harold B. Jackson, require the defendants to pay the Department of Justice $5,000 in civil penalties and enjoin the defendants from engaging in various advertising practices in violation of Wisconsin's deceptive advertising law, including the following:

-- Promoting contests which violate Wisconsin law to induce customers to purchase merchandise.

-- Advertising combinations of several items of merchandise without disclosing all the conditions for the purchase of that merchandise.

-- Advertising sale merchandise without disclosing that the merchandise is used.

-- Engaging in bait and switch advertising and sales practices including the advertisement of merchandise on sale without sufficient

quantity to meet reasonable customer demand, the employment of a commission system of payment to salesmen which discriminates against the sale of advertised merchandise and the advertisement of merchandise which the defendants do not intent to sell to customers.

Furthermore, the judgment enjoins the defendants from engaging in consumer credit practices which violate the Wisconsin Consumer Act including the following:

-- Advertising credit terms without complying with the disclosure requirements of the Act.

-- Engaging in a consumer lease plan which fails to comply with the requirements of the Act.

-- Requiring customers to sign blank retail installment contracts.

-- Failing to provide customers with a copy of retail installment contracts.

The consent judgement was obtained by the Department of Justice in cooperation with the Commissioner of Banking, who administers the Wisconsin Consumer Act.

By agreeing to the entry of the judgment, the defendants did not admit to any violation of State law.

######

ATTACHMENT 3

WISCONSIN
RENTAL-PURCHASE AGREEMENT

DATE: _____ CONTRACT No. _____
STORE: _____ CUSTOMER: _____

Item	Description	Model	Serial	New or Used	Base Payment

Total of Base Payments: $_____*

This agreement is for one weekly/bi-weekly/monthly (circle one) period. You may renew this agreement for an additional period by paying the amount of the periodic payment in advance for each period you wish to rent the property. If you rent the property for _____ periods you will become the owner as provided in the OWNERSHIP PROVISION. In that event, the following disclosures will apply to this transaction:

ANNUAL PERCENTAGE RATE The cost of rental as a yearly rate	FINANCE CHARGE Amount over cash price you will pay if you make all regular payments.	CASH PRICE The price for which we would sell the property listed above if you would pay cash today	TOTAL OF PAYMENTS The total dollar amount you will have to pay to own the property unless you exercise the early purchase option.
%	$	$	$

Rental Period: Weekly/Biweekly/Monthly (circle one)

PERIODIC RENTAL TERMS:
*Total of Base Payments: _____.
Protection Plan Fee: +_____.
Sales Tax: +_____.
Periodic Payment: =_____.

FIRST PAYMENT ONLY:
Periodic Payment: _____.
Delivery Fee: _____.
Total First Payment: _____.

To obtain ownership, your payment schedule will be:

Number of Payments	Amount of Payments	When Payments are Due
		Weekly/Biweekly/Monthly (circle one) beginning on _____

Termination: You may terminate this agreement at any time by complying with the TERMINATION PROVISION.

Protection Plan: A protection plan is not required to enter into this agreement, and will not be provided unless you sign and agree to pay the additional cost.
Cost of Protection Plan $_____If you want to purchase the protection plan, sign here _____.

Late Charge: If a payment is late, you will be charged 5% of the unpaid amount due or $10, whichever is less.

Title: The property is owned by us until you buy it or get ownership as stated in this agreement. You cannot sell, pledge, mortgage, pawn or otherwise dispose of or encumber the property.

Other important terms: See the remainder of this contract for information regarding ownership, termination, late payments, default, early purchase option, maintenance of the property, etc.

NOTICE TO CUSTOMER

1. **Do not sign this agreement before you read the entire agreement including any writing on the reverse side or on additional pages, even if otherwise advised.**
2. **Do not sign this if it has any blank spaces.**
3. **You are entitled to an exact copy of any agreement you sign.**

Customer: (sign)_____ Date: _____
Customer: (sign)_____ Date: _____
Company: (sign)_____ Date: _____

TERMS OF AGREEMENT

OWNERSHIP PROVISION: You will not own the property until you have made the stated number of payments and the total dollar amount of payments necessary to acquire ownership (plus any other obligations pursuant to this agreement), unless you exercise the early purchase option.

LIABILITY FOR DAMAGE OR LOSS: You are responsible for the safety of the item until it is returned to us. If the rented property is stolen, lost or damaged in excess of normal wear and tear, you are liable to the company the lesser of (1) the value of the property at the time of the loss, as determined under the early purchase option or (2) our cost to repair the property

PROTECTION PLAN: You may, but are not required to, purchase a protection plan from us to protect you against liability for theft, damage or loss to the rental property.

TERMINATION PROVISION: You may terminate this agreement without penalty by voluntarily surrendering or returning the property upon expiration of any rental period along with any past due rental payments.

EARLY PURCHASE OPTION: At any time after the first periodic payment is made, you may acquire ownership of the property by paying fifty-five percent (55%) of the difference between the total of payments necessary to acquire ownership and the total of rental payments you have paid on the property.

TITLE: The property is owned by us until you buy it or get ownership as stated in this agreement. You cannot sell, pledge, mortgage, pawn or otherwise dispose of or encumber the property.

LOCATION OF THE PROPERTY: You agree to keep the property at the address shown in this agreement. If you remove it without first receiving our written permission, you will be considered in default under this agreement and the default provision below will apply.

LATE CHARGE: You will be required to pay a late charge in the amount of five percent (5%) of any past due payment (not to exceed ten dollars ($10.00)) with respect to any payment not paid in full on or before the tenth day after its scheduled or deferred due date.

MAINTENANCE AND WARRANTY: We are responsible for maintaining or servicing the property while it is being rented. If any part of a manufacturer's warranty covers the rental property at the time you acquire ownership, such warranty will be transferred to you.

RETURNED CHECK CHARGE: A charge of fifteen dollars ($15.00) will be made for each check presented for payment that is returned unsatisfied because you do not have an account with the drawee, do not have sufficient funds in your account or have insufficient credit with the drawee.

RIGHTS OF COMPANY: Without affecting the liability of any customer or impairing the company's rights under the agreement, the company may, without notice, accept partial payments or agree to renew or extend the time for any payment.

DEFAULT:

1. You will be in default under this agreement if any of the following occurs:
   (a) You have not paid an amount exceeding one full payment for more than 10 days after the scheduled or deferred due date.
   (b) You fail to observe any other covenant of this agreement, breach of which materially impairs the condition, value or protection of the company's right in the goods rented under this agreement or materially impairs your ability to pay amounts due under this agreement.
2. If you are in default, we will give you notice of the default and 15 days to cure, if applicable. You may cure within the 15-day period by paying the total amount owed or taking other required action. You may then, at your option, either 1. continue making payments under this agreement, keeping the goods as long as payments are made or 2. return the goods under the TERMINATION PROVISION, above. If you fail to cure the default within the 15 day cure period, we may terminate this agreement. Your obligation upon termination will be the total of payments and charges due up to the date of termination and return of any goods obtained under this agreement that are still in your possession. The company may waive its rights pursuant to any default without waiving its rights pursuant to any subsequent or prior default by the customer.

ATTACHMENT 4

Personal Finance
WorkPlace & Careers
Business to Business

Rent-A-Center settlement to let customers share $12 million

By Tom Held
of the Journal Sentinel staff

December 17, 1998

About 20,000 consumers who entered rent-to-own agreements with Rent-A-Center over the last 10 years would share about $12 million as part of a legal settlement announced Wednesday.

Racine County Circuit Judge Allan B. Torhorst gave preliminary approval to the settlement, which would resolve the class-action suit filed against the rental firm in 1994. Torhorst will consider granting final approval of the settlement during a hearing Jan. 29.

The class-action suit, which started out in federal court in Milwaukee, covers Rent-A-Center customers who entered contracts with the firm from Oct. 19, 1988, to Oct. 23, 1998. Only customers who paid 60% or more of the total contract for their goods, or who had active agreements with Rent-A-Center as of Oct. 23, 1998, will be entitled to refunds.

The lawsuit alleged that the rental chain charged interest rates that reached 100% to rent TVs and other appliances through rent-to-own contracts. Those contracts, the suit alleged, illegally hid the actual finance costs and violated state law.

James Caragher, an attorney who represents Renter's Choice, which purchased Rent-A-Center earlier this year, said the company does not admit it violated any laws in the the settlement agreement.

The law regarding such contracts is unclear, and the company chose to avoid the uncertainty of a long and difficult legal battle, said Caragher, with the Milwaukee firm of Foley & Lardner.

Under the terms of the settlement, Renter's Choice, the current owner of the Rent-A-Center chain, would place $16.25 million in an escrow account. About 28% of that amount, or $4.5 million, would be subtracted for attorney fees and settlement costs.

The remaining $12 million would be distributed to about 20,000 customers based on their individual contracts with Rent-A-Center. Court documents show the payments would equal about 16% of a customer's total payments to the retailer.

Any of the customers who are part of the class-action suit may file objections to the settlement with the Racine County court and the attorneys for both sides. A toll-free number -- (800) 439-1781 -- has been established for Rent-A-Center customers who have questions about their prospective settlements.

Milw Journal-Sentinel 12/22/98

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ASK ABOUT FREE DELIVERY & SET-UP

IMPORTANT NOTICE

IF YOU ENTERED INTO ANY RENT-TO-OWN AGREEMENT WITH RENT-A-CENTER

AT ANY TIME DURING THE PERIOD OCTOBER 19, 1988 TO OCTOBER 23, 1998 AND COMPLETED OVER 60% OR MORE OF THE PAYMENTS REQUIRED FOR OWNERSHIP

OR

IF YOU HAD AN ACTIVE AGREEMENT WITH RENT-A-CENTER AS OF OCTOBER 23, 1998

You are hereby notified of a class action lawsuit and proposed settlement of that lawsuit for the sum of $16.25 million. You may be entitled to a share in the Settlement Fund and your rights will be affected by this lawsuit and Settlement.

If you have already received by mail a copy of the Notice of Class Action, Proposed Settlement, and Settlement Hearing, which describes the lawsuit, the Settlement and your rights (including your possible right to a share of the Settlement Fund), then read it carefully. If not, and you in fact rented from Rent-A-Center during the above period and completed over 60% or more of the payments required for ownership (or were still renting as of October 23, 1998), then you may obtain a copy of the Notice by writing to the Settlement Administrator on or before January 27, 1999 at:

Settlement Administrator
c/o Rent-A-Center Litigation
P.O. Box 1584
Madison, WI 53701

You may also request a notice by calling:

1-800-439-1781

LEGAL NOTICE LEGAL NOTICE

IMPORTANT NOTICE

IF YOU WERE A

FIRST AMERICAN RENTAL CUSTOMER

IN WISCONSIN AND:

(1) You signed, renewed, made payments under or entered into an agreement for the rental of merchandise with First American Rental in Wisconsin; and

(2) You signed, made payments under, or otherwise entered into a Consumer Installment Sales and Security Agreement, or other installment sales agreement, for the purchase of the rented merchandise; and

(3) You either (i) between July 28, 1996 and November 30, 1999, made final payment toward ownership of the merchandise pursuant to the agreement referenced in (2) or (ii) were scheduled to make final payment between September 1, 1999 and December 31, 1999 pursuant to the agreement referenced in (2)

You are hereby notified of a $501,000 class action settlement of a lawsuit against First American Rental. You may be entitled to a share in the Settlement Fund and your rights will be affected by this lawsuit and Settlement.

If you have already received by mail a copy of the Notice of Class Action, Proposed Settlement, and Fairness Hearing, which describes the lawsuit, the Settlement and your rights (including your possible right to a share of the Settlement Fund), then read it carefully. If not, and you in fact rented from a First American Rental store in Wisconsin and meet the three (3) requirements outlined above, then you may obtain a copy of the Notice by writing to the Settlement Administrator on or before *April 17, 2000* at: First American Rental Litigation Class Claims Administrator, PO Box 1568, Faribault, MN 55021-1568.

You may also request a Notice by calling:

1-800-242-7610

11/30/97

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

Christine RINTON and Gladys SANCHEZ, individually and as representatives of a class of all similarly situated consumers,
Plaintiffs,
vs.
COLORTYME, INC., and RENTER'S CHOICE, INC., foreign corporations,
Defendants.

Case No. 94 CV 5198

NOTICE OF CLASS ACTION
AND PROPOSED CASH SETTLEMENT

ATTENTION COLORTYME CUSTOMERS!

Purpose.

The purpose of this Notice is to inform you that a class action lawsuit, pending against the above named defendants, has been preliminarily approved by the court for settlement. This notice will describe the nature of this lawsuit, and advise you as to your rights with regard to participation in the class action. *You have not been sued.* Participation may mean that you will receive a future cash distribution. This notice is being published because some class members may not have received individual mailed notice. If you have already received a notice of this lawsuit in the mail, you should refer to that notice. **This is a legal notice authorized by the court and is not an advertisement, promotion, or other sales device.**

Background.

A Class Action lawsuit was filed July 21, 1994 in the Milwaukee County Circuit Court on behalf of all ColorTyme customers who entered into agreements with ColorTyme outlets in Wisconsin since July 21, 1988. On January 8, 1997, the Court certified this case as a class action, appointed the Legal Aid Society of Milwaukee, Inc. as counsel for the class, and ordered notice to be sent to all potential class members. The class has been defined as:

> All individual customers who signed, contracted for, renewed, made payments for, or otherwise entered into "ColorTyme" agreements *in Wisconsin* with any ColorTyme, Inc. subsidiary, franchisee, affiliate, or licensee, after July 21, 1988 and before May 15, 1996 for agreements made in Milwaukee stores, or after July 21, 1988 and before November 1, 1996 for all other Wisconsin agreements.

If you meet this definition, you are a class member. On November 10, 1997 the Court granted preliminary approval to a settlement agreement. As a result, the defendants have deposited 2.9 million dollars into a settlement fund. If final approval is granted by the Court at a subsequent fairness hearing, this money will be distributed to eligible class members and pay for costs and attorneys fees. All remaining money will be given to local charities.

What This Case is About.

Plaintiffs allege that the defendants violated the Wisconsin Consumer Act by failing to make certain disclosures to customers required by that Act within their customer agreements. Plaintiff's also allege that the defendants unlawfully assessed finance charges, engaged in false advertising and unconscionable conduct under the Act, committed usury, and misrepresented the nature of their transactions with customers. The Defendant denies all these allegations and has not admitted any liability in this matter. THE COURT HAS NOT RULED ON THE MERITS OF ANY OF THE CLAIMS INVOLVED IN THIS LAWSUIT, AND THIS NOTICE IS NOT AN INDICATION OF THE COURT'S OPINION REGARDING ANY OF THE CLAIMS OR DEFENSES MADE IN THIS ACTION. BY SETTLING THIS LAWSUIT, DEFENDANTS DO NOT ADMIT THAT THEY HAVE DONE ANYTHING WRONG OR VIOLATED ANY LAWS.

THIS CASE DOES NOT RELEASE YOU FROM ANY CURRENT OBLIGATIONS UNDER ANY AGREEMENT YOU HAVE WITH COLORTYME OR RENTERS CHOICE.

Rights and Responsibilities of Class Members.

If you wish to remain a class member and you have *not* received an individual notice, you must identify yourself to the ColorTyme Class Claims Administrator by **December 22, 1997.** You may do this by providing your name, address, and a statement of which agreements you entered into with ColorTyme since July 21, 1988, to the Administrator at: **P.O. Box 1536, Faribault, Minnesota 55021-1536.** You may also call the Administrator at (414) 297-9643 in the Milwaukee area, or (608) 827-5327 in the Madison area, and provide this information over the phone. The Administrator will then match your name with its records. You may be asked to provide further proof of class membership including evidence of any agreements you entered into with ColorTyme. Therefore, do not discard any information you may have concerning such agreements. Once you have been identified as a class member, you will receive an individual notice containing further information with regard to your rights, including the right to be represented by your own counsel, the right to participate in any distribution, and the right to exclude yourself from class membership. **If you have already received an individual notice, follow the instructions contained in that notice.**

By the Court, this 10th day of November, 1997.

Hon. Patricia D. McMahon
Judge, Circuit Court, Branch 18

AIDS experts warn against complacency
Page 2

MILWAUKEE
METRO AND STATE NEWS

Beloit rally just the beginning, Klan leader says
Page 5

THURSDAY, NOVEMBER 6, 1997 – MILWAUKEE JOURNAL SENTINEL — FINAL EDITION – SECTION B

ColorTyme settlement proposed

Two rental-store companies would pay $2.9 million over lawsuit alleging finance charges were unlawful

By Gretchen Schuldt
of the Journal Sentinel staff

ColorTyme Inc. and Renters Choice Inc. would pay $2.9 million to settle a 3-year-old class action lawsuit alleging that ColorTyme stores violated Wisconsin consumer protection laws, under a proposed settlement filed in Milwaukee County Circuit Court.

The suit, brought by the Legal Aid Society of Milwaukee, alleged that ColorTyme stores in Wisconsin assessed unlawful finance charges against customers, failed to disclose to customers pertinent information regarding their rent-to-own agreements, and engaged in false and deceptive advertising in violation of the Wisconsin Consumer Act.

Thousands of customers who entered into rental-purchase agreements from July 1988 until either May or October 1996, depending on which ColorTyme stores they used, could be affected by the proposed settlement. More than 10,000 contracts between ColorTyme and Wisconsin customers were made during that time, according to a statement Wednesday by Legal Aid.

Renters Choice acquired the assets of Milwaukee ColorTyme stores in May 1996 and was added to the lawsuit at that time.

If the settlement is approved by Circuit Judge Patricia McMahon, each eligible customer can qualify for a rebate check covering a portion of the charges paid to ColorTyme. Part of the settlement will be used to cover legal fees. Any remaining money will be go to local charitable organizations that assist low-income consumers.

ColorTyme, represented by the Foley & Lardner law firm, denies the allegations and does not admit liability.

"Both parties believe this

Please see RENTAL *page 4*

Rental/Deal reached in suit

From page 1

settlement to be fair, reasonable and adequate," according to the proposed settlement.

Legal Aid Executive Director James Walsh said that "most people who entered into agreements with ColorTyme rent-to-own stores were unaware of the true cost of acquiring goods through a rent-to-own transaction. These stores often marketed to low-income consumers, who may not have the convenience or opportunity to shop elsewhere."

Mitchell Fadel, ColorTyme CEO, said in a prepared statement that Wisconsin lacks the specific legislation governing rent-to-own stores that 44 other states already have.

"Without a rent-to-own law, companies in Wisconsin are left to interpret unclear legal guidelines," he said.

He said his firm believed that its rental transactions "never left within the Wisconsin Consumer Act. We believe our contracts also fully disclosed the total cost of acquiring the merchandise. We are satisfied, however, that settlement is appropriate in order to avoid years of additional costly litigation."

Since the suit, ColorTyme has modified its rental practices, the statement says.

THE WALL STREET JOURNAL FRIDA

NESS OF LAW

Rent-to-Own Firms Dealt Setback In Wisconsin Supreme Court Case

By ALIX M. FREEDMAN
Staff Reporter of THE WALL STREET JOURNAL

Wisconsin's highest court upheld a ruling that so-called rent-to-own transactions are subject to tough consumer laws governing credit sales, in a setback to companies that rent goods to customers with the option to buy.

The order involving Thorn EMI PLC's Rent-A-Center Inc., the nation's largest rent-to-own chain, will make the industry subject in Wisconsin to a number of disclosures it has long resisted. To comply with the Wisconsin Consumer Act, rent-to-own companies will have to reveal the straight cash price for their goods, the effective annual interest rates on rentals and the total cost of merchandise to consumers over the terms of their agreements.

Under a typical rent-to-own transac- renters who make weekly or monthly ments, usually for a year and a half, become owners. Customers who make every installment may end up paying several times the item's retail value, at effective annual interest rates that can top 200%. The transactions have come under attack by some consumer act-vists, who claim they exploit the poor. Rent-A-Center was the subject of a page one article in this newspaper last year.

Rent-A-Center has long argued that its transactions aren't credit sales because most customers don't ultimately buy the product and can cancel at any time. Thus, the Wichita, Kan.-based chain says it doesn't charge interest at all. In addition, it says that its prices reflect a variety of valuable benefits, including service and delivery.

The Wisconsin case was brought by Flora Hall of Milwaukee, who became a Rent-A-Center customer in April 1991. Under her contract, Ms. Hall agreed to pay $77.95 a month to rent a new washer and dryer that she said was worth $600 at retail. Under the arrangement, after 19 months of payments, she could own the appliances by making a final "balloon payment" of about $162. This would bring the total cost of the transaction, excluding sales taxes and certain fees, to around

After handing over $1,069 in rent during the course of the year, Ms. Hall stopped making payments, claiming she had already paid more than she believed the appliances were worth.

After Rent-A-Center sued to recover its merchandise, a small-claims-court commissioner referred the matter to Milwaukee Country Circuit Court, which ruled against Rent-A-Center on the grounds that the transaction violated the Wisconsin Consumer Act. In late December, a state appeals court affirmed that decision.

Industry foes applauded the state Supreme Court's decision, by a 3-0 vote, not to consider the matter further. Though Wisconsin doesn't set limits on the interest permissible on credit sales, roughly 30 states do. Therefore, if Wisconsin's view is adopted elsewhere, rent-to-own companies may have to reduce their prices to comply with state interest regulations. In some states, though, the rent-to-own transaction can't be construed as a credit sale under state laws that the industry helped draft.

"For the first time rent-to-own firms will now have to honestly disclose just how much it really costs for the consumers, who do business with them," said Patricia Cavey, a lawyer for the Legal Aid Society of Milwaukee, which represented Ms. Hall in the appeals court. "The question is whether this huge industry can be honest and still survive."

Said David Ramp, a lawyer with the Legal Aid Society of Minneapolis and one of the industry's chief opponents: "This is the biggest victory that consumer advocates (involved in rent-to-own) have had in court to date."

In a prepared statement, Rent-A-Center said it was "surprised and disappointed" that the state Supreme Court wouldn't review the case. "We disagree with this decision, but we also recognize that this case has now been decided," the company said. Rent-A-Center added, however, that the lower appeals court judges "did not agree among themselves" about why rent-to-own agreements are credit sales and "did not establish clear rules to govern future cases."

The Wisconsin Supreme Court order, made public on Wednesday, has implications for other cases pending against the industry. Most notably, the closely watched Starks vs. Rent-A-Center lawsuit, which is now on appeal in the federal appeals court in St. Louis, involves the same issues as the Hall action. A year ago, Rent-A-Center won the first round of Starks in federal district court in St. Paul, Minn. In addition, a case against rival Colortyme Inc., filed last April by the Wisconsin Attorney General's office, is pending in state court in Milwaukee. Its allegations include that Colortyme failed to disclose credit and finance terms.

Rent-A-Center, which operates in 49 states, controls about 25% of the $2.8 billion rent-to-own market. As of 1991, the 1200-outlet chain had 18 stores in Wisconsin.

MILWAUKEE JOURNAL SENTINEL

OTHER VOICES

TUESDAY, JANUARY 16, 1996 9A

Send letters to: The Morning Mail, Milwaukee Journal Sentinel, P.O. Box 371, Milwaukee, Wis. 53201-0371; Fax us at (414) 224-5175. Our Internet address is: XXHB0A@Prodigy.com

THE MORNING MAIL

Wisconsin Consumer Act best bet against rent-to-own abuses

Proposed legislation would keep rental customers in dark about questionable practices

By James A. Walrath

Consumers, beware! Low-income consumers should especially beware. Rent-to-own corporate lobbyists in Wisconsin are aggressively pushing legislation that would deny *all* rent-to-own store customers major protections in the Wisconsin Consumer Act.

One might ask: "Why should low-income consumers (who constitute the vast majority of rent-to-own store customers) receive any less protection under state law in their consumer dealings than high- and middle-income consumers?" Wisconsin Banking Commissioner Richard L. Dean never touches the issue in his Jan. 1 In My Opinion column.

One might also ask: "Why does Dean extol the virtues of a bill cradled by rent-to-own industry lobbyists around the country as their darling, which would [illegible] him the power to condemn outr[illegible]us pricing tactics, when Dean currently holds state Consumer Act powers to ban rent-to-own transactions involving annual credit rates of 235% to 550% for items such as used refrigerators or used televisions and videocassette recorders? (These are the facts stated in a pending Legal Aid Society of Milwaukee complaint against a Milwaukee rent-to-own store under the Wisconsin Consumer Act.)

Walrath

And why does Dean favor exempting rent-to-own purchases from the very finance charge disclosure requirements that he is charged by the Wisconsin Consumer Act with enforcing against all of the credit institutions his office regulates?

If Sears and Penney's, for example, and every finance company in Wisconsin must tell the buyer what credit rates are involved, why shouldn't Rent-A-Center and ColorTyme have to tell their purchasers, too? Dean is silent on this key issue.

These consumer deals aren't simple rental transactions otherwise exempt from Consumer Act rules. Indeed, the retailers openly tout their transactions as purchase plans (i.e., "rent-to-own").

The history of the kind of bill Dean and the industry lobbyists are pushing in the Wisconsin Legislature (Virginia has a similar version, for example) shows that debt collection abuses, price-gouging tactics and hidden finance charges have continued unabated. (Dean promises a get-tough policy from his regulators; but his office does not have a record of revoking licenses of regulated businesses for violations during his tenure.)

If Dean, as he claims, really wants to "strengthen" Assembly Bill 715, here are features to add to the bill:

- Define rent-to-own purchases as credit sales, and require disclosure of the finance charges and annual percentage rates to the prospective purchaser.
- Require disclosure of the actual fair market value of the goods, rather than some inflated cash price.
- Prohibit price-gouging for inferior merchandise and other unconscionable practices.
- Ban exorbitant application fees, liability waiv[illegible], reinstatement or late fees and [illegible]e charges that are disproportionate to the average installment payments.
- Prohibit rent-to-own dealers from engaging in self-help repossessions and abusive debt collection practices listed in the federal debt collections practices act.
- Confer on consumers a private right of action for statutory penalties as well as damages when violations occur.
- Impose personal liability on company officers for violations in the event of corporate insolvency.
- Require that stores supply payment history certificates to customers at their request so that these buyers can go on to establish good credit with other retailers.

A much simpler way to accomplish virtually all of these goals would be to follow the lead of the Wisconsin Court of Appeals and declare that rent-to-own deals are governed by the Wisconsin Consumer Act, because the act already provides most of these protections.

I call on church leaders, community leaders, neighborhood groups and civic associations (like the Urban League, the National Association for the Advancement of Colored People, Milwaukee Innercity Congregations Allied for Hope, the Better Business Bureau, the Fair Leading Coalition and chambers of commerce statewide to fight Assembly Bill 715; and I call on the rest of the Legislature and the voting public to do the same.

The Wisconsin Consumer Act is th[illegible] buying public's best protection agains[illegible] abuses by the rent-to-own industry.

James A. Walrath is an attorney and executive dir[illegible]tor of the Legal Aid Soci[illegible] Milwaukee.

IN MY OPINION

Walrath says:

"The history of the kind of bill Dean and the industry lobbyists are pushing in the Wisconsin Legislature shows that debt collection abuses, price-gouging tactics and hidden finance charges have continued unabated."

84

Testimony of James E. Byrd before the

COMMITTEE ON FINANCIAL SERVICES

Subcommittee on Financial Institutions and Consumer Credit

regarding H.R. 1701

The Consumer Rental-Purchase Agreement Act

July 12, 2001

Mr. Chairman and Members of the Committee, thank you for inviting me to testify today regarding H.R. 1701. My name is James Byrd and I am the owner of Byrd's TV Sales, Service and Rental in Florence, South Carolina. I am also a member of the Association of Progressive Rental Organizations, the rental-purchase industry's national trade association.

I have been in the consumer electronics business for 42 years. I started in 1959 after graduating from Denmark Technical College with an electronic and television technician diploma. At first, I opened my own business doing repair service only. In 1963 I expanded my business into radio and television sales and service, and have been at the same location in Florence since that time.

Byrd's TV is a family business. Over the years, all four of my children, Sydney, Janet, Shelia, and Charlene, have worked at the store. Shelia is now an electrical engineer and went to work for Honeywell immediately after graduating from college and Charlene is an occupational therapist. Sydney and Janet still work with me, along with my grandson Derrick when he is not attending college at South Carolina State University.

By the early 1980s increased competition from large electronic dealers and discount stores forced me to re-evaluate my business strategy. In 1982 I added furniture and appliances to my product mix. This helped me make up for the loss of electronics business. I found that some of my customers could not qualify for credit and some had temporary needs. To meet these special needs, I also began to offer rent-to-own. Since I began offering rent-to-own in 1982, my business has grown substantially. Today about 70% of my business is rent-to-own, and the other 30% is a combination of retail sales and repair service.

Rent-to-own offers great flexibility for my customers. Under a rent-to-own agreement my customers can acquire the possession and use of household goods by making more affordable weekly or monthly payments. Unlike a credit sale, the customer can return the property and end the agreement at any time without penalty. In addition, at any time during the agreement the customer can exercise the early purchase option and buy the merchandise for 55% of the remaining rent. I also offer a special option through which

my rent-to-own customers can acquire ownership of the merchandise at any time during the first 90 days of an agreement by paying the balance of the cash price. I am not required by law to offer this option, but I do because I believe it gives me a competitive edge.

The flexibility that rent-to-own provides to my customers comes with some extra costs to my business. During the rental period, I still own and am responsible for the product. I find that only about 25% of my customers will end up owning the merchandise they rent, which I understand is consistent with estimates across my industry. Most customers choose to return the merchandise within a few months. It is not unusual for an item to be rented to 4 or 5 different customers before ownership is acquired or the item is no longer in good enough condition to re-rent. This means that as a rent-to-own dealer I incur operating expenses that retailers do not incur. I provide delivery and set-up at no additional cost. I also must pick up merchandise when a customer terminates the agreement. I provide ongoing service and maintenance throughout during the term of the agreement, and a temporary replacement while a product is being repaired. I incur the special costs of refurbishing and re-renting an item after it is returned. I also incur extra costs in managing my outstanding customer accounts, which can be very labor intensive. These additional costs make rent-to-own more expensive than a cash purchase or buying on credit, but, for a variety of reasons, my customers choose to use rent-to-own.

Some customers rent because they have temporary family needs. Increasingly, I rent to people relocating to the Florence area to start a new job. Often these customers will start the new job before they have sold their house and moved their family to Florence. In these situations, we can completely furnish an apartment at a low weekly rate and then pick up the furniture and appliances as soon as they move their family and personal belongings to Florence. I have rented to people who are separated from their spouse, but hope to reconcile, and rent-to-own allows them to temporarily furnish a second residence without a long-term obligation. I know that some other rent-to-own dealers offer computer equipment with Internet service, which gives children access at home to a computer and printer for school projects.

Some of my customers have the ability to buy on credit but choose to use rent-to-own. For example, I have had customers use rent-to-own because they are getting ready to buy a house and don't want to take on new debt that will show up on their credit report. Rent-to-own allows these customers to get items they want and need without jeopardizing their ability to qualify for a home loan. Other customers that can qualify for credit choose rent-to-own because of an uncertain employment situation or tight family budgets. If they suffer a temporary job loss or an unusual emergency expense, they can return the merchandise and avoid damaging their credit rating. Then they can reinstate the agreement when their financial situation improves.

Finally, many of my customers cannot qualify for credit or have had bad experiences with credit transactions, but need household goods like refrigerators, washers and dryers, and bedroom furniture. Rent-to-own allows these customers to acquire

essential household goods without credit and if they get into a financial bind, they can return the merchandise and then reinstate the agreement when their financial situation improves.

For people in South Carolina that use rent-to-own, H.R. 1701 will increase consumer protection in two significant ways. First, South Carolina law does not require rent-to-own dealers to make any kind of point-of-sale cost disclosures. This bill will require dealers to disclose on price tags whether the merchandise is new or used, the cash price, the amount of each rent payment, the total number of rent payments, and the total of all mandatory charges that must be paid in order to acquire ownership. This is a significant improvement over South Carolina law.

Secondly, this bill gives customers that have paid at least 60% of the total rent an additional 30 days in which to reinstate an inactive agreement. Reinstatement allows a customer to return the merchandise for any reason and then reinstate the agreement in the future without losing the benefit of the payments they have already made. This is a tremendous advantage for customers that must return merchandise because of a short-term job loss or unexpected financial set backs like expensive car or home repairs.

You may wonder why a rental dealer in South Carolina is interested in federal rent-to-own legislation. This may seem like a matter that only the large companies would care about. I am supporting this bill for two reasons. First, it will raise standards in the rent-to-own industry. Because of my concern about the well being of this industry I have been an active APRO member for about 15 years and have supported its efforts to improve the industry through legislation and dealer education. I believe improving the standards in the industry will increase public confidence in rent-to-own and help the industry grow and prosper.

Secondly, the long-term viability of this industry is of great importance to me. If you think about it, from my perspective, I have more at stake than the large companies do. My entire livelihood and future and my whole life earnings are in my business in South Carolina. Reclassification of the transaction as a credit sale rather than a rental-purchase agreement in South Carolina would destroy the business I have worked hard to build. That is why federal recognition of the transaction as a rental-purchase agreement is important to me.

I hope that some day my grandson, Derrick, will take over my business and continue to provide the high level of customer service and satisfaction that I have provided for the past 42 years. Passing H.R. 1701 will help ensure that is possible.

Thank you for your time and consideration. If you have any questions, I would be glad to answer them.

United States House of Representatives
Financial Institutions Subcommittee
of the
Financial Services Committee

Hearing on H.R. 1701
The Consumer Rental-Purchase Agreement Act

Testimony of Manuela Salazar Harper, El Paso, Texas

July 12, 2001

INTRODUCTION

Thank you, Mr. Chairman, Members of the Financial Institutions Subcommittee, and especially to my Member of Congress, Representative Silvestre Reyes, for your kind introduction. It is my pleasure to have this opportunity to talk with you about my business and H.R. 1701.

My name is Manuela Salazar Harper, but my friends and customers call me Mamie. I am a businesswoman from El Paso, Texas. I am the owner and operator of four rental-purchase stores in El Paso. I have owned my own business for 10 years. My company provides jobs for 14 employees, and we have served many customers in El Paso and Canutillo, Texas, and Sunland Park, New Mexico, in the ten years that we have been open. I am extremely proud of the fact that I, a second generation Hispanic-American woman, have built my own company from the ground up, providing my employees with a middle-class lifestyle and decent workplace, while providing my customers with a unique package of goods and services.

I also presently serve as the Secretary of the rental-purchase industry's national trade association, the Association of Progressive Rental Organizations. "APRO" as it is commonly referred to is headquartered in Austin, Texas, and its members include both small and large companies that operate about 5,000 of the approximately 8,000 or so rental-purchase stores currently operating in the United States.

I am serving my second term as a member of the APRO Board of Directors and appear here today representing all of the member companies of APRO and myself.

Before I begin my remarks to the Committee I want you to know that I am neither an attorney nor a technical expert on the legal aspects of H.R. 1701. However, with me today is Edward Winn, General Counsel of our trade association and a widely regarded expert on rental-purchase legislation and legal issues. With your permission, Mr. Chairman, I would like to refer any specific legal or technical questions you may have to Mr. Winn.

BACKGROUND ON RENTAL-PURCHASE

As I mentioned, the rental-purchase industry operates approximately 8,000 stores throughout the country. We have 7 million items on rent presently in over 3 million households.

The industry as a whole produces $5 billion in annual rental revenues. We pay in excess of $1 billion in wages annually.

For many of you, the concept of rental-purchase may be somewhat unfamiliar. Basically, APRO members rent household durable goods such as electronics, furniture, appliances and computers to our customers. We use a week-to-week or month-to-month rental agreement that is renewable at the option of the customer, but does not obligate the customer to anything beyond that rental period. Because this is a lease and not a sale on credit, we do not run credit checks, a customer does not harm his or her credit rating by returning an item, and the customer does not become liable for any deficiency judgement. Other merchants use this form of transaction for other types of goods, for example, music and band instrument businesses. If my son tells me when he wants to learn how to play the trumpet, I'd rather not spend $1,000.00 or more purchasing the instrument until I knew he was serious about it. Rental-purchase offers me that flexibility to rent the trumpet with the option to own it later.

In addition to the use of the merchandise without further obligation, APRO members typically offer delivery and setup of the merchandise at no additional cost to our customers. Sometimes this delivery and setup is nearby and easy to complete; however, more often it requires our employees to drive long distances, and then to move furniture, hook up appliances to power and water sources, or to set up and integrate computer or audio-visual systems. We also provide full service on the rented goods during the term of the agreements. If for any reason we are unable to repair the item in the customers' homes, then we provide temporary replacement goods, or "loaners," while we repair the original rented items. This commitment to provide full service and replacement merchandise extends for as long as the rental agreement is in effect and additionally applies whether the rented items are new or used. When our customers choose to terminate their rental agreements, we pick up the merchandise without any charge to the customer.

Who do we serve? In my experience running my stores in El Paso, we serve a wide variety of consumers with an equally wide array of needs and wants. We serve military personnel from Fort Bliss who are required to move from place to place, often on short notice, who need nice but affordable furnishings for a short time. We serve individuals and groups who need entertainment or computer equipment only for a short period or single event – for example, big screen TVs for the Super Bowl. We provide an extra bed to accommodate a visiting relative or friend. We also lease computers and furniture for a re-election campaign office.

The predominant portion of our business involves serving customers who need and want nice things for their home and family but who may not have the cash, credit or present desire to purchase these goods and services outright. Due to past credit challenges and instability, present income and budget constraints, and future uncertainties that many of our customers face every day, we find that they need and want the quality products, financial flexibility, and associated services that our transaction affords them.

The most commonly used option in rental-purchase transactions is the option to terminate the agreements and return the goods without any further obligation. Industry statistics have consistently shown that the "keep rate" – a term used to describe the percentage of transactions originated that end with the customer acquiring ownership of the rented goods – typically falls somewhere in the 25 to 30 percent range. This rate may vary depending upon the type of goods involved, the location of the store, and other external factors.

On this point, I recently have been asked about a higher keep rate found by a Federal Trade Commission survey of rental-purchase customers, which was published last year. That survey reported a significant difference between keep rates recollected by consumers and industry keep rate statistics. I think that much of this disparity may be attributed to the different methodologies used by the FTC and the industry to determine keep rate. The FTC asked telephone respondents to recall whether they acquired any of the items they rented over the previous five years. Those results seem subject to significant memory bias, as customers look around their home and remember those items that they kept, rather than the items that they returned up to five years before. In contrast, most industry estimates derive from tracking individual transactions during the course of a year or more using point-of-rental computer systems. Speaking for APRO and its members, we would be very willing to provide the Committee with the data and related information backing up our keep rate analyses.

I also want to note that the rental-purchase industry is very competitive. In my state alone, there are nearly 1,200 rental stores competing for the same customers. Also, the barriers to entry are low – locations are rented, not purchased, and for a single store an adequate initial investment in inventory and other startup expenses is approximately $300,000. A significant number of the rental stores operating in the United States are single-store "mom-and-pop" operations.

COMMENTS ON H.R. 1701

APRO members support H.R. 1701, the Consumer Rental-Purchase Agreement Act, because we believe that it balances the interests of our customers and the concerns of the industry. H.R. 1701 incorporates several notable consumer-oriented improvements over federal bills introduced in prior years. It adopts the FTC policy recommendation on how to best disclose the total costs of a rental-purchase transaction. It also strengthens enforcement provisions in response to concerns raised by consumer advocates. I want to highlight some key aspects of H.R. 1701 that my industry supports –

(1) Rental-Purchase Agreement Disclosures. In its recent report, the FTC determined that the rental-purchase customers would benefit from more comprehensive cost disclosures. H.R. 1701 adopts the suggested FTC approach of disclosing the sum of all rental payments and any mandatory fees and charges, and it requires disclosure of this total cost in rental-purchase agreements, on merchandise labels, and in advertising.

(2) Merchandise Labeling. H.R. 1701 requires that all rental-purchase merchandise bear a label or tag that discloses specific information about the cost and the product. This point-of-rental disclosure includes the price to purchase the item outright for cash, the rental payment amount, the total number of payments to acquire ownership, and the total cost to acquire ownership. The FTC recommended this requirement. Price tag disclosures are important to help our customers make informed decisions and protect them against price manipulation. Only 18 states currently require any type of merchandise labels at the point of display. H.R. 1701 would establish this consumer protection in 32 additional states, including my state of Texas.

(3) Broader Reinstatement Rights. H.R. 1701 assures that a customer's rights will be preserved if the customer wants to reinstate the rental-purchase agreement within a specific period of time. My customers feel that this is one of the most important of all our contract provisions, and so do reputable rental-purchase dealers. H.R. 1701 also provides a three-day reinstatement period

for late payments. For customers that return merchandise, H.R. 1701 provides 30 days for reinstatement, and 90 days if the customer made 60% of the total payments toward ownership. Again, these provisions expand some aspects of current reinstatement rights in most states.

(4) Civil Liability. APRO members recognize that real enforcement mechanisms are important to ensure the legitimacy of these enhanced consumer rights. H.R. 1701 incorporates civil liability provisions similar to those in the Truth in Lending Act, including actual damages, statutory damages, and reasonable attorney's fees. Bills introduced in prior years did not include attorney's fees, and we support this addition as necessary to enable consumers to enforce their rights.

(5) Enforcement. H.R. 1701 authorizes both the FTC and the states attorneys general to enforce the act. Because states attorneys general bring actions against rental-purchase dealers who violate existing state consumer protection laws, it makes sense that they have the capacity to help enforce these provisions. We believe this is a very significant improvement to enforcement.

WHY APRO SUPPORTS PASSAGE OF H.R. 1701

In closing, let me tell you why a group of independent businessmen and women want this type of federal regulation. While every individual merchant will have his or her own reasons, I think that APRO members share several core interests.

First, enactment of H.R. 1701 would represent a final unambiguous legal determination that our transaction is not properly characterized a form of consumer credit, but as something entirely different and unique. Every day, we face the possibility of defending lawsuits in which it is claimed that the federal Truth-in-Lending Act or the Consumer Leasing Act applies to our transactions, even though those laws may otherwise appear to not apply to rental-purchase agreements.

In addition, this law would help to clarify the legal issues we face when one of our customers files for bankruptcy and claims our rental merchandise to be part of the bankruptcy estate. This is a very common and costly occurrence for our dealers.

Third, many of our members have operations in more than one state, and this bill would help to reduce the burden of regulatory compliance. Even if I am doing business in a state with a rental-purchase law in place, I benefit from this bill if I have customers in two states, like I do in Texas and New Mexico. I can use one set of agreement forms and one version of advertising disclosures, instead of two or more.

Finally, H.R. 1701 would raise the standard for disclosure and other practices in many states. This enhanced but fair regulation would add to the ongoing efforts of dealers like myself who are trying to upgrade the image of our industry. Additionally, long-term benefits accrue from having a federal "stamp of legitimacy," akin to a "good housekeeping seal of approval," that H.R. 1701 would provide. For some of our dealers, this might include better financing options for startup and expansion plans. For the five publicly traded companies in our industry, the stability and certainty that enactment of H.R. 1701 would provide would be important.

For these reasons, we ask you to support H.R. 1701. Thank you, Mr. Chairman and Members of the Committee. I would be happy to answer any questions you may have.

Testimony before the

COMMITTEE ON FINANCIAL SERVICES

Subcommittee on Financial Institutions & Consumer Credit

regarding

H.R. 1701

The Consumer Credit Protection Act

July 12, 2001

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Consumers Union
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Testimony before the
Subcommittee on Financial Institutions & Consumer Credit
regarding
H.R. 1701
The Consumer Credit Protection Act
July 12, 2001

Mr. Chairman and Members of the Committee, the **National Consumer Law Center**[1] thanks you for inviting us to testify today regarding the impact of H.R. 1701 on consumers. We offer our testimony here today on behalf of our low income clients, as well as the **Consumer Federation of America,**[2] **Consumers Union,**[3] and the **U.S. Public Interest Research Group.**[4]

On behalf of the millions of low and moderate income consumers that these groups collectively represent, we can say unequivocally that we are unalterably opposed to H.R. 1701. The bill will not help consumers, it will only hurt them. Consumers need protections from the exorbitant prices charged to purchase items through rent to own dealers; they need protections from high fees; and consumers need assurances that they can reinstate their contract with reasonable fees and under reasonable conditions after they have spent considerable sums trying to purchase the items. While we believe that even the most precise disclosures would not adequately protect consumers in these transactions, the disclosures required by H.R. 1701 do not provide meaningful information.

You have asked me to answer three questions regarding H.R. 1701. Below I answer these questions and than provide substantial background information on the rent to own industry and its impact on consumers.

Question 1. Whether or not the bill provides an adequate national "floor" for consumer protections.

Answer. There seems to some sort of misunderstanding. This bill, by its terms, does not provide a floor for consumer protections, it provides a ceiling. And this ceiling is very, very low. H.R. 1701 explicitly provides – in section 1018 – that any state law on the subject is preempted if it is inconsistent with H.R. 1701. Thus, any law which included the consumer protections such as the following would be inconsistent, and thus preempted: 1) a limitation on the total amount a consumer could be required to pay to obtain ownership of an item, or 2) a requirement that a rent to own ("RTO") dealer allow

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[1]The **National Consumer Law Center** is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen examples of predatory practices against low-income people in almost every state in the union. It is from this vantage point – many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities – that we supply these comments. We publish and annually supplement twelve practice treatises which describe the law currently applicable to all types of consumer transactions.

[2]The **Consumer Federation of America** is a nonprofit association of over 280 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education.

[3]**Consumers Union** is the publisher of Consumer Reports.

[4]The **U.S. Public Interest Research Group** is the national lobbying office for state PIRGs, which are non-profit, non-partisan consumer advocacy groups with half a million citizen members around the country.

reinstatement based on terms different than those in the bill, 3) a limitation on the fees that a dealer can charg, or 4) a disclosure like the annual percentage rate. No other consumer protection law preempts state consumer protections in this way. This is because the intent of this bill is not to provide consumer protections to consumers, but to provide cover from challenges to the industry's unconscionable practices.

Question 2. The likely impact on consumers if this bill becomes law.

Answer. Consumers will be hurt. While the laws in many states may not adequately protect consumers from the high prices and unfair practices of this industry, **the majority of the U.S. population is currently governed by better RTO provisions than this bill provides. The majority of state laws which govern RTO transactions provide *more* consumer protections than H.R. 1701. Yet H.R.1701 would curtail these protections, quite significantly in some states.** A few examples of the *better* consumer protection provisions in some state RTO statutes *which would be preempted* by H.R. 1701 include:[5]

- **California** – where, among other things, the RTO statute includes a much better definition of "cash price," closely limits the definition of default, provides more comprehensive reinstatement rights after default, and shifts the burden to the dealer to act in good faith.[6]

- **Iowa** – where, among other things, the RTO statute limits the total amount the consumer can be required to pay for ownership of the item, limits fees, and provides better rights to reinstatement of the contract after the consumer's default.[7]

- **Michigan** – where, among other things, the RTO statute limits the total amount the consumer can be required to pay for ownership, limits fees, provides better rights to reinstatement of the contract after default.[8]

- **Minnesota** – where, among other things, the statute provides a better definition of cash price, better disclosures, improved reinstatement rights,[9] and the courts have required that RTO contracts be treated for what they really are: disguised credit sales and subject to general usury ceilings.[10]

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[5]This list is meant to represenational only. There are scores of other provisions in the RTO statutes of these states as well as others not mentioned which are better for consumers than H.R. 1701 and would be preempted if H.R. 1701b were to pass.

[6] Cal. Civ. Code §§1812.644, 1812.631.

[7]Iowa Code §§ 537.3608, 537.3613, 537.3616.

[8]Mich. Comp. Ann. §§ 445.954, 445.958.

[9] Minn. Stat. Ann. §§ 325F.84, 325F.86, 325F.90.

[10] *Fogie v. Rent-A-Center, Inc.*, 1995 WL 649575 (D.Minn. 1995), *aff'd sub nom., Fogie v. Thorn Americas, Inc.*, 95 F. 3rd 645 (8th Cir. 1996), *subsequent appeal on different grounds,* 190 F.3rd 889 (8th Cir.1999).

- **New York** – where, among other things, the legislative history indicates that the definition of "cash price" is more consumer friendly, fees are strictly limited, there is a cap on the total amount consumers can be required to pay to obtain ownership, there is an early purchase option, as well as better reinstatement protections than in H.R. 1701.[11]

- **Ohio** – where the RTO statute includes a limitation on fees, improved reinstatement rights, restrictions on the definition of default, a close cap on the total of payments, and an early purchase option.[12]

- **Oregon** – where the RTO statute includes limitations on late fees and fees for reinstatement which are not in H.R. 1701.[13]

- **Pennsylvania** - where the RTO statute includes limitations on late fees and fees for reinstatement, the consumers rights to reinstatement are friendlier than those in H.R. 1701, and there is a limit on the total of payments.[14]

- **Tennessee** – where the RTO statute includes better rights for consumers' reinstatement than those in H.R. 1701.[15]

- **Texas** – where the RTO statute includes limitations on late fees and fees for reinstatement not found in H.R. 1701.[16]

- **Vermont** – where the statute provides a strict definition of cash price and strictly limits the total amount a consumer can be required to pay to acquire ownership. Also, regulations have been passed in Vermont requiring an annual percentage rate type disclosure.[17]

- **West Virginia** – where, among other things, the total of payments is limited and the definition of cash price is much stricter than in H.R. 1701.[18]

In addition, the legislatures of New Jersey, North Carolina, and Wisconsin have deliberately rejected RTO statutes, choosing instead to regulate these transactions as credit sales. In all, the populations of these 17 states (plus the District of Columbia) represent over 55% of the population of

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[11]N.Y. Pers. Prop. Law §§ 500, 501, 503.

[12]Ohio Rev. Code Ann. §§ 1351.01, 1351.05, 1351.06.

[13]Or. Rev. Stat.§ 646.253.

[14]Pa. Cons. Stat. Ann.§§ 6904, 6905, 6906.

[15]Tenn. Code. Ann. § 47-18-607.

[16]Tex. Bus. & Com §35.72

[17]Vt. Stat. Ann. tit. 9, § 41b and Rule C.F. § 115.04.

[18]W. Va. Code §§ 46B-1-1 to 46B-1-5.

this nation. The RTO consumers in these jurisdictions would clearly be worse off if H.R. 1701 becomes law. There is no trade off, either. The rest of population in the remaining states would certainly not be better protected as a result of H.R. 1701. H.R. 1701 simply does not provide any meaningful consumer protections.

What is *Wrong* with H.R. 1701?

As both the RTO industry and the FTC statistics show, the customer base for RTO transactions are among the poorest Americans. The FTC statistics also show that the vast majority of these customers enter into these transactions as a method of purchasing goods. While the industry attempts to claim that the majority of these transactions are rentals, this is belied by the information provided to the IRS and in litigation. On average the RTO stores dispose of rental units within two years of RTO's purchase of inventory and dispose of about 90% of all rental units within 3 ½ years of purchase. *In other words, almost all of an RTO dealer's merchandise is sold to the RTO customer base in two to three years.*[19]

The interesting distinction is between the FTC statistics and the industry statistics on this point. The FTC says that seventy percent of RTO merchandise is purchased.[20] The industry indicates in its promotional materials for this bill that "only 25 percent to 30 percent of rental-purchase customers actually pursue the ownership option." The difference between these statistics is that the FTC is counting *people* and the industry is counting *contracts*.

The reason for the difference in the numbers is that RTO customers frequently "refinance" their RTO contracts and continue making payments. Ultimately customers end up owning RTO goods. The 25% rate of initial contracts being completed all the way to purchase is more an indication of the industry's collection practices than it is an indication of customer intent to purchase. The income levels of most RTO customers creates ample opportunity for bumps in the customer's economic road that will adversely affect the ability of the customer to consistently continue to pay $19.99 a week to an RTO dealer over a period of 18 to 21 months. This is why the reinstatement protections in the governing law are so crucial to the customer. When a customer has defaulted on an RTO contract, some credit for weeks of past payments must be applied toward the purchase of the item. As the industry statistics show, the ultimate purchase will frequently not occur until the customer has entered into two or three RTO contracts for the same or a similar item.

What does this low income customer base most need to protect them from an industry which preys upon their lack of perceived options? These consumers need protection from high costs and unfair practices. Although we believe that the best way to achieve these protections is to treat these transactions as what they really are – disguised credit sales – we also believe that adequate federal regulation can be provided in the RTO context.

It is evident that H.R. 1701, and most state RTO statutes were intended to provide dealers with complete insulation from consumer claims that the transactions are disguised credit sales. There are numerous ways in which RTO legislation can be improved. RTO consumers need, at the least:

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[19] *ABC Rentals v. IRS*, 142 F.3d 1200, 1202 (10th Cir. 1998).

[20] Federal Trade Commission, Bureau of Economics Staff Report, *Survey of Rent-to-Own Customers*, Executive Summary.

- A true definition of the *cash price*. H.R. 1701 and many state RTO laws that require a cash price disclosure permits RTO dealers to set that price wherever they choose. *However, some state laws do require a cash price based on the reasonable price at which the merchandise is sold by other dealers. H.R. 1701 would preempt these.*

- Limitations on the total of payments that a consumer should be required to pay for the purchase of the item. A number of states have adopted some limitations, which often are not sufficient, but are better than no limitation at all. These include Iowa, Ohio, Michigan, New York, Pennsylvania, Vermont, and West Virginia. *Yet this essential regulation is excluded from H.R. 1701.*

- Limits on "fees" such as late fees, insurance fees, home pick-up fees, etc. *Most state laws include limits on these fees, unlike H.R. 1701.*

- Reinstatement rights: clear rights to have payments made on previous contracts applied to new contracts for the same types of items. *Many state laws are much friendlier to the consumer on this point than is H.R. 1701.*

- Price tag disclosures, as well as contract disclosures. By the time the customer gets the contract the decision to proceed with the transaction has often been made. Price tag disclosures provide information before the commitment to rent to own has been made. Price tag disclosures should include information that will simply convey information about the high relative cost of renting to own to the prospective purchaser. Yet, H.R. 1701, while requiring price tag disclosures – in section 1010 – does not provide an effective remedy for a dealer's failure to comply with this requirement. *Section 1012 on civil liability omits compliance with section 1010 from its coverage.*

- Meaningful penalties for dealers who violate the provisions of the RTO statute. H.R. 1701 provides no such penalties because Section 1012 (c) allows dealers to avoid liability for disclosure violations if, within 60 days of learning of the violation, the dealer adjusts the consumer's account so that the consumer would not have to pay more than was actually disclosed. *This provision clearly encourages dealers to ignore disclosure requirements because they suffer no penalty so long as they adjust once the consumer complains.*

- A disclosure like the annual percentage rate which shows the consumer the true cost of renting to own, to compare it with other methods of purchasing personal items.

Background on Rent To Own Transactions in the United States.

RTO businesses are essentially appliance and furniture retailers which arrange lease agreements rather than typical installment sales contracts for those customers who cannot purchase goods with cash or who are unsophisticated about money management. These lease agreements contain several special features. First, the lease agreements contain purchase options which typically enable the lessees to obtain title to the goods in question by making a nominal payment at the end of a stated period, such as eighteen months. Second, the leases are short term, so that "rental payments" are due weekly or monthly. Third, the leases are "at will." In other words, the leases theoretically need not be renewed at the end of each weekly or monthly term.

The RTO industry aims its marketing efforts at low-income consumers by advertising in minority media, buses, and in public housing projects, and by suggesting it has many features attractive to low-income consumers: quick delivery, weekly payments, no or small down payments, quick repair service, no credit checks, and no harm to one's credit rating if the transaction is canceled.[21] Most RTO customers enter into these transactions with the expectation of buying an appliance and are seldom interested by the rental aspect of the contract.[22] This attitude is encouraged by RTO dealers who emphasize the purchase option in their marketing even while they are minimizing its importance in the written contract. Of course, if and when a transaction is challenged in court, an RTO dealer will point to the rental provisions of the contract and claim that statutes which control traditional retail installment sales are irrelevant to RTO agreements.

The chief problem with RTO contracts is not only that these supposed leases are used to mask installment sales, but also that these sales are made at astronomic and undisclosed effective interest rates. Under most RTO contracts, the customer will pay between $1000 and $2400 for a TV, stereo, or other major appliance worth as little as $200 retail, if used, and seldom more than $600 retail, if new. This means that a low-income RTO customer may pay 1 ½ to 12 times what a cash customer would pay in a traditional retail store for the same appliance.

The finance charge and interest rate or annual percentage rate (APR) of an RTO contract depends on the retail cash value of the appliance (especially whether new or used) and the timing, amount, and number of payments. The following chart illustrates the APR computations, assuming no payments in arrears.[23]

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[21] The Association of Progressive Rental Organizations (APRO), the RTO trade association, publishes information on RTO at its Web site. *See* www.apro-rto.com. It reports that the majority of RTO customers (65%) have annual incomes under $36,000; over 65% are under the age of 45; over 58% have a high school education or less; and about 70% are Caucasian. However, a Warren Rudman report found that 61% of the respondents surveyed in 1994 had personal earnings less than $20,000 and 29% earned less than $10,000. Warren B. Rudman, "Market Survey Results and Economic Analysis" (Feb. 1994) at 14 (report to the Board of Directors of Thorn EMI PLC concerning the operations of the Rent-A-Center Division of Thorn Americas Inc.).

[22] The industry often says that less than one-quarter of its customers purchase the "rented" goods, but its method of deriving that statistic is suspect. Discovery obtained in one class action against a major RTO company showed that 66% of one year's inventory was sold, and between 73% and 77% of the company's revenues came from sales, not rentals. *See* Ramp, *Renting-To-Own in the United States,* 24 Clearinghouse Rev. 797 (Dec. 1990). Data obtained from RTO dealer's databases from different chains in several states confirm that 75% or more of the dealer's gross revenue is derived from customers who purchase goods. For example, RTO Enterprises Inc., Canada's largest rent-to-own company, reports that approximately 85% of RTO's revenues are generated through the rent-to-own program and approximately 87% of all rent-to-own customers purchase the merchandise at the end of the rental term. *See* www.stockdepot.com/buylowsellhigh/rto.html (as of 1998) for RTO Enterprises Inc. (This website is now available to subscribers only). APRO statistics confirm this assumption. In 1994, 2,403,000 products were purchased, with title passing to customers. Corresponding numbers for 1991 and 1993 were 3,033,600 and 2,160,000 respectfully. *See* "Industry Survey with Five-Year Comparison," Association of Progressive Rental Organizations, Nov. 1, 1995, Clearinghouse No. 52,050.

[23] Payments in advance are called "annuity due" transactions, as contrasted with "ordinary annuities" as used in Truth in Lending's Regulation Z, Appendix J. For example, the top line of the chart shows different APRs if RTO payments are made at the beginning of each week: 52 weeks at $16 bears an APR of 445%, seventy-eight weeks at $16 amounts to 451% APR, and 104 weeks yields 452%, because the time value is different. The entire

		52 Weeks		78 Weeks		104 Weeks	
Amount Financed	Weekly Paymt	Finance Charge	APR	Finance Charge	APR	Finance Charge	APR
$200	$16	$632	408%	$1048	415%	$1464	416%
	$18	$736	462%	$1204	467%	$1672	468%
300	$16	$532	254%	$ 948	272%	$1364	276%
	$18	$636	294%	$1104	309%	$1572	311%
400	$16	$432	68%	$ 848	197%	$1264	204%
	$18	$536	201%	$1004	226%	$1472	231%
500	$16	$332	111%	$ 748	148%	$1164	159%
	$18	$436	140%	$ 904	173%	$1372	182%
	$20	$540	168%	$1060	197%	$1580	204%
600	$16	$232	68%	$ 648	113%	$1064	128%
	$18	$336	95%	$804	135%	$1272	147%
	$20	$440	121%	$960	156%	$1480	167%
700	$18	$236	60%	$704	106%	$1172	122%
	$20	$340	84%	$ 860	125%	$1380	139%
	$22	$444	107%	$1016	144%	$1588	156%

For example, in the Boston area, a 19-inch brand name, new color TV with standard features sells for less than $300. A 25-inch table model, color television sells for less than $500 and a 25-inch console television sells for less than $600. Therefore, if an RTO customer leases a new 19-inch color TV (worth $300) for $16 per week for 52 weeks, the APR would be about 254%. However, if the customer leased a used 19-inch color TV (worth about $200 or less) for the same payment terms, the APR could be 408% or more.

Trends in the RTO industry

The Association of Progressive Rental Organizations (APRO), the RTO trade association, maintains a website. As of July 2001, APRO reports that RTO is a $5 billion dollar a year industry serving about 3 million customers a year. Thus, the average RTO customer is spending over $1,667 a year or over $138 per month on RTO merchandise. These figures have remained essentially constant throughout the 1990s.[24]

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chart would show greater APRs for payments in advance. Because RTO dealers usually demand payments at the beginning of each week, the astronomic APR's in this chart are probably understated.

[24] One of the reasons the customer base has not grown significantly may be that adverse publicity about RTO has discouraged potential customers.

Year	Total RTO revenues (in billions)	Total RTO customers (in millions)	Average RTO customer payment
2000	$5.0	3.00	$1,667
1999	$4.70	3.30	$1,424
1996	$3.98	2.85	$1,396
1994	$3.85	2.73	$1,410
1993	$4.49	3.43	$1,282
1991	$3.57	2.91	$1,226

Source: APRO

With the enactment of protective state laws and the resolution of IRS disputes,[25] banks and Wall Street have recognized the tremendous profit potential of RTO. The industry, however, is rapidly consolidating into a few dominant national companies.[26]

Once the current wave of consolidations has run its course the industry will need to expand its customer base if it wants to maintain its earnings record. Some dealers are already reporting that they are seeking to serve a new type of client, middle income individuals who have exhausted their credit lines but still desire to purchase additional consumer items.

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[25] One of the most significant financial advantages enjoyed by RTO dealers that is not available to retail firms is the ability to depreciate household goods as rental merchandise. Retail merchants offering identical households goods cannot depreciate their inventory. For a discussion of the importance of the depreciation issue for RTO dealers, *see* Susan Lorde Martin & Nancy White Huckins, *Consumer Advocates v. The Rent-to-Own Industry: Reaching a Reasonable Accommodation,* 34 American Bus. L.J. 385, 416 (1997); Laura Saunders, "Taxing Matters", Forbes, Mar. 10, 1997, at 84. The RTO industry and the IRS have disputed the speed with which dealers can depreciate their merchandise. Dealers have argued that they should be able to depreciate very quickly since, on average, nearly all merchandise is disposed of in two to three years. In 1996, the industry prevailed on this issue in *ABC Rentals & San Antonio Inc. v. Commissioner,* 86 F.3d 392 (10th Cir. 1996). The court permitted RTO dealers to use a much faster depreciation methodology than the IRS argued was allowable. However, this decision was undermined by a change in the Code added by Section 1086 of the Taxpayer Relief Act of 1997 which allows RTO dealers the ability to depreciate their goods over three years if they have "qualified rent-to-own property." Pub. L. No. 105-34, codified at 26 U.S.C. § 168(g)(14). The impact of this tax provision on rent-to-own operations and customers may be profound since under the Act dealers are only entitled to use the three year depreciation schedule "if a substantial portion of the rent-to-own contracts terminate and the property is returned." I.R.C. § 168(i)(14)(B). This provision provides an even greater financial motivation for RTO dealers to immediately repossess goods rather than refinance the contract, permit the customer to reinstate the contract with payment of a late fee or otherwise negotiate an extension for late payment. Previously, many RTO dealers permitted the customer to retain the goods in their home while a new contract was substituted for the prior one. This can no longer be done because the Code requires that the property must be returned to the dealer. The net effect of this provision may well be an increase in repossessions for RTO customers, an event that has repeatedly led to litigation in the past. *See, e.g., Mercer v. DEF Inc.,* 48 B.R. 563 (Bankr. D. Minn. 1985); *Murphy v. McNamara,* 416 A.2d 170 (Conn. Super. Ct. 1979); *Fassitt v. United TV Rental, Inc.,* 297 So. 2d 283 (La. Ct. App. 1974); *State v. Action TV Rentals, Inc.,* 467 A.2d 1000 (Md. 1983); *Kimble v. Universal TV Rental, Inc.,* 417 N.E.2d 597 (Ohio Mun. Ct. 1980).

[26] For an account of consolidations within the RTO industry between 1994 and 1996, *see* Susan Lorde Martin & Nancy White Huckins, *Consumer Advocates v. The Rent-to-Own Industry: Reaching a Reasonable Accommodation,* 34 American Bus. L.J. 385, 405/-/06 (1997).

Despite RTO successes, there are significant problems on the horizon. RTO industry revenues have remained stagnate throughout the 1990s with the exception of 1999 (see above table). To date, the industry has not been able to convince the public that RTO is a good idea. Press on RTO remains overwhelming negative.[27]

Unconscionability and RTO pricing

Dealers typically set RTO prices in reference to weekly or monthly rates (e.g., $15.99 a week) and will determine the number of terms needed to acquire ownership. For example, a low-end stereo may be priced at $15.99 a week for seventy-eight weeks for a total of $1247.22.

A widespread abuse involves the inclusion of so-called "optional fees," such as liability damage waivers (LDW). LDW programs purport to relieve customers of any further responsibility for the fair market value of the property if the property is stolen or destroyed by certain specified acts.

The value of LDW is highly questionable.[28] RTO dealers rarely if ever sue customers. They expect their customers to be judgment proof. Further, many RTO dealers report that 95% or more of contracts include so called "optional" fees. In fact, it appears that the fee in many cases is not truly optional but mandatory. RTO contracts are frequently prepared at the store and taken to the customer's home with the goods. The contract may have the liability damage waiver fee already added to the rental rate. If the customer objects to the fee, the delivery person states that the contract will have to be rewritten and threatens that the goods cannot be delivered. Faced with this alternative the customer may elect to sign the contract with the optional fee included.

Repossession Tactics

Even if the state RTO statute exempts the transaction from UCC Article 9 applicability, some repossession tactics remain suspect. The term "repossession" is used generally here to include collection-related conduct by an RTO dealer. The more outrageous examples include: RTO employees struggling with the customer in the home over possession of the television set, picking up a nearby object and smashing the set;[29] an employee breaking and entering a customer's home only to be shot and killed as a result.[30]

In a number of instances, RTO dealers have been found liable for tort claims such as assault,

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[27] *See, e.g.,* NBC Nightly News, *"The Fleecing of America"* Feb. 25, 1998.

[28] There is a detailed discussion of LDW and other miscellaneous charges such as processing fees and reinstatement fees in James Nehf, *Effective Regulation of Rent-to-Own Contract,* 42 Ohio St. L.J. 751, 824 (1991). Nehf recognizes that these miscellaneous charges can present some of the most offensive aspects of RTO contracts because even a capable customer who has read the contract will have difficulty understanding these fees.

[29] *See, e.g., State v. Action TV Rentals,* 467 A.2d 1000 (Md. 1983).

[30] *See, e.g., State v. Stewart,* 288 N.W.2d 751 (Neb. 1980).

battery, and trespass.[31]

Legal status of RTO contracts

RTO transactions attempt to circumvent numerous consumer protection statutes and therefore have been attacked on many different levels. Leases under which the lessee agrees to pay a sum equal to or exceeding the value of goods, and under which the lessee acquires an option to purchase for nominal consideration, may constitute security interests under the UCC and may thus be subject to UCC repossession limitations.[32] Similarly, RTO transactions may be held to constitute security agreements rather than true leases under the Bankruptcy Code, thereby giving bankrupt consumers greater rights than normal lessees.[33] Last, but not least, RTO agreements may be subject to usury limitations under state

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[31] *See, e.g., Botello v. Remco,* No. 300,458, Clearinghouse No. 52,036 (Tex. Dist. Ct. 1985). Jury returned a verdict for nearly $130,000 against a rental company for injuries to a customer which occurred during an attempted repossession.

Many RTO dealers when faced with an incident of wrongful repossession will attempt to accuse the employee of unforeseen misconduct. While most RTO companies are going to have written policies that prohibit the use of force during a repossession, in most cases it has been proven that the employer knew or should have known that force and threats of force are commonly used and approved during repossessions. Many RTO contracts have clauses which attempt to sanction entry into the customer's residence even when the customer is not home. The contract currently used by a large company provides: "Lessor shall have the right forthwith and without prior notice to enter any premises where said property is located and take immediate possession of said property without the necessity of any legal or judicial process and the Lessee shall be obligated to reimburse Lessor for any and all expenses related to any reasonable effort to repossess its property including reasonable attorneys fees." Similar contract language was in the RTO contract in *Kimble v. Universal TV Rental, Inc.,* 65 Ohio Misc. 17, 417 N.E.2d 597 (1980). Despite the contract language, the court rejected the argument that the repossession was in fact peaceful since the customer was not home at the time and concluded that the entry of locked premises constituted a trespass. Other courts have similarly found a dealer's attempt to use right of entry clauses in a contract as not a defense to wrongful repossession claims. In *Fassitt v. United TV Rental, Inc.,* 297 So. 2d 283 (La. Ct. App. 1974), the RTO contract had similar reentry language. The dealer entered the house and repossessed a stereo when the only person in the house was the customer's eleven year old daughter. The court in *Fassitt* held that the reentry language was void as against public policy.

Despite these cases, many RTO dealers use similar waiver language in their RTO contracts that should be construed as evidence that dealers know, anticipate and even sanction wrongful repossessions despite company manual language to the contrary. The industry often incorporates each individual store as a separate entity which may have no assets to pay a judgment. The parent corporation will deny responsibility for the misconduct of its subsidiaries.

[32] *See Sight & Sound of Ohio, Inc. v. Wright,* 36 B.R. 885 (S.D. Ohio 1983); *Murphy v. McNamara,* 416 A.2d 170 (Conn. Super. Ct. 1979) (RTO agreement was unconscionable sale); *Broad v. Curtis Mathes Sales Co.,* Clearinghouse No. 36,376 (CV-82-1254 Me. Sup. Ct., Feb. 6, 1984). *See generally* National Consumer Law Center, *Repossessions and Foreclosures* § 19.3 (4th ed. 1999).

[33] *See In re Puckett,* 60 B.R. 223 (Bankr. M.D. Tenn. 1986), *aff'd,* 838 F.2d 470 (6th Cir. 1988). *See also Michaels v. Ford Motor Credit Co.,* 156 B.R. 584 (Bankr. E.D. Wis. 1993) (court found that the intent of the parties determined that the agreement was a disguised security agreement even though it was called a "Rental Agreement").

installment sales acts.[34]

For the past twenty years legal service attorneys, state attorneys general, and other consumer advocates have made these arguments with mixed success.[35] The most recent successful cases are primarily from three states, Wisconsin, New Jersey and Minnesota.[36] In addition, a Vermont court upheld a state attorney general rule requiring RTO companies to disclose the effective annual percentage rate of their RTO transactions.[37]

During this same period, the RTO industry has aggressively (and successfully in most cases in the states) lobbied state legislatures and the Congress for a statutory exemption from consumer protection statutes, from annual percentage rate disclosure requirements, and from usury rate

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[34] *See Burney v. Thorn America, Inc.*, 944 F. Supp. 762 (D. Minn. 1996) (measure of damages is the difference between the finance charge and a 5% interest rate; finance charge includes everything except the retail price); In re Rose, 94 B.R. 103 (Bankr. S.D. Ohio 1988); *Murphy v. McNamara*, 416 A.2d 170 (Conn. Super. Ct. 1979); Miller v. Colortyme, Inc., 518 N.W.2d 544 (Minn. 1994); *Starks v. Rent-A-Center*, Clearinghouse No. 45,215 (Minn. Dist. Ct. 1990); *Robinson v. Thorn Americas, Inc.*, #L-003697-94, Clearinghouse No. 52,047 (N.J. Super. Ct. Dec. 19, 1997); *Green v. Continental Rentals*, Clearinghouse No. 50,403 (N.J. Super. Ct. Law Div., Passaic County, Mar. 25, 1994); *Commonwealth of Pennsylvania v. Riverview Leasing, Inc.*, Clearinghouse No. 50,401, No. 325 M.D. 1993 (Pa. Commw. Ct. Aug. 5, 1994); *Chandler v. Riverview Leasing, Inc.*, Clearinghouse No. 40,628 (Pa. C.P. Northampton Cty. May 15, 1986); *State v. Rentavision Corp. of America*, Clearinghouse No. 35,731 (Tenn. Chanc. Ct. 1983); *Palacios v. ABC TV & Stereo Retail*, 123 Wis. 2d 79, 365 N.W.2d 882 (Ct. App. 1985). Cf. *Fogie v. Rent-A-Center, Inc.*, 1995 WL 649575 (D. Minn. 1995) (RTO contracts are credit sales for all purposes, and are subject to general contract usury ceiling), *aff'd sub nom., Fogie v. Thorn Americas, Inc.*, 95 F.3d 645 (8th Cir. 1996), *subsequent appeal on different grounds*, 190 F.3d 889 (8th Cir. 1999) (RICO claim dismissed).

[35] The following law review articles discuss the case law regarding rent-to-own and the application of credit sales law. Adoption of the RTO industry's state laws make much of this material of historical interest only. Susan Lorde Martin & Nancy White Huckins, *Consumer Advocates v. The Rent-to-Own Industry: Reaching a Reasonable Accommodation*, 34 American Bus. L.J. 385, 389 (1997); James Nehf, *Effective Regulation of Rent-to-Own Contracts*, 42 Ohio St. L.J. 751, 758 (1991); Scott J. Burnham, *The Regulation of Rent-to-own Transactions*, 3 Loy. Consumer L. Rep. 40, 41 (1991); David L. Ramp, *Renting To Own in the U.S.*, 24 Clearinghouse Rev. 797 (1990); Karen F. Meenan, Note, *The Applicability of the Federal Truth in Lending Act to Rental Purchase Contracts*, Cornell L. Rev. 118, 132/-/133 (1980).

[36] The Wisconsin cases include *Rent-A-Center, Inc. v. Hall*, 510 N.W.2d 789 (Wis. Ct. App. 193), *rev. denied*, 115 N.W.2d 715 (Wis. 1994). The Minnesota cases include *Fogie v. Thorn Americas, Inc.*, 95 F.3d 645 (8th Cir. 1996), *subsequent appeal on different grounds*, 190 F.3d 889 (8th Cir. 1999) (RICO claim dismissed) and *Miller v. Colortyme, Inc.*, 518 N.W.2d 544 (Minn. 1994). The New Jersey cases include *Robinson v. Thorn Americas, Inc.*, #L-003697-94, Clearinghouse No. 52,047 (N.J. Super. Dec. 19, 1997) (after plaintiffs won summary judgment on the merits, the damage portion of the case (and two other related suits) was settled for almost $60 million); *Green v. Continental Rentals*, 678 A.2d 759 (N.J. Super. 1994).

[37] *Thorn, Americas, Inc. v. Vermont Attorney General*, Clearinghouse No. 51,957 (Vt. Super. Ct. Mar. 7, 1997).

limitations.[38] In nearly every state there are now RTO statutes which were carefully drafted by the industry to insulate dealers from claims of consumer abuse.[39] H.R. 1701 is similar in this perspective – its primary aim is to protect the industry from litigation, not to provide protections for consumers.

The specific exemption of RTO transactions from other state and federal laws is the essential feature of these RTO statutes. All of the RTO laws provide that transactions that comply with their provisions are not "credit sales." Many statutes explicitly exempt RTOs from the state's home solicitation sales laws and from UCC Article 9 security interest definitions.

Although there are variations, nearly all RTO statutes require certain disclosures in the contract including: the number and timing of the payments necessary to acquire ownership of the property; a statement declaring that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership; the cash price of the property (most commonly defined as whatever price the lessor sets); and a statement as to whether the property is new or used. Although many state statutes provide that these disclosures must be made clearly and conspicuously, none require that the information be given on a separate document or separately segregated. The mandated disclosures, therefore, often appear scattered throughout the contract. State statutes generally do not mandate in-store price tag disclosures.

All RTO statutes contain "consumer remedy" provisions but these generally are as meaningless as is the provision in H.R. 1701 – Section 1012. For example, like H.R. 1701, Florida provides for statutory damages with attorney's fees and costs. Dealers, however, are only liable if they were notified

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[38] For a discussion of the RTO industry's legislative efforts between 1983/-/1991, see James Nehf, *Effective Regulation of Rent-to-Own Contracts,* 42 Ohio State L.J. 751, 821 (1991). (It should be noted that prior to becoming a law professor, James Nehf was a member of a law firm that represented Rent-A-Center and the Association of Progressive Rental Organizations (APRO), the RTO trade association. This law firm wrote most of the industry's model RTO bills. N.Y. Times, June 4, 1988, at 56. Prof. Nehf does not acknowledge his previous connection with the rent-to-own industry and the effect it had on his observations in his article.)

[39] Ala. Code §§ 8.25.1 to 8.25.6; Ariz. Rev. Stat. Ann. §§ 44.6801 to 44.6814; Ark. Code Ann. §§ 4.92.101 to 4.92.107 (Michie); Cal. Civ. Code §§ 1812.620 to 1812.649; Colo. Rev. Stat. §§ 5.10.101 to 5.10.1001; Conn. Gen. Stat. §§ 42-240 to 42-253; Del. Code Ann. tit. 6, §§ 7601 to 7616; Fla. Stat. §§ 559.9231 to 559.9241; Ga. Code Ann. §§ 10.1.680 to 10.1.689; Haw. Rev. Stat. §§ 481M-1 to 481M-18; Idaho Code, §§ 28.36.101 to 28-36-111; 815 Ill. Comp. Stat. §§ 655/.0.01 to 655/5; Ind. Code §§ 24-7-1-1 to 24-7-9-7; Iowa Code §§ 537.3601 to 537.3624; Kan. Stat. Ann. §§ 50.680 to 560.690; Ky. Rev. Stat. Ann. §§ 367.976 to 367.985; La. Rev. Stat. §§ 9:3351 to 9:3362; Me. Rev. Stat. Ann. tit. 9-A, § 11-1101 (West); Md. Code Ann., Com. Law II, §§ 12-1101 to 12-1112; Mass. Gen. Laws Ann. ch. 93 §§ 90 to 94; Mich. Comp. Law Ann. §§ 445.951 to 445.970 (West); Minn. Stat. Ann. §§ 325F.84 to 325F.97; Miss. Code §§ 75-24-1-51 to 75-24-175; Mo. Rev. Stat. §§ 407.660 to 407.665; Neb. Rev. Stat. §§ 69-2101 to 69.2119; Nev. Rev. Stat. §§ 597.010 to 597.110; N.H. Rev. Stat. Ann. §§ 358-P:1 to 358-P.12; N.M. Stat. Ann. §§ 57-26-1 to 57-26-12; N.Y. Pers. Prop. Law §§ 500/-/507; N.D. Cent. Code §§ 47-15.1-01 to 47-15.1-08; Ohio Rev. Code Ann. §§ 1351.01 to 1351.09; Okla. Stat. tit. 59, §§ 1950 to 1957; Or. Rev. Stat. §§ 646-245 to 646-259; 42 Pa. Cons. Stat. Ann. §§ 6901 to 6911; R.I. Gen. Law §§ 6-44-1 to 6-44-10; S.C. Code Ann. §§ 37-2-701 to 37-2-714 (Law. Coop.); S.D. Codified Laws §§ 54-6A-1 to 54-6A-10; Tenn. Code Ann. §§ 47-18-601 to 47-18-614; Tex. Bus. & Com. §§ 35.71 to 35.74; Utah Code Ann. § 15-8.1; Vt. Stat. Ann. tit. 9, § 41b and Rule C.F. § 115.04; Va. Code Ann. §§ 59.1-207.17 to 59.1-207.27; Wash. Rev. Code §§ 63.19.010 to 63.19.901; W. Va. Code §§ 46B-1-1 to 46B-1-5; Wyo. Stat. Ann. §§ 40-19-101 to 40-19-120.

of the violation in writing and failed to correct it within thirty days.[40] In H.R. 1701, dealers are even better protected, they have sixty days. Some states provide for a mandatory minimum recovery of, say, $100 which is not permitted if the case is filed as a class action.[41] Other states' statutes do not include a minimum statutory award.[42] In these regards, H.R. 1701 appears on first blush to have better provisions. However, although there may be better remedies for violations, the statutory protections themsel often considerably less protective of consumers than the state laws being preempted, and the righ in Section 1012 (c) undermines compliance incentives.

Conclusion

H.R. 1701 is an industry bill, designed to protect the RTO industry from challenges to it practices. It does not provide meaningful protection to consumers. If H.R. 1701 were to pass, w massive preemption provision, the majority of consumers in the U.S. would have significantly fe consumer protections than they have currently when dealing with the RTO industry.

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[40] Fla. Stat. § 559.9239.

[41] *See, e.g.*, Ky. Rev. Stat. Ann. § 367.983(c).

[42] *See, e.g.*, Iowa Code § 537.3621.

National Consumer Law Center
Consumers Union

Consumer Federation of America
U.S. Public Interest Research Group

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