



March 16, 2017

Senator Kevin Mullin, Chair  
Senate Committee on Economic Development, Housing and General Affairs  
Vermont General Assembly  
118 Oxyoke Drive  
Rutland, VT 05701

**Re: dr req 17-1176 – Committee Bill on Consumer Protection**

Dear Chairman Mullin:

I write on behalf of the American Financial Services Association (“AFSA”)<sup>1</sup> to express our serious concerns with a provision in dr req 17-1176, a draft Committee Bill on Consumer Protection (“the bill”) regarding vehicle repossession. We urge you to remove this provision, which would impose costly new requirements on creditors repossessing vehicles in the event of default. These new requirements would lengthen the repossession process and would negatively impact Vermont’s consumers who could face higher costs in financing the lease or purchase of a vehicle.

Repossession is a result that neither consumers nor finance companies want. Vehicle finance companies seek to avoid repossession wherever possible, using this process only as a last resort. For these reasons, financial institutions put a considerable amount of time and effort into proactively reaching out to their customers experiencing financial difficulty to work with them to resolve account issues and avoid repossession whenever possible and recognize that each individual’s situation, credit history, and account history vary; therefore, they work with individuals on a case-by-case basis to find ways to remedy an account problem whenever possible.

Though a last resort, repossession is sometimes the only option available. Finance companies nearly always lose money in the repossession process due to the costly act of physical repossession and the unlikelihood of recovering the deficiency. The bill’s proposed requirements would add to this burden. These increased costs will likely fall on all Vermont consumers in the form of higher finance rates and fees and may further tighten the availability of affordable credit to consumers with less than perfect credit histories.

AFSA members recognize that the repossession process must be handled cautiously and are committed to ensuring that repossessions are conducted professionally and in full compliance with all applicable laws and regulations. AFSA members stress to their repossession contractors that all repossessions be must be conducted peacefully and in full compliance with the law.

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<sup>1</sup> Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

While we urge you to not move forward with the repossession provisions of the proposed bill, if the bill does move forward as written, AFSA members have serious concerns and recommendations with several requirements in the bill.

First, we recommend the removal of *Section 2343(a)*, which significantly limits the conditions under which default may occur under the agreement. Automobile lease agreements and sales finance contracts have default provisions other than non-payment, including failure to carry insurance, fraud, subleasing or placing the vehicle in jeopardy, e.g., vehicle impounded. This statutory limitation of default under a contract attempts to remove certain rights finance companies already have under their contracts and is likely a taking of property from the vehicle finance companies. The section adds no benefit to the payment default rights the bill proposes to address and should be removed from the bill.

### *Proposed Notice of Default*

As written, the proposed notice of default may confuse consumers and presents several concerns. Accordingly, AFSA members recommend the following changes. The notice should be required for payment default only and not for other defaults such as those in the case of fraud or the vehicle being impounded or subject to immediate lien sale. The notice of default also should not be required in the event a consumer voluntarily surrenders a vehicle, which should be specifically excluded.

Further, instead of the notice referring to the vehicle finance company exercising its rights to repossess the vehicle or file suit, the notice should refer to the lessor or secured party “exercising any rights available to it.” There may be other remedies available to the vehicle finance company, such as acceleration of the debt when the vehicle is not repossessed.

The proposed notice refers to the consumer receiving any overage from the sale of the vehicle. Without stating that the customer will be responsible for any deficiency, this statement is misleading, particularly given that the likelihood of the consumer recovering an overage will be remote in most cases. In fact, the post repossession notice required by 9A V.S.A §9-614 requires that the potential deficiency liability be explained to the consumer. In general, if the notice of default is going to provide post-repossession information, it should reflect the information currently required under the Vermont UCC statutes.

The proposed notice and cure amount also do not reflect any payments that may become due during the cure period. Due to timing, a customer can quickly become even more past due while a cure period is pending. If those amounts are not cured at that time, the end result may be additional customer confusion

The proposed requirements would significantly lengthen the repossession process following a default. Currently, Vermont statutes do not require a cure; nor do they specify a 20-day post-repossession redemption period. Under the proposed requirements, a vehicle finance company must wait at least 10 days before the notice of default may be sent, three days for mailing, 21 days for curing, and 20 days for redemption, meaning a wait of at least 54 days before it can sell the vehicle at auction. Because of the long delay in bringing the vehicle to resolution, vehicle finance companies may want to reduce any potential losses and send notices of default as soon as possible rather than waiting until the consumer is seriously delinquent. In order to provide vehicle finance companies more flexibility, we recommend the cure period be reduced to 10 days and the redemption period be reduced to 15 days.

Additionally, please bear in mind that if the bill as currently drafted were to pass, the new requirements would require significant changes to creditors' existing operations, and time will be needed to implement such changes, such as drafting, reviewing and distributing a compliant notice to consumers. Repossessions frequently involve a number of parties, including the finance company, printing vendors, courier services, and repossession agencies. In connection with auto finance delinquency and default, companies are reliant on systems to ensure timely production and delivery of notices to customers. Accordingly, we request that a more appropriate effective date, at least six months after enactment, be included in the provision to allow all affected industry members sufficient time to implement procedures and systems changes necessary to comply with the proposed changes.

With this session's crossover deadline only days away, we believe it would be a mistake to move forward with legislation that would impose such significant new requirements on the state's credit industry, as the General Assembly may not have sufficient time to consider the legislation and any feedback received during this short time. Moreover, the draft bill contains significant unclear or inconsistent requirements, which can lead to non-uniform implementation by creditors. For these reasons, we urge you to remove the vehicle repossession section of the bill. Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or [mkownacki@afsamail.org](mailto:mkownacki@afsamail.org).

Sincerely,

A handwritten signature in blue ink that reads "Matthew Kownacki". The signature is written in a cursive style with a small dot at the end.

Matthew Kownacki  
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