



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

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CLERK OF COURT
RECORDS DIVISION

CHARLIE BROWN
ATTORNEY GENERAL

July 17, 1986

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

PUBLIC HEARING

AGENCY: Attorney General

RULE TYPE: Legislative Rule

RULE TITLE: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 10:00 a.m. ON August 29, 1986, AT House of Delegates Judiciary Committee Room, 2nd Floor, Main Unit, Room 410, State Capitol, Charleston, West Virginia 25305

COMMENTS ARE LIMITED TO: ORAL WRITTEN BOTH X

COMMENTS MAY ALSO BE MAILED TO: 1204 Kanawha Boulevard, East, Charleston, West Virginia 25301

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT THE HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER TO FACILITATE A REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

Charles G. Brown
CHARLES G. BROWN
Attorney General

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 and 46A-7
SERIES I

Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

SUMMARY OF PROPOSED LEGISLATIVE RULE

The Consumer Protection Division of the Office of the Attorney General is promulgating a Rule designed to prevent a variety of unfair or deceptive acts or practices by home improvement and home construction contractors in West Virginia.

The Rule is divided into three sections. The first, entitled "General," addresses the scope, authority, filing date, effective date, penalties, construction and severability of the Rule.

The second section contains relevant definitions.

The third and final section, entitled "Home Improvement and Home Construction Transactions," identifies those activities considered by the Consumer Protection Division to constitute unfair or deceptive acts or practices. A total of thirty-one (31) specific acts or practices are proscribed, including failure to provide a written contract, failure to provide the full price of the work to be performed, and misrepresenting that goods are specially discounted due to surplus from a previous job. The need for this section is underscored by the twelve-year experience of the Consumer Protection Division in handling complaints of this nature, our recent experience with flood-related complaints, and reports from other states engaged in similar enforcement activities.

For more information, please contact Jane H. Theiling, Acting Director, Office of the Attorney General, Consumer Protection Division, 1204 Kanawha Boulevard, East, Charleston, West Virginia 25301.

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 and 46A-7
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Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

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- Section 1. General
2. Definitions
3. Home Improvement and Home Construction Transactions

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WEST VIRGINIA LEGISLATIVE RULE
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CHAPTER 46A-6 and 46A-7
SERIES I

Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions.

Section 1. General

- 1.1 Rule Designation - This rule is legislative.
 - 1.2 Scope - This proposed legislative rule covers certain unfair or deceptive acts or practices covering home improvement transactions, and home construction transactions in West Virginia, counties, and all political subdivisions.
 - 1.3 Authority - W. Va. Code § 46A-6-103 and Code § 46A-7-102(e).
 - 1.4 Filing Date -
 - 1.5 Effective Date -
 - 1.6 Repeal of Former Rule - Not applicable.
 - 1.7 Penalties - Except as otherwise indicated, a violation of this rule constitutes a violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1 et seq.
 - 1.8 Construction - This rule shall be liberally construed to effectuate the purposes of the West Virginia Consumer Credit and Protection Act, W. Va. Code 46A-1 et seq.
 - 1.9 Severability - If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions or its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.
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Section 2. Definitions

2.1 "Advertisement" (including the terms advertise and advertisement) means any oral, written or graphic statement made by the seller in any manner in connection with the solicitation of business, and including but not limited to statements or representations made in a newspaper, magazine or other publication, or on radio or television, or contained in any notice, handbill, billboard, poster, display, bill, circular, brochure, pamphlet, sign, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any goods or services offered for sale. Advertisement includes any statement or representation disseminated within West Virginia, even if such statement or representation was first disseminated outside West Virginia.

2.2 "Clear and Conspicuous" means that the statement, representation or term being disclosed is of such size, and/or color contrast and is so presented as to be readily noticeable and understandable to the person to whom it is being disclosed. A statement, representation or term contained in a written contract is not clear and conspicuous unless: (a) it appears in typeface at least 10% larger than size of the largest type used in the written contract, and (b) it appears in close proximity to the information which it modifies or to which the seller intended it to refer.

2.3 "Consumer Goods or Services" means goods or services purchased, leased or rented primarily for personal, family or household purposes.

2.4 "Home Construction" means constructing single family dwelling units including single family homes, condominium units or any other dwelling unit to be sold to any person primarily for personal or family use.

2.5 "Home Construction Contractor" means all persons, firms and corporations, their officers, representatives, agents, and employees engaged in the trade or commerce of home construction.

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2.6 "Home Improvement" means installing roofing, siding, paving, windows, doors, awnings, heating and air-conditioning equipment, water softeners and purifiers, swimming pools, fire protection devices or any other permanent installation or improvement attached or to be attached to an already existing home, noncommercial structure or building.

2.7 "Home Improvement Contractor" means all persons, firms and corporations, their officers, representatives, agents and employees engaged in the trade or commerce of home improvements.

Section 3. Home Improvement and Home Construction Transactions

3.1 In connection with any home improvement or home construction transaction, and without limitation by enumeration, it is an unfair or deceptive act or practice for any seller to:

3.1.1 Fail to disclose the exact nature, description, and price of the goods or services which are to be the subject of the transaction to the buyer or prospective buyer in advance of any attempt to induce the buyer or prospective buyer into (1) an agreement in writing, or (2) to pay any consideration to the seller;

3.1.2 Fail to provide a written contract and a copy thereof to the home construction buyer or home improvement buyer at the time of sale;

3.1.3 Fail to provide an approximate home improvement or home construction completion date in the written contract unless the contract clearly and conspicuously discloses that no completion date is provided;

3.1.4 Fail to fill in all the relevant blank spaces in the home improvement or home construction contract before it is signed by the buyer;

3.1.5 Fail to include the home improvement or home construction contractor's name and address on the contract;

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3.1.6 Fail to include in the contract a description of the home improvement or home construction work to be performed;

3.1.7 Fail to include in the contract all financing information as required by federal and state law, including the right of rescission notification pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.15;

3.1.8 Fail to include in the contract all warranty agreements of the home improvement or home construction contractor for the benefit of the buyer;

3.1.9 Disclaim, exclude, modify or otherwise attempt to limit any warranty, including the warranties of merchantability and fitness for a particular purpose, pursuant to W. Va. Code § 46A-6-107;

3.1.10 Abandon or fail to honor without justification the home improvement or home construction contract required in subsection 3.1 with a home improvement or home construction buyer or to deviate from or disregard plans or specifications in any material respect without the consent of the buyer;

3.1.11 Make any misrepresentation in the promotion, advertising or sale of a home improvement or home construction contract or make any false promise of a character likely to influence, persuade or induce;

3.1.12 Use any false or deceptive inducements or misrepresent or falsely state to a prospective buyer that his dwelling or building is to serve as a "prospective buyer" lure, or "model home" or "advertising job" and that he will be paid a commission or other compensation for any other sales the seller may make in the vicinity or within a specified distance from the buyer's location, and that in any way leads the buyer to believe that the cost of the improvement or installation will be fully paid or greatly reduced by reason thereof;

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3.1.13 Fail to complete the home improvement or home construction before the completion date as stated in the home improvement or home construction contract unless such home improvement or home construction is delayed by unforeseeable acts of God, or other events beyond the home improvement or home construction contractor's control;

3.1.14 Attempt to induce a buyer to sign any certificate or completion form before such home improvement or home construction is actually completed;

3.1.15 Fail to disclose that the goods being offered need additional attachments or fixtures to perform the functions claimed for them by the seller;

3.1.16 Unfairly or deceptively induce or persuade a buyer or prospective buyer to sign any writing when the seller knows or should know that the buyer or prospective buyer is unable to read or write, or does not understand the terms of the instrument;

3.1.17 Represent that the buyer or prospective buyer has been specially selected to receive a bargain, discount or other advantage when such, in fact, is not true;

3.1.18 Fail to disclose to a buyer or prospective buyer orally prior to the time of sale, and in writing on any conditional home improvement or home construction sales contract, promissory note, or other instrument of indebtedness executed by a buyer or prospective buyer, and with such conspicuousness and clarity as is likely to be observed and read by such a buyer or prospective buyer, that such instrument, which must have printed on the face thereof "Consumer Note," may be discounted, negotiated, or assigned to a finance company or other third party;

3.1.19 Represent that the goods that are being offered are current models, when, in fact, they are not current models, or are discontinued models;

3.1.20 Misrepresent the quality, capacity, character, nature, manufacturer, or composition of any goods;

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3.1.21 Misrepresent or falsely state that the buyer's present equipment, materials or goods are dangerous or defective, or in need of repair or replacement;

3.1.22 Fail to disclose that the advertised price or offer does not include delivery or installation;

3.1.23 Mislead the prospective buyer into believing that the down payment or some other figure constitutes the full amount the buyer will be obligated to pay, or to omit or exclude any other obligations, fees, charges or costs to the buyer;

3.1.24 Deceptively gain entry or access into the prospective buyer's home or onto his/her property under the guise of any governmental or public utility inspection, right or duty, or to misrepresent that the seller has such authority;

3.1.25 Misrepresent that the seller is an employee, officer or representative of a manufacturer, importer or any other person, firm or organization, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract;

3.1.26 Misrepresent to a prospective buyer that (s)he is being given an introductory, confidential, closeout, going out of business, factory or wholesale price or discount or any other concession, or that a concession is made due to "materials leftover from a nearby job" or a test of the local market or a market survey;

3.1.27 Include in any contract or written document evidencing such a transaction a clause of acknowledgement of having understood and/or read the document;

3.1.28 Include in any contract or written document evidencing such a transaction a clause that the document is not binding upon the seller except upon acceptance;

3.1.29 Include in any contract or written document evidencing such a transaction a clause stating or suggesting that the seller's oral representations, promises, assurances, or the like, are not binding;

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3.1.30 Include in any home improvement or home construction contract or written document evidencing such a transaction a clause requiring liquidated damages or the like for cancellation of the home improvement or home construction contract unless:

(a) Such provision is reasonable and does not constitute a penalty; and

(b) Such provision clearly and conspicuously discloses that it does not take effect until seller has fully complied with the right of rescission as stated in subsection 3.1.7 and/or the buyer's right to cancel as stated in subsection 3.2.

3.2 In connection with any home solicitation sale of home improvement(s) or home solicitation sale of home construction, and without in any way limiting the application of section 3.1 to such transactions, it is an unfair or deceptive act or practice to fail to provide the buyer a three-day right to cancel pursuant to W. Va. Code § 46A-2-132 through 135, and 16 C.F.R § 429.

FISCAL NOTE FOR PROPOSED RULES

Proposed legislative rule pertaining to the prevention of unfair or
 Rule Title: deceptive acts or practices in home improvement and home construction
transactions.

Type of Rule: X Legislative Interpretive Procedural

Agency Office of the Attorney General
Consumer Protection Division Address 1204 Kanawha Boulevard, East
Charleston, West Virginia 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	\$0	\$0	\$0	\$0	\$0
Current Expense	\$0	\$0	\$0	\$0	\$0
Repairs and Alterations	\$0	\$0	\$0	\$0	\$0
Equipment	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0

2. Explanation of above estimates.
 No estimated cost increase or decrease.

3. Objectives of these rules:
 The proposed legislative rule is designed to protect consumers from unfair or deceptive acts or practices in West Virginia. More specifically, the rule proscribes a variety of unfair or deceptive acts or practices in home improvement and home construction transactions.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date July 17, 1986

Signature of Agency Head or Authorized Representative

Charlie Brown
ATTORNEY GENERAL