



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

1986 JUL 17 PM 2:52
OFFICE OF THE ATTORNEY GENERAL
SECRETARY'S OFFICE

FILED

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 the sale of damaged goods or damaged products.

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 2:00 p.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 the sale of damaged goods or damaged products.

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 in the sale of damaged goods or damaged products 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 "Sale of Damaged Goods or Damaged Products" deals with unfair and deceptive practices in the misrepresentation of damaged goods or damaged products offered for sale. It prohibits the selling of damaged goods or damaged products without clear and conspicuous disclosure of the extent of the damage. 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
SERIES I

Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in the sale of damaged goods or damaged products.

- Section 1. General
2. Definitions
3. Sale of Damaged Goods
or Damaged Products

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LEGISLATIVE SERVICE

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 the sale of damaged goods or damaged products.

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 regarding the sale of damaged goods or damaged products 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.

Section 2. Definitions

2.1 "Clear and Conspicuous" means that the statement, representation or term being disclosed is readily noticeable and understandable to the person to whom it is being disclosed. A statement, representation or term contained in a printed advertisement is not clear and conspicuous unless: (a) it appears in typeface at least 20% of the size of the largest type used in the advertisement, except for the typeface size of the seller's name, and (b) it appears in close proximity to the information which it modifies or to which the seller intended it to refer.

2.2 "Damaged Goods or Damaged Products" means any goods or products, the fair market value or use of which are impaired or otherwise diminished as to what the sale of goods or products would bring in the market under ordinary conditions.

Section 3. Sale of Damaged Goods or Damaged Products

In connection with the sale of damaged goods or damaged products, and without limitation by enumeration, it is an unfair or deceptive practice to:

3.1 Represent, directly or indirectly, that a product is new or undamaged, or any part of a good is new or undamaged, when such is not the fact, or to misrepresent the extent of damage thereof.

3.2 Offer for sale or sell any good or product which is damaged, contains damaged parts, is rebuilt, remanufactured, reconditioned, or contains rebuilt, remanufactured, or reconditioned parts due to damage, or has the appearance of being new when it is damaged, unless there is given to the buyer or prospective buyer clear and conspicuous prior disclosure that such a good or product has been damaged, rebuilt, remanufactured or reconditioned due to damage, or that it contains used, rebuilt, remanufactured or reconditioned parts due to damage.

FISCAL NOTE FOR PROPOSED RULES

Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in the sale of damaged goods or damaged products.

Rule Title: Proposed legislative rule pertaining to the prevention of unfair or deceptive acts or practices in the sale of damaged goods or damaged products.

Type of Rule: Legislative Interpretive Procedural

Office of the Attorney General
 Agency 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 the sale of damaged goods or damaged products.

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

Charles C. Brown

ATTORNEY GENERAL