



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

FILED
1986 SEP 23 PM 2:39

DEPT. OF STATE
SECRETARY OF STATE

CHARLIE BROWN
ATTORNEY GENERAL

NOTICE OF AGENCY APPROVAL

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

The attached legislative rule constitutes the official rule approved by the Attorney General's office on 23rd day of September, 1986 and filed pursuant to the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.


ATTORNEY GENERAL

FILED

1993 SEP 23 PM 2:30

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 and 46A-7
SERIES 3

OFFICE OF THE ATTORNEY GENERAL
SECRETARIAT OF STATE

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, its 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 clearly legible typeface of 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 goods or products, whether otherwise represented as new or used, whose market value or usefulness has been diminished by virtue of damage, occasioned by fire, smoke, water or other other natural event, to all or a part or portion of the goods or products.

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 such a good or product is new or undamaged, or or misrepresent the nature and extent of damage to the whole or any part of the good or product.

3.2 Advertise or otherwise emphasize the undamaged aspects or portions of any such good or product so as to deceive or attempt to deceive the public with respect to the damaged aspects or portions, or so as to create a likelihood of confusion or misunderstanding.

3.3 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

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 3, Sec. 3

of being new when it is damaged, unless there is given to the buyer or prospective buyer clear and conspicuous prior notice 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.

3.4 Represent, directly or indirectly, that goods or products are damaged and that a price concession has been made for that reason when the goods have not in fact been damaged or the price has not been reduced accordingly.

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 and 46A-7
SERIES 3

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

REPORT ON PUBLIC HEARING AND PUBLIC COMMENT PERIOD

The Public Comment Period with respect to the above-referenced legislative rule expired on August 29, 1986, and a Public Hearing on the proposed rule was held on that date, all pursuant to notice sent to the Secretary of State's office for publication in the State Register on July 17, 1986.

No comments were received and no one attended the Hearing.

A taped transcript of the Public Hearing Proceedings is attached hereto.

For further information, please contact Thomas L. Hindes, Deputy Attorney General, Director of the Consumer Protection Division, 1204 Kanawha Boulevard, East, Charleston, West Virginia 25301.

Section 3.2 is a new section, filling what was perceived as a gap in the explicit language of the proposed Rule. It prohibits false or deceptive advertising and sales promotion of damaged goods.

Section 3.4 is a new section which prohibits the promotion of goods as reduced in price because they are damaged when the goods are not actually damaged or the price has not actually been reduced.

For further information, please contact Thomas L. Hindes, Deputy Attorney General, Director of the Consumer Protection Division, 1204 Kanawha Boulevard, East, Charleston, West Virginia 25301.

FILED

1986 SEP 23 PM 2:39

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 and 46A-7
SERIES 3

SECRETARY OF STATE

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 Thomas L. Hindes, Deputy Attorney General, 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 3

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
-



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

FILED

1986 SEP 19 PM 3:22

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

September 19, 1986

CHARLIE BROWN
ATTORNEY GENERAL

The Honorable Ken Hechler
Secretary of State
State Capitol
Charleston, West Virginia 25305

Re: Filing of Agency Approved Legislative Rule

Dear Secretary Hechler:

Enclosed for filing in the State Register please find a copy of our agency approved Legislative Rule pertaining to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions in West Virginia. Also enclosed are the Notice of Agency Approval, the Agency Report on the Public Hearing and Public Comment Period and the Agency's Discussion of Amendments to the Rule as originally submitted.

The fiscal note and summary of the proposed rule were not affected by the amendments.

If you have questions about the materials herein or the Rule as approved, please contact me at any time.

Very truly yours,

THOMAS L. HINDES, Director
Deputy Attorney General
Consumer Protection Division

TLH/lp

Enclosures