



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

NOTICE OF RULE MODIFICATION

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 above titled rule has been modified as a result of comments by the Legislative Rule-Making Review Committee and the attached modifications have been incorporated into the above-titled rule and filed in the Secretary of State's office on November 25, 1986.

A handwritten signature in cursive script, appearing to read "J. R. Hill".

DIRECTOR

1986
DEC 1
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FILED
SECRETARY OF STATE
CHARLESTON, W. VA.



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

November 25, 1986

The Honorable Ken Hechler
Secretary of State
State Capitol, Suite 157-K
Charleston, West Virginia 25305

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

Dear Secretary Hechler:

Enclosed please find the Notice of Rule Modification and a corrected copy of the above-referenced Rule. It has been modified and corrected to reflect suggestions made by the Legislative Rule-Making Review Committee. Please file the Rule, as modified, in the official records of your office.

If you have questions, please contact me at your convenience.

Sincerely,

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

TLH/lp

Enclosure

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STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL

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
- 4. Remedies

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

- 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.
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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 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

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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.

Section 4. Remedies

4.1 In the event of a violation of this Rule by a merchant or other person subject to its provisions, the Attorney General may bring a civil action to restrain any such violation, including an application for temporary relief pending final determination of the proceedings, and for other appropriate relief, including restitution for affected consumers and the costs and expenses incurred in the investigation and prosecution of such action.

4.2 In addition to an application for injunctive remedies and other appropriate relief, as aforesaid, the Attorney General may also bring a civil action to recover a civil penalty for the willful violation of this Rule, and if the court finds that a person has engaged in a course of willful and repeated violations of this Rule or any other applicable provision of West Virginia Code Chapter 46A, it may assess a civil penalty of no more than five thousand dollars for each such violation.

BEFORE THE CONSUMER PROTECTION DIVISION
OF THE OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF WEST VIRGINIA

FILED
OCT 30 PM 2:02
WEST VIRGINIA

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

Transcript of proceedings had or testimony adduced in a
hearing held at the House of Delegates Judiciary Committee
Room, Second Floor, Main Unit, Room 410, State Capitol,
Charleston, West Virginia, on the 29th day of August, 1986,
beginning at 2:00 p.m., pursuant to notice to all interested
parties.

BEFORE: THOMAS L. HINDES, Director
Deputy Attorney General

APPEARANCES: ANTHONY F. SERRENO
Assistant Attorney General

RANDAL DUNKLE
Staff Assistant
Consumer Protection Division
1204 Kanawha Boulevard, East
Charleston, West Virginia 25301

DIRECTOR HINDES: At this time, I announce the commence-
ment of a public hearing, conducted pursuant to the authority
in West Virginia Code §§ 29A-3-5 through 29A-3-7. The pur-
pose of this public hearing is to receive public comments,

oral and written, with respect to the proposed rules promulgated by the Consumer Protection Division of the Office of the Attorney General dealing, with unfair and deceptive acts and practices in the sale of damaged goods or damaged products in the State of West Virginia.

Notice of this hearing and the announcement of the public comment period was sent to the State Register as required by law on July 17, 1986.

This rule was proposed under the authority of Code §§ 46A-6-103 and 46A-7-102(b). The purpose was to replace an emergency rule dealing with the same general topic promulgated by the Attorney General's office. The rule as proposed 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 definitions. The third and final section, entitled the "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.

In general, the Rule 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 12-year experience of the Consumer Protection Division in handling complaints of this

nature and our recent experience in flood-related complaints and reports from other states engaged in similar enforcement activity.

At this time there is no one who has signed in or has indicated an interest in furnishing such a comment. We will hold the record open for a reasonable period of time to determine whether, in fact, any member of the public wishes to participate.

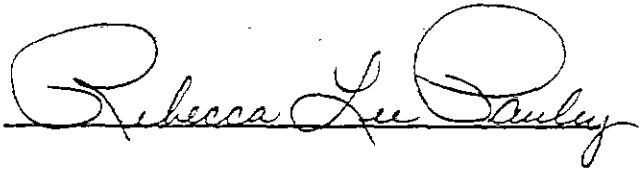
* * *

This is Tom Hindes, Deputy Attorney General, Director of the Consumer Protection Division. I have conducted this hearing on behalf of the Attorney General's office for the purpose of receiving public comment. We have waited from the scheduled beginning time of 2:00 p.m. until 2:30 p.m. No member of the public has appeared at this hearing; we have had no indication that there will be any such public attendance at the meeting.

The Attorney General's office will take the proposed rule under advisement and will continue to be receptive to any public comment that we may receive for at least a two-week period while we are evaluating the rule as proposed and deciding on the final form that it should assume. At this time I will close the record and declare the public comment hearing to be concluded.

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, REBECCA LEE PAULEY, a Secretary in the Office of the Attorney General, Consumer Protection Division, do hereby certify that the foregoing transcript is true and accurate to the best of my skill and ability.

A handwritten signature in cursive script, reading "Rebecca Lee Pauley", written over a horizontal line.

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee



NOTICE OF ACTIONS TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

November 18, 1986

TO: Ken Hechler, Secretary of State, State Register

TO: The Honorable Charlie Brown
Attorney General
State Capitol
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

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

FILED
1986 NOV 20 AM 9 42
OFFICE OF THE STATE REGISTER

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule as originally filed or as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the state register and with the agency proposing the rule.

cc: Thomas L. Hindes, Director
Consumer Protection Division
Office of Attorney General