



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

FILED
1987 MAY 14 PM 2:58

OFFICE OF THE ATTORNEY GENERAL
300 MARKET STREET

CHARLIE BROWN
ATTORNEY GENERAL

May 14, 1987

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

Re: Legislative rule pertaining to the prevention
of unfair or deceptive acts or practices in
sale of damaged goods or damaged products.

Dear Secretary Hechler:

Enclosed please find the final version of the above-referenced rule, modified to reflect the amendments approved during legislative consideration, together with the Promulgation History Abstract for the rule. Please note we have chosen a June 15, 1987, effective date.

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

Sincerely,

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

TLH/lp

Enclosures



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

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OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

CHARLIE BROWN
ATTORNEY GENERAL

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

PROMULGATION HISTORY ABSTRACT

<u>Date</u>	<u>Action</u>
July 17, 1986	Original Filing of Proposed Rule for Inclusion in State Register
August 29, 1986	Public Hearing
August 29, 1986	Close of Public Comment Period
September 23, 1986	File Agency Approved Rule with Secretary of State and Legislative Rule-Making Review Committee
December 1, 1986	File Rule, as modified pursuant to Legislative Rule-Making Review Committee action, with Secretary of State and Legislative Rule-Making Review Committee
March 14, 1987	Passage of Senate Bill No. 748
June 15, 1987	Effective Date of Rule

For more information, please contact Thomas L. Hindes, Deputy Attorney General, Office of the Attorney General, Consumer Protection Division, 812 Quarrier Street, Sixth Floor, Charleston, West Virginia 25301 (304) 348-8986, or in West Virginia 1-800-368-8808.

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

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Title: 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 6

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SECRETARY OF STATE

Title: 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 - June 15, 1987
- 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 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

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

Senate Bill No. 383

(By Senator Tucker)

[Introduced February 5, 1987; referred to the Committee
on _____ ; then to
the Committee on the Judiciary.]

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections designated sections forty-six-a (six)(one hundred three) and forty-six-a (seven) (one hundred two) all relating to authorizing the attorney general to promulgate legislative rules relating to the prevention of unfair or deceptive acts or practices in the sale of damaged goods or products.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections forty-six-a (six) (one hundred three) and forty-six-a (seven) (one hundred two), all to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-46a(6)(103). Attorney general.

1 The legislative rules filed in the state register on the
2 twenty-third day of September, one thousand nine hundred eighty-
3 six, modified by the attorney general to meet the objections of
4 the legislative rule-making review committee and refiled in the
5 state register on the first day of December, one thousand nine
6 hundred eighty-six, relating to the attorney general (prevention
7 of unfair or deceptive acts or practices in the sale of damaged
8 goods or products) are authorized. These rules were proposed by
9 the attorney general pursuant to section one hundred three,
10 article six and section one hundred two, article seven of chapter
11 forty-six-a of the code.

12 §64-2-46a(7)(102). Attorney General.

13 The legislative rules authorized by the legislature in
14 section forty-six-a (six) (one hundred three) of this article
15 were also proposed by the attorney general pursuant to section
16 one hundred two, article seven, chapter forty-six-a of this code.

17

18 NOTE: The purpose of this bill is to authorize the Attorney
19 General to promulgate legislative rules relating to the
20 prevention of unfair or deceptive acts or practices in the sale
21 of damaged goods or products.

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23 This section is new; therefore, strike-throughs and
24 underscoring have been omitted.

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H. B. 2615

(By Delegate Knight)

(Introduced February 4, 1987; referred to the
Committee on the Judiciary)

10 A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto two new sections designated
13 sections forty-six-a (six) (one hundred three) and forty-six-a
14 (seven) (one hundred two) all relating to authorizing the
15 attorney general to promulgate legislative rules relating to
16 the prevention of unfair or deceptive acts or practices in
17 the sale of damaged goods or products.

18 Be it enacted by the Legislature of West Virginia:

19 That article two, chapter sixty-two of the code of West
20 Virginia, one thousand nine hundred thirty-one, as amended, be
21 amended by adding thereto two new sections, designated sections
22 forty-six-a (six) (one hundred three) and forty-six-a (seven)
23 (one hundred two), all to read as follows:

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9 the attorney general pursuant to section one hundred three,
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13 The legislative rules authorized by the legislature in
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15 were also proposed by the attorney general pursuant to section
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