

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

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1988 AUG 12 PM 4:28

SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Office of the Attorney General TITLE NUMBER: 142

RULE TYPE: Legislative; CITE AUTHORITY Code 46A-6-103 and
Code 46A-7-102(1) (e)

AMENDMENT TO AN EXISTING RULE: YES___ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Proposed legislative rule defining
certain terms used within the West Virginia Consumer Credit
and Protection Act.

DATE OF PUBLIC HEARING: September 15, 1988 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Office of the Attorney General
Consumer Protection Division
812 Quarrier Street, L&S Bldg., Sixth Floor
Conference Room
Charleston, West Virginia 25301
(9:00 a.m. to 9:45 a.m.)

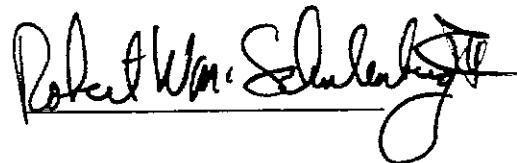
COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH x

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of the Attorney Gen.
Consumer Protection Div.
812 Quarrier Street
L&S Bldg., 6th Floor
Charleston, WV 25301

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 AND 46A-7
SERIES 9

Title: - Proposed legislative rule defining certain terms used within the West Virginia Consumer Credit and Protection Act.

SUMMARY OF PROPOSED RULE

This rule is proposed in order to define certain terms used within the West Virginia Consumer Credit and Protection Act, West Virginia Code, § 46A-1-101 et seq.

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WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL SECRETARY OF STATE
CHAPTER 46A-6 AND 46A-7
SERIES 9

Title: Proposed legislative rule defining certain terms used within the West Virginia Consumer Credit and Protection Act.

Section 1. General Provisions.

1.1 Rule Designation - This rule is legislative.

1.2 Scope - This rule defines certain terms which appear within the Consumer Credit and Protection Act, W. Va. Code Sections 46A-1-101 et seq.

1.3 Authority - The authority for this rule is W. Va. Code Chapter 46A, Article 6, Section 103 and Chapter 46A, Article 7, Section 102(1)(e).

1.4 Filing Date -

1.5 Effective Date -

1.6 Repeal of Former Rule - Not applicable.

1.7 Penalties - No penalty exists for violating any provision of this rule.

1.8 Construction - This rule shall be deemed to be remedial and, therefore, shall be liberally construed to effectuate the purposes of the West Virginia Consumer Credit and Protection Act.

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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Series 9, Section 2

Section 2. Definition of "Unfair Act or Practice."

For the purpose of Code Chapter 46A, Article 6, Section 104 and in addition to the conduct prohibited by Code Chapter 46A, Article 6, Section 102(f), an act or practice shall be "unfair" when the act or practice violates public policy as expressed by the statutes, regulations, judicial decisions, or other authoritative statements of public policy, violates any state or federal statute or regulation designed to protect or promote the general health, safety, or welfare of the consuming public, causes substantial injury to consumers without significant countervailing benefit, or is deceptive, fraudulent, or unconscionable. This definition shall be independent, separate, and apart from conduct constituting an "unfair method of competition."

Section 3. Definition of "Deceptive."

For the purpose of Code Chapter 46A, Article 6, Section 104 and in addition to the conduct prohibited by Code Chapter 46A, Article 6, Section 102(f), an act or practice is "deceptive" when the act or practice is fraudulent, unconscionable, or has the tendency or capacity to deceive consumers or other purchasers regardless of the existence of any actual deception.

Section 4. Definition of "Fraudulent."

For the purpose of Code Chapter 46A, Article 7, Section 109, conduct shall be deemed "fraudulent" when, by a preponderance of the evidence, the person alleging the fraudulent conduct proves that a material, but false, representation was made and that the consumer believed the representation to be true and acted in reliance upon such representation. No intent on the part of the person making the representation need be shown.

Section 5. Definition of "New or Original."

For the purpose of Code Chapter 46A, Article 6, Section 102(f)(6), a good is not "new or original" when such good has been previously titled or transferred when such good has been

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Series 9, Section 5

damaged in such a way that, were the damage not repaired, the value, usability, performance, or other characteristics or benefits of such good may be impaired, or when such good has been delivered to any person for personal or discretionary use.

Section 6. Definition of "New Motor Vehicle."

For the purpose of Code Chapter 46A, Article 6A, Section 1 et seq. (also known as the "Lemon Law"), a "new motor vehicle" includes any motor vehicle defined in Code Chapter 46A, Article 6A, Section 2 which has not been previously titled or which has been previously titled but which motor vehicle has been used by the manufacturer (or the agent of the manufacturer) for the following or other similar purposes: (1) use by the manufacturer or any designated entity for testing; (2) use by the manufacturer or any designated entity for quality assurance review; (3) use as a daily rental motor vehicle by a daily rental company when such motor vehicle was obtained by the daily rental company directly from the manufacturer or a designate of the manufacturer and, after any use, such motor vehicle was returned to the manufacturer or its designate for disposition, (4) use by a representative of the manufacturer in connection with his or her duties, (5) use by a representative of a dealership as a demonstrator, or (6) use by any school or college in a driver's education program.

Section 7. Definition of "Repeated and Willful."

For the purpose of Code Chapter 46A, Article 7, Section 111(2), a person has engaged in "repeated and willful" violations of the Consumer Credit and Protection Act when such person has engaged in conduct violative of the Act on more than one occasion and has voluntarily engaged in such violative conduct. Therefore, specific intent to violate the Act need not be proven in order to recover a civil penalty.

Section 8. Definition of "Consumer Credit Sale."

For the purpose of Code Chapter 46A, Article 1, Section 102(12), a "consumer credit sale" shall include, but shall not be limited to (1) any credit "sale of goods" [as defined in Code Chapter 46A, Article 1, Section 102(37)] in which a

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secutiry interest may arise as defined by Code Chapter 46, Article 1, Section 201(37); (2) any conditional sale of goods; or (3) any arrangement, whether in the form of a lease or bailment, in which a consumer pays, agrees to pay, or may pay, at his or her option, an amount at least equal to the fair market value of the goods which are the subject of the arrangement, and in which the consumer may become the owner of the goods for no other or a nominal consideration.

Section 9. Definition of "Material Fact" and "Material Information."

For the purpose of Code Chapter 46A, Article 6, Section 102(f)(13) and Chapter 46A, Article 6, Section 102(f)(14), "material information" and "material fact" includes but is not limited to any information which is required to be disclosed (including the manner or means of disclosure) by any statute or regulation.

FISCAL NOTE FOR PROPOSED RULES

Proposed legislative rule defining certain terms used
 Rule Title: within the West Virginia Consumer Credit and Protection Act.

Type of Rule: X Legislative Interpretive Procedural

Agency Attorney General Address 812 Quarrier St., 6th Floor
 Charleston, West Virginia 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
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. This rule will not require the expenditure of any additional government funds for the purpose of implementing and effectuating its objectives.

3. Objectives of these rules: The objective of this rule is to define certain terms contained within the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101 et seq.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There will be no economic impact on state government as a result of the promulgation of this rule.

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


There will be no economic impact on political subdivisions of this state, any industry, or any specific groups of citizens directly resulting from the promulgation of this rule.

C. Economic Impact on Citizens/Public at Large.

There will be no economic impact on the public at large directly resulting from the promulgation of this rule.

Date August 12, 1988

Signature of Agency Head or Authorized Representative


CHIEF DEPUTY ATTORNEY GENERAL