

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

FILED

1000 AUG 12 PM 4:27

SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: 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: 10

TITLE OF RULE BEING PROPOSED: Proposed legislative rule pertaining
to the prevention of deceptive acts or practices in connection
with the sale of consumer goods and services.

DATE OF PUBLIC HEARING: September 15, 1988 TIME: 10:00 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
(10:00 a.m. to 10:45 a.m.)

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH x

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of the Attorney
General
Consumer Protection Div.
812 Quarrier Street
L&S Bldg, Sixth Floor
Charleston, West Va. 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

Robert Wm. Schuler

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 AND 46A-7
SERIES 10

Title: Proposed legislative rule pertaining to the prevention of deceptive acts or practices in connection with the sale of consumer goods and services.

SUMMARY OF PROPOSED RULE

The purpose of this rule is to protect consumers from certain deceptive acts or practices within the State of West Virginia and to require disclosure of certain terms and conditions relating to the sale of goods and/or services within West Virginia.

FILED

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 AND 46A-7
SERIES 10

AUG 12 PM 4:28

SECRETARY OF STATE

Title: Proposed legislative rule pertaining to the prevention of deceptive acts or practices in connection with the sale of consumer goods and services.

Section 1. General Provisions.

1.1 Rule Designation - This rule is legislative.

1.2 Scope - This rule defines certain deceptive acts or practices in connection with the sale of goods or services in West Virginia, its counties, and all political subdivisions.

1.3 Authority - 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 - Except as indicated, a violation of this rule constitutes a violation of Chapter 46A, Article 6, Section 104 of the Code and any seller violating the provisions of this rule or the provisions of the Consumer Credit and Protection Act shall be subject to a civil penalty in the amount of Five Thousand Dollars for each transaction or occurrence of a repeated and willful violation.

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

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 1

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.

1.10 Duty of Seller - Each seller shall review the content of its advertising prior to publication and possess information or reports which substantiate its claims, representations, or assertions prior to the initial broadcast, circulation, dissemination, distribution, or publication of any claims, representations, or assertions.

1.11 Evidence - Any seller who makes any unsubstantiated claim, representation, or assertion, or who fails to deliver all substantiation information and make a substantiation report to the Attorney General upon written request, shall be prohibited from using any substantiation evidence in any proceedings. Substantiation information shall be kept and maintained by any seller for a period of four years after the expiration of the offer.

1.12 Regulatory Presumption - Any seller shall be conclusively presumed to have reviewed and approved any assertion made in any advertising made by seller or on its behalf.

1.13 Cost Recovery - The Attorney General shall recover as costs any expenses relating to market surveys, scientific tests, data compilations, and preparation and testimony of expert witnesses in addition to or independently of any civil penalty assessment.

1.14 Violations - Violations of the provisions of this rule or of the Consumer Credit and Protection Act shall be determined as a matter of law.

1.15 Exemption - This rule shall not apply to acts done by the publisher, owner, agent or employee of a newspaper, periodical, or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 1

false, misleading or deceptive character of the advertisement, did not prepare the advertisement and did not have a direct financial interest in the sale or distribution of the advertised goods or services.

Section 2. Definitions.

2.1 "Claim, representation, or assertion" includes any written or oral statement whose design or effect is to induce, directly or indirectly, any person to enter into any obligation, sign any contract, or acquire any title or interest in any product. "Claim, representation, or assertion" shall also include any name by which a business is known.

2.2 "Comparable product" includes any product which is similar in all respects to any compared product and which is of like grade and quality.

2.3 "Free" means at no cost, charge or expense.

2.4 "Product" includes any goods or services which may be the subject of a consumer transaction.

2.5 "Regular price" means the price at which any seller has sold more than one-half of the quantity of any product sold during the ninety days prior to any relevant date.

2.6 "Sale," or any form of the verb "to sell," includes any sale, lease, transfer, or acquisition of any interest in any product, or any offer of sale, lease, transfer, or acquisition of any interest in any product.

2.7 "Seller" includes any person who sells or offers for sale any interest in any product or any person who prepares or distributes any advertising on behalf of any seller, or agents, employees, or independent contractors of any seller.

2.8 "Trade area" means that geographic area in which any seller offers any product for sale.

Section 3. Clear and Conspicuous Standard for Disclosure.

The clear and conspicuous standard for disclosure shall require that the disclosure be of such similar size, color, contrast, audibility, speed, and proximity to the statement triggering the disclosure that the attention of the audience to whom the message is directed is immediately drawn to the disclosure. The use of any device to direct attention to any other portion of the message for disclosure shall not constitute a clear and conspicuous disclosure.

Section 4. Unlawful Conduct.

It shall be a deceptive act or practice in violation of Chapter 46A, Article 6, Section 104 of the Code for any seller in any trade area to:

4.1 Violate any state or federal consumer protection, disclosure, or health, safety, or welfare statute or regulation, or other expression of public policy.

4.2 Advertise any offer which fails to clearly and conspicuously disclose all limitations, terms, and conditions in any offer, including, but not limited to, limitations concerning time or duration of the offer, geographic area to which the offer applies, or acts the purchaser must perform to become eligible for the offer.

4.3 Fail to deliver any product under the advertised limitations, terms, and conditions.

4.4 Make any claim, representation, or assertion which conveys a message which may be confusing or false, misleading, or deceptive even though each individual statement contained in the claim, representation, or assertion may be literally true.

4.5 Fail to deliver any product at the advertised price, except for a permissible addition for the actual amount of consumer sales taxes or any privilege tax.

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.6 Engage in any price comparison claims, representations, or assertions in which the seller compares its current selling price for any product with the former selling price for the same product by the same seller unless the seller

4.6.1 Compares its former selling price with its current selling price when its compared former selling price is any price other than the lower of the last offered price or the regular price; and

4.6.2 Makes the offer in good faith; and

4.6.3 Offers the product for sale at a price which constitutes a reduction of at least ten percent over the lower of the last offered price or the regular price.

4.7 Make any price comparison claims, representations, or assertions in which the seller compares its current price for any product to the current price of an identical product offered for sale by another seller unless the comparing seller

4.7.1 Makes the price comparison as a result of recent testing or surveys of the comparative prices prior to the initial broadcast, circulation, dissemination, distribution, or publication of the claims, representations, or assertions;

4.7.2 Makes the price comparison based upon the current prices for the product; and

4.7.3 Makes the claims, representations, or assertions in good faith.

4.8 Make any price comparison claims, representations, or assertions in which the seller compares its current price for any product with a price offering by the same or another seller for a comparable product unless the seller making the claims, representations, or assertions

4.8.1 Makes the price comparison in good faith;

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.8.2 Compares the current offering price of the seller's compared product with the lower of the last offered price or regular price of the same seller's comparable product or the current selling price of another seller's comparable product.

4.9 Claim, represent, or assert, directly or indirectly, that a manufacturer's suggested retail price, a list price, or any other price is a regular price when that price is not, in fact, the seller's regular price.

4.10 Claim, represent, or assert that any product is new or original when the product is not new or original, has been placed in personal service, has been titled, has been damaged (when the amount of damage significantly impairs the market value of the product), used, rebuilt, reclaimed, repaired, or has been delivered to any person for discretionary use. This provision shall have no effect upon the provisions of the New Motor Vehicle Warranties Act, Chapter 46A, Article 6A, Section 1 et seq. of the Code.

4.11 Fail to disclose in a clear and conspicuous manner that products offered for sale are damaged, used, rebuilt, reclaimed, repaired, or otherwise not new or original.

4.12 Claim, represent, or assert that any product is being made available directly from the manufacturer, is being made available "factory direct," or that any seller is a "factory outlet," or use terms of similar import, when the products offered for sale are not manufactured by the seller in factories owned or controlled by the seller.

4.13 Claim, represent, or assert that the seller is a wholesaler, a "wholesale outlet," or sells at "wholesale" prices, or use terms of similar import, when the seller does not (1) own or control a wholesale operation or distribution facility which primarily sells products to resellers and (2) charge a regular price for products charged comparable to those resellers by other wholesalers for the same products in the same trade area.

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.14 Claim, represent, or assert that the seller operates a "discount" sales operation or a discount house, or use terms of similar import, unless the seller's regular prices are less than those prices of retail sellers in the same trade area, and the seller has substantiated this claim, representation, or assertion by surveys or tests conducted prior to the initial broadcast, circulation, dissemination, distribution, or publication of the claim, representation, or assertion.

4.15 Claim, represent, or assert that any product offered for sale at the seller's cost, invoice price, or inventory price, or make any price reference to any seller's cost, invoice price, or inventory price, or use any terms of similar import, unless the seller

4.15.1 Makes the offer in good faith;

4.15.2 Calculates the seller's cost, invoice price, or inventory price, by deducting from the cost, invoice price, or inventory price any reasonably expectable holdback, credit, rebate, or allowance;

4.15.3 Discloses the manner of calculation of the price offering in the retail sales instrument and incorporates any relevant document into the retail sales instrument; and

4.15.4 Delivers the advertised product at the offered price except for an addition for consumer sales tax or privilege tax.

4.16 Claim, represent, or assert that any price offering is a "sale," or use any term of similar import, unless the claimed, represented, or asserted price offering constitutes at least a ten percent reduction over the lower of the seller's last offered price or regular price.

4.17 Claim, represent, or assert that any sale is a distress, liquidation, or going out of business sale, or use any term of similar import, unless

4.17.1 The seller complies with the provisions of Chapter 47, Article 11B, Section 1, et seq. of the Code;

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.17.2 The seller is actually suffering from distress;

4.17.3 The seller does not increase the stock subject to the sale by ordering in additional product for the sale; and

4.17.4 The seller lowers its price by at least ten percent from the lower of the last offered price or regular price for any product.

4.18 Claim, represent, or assert that a range of savings or price reductions are available unless at least one-fourth of all products subject to the offer are available at the highest level of savings or reduction.

4.19 Require any consumer to purchase any product not installed by the manufacturer in order to purchase any other product.

4.20 Require any consumer to pay for services which are required to be performed by the seller or any other person by the manufacturer or distributor of the product.

4.21 Claim, represent, or assert that the seller offers the lowest prices available unless

4.21.1 The seller has surveyed all competitors in the same trade area and has ascertained that its claim, representation, or assertion is true;

4.21.2 The seller clearly and conspicuously discloses the remedy if a lower price is discovered; and

4.21.3 The seller clearly and conspicuously discloses all limitations, terms, and conditions on the offer.

4.22 Use any television program to advertise or promote any product without clearly and conspicuously disclosing at the beginning, middle (at least once for each fifteen minutes duration of the program), and end of the program that the program is a paid-for advertisement for the promotion of the product which is being discussed.

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.23 Claim, represent, or assert that any product will be given to any purchaser "free" or at little cost in conjunction with the purchase of any other product when

4.23.1 The consumer must pay an amount in excess of the lower of the last offered or regular price for the product purchased in connection with the product given "free" to the consumer; or

4.23.2 The consumer must pay any other charge to obtain the "free" product; or

4.23.3 The price, quality, or quantity of the product purchased in connection with the "free" product is determined through bargaining or negotiation.

4.24 Advertise products in conjunction with any "free" offer

4.24.1 More frequently than six months out of any twelve-month period; or

4.24.2 More closely than thirty days after the expiration of a prior free offer; or

4.24.3 More frequently than three times within any twelve-month period; or

4.24.4 With such frequency that one-half of the volume of any product delivered within any six-month period is a result of any free offer.

4.25 Claim, represent, or assert the existence of any minimum or guaranteed trade-in allowance when the seller increases the actual sale price of the product sold in connection with such an offer above the lower of the last offered price or the regular price.

4.26 Broadcast, circulate, disseminate, distribute, or publish any advertisement intended to aid, promote, or assist in any extension of consumer credit, (as defined in the Truth in Lending Act, Title 15 U.S.C. Sections 1601 et seq.), including any consumer lease, without

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.26.1 Clearly and conspicuously disclosing the rate of assessment of finance charges as an "annual percentage rate" or "A.P.R.";

4.26.2 In the case of closed-end consumer credit (as defined by the Truth in Lending Act, 15 U.S.C. Sections 1601 et seq. and Regulation Z, 12 C.F.R. Part 226), when the amount or percentage of downpayment, the amount of any payment, the period of repayment, or the amount of any finance charge is disclosed in the advertisement, fail to clearly and conspicuously disclose the amount or percentage of downpayment, the amount of the periodic payment, the period of repayment, and the rate of assessment of finance charges expressed as an "annual percentage rate" or "A.P.R.," using either of those terms;

4.26.3 In the case of open-end consumer credit (as defined by the Truth in Lending Act, 15 U.S.C. Sections 1601 et seq. and Regulation Z, 12 C.F.R. Part 226), when the advertisement discloses a statement of when the finance charge begins to accrue, including any "free ride period," any periodic rate used to compute the finance charge, the method of determining the balance on which a finance charge may be imposed, the method of determining the finance charge, including a description of how any finance charge other than the periodic rate will be determined, the amount of any charge, other than a finance charge, that may be imposed as a part of the plan, or the fact that the creditor will acquire a security interest, the advertisement must clearly and conspicuously disclose any minimum, fixed, transaction, activity, or similar charge which could be imposed, and any periodic rate that may be applied expressed as an "annual percentage rate," or "A.P.R.," and any membership or participation fee which could be imposed;

4.26.4 In the case of any consumer lease (as defined by the consumer leasing provisions of the Truth in Lending Act, 15 U.S.C. Sections 1601 et seq. and Regulation M, 12 C.F.R. Part 213) when the advertisement discloses the amount of any payment, the number of required payments, a statement that any or no downpayment is required at the beginning of the lease, the advertisement shall clearly and conspicuously disclose that the transaction is a lease, the total amount of

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

any payment required at the beginning of the lease, or a statement that no such payment is required, a statement of whether the customer has the option to purchase the leased property and at what time and price (the method of determining the price may be substituted for the disclosure of the price), and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the customer at the end of the term and, if the customer has such liability, a statement that the customer shall be liable for any difference between the estimated value of the leased property and its realized value at the end of the lease term;

4.26.5 Clearly and conspicuously disclosing whether an advertisement involves either or both open-ended consumer credit or closed-ended consumer credit; or

4.26.6 Clearly and conspicuously disclosing the selling price of any product included in the offer.

4.27 Advertise that credit is available under easy terms or liberal terms unless consumer credit will be extended to persons whose ability to pay or credit worthiness is below typical standards, the terms and conditions for the extension of credit are equal to those terms and conditions as those whose credit worthiness meets otherwise acceptable standards, and the consumer is dealt with on equal terms as those whose credit worthiness meets otherwise acceptable standards when late payment or default occurs.

4.28 Advertise any product for sale where the seller does not have a sufficient quantity on hand to meet reasonably expectable public demand. It shall not be a defense to a violation of the provisions of this section that the seller intended to offer any product for sale under the same terms and conditions as the advertised offer at a later time unless the seller had sufficient quantities on display and available for delivery at the time of initial broadcast, circulation, dissemination, distribution, or publication of the advertisement or that "rainchecks" or other writings entitling consumers the right to purchase the product as advertised were distributed when the seller did not maintain a sufficient quantity of the product on hand to meet the public demand unless a limitation of the quantity available was clearly and conspicuously disclosed in the advertisement.

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.29 Refuse to show or demonstrate the advertised product, disparage the advertised product or the availability of any warranty, parts, service, or credit terms for the advertised product, sell the advertised product to a purchaser and subsequently unsell the purchaser to cause or make a sale of any other product, refuse to take orders for the advertised product, fail to deliver the advertised product within sixty days of the initial broadcast, circulation, dissemination, distribution, or publication of the offer or maintain a compensation plan which effectively punishes or fails to reward sales personnel who sell the advertised product.

4.30 Claim, represent, or assert that any product is offered for sale under any guarantee or warranty, whether express or implied, without clearly and conspicuously disclosing in any contract of sale and upon a separate guarantee or warranty document all limitations, terms, and conditions on the guarantee or warranty.

4.31 Advertise the term "lifetime," or use any term of similar meaning or import, in relation to any guarantee or warranty without clearly and conspicuously disclosing the person to whose life the claim, representation, or assertion refers.

4.32 Use any abbreviation which is or may not be known by members of the audience to whom the advertisement is directed.

4.33 Advertise any rebate offer without clearly and conspicuously disclosing the sources of funds for the rebate.

4.34 Advertise any product using a testimonial or endorsement which

4.34.1 Is not genuine or does not represent the current opinion of the endorser;

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.34.2 Is not quoted from in its entirety, resulting in an alteration of the overall meaning and impact of statement;

4.34.3 Contains claims, representations, or assertions which, while literally true, may be misleading to the audience to whom the claims, representations, or assertions are directed;

4.34.4 Contains a testimonial or endorsement by an endorser who is not competent or qualified to express an opinion concerning the quality or characteristics of the product being endorsed;

4.34.5 Contains a testimonial or endorsement by a well-known and highly regarded person who is speaking in a personal capacity unless the advertisement clearly and conspicuously discloses that the endorser is speaking in a personal capacity; or

4.34.6 Contains a testimonial or endorsement by an endorser who has a pecuniary interest in the business whose product is being endorsed without clearly and conspicuously disclosing such fact.

4.35 Advertise, promote, or support any lottery in connection with the promotion of any product whereby any participant, in return for giving valuable consideration, may be awarded a prize based upon an award mechanism in which chance is the dominant factor in determining the outcome. For the purpose of this paragraph, valuable consideration shall be satisfied when any consumer performs any act at the request of the person advertising, promoting, or supporting the lottery.

4.36 Claim, represent, or assert that the use of any product will result in savings, or assert that the product's performance, safety, efficacy, or reliability is better than any other product, unless such claim, representation, or assertion is supported by reliable, recent, and competent scientific tests, engineering reports, or other objective data which are possessed by the seller regarding that specific product prior to the initial broadcast,

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

circulation, dissemination, distribution, or publication of any advertisement in which those claims, representations, or assertions are made.

4.37 Fail to disclose that any product will be received in an unassembled or partially assembled condition prior to the consummation of the transaction.

4.38 Charge or attempt to charge consumers any fee, cost, or expense for any unordered product. However, the provision of this subsection shall not apply to any negative option sales plan complying with the Use of Negative Option Plans by Sellers in Commerce Trade Regulation Rule, 16 C.F.R. Part 425.

4.39 Advertise any below-market rate of assessment of finance charges is advertised without clearly and conspicuously disclosing all limitations, terms, and conditions of the offer, including, but not limited to,

4.39.1 Disclosing that a consumer may be required to pay a higher price than usual for participation in or to be eligible for such program;

4.39.2 Disclosing the minimum amount or percentage of downpayment required to participate in or to be eligible for such program;

4.39.3 Disclosing any duration of repayment limitations required to participate in or to be eligible for such program;

4.39.4 Disclosing that certain products must be purchased to participate in or to be eligible for such program; and

4.39.5 Disclosing that a program is of limited duration, that such program applies only to certain models or those models which are in stock, or that the seller requires surrender of any rebate by the consumer to participate in or be eligible for such program.

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.40 Fail to disclose a composite or calculated rate of assessment of finance charges (expressed as an "annual percentage rate" or "A.P.R.," using those terms) in any advertisement to aid, promote, or assist in the promotion of consumer credit where

4.40.1 The seller asserts availability of a below-market rate of assessment of finance charges; and

4.40.2 The consumer must pay the seller a sum of money to participate in or be eligible for such program; or

4.40.3 The seller offers the product for sale at a lower price if the consumer pays cash for the product or finances the product at a higher rate of assessment of finance charges.

4.41 Claim, represent, or assert the availability of a rate of assessment of finance charges which exceeds the maximum rate permissible by applicable law.

4.42 Claim, represent, or assert the availability of any credit terms when such credit terms are not regularly available to consumers.

4.43 Claim, represent, or assert that no down-payment is necessary, or make any other similar representation, when the consumer must pay any money to the seller at the time of sale for any purpose, including, but not limited to, documentary fees, documentary service charges, or sales or excise taxes.

4.44 Fail to clearly and conspicuously disclose that an offer is a sale or lease, or distinguish between the terms of any sale or lease offer.

4.45 When any motor vehicle is sold within this State, fail to include the following, verbatim statement in the contract of sale proximately to the location where the consumer executes the contract of sale:

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

"WHEN YOU PURCHASE THIS VEHICLE, WEST VIRGINIA LAW PROVIDES YOU WITH AN IMPLIED WARRANTY OF MERCHANTABILITY. THIS WARRANTY IS IN ADDITION TO ANY EXPRESS WARRANTY OFFERED BY THE DEALER. YOU MAY BE ENTITLED TO HAVE ANY MECHANICAL, ELECTRICAL, OR THERMAL PARTS REPAIRED OR REPLACED BY THE DEALER WITHOUT CHARGE UNDER THE IMPLIED WARRANTY OF MERCHANTABILITY, NOTWITHSTANDING THE TERMS OF ANY OTHER WARRANTY OFFERED BY THE DEALER. THE DEALER, IN SELLING YOU THIS VEHICLE, IS GUARANTEEING THAT IT CONFORMS IN ALL MATERIAL RESPECTS TO APPLICABLE STATE AND FEDERAL STATUTES AND REGULATIONS ESTABLISHING SAFETY OR QUALITY STANDARDS, AND THAT IT IS IN GOOD WORKING ORDER AND WILL OPERATE PROPERLY IN NORMAL USAGE FOR A REASONABLE PERIOD OF TIME."

However, it shall not be unlawful for any seller of a motor vehicle to fail to provide a warranty on the entire motor vehicle, either express or implied, when the motor vehicle is being sold for parts. Further, it shall not be unlawful for any seller of a motor vehicle to sell a motor vehicle without any express or implied warranty on any specific component or system when the seller specifically discloses a known defect to the consumer prior to the consummation of the transaction.

To be eligible for these exemptions, the seller of a motor vehicle must inform the consumer in writing that the motor vehicle is being sold for parts only or that a specific defect is known to exist in any component or system of the motor vehicle, the seller marks the sales agreement "sold for parts only" (or some other similar description) or the seller describes the nature of the known defect in any component or system to the consumer in writing on the face of the retail sales instrument prior to the consummation of the transaction, and the consumer acknowledges receipt of such notification by signing or initialing at a location proximate to the description of the sale as "sold for parts only" or to the description of the known defect in any component or system.

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.46 Make any claim, representation, or assertion regarding any product without actual possession of substantiation information prior to the initial broadcast, circulation, dissemination, distribution, or publication of those claims, representations, or assertions.

4.47 Fail to keep and maintain substantiation information for a period of four years after the latter of the expiration date of an offer or the date of final broadcast, circulation, dissemination, distribution, or publication of any claim, representation, or assertion.

4.48 Use any type, size, style, location, sound, lighting, color, layout, headline, illustration, picture, or other depiction or description which may obscure or make misleading any material fact upon which a consumer may rely, convey a confusing or erroneous impression regarding any product offered for sale, the price of the product offered for sale, or any other material matter.

4.49 Attempt to disclaim any responsibility for any claim, representation, or assertion contained in any advertising.

4.50 Claim, represent, or assert that any motor vehicle is available for sale at a certain price or on certain terms unless the motor vehicle is actually in the seller's stock at the time the claim, representation, or assertion is made, or the motor vehicle has been ordered prior to the initial broadcast, circulation, dissemination, distribution, or publication of the claim, representation, or assertion.

4.51 Fail to return any deposit made by a consumer in connection with the sale of any product unless the consumer receives actual notice in writing and prior to consummation of the transaction of the conditions under which the consumer's deposit will not be returned.

4.52 Fail to disclose in writing to a consumer the time when or conditions under which a trade-in re-evaluation may occur.

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 4

4.53 Fail to disclose any added dealer profit in the sale of a motor vehicle without disclosing such fact on a window sticker using the term "Additional Dealer Markup."

4.54 Sell any product to any consumer under any circumstance or under any contractual terms in which the consumer is making the offer to the seller unless the consumer is given the opportunity to cancel the transaction at no cost prior to accepting delivery of the product.

4.55 Fail to deliver to the Attorney General any substantiation information upon his or his designate's written request or intentionally deliver false substantiation information to the Attorney General in response to his or his designate's written request.

Section 5. Enforcement by Attorney General.

The Attorney General is authorized to seek, and the courts shall be authorized to grant, appropriate relief for violations of the provisions of this rule, including, but not limited, to the following:

5.1 Temporary and permanent injunctive relief without bond;

5.2 Restitution to adversely affected consumers;

5.3 Mandatory corrective advertising; and

5.4 Any other relief that the court may deem just and proper.

Section 6. Violation of Injunction.

6.1 Any person who violates any temporary or permanent injunction or any final cease and desist order may be assessed a civil penalty by a court of competent jurisdiction in the amount of up to Twenty-five Thousand Dollars for each day any violation occurs.

6.2 The Attorney General shall be empowered to enforce any provision of any injunction issued by a court of

Attorney General
Legislative Rule, 46A-6 & 46A-7
Series 10, Section 6

competent jurisdiction prohibiting any violation of this rule. Such violation shall be subject to the penalty provision of section 6.1 of this rule.

Section 7. Private Consumer Actions.

7.1 Any consumer who has suffered any ascertainable loss to money or property as a result of any violation of the provisions of this rule may recover actual damages and a reasonable attorneys fee.

7.2 Any permanent injunction or final order issued in favor of the Attorney General for violations of the provisions of this rule shall create a prima facie case in favor of any consumer who has suffered any ascertainable loss to money or property.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Proposed legislative rule pertaining to the prevention of deceptive acts or practices in connection with the sale of consumer goods and services.

Type of Rule: Legislative Interpretive Procedural

Agency Attorney General Address 812 Quarrier Street, 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. No estimated or anticipated cost increase or decrease

3. Objectives of these rules: This rule is designed to protect consumers from deceptive sales practices in West Virginia.

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 August 12, 1988

Signature of Agency Head or Authorized Representative


CHIEF DEPUTY ATTORNEY GENERAL