

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED IN THE OFFICE OF THE SECRETARY OF STATE  
THIS DATE July 6, 1990  
ADMINISTRATIVE LAW DIVISION

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Attorney General TITLE NUMBER: 142

RULE TYPE: Legislative; CITE AUTHORITY Code 47-18-20

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: 14

TITLE OF RULE BEING PROPOSED: Allowable investigative costs and attorneys fees and fixed limitations period for violations of the Antitrust Act.

DATE OF PUBLIC HEARING: August 6, 1990 TIME: 8:30 am

LOCATION OF PUBLIC HEARING: Antitrust Division  
812 Quarrier Street, Sixth Floor  
Charleston, West Virginia 25301

COMMENTS LIMITED TO: ORAL\_\_\_, WRITTEN\_\_\_, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: \_\_\_\_\_  
Antitrust Division

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.

Constance R. Tsokanis  
812 Quarrier Street, 5th Floor  
Charleston, West Virginia 25301

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



FISCAL NOTE FOR PROPOSED RULES

Allowable investigative costs and attorneys fees and  
 Rule Title: Fixed limitations period for violations of the Antitrust Act

Type of Rule: X Legislative          Interpretive          Procedural

Agency Attorney General Address Antitrust Division

812 Quarrier Street, Fifth 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 additional personnel, equipment, or facilities will be required to implement the provisions of this rule.

3. Objectives of these rules:

The objective of these rules is to clarify the application of the West Virginia Antitrust Act.

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: \_\_\_\_\_

7/6/90

Signature of Agency Head or Authorized Representative

Daniel N. Huch

TITLE 142

LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 14

ALLOWABLE INVESTIGATIVE COSTS AND  
ATTORNEYS FEES AND FIXED LIMITATIONS  
PERIOD FOR VIOLATIONS OF THE ANTITRUST ACT.

---

§ 142-14-1. General.

1.1 Scope - This rule shall apply to any action, including but not limited to assurances of voluntary compliance, injunctions, and settlement agreements, brought by the Attorney General in state or federal court under W. Va. Code §§ 47-18-1 through 47-18-23 (1986).

1.2 Authority - This rule is authorized by W. Va. Code § 47-18-20.

1.3 Filing Date -

1.4 Effective Date -

1.5 Purpose - The purpose of this rule is to allow the people of the State of West Virginia or other plaintiffs to recover investigative and attorney costs and fees for any action found to be in violation of the Antitrust Act and to establish the limitations period for the commencement of causes of action in the instance of continuing violations under Chapter 47, Article 18.

1.6 Construction - This rule shall be liberally construed to effectuate the beneficial purposes of the West Virginia Antitrust Act.

1.7 Severability - If, for any reason, any section, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstances is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, sentences, clauses, phrases, or provisions or their application to any other person or circumstance, and to this end, each and every section, sentence, clause, phrase, or provision of this rule is hereby declared severable.

Attorney General  
Legislative Rule  
§ 142-14-2

§ 142-14-2.        Limitations Period in the Instance of a  
                         continuing violation of W. Va. Code  
                         § 47-18-1 through § 47-18-23.

2.1            A cause of action alleging a continuing violation of W. Va. Code §§ 47-18-1 through § 47-18-23 shall be available to any injured person or to the State within four years after the last date on which the continuing violation took place.

2.2            Within the limitations set out in section 2.1 of this rule, a violation which continues for a period in excess of four years shall be deemed a present violation for the purpose of determining the date of accrual of a cause of action.

§ 142-14-3.        Investigative Costs and Attorney's Fees  
                         Recoverable under Assurances of Voluntary  
                         Compliance entered pursuant to Chapter 47,  
                         Article 18.

3.1            Parties entering into Assurances of Voluntary Compliance which dispose of enforcement actions brought pursuant to Chapter 47, Article 18, may stipulate for the payment of reasonable investigative costs and attorneys fees.

3.2            The State may stipulate to the payment of those costs and fees allowed by section 3.1 of of this rule in addition to any penalty assessed pursuant to an Assurance of Voluntary Compliance.

§ 142-14-4.        Investigative Costs and Attorney's Fees  
                         Recoverable when a Permanent Injunction is  
                         issued pursuant to Chapter 47, Article 18.

When any court issues an Injunction in any enforcement action brought pursuant to Chapter 47, Article 18, the court may award the payment of reasonable investigative costs and attorneys' fees to the Attorney General or any other plaintiff.



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

ROGER W. TOMPKINS  
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOTLINE  
(800) 368-8808

July 6, 1990

The Honorable Ken Hechler  
Secretary of State  
State Capitol, Room 157  
Charleston, West Virginia 25305

Re: Promulgation of Proposed Legislative Rule  
pertaining to allowable investigative costs  
and attorneys fees and fixed limitations  
period for violations of the Antitrust Act.

Dear Secretary Hechler:

Enclosed please find for filing each of the following documents:

- One (1) copy of the proposed rule;
- One (1) copy of the fiscal note for the proposed rule; and
- One (1) copy of the Notice of Public Hearing for the proposed rule.

Your attention and courtesies in this matter are greatly appreciated. If you or your staff have any questions regarding this matter, please do not hesitate to call Daniel N. Huck, Deputy Attorney General, Antitrust Division at 348-0246.

Sincerely,  
  
ROGER W. TOMPKINS  
ATTORNEY GENERAL

RWT/jar

Enclosures