

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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THE SECRETARY OF STATE
THIS DATE NOV 20, 1990
ADMINISTRATIVE LAW DIVISION

Form #4

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Attorney General TITLE NUMBER: 142

CITE AUTHORITY W. Va. 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: Proposed legislative rule

pertaining to limitation of action and recovery of
investigative costs and a reasonable attorney's fee
by the Attorney General in enforcement actions.

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.


SENIOR ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

TITLE 142

PROPOSED LEGISLATIVE RULE
ATTORNEY GENERAL
SERIES 14

Title: Proposed legislative rule pertaining to limitation of action and recovery of investigative costs and a reasonable attorney's fee by the Attorney General in enforcement actions.

§ 142-14-1. General.

1.1 Scope - This rule shall apply in any action brought by the Attorney General under the West Virginia Antitrust Act, W. Va. Code §§ 47-18-1, -23 (1978), or authorized by federal law.

1.2 Authority - W. Va. Code § 47-18-20 (1978).

1.3 Filing Date -

1.4 Effective Date -

1.5 Purpose - The purpose of this rule is to clarify, implement, apply, and make specific the provisions of W. Va. Code § 47-18-11 (1978) relating to limitation of action under the West Virginia Antitrust Act and authorizing the courts of this state to award a reasonable attorney's fee to the Attorney General in enforcement actions.

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
Proposed Legislative Rule
§ 142-14-2

§ 142-14-2. Continuing Violations.

A cause of action alleging a continuing violation of the West Virginia Antitrust Act shall be available within four years after the last date on which an antitrust injury was suffered. In such instances, money damages and penalties may be recovered for antitrust injuries which preceded the four-year limitation period set forth by W. Va. Code § 47-18-11 (1978).

§142-14-3. Investigative Costs and Attorney's Fees.

When any court issues an injunction or penalty in any enforcement action brought pursuant to W. Va. Code § 47-18-8 (1978), the court may also award the Attorney General the reasonable costs and expenses of the investigation and litigation and a reasonable attorney's fee.



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

ROGER W. TOMPKINS
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOTLINE
(800) 368-8808

November 14, 1990

The Honorable Ken Hechler
Secretary of State
State Capitol, Suite 157-K
Charleston, West Virginia 25303

Re: Proposed legislative rule pertaining to limitation of
action and recovery of investigative costs and a
reasonable attorney's fee by the Attorney General in
enforcement actions.

Dear Mr. Hechler:

Enclosed please find one (1) copy of the above-referenced
legislative rule as authorized by the Legislative Rule-Making
Review Committee at its November 14, 1990 meeting.

Please feel free to contact the undersigned or Donna S.
Quesenberry, Assistant Attorney General, Antitrust Division, at
348-0246 should you have any questions.

Very truly yours,

Robert Wm. Schulerberg, III

ROBERT WM. SCHULENBERG, III
SENIOR ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Enclosure



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WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-438, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

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OFFICE OF THE CLERK
LEGISLATIVE BLDG.
CHARLESTON, WV 25305

Senator Lloyd Jackson, Co-Chairman
Delegate Patrick H. Murphy, Co-Chairman

Debra A. Graham, Counsel
Michael McThomas, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

November 15, 1990

TO: Ken Hechler, Secretary of State, State Register

TO: The Honorable Roger W. Tompkins
Attorney General
State Capitol
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Proposed legislative rule pertaining to
limitation of action and recovery of
investigative costs and a reasonable attorney's
fee by the Attorney General in enforcement
action

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

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed -----
 - (b) 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. Authorize the agency to promulgate the Legislative rule
as modified with certain amendments; amendments and a
statement of reasons for such recommendation is attached. _____
5. 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: Robert Wm. Schulenberg, III, St. Asst AG
Donna S. Quesenberry, Asst. Attorney Gen.