

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Attorney General TITLE NUMBER: 142
RULE TYPE: Interpretive; CITE AUTHORITY W. Va. Code 46A-7-102(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: 14

TITLE OF RULE BEING PROPOSED: Interpretive Rule Pertaining to
Treatment of Rent to Own Transactions as Consumer Leases
or Consumer Credit Sales

EXTENSION OF COMMENT PERIOD

~~DATE OF PUBLIC HEARING:~~ September 16, 1992 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: _____

COMMENTS LIMITED TO: ORAL___, WRITTEN^X, BOTH___

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Attorney General

812 Quarrier St

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

John C. Winkler

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

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1992 AUG -5 AM 10: 22

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Attorney General TITLE NUMBER: 142

RULE TYPE: Interpretive; CITE AUTHORITY W. Va. Code § 46A-7-102(e)

AMENDMENT TO AN EXISTING RULE: YES NO

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: Interpretive Rule Pertaining to
Treatment of Rent to Own Transactions as Consumer Leases
or Consumer Credit Sales

DATE OF PUBLIC HEARING: September 9, 1992 TIME: 1 p.m.

LOCATION OF PUBLIC HEARING: Room 215 East Wing

State Capitol

Charleston, West Virginia 25305

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: West Virginia Attorney
General's Office
812 Quarrier St., 6th Fl

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.

Charleston, WV 25301

Attn: RTO Rule 14

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

2.60

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Interpretive Rule Pertaining to the Treatment of Rent to Own Transactions as Consumer Leases or Consumer Credit Sales

Type of Rule: Legislative X 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:

The rule involves neither the collection of any additional revenue nor the expenditure of any additional funds. Enforcement of the interpretation would be met by existing staff and agency budget.

3. Objectives of these rules:

To clarify the coverage and application of the West Virginia Consumer Credit and Protection Act to rent-to-own transactions.

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.

Will require the rent-to-own industry to substantially modify its practices to remain in business.

C. Economic Impact on Citizens/Public at Large.

Will result in some consumers having access goods on a rent-to-own or lease/purchase agreement at an effective 18% interest rate. Will prevent some uncredit worthy consumers from gaining access to rent-to-own goods. Will provide all consumers with information for comparative shopping purposes.

Date: Sept 4, 1992

Signature of Agency Head or Authorized Representative

Jonathan C. Dunsford

TITLE 142
INTERPRETIVE RULE
ATTORNEY GENERAL

SERIES 14
INTERPRETIVE RULE PERTAINING TO THE TREATMENT
OF RENT TO OWN TRANSACTIONS AS CONSUMER LEASES
OR CONSUMER CREDIT SALES

SUMMARY OF PROPOSED INTERPRETIVE RULE

The purpose of the rule is to clarify the coverage and application of the West Virginia Consumer Credit Protection Act to rent to own transactions. As proposed, rent to own transactions involving less than \$1000 will be treated as consumer credit sales and subject to the interest limitations contained in law for such sales. Rent to own transactions not considered consumer credit sales will be treated as consumer leases subject to the disclosure provisions set forth in law for such leases where it is the intention of the parties to transfer ownership by having the consumer make payments over a scheduled four month period.

TITLE 142
INTERPRETIVE RULE
ATTORNEY GENERAL

FILED

1992 AUG -5 AM 10: 22

SERIES 14
OFFICE OF THE ATTORNEY GENERAL
STATE OF WEST VIRGINIA
INTERPRETIVE RULE PERTAINING TO THE TREATMENT
OF RENT TO OWN TRANSACTIONS AS CONSUMER LEASES
OR CONSUMER CREDIT SALES

§142-14-1. General.

- 1.1. Rule Designation. -- This rule is interpretive.
- 1.2. Scope. -- This interpretive rule sets forth the Attorney General's policy to consider certain types of rental-purchase agreements as consumer leases or consumer credit sales subject to the provisions of Chapter 46A of the West Virginia Code.
- 1.3. Authority. -- W. Va. Code §46A-7-102(e).
- 1.4. Filing Date. --
- 1.5. Effective Date. --
- 1.6. Repeal of Former Rule. -- Not applicable.
- 1.7. Penalties. -- Except as otherwise indicated, a violation of this rule will be considered by the Attorney General to be an unfair and deceptive act or practice in violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-1-101 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-1-101 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 holding shall not affect other sections, subsections, sentences, clauses, phrases, or provisions which are hereby each declared severable.

§142-14-2. Definitions

- 2.1. "Lessee" means any natural person who leases personal property under lease agreement, including any rental-purchase agreement.
- 2.2. "Lessor" means any person or organization who, in the ordinary course of business, leases, offers to lease, or acts as

an agent for the leasing of personal property under a lease agreement, including any rental-purchase agreement.

2.3. "Rental-purchase agreement" means an agreement for the use of property by an individual lessee for personal, family or household purposes in which the lessee has an option to renew the lease by making additional periodic payments after the initial period, and that permits, but does not obligate, the lessee to become the owner of the property.

§142-14-3. Rental-Purchase Agreements as Consumer Leases.

3.1. A rental-purchase agreement not otherwise considered a consumer credit sale will be considered a consumer lease subject to the provisions of Chapter 46A of the West Virginia Code where the lessee intends to obtain ownership of the property through payments made as scheduled pursuant to the agreement, and such scheduled payments are to extend for a period of more than four months.

3.2. A rental-purchase agreement will be presumed to be a consumer lease subject to the provisions of Chapter 46A of the West Virginia Code regardless of whether or not the parties originally intended to transfer ownership through the agreement where the lessee makes all payments required under the agreement for a period of more than four months.

3.2.1. The lessor may rebut the presumption that a rental-purchase agreement is a consumer lease by showing that the lessee does not intend to gain ownership, such showing which can be made by obtaining a written waiver stating that the parties solely wish to rent the property, which waiver is signed by the lessee after each four month period.

3.2.2. When a rental-purchase agreement becomes a consumer lease under this subsection the lessor should make the disclosures required by W. Va. Code §46A-2-111 and otherwise comply with all pertinent provisions regarding consumer lease transactions set forth in Chapter 46A of the West Virginia Code.

§142-14-4. Rental-Purchase Agreements as Consumer Credit Sales.

4.1. A rental-purchase agreement will be considered a consumer credit sale subject to the provisions of Chapter 46A of the West Virginia Code, including the limits to finance charges set forth in W. Va. Code §46A-3-101 where the lessee intends to obtain ownership of the property through payments made as scheduled pursuant to the agreement, and such scheduled payments total not more than \$1,000 or other amount specified in W. Va. Code §46A-2-119(2).

4.2. The rate of finance charge should be calculated from the difference in the cash price of the item and the total amount required to be paid, excluding taxes, in the agreement's schedule of payments, and as otherwise in accordance with proper determination of the annual percentage rate under federal law.

4.3. Where the rental-purchase agreement is considered a consumer credit sale, the person offering to supply the good will be viewed as having a security interest in that good.