

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #4

Do Not Mark In this Box

**FILED**

FEB 18 3 40 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Attorney General TITLE NUMBER: 142

CITE AUTHORITY W. Va. Code 46A-6-103 and 46A-7-102(1)(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: 21

TITLE OF RULE BEING PROPOSED: Legislative Rule on Consumer  
Lease Disclosures in Rent to Own Transactions

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.

*Donald H. Bowling*

FILED

WEST VIRGINIA LEGISLATIVE RULE  
ATTORNEY GENERAL  
CHAPTER 46A-6 AND 46A-7  
SERIES 21

FEB 18 3 40 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
PROPOSED LEGISLATIVE RULE ON CONSUMER LEASE DISCLOSURES  
IN RENT TO OWN TRANSACTIONS

§ 142-21-1. General.

1.1. Rule Designation. -- This rule is legislative.

1.2. Scope. -- This legislative rule sets forth specific disclosure requirements for certain types of rental-purchase agreements as consumer leases, and defines certain deceptive acts or practices.

1.3. Authority. -- W. Va. Code § 46A-7-102(1)(e) and § 46A-6-103.

1.4. Filing Date. --

1.5. Effective Date. --

1.6. Penalties. -- Except as otherwise indicated, a violation of this rule constitutes 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.

1.7. 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.

1.8. 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, the holding shall not affect other sections, subsections, sentences, clauses, phrases, or provisions which are hereby each declared severable.

§ 142-21-2. Definitions.

2.1. "Lessee" means any natural person who leases or purchases personal property under a lease agreement, including a 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 or sale of personal property under a lease agreement, including a 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 agreement by making additional periodic payments after an initial period, and that permits, but does not obligate, the lessee to become the owner of the property.

2.4. "Term exceeding four months" means to include in the context of determining whether a lease is a consumer lease under W. Va. Code § 46A-1-102(14), rental-purchase agreements where the lessee can obtain ownership of the property through payments made as scheduled pursuant to the rental-purchase agreement, and the scheduled payments are to extend for a period of more than four months.

**§ 142-21-3. Disclosures for rental-purchase agreement consumer leases.**

3.1. In any consumer lease structured as a rental-purchase agreement, the lessor shall disclose in clear type at least one half inch high on a tag prominently attached to every item of property displayed or offered for rental-purchase:

3.1.1. The cash price;

3.1.2. The amount of the periodic payment and any tax on the periodic payment;

3.1.3. The length of each payment period;

3.1.4. The total number of periodic payments required to complete the purchase under the rental-purchase agreement;

3.1.5. The total amount the lessee must pay to complete the purchase under the rental-purchase agreement including taxes, which may be separately itemized;

3.1.6. The imputed interest rate expressed as an annual percentage rate calculated from the difference in the cash price of the item and the total amount required to be paid, excluding taxes, delivery charges, and bona fide maintenance or service fees, in the agreement's schedule of payments, and as otherwise in accordance with proper determination of the annual percentage rate under federal law; and

3.1.7. Whether the item of property is new, used, or previously rented.

3.2. In any consumer lease structured as a rental-purchase agreement, the lessor shall disclose in clear bold type at least one-eighth inch high in the agreement, all information required in W. Va. Code § 46A-2-111 or by subsection 3.1 of this rule, and in addition thereto state:

3.2.1. Whether the lessor is responsible for maintenance due to normal wear and tear;

3.2.2. The amount of any credits, if applicable, for sums paid pursuant to a previous rental-purchase agreement between the lessor and lessee for the same or replacement property and the amount of any credits for a trade-in allowance, including, if applicable, the number of additional payments required to obtain ownership of the property;

3.2.3. The amount, if applicable, of any delivery charges, taxes, and other sums which are required to be paid by law, and the description and amount of all other initial payments which must be paid at the beginning of the rental-purchase agreement in addition to the initial periodic payment;

3.2.4. The amount, if applicable, of all other charges, individually itemized, which may become payable by the lessee to the lessor that are not included in the disclosure of initial or periodic payments;

3.2.5. The amount, if applicable, of all maintenance or service fees, individually itemized, which may become payable by the lessee to the lessor and the amount the fees comprise of the periodic payments;

3.2.6. The party who is liable for loss or damage to the property in excess of normal wear and tear;

3.2.7. The right, if any, of the lessee to reinstatement; the length of time the lessee has to reinstate, and the payments the lessee must make to reinstate the rental-purchase agreement or the manner in which such sums are calculated;

3.2.8. That the lessee has the option to accelerate the purchase of the property early during the lease term and the price or the formula or method by which the price of the property will be determined;

3.2.9. Whether there is a transferrable manufacturer's warranty on the goods; and that if any part of a transferrable manufacturer's warranty exists on the rental-purchase property when the lessee acquires final ownership of the property, that warranty will be transferred to the lessee;

3.2.10. The amount of any late fee which may be charged by the lessor, which amount shall be in conformity to that permitted by W. Va. Code § 46A-3-112 for a precomputed consumer credit sale; and

3.2.11. That the lessee may, but is not required, to purchase insurance or a liability damage waiver with regard to damage or loss to the property beyond normal wear and tear, where the lessee is made liable for the damages.

**§ 142-21-4 Exclusions.**

4.1. Rental-purchase agreements and lease agreements with an option to purchase involving transactions of consumer goods including, for example, those involving musical instruments, automobiles, or telecommunications equipment where the agreements are subject to the Federal Truth in Lending Act, 15 U.S.C. § 1601 et seq., and the regulations pursuant thereto, are excluded from the provisions of this rule.

4.2. Rental-purchase agreements and lease agreements with an option to purchase involving transactions of consumer goods including, for example, those involving musical instruments, automobiles, or telecommunications equipment where the agreements are subject to the Federal Consumer Leasing Act of 1976, 15 U.S.C. § 1667 et seq., and the regulations pursuant thereto, are excluded from the provisions of this rule: Provided, that the agreements require a further consideration or final payment of more than a nominal amount to acquire ownership.



SENATE BILL NO. 225

1 (By Senator Manchin

2 [Introduced March 1, 1993; referred to the  
3 Committee on the Judiciary.]  
4  
5  
6  
7  
8  
9

10 A BILL to amend and reenact section three, article nine, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 attorney general to promulgate legislative rules relating to  
14 consumer lease disclosures in rent to own transactions.

15 **Be it enacted by the Legislature of West Virginia:**

16 That section three, article nine, chapter sixty-four of the  
17 code of West Virginia, one thousand nine hundred thirty-one, as  
18 amended, be amended and reenacted, to read as follows:

19 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS**  
20 **TO PROMULGATE LEGISLATIVE RULES.**

21 **§64-9-3. Attorney general.**

22 (a) The legislative rules filed in the state register on the  
23 sixth day of December, one thousand nine hundred eighty-four,

1 relating to the attorney general (third party dispute  
2 mechanisms), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 ninth day of January, one thousand nine hundred eighty-five,  
5 relating to the attorney general (fair treatment of crime victims  
6 and witnesses), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 nineteenth day of September, one thousand nine hundred  
9 eighty-six, modified by the attorney general to meet the  
10 objections of the legislative rule-making review committee and  
11 refiled in the state register on the first day of December, one  
12 thousand nine hundred eighty-six, relating to the attorney  
13 general (prevention of unfair or deceptive acts or practices in  
14 home improvement and home construction transactions), are  
15 authorized. These rules were proposed by the attorney general  
16 pursuant to section one hundred three, article six and section  
17 one hundred two, article seven of chapter forty-six-a of this  
18 code with the following amendments:

19 "Amending the title to the proposed legislative rule wherever  
20 said title may appear, on lines three and four thereof, by  
21 striking the words 'and home construction'.

22 On the index page following '3.' by striking the words 'and  
23 home construction'.

24 On page 1, §1.2, line three, after the first word  
25 "transactions" on line three, by striking the comma and the words

1 "and home construction transactions" and on line five, by  
2 striking the period and inserting the words "but shall not cover  
3 new construction of single-family dwellings or rebuilding all or  
4 substantially all of an existing or preexisting single-family  
5 dwelling."

6 Page 2, section 2.2 by striking all of lines seven and eight  
7 and inserting in lieu thereof the following:

8 'unless: (a) it appears in printed or typed face larger than  
9 the largest type used in the written contract, apart'.

10 On page 2, section 2.4, by striking all of section 2.4 and  
11 inserting in lieu thereof a new section 2.4, to read as follows:

12 "2.4 'Home Construction' means, for the purpose of this Rule,  
13 the repair, remodeling or the building of additions to existing  
14 single-family dwelling units, including single-family homes,  
15 condominium units or any other dwelling unit to be used by any  
16 person primarily for personal or family use, but shall not  
17 include new single-family home construction or the rebuilding of  
18 all or substantially all of an existing or preexisting  
19 single-family dwelling."

20 Page 3, section 2.6, on line two thereof, after the second  
21 comma by inserting the word "replacement."

22 Page 3, section 3, by striking the words "and home  
23 construction" from the section heading.

24 Page 3, section 3.1, lines one and two, by striking the words  
25 "or home construction."

1 Page 4, section 3.1.4, on lines one and two thereof, by  
2 striking the words "or home construction."

3 Page 4, section 3.1.8, on line two thereof, by striking the  
4 words "or home construction."

5 Page 4, section 3.1.9, on lines two and three thereof, by  
6 striking the words "or home construction."

7 Page 5, section 3.1.12, on lines one and two thereof, by  
8 striking the words "or home construction."

9 Page 6, section 3.1.26, by striking all of section 3.1.26 and  
10 renumbering the subsequent subsections.

11 Page 7, section 3.1.29, on lines one and two thereof, by  
12 striking the words "or home construction."

13 Page 7, section 3.1.29, on line six thereof, following the  
14 word "contract" by inserting a period and striking the remainder  
15 of the section.

16 Page 7, following section 3.1.29 by adding a new section to  
17 be designated section 3.1.29, to read as follows:

18 "failed to file a certificate in the office of the Clerk of  
19 the County Commission in the county in which the principal place  
20 of business of the seller is located, setting forth the assumed  
21 name in or by which the business is being conducted in conformity  
22 with the provisions of Chapter 47, Article 8, Section 2 of the  
23 Code of West Virginia, 1931, as amended."

1 Page 7, section 3.2, on lines two and three thereof, by  
2 striking the words, "or home solicitation sale of home  
3 construction" and the comma on line three.

4 Page 9, section 4.1, on line eight thereof, by deleting the  
5 period and inserting the following:

6 'to the extent permitted by statute'.

7 Page 10, section 4.2, on line 9 thereof, by striking the  
8 period and inserting the following:

9 'to the extent permitted by statute'.

10 (d) The legislative rules filed in the state register on the  
11 twenty-third day of September, one thousand nine hundred  
12 eighty-six, modified by the attorney general to meet the  
13 objections of the legislative rule-making review committee and  
14 refiled in the state register on the first day of December, one  
15 thousand nine hundred eighty-six, relating to the attorney  
16 general (prevention of unfair or deceptive acts or practices in  
17 the sale of damaged goods or products), are authorized.

18 (e) The legislative rules filed in the state register on the  
19 twenty-third day of September, one thousand nine hundred  
20 eighty-seven, modified by the attorney general to meet the  
21 objections of the legislative rule-making review committee and  
22 refiled in the state register on the twenty-fifth day of  
23 November, one thousand nine hundred eighty-seven, relating to the  
24 attorney general (administration of preneed burial contracts),  
25 are authorized with the following amendments set forth below:

1       On page 9, section 8.2, by striking the words "within thirty  
2 days after the death of a contract beneficiary," and inserting in  
3 lieu thereof the following: "On or before the first day of  
4 January and the first day of July of each year," and after the  
5 word "provided" by striking the comma and inserting in lieu  
6 thereof "after the death of any contract beneficiary during the  
7 previous six-month period,";

8       On page 12, section 9.7, by striking all of 9.7;

9       Beginning on page 15, by striking the entirety of section 15;

10      And,

11      Beginning on page 18, by striking the entirety of section 16,  
12 and by renumbering the remaining sections.

13      (f) The legislative rules filed in the state register on the  
14 eleventh day of August, one thousand nine hundred eighty-nine,  
15 modified by the attorney general to meet the objections of the  
16 legislative rule-making review committee and refiled in the state  
17 register on the twenty-sixth day of October, one thousand nine  
18 hundred eighty-nine, relating to the attorney general (allowing  
19 persons who are indirectly injured by violations of the West  
20 Virginia antitrust act to recover damages), are authorized.

21      (g) The legislative rules filed in the state register on the  
22 fourteenth day of August, one thousand nine hundred eighty-nine,  
23 modified by the attorney general to meet the objections of the  
24 legislative rule-making review committee and refiled in the state  
25 register on the fifteenth day of December, one thousand nine

1 hundred eighty-nine, relating to the attorney general (health  
2 spas), are authorized.

3 (h) The legislative rules filed in the state register on the  
4 tenth day of August, one thousand nine hundred ninety, relating  
5 to the attorney general (authorizing the attorney general to  
6 require persons upon whom subpoenas are served to answer written  
7 questions under oath), are authorized.

8 (i) The legislative rules filed in the state register on the  
9 tenth day of August, one thousand nine hundred ninety, relating  
10 to the attorney general (obtaining assistance of public officials  
11 in investigations and the commencement of proceedings to compel  
12 compliance), are authorized.

13 (j) The legislative rules filed in the state register on the  
14 tenth day of August, one thousand nine hundred ninety, modified  
15 by the attorney general to meet the objections of the legislative  
16 rule-making review committee and refiled in the state register on  
17 the twentieth day of November, one thousand nine hundred ninety,  
18 relating to the attorney general (limitation of action and  
19 recovery of investigative costs and a reasonable attorney's fee  
20 by the attorney general in an enforcement action), are  
21 authorized.

22 (k) The legislative rules filed in the state register on the  
23 tenth day of August, one thousand nine hundred ninety, modified  
24 by the attorney general to meet the objections of the legislative  
25 rule-making review committee and refiled in the state register on

1 the twenty-third day of January, one thousand nine hundred  
2 ninety-one, relating to the attorney general (regulated business  
3 exemption under the West Virginia antitrust act), are authorized.

4 (l) The legislative rules filed in the state register on the  
5 tenth day of August, one thousand nine hundred ninety, modified  
6 by the attorney general to meet the objections of the legislative  
7 rule-making review committee and refiled in the state register on  
8 the twenty-second day of January, one thousand nine hundred  
9 ninety-one, relating to the attorney general (defining the term  
10 "federal antitrust laws" and prohibiting tying and reciprocity),  
11 are authorized.

12 (m) The legislative rules filed in the state register on the  
13 eighteenth day of September, one thousand nine hundred ninety-  
14 two, modified by the attorney general to meet the objections of  
15 the legislative rule-making review committee and refiled in the  
16 state register on the eighteenth day of February, one thousand  
17 nine hundred ninety-three, relating to the attorney general  
18 (consumer lease disclosures in rent to own transactions), are  
19 authorized.

20

21 NOTE: The purpose of this bill is to authorize the Attorney  
22 General to promulgate legislative rules relating to consumer  
23 lease disclosures in rent to own transactions.

24

25 Strike-throughs indicate language that would be stricken from  
26 the present law, and underscoring indicates new language that  
27 would be added.