

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #2

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Jul 15 3 21 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Attorney General TITLE NUMBER: 142  
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code § 46B-3-10;  
§ 46A-6-103; § 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: 22

TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to  
the West Virginia Consumer Goods Rental Protection Act

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 14, 1993 AT 5 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Donald L. Darling  
Senior Deputy Attorney General  
Antitrust & Consumer Protection Div.  
812 Quarrier Street, Sixth Floor  
Charleston, West Virginia 25301

THE ISSUES TO BE HEARD SHALL BE  
LIMITED TO THIS PROPOSED RULE.

  
DONALD L. DARLING  
SENIOR DEPUTY ATTORNEY GENERAL

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.40

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Legislative Rule Pertaining to the West Virginia Consumer Goods Rental Protection Act  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency: Attorney General  
 Address: Antitrust & Consumer Protection Division  
812 Quarrier Street, Sixth Floor  
Charleston, West Virginia 25301

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

**2. Explanation of above estimates:**

No effect on budget.

**3. Objectives of these rules:**

To set methods for determining "retail value" which is key factor in regulation of rent-to-own transactions and establish standards for notices and disclosures required by statute.

Rule Title: Legislative Rule Pertaining to the West Virginia Consumer Goods Rental Protection 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.

Slight increase in administrative cost for rent-to-own dealers.

C. Economic Impact on Citizens/Public at Large.

Date: July 15, 1993

Signature of Agency Head or Authorized Representative

Donald L. Darling

DONALD L. DARLING  
SENIOR DEPUTY ATTORNEY GENERAL

TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL

SERIES 22  
LEGISLATIVE RULE PERTAINING TO  
THE WEST VIRGINIA CONSUMER GOODS  
RENTAL PROTECTION ACT

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SUMMARY OF RULE

This rule is intended to implement the provisions of the West Virginia Consumer Goods Rental Protection Act. The rule defines certain terms. The key feature of the rule is the establishment of a formula or method for establishing retail value. Retail value for a consumer good subject to a rent-to-own agreement is the linchpin of the regulatory structure as the maximum charge allowable under a rent-to-own agreement is fixed at 240% of retail value. Alternative methods for ascertaining retail value are set out. Additionally, requirements and formats for mandatory disclosures for price tags, written agreements, telephone communications and advertisements are established. A format and language for required notices for termination and right of reinstatement are established. The final provision of the rule addresses the transfer of warranties from dealer to consumer at the successful completion of a rent-to-own agreement.

FILED

TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL

JUL 15 3 22 PM '93

SERIES 22  
LEGISLATIVE RULE PERTAINING TO  
THE WEST VIRGINIA CONSUMER GOODS  
RENTAL PROTECTION ACT

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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§ 142-22-1. General.

1.1. Scope. -- This Rule relates to the regulation of rent-to-own agreements under the West Virginia Consumer Goods Rental Protection Act, W. Va. Code §§ 46A-1-101 et seq. and consumer credit sales under the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46B-1-1 et seq.

1.2. Authority. -- W. Va. Code § 46A-6-103, W. Va. Code § 46A-7-102(e), and W. Va. Code § 46B-3-10.

1.3. Filing date. --

1.4. Effective date. --

1.5. Penalties. -- Except as otherwise indicated, a violation of this rule constitutes a violation of the West Virginia Consumer Goods Rental Protection Act.

1.6. Construction. -- This rule shall be liberally construed to protect consumers pursuant to the West Virginia Consumer Goods Rental Protection Act and the West Virginia Consumer Credit and Protection Act.

1.7. 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 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.

§ 142-22-2. Construction.

2.1 "Transaction Definitions" -- The definition of "rent-to-own agreement" in the West Virginia Consumer Goods Rental Protection Act [§ 46B-1-5(17)] and the definition of "consumer credit sale" in the West Virginia Consumer Credit and Protection Act [§ 46A-1-102(13)] shall be construed so that every transaction

is either a "consumer credit sale" or a "rent-to-own agreement" if the subject matter of the transaction is personal property which is to be used for personal, family or household purposes, and if a natural person who is not in the business of selling or otherwise dealing with such goods is acquiring rights to ownership of the goods by paying over time, and if such natural persons has the right to use or possession of the property before all payments are made.

2.2. "Consumer" -- To be a consumer for the purposes of the definition of "consumer" in the West Virginia Consumer Goods Rental Protection Act [§ 46B-1-5(2)], the consumer does not have to have entered into a rent-to-own agreement.

2.3. "Financial Organization" -- The term "financial organization in the West Virginia Consumer Goods Rental Protection Act [§ 46B-1-5(8)], is limited to banks or savings and loan associations.

2.4. "Price" -- The term "price" in the disclosure provisions of the West Virginia Consumer Goods Rental Protection Act [§ 46B-3-7(c)(4)] means the amount of the periodic payment.

2.5. "Increased Periodic Payments" -- The prohibition in the West Virginia Consumer Goods Rental Protection Act against charging a fee other than a fee specifically allowed by the code at the time ownership of the goods passes to the consumer [§ 46B-3-8(2)] means that a rent-to-own transaction is prohibited from having one or more periodic payments either at the end of the transaction or at any time after the first regular periodic payment which is larger than any other periodic payment.

2.6. "Limitation of Re-Signed Agreement" -- The limitation on the total of payments in any rent-to-own transaction in the West Virginia Consumer Goods Rental Protection Act [§ 46B-3-9(d)] means that the total of payments of a rent-to-own agreement between the same consumer, or one of the same consumers, and the same dealer, or the dealer's successor, for the same goods as in a previous agreement shall not be greater than A) The unpaid total of payments for the previous transaction; plus B) Any other charges due as lawfully provided by the previous agreement and unpaid; plus C) The amount of one additional periodic payment as provided in the previous agreement.

### § 142-22-3. Formula or Method for Ascertaining Retail Value.

3.1. General. --

3.1.1. Retail value does not include any applicable sale, use, privilege, excise or documentary stamp taxes payable upon the transfer of such goods.

3.1.2. "Market area" means the geographic area around the dealer's place of business at which the dealer enters into rent-to-own agreements with consumer from which consumers usually travel for the purpose of doing business with a dealer or other retailer of consumer goods and shall be presumed to include the county in which the dealer is located and any contiguous counties.

3.2. "Retail value" may be established by any of the following methods:

3.2.1 New and Used Goods; Actual Sales -- The retail value of new goods may be established as the price at which goods of substantially similar quality and substantially similar features changed hands in a bona fide retail sale between one or more willing sellers and willing buyers in the normal course of business of the seller. The proof may come from only one seller, but the goods must be sold to more than one buyer. The seller or sellers, and the buyer or buyers, must not be a person related to a dealer or to an individual who is related to a person related to a dealer. The transaction must take place in the same market area in which goods to which the retail value is assigned are marketed. The buyer must have paid with cash or a check and not a credit card.

3.2.2. New Goods; Mark Up -- The retail value of new goods may be established by multiplying the manufacturer's charge to the dealer by the following percentages:

For kitchen and major appliances: 30%  
For electronics: 35%  
For furniture: 40%  
For jewelry: 45%  
For other household goods: 40%

In order to use this method no rebates, discounts, incentives or other value may be received from the manufacturer by the dealer.

3.2.3. New Goods; Catalogues -- The retail value of goods may be established by the use of a current catalogue of a seller who is not a person related to a dealer or an individual who is a person related to a dealer, as the term "person related to" is defined by the West Virginia Consumer Goods Rental Protection Act [§ 46B-1-5(13)]. However, such a catalogue may only be used if the seller's current catalogues are approved by the attorney general as a seller who makes substantial sales for cash and not for payment over time by credit card or otherwise.

3.2.4. Any dealer may apply to the attorney general for approval of such a catalogue for use by that dealer. The attorney general may require reasonable data from the applicant with regard to such request for approval. The attorney general must act upon such request within a reasonable time in light of the data supplied by the applicant, availability and difficulty in obtaining data,

and the requested applicability of use of the seller catalogue. An applicant may request a hearing on the attorney general's initial denial of such application. Such a request for hearing shall be a contested case for the purposes of chapter 29A of the Code of West Virginia.

3.2.5. Used Goods; Book Value -- The retail value of used goods may be established by the use of publications which are generally distributed and used and generally relied upon by persons and organizations other than rent-to-own dealers as stating fair market value. Used goods should not have retail value greater than new goods.

3.2.6. Used Goods; Depreciation -- The retail value of used goods may be established by using straight line depreciation of the goods over eighteen months of actual rental based on a retail value established as allowed by this rule or the West Virginia Consumer Goods Rental Protection Act.

3.3. Record Retention -- A dealer shall keep sufficient records to document the retail value of any good. The type of records to be kept shall be dependent on the method adopted to determine retail value. All such records shall be retained for the period of time any good is owned by the dealer whether or not the good is the subject of a rental agreement. All such records shall be subject to inspection by any member of the public during the dealer's regular business hours.

#### § 142-22-4. Disclosures.

4.1. General -- All disclosures required under the West Virginia Consumer Goods Rental Protection Act shall be clearly communicated and conspicuously placed so as to be reasonably understandable and, if in writing, legible.

#### 4.2. Format of Disclosures --

4.2.1. Rent-to-Own Agreements and Price Tags -- A disclosure to be contained in a rent-to-own agreement or price tag shall be in substantial compliance with the following format and language:

1. THIS ITEM RENTS FOR \$ \_\_\_\_\_ PER  
(Periodic Payment)

\_\_\_\_\_  
(Rental Period)

2. YOU CAN OWN THIS ITEM IF YOU RENT IT FOR

\_\_\_\_\_  
(Total No. Rental Periods)

3. IF YOU RENT THIS ITEM FOR THE FULL TIME TO OWN IT YOU WILL PAY A TOTAL OF \_\_\_\_\_ (PLUS ANY ADDITIONAL TRANSFER CHARGES SHOWN IN THE WRITTEN AGREEMENT).  
(Total of all Payments)

4. THE RENTAL VALUE (CASH SALE PRICE IN THIS AREA) OF THIS ITEM IS \$ \_\_\_\_\_. THE BALANCE OF \_\_\_\_\_ (Retail Value) TOTAL OF PAYMENTS SHOWN IN NO. 3 ABOVE, IN THE AMOUNT OF \$ \_\_\_\_\_, IS THE RENT-TO-OWN CHARGE OR (Rent-To-Own Charge) AMOUNT YOU WILL PAY MORE THAN RETAIL VALUE TO OBTAIN OWNERSHIP THROUGH A RENT-TO-OWN AGREEMENT.

5. THIS ITEM IS ( ) NEW  
( ) PREVIOUSLY RENTED OR OTHERWISE USED

6. THE TOTAL OF ALL PAYMENTS SHOWN IN NO. 3 OF \$ \_\_\_\_\_ MAY NOT BE MORE THAN 2.4 (Total No. of all Payments) TIMES THE RETAIL VALUE OF \$ \_\_\_\_\_ (Retail Value).

4.2.2. A separate disclosure shall be required for each good or item which is the subject of a rent to own agreement. When multiple goods or items are the subject of one rent-to-own agreement the disclosure made in the body of this agreement may be an aggregate of the values for all goods covered, PROVIDED that the individual price tag disclosure for each individual item (or a copy) be attached to and become a part of the rent-to-own agreement.

#### 4.3. Advertisements --

4.3.1. Printed advertisements mentioning price shall contain disclosures in the format and language set forth in § 142.22.4.2.1 of this rule.

4.3.2. Radio and television advertisements mentioning price shall contain all required disclosures which shall be communicated orally in a reasonably understandable manner for the average hearer of the advertisement. Television advertisements may contain only printed disclosures if conspicuously displayed for a reasonable period of time.

#### 4.4. Telephone communications --

4.4.1. A dealer shall make all disclosures required by W. Va. Code § 46B-3-7(b) in any "telephone communication with a potential customer."

4.4.2. For purposes of this rule, a "telephone communication with a potential customer" means a telephone conversation:

4.4.2.1. Initiated by the dealer for the purpose of soliciting the consumer to enter into a rent-to-own transaction with the dealer during which a price for a specific item is discussed; or

4.4.2.2. Initiated by the consumer for the purpose of inquiring about a rent-to-own transaction during which the price for a specific item is discussed.

#### § 142-22-5. Termination Notice.

5.1. A dealer's notice to terminate a rent-to-own agreement shall be in substantial compliance with the following format and language:

##### NOTICE OF TERMINATION

You have failed to make your payment(s) due on \_\_\_\_\_ . Your rent-to-own agreement will terminate seven days from your receipt of this notice. You have failed to make your payment(s) in the total amount of \$\_\_\_\_\_.

A late charge of \$\_\_\_\_\_ has been added to the amount you owe under your rent-to-own agreement.

You may voluntarily surrender possession of the goods rented under your rent-to-own agreement by making them available to the dealer at the place where the goods are located.

##### NOTICE OF RIGHT TO "REINSTATEMENT" OF YOUR RIGHT TO OBTAIN OWNERSHIP OF GOODS

You have been using item(s) which you got from a rent-to-own dealer. The rent-to-own agreement gave you the right to own the item(s) if you paid all of the periodic payments. Now you may have return the item(s) to the dealer (or the dealer may have picked them up or repossessed them from you).

Even though the dealer has the item(s) back, you may have the right to "reinstate" the agreement. This means you can pick up making the payments where you left off.

The dealer will return possession of the item(s) to you. (If the dealer has already rented the item(s) you had to someone else, the dealer must give you goods that are the same or better than what you had before.) And, you will have the same right to eventually own the item(s), if you finish the terms of the agreement, that you did before.

You have 60 days from the last day of the last rental period for which you made a payment (90 days if you have paid 40% or more of the payments) to go to the dealer and "reinstate" the agreement. If the dealer has had to repossess or has tried to repossess the goods two time in the pas, the dealer does not have to let you reinstate.

If you want to "reinstate" the agreement and obtain ownership of the goods, you only have to go to the dealer and do the following:

- 1) Pay the dealer any payments that have dome due you have not paid, but only if those payments are due for periods of time when you actually had the item(s) in your possession; and

- 2) Pay the dealer any other fees provided in the written agreement which have become due, but have not been paid; and

- 3) Pay the dealer a reinstatement fee of not less than \$5.00 if that fee is in the written agreement and if the dealer has possession of the item(s).

5.2. A dealer's notice to terminate will be effective for purposes of the seven-day notice period upon actual receipt by the consumer. However, the seven-day notice period is to be calculated exclusive of the day of its receipt. The burden of establishing actual receipt shall be on the dealer, PROVIDED that notice made by regular mail shall be presumed to have been received on the third day following its mailing.

#### **§ 142-22-6. Transfer of Warranties.**

6.1. At such time as maintenance of the goods becomes the responsibility of the consumer through a transfer of ownership or otherwise, the dealer shall advise the consumer of any manufacturer's or supplier's warranty that may apply to the goods and any details regarding the warranty and the transfer of the warranty.

6.2. A dealer may comply with subsection 6.1 by:

6.2.1. establishing that the consumer has a copy of the manufacturer's warranties;

6.2.2. providing the consumer with a written notice that any remaining manufacturer's warranties are transferred to the consumer, if permitted by the terms of the warranties;

6.2.3. providing the date(s) on which the warranties commenced; and

6.2.4. offering to answer any questions the consumer may have concerning the warranties.