

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JAN 24 4 14 PM '94

FILED

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Attorney General TITLE NUMBER: 142

CITE AUTHORITY W. Va. Code 46A-6-103, 46A-7-102(e), 46B-3-10

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: 22

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

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 L. Darling

4.40

FILED

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

JAN 24 4 14 PM '94

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 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, W. Va. Code § 46B-1-1 et seq.

1.6. Construction.

1.6.1. This rule shall be liberally construed to protect consumers pursuant to the West Virginia Consumer Goods Rental Protection Act W. Va. Code § 46B-1-1 et seq. and the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-1 et seq.

1.6.1. 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.

1.7. Severability. -- If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or

the application of this rule 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, clauses, phrase, or provision of this rule is hereby declared severable.

§ 142-22-2. Definitions.

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

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

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

2.4. "Price" -- The term "price" in the disclosure provisions of the West Virginia Consumer Goods Rental Protection Act, W. Va. Code § 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 W. Va. Code § 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 on 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, W. Va. Code § 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.

2.7. "Retailer" -- The term "retailer" means a person or firm in the business of making substantial bona fide sales of goods to consumers for cash, check, or other legal tender, or for which the purchaser uses a credit card of a firm which is not a person related to the retailer and which is not an individual who is a person related to the retailer: Provided, That a person or firm is not a "retailer" if the person or firm is a person related to a dealer or an individual related to a person related to a dealer as the term "person related to" is defined in W. Va. Code § 46B-1-5(13).

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

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

3.2. "Retail value" may be established by any of the following methods; provided, however, the sale, the manufacturer's charge, the publication of the catalogue, the publication of values, the advertisement or the other evidence of value relied upon must not have occurred more than one year prior to the first use of the retail value for a particular good.

3.2.1. New and Used Goods; Actual Sales -- The retail value of new and used goods may be established as the price at which goods of substantially similar quality and quantity and substantially similar features changed hands in a bona fide retail sale between one or more willing retailers and willing buyers in the normal course of business of the seller. The proof may come from only one retailer, 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, check, other legal tender or a credit card of a firm which is not a person related to the retailer and which is not an individual who is a person related to the retailer: Provided, that sales made by a buyer who used a credit card of a firm that is related to the retailer may be used if the seller is one approved by the attorney general as a seller who makes substantial sales for cash, check or other legal tender or who makes substantial sales in which the purchaser uses a credit card of a firm which is not a person related to the retailer and which is not an individual who is a person related to the retailer.

3.2.1.1. Any dealer may apply to the attorney general for approval of the use of sales by a retailer using a credit card of a person or firm related to the retailer. The attorney general may require reasonable data from the applicant

with regard to a request for approval. The attorney general must act upon the request within a reasonable time in light of the data supplied by the applicant, the availability and difficulty in obtaining data, and the requested applicability of the use of the sales. An applicant may request a hearing on the attorney general's initial denial of the application. The request for hearing shall be a contested case for the purposes of chapter 29A of the West Virginia Code.

3.2.2. New Goods; Mark Up -- The retail value of new goods may be established by multiplying the supplier's charge, including freight, to the dealer by the following percentages and adding that amount to the supplier's charge:

For kitchen and major appliances: 56%
For electronics: 56%
For furniture: 67%
For jewelry: 82%
For other household goods: 67%

3.2.2.1. In order to use this method rebates, discounts, incentives, or other value received from the manufacturer by the dealer must be deducted from the supplier's charge.

3.2.2.2. The dealer's supplier's cost must be determined using the cost from the supplier of the goods which is not a person related to a dealer or an individual who is related to a person related to a dealer, as the term "person related to" is defined in the West Virginia Consumer Goods Rental Protection Act.

3.2.3. New Goods; Catalogues -- The retail value of goods may be established by the use of a catalogue of a retailer 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, W. Va. Code § 46B-1-5(13) retailer. However, the catalogue may only be used if the seller's catalogues are approved by the attorney general as a seller who makes substantial sales for case, check, or other legal tender or who makes substantial sales in which the purchaser uses a credit card of a firm which is not a person related to a dealer and which is not an individual who is a person related to a dealer.

3.2.3.1. Any dealer may apply to the attorney general for approval of a catalogue for use by that dealer. The attorney general may require reasonable data from the applicant with regard to a request for approval. The attorney general must act upon request within a reasonable time in light of the data supplied by the applicant, the 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 the application. The request for hearing shall be a contested case for the purposes of chapter 29A of the West Virginia Code.

3.2.4. New or Used Goods; Advertised Price. The retail value of new or used goods may be established by the posted or advertised price of a retailer in the same market area for the same goods or goods of like type, features, quality and quantity.

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.

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 new retail value established as allowed by this rule or the West Virginia Consumer Goods Rental Protection Act, W. Va. Code § 46B-1-1 et seq.

3.3. Limitations --

3.3.1. Used goods shall not have a retail value greater than the retail value assigned to that item which the item was offered as new.

3.3.2. "List Price" or "Manufacturer's Suggested Retail" may not be used to determine retail value.

3.4. Record Retention -- A dealer shall keep sufficient records to document the retail value of any good. If the actual sales method is used, records kept shall be the records of sales gathered by the dealer and any surveys or summaries made by the dealer. If the mark up method is used, the dealer shall maintain the supplier's invoice or other supplier's records of the price to the dealer of the goods including rebates, discounts, incentives, or other value received by the supplier from the dealer. If the catalogue method is used, the catalogues shall be kept. If the book value valuation method is used, the publication used must be kept. If the depreciation valuation method is used, the valuation calculation must be kept together with the records used for the valuation of the new retail value. If the advertising method is used, then the retailer's actual advertisement must be kept. If another method is used, then the dealer must keep records made at the time the valuation was made, and if the dealer relied upon records which were not the dealer's, those records must be kept. All 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. In addition to any other powers of the attorney

general and any other duties of dealers provided by law, the attorney general may make reasonable requests for retail value records of a dealer or dealers to survey or investigate retail value pricing by dealers and any dealer shall respond to such a request within thirty days.

3.4. Disapproval of Methods. The methods set out in § 3.2 may be used until the attorney general, after a contested case pursuant to Chapter 29A of the West Virginia Code or other appropriate judicial determination, disapproves this method because of disparity of the results of one of the aforesaid methods for determining retail value as compared to retail value as established by the actual sales method in § 3.2.1.

§ 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. Rent-to-Own Agreements.

4.2.1. Every rent to own agreement must disclose the "retail value", the "rent-to-own charge", the "rental period", the "number of payments", the "Periodic" or "Weekly" or "Monthly" payment amount, the "total of all payments", and whether the goods are "new", "used" or "previously rented".

4.2.2. The disclosures set out in the section 4.2.1 must be made on every rent-to-own agreement before it is signed by the consumer. The disclosures may be made within sentences or phrases as long as the phrases or sentences are grouped together without intervening phrases or sentences. The disclosures must be on the same page and the same side of the page that the consumer signs. The terms labeling the disclosures must be explained. The disclosures must be grouped together: The terms labeling the disclosures must immediately precede or follow the disclosures being made. If the disclosures are not made within the sentences or phrases explaining the terms labeling the disclosures, the explanations may be made elsewhere though they must be grouped together without intervening information on the same side of the page signed by the consumer.

4.2.3. 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 and each individual item (or a copy) be attached to and become a part of the rent-to-own agreement.

4.2.4. The disclosure and the terms labeling in the disclosures must be in type that is bolder and larger than the surrounding type and 90% of the remainder of the printing in the contract. If the disclosures and handwritten must be printed and must be larger and no less dark than the terms labeling the disclosures.

4.2.5. The disclosures must be labeled with the exact terms used in subsection 4.2.1 except:

4.2.5.1. The term "Periodic" does not have to be used to label the disclosure of the periodic payment if the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY", or "MONTHLY" are used instead of "Periodic".

4.2.5.2. The rental period disclosure does not have to be separately labeled "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY", or "MONTHLY" are used to label the disclosure of the payment amount.

4.3 Display Label.

4.3.1. Every item displayed to a potential rent-to-own customer by a dealer must have a label attached to it or posted on top of the item which must disclose the "retail value", the "rent-to-own charge", the "rental period", the "number of payments", the "Periodic" or "Weekly" or "Monthly" payment amount, the "total of all payments", and whether the goods are "new", "used" or "previously rented". No disclosure or label of any disclosure may be less than 3/4 the size of any of the other disclosures. The disclosures must be grouped together. The terms labeling the disclosures must immediately precede or follow the disclosures being made.

4.3.2. The disclosures must be labeled with the exact terms used in subsection 4.2 except:

4.3.3.1. The term "Periodic" does not have to be used if the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY", or "MONTHLY" are used instead of "Periodic" in disclosing the periodic payment amount.

4.3.3.2. The rental period disclosure does not have to be separately labeled if the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY", or "MONTHLY" are used to label the disclosure of the payment amount.

4.4. Printed advertisements.

4.4.1. Any printed advertisement which communicates a periodic payment amount must also disclose the "retail value", the "rent-to-own charge", the "rental period", the "number of

payments", the "total of all payments", and whether the goods are "new", "used" or "previously rented". No disclosure can have type smaller than the capital letters in six point type. No disclosure can be less than one sixth the size of any of the other disclosures. The disclosures must be grouped together. The terms labelling the disclosures must immediately precede or follow the disclosure being made.

4.4.2. The disclosures must be labeled with the exact terms used in subsection 4.4.1. except:

4.4.2.1. The term "Periodic" does not have to be used the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY", or "MONTHLY" are used instead of "Periodic" in disclosing the periodic payment amount.

4.4.2.2. The rental period disclosure does not have to be separately labeled if the terms "WEEKLY", "BI-WEEKLY", "SEMI-MONTHLY", or "MONTHLY" are used to label the disclosure of the payment amount.

4.5. Radio and Television -- Radio and television advertisements which communicate a periodic payment amount shall also disclose all of the other disclosures required to be on the price tag except the rent-to-own charge. Each disclosure must be labeled or described using the terms for the disclosures which must be on the price tag. Television advertisements may contain only printed disclosures if conspicuously displayed for a reasonable period of time which would allow a person of average reading ability to read and comprehend the disclosures.

4.6. Telephone communications --

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

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

4.6.2.1. 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 periodic payment amount is communicated;

4.6.2.2. Initiated by the consumer for the purpose of inquiring about a rent-to-own transaction during which a periodic payment amount is communicated. A dealer's obligation to make the disclosures required under this subsection is considered satisfied, if, after the dealer offers to provide or attempts to provide the disclosures, the consumer affirmatively states that he

or she does not wish to hear the disclosures; provided, however, that if the consumer subsequently requests the disclosures, the dealer shall provide them.

§ 142-22-5. Termination Notice.

5.1. A dealer's notice to terminate a rent-to-own agreement shall be presumed to satisfy the requirements of the statute if it is in substantial compliance with the following format and language:

NOTICE OF TERMINATION AND
NOTICE OF RIGHT TO REINSTATE

You have failed to make your payment(s) due on _____ . You 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 returned the item(s) to the dealer (or the dealer may have picked them up or repossessed them from you), or you may just be behind on the payment and the dealer is seeking payment or return of the goods.

You may have the right to "reinstate" the agreement even though the dealer has the item(s) back. 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 had before.

You have 60 days form 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 times in the past, the dealer does not have to let you "reinstate" the agreement.

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 come due which 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;

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 more 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 is on the dealer, PROVIDED that notice made by regular mail properly addressed and mailed to the last known address of the consumer shall be presumed to have been received by the consumer, and to have been received on the third day following its mail.

§ 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 of this section by:

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

6.2.2. providing 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.

