

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #6

**FILED**

APR 8 10 25 AM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Attorney General TITLE NUMBER: 142

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: Series 22

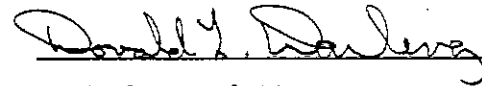
TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to the  
West Virginia Consumer Goods Rental Protection Act.

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB145

SECTION 64-9-3(m), PASSED ON March 10, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: May 9, 1994



Authorized Signature  
Donald L. Darling  
Senior Deputy Attorney General

4.60

PROMULGATION HISTORY

TITLE 142  
LEGISLATIVE RULE

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

- |                  |   |   |
|------------------|---|---|
| July 15, 1993    | - | Filed with Secretary of State for public comment            |
| August 14, 1993  | - | Public comment period ended (No public hearing was held)    |
| August 16, 1993  | - | Agency approved rule filed with Secretary of State          |
| August 16, 1993  | - | Filed with Legislative Rule Making Review Committee (LRMRC) |
| January 9, 1994  | - | Modified and approved by LRMRC                              |
| January 24, 1994 | - | Modified rule file with LRMRC                               |
| March 10, 1994   | - | Rule passed by Legislature in SB145                         |
| April 8, 1994    | - | Rule final filed with Secretary of State                    |
| May 9, 1994      | - | Effective date of Rule                                      |

TITLE 142  
LEGISLATIVE RULE  
ATTORNEY GENERAL

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

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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. -- April 8, 1994.

1.4. Effective date. -- May 9, 1994.

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.

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H. B. 4239

(By Delegates Gallagher, Douglas, Compton,  
Huntwork, Burk and Faircloth  
(Introduced January 31, 1994; referred to the  
Committee on the Judiciary.)

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 the West Virginia consumer goods rental protection act.

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,

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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 sixteenth day of August, one thousand nine hundred ninety-three,  
14 modified by the attorney general to meet the objections of the  
15 legislative rule-making review committee and refiled in the state  
16 register on the twenty-fourth day of January, one thousand nine  
17 hundred ninety-four, relating to the attorney general (West  
18 Virginia consumer goods rental protection act), are authorized.

19

20 NOTE: The purpose of this bill is to authorize the Attorney  
21 General to promulgate legislative rules relating to the West  
22 Virginia consumer goods rental protection act.

23

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

SENATE BILL NO. 154

(By Senators Manchin, Anderson, Grubb, Macnaughtan  
and Minard)

[Introduced January 31, 1994; referred to the  
Committee on

THE JUDICIARY

A BILL to amend and reenact section three, article nine, chapter  
sixty-four of the code of West Virginia, one thousand nine  
hundred thirty-one, as amended, relating to authorizing the  
attorney general to promulgate legislative rules relating to  
the West Virginia consumer goods rental protection act.

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

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

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

**§64-9-3. Attorney general.**

(a) The legislative rules filed in the state register on the  
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:

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7 previous six-month period,";

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25 the present law, and underscoring indicates new language that  
26 would be added.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

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Executive Assistant

Telephone: (304) 558-6000  
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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

March 15, 1994

Donald L. Darling  
Attorney General  
Consumer Protection Division  
812 Quarrier St., Sixth Fl.  
Charleston, WV 25301

**SB 145** authorizing, Title 142, Series 22, Legislative Rule Pertaining to the WV Consumer Goods Rental Protection Act, passed the Legislature on March 10, 1994. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 145, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 145** section 64-9-3(m). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

**\*\*\*IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You  
Administrative Law Division



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
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**STATE OF WEST VIRGINIA**

**SECRETARY OF STATE**  
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Charleston, WV 25305-0770

**RECEIVED** WILLIAM H. HARRINGTON  
APR 25 1994 Chief of Staff

JUDY COOPER  
ATTORNEY GENERAL Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

TO: Donald Darling

AGENCY: Attorney General

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 21, 1994

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 22 TITLE: 142 Attorney General

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Donald E. Darling

TITLE OF PERSON SIGNING: Senior Deputy Attorney General

DATE: April 25, 1995

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.