WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #3

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Aug 15 3 20 PM '94

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Office of the Attorney General TITLE NUMBER: 142

CITE AUTHORITY W. Va. Code Section 46A-6-103 & W. Va. Code Section 46A-7-102(1)(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: 23

TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to The Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

31.10
9.40 W/O

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

SERIES 23
LEGISLATIVE RULE PERTAINING TO THE PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN MOBILE HOME PARKS

BRIEF SUMMARY

Consumers who reside in mobile home parks usually have very little assets but considerable expenses in moving in or out of a park. Series 23 covers common problems experienced by residents of mobile home parks.

The proposed rule would make it an unfair or deceptive act or practice to require the consumer to purchase a mobile home from the owner of the park. The proposed rule would also set disclosure requirements for rent and security deposits, and provides the consumer with protection when there is a sale of a mobile home or transfer of tenancy.

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

SERIES 23
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN MOBILE HOME PARKS

STATEMENT OF CIRCUMSTANCES

West Virginia law (W. Va. Code § 37-5-1 et seq.) regarding mobile home sales and services is inadequate in protecting consumers. The underlying issue is that owner's have tremendous leverage over the residents of the park because the residents usually have very little assets but have considerable expenses in moving out of a park. By virtue of this situation, there is an inequity of bargaining power.

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

August 15, 1994

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
Charleston, West Virginia 25305

Dear Mr. Hechler:

Please accept this letter as my authorization for the filing of the enclosed proposed legislative rules with the Secretary of State's Office and the Legislative Rule Making Review Committee. A public hearing was held on these rules on August 10, 1994. Written comments were also received.

The enclosed proposed legislative rules to which my authorization extends are:

(a) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks;

(b) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Advertising and Sales;

(c) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Landlord Transactions;

(d) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Act or Practices in Motor Vehicle Repairs;

(e) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Act or Practices in Motor Vehicle Sales;

(f) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Act or Practices in Proprietary Institution;

(g) Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Act or Practices in Door-to-Door Sales.

Thank you for your cooperation.

Very truly yours,

Darrell V. McGraw, Jr.

DVM/mgc
Enclosures

DATE: August 15, 1994

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Darrell V. McGraw, Jr., Attorney General
Building 1, Room E-26, Charleston, West Virginia 25305

FROM: Title 142 Series 23 Prevention of Unfair or Deceptive Acts or Practices in Mobile Home Parks

LEGISLATIVE RULE TITLE: ______________________

1. Authorizing statute(s) citation ______________________

W. Va. Code section 46A-6-103; 46A-7-102(e)

2. a. Date filed in State Register with Notice of Hearing

July 7, 1994

b. What other notice, including advertising, did you give of the hearing?

Press release giving date of hearing and agency phone number for additional information.

c. Date of Hearing(s) August 10, 1994

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received ______

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 15, 1994

f. Name and phone number(s) of agency person(s) to contact for additional information:

Darrell V. McGraw, Jr.

558-2021

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A
____

____

b. Date of hearing: ______________________________

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

____

d. Attach findings and determinations and reasons:

Attached ____________________________________

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Legislative Rule Pertaining to the Unfair or Deceptive Acts or Practices in Advertising and Sales

Type of Rule: x Legislative ____ Interpretive ____ Procedural

Agency Office of the Attorney General Consumer Protection Division

Address 812 Quarrier Street, 6th Floor

Charleston, West Virginia 25301

1. Effect of Proposed Rule Not Applicable

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$	$	$	$	$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

No cost to State or local government.

3. Objectives of these rules: Promotion of Consumer Protection

Rule Title: *Legislative Rule Pertaining to the Unfair or Deceptive Acts or Practices in Advertising and Sales*

4. **Explanation of Overall Economic Impact of Proposed Rule.**

   A. **Economic Impact on State Government.**

   Will promote private adjudication of consumer issues, reducing burden on state regulations.

   B. **Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

   Will promote consumer confidence and assist responsible businesses, leading to job growth.

   C. **Economic Impact on Citizens/Public at Large.**

   Will assist consumers and businesses with certainty in consumer law, promoting sustainable and responsible business development.

Date: 6/30/94

Signature of Agency Head or Authorized Reprensentative

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

SERIES 25
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN ADVERTISING AND SALES

§ 142-25-1. General

1.1 Rule Designation.--This rule is legislative

1.2 Scope.--This legislative rule covers certain unfair or deceptive acts or practices covering advertising and sales practices in West Virginia, its counties, and all political subdivisions.

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

1.4 Filing Date.--

1.5 Effective Date.--

1.6 Repeal of Former Rule.-- Not applicable

1.7 Penalties.--Except as otherwise indicated, a violation of this rule constitutes a violation of Article 6 of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101 et seq.

1.8 Construction.--This rule shall be liberally construed to effectuate the purposes of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1 et seq.

1.9 Severability.--If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provision 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.

§ 142-25-2 Definitions.

2.1 "Act or Practice" An act or practice shall include any threat or attempt to perform such act or practice.

2.2 "Advertisement" means the publication, dissemination or circulation of any matter, oral or written, including labeling, which tends to induce, directly or indirectly, any person to enter into any obligation, sign any contract, or acquire any title or interest in any goods or services and includes every work device to disguise any form of business solicitation by using such terms as "renewal," "invoice," "bill," "statement" or "reminder," to create an impression of existing obligation when there is none, or other language to mislead any person in relation to any sought-after commercial transaction.

2.3 "Consumer" means a natural person to whom a sale is made in a consumer transaction.

2.4 "Consumer transaction" means a sale to a natural person or persons for a personal, family, household or agricultural purpose.

2.5 "Bait Advertising" is an alluring but insincere offer to sell a product which the advertiser does not intend or want to sell, or the advertisement of goods after which the merchant steers consumers responding to the advertisement of other goods by disparaging the advertised goods or otherwise discourage their purchase. Its purpose is to switch consumers from buying the advertised product in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying a product of the type so advertised.

2.6 "Blind Advertising" means an advertisement which has the tendency to induce consumers to contact the advertiser and which fails to reveal that the primary purpose of the advertisement is the sale of goods or services, and fails to reveal the identity of the advertiser.

2.7 "Clear and Conspicuous Disclosure" Without limiting any other provisions of law, disclosures required by these regulations shall be of such size or color contrast and so placed as to be readily noticeable to purchasers or prospective purchasers reading advertising, sales promotional literature, or invoices containing same, or reading any representation as to content on the container in which the product is packed, or inspecting a product before installation or with a minimum of disassembly after installation. A term is conspicuous when it is so written that a person against whom it is to operate ought to have noticed it. Language in the body of a form is "conspicuous" if it is in larger or contrasting type or color.

2.8 "Deceptive Warranty" includes

2.9.1 A guarantee or warranty that contains an affirmation, promise, description, or representation that is either false, fraudulent, or that in the light of all the circumstances would mislead the consuming public; or fails to contain the necessary information to avoid misleading the consuming public; or,

2.9.2 A guarantee or warranty created by the use of such terms as "guarantee" or "warranty" if the terms and conditions of such guarantee or warranty so limit its scope and application as to render the representation illusory, as where any costs or charges to the consumer attendant upon such work are prohibitive or approach the cost for the repairs absent any warranty or guarantee.

§ 142-25-3 False Advertising

3.1 It shall be an unfair and deceptive act or practice to advertise in violation of this section. No advertisement containing an offer to sell a product shall be made when the offer is not a bona fide effort to sell the advertised product.

3.2 No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of mode, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another. Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception.

3.3 No act or practice shall be engaged in by an advertiser or seller to discourage the purchase of the advertised product as part of a bait scheme to sell another product. For example, among acts or practices which will be considered in determining if any advertisement is a bona fide offer include, but not limited to:

3.3.1 The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer.

3.3.2 The disparagement by acts or words of the advertised product or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or parts, or in any other respect, in connection with it.

3.3.3 The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonable anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the product is available only at designated outlets.

3.3.4 The refusal to take orders for the advertised product to be delivered within a reasonable period of time.

3.3.5 The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement.

3.3.6 Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product.

3.4 No practice shall be pursued by an advertiser or seller in the event of sale of the advertised product of obtaining or attempting to obtain a rescission of the sale of the purpose of selling another product in its stead. Among acts or practices which are relevant in determining if the initial sale is in good faith, and not a stratagem to sell another product are:

3.4.1 Accepting a deposit for the advertised product, then switching the buyer to a higher-priced product.

3.4.2 Failure to make delivery of the advertised product within a reasonable time or to make a refund.

3.4.3 Disparagement by acts or words of the advertised product, or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it.

3.4.4 The delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement. Sales of the advertised product do not preclude the existence of a bait and switch scheme if the sales are a mere incidental by-product of the fundamental plan and are intended to provide an aura of legitimacy to the over-all operation.

§ 142-25-4 Deceptive Advertising of Guarantees

It shall be an unfair and deceptive act or practice to advertise a guarantee in violation of this section.

4.1 In general, any guarantee in advertising shall clearly and conspicuously disclose:

4.1.1 The name and extent of the guarantee. This includes disclosure of what product or part of the product is guaranteed; what characteristics of properties of the designated product or part thereof are covered by, or excluded from, the guarantee; what is the duration of the guarantee; e;e; what, if anything, anyone claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charges; and

4.1.2 The manner in which the guarantor will perform. This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement, refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee this should be set out; and

4.1.3 The identity of the guarantor. The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. For example, it should be made clear whether the manufacturer or the retailer is the guarantor.

4.2 As to those guarantees which are adjusted by the guarantor on a pro rata basis, the advertising relating thereto should clearly disclose this fact, the basis on which they will be prorated, e.g., the time for which the guaranteed product has been used, and the manner in which the guarantor will perform.

If these guarantees are to be adjusted on the basis of a price other than that paid by the buyer, this price should be clearly and conspicuously disclosed.

Example: During the course of a sale, "A" sells to "B" for $20 and with a 12 month guarantee a battery that he regularly sells for $35. After 6 months the battery proves defective. If "A" adjusts on the basis of the price "B" paid $20, "B" will only have to pay 1/2 of $20, or $10, for a new battery. If "A" instead adjusts on the basis of the regular selling price, "B" will owe 1/2 of $25, or $12.50 for a new battery. The guarantor would be required to disclose here the following: that this was a 12 month guarantee, that the regular selling price, rather than the actual sale price, would be used in the adjustment, that there would be an adjustment on the basis of the time that the battery was used and, if factual, that he would not pay the adjustment amount in cash, but would make an adjustment on a new battery.

4.3 "Satisfaction or your money back," "10 day free trial," or similar representations will be construed as a guarantee that the full purchase price will be refunded promptly at the option of the buyer.

If such guarantee is subject to any conditions or limitations whatsoever, they shall be set forth.

Example: A rose bush is advertised under the representation "Satisfaction or your money back." The guarantor requires return of the product within 1 year of purchase date before he will make refund. These limitations, i.e., "return" and "time" shall be clearly and conspicuously disclosed in the ad.

4.4 When a product is represented as "guaranteed for life" or as having a "lifetime" guarantee," the meaning of the term "life" or "lifetime" should be explained.

Example: "A" advertised that his transmission was guaranteed for "life", whereas his guarantee ran for the "life of the car" in which the transmission was originally installed. The advertisement is ambiguous and deceptive and should be modified to disclose the "life" referred to.

4.5 Advertisements which contain representations of guarantees that assure prospective buyers that savings may be realized in the purchase of the advertiser's products, such as "Guaranteed to save you 50%," shall include a clear and conspicuous disclosure of what the guarantor will do if the savings are not realized, together with any time or other limitations that he may impose. Guarantees of this type may constitute affirmative representations of fact.

4.6 A seller or manufacturer shall not advertise or represent that a product is guaranteed when he cannot or does not promptly and scrupulously fulfill his obligations under the guarantee.

A specific example of refusal to perform obligations under the guarantee is use of "Satisfaction or your money back" when the guarantor cannot or does not intend promptly to make full refund upon request.

4.7 Where guarantees are employed in such a manner as to constitute representations of material facts, the guarantor not only undertakes to perform under the terms of the guarantee, but also assumes responsibility under the law for the truth of the representations made.

Example 1: "Guaranteed for 36 months" applied to a battery is a representation that the battery can normally be expected to last for 36 months and should not be used in connection with a battery which can normally be expected to last for only 18 months.

Example 2: "Guaranteed to grow hair or money back" is a representation that the product will grow hair and should not be used when in fact such product is incapable of growing hair.

Example 3: "We guarantee you will earn $500 a month" is a representation that prospective employees will earn a minimum of $500 each month and should not be used unless such is the fact.

4.8 The term "unconditionally guaranteed" should not be used when a guarantee is restricted in any manner other than as to when there is a time limit, it should be clearly disclosed (e.g., "unconditionally guaranteed for three years"). An "unconditional guarantee" is considered as an undertaking on the part of the guarantor either to refund the full purchase price of the product so guaranteed or to repair or replace such product should it prove defective in any respect, all at the option of the buyer.

(Note: The unqualified use of the word "guaranteed" shall be considered as a representation that an article so described is "unconditionally guaranteed".) -

§ 142-25-5 Deceptive Pricing and Misrepresentation

5.1 It shall be an unfair and deceptive act or practice in advertising to make claim or representation by any means which has the capacity or tendency or effect of deceiving buyers or prospective buyers as to the value or the past, present, common or usual price of a product, or as to any reduction in price of a product, or any saving relating to product. Savings or value claims utilized in connection with terms such as "originally," formerly," "regularly," "usually," "comparable value," "list price" or other like terms, expressions, or representations must be based on facts provable by the claimant or advertiser by his own records; or by reasonably substantial competitive sales in the trading area where such claims or representations are made, under circumstances and conditions are represented or implied by the claims or representations.

5.2 It shall be an unfair and deceptive act or practice to make any claim or representation by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part hereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.

5.3 No advertisement shall be used which would mislead or tend to mislead buyers or prospective buyers, through pictorial representations or in any other manner, as to the product being offered for sale. Where price is featured in advertising, any picture or depiction utilized in connection therewith, shall clearly indicate the exact product being offered for sale at the advertised price.

§ 140-25-6 Advertising or Offering to Sell on an "Easy Credit" Basis

6.1 It is an unfair and deceptive act or practice for any seller to induce a consumer to enter into a transaction by advertising or offering to sell to such buyer on easy or lenient credit terms, or words to similar effect or meaning, when the facts demonstrate that the credit or repayment terms of the credit arrangement are neither lenient nor easy. Factors indicating that the credit terms are neither lenient nor easy include, but not limited to:

6.1.1 The seller does not in fact extend credit to persons whose ability to pay, or credit rating, is below generally prevailing standards of credit worthiness;

6.1.2 The down-payment and repayment periods are not as low as or are shorter than those extended to persons ordinarily determined to be credit worthy;

6.1.3 The true cost of the credit being charged by the seller is in excess of the average cost being charged by other sellers in the same general merchandise retail market;

6.1.4 The mark-up over the seller's acquisition cost for the goods or services which are the subject of the transaction exceeds the average mark-up being charged for similar or comparable goods or services by sellers in the same general merchandise retail market;

6.1.5 The seller pursues a policy of using rigorous collection practices against buyers who fall behind in their payments;

6.1.6 The seller negotiates, sells or discounts the instrument which is the evidence of the buyer's indebtedness to a third party without printing or stamping on the face "Consumer Note."

§ 142-25-7 Repairs and Services Including Warranties and Service Contracts

7.1 Repairs and Services. It shall be an unfair and deceptive act or practice to:

7.1.1 Fail to provide in advance to a customer upon request a written estimate of the cost to the customer of the anticipated repairs, or the basis upon which the charge to the customer will be made and the reasonably expected time to accomplish such repairs, including any charge for reassembly of any parts disassembled for inspection or any service charge to be imposed;

7.1.2 Make or charge for repairs which have not been authorized by the customer;

7.1.3 Fail to disclose, in the case of an in-home service call where the consumer has initially contacted the repairman, that a service charge will be imposed even though no repairs are effected, before the repairman goes to the consumer's home;

7.1.4 Represent that repairs are indicated to be necessary when such is not a fact;

7.1.5 Represent that repairs have been made when such is not a fact;

7.1.6 Represent that the goods being inspected or diagnosed are in a dangerous condition or that the customer's continued use of them may be harmful to him when such is not a fact;

7.1.7 Materially understate or misstate the estimated cost of repair services.

7.2 Warranties. It shall be an unfair and deceptive act or practice to fail to perform or fulfill any promises or obligations arising under a warranty. The utilization of a deceptive warranty is unlawful. Fail to provide the customer with an itemized list of repairs performed and the reason for such repairs including:

7.2.1 A list of parts and statements of whether they are new, used, or rebuilt and the cost thereof to the customer; and the number of hours of labor charged and the name of the mechanic performing there service.

7.2.2 It shall be an unfair and deceptive act or practice to attempt to limit an implied warranty arising by operation of law, whether by language such as "as is" or by representing that a consumer's warranty is limited to an express warranty after which repairs are at the consumer's cost.

7.2.3 It shall be an unfair and deceptive act or practice to fail to make repairs that should be covered under an implied warranty.

7.3 Service Contracts. It shall be an unfair and deceptive trade practice to fail to disclose in writing, fully and conspicuously, in simple and readily understandable language that a service contract charge pays for, or that no charge may be made for that which an implied warranty should cover, or to charge the consumer a service contract charge for that which is covered by an implied warranty by operation of law.

§ 142-25-8 Lay Away Plans

It is unfair and deceptive act or practice:

8.1 To fail to disclose or to misrepresent in any way the store's policy with reference to a "lay away" plan;

8.2 To represent to a consumer who is purchasing on a "lay away" plan that the specific goods chosen by the consumer or an exact duplicate of such goods are being laid away for that buyer when such is not a fact;

8.3 To fail to disclose to the consumer that the specified goods or their exact duplicate will only be set aside for a certain period of time;

8.4 To deliver to the consumer after payments (pursuant to the lay away plan) are completed, goods which are not identical or exact substitutes to those specified, unless prior approval in writing has been received from the buyer;

8.5 To increase the price of the goods specified either by way of increasing the payments of substitute goods which are of a lower quantity of price;

8.6 To fail to deliver to the consumer on any date payment is made, a receipt showing the amount of that payment and the date thereof, and, upon request, the balance of payments made up to date;

8.7 To fail to disclose or misrepresent in any way the store's policy with reference to cancellations and repayments or non-repayment of payments already made, and in case payments are not refunded, to fail to disclose that fact in writing.

§ 142-25-9 New for Used, Substitution of Products, Failure to Deliver

9.1 New for Used. It is an unfair and deceptive trade practice to represent, directly, or indirectly, that a product is new or unused, or that any part of a product is new or unused when such is not the fact, or to misrepresent the extent of previous use thereof. It is further an unfair and deceptive trade practice for a seller to offer for sale or sell any product which is used, contains used parts; is rebuilt, remanufactured, reconditioned, or contains, rebuilt, remanufactured, or reconditioned, or that it contains used, rebuilt, remanufactured or reconditioned parts, made to the buyer or prospective buyer.

The disclosure that a product has been used or contains used parts as required by the previous paragraph may be made by use of a word such as, but not limited to "Used," "Second Hand," "Repaired," "Remanufactured," "Reconditioned," "Rebuilt," whichever is applicable to the product involved.

9.2 Substitution of Products. It is an unfair and deceptive practice to make a substitution of products:

9.2.1 By shipping, delivering, or installing products which do not conform to samples submitted or to specifications upon which the sale is consummated to induced, or to the representations made prior to securing the order, without advising the purchaser of the substitution and obtaining the consent thereto prior to making shipment, delivery, or installation;

9.2.2 By falsely representing the reason for making the substitution in order to induce consent; or

9.2.3 When there was no intention to deliver the original merchandise ordered.

9.3 Failure to Deliver. It is unfair and deceptive act or practice:

9.3.1 To advertise or promise prompt delivery where delivery is neither prompt nor expeditious.

9.3.2 To fail to deliver merchandise ordered by mail or otherwise on which payments has been made or undertaken, in the form of a deposit, down payment or total payment where a definite delivery date has been set unless the seller can show how circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the delivery date.

9.3.3 To accept an order for goods, or service, where delivery is not, because of facts known to the seller, contemplated within four weeks, unless a later delivery date is specifically agreed upon by the consumer and the seller.

§142-25-10 Disclosure of Material Representations

10.1 It is an unfair and deceptive act or practice for a seller to fail to clearly and conspicuously disclose in any advertisement any material representation, the omission of which would have the tendency or capacity to mislead reasonable buyers or prospective buyers. For purposes of these regulations, material representations which must be clearly and conspicuously disclosed shall include but are not limited to the following.

10.1.1 The fact that a mandatory fee in addition to the advertised price will be charged for any service such as delivery, handling, installation, or an initiation fee;

10.1.2 The amount of any handling, service or other additional fee for an admission ticket to an entertainment event charged to any purchaser who purchases such ticket through a ticket service or similar entity other than the box office for the facility holding such event when the advertisement refers to the price of such ticket;

10.1.3 The fact that the product advertised is available for the advertised price only after the purchaser receives a rebate from the manufacturer of the product;

10.1.4 The fact that the product advertised is used, rebuilt, remanufactured, reconditioned, imperfect, irregular or a second;

10.1.5 In case of hard goods, the fact that a hard good advertised has been discontinued by the manufacturer, if the seller knows: (1) that there is a significant risk that the product will not have replacement parts and supplies essential to the operation of the product available during its average useful life or for three years after purchase, whichever is less; or (2) that the product has been discontinued and either: (a) is the subject of a notice from the manufacturer that the manufacturer will voluntarily add a safety improvement to the product; or (b) lacks safety improvements that the manufacturer either has agreed to make or has been required to make by a regulatory agency.

10.2 In the case of hard goods, individually identified for sale in any advertisement, the manufacturer's name or trade name, the seller's proprietary trademark, or if a seller is prohibited by law or by contract from using the manufacturer's name or trade name in an advertisement, the phrase "famous brand names" or any similar phrase, and the model number of any hard goods, unless it is the only model of the hard good currently being sold in the trade area or the item is not customarily identified and distinguished by its model number, or it is being offered for sale at a price under $25.

10.3 The fact that the product advertised at a stated price does not include parts, accessories or equipment customarily included and necessary or usual to the proper functioning, appearance, or use of such product.

10.4 With respect to tags, labels, and in-store signs:

10.4.1 a tag need only contain material representations regarding the price of an item;

10.4.2 a label need only contain material representations regarding the quality of an item;

10.4.3 an in-store sign need only contain material representations regarding the price or quality of an item.

§ 142-25-11 Duration of Sale

11.1 It is unfair and deceptive act for a seller to advertise a price comparison for a period greater than twenty-one (21) days unless the product is being offered as part of an advertisement clearance sale in which the product will continue to be offered at a reduced price until it is sold.

§ 142-25-12 Price Comparison and Savings Claims

12.1 Unidentified Price Comparisons. It is unfair or deceptive act for a seller to state or imply that it is offering any savings as to any product by making a direct or indirect price comparison, unless the seller clearly and conspicuously describes the basis for the price comparison. Notwithstanding the foregoing, a seller may claim a savings or compare a higher and lower price without disclosing the basis for the comparison if the seller is comparing to its own former price.

12.2 Comparison to Sellers's Own Former Prices. It is an unfair or deceptive act for a seller to compare its current price with its former price for any product, unless such former price meets one of the following conditions:

12.2.1 The former price is equal to or below the price(s) at which the seller made at least 30% of its sales of such products in any state in the twelve month period immediately preceding the measurement date of the advertisement; or

12.2.2 The comparison is made during a 180-day period immediately following the establishment of the former price, and the product is not offered for sale at a lower price for more than 45 percent of that 180-day period. For purposes of this provision a former price is established by offering the product for sale at such price or a higher price openly and in good faith on each business day of a period of at least 14 consecutive calendar days immediately preceding the initial advertisement of the price comparison. A seller offers a product openly and in good faith when the seller's former price does not exceed the seller's usual and customary retail mark-up for similar merchandise, i.e., the former price is not an inflated or exaggerated price. The burden shall be on the seller to show that its former price is not an inflated or exaggerated price. The following factors may be considered in determining whether the seller has met such burden: (a) whether the seller compares its current price to its former price when the seller knows at the time it will be made at such former price; or (b) whether the former price substantially exceeds the price at which a reasonable number of non-discount sellers sell the product in the seller's trade area; or (c) where a "manufacturer's suggested retail price" or a "list price" exists for the product, whether the former price exceeds such price and by what amount; or (d) whether the product was openly and actively offered in the recent, regular course of business, such as by devoting reasonable display space to the product during the period(s) in which it was at the former price, maintaining reasonable inventory during former price periods, advertising the product at the former price periods, advertising the product at the former price; or

12.2.3 The former price is equal to or below the price(s) at which the seller has offered the product for sale for less than 14 days, and the seller clearly and conspicuously, discloses in all advertisements for the product the specific period during which the seller offered the product at the former price.

12.2.4 It shall be an unfair or deceptive act for a seller to advertise a sale with a duration of 4 days or less that involves a substantial portion of the products in a store or department.

12.2.5 It shall be an unfair or deceptive act for a seller to offer a product in accordance with an advertised price policy whereby prices are reduced by a set amount or percentage on a pre-set schedule.

§ 142-25-13 Introductory Offers and Future Price Comparison

13.1 Except for a catalog, it is an unfair or deceptive act for a seller to make an introductory offer or to compare its current price for a product with the price at which the product will be offered in the future, unless:

13.1.1 The future price takes effect immediately after the sale is over but not later than 60 calendar days after the dissemination date of the introductory offer or price comparison; and

13.1.2 Following the date the future price takes effect the product is offered openly and in good faith in the state at the future price for a period of time that is at least equal to the period of time that it was offered at the introductory price, but not less than 21 days, except where compliance becomes impossible because of unforeseeable circumstances beyond the seller's control which the seller is able to document.

§ 142-25-14 Availability of Advertised Products

14.1 It is an unfair or deceptive act for a seller to offer any product for sale when the seller does not have the product in stock or readily available for sale in sufficient quantities to meet reasonably anticipated demand at its retail locations in the trade area covered by the advertisement.

14.2 Notwithstanding the terms and provisions of 14.1 above, it shall not be an unfair or deceptive or practice to offer any product for sale if the seller does not have the product in stock or readily available for sale in sufficient quantities to meet reasonable anticipated demand at its retail location in the trade area covered by the advertisement when:

14.2.1 The seller clearly and conspicuously disclosed in the advertisement all specific exceptions, limitations or restrictions regarding the stores, products or prices applicable to the advertised offer, and: (1) States the minimum quantity of the product available in each store; or (2) States that the quantity is limited and that is the case; or that rain checks will be provided, if that is the case; or

14.2.2 The seller has acted in good faith by ordering the advertised product in adequate time for delivery and in sufficient quantities to meet reasonably anticipated demand and: (1) offers a comparable product at a comparable savings, acceptable to the reasonable consumer and to all prospective buyers unable to purchase the advertised product; or (2) provides a rain check to each prospective buyer at the time of the attempted purchase, and the seller: (a) informs the consumer when the rain check is more than sixty 60 days from the date of issuance advertisement that a longer period applies and specifically states the length of such time period; (b) discloses to the consumer at the time the rain check is issued that: (1) for a product advertised for $25 or more, the seller will make reasonable efforts to notify the consumer when the rain check item is available; or (2) for a product advertised for less than $25, the seller will not notify the consumer when the rain check product is available, if that is the seller's policy; and (c) allows the consumer a reasonable redemption period to purchase the item; or

14.2.3 The seller has acted in good faith by ordering the advertised product in adequate time for delivery and in sufficient quantity to satisfy reasonable anticipated consumer demand. Notwithstanding anything contained herein, a seller shall be presumed not to have acted in good faith if such seller has demonstrated a pattern or practice of failure to have the product in stock in sufficient quantities to satisfy reasonable anticipated consumer demand.

§ 142-25-15 Disclosure of Expiration Dates

15.1 It is an unfair or deceptive act for a seller to fail to disclose in an advertisement, other than a tag, label, or in-store sign, the earliest date upon which an offer terminates if the offer is for a limited period of time.

§ 142-25-16 Prizes

16.1 It is an unfair and or deceptive act for a seller to offer any product for free or at a reduced price (a "prize"), to a prospective buyer in conjunction with the prospective buyer's participation in a sales presentation or promotional contest, unless;

16.1.1 The seller clear and conspicuously discloses in the advertisement all material conditions or limitations imposed by the seller as a prerequisite to receipt of or on the use of the prize.

16.2 In every prize promotion in which there is a risk that each person satisfying the conditions or limitations disclosed in the advertisement will not receive the advertised prize:

16.2.1 The seller shall clearly and conspicuously disclose in the advertisement the quantity of each prize offered;

16.2.2 The seller shall clearly and conspicuously disclose the numerical odds of receiving each prize or if the odds cannot be reasonably calculated, the approximate number of individuals to whom the advertisement is disseminated or the fact that the odds of winning a prize are determined by the number of entries received; and

16.2.3 Within thirty (30) days of the award of the prize, the seller shall clearly and conspicuously disclose in each of its business locations and by mail, if so requested in writing, the manner by which a person may learn the name and the city or town of residence of each prize winner, the date of receipt of the prize, the value of the prize, and the business location of the seller, if any, which the winner visited to qualify for the prize; and

16.2.4 The prize is provided to the entitled consumer at the time the conditions are met, unless: (a) The advertisement clearly and conspicuously discloses a specific later delivery date (for example, twenty days after the consumer satisfies the advertised conditions); or (b) The consumer agrees in writing to a specific later delivery date.

§ 142-25-17 Availability of Financing

17.1 It is an unfair and deceptive act or practice for a seller to state or imply that financing is available at a specified rate of interest or upon other specified terms unless:

17.1.1 Financing at such rate or upon such terms is available to the public generally through the seller; or

17.1.2 The seller clearly and conspicuously discloses any special conditions, terms, or criteria other than general creditworthiness which a purchaser must meet in order to qualify for such financing.

17.2 Compliance with Truth-in Lending Requirements. It is an unfair or deceptive act for a seller who advertises any finance terms to fail to comply with federal Truth-In Lending laws, 15 U.S.C. §§ 1601, et seq., and regulations promulgated thereunder.

§ 142-25-18 General

18.1 It is an unfair and deceptive act or practice for a seller in a consumer transaction to fail to comply with existing statutes, rules, regulations or laws meant for the protection of the public's health, safety, or welfare promulgated by the state or any political subdivision thereof intended to provide the consumers of this state protection or;

18.2 To fail to comply with the Federal Trade Commission Act, the Federal Consumer Credit Protection Act or other Federal consumer protection statutes within the purview of West Virginia Code §46A-6-101 et seq.

§ 142-25-19 Private Employment Agencies and Business Schemes

19.1 It is an unfair and deceptive act or practice to make false or deceptive representations through advertisements or otherwise regarding the actual or probable earnings of the existence of opportunities or openings in any vocation, company, business, firm or other place of employment.

19.2 It is an unfair and deceptive act or practice to make any representations as to opportunities available in or to promote any activity, occupation or vocation as being profitable for one engaging in it if in fact the representations as to the opportunities available or profits to be made are untrue and the representor does not have a verifiable and legitimate basis for believing they were true.

19.3 It is an unfair and deceptive act or practice in the sale or offering for sale of consumer goods or services for any person to represent or imply in advertising or otherwise that persons employed in a particular position in a trade or industry or who are self-employed in a particular position in a trade or industry earn a stated salary or income or that the goods or services offered or sold will enable the purchaser or prospective purchaser to earn the stated salary or income or "up to" the stated salary or income unless:

19.3.1 The salary or income is equal to or less than the average salary or income of persons employed less than five years in the indicated position in the state and the advertisement or representation states the basis for calculation of the average salary or income or the advertisement or representation states the basis for calculation of the salary stated and also discloses the average salary or income of persons employed less than five years in the indicated position in the State.

19.3.2 The advertisement or representation states any limitations, conditions, or other requirements such as union membership or service of an apprenticeship, which must be met before the stated salary or income can be earned; and

19.3.3 The advertisement or representation states clearly and conspicuously that no guarantee is made that a person who purchases the advertised goods of services will earn the stated salary income, unless the guarantee is actually offered by the seller.

The words "EARN $....." or "EARN UP TO $...." or word of similar import or meaning constitute a representation that a person who purchases the goods or services will earn the stated salary or income within the meaning of this Regulation.

§ 142-25-20 REMEDIES

20.1 In the event of a violation of this Rule by person subject to its provisions, the Attorney General may bring a civil action to restrain any such violation, including an application for temporary relief pending final determination of the proceedings, and for other appropriate relief, including restitution for affected consumers and the costs and expenses incurred in the investigation and prosecution of such action.

20.2 In addition to an application for injunctive remedies and other appropriate relief, as aforesaid, the Attorney General may also bring a civil action for the willful violation of this Rule, and if the court finds that a person has engaged in a course of willful and repeated violations of this Rule or any other applicable provisions of the West Virginia Consumer Credit and Protection Act, W. Va. Code 46A-1-101 et seq., it may assess a civil penalty of no more than five thousand dollars for each such violation. The Attorney General may also take such administrative and other action authorized by law and regulation.

CONSUMER PROTECTION REGULATIONS HEARING

Hearing held beginning at 9:19 a.m., on August 10, 1994, in Room 105 of the Charleston Civic Center, Charleston, West Virginia.

APPEARANCES: ATTORNEY GENERAL DARRELL V. McGRAW, JR.
THOMAS W. RODD, Deputy Attorney General
ANDREW MAIER, Asst. Attorney General

MR. RODD: Good morning. We're about to begin. For a few remarks, the Honorable Darrell V. McGraw, Jr., the Attorney General.

DARRELL McGRAW: Good morning.

I'm glad you were able to come. I'm glad that we're going to be able to hear from you with respect to the regulations which have been prepared by the task force that we designed to initiate the promulgation of regulations which we are required under the law to promulgate.

I must share with you a secret in my heart of hearts. Indeed, I had a long conversation about this very issue earlier today with relation to an entirely different proposition than these regulations.

In my heart of hearts I'm always concerned about more regulations and more laws. For quite a long time, even perhaps 20 years, it has been that the Attorney General's office is empowered to, indirectly, to promulgate regulations in these fields that we have chosen to address; and it has also been that others have probably shared the view which I have, which is that, that it's possible for regulations to just be piling on.

I'm not here today to say that that is true with respect to any particular or specific regulation that we are addressing here, but I do want you to know that in my heart of hearts that I approach these things as a matter of duty directed by the law to, to proceed; and it is a duty with which I had some philosophical concern.

I was riding yesterday with a prominent person familiar with the law who said that he had heard me say many years ago that there are already quite enough laws to address probably anything that we want to talk about, and this was a long time ago. And in my judgment, things haven't changed quite a lot since that day to this, except that there have been more, always more.

So, we're here to address this, but we want to do this in a, in a way that responds to the needs of the community in a way that strives to bring fairness to all parties concerned in transactions which these rules address, recognizing all the while, recognizing all the while, that we live in a society which requires to some degree the exercise of individual responsibility by all people who choose to participate in whatever function it is that the society allows engagement in.

And so, I want to express to you my particular heart-felt appreciation that you've come here to share your views of these things, recognizing all the while that this is a part of the process which will culminate in legislative approval of these regulations finally.

And so, again, thank you for coming; and I am depending upon you to express your view with respect to these regulations as we go forward in an effort to promulgate fair and proper regulations.

Thank you very much.

MR. RODD: Thank you, Judge McGraw.

I'm Tom Rodd, the Director of the Consumer Protection & Antitrust Division of the Attorney General's office, and this is the public hearing that was announced in the State Register with respect to the draft regulations filed with the Secretary of State's office by the Division pursuant to West Virginia law.

I have the sign-up sheets for the public hearing; and the first two sign-up sheets -- which seem to be the completed ones -- and I see that we have about 30 people who have indicated a desire to speak.

As I said earlier, at the end of the speaking of those folks who have signed up we may have time to have other people speak, but that's not a certainty. So, if -- it's in the interest of anyone who thinks that they might want to speak today to go ahead and sign up on the sign-up sheet to be guaranteed time.

I'm going to just take a second and consult with my colleague, Andrew Maier, also from the office here, on the question of time; and I'll be right back to make a few remarks about the time, and then we'll begin with the first speaker.

(Short recess.)

MR. RODD: We have concluded that at an appropriate time limit, which, quite frankly, we will be somewhat flexible in administering, is five minutes for peoples' comments; and, of course, we can accept written comments as well. If people begin to go significantly over five minutes, we'll indicate to them that they are at that point. If they really want to deliver a 15- or 20-minute speech, we may have to ask them to give their first five minutes and then fall back to the end of the line and address whoever remains here at the end of the procedure.

Mr. Maier is going to keep a watch on the time, and he'll -- I think he'll show people -- he'll show folks when they have got a minute remaining of those five minutes; but as I say, we'll be flexible. This is not a formal judicial process or anything like that.

Do I have any questions before we actually begin to hear from the witnesses?

LEFF MOORE: We have a process question. Your notice of public hearing indicated that you were not taking written comments, and you limited the notice in the federal -- the State Register to oral comments only. Was that an error or am I to understand that you've changed the procedure?

MR. RODD: Well, I have stated that we will take written comments today. So, I would --

LEFF MOORE: (Interposing) Is that only today?

MR. RODD: The comment period will

end today.

LEFF MOORE: Well, your notice to the public indicated that oral would only be accepted. So, many of us did not prepare written comments, in view of your notice to the public.

MR. RODD: I'm sorry, my impression was that the notice to the public -- and I haven't got that in front of me -- indicated that there was a 30-day comment period following the promulgation of the regulations, and in fact we have been receiving written comments during the 30-day standard comment period; that this hearing comes at the end of that comment period.

LEFF MOORE: I would urge you to read the notice as it appeared in the State Register and on the front of the rules; and if I am wrong in that, in that note, in my interpretation of the notice, then I'll stand corrected. It's my -- the way I read the notice is that there was a public hearing scheduled for today with oral comments only, and that the box that indicated written comments was not checked on that -- the front of this rule. But in view of that, I would request that you would extend for at least 24 hours the opportunity to submit written comments --

MR. RODD: (Interposing) I will.

LEFF MOORE: (Continuing) -- after today's date.

MR. RODD: I will.

LEFF MOORE: Thank you.

MR. RODD: Your name, sir?

LEFF MOORE: My name is Leff Moore.

MR. RODD: And is your address on the sign-up sheet, Mr. Moore?

LEFF MOORE: Yes.

MR. RODD: Thank you for calling that to my attention, Mr. Moore; and I apologize for any inconvenience that that may have caused to anyone else here.

TOM WINNER: Tom, just procedure. Are you going to take these series-by-series-by-series or just lumping everything together or --

MR. RODD: (Interposing) No. I was going to go in the order of the, of the sign-up sheets.

Other questions?

Okay, we'll begin with Richard Gallagher from

Clarksburg, West Virginia.

RICHARD GALLAGHER: First, let me thank Judge McGraw for the opportunity to address these regulationS as they have been proposed.

My name is Richard Gallagher. I'm here on behalf of the West Virginia Automobile & Truck Dealers Association. I'll try to be as brief as possible.

First, I'd like to address the Series 27 regulations regarding motor vehicle repairs.

The 3.1 regulation limits the -- or requires only a $50 anticipated repair before a written repair order is required. In today's market $50 doesn't go very far, as I think we're all aware. We would request that this be increased to at least $200.

In that section also there is consent required to be given by the consumer. We believe that in this provision, as well in a number of other provisions, the consent language should be changed to permit consent from the consumer or any adult member of the consumer's immediate household, because many times you'll have a situation where the consumer, if it's a husband at work, is unable to be reached; and the spouse can call in and say, "We need this done" or "Yes, you have our approval to do that." Under these regulations that would not be feasible or appropriate.

A number of places through the regulations -- for instance, in Section 4.2.1, it requires conspicuous notice of language. That's a term which is subject to different interpretations, a subjective term. We would request that any notice requirements clearly state the language that's required, as well as have it stated in the size print that's required. That would eliminate the subjective terms, because our concern is that the more subjectivity that's involved in it, the more difficult to comply with it, and the more it breeds litigation.

The same type of language is used in Section 4.3.1, which we contend should be, should be replaced.

In regard to 4.3.1, there is an alternative form there that provides three alternatives. That's something that's new. We don't think that's anything that's required under the authority of 46A-6-101, but we could contend that alternative three should be amended so that it reads, "I do not want an estimate, dash, just fix my car," so that people can understand what the point of that is.

Under the waiver language under Section 4.4.1, it permits a written revocation as long as the person has four or more cars. Again, under 46A-6-01 (sic) we belief that that limitation is unnecessary and should not be there.

In regard to the charges provisions under Section 4.5, the provision should be amended to recognize that estimates for repairs at times can't be made in advance, because some problems with engines, for instance, you have to tear the engine down to see what the problem is before you can prepare a meaningful estimate. So, that language should be addressed to, to take care of that problem.

Under the "Authorization to Proceed," the primary concern is -- or one of the primary concerns is the fact that only the consumer can give that authorization. That language should permit any adult member of the consumer's immediate household to provide authorization.

In regard to Section 6.1, the "Return of social services to low-income women and their families throughout West Virginia. We have over 1,000 families throughout the state in our current case load.

I'm here today to speak in support of the Series 26 regulations governing practices in tenant-landlord transactions.

Substandard housing conditions are a major concern that we face every day with our clientele. It is a major problem. Public housing is often unavailable or there's a long wait to get into public housing. So, many of our clients are left to rent on the private market, often finding units that are barely affordable, yet often substandard.

We feel that consumer law protection is right on target in terms of the tenant-landlord relationship, because what is a landlord but a provider of a good or, if you will, a service in the public marketplace. And I think it's well established under consumer law that a provider of a good or service should not provide a good or service which is hazardous to health or safety.

There are a couple of inadequacies in the current law concerning consumer protections, and it comes under the general heading of "Code Enforcement." Code enforcment is either unavailable in rural areas or small towns; and even in the larger towns the major problems with code enforcement and making landlords live up to building code standards, fire code standards, health code standards, it's reactive in nature, and many times it's a lengthy and complicated process that our clientele, because of their limited education, just their unfamiliarity with how the system works, are unable to negotiate. It's difficult even with the assistance of our case managers who often do try to intervene on their behalf.

Another problem of a reactive nature of code enforcement is in the time delays that are involved often our clients incur a fairly large financial burden in situations, such as poor building construction where heating bills are very high or a problem with plumbing where water bills are run up, where the bills are in the names of the clients. So, even if they are doing what they're supposed to do in terms of trying to rectify the situation under building code enforcement, they're still running up those water bills, still running up those heating bills. And often what results, quite frankly, is they choose to pay the utility bill so that their utility service is not cut off, they don't find that they have the money to pay the rent, so they're subject to what is a very fast eviction process in West Virginia.

In closing I'd just like to say I myself am a landlord, so I can speak from that, that perspective. I own four units and three different properties in the Wheeling area. And as I look through the proposed regulations, I did have to smile and ask myself am I in compliance with all of these provisions of the proposed regulations in terms of the complying with the building code and all its details and also in terms of what can be done with deposits, security deposits, and things like that. And I had to admit that I wasn't in compliance with the proposed letter of the Code, but I don't think it's unduly burdensome to bring my properties and my practices into compliance, and I would suggest that this is a fundamental consumer protection law and not overly burdensome to landlords who, you know, are doing this as a business as a serious investment in the public marketplace.

In conclusion, I'd just like to say that I think that these proposed regulations are fair and reasonable; and based on our experience and the experience that, you know, we've garnered through dealing with over a thousand families throughout the state, that they're, they're timely needed and overdue. Thank you very much.

MR. RODD: Thank you, Mr. Gossett.

The next person signed up is James Rice from New Martinsville.

JAMES RICE: Hello. I also thank you for the opportunity to speak today. I'm Jim Rice from AAA Mobile Homes in New Martinsville. Our business is -- consists of both sales of manufactured homes and the rental of 356 lots.

I have several concerns with the proposed rules on Series 23. I'll limit it to one, because of your statements earlier.

MR. RODD: Let me encourage you to identify all areas that you have some concerns, even though you may limit how much you discuss.

JAMES RICE: One section I'm wanting to mostly state involves 3.1 and 5.2. This is regulating the restriction of the vendor when renting the lot -- when renting the space to a manufactured home.

Many hours of hard work and investment went into the business, went into the preparation of the sites that we rent. We feel that, you know, that it is our property and that we should have the opportunity to limit the sales going into it.

The same way with many of the items in this proposal, we feel that the tenants are being given more control over the parks than we are. Thank you.

MR. RODD: Thank you very much, Mr. Rice.

The next speaker signed up is Alvin McCorkle from Charleston.

Alvin McCorkle from Charleston.

ALVIN McCORKLE: I just thought we were signing up as we came in.

MR. RODD: That's fine. Excuse me.

Let me correct what may be a misapprehension, perhaps because the information was not clearly put on the sign-up sheet. If there are folks who have signed up but don't intend to make a presentation at this time or make comments, I'll, unless the people find it embarrassing, go ahead and read their name, because there may have been some confusion in that regard, and then they can indicate that they don't intend to make a presentation or, if you'd like, you can step forward and speak to Mr. Maier, and he'll write down your name, and he'll make sure that I don't call on you.

Thank you.

The next name that I have on the sign-up sheet is A. D. McCorkle, IV.

ALVIN McCORKLE: Good morning. My name is Alvin McCorkle. I'm president of Quality Properties, a property management. We manage almost a hundred units in the valley.

My concerns are mainly the landlord-tenant transactions. The -- the first thing I would like to address is Section 5.2.3 under 142-26-5, the security deposits, requiring landlords to keep these in a separate interest-bearing account.

And my understanding -- and I'm not a lawyer, thank God -- is that by definition of what you-all define here as a trust account and that also by law a trust account cannot be interest-bearing, which would seem to be contradictive. (sic)

The -- the next, 5.2.4, "the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures," I'm assuming you-all -- you people mean going into court, magistrate or otherwise.

I'm totally opposed to that. I think there's a lot of legal evictions that take place that do not involve magistrate court or higher.

The -- under 142-26-6, 6.3, again this is -- addresses what I was talking about before concerning paying interest on security deposits. I think it's a highly unusual practice to publicize your account number and bank that you, that you deal with.

Under that same heading, 6.4, only allowing 20 days to return a security deposit when it's a one full month -- one full rental period for an eviction process, but you're -- in 20 days, if there's repairs needed to be done to the apartment -- and a lot of times you cannot come up with a decent, reasonable price within 20 days as to how much those repairs are going to cost. If there's a sanitary lien involved, you cannot get the proper account status from the Sanitary Department in 20 days from the time of, like, from the time that the apartment was vacated.

6.5, same, same concerns.

MR. RODD: Mr. McCorkle.

ALVIN McCORKLE: Yes.

MR. RODD: May I ask, do you have a time that you would care to specify as to what you consider to be more appropriate for the return of security deposits? I mean, you don't have to come up with something, but I just wondered.

ALVIN McCORKLE: I would say 60 days.

MR. RODD: Thank you.

ALVIN McCORKLE: Under 142-26-7, "Evictions and Termination of Tenancy," quite frankly 7.2, "Commence summary process for possession of a dwelling unit before time period designated in a 30-day notice," I'm not real sure what you mean. I mean, does that mean that they have to violate the lease for 30 days before you're allowed to do anything? In which case, I would like the same consideration as a landlord: that if a tenant deems an apartment uninhabitable, then I have

30 days before he can declare it such, which I think either way is probably a little ridiculous.

Again 7.3, the judicial eviction process.

7.4, "Provide for an acceleration of rent payments in the event the tenant defaults," I'd like a little more explanation on that. Again, what would be provided to -- once you provided this, this payment schedule, what would enforce it?

And, in closing, the title of this is "Landlord Tenant Transactions," but every, every heading starts with "it will be an unfair or deceptive act or practice for a landlord to." I see nothing in here as to what the tenant agrees to when he signs that lease and what is unfair and deceptive for the tenant to do.

Mr. Rodd, I consider myself a consumer; I consider myself, if needed, would be protected by your division. My idea of a tenant-landlord association is contractual. I am not selling anything. I'm entering into a contract with a tenant. And I think both sides of that contract ought to be defined in your legislative rule. Thank you.

MR. RODD: Thank you very much,

Mr. McCorkle.

The next person signed up, if I read this right, is Pat Hose.

PAT HOSE: Thank you, gentlemen. My name is Pat Hose, and I am what I consider a small landlord. I just have a few properties.

I especially want to -- I don't want to talk about the ones that Mr. McCorkle just spoke about, but I do have concerns of those same numbers, but especially I want to talk about 142-26-7 on the "Evictions and Termination of Tenancy."

I'm concerned about this 30-day notice. If you have a tenant that has not paid the rent and you have to give a 30-day notice before you can start proceedings, that means when you come into court it will be 10 days before they have to appear in court, and it will be at least another 10 days before they have to move out. So, you're already into a two months' loss of rent.

I just went through an experience which, to me, was a nightmare. The girl quit her job and did not -- was not paying her rent. I tried to get her out. It took four months to get her out, and in the meantime she's brought in a cat with kittens that are using the carpets for a bathroom, all of which all had -- and I had just carpeted before she moved in. So, her place was -- you could hardly stand to get in it, let alone show it to anyone. We had to redo the carpets; we had to seal the floors. In the meantime her rent, which was 350 for a one-bedroom apartment -- it included all her utilities, which I paid for that the whole time.

I think there should be some way that if we do happen to have an apartment where we're paying the utilities, that we don't have to keep that up if we can't get someone out. If she were paying her own gas and electric, it would have been terminated within a month; but because I was doing it, I had to, I had to keep on paying that.

I think maybe a more fair way would be if there -- if they haven't paid their rent in ten days and they tell you they're not going to pay it, you could give them their notice, but you should be able to go to court and start it so that at least by the end of the 30 days you could have them out.

I'm not sure what you mean on this 7.4 either about an acceleration of rent payments. I do think that we should be able to have something in the contract; that if they haven't paid the rent in three to five days, that there is a late payment charge.

Some of our tenants can be very good, and I don't think there's any problem. I often give rent refunds when someone moves. They don't have to wait anytime if they've paid their rent on time and taken good care of the apartment. But I think there should be exceptions when they haven't paid the rent on time and when they haven't taken good care of it. Thank you.

MR. RODD: Thank you very much, Ms. Hose.

The next signer is Melody Douglas.

MELODY DOUGLAS: I don't have anything.

MR. RODD: Thank you. Excuse me.

MELODY DOUGLAS: That's fine.

MR. RODD: The next signer is Guy Ponter (sic)?

GUY PORTER: Porter.

MR. RODD: Porter, Jr. Excuse me.

GUY PORTER: My name is Guy C. Porter, Jr. I'm from Charleston. I'm a Certified

Property Manager. We manage around 120 units for various customers, clients, owners. And I am opposed to the tenor of your regulations where you are only restricting the landlord more and there is no mention of tenant obligation. I certainly think in a general way that our present statutes are adequate to protect just about every situation.

Let me speak specifically to the item of security deposits. The purpose of a security deposit, as far as I'm concerned, is to make sure that the tenant pays his last sanitary bill and also pays for any damages that might have occurred. Now, the Sanitary Department in Charleston charges the owner of the property, if the tenant does not pay the sanitary bill. And in order to get a final bill from the Sanitary Board, it usually takes three to four weeks. That bill is then sent to the address, forwarded onto the tenant in whatever state he might be living in now; and by the time that he has a reasonable time to pay it, at least six weeks have expired on the sanitary bill alone.

MR. RODD: May I interrupt you and ask a question?

GUY PORTER: Yes, sir.

MR. RODD: Can you give some indication of the typical amount of the sanitary bills that you are referring to, the range?

GUY PORTER: The range will be anywhere from, oh, $8 to $25.

MR. RODD: And that would be a monthly bill?

GUY PORTER: Yes, sir. And they may be behind --

MR. RODD: (Interposing) That's right. I was going --

GUY PORTER: (Interposing) They may be behind with the Sanitary Board, so it could be several hundreds of dollar.

MR. RODD: But typically the range for one month's sanitary bill is $8 to $25?

GUY PORTER: Yes.

MR. RODD: Thank you.

GUY PORTER: Now, I would certainly suggest that instead of 20 days, you have 60 days in there. This seems to be a normal procedure in most leases at this point in time.

The other problem I see is the business of interest on security deposits. We turn security deposits directly over to the owner and along with their rental income, net rental income. This would be a tremendous bookkeeping arrangement, and I question whether or not we can get any of the banks to pay interest on this type of a deposit.

I'm also concerned about the eviction procedure that you have provided, and I'm also concerned about the fact that no provision is made in your regulation for the disposal of personal property that has been abandoned by the tenant and left in the unit, and the tenant is -- you're unable to find the tenant. What do you do with the abandoned property? There is no provision in your regulation for that.

So, I think we need to be fair on both sides of the coin. This is a contract between a landlord and a tenant. We're not a store. We're creating a contractual situation, and both parties should be equal. Thank you very much.

MR. RODD: Thank you, Mr. Porter.

The next name I have signed up is Neal Walters. Neal Walters from Eleanor?

We'll pass on to the next person. If someone sees Neal Walters, you might tell him that I called his name.

Kathryn Maddox from Charleston.

KATHRYN MADDOX: Thank you very much for this opportunity. I'm Kathryn Maddox from Charleston. I'm president of the West Virginia Landlords Association, which is composed of approximately 125 members. Many of our members own a hundred pieces of property, rental properties or rental units. We are all dedicated to fair and safe housing. We have a variety of rental types, some for low-income and some for the -- more expensive housing units.

We are concerned about several of these items as an organization. First, 3.5 under 142-26-3, the conditions and maintenance of the dwelling unit. It says "Failure within a reasonable time after receiving notice from a tenant to make repairs." Many times the tenant may notify a landlord that there are damages to the unit which were caused by the tenant themselves. And if you rent to low-income -- families of low income, then the landlord is responsible for repairing those damages, because the unit could be declared unfit for habitation.

We feel that there should be something stated about what caused those damages. Now, if they were existing, that's one thing. But if the tenant caused the damages or if they had a breaking and entering, which many times turns out to be the boyfriend of the girl living in the unit who breaks and enters, then should the landlord be responsible for repairing door locks and doors that have been kicked open?

3.7, in that "fail to reimburse the tenant within a reasonable time for service or supplies," our policy is pretty much that we don't require the tenants to do any repairs or maintenance, and we have -- our experience is that we run into more trouble if we do that, because sometimes they'll paint woodwork that is natural woodwork. They might paint it black. I just had that last week to happen. So, if there is any kind of an agreement for painting or anything else, it should be in writing. This says it should be reimbursed by the tenant after any representation from the reimbursement (sic).

So, if any kind of an agreement like that is made, it should definitely be in writing.

Under the next section of rental agreements, 5.2.3, about the interest-bearing account for the deposits, we feel very strongly that this should not be. If you have a hundred rental units and you have deposits from a hundred tenants, think of the bookkeeping that is going to take. Plus, if you'd have to have a separate account for each one of those, I don't think you would find a bank anywhere that would let you set up a hundred different accounts.

And we certainly don't think that the account number should be given out. Keeping a separate account for deposits is understandable, but not interest-bearing, because the banks don't do it that way; and it would be a horrendous thing if you had to give -- pay this out at the end of every year, if you have tenants staying. It would just take too much time, and you'd lose too much money.

The next item, 6.4, the 20 days for termi-, termination of the occupancy, as stated by several other members we feel it should be 60 days, because that -- many times your repairs are much more extensive, and you can't get it done within a 30-day period of time. So, a 60-day refund of the tenant's deposit, we feel, would be much more reasonable.

No. 6.6 --

DARRELL McGRAW: (Interposing) When you say "reasonable," does that -- can I translate that to be an acceptable 60 days?

KATHRYN MADDOX: Yes.

DARRELL McGRAW: All right.

MR. RODD: I'm sorry, the number you had just stated?

KATHRYN MADDOW: 60 days instead of 20 days.

MR. RODD: I'm sorry. You were moving on.

KATHRYN MADDOX: The next one is 6.6.

MR. RODD: Your number is.

KATHRYN MADDOX: 6.6. The normal wear and tear, it says, for the tenant -- normal wear and tear is not to be included when you give the reimbursement -- their deposit. Many times this requires us videotaping or taking pictures when the tenant moves in and also taking pictures when the tenant moves out, because there could be a difference of opinion on this. We have checklists that they can itemize. We itemize things. Like, if new carpet is put in, then when the tenant moves out, if the carpet is very badly damaged, that's really not normal wear and tear at the end of one year. So, it needs to have a definition of what is normal wear and tear.

The next one under "Eviction and Termination," again we feel that the 30-day process for giving a written notice -- if the tenant has not paid their rent, you can now go to magistrate court within ten days and file, if they have not paid their rent; and we feel that that should still remain, that the landlord should be able to go after a period of ten days. Because it's going to take more than 30 days to -- in order to get a process and in order to sometimes even get an appointment, because the tenant can postpone the hearing. If the magistrate sets up the hearing date ten working days -- now, if you have a holiday, that's excluded. Weekends are excluded. So, that's ten working days which sometimes can amount to 20 days before you can get a hearing. Then the tenant can postpone that -- sometimes one, two times. You can already be into 60 days before you can even get a hearing, a legal hearing on an eviction notice. So, we feel that the 30-day notice is too long a time if they fail to pay their rent.

Again, as we get into utilities, this kind of ties in together, but some of the tenants and elderly people can receive assistance when they aren't able to pay utilities; and sometimes if they aren't able to pay their rent, they can get an assistance for, like, for one month's rent. But many times this extends the period of time also for an extra 60 days before you can have court proceedings, because you have to sign a paper after they get a little slip that says they -- that the landlord will refuse to evict them for another 30 days if they get assistance. And so, sometimes that can drag out to be three months.

Under utilities --

MR. RODD: (Interposing) Do you have a number that you're referring to?

KATHRYN MADDOX: For the eviction?

MR. RODD: For what you're about to speak about.

KATHRYN MADDOX: Okay, we feel

that after ten days, that they have --

MR. RODD: (Interposing) No. I meant the number of the regulation. I thought you were changing to another regulation.

KATHRYN MADDOX: All right. This is 7.2, was the --

MR. RODD: (Interposing) Thank you.

KATHRYN MADDOX: (Continuing) -- summary payment as to the 30-day notice.

MR. RODD: And it's helpful for the record --

KATHRYN MADDOX: (Interposing) Okay.

MR. RODD: (Continuing) -- if you identify it by number, if you can, the --

KATHRYN MADDOX: (Interposing) All right.

MR. RODD: (Continuing) -- regulation that you're commenting on, if it's easy.

KATHRYN MADDOX: And also 7.3 then, which says the judicial eviction procedure only, a court procedure, Mr. McCorkle, I think, made mention also of this, that there -- that you should not have to go to court each time you are going to evict a tenant, and this is what this regulation states, 7.3.

Under the next heading of "Utilities," 142-26-8, if the -- again, to refer, if the tenant then -- if the landlord is paying utilities, we do not feel that the landlord should continue to have to pay utilities when a tenant has not paid their rent. Again, if it is a hardship case, the tenant can go to different agencies, several different agencies and receive assistance in paying utilities. But if the landlord is signed up to pay the utilities, then the landlord, according to this, would have to continue paying the utilities, even when a tenant for three months or more hasn't paid rent. So, that can be very, very expensive, because usually you're going to have a big damage bill besides that.

DARRELL McGRAW: I have a question about that kind of a scenario. If, if you had a circumstance where a tenant did not pay, for example, gas in the wintertime --

KATHRYN MADDOX: (Interposing) Yes.

DARRELL McGRAW: (Continuing) --

and the landlord were to not pay the gas, and the gas would be turned off, how would you see who is responsible for the ensuing damage to the property that might occur as a consequence of freezing or whatever. Who, who would you sue as responsible for that?

KATHRYN MADDOX: Well, I think the tenant would be responsible, but in 99 percent of the cases the tenant has no income whatsoever when this happens. I think there is also a regulation that states that the utility company is not allowed to turn off a tenant's utility in the severe winter months.

DARRELL McGRAW: I see.

KATHRYN MADDOX: However, if the landlord is paying the utilities, there's no such provision; the landlord has to continue pay it. So, they're just going to be out the money. If the utility would be shut off, the tenant would, more than likely, not have the money to pay for any of the damages.

DARRELL McGRAW: I see. Thank you.

KATHRYN MADDOX: So, we've all

concluded that we shouldn't be paying utilitis. We should have it signed so that the tenants are paying the utilities.

DARRELL McGRAW: Thank you.

KATHRYN MADDOX: That's the best solution to that, we feel.

Again, we are very interested in maintaining our property and keeping it up, and we want to work cooperatively in every way, but we feel strongly that there should be some provision in here for tenant's responsibilities in a landlord-tenant agreement. Thank you.

MR. RODD: May I ask you one question to clarify one of your remarks?

KATHRYN MADDOX: Uh-huh.

MR. RODD: It's entirely possible that you may say, "I don't think I can comment on that," and I can accept that response as well, I assure you. But on the question of security deposits, and I address this because you said you were president of the Landlords Association, so presumably you're familiar with the position of some landlords, is there a suggestion that your association or you would make which would accomplish the result that tenants would reflect -- somehow accomplish the benefit of having their money held and set aside, losing value in the deposit form, other than the idea of an interest-bearing account; and secondly, isn't it true in your standing that many states do require, and landlords live with your requirement, of returning deposits to tenants with interest? Can you -- do you have any comments on that?

KATHRYN MADDOX: I know that when I talk to the bank for any business, that the bank had a regulation that they do not pay interest on a business account. And so, therefore, unless the banks have changed that ruling, the banks will not pay interest on a business account. We do have separate accounts to keep the deposits in, but they're noninterest-bearing accounts.

So, I think that's the solution; that we would make that a, just make that a provision that it would be deposited in a noninterest-bearing account and would be reimbursed to the tenant after the damages have been deducted or any rent that had not been paid.

MR. RODD: Doesn't it seem unfair

that the person is losing the benefit of that money over that period of time that it sits in that account?

KATHRYN MADDOX: I can't speak for everyone, but I think many times a deposit, particularly when you're dealing with low-income families, might be $20 for the deposit. Now, would you -- if you had, again, a hundred accounts and you're figuring out interest on $20 for a year's interest then -- you know, think of the time that that's taking.

I don't think that it usually matters. I haven't had a single tenant to ever complain about the deposit losing -- that low amount of deposit losing interest. Never had a complaint. I don't know if anyone else ever has or not.

MR. RODD: Thank you very much, Mrs. Maddox.

KATHRYN MADDOX: Thank you.

MR. RODD: The next person we have signed up is Zol -- I apologize -- Maggied?

ZOL MAGGIED: Maggied.

MR. RODD: Maggied?

ZOL MAGGIED: Yes, sir.

My name is Zol Maggied. I live in Charleston. I'm a landlord. I'm the immediate past-president of the West Virginia Landlords Association, the same association that Katie Maddox is now president of.

Because of time interest and because quite a few of our people have already spoken, I must say that I would rather not comment on item for item but maybe make a few general comments.

In the matter of deposits, deposits are designed not to keep extra money from the tenant but designed to encourage the tenant to take care of the property, and also to give proper notice of leaving, and to follow certain procedures in that regard. I've found that by having a substantial deposit, it makes a tremendous difference in the condition that the apartment is left in and kept in.

And as far as the interest-bearing aspect of it, I agree with Katie Maddox. The bookkeeping would be tremendous, and it would be a tremendous problem to do this.

Utility costs, a comment was made also by another speaker. The utility cost probably should be paid for by the tenant. In some of the older buildings which provide very reasonable and good housing, it's virtually impossible to do that, and that's the reason that utilities are always paid for by landlords.

The hue and cry in Charleston, as I understand in most of the country, has been for years that there's a necessity and a great desire by public officials for reasonable housing at reasonable costs for people who do not have high incomes, and that's part of what we provide. And I think it's time that the legislators and the lawmakers stop tilting the laws towards the tenant. I think it's time that the landlords' rights are protected, also. And if you have any doubts as to this, talk to anybody about procedures for evicting tenants who do not pay, talk about procedures for evicting tenants who do not obey the law, and then you will find that this thing is way off-balance.

I apologize for not staying with your numbers here, but I feel very strongly in this regard.

MR. RODD: That's perfectly all right.

ZOL MAGGIED: And I think it's something that should be considered by the lawmakers, by the legislature, by all people concerned.

And if -- you must remember this, too: That when we are burdened with extra costs, there's only one way we can survive, and that's to pass it on. We're just like the clothing store whose suit cost them a given number of dollars, and then it's raised by the manufacturer 20 percent later. They pass it on to the customer. And that's the only way the landlord survives. And I hope you will keep this in mind. Thank you.

MR. RODD: Thank you very much.

The next person signed is Roy Stricklen.

ROY STRICKLEN: Tom, my comments will be made in writing.

MR. RODD: Thank you, Mr. Stricklen.

For anybody who's just come in, at the beginning of the hearing in response to an inquiry I indicated that we would keep the record open for 24 hours, and I will say until the close of business tomorrow at the Attorney General's office, either at the main capitol or preferably at 812 Quarrier Street, for written submissions.

The next person signed up is a Bryan Kett from

Ford Credit.

BRYAN KETT: Hello. I am Bryan Kett. I am with Ford Credit, and I am here to address the Series 24, "Legislative Rule Pertaining To The Prevention Of Unfair Or Deceptive" practice -- "Deceptive Acts" and "Practices In Security Interests and Repossession Practices."

As the largest automotive finance company in the world, with over 77 billion dollars in receivables, Ford Motor Credit Company supports efforts to promote fair and consistent treatment of all customers.

To the extent the proposed rule promotes such treatment, Ford Motor is supportive; however, we must express our deep concern over and opposition to provisions which would place unreasonable burdens upon the automotive finance industry and ultimately work against the best interest of the consumers of West Virginia.

Although Ford Credit is -- let's see, although it is Ford Credit's policy to accommodate our customers to the greatest extent possible, unfortunately repossessions do occur. Proposed Rules 3.2.7 and 3.4.3 are opposed by Ford Credit for the following reasons:

3.2.7 requires the creditor to possess knowledge that is generally unavailable. The rule provides that it shall be unfair and deceptive acts or practice deliberately (sic) -- to deliberately seize property from a location that causes undue hardship to the consumer.

Most vehicle repossessions cause some degree of hardship, but how will a creditor ever know whether a recovery place and time will constitute an undue hardship? Ford Credit would make subject to the burden -- would be made subject to the burden of countless claims and litigation, alleging that Ford Credit knows or should have known that the repossession would cause an undue hardship. We believe this rule is tantamount to the repeal of the statutory right to repossess collateral. The cost of which would be borne to the West Virginia consumers who pay is great.

Rule 3.4.3 places burdens on creditors which will increase the cost of and decrease the availability of credit in West Virginia. The rule requires that a repossessed vehicle be sold at retail or that the creditor -- or that the customer be given credit for retail market value. This rule appears to be based on two false premises. First, creditors will always be able to collect deficiencies from defaulted customers and, hence, have no incentive to maximize the sale price of repossessed vehicles. Second, a retail sale will result in greater proceeds applies to the -- apply to the account than a wholesale -- than a wholesale sale.

Unfortunately, such premises are flawed for the following reasons: One, the creditor must get the highest sale price reasonably (sic) for repossesed vehicles. The rule assumes the creditor can simply force the defaulting customer into paying the difference between the outstanding balance and the proceeds of the sale. In fact, repossessions occur precisely because the consumer is unwilling or unable to pay.

The creditors must, therefore, assume the additional amounts will not be collected and seek to obtain the highest sales price reasonable to, to minimize the potential losses. For example, Ford Credit experiences an average deficiency of over 31 hundred dollars after the sale of a repossessed vehicle. Less than one-third of this deficiency is recovered from post-repossession collection activities. Once again, it is critical that we maximize the sale price of a repossessed vehicle to reduce our bottom-line losses.

Number two, wholesale automotive auctions open to dealers obtain the highest prices at the least cost. The automotive auctions used by Ford Credit in selling recovered vehicles are sophisticated, state-of-the-art, multi-million-dollar facilities complete with marketing departments, cleaning and repair facilities. It is not uncommon to have over 1500 dealers in attending and participating at these auctions. Every aspect of the process is designed and monitored by vehicle remarketing specialists to quickly and efficiently obtain the highest price for those consumers' account.

Three, forcing creditors to open retail outlets and/or give retail prices will increase the cost and/or reduce the availability of credit to consumers in West Virginia. Proposed Rule 3.4.3 would increase the cost associated with repossessions to creditors such as Ford Credit. In response, creditors, in order to maintain acceptable profit margins, will either have to raise the cost of credit to the customers or tighten credit policies. Marginal and high-risk customers will be rejected in an effort to reduce the number and cost of repossessions.

Number four, the proposed rule is contrary to current West Virginia law. The legislature has established the standard for rules for repossessed goods as commercially reasonable, West Virginia Code 46-9-504(3). The standard for this application to wholesale automotive auctions has long been accepted in jurisdictions throughout the country.

Five, the federal government has concluded that the wholesale automotive auctions are advantageous to consumers. As a part of the investigation of creditor practices which led to the adoption of the credit practices rules, the FTC considered requiring repossessed vehicles to be disposed at retail. The FTC's conclusions match what common sense would dictate: After deducting the reasonable expenses of the retail sale, the debtor's account would not be credited the amount greater than the resulting (sic) from the wholesale sale.

They further concluded that this provision would impose costs and would raise the cost and reduce the availability of credit in excess of offsetting benefits. Its conclusion was based on the examination of the incentive of creditors to maximize the sale price and the fact that the wholesale retail price difference is due primarily to the cost of running retail outlets.

We view this rule as nothing more than an attempt to increase the creditor cost on defaulting accounts which will only hurt good-paying customers. Thank you.

MR. RODD: Thank you very much, Mr. Kett.

I had -- I apologize for conversing a little bit while you were talking there, but I had seen some of your comments in writing, as well as I was pretty familiar with them. So, I figured -- and I appreciate that.

BRYAN KETT: I have a copy, if you would want one.

MR. RODD: Yes. If you, if you have -- well, we received -- already received your comments in writing.

MR. KETT: Okay.

MR. RODD: Just a second.

The next person signed up is Joe Doughton from --

JOE DOUGHTON: (Interposing) Mr. Kett has explained our position. Thank you.

MR. RODD: Thank you, Mr. Doughton.

The next person signed up is Alonzo Johnson.

ALONZO JOHNSON: I am Alonzo Johnson from Monongalia County. I have a small mobile home park in that county. Several things concern me in these regulations I'd like to talk to you about, and I thank you for allowing me to do this.

When I started my park several years ago when I was a much younger man, I would have probably lost it if these rules had been in effect, because I was able then to rent some of my lots to mobile home salespeople, keeping them available for their sales, which allowed me to make my payments much earlier than I would have been able to otherwise.

Item No. 3.4 on Page 3 of the mobile home regulations you have would exclude the possibility of doing this. Item 3.5 seems a little unfair to me, but I guess we are unfair in some things, that you can't rent to the highest bidder for a lot that excludes one person offering more for a lot than someone else if there's only one lot available.

Item No. 4.2 requiring a one-year lease unless the tenant requests in writing a shorter period of time would exclude many of the practices I now use, it appears to me.

One is you could not prorate the first month's rent, because you'd have to have a year's lease, the payments being monthly, covering this statement in the rule.

MR. RODD: I'm sorry, I'm not following you.

ALONZO JOHNSON: Okay. Item 4.2 says, one, that -- each rental agreement must be for no less than one year. So, it's got to be a one-year. So, it could be more than one year; it could be one year and ten days or one year and 20 days, the first one; and one year after that. I assume it says one-year lease and the payments be monthly.

If it's a one-year lease and the payments being monthly, then I would not be able to get my rents all coming due the first of each month, which I do. I prorate the second month of rental so all payments will come due on the first of the month. This says all payments would be monthly payments.

MR. RODD: So, it's not clear that, that under the circumstances you're describing, partial payments could be made?

ALONZO JOHNSON: It's says they do not. It says montly, equal monthly installments, all rent must be in equal monthly installments.

MR. RODD: I understand. There's no exception for the circumstance where you prorate.

ALONZO JOHNSON: Prorate or where I want my -- all leases to expire on June 30th, if I would want that to happen; and I could see where people, because of administrative costs, would want them all to come due at a particular time.

MR. RODD: Okay. I understand you. Thank you.

ALONZO JOHNSON: Okay. I'm sorry I wasn't clear.

MR. RODD: No, no. Please proceed.

ALONZO JOHNSON: Item 5.3.1,

although I don't now have nonmetered utilities, when I started the park I did have nonmetered utilities; and everyone paid the same amount of rent, and the charge was included in the rent. I don't know whether it was listed as separate or not. But this tends to say that you have to charge everyone for utilities according to how much they use. It appears to me to say that.

Since you are not metering -- when you -- small parks are not metered, you just pay your water. Get one water meter, and everyone has paid for the water in their rent. This would exclude that practice. It appears to.

I have trouble reading these things sometimes.

Item 6.2 excludes rule changes during the terms of the rental agreement. Item 6.2 with Item 9.1, I read 9.1 to give a perpetual lease to anyone that does not break a rule in the park, the mobile home community, whatever we call it here. It appears to include those forever. I'll get back to Item 9.1 again when I get over to that. If Item 9.1 was changed, that would take care of my problems with 6.2.

And I would like to see Item 5, the one I just talked about a moment ago, to allow monthly leases instead of just annual leases, which I do now monthly lease.

MR. RODD: That is at this time your practice is to say that you can terminate a lease anytime --

ALONZO JOHNSON: (Interposing) Either party. Either party can terminate the lease on a 30-day notice.

MR. RODD: Period.

ALONZO JOHNSON: Period.

MR. RODD: Anybody who rents from you, that's what they --

ALONZO JOHNSON: (Interposing) Sign, and that's what they renew.

MR. RODD: You don't offer them any other option?

ALONZO JOHNSON: No.

MR. RODD: Okay.

ALONZO JOHNSON: And I've had no problem with that in years.

Item 7.2 and 7.3, I think all of the items in 7 refer to the age of a factory-built home. You can exclude solely or in part on the basis of.

I am sure many of my tenants would take me to court when I terminate their lease and say it was in part on the basis of, based on. If I would require them to paint the home and they refused to paint the home -- "Why does it need painted?"

"Because of its age, it needs paint."

So, anything dealing with the age of the home you cannot use to exclude someone from the home -- from the park.

Item 7.8 appears to allow tenants to place a mobile home "For Sale" sign anywhere in their lot. Mobile homes have to be moved in and out, and I at least allow to re- -- keep a right to move anything so I can move a home in or out, because you have to pass one -- or cross over one lot sometimes to get into another one. But Item 7.8 says "or on the site on which the mobile home is located." I'm sure people will interpret that anywhere they want to put one.

Item 9.1 really bothers me. "It shall be an unfair and deceptive act or practice to refuse to renew the tenancy of a resident of a mobile home park, except upon the following grounds." (sic) It lists three grounds. That's for renewing. So, we're giving a one-year lease; we cannot terminate the agreement at the end of that unless one of these three things occur.

I recently just put in some extra spaces on land that I, quote, held -- or felt was too valuable for mobile homes, but I knew I could change it in five years if I wanted to put something else of higher value in on the land. The way I read 9.1, if these people pay their rent, don't break any of the terms of the rental agreement, material terms of the rental agreement, they can stay there forever, unless I change the whole community, change the use of the whole community. I just can't change the use of part of it.

Item 10.3, if I wanted to put in a pool, pave roads, does Item 10.3 exclude me from having a charge for doing that? It appears to to me.

Timing on these rules bother me. I just recently had to pay an attorney over $500 to get a lease written that met the conditions, he said, after talking with him, of the West Virginia new law concerning mobile home parks. With this, I will have to get a new lease and have everyone sign a new lease. I wish the two had been done at the same time, because this -- these regulations will require me to have everyone sign a new lease and have a new lease written.

I have two questions I'd like to know. When will these rules be final, and when will they be effective?

MR. RODD: The rules will not be effective until and unless they are approved by the legislature of the State of West Virginia.

ALONZO JOHNSON: So, the answer is the next legislative session?

MR. RODD: I believe that's a pretty safe answer.

ALONZO JOHNSON: Thank you.

MR. RODD: Thank you very much, Mr. Johnson.

Tom Winner.

TOM WINNER: Counsel will give our remarks.

MR. RODD: Okay.

DEBBIE SINK: Debbie Sink. I signed in.

MR. RODD: You're the next person that signed up.

DEBBIE SINK: Yes.

MR. RODD: Thank you.

DEBBIE SINK: My name is Debbie Sink, and I'm here with Tom Winner on behalf of the West Virginia Bankers Association which represents the banks and their parent companies in the state of West Virginia, and we would like to just give some very general oral comments on Series 24, the repossession regulations.

We've previously submitted fairly detailed written comments, and I will not take the time to go through each of those, but the concepts we would like to relay this morning are -- relate to our serious concern with that proposed series. We believe that they would have, if promulgated, an adverse impact on consumer credit or -- and/or the cost of that credit, both availability and cost. The reason we say that is that these proposed rules will discourage banks from lending to a marginal borrower or one where there may be the likelihood of a need to repossess. The cost that the proposed rules would impose upon repossessions, or the limitations on repossessions, would lead to this result.

The regulations also would tend to eliminate flexibility and work-out room, if you will, negotiation room, between a creditor and a borrower because of some of the limitations imposed on creditors within those rules.

Another serious concern we have is the several provisions that are in direct conflict with the Uniform Commercial Code, and we have enumerated those and given references in our written comments. The reason for concern there is multifold, but one point I want to make that hasn't been made, I don't believe, by the other commenters is that the Uniform Commercial Code has extreme value because it is just that: uniform. And it permits interstate commerce, interstate transactions, because of its uniformity.

We are concerned that any attempt, attempt to alter that could not only have an adverse effect with respect to what's available to consumers within the state but also from without the state, because it will be more costly for those out of state who would perhaps make credit offerings or offerings of goods to consumers in West Virginia. It will be more costly for them to do business in this state.

Also, there's some concern, I guess, about enforcecability, given that the proposed rule is a rule as opposed to a statute, and there could be litigation in an effort to establish which prevails in the consumer context.

We also made the point in the written comments and would like to reiterate here that portions of the rule which are not in conflict with the UCC are, we believe, duplicative; and we have the same concern that was expressed at the outset this morning about piling on when there is very adequate coverage on some of the areas addressed in the rules, both within the West Virginia Consumer Credit Protection Act, other areas of West Virginia, and federal law; and, again, we pointed out some specifics in that regard in our written comments.

In short, the concern we have is very high with these proposed rules, and details are set forth in the written comment. And we thank you for this opportunity and appreciate your consideration of our comments.

MR. RODD: Okay. May I ask you one -- it's simply a clarification of something you said, and I understand that you may not be able to respond to this, but you said something about eliminating the work-out room.

DEBBIE SINK: Yes, sir. I could give you one example just off the top of my head. There's -- I believe in the proposed rule there's a provision that a creditor shall not make a, quote, "false threat," I believe is the language, to repossess. If the creditor did that, that would be an unfair or deceptive practice.

I think in the written comments we pointed out that it would be impossible to know what was false. I mean, perhaps it was a genuine indication that repossession was imminent, but perhaps something could be worked out. If the creditor did not follow through, could it then be construed as a false threat? That's one example that occurs to me. That's a very, a very vague standard; and it might require creditors to establish a policy that if they ever mention the likelihood of repossession, they must follow through or else they would in fact be guilty of an unfair practice.

That's one example that occurs to me, but that's the type of thing that I think could impede flexibility or work-out opportunities.

Thank you very much.

MR. RODD: Okay, thank you.

The next person signed is Bonnie Harold.

Bonnie Harold.

The next person signed is S. D. McClure, Charleston.

S. D. McCLURE: Thank you. My name is Steve McClure. I'm with Old Colony Management Services. We manage over 450 rental properties, that's residential and commercial. And I'm very concerned about this whole proposition here of Rule 26 -- or Series 26 that is totally one-sided towards the, towards the tenant.

A couple of questions. I'm not going to go into all of the details, but I would like to invite the author of this to come to my office and spend a day or two or three and see how we have to live fighting this kind of stuff.

One question. It says -- on the -- I don't know what this sheet is called. It's a rule entitled: "Explanation of Overall Economic Impact." It says here that it will promote private adjudication of consumer issues, reducing the burden on state regulations; and right in it it says the only way you can evict anybody is to go to court.

It's kind of contradictory.

Anyway, to me it reads like a Japanese instruction book before you translate into English. I'd like to invite the author to come and spend a day with me. Thank you.

MR. RODD: Thank you.

The next speaker is a J. D. Stricklen.

J. D. STRICKLEN: Thank you. My name is J. D. Stricklen with Stricklen Properties. Our offices are in South Charleston. We operate -- own and operate a few hundred units throughout the Kanawha Valley.

And the comments I want to make today is, first of all, the -- some of the things I'm in agreement with. I can see where some of it is a little bit one-sided, but I don't think anybody should have to live in anything that's inhabitable or substandard.

To get specific with what my concerns are, first of all -- of course, I'm speaking on the tenant-landlord Series 26. The first item would be 3.5 where "Fail within a reasonable time after receipt of notice from the tenant to make repairs" when you've been notified that something is not fit or habitable. The only concern I would have would be that if in fact the problem was created by a tenant, such as someone spoke to earlier where there had been a domestic squabble and the door got busted down or a thermostat got knocked off the wall. I think there should be some special consideration to tenant responsibility due to their negligence.

The next thing would be 3.8, which deals with reimbursement for repairs within a reasonable time. A little bit of gray area there. What is reasonable? If on Sunday afternoon my air conditioner goes off at my house, my wife thinks a reasonable repair could mean within a half an hour, which I don't personally think is reasonable.

You know, I try to -- when we deal with tenants, we try to put the shoe on the other foot. And, you know, if something happened to my house on Sunday, I'm going to tend to wait until Monday to fix it, and I think that's reasonable as opposed to trying to track down a technician at double-time pay. So, I think that could be a little gray, and there could be some misinterpretation of what a reasonable time would be, and I would hope that that would be addressed.

Moving to Section 4 on "Notices and Demands," I really don't have any problem with what you've written other than I'd like for it to be bilateral. I'd like for the tenants to be involved with that. For instance, on 4.2, "Fail or refuse to accept" -- or backing up, it says "It shall be unfair and deceptive act or practice for a landlord to," 4.2, "Fail or refuse to accept any notice sent to any address to which customarily sent."

To make a long story short, I don't have a problem accepting notices; I just wish that the tenants would accept Certified Mail. I'd like to see that be a little bit more bilateral to make it more fair.

Getting to the section that deals with the interest-bearing deposits, security deposits would be first mentioned in Section 5.2.3 and also in Section 6.3. Well, what I want to point out to you is that I was over at One Valley Bank earlier this morning. I noticed that on a one-year C.D. the interest rate is now 3.75. Let's call it 4 percent.

If you've got a $200 security deposit on a tenant, 4 percent, you're talking about $8 a year. In order to process that back to the tenant, our cost made be $20 to process $8. So, what we do is, like in any business, when you have an increase in the cost of business, you generally pass it on to the tenant. So, in order for the tenant to get the benefit of an $8 interest payment on their deposit, they're probably going to have their rent increased to reflect a $20 increase in doing business.

I know it sort of seems like the money is just sitting there, but that's, that's the things that you've got to take into consideration, is what the cost of doing some of these things would be.

Moving on down to the matter of security deposits in 6.4 and 6.5 on the 20-day period, as other landlords, I have a problem with the 20 days. But there's an incentive for me as a businessman and a landlord to even process security deposits much more quickly than 20 days. We -- because of the word mouth, you know, the way you conduct yourself helps you in future business relationships and referrals from past tenants.

However, the problem is, you know, we like to refund deposits within two days of when the people move out. Sometimes you can do that and sometimes you can't. There are al- -- there can be extenuating circumstances where it could take up to

60 days. The most, the most prevalent problem is, is getting the final utilities paid. You know, under the Public Service Commission regulations, the property owner can be held responsible for the final garbage bill or the final sewer bill; and you might think that, "Well, that could be an 8 or $20 item, but by the time -- if that gets slipped past and they actually put a lien on your property and you get that put on your personal credit report, and then it maybe will cost you as much as $100 to get that cleared up. So, it's important to always have those cleared up when tenants leave, and sometimes you just can't do that within 20 days.

What I tell people is when I get notice that they're going to move, I say, "Please get me those paid receipts." Sometimes they don't listen. Sometimes they are moving out of state. When people are moving, it's a busy time. It's very important that we have enough time to get these utilities accounts taken care of when people leave.

The Section 7 which deals with the termination of leases, just generally -- someone made the comment earlier that they thought that West Virginia had a quick eviction process, which I disagree with -- and I would, I would say that I think that probably what's on the books now is fair; and I think that anything that would be more stringent as reflected in Section 7 would not be fair to the landlords.

And the last item I'd like to make a comment on would be Section 9.1 which has to do with entering the tenant's unit. And really the only problem that I have with that -- we don't make periodic inspections or anything of that nature. We re- -- it's mostly through where you reserve a right to enter at reasonable times for purposes of repairs or showing the unit to prospective tenants. And at the end of that it says that you can, you can enter if it's authorized in writing; and if you stop it there, I don't have any problem with it. But it goes on to say that "other than in a form provision," which is what a lease is. And I'd like for that to be struck, from -- the end of Section 9.1, in order for us to be able to put that in the lease as opposed to have to get an individual authorization from every tenant.

I might also say that's all of my comments, and I'm glad that the Attorney General has decided to spend his valuable time here this morning. I'm quite impressed that you stayed to hear our comments. Thank you very much.

DARRELL McGRAW: Thank you.

MR. RODD: Thanks very much.

The next person signed up is David Yoder.

DAVID YODER: Director Rodd, Judge McGraw, thank you for taking the time to hear us today.

I am David Yoder from Morgantown. My address is 1225 Pineview Drive. I'm here representing the Home Builders Association of West Virginia, and I'm also president of the Apartment and Rental Housing Association of West Virginia. I'm president of Allegheny Development Corporation, which operates and owns several hundred -- at least 300 units of various types, whether they are residential housing, single-family, two-family, four-family, and multiple-housing structures, as well as commercial units.

I'd like to state that I have been involved in housing issues for about 30 years. I have worked since that time with at least four university administrations in Morgantown, with President

Harlow, President Budig, President Gee, and also President Bucklew.

In all our endeavors, whether they are in the corporate structure or with the associations in the housing industry which I represent, we promote safe, decent, and affordable housing. In fact, you might recognize the fact that when we can provide good housing, that means more jobs for our industry.

When we can eliminate housing that is not fit and habitable, we, we find that that's good for the housing construction. So, we support good housing. We support fair and just dealings with our housing consumers, as well.

And I could relate some horror stories. I will have a prepared text for you, as well. I recall that in times past we have gotten into situations where we've had tenants that were a little less than responsible in our corporate affairs, and we had tenants' associations deal with us, and always in a good relationship. We're very proud of our reputation in Morgantown.

We have had one instance where a family had rented a new duplex. They were the first tenants in this duplex. It was a 3-bedroom unit, and they had a family with several children, and they couldn't pay their rent. So the, the tenants' association intervened and said, "Well, would you let us hold a check until the end of the tenancy, and then you'll be sure to get your money? And after the tenancy, then we will deliver to you the check, after we inspect the apartment, because these tenants believe that you may not be fair, you may not want to return all of their security deposit. So, after we inspected the unit," the association said, "we will assure you payment."

That check was around $2,000. And after they vacated the apartment -- the unit in about one year -- I think the tenancy was for one year -- we inspected the unit and found that the little kid cars and what have you had raced around the hallways and virtually destroyed the decor of the unit.

So, that's why the cost of repairing the unit was considerably more than the check that was to come to us.

These tenants moved on to an out-of-state location; and at the time when we cashed the check, we found, after a couple of weeks, that payment had been stopped.

So, how do we -- how do you propose that we go about finding the tenants and recover our losses? These are some of the, the experiences typical of this one that we have had.

The issue of security deposits, in my view, is not nearly as serious as it appears in the proposed regulations. They are typically safe in the landlord's hands, simply because to own property you would have some financial assets; and there are remedies, if the security deposit is not repaid when appropriate, to recover any deposit of the security deposit.

So, we -- we also had a situation which was mentioned before where the utilities become an issue. We find that security deposits are necessary for many reasons, whether it's for repair of damages potentially to an apartment or whether they are for the security of utilities which may have been transferred back into the landlord's name.

And where there's a public service district involved, the Public Service Commission provides that the District can attach the landlord's property for not paying the utilities, even though it was a tenant who had signed for the utility. I'm not sure that that's always the case in a municipal utility, but I know it's true in a public service district which I chair.

The Board of Directors of the West Virginia Home Builders Association met on July 23, 1994, and unanimously adopted an action to present testimony here today, and the Apartment and Rental Housing Association has likewise acted on the day before to authorize the providing of testimony here today.

The testimony which I have prepared that is written is from the homeowners association, and I signed it as Chairman of the Subcommittee on Legislation.

We find that many of the provisions outlined -- and I have footnoted in the prepared remarks the, the specific section to which we refer as we provide these comments. I hope that you'll be just slightly lenient, as you have been for the other speakers. I am representing more than one entity, and I thank you very much for your courtesy.

The association, as I've indicated, likes to promulgate good relations with landlords and tenants, and any way that can be accomplished we would support. We find that the requirement under

Section 5.2.3 and 6.3 are, in the paying of interest on security deposit, is probably more cost than the value to the tenant. I think you had some figures brought to your attention this morning regarding the rate of interest. In fact, we find that many banks will refuse to pay an interest on these small accounts and, on the other hand, would likely charge a fee for servicing such accounts.

And there's another problem where the Social Security numbers are required, and you have multiple tenants in one unit. The financial institutions would likewise have a problem in how to segregate out who is responsible for receiving the interest on the money.

A "fit and habitable condition" has never been defined by the legislature. In years past, in the mid-'70s to the mid-'80s, the late Senator William Moreland from Monongalia County frequently attempted to amend the landlord-tenant legislation so that "fit and habitable condition" could be defined. There's always controversy on whether to open the landlord-tenant legislation as it is now provided.

Another section, 6.1, that I wish to refer to, I have the following comments: The prohibition and the regulations against collecting rent in advance or any amounts in excess of one month as a security deposit makes it very difficult to collect for a 12-month lease in college towns where the normal school year is less than nine months. In fact, some landlords provide for payment of the first month's rent and a security deposit with the last month's rent in installments to ensure that at least some rent is collected for the period between May and August.

In addition, some landlords provide for a discount for the payment of a term, such as six months or a year in advance. Our companies do that. We give as much as a ten percent discount for payment of the rent in advance. We're assured that way that the rent will be there; and, as I've indicated, we have not had any problem with this with out tenants, because we're very proud of our relations with our tenants for many years. In fact, yesterday a past tenant of about 1965 called me and wanted to see whether they couldn't stop by and say hello, and they have stopped by on occasions in years past. These are the types of things that make business worthwhile, when you can refer back to relationships that you have developed with those with whom you deal.

As previously noted, the Association supports fair dealings in all landlord-tenant contracts and relationships. We support the refunding of security deposits in all instances, except where legitimate deductions are made for items of damage by a tenant or failure to pay amounts due under the contract.

We do not believe that a time limit of 20 days for the refund of a security deposit is always reasonable. We are aware of many landlords whose contracts, as I indicated, run on a calendar year or a term peculiar to a specific location. Therefore, when multiple tenancy is handled on a compressed time frame, it is reasonable to assume that there would be an undue burden on the staff of a company or any landlord to compile the necessary data for the return of the deposit in such a short period of time.

We are aware that other states in some instances have a time period of 30 days. I note that others have indicated that that may not be enough time on occasion. But any term less than 30 days, we believe, would be quite difficult for many of the operators who do a good job and try to do a proper accounting.

We have always urged our members to make an effort to make such refunds on an expeditious and timely manner. And we further believe that a security deposit should rightfully be applied to excessive cleaning required by a tenant whose living habits have caused excessive wear and tear, but we do not condone withholding a security deposit simply to collect additional rent. We refer in that instance to Section 6.4 and 6.5.

The next paragraph which I refer to applies more to Section 3.7. We are strictly opposed to any rule which would allowed tenants to perform work on property of the landlord. The proposed rules would allow a tenant to replace a tile roof. You know, if a tile roof happens to have a leak, that's -- that takes some skilled craftsman to replace it.

So, there are exceptions to anything that a tenant might undertake on a landlord's property, and we believe that any, any work that's refundable to a tenant should certainly be by a contractor acceptable to the property owner.

I have just about concluded, Mr. Director, and I thank you for your consideration.

We also find that the Section 5.2.3 and Section 7.1 through 7.5 have some concerns to us. They prohibit accelerations of rent payments in the event of default or breach of a contract. Common business practice would permit a bank to accelerate payment on a note, but somehow acceleration of rent payments is found by these proposed regulations to be unacceptable. We also find that the section relating to evictions and termination of tenancy is generally restrictive.

West Virginia law provides for a process for eviction for wrongful occupation. We believe this section attempts to extend the time necessary for obtaining possession even during unlawful occupation. We believe this section further requires a landlord to provide utilities during unlawful occupation. We find this to be unreasonable.

As to Section 7.5 and 8.2, we agree with the provisions of the regulations which would prevent denying a tenant the use of utilities during any lawful occupation. We strenuously oppose the requirement that all utilities shall be furnished during unlawful occupation. We object to any arrangement which would require a landlord to provide utilities when funds are being withheld by tenants in a breach of a contract.

It is quite conceivable that a group or an association of tenants could join and decide "We're all going to withhold rent for a month or two," and there may be no alternative for the landlord but to cut off the utilities, because he may not have the funds whereby he could support the utilities during such a time period.

And as to Section 9.1, we believe the requirement of these twelve hours advance notice to show premises to prospective tenants or purchasers is unreasonable when both landlord and tenant have agreed in writing otherwise. This would deny prospective tenants who are in town for just one day the opportunity to view a living unit where arrangements were made -- were not made at least a day ahead of time.

And, finally, these comments are provided in the interest of promoting fair and reasonable landlord and tenant relations and dealings. We believe that the proposed rules and regulations are silent concerning landlord rights or that they attempt to remove legitimate rights which the landlord may already have. It must be noted that there are no unfair and deceptive acts cited which can be attributed to the tenant.

An example of this inconsistency is the provision that it is an unfair and deceptive act for a landlord, quote, to fail or refuse to accept any notice, end quote. But there is no provision which finds a tenant in violation of the same act.

It is our opinion that the adoption of these rules will discourage the development of affordable rental housing in West Virginia. Accordingly, these rules will not promulgate job growth nor landlord-tenant relations as they are presently proposed.

So, we urge you to do some rewriting, and we stand ready and willing and anxious to participate with you in a way to make these rules more equitable. Thank you very much.

MR. RODD: Thank you very much, Mr. Yoder.

The next person we have on the list is Brad

Sorrells.

BRAD SORRELLS: Thank you, Mr. Rodd, Judge McGraw.

I'm here today on behalf of the Chrysler Credit Corporation and Green Tree Financial Corporation.

Before I move to the rule that I'm primarily concerned with, which is Series 24, Title 142, I wonder if I could offer a suggestion that's occurred to me as I've heared (sic) -- as I've heard landlords talk about the problems with the security deposits, in not being able to put them into a separate account and that type of concern.

Lawyers for a long time had the same problem with their trust accounts, and the State Bar came up with the IOLTA system where the -- all the money went into one, interest was drawn and taken off for something of good use. It seems that would be an appropriate use of what in individual cases would be smaller amounts; but when amassed together across the state, it would certainly be quite a sum.

Moving to Series 24, as an initial matter, both Chrysler Credit and Green Tree believe that rules pertaining to repossession are desirable. It's a somewhat nebulous field, but guidance is desirable.

There are, however, a few provisions within the proposed rules that cause concern, and I'll run through them as quickly as I can. First, 2.2, the definition of a "Consumer transaction," I would maintain that that should be limited as it is by West Virginia Code Section 46A-1-102, 12A-5, to transactions that do not exceed $25,000.

Second, 3.1.1, this has been commented on previously regarding the actual intent to repossess. I deal with a variety of certain secured creditors in addition to Green Tree and Chrysler Credit. In most of those instances I've been hired to take possession, and in virtually all of those instances they would rather work something out than take possession. And that rule seems to say, "Go get it. If you took the security interest, you have to go get it."

Next would be 3.2.4, "false threats to repossess." Again, I'm not -- I think that's somewhat ambiguous. I'm not sure whether it's threatening to repossess when you have no intent; and that was already covered, so I think it must mean something else. I assume that what is meant is threatening repossession when the creditor really is not a secured creditor and has no right to repossess; and I would suggest that perhaps it would be clearer if the provision read "threaten to repossess property, including but not limited to household goods when the creditor knows that it has no recoverable claim of a right to do so."

Next, 3.2.5, it's somewhat ambiguous there in the last two words, "of other deception." Certainly it's improper to make false threats about the use of law enforcement, but a lot of ambiguity as to other deceptions.

On 3.2.6, the same concern as to otherwise misrepresent the repossessor's identity, that that could be construed in a lot of instances that when you have a repossession agent going out to look for a car, unless he clearly has it marked "Larry's Repossession Service," he's misrepresented himself as just being a standard citizen driving down the street.

3.2.7 causes a great deal of concern, and I think that it's an invitation for litigation to ensue almost every time that there's a repossession. It is so subjective that I don't think any creditor can be charged with that knowledge of when seizing property from a particular location might cause undue hardship.

I have the feeling that the intent of this provision is to stop malicious conduct on the part of creditors; and perhaps there are some creditors who would say, "Well, this guy defaulted. I'm really going to stick it to him." And if that's the intent, that's a good thing.

But I would propose that language such as the following might serve that same purpose and not put creditors at risk of an ambiguous section, and that would be "Seize the property from a given location when the creditor has actual knowledge that seizing the property from that location will cause objectively undue hardship to a consumer." I think that takes care of the concerns.

I next would bring you to 3.2.9. That regards repossession agents to carry a firearm. Now, neither Green Tree nor Chrysler Credit have any interest in hiring Wyatt Earp to go out and seize their collateral, if they have to do that. On the other hand, they don't have any control, their actual control of whether or not the repossession agent is going to carry a firearm. There are already state laws that govern who can carry a firearm, and when that person can carry it, and what use that person can make of it while they have it.

Now, a creditor can have it in his contract, "Agent shall not carry any firearm"; but if the agent does, this provision would appear to make the creditor strictly liable for that conduct.

DARRELL McGRAW: This is a problem that appears to me. On the one hand -- and among my life's experiences is some experience in the practice of what some might say repossession. On the other hand -- all right. And in that experience I know of the stresses and strains that develop in that enterprise. And the availability -- or the availability of weapons in those circumstances is always problematic.

Do you think it's unreasonable to propose that repossessors should not have -- should not be armed?

BRAD SORRELLS: Well, Judge, there are a lot of situations in life which are highly stressful. I think my concern as to this section deals with creditors who by and large, and I would suggest almost as a universal practice, do not go out and have their employees do the actual repossession. This is accomplished by repossession agencies, people that are in that business.

DARRELL McGRAW: Well, they're contractors; are they not?

BRAD SORRELLS: Yes, they are.

DARRELL McGRAW: Yes. And would it not be possible for the contract to include a provision in the repossession contract that the repossessors not be armed?

BRAD SORRELLS: It -- of course, that would be possible; but unless someone from the credit agency went out, it would be pretty hard to enforce; and as I mentioned previously, I think that section pretty much imposes strict liability on the creditor.

But the thing I want to stress is there are already laws in the state of West Virginia that deal with this. If a creditor comes up and pulls up his gun and says, "I want the Chevy," well, he's brandishing, and that's a criminal offense. He's not supposed to do that. And I think we're already -- I mean, the use of a firearm really doesn't have anything to do with repossession.

MR. RODD: Could I just ask you,

since you've raised this issue -- you are the first person that's raised the issue on a public comment side. I would just like to ask you, would you agree that this is an area where a person is granted the right under the law to in a self-help extra-judicial fashion confiscate or take property from another person's possession?

BRAD SORRELLS: Only if there's not a breach of the peace in doing so.

MR. RODD: Right. But they are given that right to do that, which is kind of an exceptional situation. And it has -- it's very fraught with the possibility of conflict.

BRAD SORRELLS: I won't belabor this point.

MR. RODD: No. I understand.

BRAD SORRELLS: This is not a provision that is particularly -- that Chrysler Credit or Green Tree are particularly adamant about. It sort of goes along the same concerns the Attorney General was addressing this morning, as regulations and rules being piled on when they may not be needed.

MR. RODD: I understand your. I

appreciate your raising it and addressing it. I think you have made legitimate points. Thank you.

BRAD SORRELLS: The final comment on that is I'm not sure that that doesn't raise constitutional questions, both state and federal.

3.2.11, I'm a little concerned over the word, "premises." I'm not sure if that's intended to mean residential property as a whole or the dwelling place. If it -- if -- either way, of course the creditor shouldn't itself or have an agent barge into the customer's home to be repossessing something. On the other hand, if we're talking about going onto that customer's property, this makes, as it's written, makes it illegal to walk up and politely knock on the door and say, "Excuse me. As you were notified, you are in default on the vehicle in the driveway. I'm here to to pick it up. It would be easier on everybody and less expensive if you just gave me the keys."

I mean, this would seem to require a creditor to wait until the vehicle is away from the home and then seize it. But then the creditor has to concern himself with the other provision I mentioned: Is this going to cause undue hardship?

Most consumer goods most of the time are going to be at the home; and that as long as there's no breach of the peace and being on private property after you have been asked to leave -- and we also have a specific provision in here elsewhere that says that trying to repossess when you have been told no -- I mean, that's sufficient. I don't think we need to restrict legitimate and polite entry on the consumer's residence.

DARRELL McGRAW: Well, what is -- I should know this. What is the process these days for the repossession of property? What's the process? And I'm not talking about business in a lot of respects, the help -- the self-help procedures. What is the process for repossessing of property?

BRAD SORRELLS: If it's consumer goods, of course first there has to be a notice of right to cure default. The cure period has to expire, and then the property can be seized whenever or wherever it's found as long as there's no breach of peace. If that is not possible --

DARRELL McGRAW: (Interposing) All right. At this point --

BRAD SORRELLS: (Continuing) -- then you need to move into the courts. You simply file a standard civil action --

DARRELL McGRAW: (Interposing) When you say it can be -- when you say it can be seized by an officer, by whom?

BRAD SORRELLS: By the creditor or its agent. It's when you are still in the self-help mode.

DARRELL McGRAW: Why wouldn't it be more desirable to have a process which requires one to deliver up the property? After all, if you think of the common law, the procedure of (untelligible) probably would require the delivery up of the property, would it not?

BRAD SORRELLS: Well --

DARRELL McGRAW: Unless, of course, it were (unintelligible) or something like this, in which instance it would be the cause of action called replevin, and all of those things have to be merged of course into a cause of a civil action, but -- I guess really my question goes to -- my question is a philosophical one that does not necessarily relate to this process today, but rather it goes to the issue of why don't we have a process by which people who are in the possession of the property of others in the instance of the failure of finance agreements and so on and such as that, why don't we have a process that requires the delivery up to an officer of the court the property?

BRAD SORRELLS: Because it's too expensive to go through a formal process every time there's a breach of a contract which already requires that person to surrender the collateral.

My next point with regard to entering on the residential premises is that would require in the case of all repossessions that process be issued, that a civil action be filed, that a summons and complaint be served, that a judgment be entered, that the creditor then get a writ of possession, that that be served by the sheriff.

And all of those things are very expensive. You've got $70 to file the action; $20 to file the summons and complaint; you've got costs to go back and -- attorney time and time of the individual to go and get the actual judgment; another $20 for service of the writ. All of those costs are charged to the losing party. So, every time that an absolutely meritorious claim -- which wouldn't have been objected to by the consumer in the first place if the creditor simply came up and said, "I'm here to get the keys."

And he'd say, "Yeah. I knew you were coming."

Adding on a lot of money and a lot of time for no benefit. And that's not to mention the fact that you're taking up court time and the time of officers going out and delivering writs and summonses when nobody wants them.

I mean, the sheriffs of the various counties of West Virginia have much better things to do than deliver papers that nobody wants, nobody needs, that cost a lot of money. And certainly there are many instances where the only way to get possession of the property is through an actual civil action. Even in those cases, once the summons and complaint is delivered, the majority of them are worked out, never go to the actual possession.

Moving to provision 3.3.2, "Include a provision waiving the consumer's right to personal property taken with a repossessed vehicle," now neither Chrysler Credit nor Green Tree -- and I would suggest no responsible creditor would say that a consumer just doesn't have a right to their goods in the car, mobile home, or whatever. But I would suggest to you that that needs to be somewhat limited to a reasonable period.

As written, it would prohibit language in contracts saying, "You will be provided with a list of any goods that were in the vehicle; they will be held for you for a period of 'X' days."

You know, there's a lot of things that are left in cars or left in mobile homes. It's just abandoned property. Yet, as written, this would turn the creditors into involuntary bailees, and they would be charged with keeping that stuff forever. You couldn't -- so, there needs to be a reasonable time limit on that.

Moving to 3.4.2, "Sell collateral at private sale to a secured party or to a party affiliated with the secured party," now I think it's quite -- I have a very serious problem with that. That's in direct opposition to the specific provisions of the UCC and 46-9-504-3, which specifically provides a secured party may buy at public sale.

MR. RODD: I'm sorry, I thought it said "private sale" in the regulation.

BRAD SORRELLS: Yes. It said --

MR. RODD: (Interposing) That you read.

BRAD SORRELLS: Okay. Well, I didn't read enough of the UCC.

MR. RODD: I'm just trying to follow you. I thought that you meant --

BRAD SORRELLS: (Interposing) You're, you're right. 3.4.2 is a private sale. 46-9-504-3, "Secured party may buy at public sale and, if the collateral was of a type customarily sold in a recognized market or is in a type that you can subject to widely-distributed price quotations, the secured party may buy at a private sale." And both of my clients would be involved with collateral of exactly that nature. Both of them are published NADA Guides as to the retail -- or the value of used mobile homes and value of used cars, which is what you have to own to be able to repossess.

I believe that the harm -- I think what's trying to be stopped here is the idea that secured parties can abide -- it's going to be a sham transaction, low dollars, high deficiency. That's already covered. The UCC requires that the entire disposition, including the method, the manner, time, place, and terms, must be commercially reasonable.

Now, especially in light of things like mobile homes and cars, which are subject to huge books that are published monthly as to what they're worth, sham transactions can be covered by the UCC, and this is not needed.

3.4.3, "private sale only to wholesale bidders without deducting the retail market value," that -- the retail market value provision just doesn't work. It's going to end up costing consumers more. When you get right down to it, it's just not fair; and if you work out the numbers, it doesn't make any sense. Anytime something is sold on the retail, a significant chunk of that price is profit for the seller for the work that goes into selling a product. But that's not what's going on here. But I don't want to speak much on that. I would refer instead to the Federal Trade Commission's comments when they considered a similar provision and rejected it.

There's a number of very good policy reasons why it's bad, and I'm going to be making a couple of slight changes to my written comments and submitting them this afternoon, and that is attached as an exhibit.

3.4.5, "sell collateral at an ostensible public sale which charges fee or deposit for admission," not all auto auctions do, but some do charge a fee. It's a minor fee. It's something that they use to offset the cost. But we would submit the same thing perhaps in some mobile home auctions, although generally those aren't sold at a public auction.

That doesn't serve any real useful purpose. I think that perhaps what's trying to be accomplished here is someplace where, quote, it's a public sale but you've got to pay big money to get in, so nobody can really get in, so there are no buyers. And that's just not a harm that's going on out there. If you have done any work around these auto auctions, they are big things, they are in competition with each other, and the fees that dealers pay are relatively low. And, you know, dealers travel at great distance to go down to these sales which are well-published and advertised, and that they aren't going down there just to look. They are going down to buy. So, it's not a question of "if" but how much they are going to buy.

3.4.6, it's sort of the same problem. That's saying you can't sell it if the seller waives warranties. Well, when you are selling a piece of repossessed collateral, whether it's a mobile home or a car, you don't know where it's been, you don't know how it's been taken care of. And you are by and large selling it to a dealer, and the dealer doesn't really need that warranty. Now, he may be required by state law when he later sells it to a consumer to warrant that good; but if the seller at an auction has to warrant this vehicle, there's going to be a charge for that. And the charge is not for anything of value in the collateral as it was repossessed from the defaulting consumer. That charge is for the service that this dealer is being -- or the seller is being required to offer by this rule. It doesn't protect consumers.

I'm almost done here.

3.4.10 regarding seek -- it says you can't seek attorney fees not authorized by law. I think that's ambiguous. I'm not sure if it means you can't seek attorney's fees unless they are affirmatively authorized by law or you can't seek attorney's fees that are prohibited by law. And just one way or the other it ought to be made clear.

Finally, 3.4.11 regarding "retain property in strict foreclosure without crediting the buyer's obligation with the retail market value and turning over any surplus to the consumer," in the first place this seems to be in violation of 46-9-505-2 which doesn't call that process strict foreclosure, but I think it's the same thing; and it allows strict foreclosure so long as you give the consumer notice of it and he doesn't object within 30 days.

You -- but the bottom line is a repossessed piece of collateral is not worth to the creditor what the retail value is. It's worth to him what the wholesale value is. And there are going to be a lot of instances where the creditor says, "You know, it's not worth selling it and seeking a deficiency. We'll just keep it." But with this section, if they are required to give the retail market value, all of a sudden they are going to go, "No, we have to sell it," and then go after that deficiency when the case could have been closed and everybody was done. But as it ends up, the consumer ends up with a deficiency lawsuit against him and/or bad credit entry with "X" number of dollars owed to Creditor Z.

Again, I thank you, and I know I have sort of picked apart various sections in there, and it truly is my intent that that be helpful, and I hope it won't be taken as criticism. I know -- I think it's quite obvious looking that a great deal of work has gone into this process, and I understand that these repossession rules are only a part of the consumer credit protection process going on.

DARRELL McGRAW: I take your comments in the spirit of constructive contribution. Thank you. And we appreciate what you have said, and we are particularly sensitive to the area that you discussed.

BRAD SORRELLS: Thank you, Judge.

DARRELL McGRAW: Thank you.

MR. RODD: Thank you.

The next person signed up is Norman Googel.

NORMAN GOOGEL: My name is Norman Googel, and I'm here on behalf of a woman named Helen Ann Wooten. Ms. Wooten is a loving, fun person who is also a renter, and this year she formed an organization called the Renters Association and Protective Services, and this is an organization which is strictly volunteer and hopefully will provide some meaningful advocacy to people that rent so that they understand what few legal rights they do have and to enable them to enforce their rights.

At this point the organization operates out of a Helen's suitcase -- or I should say her briefcase. I really would have preferred Helen to be here, because she can comment much better than me and much more eloquently than me on Series 26, which is what I will address.

On the same note, I have to say that I wasn't aware that this public hearing was coming at the end of the written comment period, that I was hoping that Helen could still present some written comments, but I know it wouldn't be possible for her to do it by the close of business tomorrow.

So, I would ask if the law permits it, if you could extend the period for written comments perhaps till maybe the close of business on Monday.

MR. RODD: I don't think I can.

NORMAN GOOGEL: Okay. In any event, I do want to -- my comments are going to be very general. I want to offer my, my support for all of the legislative rules. I'm only going to comment, however, on Series 26. I do want to say that I, I support these rules in principle. I don't see anything in here which is burdensome or that I think would be unreasonable.

I do want to say, as the Attorney General's staff is aware, there are very few statutes that give tenants very many rights, and I think -- but the few rights that tenants do have are very important, but sadly enough they don't get enforced.

We have one statute that requires landlords to provide rental housing in a fit condition when tenants first move in and to maintain it throughout. It's a very important right. There's no way really to enforce it other than a lawsuit, and then there's another statute that says a landlord has to give a one -- one rental period of notice in advance before evicting them. But that doesn't even apply when a tenant doesn't pay the rent.

And then you have a summary eviction statute which not only is fair to the landlords, but this statute in my experience representing tenants in 14 years is absolutely brutal. It calls for a -- it doesn't require landlords to provide any type of written notice of events before filing the eviction suit, and often they don't. When the suit is filed, the trial on the eviction case is five to ten days later. Often the tenants are served with the notice of trial a couple days in advance. And if they don't know their rights and they go straight to the trial and are evicted, as they almost always are, it doesn't even do them any good to appeal, because there's no possession pending appeal.

So, to whatever extent -- as far as the landlords today who have commented on the eviction procedure who would want to say to you that, that it favors tenants, that's simply not true. And in West Virginia we have an eviction procedure which in my opinion doesn't even meet minimum standards of due process.

So, I -- while tenants do have very few rights by statute, there are some legal rights that they have from other sources. And contrary to popular -- or contrary to popular belief, even renters have the right to not be trespassed upon, they have the right to be free from invasion of property, and many other rights.

And what I think these rules do and the reason why I think they're helpful is they, they help to make meaningful those few rights that tenants actually already have. These rules do not create any rights for tenants that don't already exist; but by saying that some of these things that landlords commonly do are unfair and deceptive acts and practices, now tenants have a meaningful way to enforce these rights which they already have, and I just don't see how anybody can disagree with that.

And I haven't really heard any of the landlords today say that they should be required to maintain property in a fit condition or that they shouldn't be required to return damage deposits when it's justified. And all these rules seem to do is enforce the right.

DARRELL McGRAW: But the problem is, is that we live in a society of laws, and within those laws we have provided for contracting, which is the heart of our economic system, that is in terms of the relationship between whomever in an economic engagement -- in any economic activity, and then we have provisions for the enforcement of those contracts.

NORMAN GOOGEL: That's right, and

I do think that no one can say that the tenants and the landlords start out on any type of even footing. I mean, the tenant is at a tremendous disadvantage from this entire relationship. And even with this summary eviction procedure, which I, which I would say is unfair even if it's followed properly by the landlord, the reality is most landlords try to avoid it, and they use ever unlawful means possible to try to evict tenants without going through the statutes, just -- such as cutting off utilities, locking them out.

In one recent case a tenant who lived in an upstairs apartment, the landlord removed the stairs so he couldn't get up to his apartment to get in or to get his stuff. And that's not an extreme example. That's typical. Landlords are only limited by their imagination as to the ways to get around the laws.

And then I don't even want to begin to tell you about all of the tenants who have lived in rental properties and improved these places and make them better by making repairs, and of course they can't get compensated for it.

So, I, I think all these rules do is help to enforce already existing rights. There's no tilt here in favor of the tenants. I think -- it's just not correct to say that rules which now make it possible to enforce already existing rights constitute a tilt toward the landlord and away from the tenant -- or rather in favor of the tenant (sic).

And as far as the security deposits go, that seems to be a favorite issue of the landlord. What I have found in my practice representing tenants, good tenants, bad tenants, it doesn't matter how well you take care of the place, it's almost universal, that you will not get your damage deposit returned. And a lot of tenants, it's just not worth it to them to have to file suits to get the damage deposits back.

So, I think that the rule proposed on damage deposits is very reasonable. It's a good start. It's a lot less than many other states have. I just, I just don't buy the arguments about all of this burdensome bookkeeping by putting a couple of hundred dollars into an account somewhere so that the money is set aside and will be there at the end. I just -- I think it's a very reasonable requirement and a good starting place.

So, I would offer my support for these rules and commend the Attorney General in general for proposing these legislative rules on unfair or deceptive acts and practices.

DARRELL McGRAW: Thank you very much.

MR. RODD: Thank you, Mr. Googel.

Andrew Maier has informed me that there is an individual, a Mr. Anderson, who would like to jump ahead of the pack because he's got some responsibilities, and that's perfectly okay.

Mr. Anderson.

Which Anderson are we going to hear from?

E. C. ANDERSON: I'm "Bud" Anderson; and this is Neal, the more vocal part of my family.

I am both a property owner, a landlord, and a property manager.

DARRELL McGRAW: It's really interesting to see who Neal is kin to.

E. C. ANDERSON: Well, from the cheeks up, he's definitely mine; and from there below, I believe he's my wife's, but --

I would like to say that I apologize for bringing him and being disruptive, and I apologize to anybody with a tight time schedule. I don't have a lot of points to cover that have not already been stated, and I don't want to be redundant. I did miss the first part, so forgive me if I restate something other landlords might have said.

The basic premise on the landlord-tenant relationship as we see it is that there are different options for people to have a place to live. They can have an extended family. Other countries do not find it strange to have many generations under one roof.

We recently enabled some Chinese immigrants here to be able to get mattresses put on their floor. We told them that they had too many people to rent from us, because we were following basic rules. They wanted to have boys and girls in the same room, and they wanted to have 17 people living in a 2-bedroom home. We were unable to follow current regulations and rent to them, but we did go out of our way to assist them in finding clothing, bedding, and other places for them to live.

I'd also like to say that, speaking for myself, my parents, and a few associates of Anderson

Properties, that we do a lot of things to help tenants out. And to the person that spoke just before me, I would love to have a chance to share actual experiences that came from tenants that burdened us as property owners and landlords.

I think that if you look purely to the rights of tenants -- and I know that this varies from landlord to landlord -- but I'm here to say that as a responsible landlord, as a compassionate human being, I feel not only downtrodden by the system but absolutely taken advantage of, humiliated, undermined, and back-stabbed by the way the system supports the consumer aspects without being able to have the tenants held accountable to the landlords.

In a contractual relationship -- as I understood it in college there were five basic tenets. You had to have -- the points of the contract would include a legal contract, an offer, and acceptance, a timeliness, and also compensation.

You do not rent somebody else's property from them without compensating them for it. You do not tear up somebody else's property without expecting to have to pay for that.

Yes, when I rent property, it will be in good shape. There's a lady been trying to move into the unit that I have in Cross Lanes for the last two weeks, and I won't let her move in because I know that I have a leak in the wall -- it's a simple matter -- and it also does not have all of the burners on the stove working, and the dishwasher does not work.

To me, that's a luxury apartment that I am refusing to rent because I want everything to be right when the lady moves in. She is begging me. She is trying to make me feel like I am withholding a place for her to live. She is living with her parents right now. It's just a choice that she has made, that she does not want to be responsible, be cooperative, and share space with her parents and her family; that she is now trying to hurry us up to get these things fixed. And when parts are not available, it is impossible to have something fixed within a day or two.

There were a few specific points that I want to mention that we have done both as members of the Kanawha Valley Landlords Association that a few of us got together and founded a while back, also other members of the West Virginia Landlords Association that I'm a member of, have gone as far as trying to help people out to find them other places to live, to work through the FMHA office -- that's the Farmers Home Administration office -- so that they could find literally better housing than I'm able to rent them at the subsidization of government monies for a rent that is actually 150, sometimes $125 a month. They're getting a bigger house, a yard. And I'm able to do that kind of thing because I enjoy helping people, and I am a compassionate person.

We also work with Mountaineer Habitat For Humanity. And as a member of a number of civic clubs that I belong to, we also help the homeless shelters, both the emergency men's shelter, the Sojourners, and the Samaritan Inn. We cook at the Samaritan Inn at least once a month, provide a lot of help there.

I'm not saying people need to live in homeless shelters if they can't afford to have a place to live, but where in American society has it ever been said that you get something without paying for it? It is no different to move into my place, tear it up, and not pay for it, and move -- or to move into it, and occupy its accommodations and not pay for it and move, there's absolutely no difference in that and walking into Kmart and shoplifting at will, or going into Kroger's and eating off the stand and ruining it for everyone else and then walking away and expecting not to pay for it. Thieves are thieves.

And the biggest thing that I stress to my tenants is that we want to work with them, but that necessitates a two-way communications.

I have asked, "If you cannot pay the rent, you must at least contact us." And I will tell you inevitably it is the people who move out and owe two or three months' rent, tear the doors off the hinges, scratch and tear up walls, loosen the tiles, and knock over the handrail when they are moving their U-Haul truck in, those are the type of people that do not notify us when they're unable to pay the rent. They think the best way to treat us is to ignore us.

I vehemently oppose people that have such poor communication skills that they do not avail themselves of opportunities where I might assist them through the Department of Human Services, FEMA, local community groups that will help to subsidize, such as Heart And Hand.

Tenant obligations are to pay and also let us know when they are ending their occupancy. I have a unit sitting right now where the mother moved off to Maryland. She left an 18-year-old boy and a 16-year-old daughter; and I have no control over that unit.

The boy broke into the unit next-door, thieved, stole over $900 worth of property, and it is still in the hands of the court right now. That unit is totally in limbo. We have sent mailings to both the mother that signed on the lease and the 18-year-old boy that signed on the lease. We have no idea what to do with their property. It's costing me $290 a month plus utilities. I have absolutely no idea when the end of their occupancy will occur.

And if you're not going to expect fair-paying tenants to bear the burden for our overhead and costs -- because we like to help people, but we are not in the human services business, we are not in the charity business. We are in the business of trying to get a fair return on our investment dollar. And believe me, any store uptown does not operate on the profit margin that I subject myself to. And nobody would put up with the kind of bad communications our tenants share with us.

And just -- if I may, to, to state a couple things, Paul Harvey is one of my favorite people. I'll end with him but not before trying to make a point.

In political science, if you read a lot of Plato, you know that Plato wrote The Republic. He had a lot of good ideas. When he wrote the law, it was his idea to try to adjudicate common sense. It was his idea to try to legislate fair practices. And it was as big a flop as it might be to try to overlegislate things that could best be handled if the tenants were required to reciprocate, to communicate, and to be fair to us. We would be much more in a frame of mind to cooperate with them and be more lenient.

My experience is if you do not share with the landlords the ability to collect (sic) more than a flat one-month security deposit, then we will be forever at a disadvantage. If a landlord only owns property in a bad part of town and you expect one month's security deposit when it's well-known that the guy is moving in, and he gives you one month, that's all you see for three or four months -- they know the tricks, they go to the magistrate court, they postpone it, they're still living there. They get a -- they fight the eviction that I give them. That's another 30 days. There are up to 70 to 90 days it will take to get rid of an absolute crook.

If the system is cleaned up so that people can be accountable for the merchandise, and that is the property that they are occupying from me, I would be very happy to deal with them.

Insurance companies are given the ability to set their rates and fees based upon their specific experiences; and I would say to you that one month might be fine in a place where people are paying good rent, the place is in a nice part of town. One month might be just wonderful. But when you are dealing with the lower-income properties, you are dealing with a lot more headaches; and the only way to protect the landlord and protect the other tenants would be to have some flexibility in the amount of security deposits.

They have choices. They can live at home; they can share a dwelling; they can get a roommate; they can go through Mountaineer Habitat; they can go through FMHA (sic); they can deal with people that are willing to help them, but they cannot move in and take advantage of the landlords or the landlords will just simply move their investment dollars elsewhere, and there will be no option left to government but to provide more expensive and more socioeconomically-deprived projects and housing units that compound the problem by concentrating crime and that kind of status.

And as I said, I'd like to end with Paul Harvey, and a famous quote that he always uses is: "Self-government without self-discipline will not work." And I don't want to be like Plato and overlegislate, but I do not see anything spoken to in this that would, quote, assist the responsible businesses, because we consider ourselves a very responsible and humanitarian type business -- but I see on your Appendix B, No. 4B, it says "Will promote consumer confidence and assist responsible businesses." I see nothing in this legislation that would assist me as a responsible business person if you do not give some flexibility and to hold people accountable and make sure that they are accountable to their own leases that they sign, that they communicate with us, and that they actually display self-discipline so that they might have self-government and a lot less legislation. Thank you.

DARRELL McGRAW: Thank you.

MR. RODD: Thank you, Mr. Anderson.

The next person signed up, returning to our original schedule, is Leff Moore.

LEFF MOORE: Judge, Director Rodd, thank you for the opportunity to speak today. I'll try to be brief.

I'd like to have the opportunity to address both Series 23 and Series 24 rules; and then at the conclusion of my remarks I'd like to sort of give an overview, if I could, as to how the organization that I represent, which is the West Virginia Manufactured Housing Association, generally views this rule-making exercise generally and the good work of the Attorney General's office, Consumer Protection Division in particular.

In relation to Series 23, some of the information that we would like for the Attorney

General's office to consider is the problem of the drafting of the rule itself. From a technical standpoint, it appears that the rule drafter recognized that there is a new statute, 1993 statute, Chapter 37, Article 15, wherein the legislature clearly indicates that its purpose --- that it is trying to determine the differences between various types of factory-built homes, and it gives on -- in its legislative purpose and applicability section under 37-15-1, it clearly states the reason for these definitions.

We accept those definitions in drafting the rule in part, but we abandon them in part; and we are unclear as to why the drafter of the regulations accepted some of those legislative statutes and abandoned others.

We find that that process was carried throughout the drafting of the rules, and there's an inconsistency in definitions and terms. And as such, we find that, notwithstanding other parts of the rule and its intent, we find it to be virtually unadministerable and subject to a lot of litigation just on the definition section, because it is in so much conflict with numerous state statutes, but particularly 37-15.

MR. RODD: Excuse me. I'm having a little trouble hearing, Mr. Anderson.

E. C. ANDERSON: We're leaving right now.

MR. RODD: Okay.

I'm sorry.

LEFF MOORE: In addition, we would point out specifically that 2.5 in Series 23 defines a, quote, "mobile home park"; and the rules themselves are entitled "Practices in Mobile Home Parks."

While the statute clearly at 32-15-2(c) defines "factory-built home rental community" clearly in the statute, we're unclear as to why we are using slang language in the rule and in some type of cases we adopt those definitions. I -- we feel that the definition section is extremely important. The title of the rule is extremely important as it relates to other state codes, and for consistency.

That ambiguity be clear -- is also clear in 2.1 and 2 wherein mobile homes and mobile homes rather than factory-built homes are generally addressed. And when you compare those definitions and apply the legal definition to the, to the proposed rule, it would indicate that we have a problem there.

We're, we're confused and perplexed about why we even included 142-23-3, the "Tie-in Sales; Separate or Discrimination (sic) Charges." I heard speakers earlier today complain that they felt that that was unfair; that people should be able to use their property in whatever way they felt appropriate. However, we recognize as an industry that the, that the antitrust provisions of West Virginia and federal law clearly prohibit tie-in sales.

The reason we raise the question is the Attorney General's office's Antitrust Division has brought in the past several successful, I might add, actions against rental community owners who engaged in tie-in -- in tie-in sales and engaged in antitrust activity, and there were several consent decrees that were signed by those -- by our industry firms.

And so, we're unsure as to why we're even including that language in the rule. We think the energy might be better expended actually enforcing the law that is already there, because we do have -- we clearly do have laws that protect people from tie-in sales and separate and disciminatory charges based on previous actions of the Attorney General's division.

In the term, the "Rental Agreement Requirements," we find that, that a, that again the rule appears to be redundant in view of the statute of 37-15-1. Those statutory requirements were there. The only thing that this rule appears to do is allow the Attorney General's division to bring a civil suit on behalf of an aggrieved party who finds that the, the regulated entity under thirty- -- under Chapter 37, Article 15 fails to perform. And from that standpoint we find no -- nothing wrong with that as long as the language in that rental agreement requirement section is compatible with our existing statute.

Where we feel that the rule is defective is it fails to take into account and fails to acknowledge a whole body of law that's designed to protect the consumer that's not even, not even addressed here.

The West Virginia Fair Housing Act, which is the companion statute to the United States Fair Housing Act, it's a body of law that is, is readily available to the consumers of all kinds of rental property nationally, and particularly in West Virginia; and that statute is very clear; and rental agreements and what shall be contained in them and what cannot be contained in them as well as all kinds of rental practices are very much a part of the existing body of law.

It's obvious to us in our industry that there is a general ignorance on the part of not only the landlords but also the tenants in this state about that body of law; and as a result, a lot of violations of that law occur; and even the court system, particularly at the magistrate level, is unaware of that body of law and issues rulings without referring to that law or to the -- and thus depriving the consumer, those that the law was designed to protect, with -- from the benefits of the law.

We find that to be consistent throughout a lot of the activities of government generally is that those people charged with enforcing the law in many cases are not well-versed in the letter and the provisions of the law, so the result there being that we try to pass another new law so that it's within our comfort zone rather than to enforce the laws that we already have on the books.

I would point out that, that in the manufactured housing regulations generally -- I'll submit more detailed comments about the particular technical sections that we feel are defective, and -- but many of that (sic) has to do with the overall approach to terminology.

An old lobbyist at the legislature many years ago told me that -- he said, "Just let me write the definitions, and you can write all the rest of the bill." And in writing the definitions in this proposed rule, I think we've created a situation where we're going to have a lot of conflict in its effective administration between contract law, contract terminology, and the existing state law.

In addition, I'd like to just briefly talk about rule Series 24 regarding repossessions. I'm not going to repeat a lot of the information that the Attorney General's office has received this morning, but there are certain sections that are particularly troublesome to the manufactured housing industry because of the uniqueness of the product.

For instance, it would be a deceptive act or trade practice to enter a consumer's residential premise to seize property. We understand the concept there, and we understand what we are trying to achieve, but remember that we were actually repossessing his residential property from his residential property. His real estate very well may be his residential property; and we may be also entering into his factory-built manufactured home which is held as personal property, that's secured as personal property, to remove it from his residential property.

So, just the -- that -- we think that's a fixable thing, but we think that it could be the source of a lot of litigation by those people who feel -- felt aggrieved by trespass or "entering into" or wherever.

There is also -- there's some time limitations on the sale of distressed merchandise or on repossessions that we find to be owners, particularly in view of the trade practices within the industry.

If we were forced to meet the time frames that were outlined in the, in the rule, what would happen is that many consumers would be subjected to greater deficiency balances than are necessary. There are many times when it's to the advantage of both the consumer and the holder of the security to defer a sale for a seasonal period of time in order to capture the best dollars for the season. In addition, because of the transportation difficulties of adverse and inclement weathers and mud and those kinds of things, many times collateral has to sit in place for some time in order for it to be physically moved, and it is not as simple as repossessing an automobile and towing it to another location, because of the complexity there.

We would urge that -- and we will address those in more detail in our written comments, but we would urge that the Attorney General's office revisit those rules with those kind of comments in mind with the idea of trying to refine the language somewhat to consider that there is a lot of unique situations that could very well prove troublesome under the draft language.

Finally, I would like to, if I could, just briefly address our history of consumerism within our industry generally and how it has related to the Consumer Protection Division most particularly.

In 1975 when the act passed, went into effect, we recognized that the holder in due course doctrine was eliminated in West Virginia, and a lot of the, the, the, a lot of the requirements of the business community were changed by the nature of that statute. And we also recognize that, unlike some of the previous speakers, that business people are held under -- to a higher standard in the marketplace than consumers are. And we recognize that there is -- they should be held to a higher standard, and we subscribe to that. And it's a right and a privilege under licenses and other laws that business people serve the public, and it is a privilege to do that, and we understand that consumers' rights and businesses' rights are not necessarily to be held even in all cases before the law.

But we, we also recognize that business has a responsibility to its consumers; and as such, we formed what we call our Consumer Service Bureau through the West Virginia Manufactured Housing Association. And what we did is we worked very closely with the Attorney General's Consumer Protection Division, and so the Consumer Protection Division actually would review consumer complaints emanating from our industry. They would then review the complaints to see if a statute was violated, particularly Chapter 46A; and if no violation on the surface was deemed and they couldn't mediate the complaint, they would refer it to our Consumer Protection Division for industry mediation and assistance.

What we learned over -- and that system worked for -- very well. What we learned over the years, that most of the complaints coming before the Attorney General's Consumer Protection Division were not violations of 46A, but they were contractual disputes, or warranty disputes, or violations of the Magnus-Moss (phonetic) Warranty Act, or violations of Chapter 29 -- or Chapter 21-9 or Chapter 21-11 of the Code of West Virginia in regards to manufactured housing, or violations of the fair housing law, or many other violations of existing statutes.

We, we have stacks and stacks of files in our offices of complaints that -- where the complainant had first filed a complaint with the Attorney

General's Consumer Protection Division, and the Attorney General's Consumer Protection Division made a good-faith attempt to mediate. In addition, they also made a review and determined that there was not a violation or not an apparent violation of Chapter 46A.

We then got the complaint. Upon investigating those complaints, in many cases we found numerous protracted, over and over, lots of code sections that were violated. There were -- there -- we -- the Attorney General's case workers did not understand that they were looking at a violation of numerous laws. But they applied their law, 46A, to that particular complaint but did not look at other Code sections that are in existence that protect that consumer.

We have a defect in our system. And I'm not sure I know how to fix that defect; but when a consumer comes to the Attorney General's office, they assume that, that, that they're going to get legal advice on how to proceed with their consumer complaint.

In many cases what they get is a review of the consumer complaint, a good faith attempt at mediation, but they are left unawares of many of the laws that exist in the Code of West Virginia and the United States Code that protect them. And so, what we -- I think what happens is is that that leaves the consumer unserved to a degree, although it's not a willingness on the part of the Attorney General's office to do that. I understand their restraint -- constraints by staff and budget and their legislative mandate under Chapter 46A.

But at the same time many, many landlord-tenant relationships, many magistrate situations, many violations of other licensing laws or regulatory laws that are designed to protect consumers are never passed on to those consumers by the Attorney General's consumer complaint division, simply because the case worker does not have the comprehensive knowledge of all of those various consumer protection laws that exist, including fair housing and licensing laws and regulatory laws and other rules and regulations that exist, including sanitary, health laws, trespass laws, and those other things.

So, in reviewing that consumer complaint, a knowledgeable consumer advocate, like APPALRED and others, use a whole body of law to assist the consumer and not just Chapter 46A. I believe that what we are doing is we are trying to expand our realm of influence under Chapter 46A so we can act as a government agency on behalf of more aggrieved people.

But now, even that, it requires a civil action and a protracted process under West Virginia law under these sections for any meaningful work to happen on behalf of the consumers.

I would submit, gentlemen, that we would be better served to find ways to inform the public, assist the public in accessing that body of knowledge about the laws that already exist that protect them. I find that many of our business people are not -- are -- in many cases are violating the laws themselves simply because they don't know they exist.

So, we have a real educational problem on behalf of the public, on behalf of the business community, and I would submit on behalf of the Attorney General's Consumer Protection Division case workers who in many cases are unawares of the various laws that they overlook in assisting consumers.

I'm, I'm sort of like the guy alongside the road who can point out how the car broke down, but I'm not sure that I have a solution on how to fix it. But I believe that if we recognize that this body of law exists, that -- I'm sure that as these rules make their way through the legislative process, there will be advocates from all corners pointing out how there are existing statutes that cover many of the things that are covered in these rules and why -- and how we have as a society collectively failed to inform our consumers about these particular laws that there are there to benefit them. If we can address that issue at the same time we're working on these rules, I think the public would be well served. Thank you.

DARRELL McGRAW: Mr. Moore, I want to say something before you quit. I want to say that, of course, wisdom, you know, the concept of wisdom, is most often recognized because the purveyor of the wisdom is cultivating the prejudice of the one who is listening attentively to what he has to say, all right?

And so, I want to thank you for what I perceive to be in your latter remarks this morning a very wise commentary with respect to how government operates generally. And inasmuch as we are able to apply your observations to the improvement of our little corner of the government, I want to, I want to, to perhaps apply your wisdom to our circumstances with a view to improving our services to the general community that we serve, consumers particularly and vendors also.

And so, so, so, I want to thank you particularly for your, your remarks this morning and imparting your wisdom to us on these issues that you have addressed.

LEFF MOORE: Thank you very much.

MR. RODD: Thank you, Mr. Moore.

I'm going to take about a two-minute break to consult about the process here, and then we'll resume the hearing; but literally that will be just a couple of minutes.

(Short recess.)

MR. RODD: Our court reporter has kindly acknowledged that he is able to continue, so in about two minutes we'll resume with the next speaker; and I mean that precisely, that being, in the order that I have it here, Lester Caudill.

I'm going to -- during this two-minute period of time, I'm going to also give you the names of the remaining people whose names I have here: David McMahon, Nelson Robinson, Susan Sobkoviah, and then previously I had called the name of Bonnie Harold, and I was told that the name of Terry Snyder should be deleted, and also a Neal Walters.

Are any of those people around?

Okay, we'll begin in just, as I say, about a minute with Mr. Lester Caudill. Thank you.

Thereupon, at 12:17 p.m. a recess was had until 12:19 p.m., at which time the following proceedings were had, all parties being present as heretofore noted:

MR. RODD: We're ready to resume, and the next person listed is Lester Caudill.

Thanks for your patience, Mr. Caudill.

LESTER CAUDILL: Well, I'm actually here and going to speak on behalf of myself and Terry Snyder representing the role of United National Bank. And, of course, we're members of the West Virginia Bankers Association. We're here basically just to support Tom Winner's letter that he's already submitted and addressed to you-all.

I did want to make some simple comments that we support the Consumer Protection Agency, the issues that they have to address. In general, on Series 24 as Tom Winner has already pointed out. I don't want to be redundant, but the issues that he -- that Tom has addressed, that the Series 24 is prevented in certain areas, and perhaps not necessary in certain areas; and then as other people have also pointed out, other creditors, that some of the language as written that the issues are too vague and in certain circumstances too restrictive.

And that's basically all we have. I think there were some questions asked about some general repossession procedures earlier, and I was going to encourage anyone from the Consumer Protection Agency or the Attorney General's office simply to call. I'm sure the other banks will -- certainly mine will -- we would be happy to discuss and, as I indicated, as to our procedures and any recommendations or any conflicts or issues that we -- we all need -- you know, we need the agency as, you know, not only as an agency to keep us in line, but as individuals I'm sure we all have got friends and relatives that we need protected, and we respect and appreciate the efforts of the agency and the Attorney General's office. Thank you.

MR. RODD: Thank you, Mr. Caudill.

The next speaker listed is David McMahon.

DAVID McMAHON: I had some thank-you's for the General. I'll save those until later.

I have some general remarks and some specific remarks. Do you have any particular idea whether it would be better to wait for the General to hear the specifics in general or shall I just -- or does it make a difference?

MR. RODD: Well, give us your -- start with your specifics, I would say.

DAVID McMAHON: Okay.

There have been several comments by creditors and other businesses about the difficulty of using the word, "reasonable." The benefit of using the word, "reasonable," is it means flexibility. We cannot under these rules predict all future market conditions, all future needs, all current circumstances and damages. I think that if we --

the, the complaint about overregulation -- unfortunately we complain about reasonableness. If you become too specific, then it will be overregulated and inflexible.

Reasonableness leaves it in the hands of industry to decide and businesses to decide. They who know, as Mr. Moore went on, better than the consumers how things work, what the standard should be. They in the first instance are the ones who know what it is.

With regard to the subject of landlord-tenant and deposit accounts bearing interest at some possible time frame, there is -- if you are the fiduciary for the account and if it is to your benefit for the money to stay in the account, and if you get paid the interest, then that is possibly a conflict because of your fiduciary's interest. That's why lawyers are not allowed to receive interest on their trust accounts. However, it's unclear that because it applies to the lawyer's fiduciary, that it would apply here.

But I support the suggestion by the man from Robinson & McElwee, that we do for deposit accounts what was done for interest on lawyers' trust accounts. Have them put the money in a, in a, in an interest-bearing account. The interest will first go to the expenses of the account. And because it is so difficult to account for each tenant's interest if there is more than one tenant's money in the account, have that money go to a fund that would provide housing for homeless people.

With regard to the comment in the -- in a landlord-tenant on the fact that the rules require the deposit be returned, if possible, to have been done within 20 days, I think that's extraordinarily reasonable. I would think 14 days would be my first choice. That's two weeks for the landlord to walk in the place, look around, get a reasonable estimate of what's it's going to take, get someone in there to do an estimate of repairs, and walk out.

60 days is just not workable for your typical tenant. People have a hard enough time getting together a deposit to rent one apartment. If they then need to move from one apartment to another, where do they get the money for the second deposit if they've got to wait 60 days for the deposit from the first unit to become free? It's just not a feasible thing for the tenant to be able to do, to

wait 60 days to get a deposit back. It should be -- I say 14 sounds reasonable to me. Anything beyond 30 is just -- it just deprives tenants of the ability to rent their next rental unit.

With regard to the complaint about there having to be a roof -- an estimated repair of $50, one gentleman suggested $200, I would suggest that if you are on a minimum wage, working 30 hours a week, which lots of folks are, trying to raise a family, your monthly income is going to be about 550 bucks. If you have got a surprise auto repair for 200 bucks on a car that might not be worth more than 3 or $400, that's a significant fact. I think the $50 amount is very reasonable on that account.

I have written down -- I think it was on deposits. To get to the lady who said she required a $20 deposit, I have never in my 20 years of Legal Aid history heard of a deposit that low. There are -- I'm not sure that I've ever heard of one under a hundred dollars either. It's kind of a practice in the industry to have one month's rent, which is, which is not unreasonable, which is what, what is allowed by the rule, and I think it's unreasonable to -- just by the comments of Mr. Anderson.

With regard to the comments of Ford Motor Credit company and with respect to Chrysler Credit company, they talked about the place that they have found where they can get the highest dollar when they resell a repossessed vehicle is a wholesale, that is dealers-only auction and not the public. And they say that they've tried all of these different things, and that's what they found works. They say they've tried an independent lot to sell repossessed goods; they say they have tried to advertise in the paper; they have tried -- they have tried public sales on the courthouse steps; they have tried the dealers-only auction.

The problem with the dealers-only auction is it assures that never ever will they get an amount for the repossessed goods above wholesale, because consumers are not allowed into those auctions. So, it guarantees that they will, that they will not get more than wholesale. If the car was worth more than wholesale, the dealers are friendly, that he'd bid on some other car at its wholesale value, and then you could mark it up to retail. So, it's inherently unfair.

They say it's the one they have tried that is the best, but they haven't really tried them all. The best one is to put it back on their dealer's used-car lot. But they don't do that, and the reason is because the dealers make a higher profit, a higher net profit when they sell their own inventory, used inventory -- even as used inventory, they make a higher net profit on that than reselling the repossessed car. But they don't wish to compete with themselves in the way that they really would get a true fair market value.

Of course, you go to a used car lot. If -- you can call the previous owner.

You can call the previous owner of a repossessed car. There's no reason why not. But they don't use that kind of practice as they would if their own used car lot sold a car, because they don't want to compete with themselves. So, references to the -- the retail value of the books is the most accurate one.

Another comment I want to make generally is that several of the commentators said that any little additional expense that these rules may cause are automatically passed on to the consumer. I'm confused. I thought these gentlemen were all private enterprise people who live in a marketing fund where price is determined by supply and demand in addition to cost. And it depends on the flexibility and demand for the product whether in fact the industry will absorb from its profits some of the other expenses. It's simply not an accurate statment that all costs would be passed on to the consumer.

There were also several comments that said that what the, what the Attorney General has proposed goes beyond the Uniform Commercial Code. Well, that's really not the question. If -- everything, almost everything in Article 46A -- Chapter 46A goes beyond what's in the Uniform Commercial Code. Chapter 46A provides additional consumer protections. Included in that is the unfair and deceptive practices law which can offer protections to consumers. It goes beyond the Uniform Commercial Code, Holder v. Course deemed as an example. So, that it's not inappropriate for the Attorney General to do this. The difficulty would be assuring that there is particular statutory authority for what you are doing when you go beyond the Uniform Commercial

Code.

MR. RODD: Do you want to explain what you mean by the example of the Holder v. Course as going beyond the UCC?

DAVID McMAHON: The Uniform Commercial Code -- I don't know the exact provisions -- devised the -- let me think for a second.

It says there -- I think "privy" would be appropriate -- privy between the buyer -- where he brings a warranty claim and the assignee of the negotiable paper -- therefore, the old -- for example, the old roofing scams where someone would go to an old person's house, convince them they needed a new roof, go up and paint the roof black, charge them for a new roof, sell the paper to a bank or a collection agency which would then collect the cost of the new roof.

Under the Holder v. Course that stood up in UCC, the seller would have to pay the bank. It could only go against the guys that painted his roof black to get his money back. Of course, they guy that painted the roof black is in Ohio. However, 46-2-101, 102, and 103 abolishes Holder v. Course.

It's -- it goes beyond the Uniform Commercial Code, perhaps not exactly conflicting with it.

The cutoff in landlord and tenant cases, the cutoff of utilities, the gentleman made an excellent remark. He said that when the tenant is lawfully, lawfully in the premises, the landlord should not be able to turn off his utilities. When the tenant is unlawfully on the premises, then everyone should; and I agree with him. The question is who decides unlawfully? And I believe if you listen to his remarks, he was saying once the guy has stopped paying rent before any court has declared his tenancy to be unlawful, that's when he ought to be able to cut off the utilities.

The problem with that is, is that despite the apparent reputability of the people who testified here, there are lots of disreputable landlords. I find it frankly incredible that the fellow representing the Morgantown landlords association comes down, and anybody that's gone to school in Morgantown or had children gone to school in Morgantown knows that landlords take tremendous advantages of suits in those situations. I think there are other people who are not at a good bargaining position, either economically or otherwise, to, to get back deposits and to otherwise protect themselves from unsrupulous practices of landlords.

I'd also like to correct the gentleman from Robinson & McElwee when he talked about the fact that the secured party came by at a private sale when there are recognized markets for -- that state the price of goods.

The case law in that situation talks about things like wheat futures, especially the commercial practice thing of grain futures, security markets, you know, when stocks are put up as security. And unfortunately a -- the -- its values would -- NADA blue books. Those are not considered to be recognized markets.

MR. RODD: I believe there is case law to that effect.

MR. McMAHON: Yes.

They talked to us somewhat about not needing more guidance on commercially-reasonable sales. Currently the concept of commercially-reasonable sales is too flexible. I have an article that's about to be published in the <u>Financial Quarterly</u>

which I will submit tomorrow that's pertinent testimony that states nine reasons why it's not true that the secured party has a financial interest in getting the most out of the resale of secured goods. In fact, what they are most interested in is their own deeds and their own overall financial interest.

Why should you step on your feet and not work a little harder to get a little extra value for these goods you repossessed when you can send that same guy out to a sales promotion that will bring lots and lots of business to your, into your company?

So, there are in fact huge difficulties with commercially-reasonable sales currently in the Uniform Commercial Code which makes the Attorney General's attempts to limit and clarify an excellent idea. An example: There is a West Virginia case that says that a car was advertised for sale in the legal ads in a local paper as part of the notice to the public that the goods were for sale so the public could bid on it. And the West Virginia Supreme Court, surprisingly but consistent with other courts, remanded that to the circuit court to find out if that was a commercially-reasonable way to advertise a car for sale.

Well, I think anybody in this room -- there's not many of us left --- knows that if you ever shopped to buy a used car, you start in the want ads or you start in the Ad Bulletin or you start in the car advertisements. Whoever goes to the legal aid section to buy a car? And yet our West Virginia Supreme Court has said that that may in fact be a commercially-reasonable way to sell a car, and that makes no sense.

Part of the NADA book valuation as in strict foreclosure, the real fraud that takes there is strict foreclosure, that is where I go to the consumer -- I go to the -- the secured party goes to the debtor and says, "I'll tell you, I'm not going to go to this commercially-reasonable sale, so let me keep the goods, and you don't owe me anything."

The current law: that can only be done for full satisfaction. That is, I can only keep the goods that way from a commercially-reasonable sale if I grant full value. Oh, I have to tell you that the national conference of (unintelligible) uniform state laws has taken a change in that to be purchase satisfaction. But that -- what that -- it's only supposed to apply if the secured party doesn't keep the goods for their own use. And we all know that people who finance used cars or repossess new cars which are then used cars never keep it for their own use. So, the use of strict foreclosure at all is probably inappropriate.

Mr. Moore, from the manufactured housing association, made some excellent points, some of -- some I agree with. I am not sure either that the 60-day requirement for sale will in the end work to the consumer's benefits, because particularly in the area of mobile homes I think you do better selling them in the summer than February, and it's better to wait and get a better price. On the other hand, there are times when -- with cars, you know, it doesn't make such a difference; that people do keep cars until they deteriorate in value, and they don't make enough effort. Perhaps a reasonableness time frame should be put in there which gives the burden on the industry to figure out what it is if they know this.

With regard to his statement that there are perhaps other areas of West Virginia law that cover some of the areas that we have covered, and a number of people said that, that it is true that there are other areas of law that cover some of the ones we covered, but the particular benefit of making it an unlawful practice under the West Virginia Consumer Credit and Protection Act is that it will give the consumer a remedy for things like your -- the credit -- UCC -- FTC Credit Practices Act that West Virginia incorporated. There currently is no private remedy for the Attorney General to do that and enforce that. Only the FTC can enforce its. And I don't know about antitrust. And so this would give the consumer a remedy to enforce, which would be very beneficial.

Let's go back to the general remarks. Of course, we thank the Attorney General for doing this. These rules and regs, they have law. These are -- they also are an enormous undertaking, and I admire the work of Mr. Rodd and his people under him trying to do this. Because it is such an enormous task, of course there will be, there will be things that cannot be thought about by all of the heads sitting around the first time. So, these comments are important, and I thank the Attorney General and his staff for allowing me to comment and exceeding my five minutes.

There are certain areas that are very important, landlord-tenant being one. We see repeated problems with landlords entering tenants' places as if they were the landlord's residence instead of the tenants' residence. That's an important factor.

It is also important to recognize that landlord-tenants transactions now are essentially consumer transactions, and the law originally arose out of the law of England dealing with lords and peasants. And so this kind of update is needed. All of the provisions that you are inquiring in other states -- and there are still lots of landlord-tenant transactions going on in there.

It's particularly important to segregate that deposit account. A lot of the problems we have are the, are the tenant -- the landlords who are not particularly doing well who mix -- commingle their deposits, their deposit funds with their, with their general cash flow. When cash flow is down, we find -- when their cash flow is down, particularly are the deposits, and that's why it's particularly important to segregate those accounts.

Within repossession -- again, I'm talking about commercially-reasonable sale -- the sale at a public auction is the worst abuse of used cars that I see, and then it's resold later. I have a particular case that I am now working on where the bank sold the car to itself at a public auction for $200; my clients and everbody -- the car went there for $800. Well, even the value -- it will only earn credit against the resale for $200. And in fact when the car was repossessed, they told her that the car was going to be sold to that dealer. So, it was all a setup.

I've already mentioned that the credit practice rule is not enforceable unless you pass these rules.

I'd also like to particularly thank you for your proprietary schools. Since the legislature in the last session eviscerated the statutory protections for students going into proprietary schools, such as Northeastern Business College, they closed down Century College, they closed down the -- I think it was great that the Attorney General used his statutory authority to do this.

My closing remark is that whenever you do legislation, the rules -- the important thing: You never want to hurt the good guys, but it's important to get the bad guys. The difficulty is how do you regulate the bad guys in a way that hurts the good guys the least? But the polar star -- we must always keep the light lit -- is that we do have bad guys out there operating. The good guys should not have to compete with them. We need to be sure to get the bad guys while treating the good guys as gently as we can, and still not forget that the ultimate goal is to regulate those bad ones in our business community and protect our interests.

And I will also submit a mark-up, if you would, of the rules and regs and some small things that I have found as I have read through them.

MR. RODD: Thank you very much.

As I look around the room, I see that there is nobody here, all who has not spoken, so I will spread my thanks upon the record to all of those people who have spoken and to our court reporter for bearing with us during this long morning.

And with that I'll declare the public hearing closed; but I'll state for the record that we will receive comments at the Attorney General's Consumer Protection Division, 812 Quarrier Street, Sixth

Floor floor, until 5:00 o'clock the close of business tomorrow.

Any comments, questions?

Thank you. This hearing is concluded.

AND at 1:42 p.m. these were all the proceedings had and reported upon this matter.

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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-wit:

I, Dwayne Price, a notary public within and for the county and state aforesaid, duly commissioned and qualified, do hereby certify that the foregoing public hearing was duly taken by me and before me at the time and place specified in the caption hereof.

I do further certify that the said hearing was reported by me in stenotype notes, that the same were accurately written out in full and reduced to typewriting, and that said transcript is a true record of the proceedings.

I do further certify that I am neither attorney or counsel for, not related to or employed by, any of the parties to this action, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

My commission expires December 13, 1998.

Given under my hand this 13th day of August, 1994.

Dwayne Price

LIST OF PERSONS WHO ATTENDED PUBLIC HEARING ON PROPOSED LEGISLATIVE RULES TITLE 142 SERIES 23-30

1. Richard Gallagher
2. Bill Minsker
3. Jack Albert
4. Bill Gossett
5. James Rice
6. Alvin McCorkle
7. A.D. McCorkle, IV
8. Pat Hose
9. Melody Douglas
10. Gary C. Porter, Jr.
11. Neal Walters
12. Zol Maggied
13. Kathryn Maddox
14. Roy Stricklen
15. Bryan Kett
16. Joe Doughton
17. Alonzo Johnson
18. Tom Winner
19. Debbie Sink
20. Bonnie Harold
21. S. D. McClure
22. J. D. Stricklen
23. David Yoder
24. Brad Sorrells
25. Norman Geogel
26. Leff Moore
27. Lester Claudill
28. David McMahon
29. Nelson Robinson
30. E.C. "Bud" Anderson

David B. McMahon
1033 Quarrier St. E.
Charleston, WV 25301
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Consumer Protection Office
Attorney General Office
812 Quarrier St. East
Charleston, WV 25301

Re: Rules

Dear Friends,

Enclosed please find three documents as my official written comments as requested. The first two are drafts of two of the series of rules that I have marked with interlineation as my comments. The third is an article I have written explaining why the concept of "commercially reasonable sales" does not work.

I regret my comments were not more thorough. I will endeavor to work for the best Rules possible as the process proceeds as long as I am authorized to do so under Legal Services Corporation requirements.

Sincerely,

David B. McMahon

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RICHARD W. GALLAGHER

August 11, 1994

VIA FACSIMILE (304) 558-0184 and U.S. MAIL

Thomas W. Rodd, Esquire
Deputy Attorney General - Consumer Division
Office of Attorney General
812 Quarrier Street
L & S Building
Charleston, West Virginia 25301-2617

Re: West Virginia Automobile and Truck Dealers Association's Comments regarding proposed legislative rules pertaining to the prevention of unfair or deceptive acts or practices

Dear Mr. Rodd:

As a follow-up to the public hearing held on August 10, 1994 at the Charleston Civic Center pertaining to Title 142, legislative rules pertaining to the prevention of unfair or deceptive acts or practices, the West Virginia Automobile and Truck Dealers Association ("Association") submits these additional written comments for your consideration. Unfortunately, because of the shortage of time at the public hearing, I was not permitted an opportunity to address in detail the various concerns the West Virginia Automobile and Truck Dealers Association has with significant portions of the proposed regulations, particularly Series 27 - Motor Vehicle Repairs, Series 28 - Motor Vehicle Sales, and to a lesser extent, Series 24 - Repossession Practices, Series 25 - Advertising and Sales, and Series 30 - Door-to-Door Sales.

GENERAL COMMENT

The purpose of this letter is to provide the thoughts of the West Virginia Automobile and Truck Dealers Association in regard to the analysis of the herein discussed proposed regulations. The primary concerns of the Association will be addressed in some detail, although additional concerns with the proposed regulations may be raised at a later time. As the regulations are addressed, certain objections will be repeated. One significant concern of the Association is that as these regulations are currently written, they use various terms and phrases which are subjective in nature and do not provide meaningful guidance to the members of the Association or consumers as to what is required or expected by these regulations. The end result of such subjective language will be increased litigation through which increased expense and inconsistent results will be experienced both by members of the Association and consumers generally. Accordingly, language which is subjective in nature should be replaced with objective rules, where needed, in order to provide concrete guidance to all concerned.

Another significant concern of the Association is that throughout the regulations, there is discussed a requirement that dealerships obtain the consent of the consumer in regard to various transactions principally related to repair regulations. Many times, it is impossible for a dealership to speak directly with a consumer regarding proceeding with repairs, although the consumer's spouse is readily available and instructs the dealership to proceed. Under the proposed regulations, the spouse of a consumer would not have the authority to instruct a dealership to proceed with repairs. This unquestionably would result in the dealership either ignoring the regulation and obeying the instruction of the consumer's spouse or being subjected to the rightful frustration of a consumer when he/she is advised that their spouse cannot provide instruction to the dealership regarding repair work. Accordingly, in each circumstance, the language regarding obtaining the consent of a consumer should be amended to permit "any adult member of the consumer's immediate household" to provide the necessary authorization or consent.

Finally, West Virginia Code, 46A-6-101 clearly states that Article 6 was designed to prevent unfair and deceptive acts, but it is specifically stated that it is not to be construed to prohibit acts or practices which are reasonable in relation to the development and the preservation of business and it is not to be construed to prohibit acts or practices which are not injurious to the public interest. Accordingly, various provisions as set forth in the proposed regulations are objectionable because the regulations in fact do prohibit acts or practices which are reasonable in relation to the development and preservation of business and such acts or practices are not injurious to the public interest.

SERIES 27 - MOTOR VEHICLE REPAIRS

§ 142-27-3 Repair Order

3.1 The dollar limit set forth in this provision should be raised from $50.00 to at least $200.00. Further, the language relating to a repair order should be permitted to be given to the consumer or "any adult member of the consumer's immediate household." Finally, the word "may" set forth in the third line down in this paragraph should be eliminated.

§ 142-27-4

4.1 The dollar limit set forth in this provision should be raised from $50.00 to at least $200.00. Further, the language relating to a repair order should be permitted to be given to the consumer or "any adult member of the consumer's immediate household." Finally, the word "may" as set forth in the fourth line down in this paragraph should be eliminated. There are no current regulations similar to those which are set forth in Section 4.1 and this new provision violates the spirit and letter of West Virginia Code, 46A-6-101.

4.2 Price Quotation

4.2.1 The statements set forth in this provision requiring certain language to be "on the repair order", if necessary, should be phased in over a two year period so that dealers could use their present forms and not be required to immediately purchase new forms at a substantial cost. During this phase-in period, the required language in notice form could be stapled to the back of a repair order. Further, reference to the statement being "conspicuously" printed should be eliminated because conspicuous is a vague word which is subject to various interpretations and would breed litigation. If a disclosure were required, it should be stated precisely what wording is required and what size the print must be.

4.3 Estimate

4.3.1 The word "conspicuously" is included in this subsection and should be revised for all of the reasons previously set forth herein. Further, number 3 of the required estimate alternative should be amended to read "I do not want an estimate - just fix my car." Further, the Association generally objects to the language in this subsection because it is in no way necessary under West Virginia Code, 46A-6-101.

4.4 Waivers

4.4.1 A written revocation waiver, wherein the consumer waives the right to a price quotation or estimate, may be accepted so long as the consumer owns or leases four or more vehicles. This waiver should not be limited to owners or lessees of four or more vehicles, but rather should be permitted to be accepted from any consumer.

4.4.2 This provision should be stricken in its entirety because it is duplicitous. Further, this provision should be stricken or revised because it requires the consumer "voluntarily and with knowledge" to sign a waiver. Such language is subjective in nature and will unquestionably result in litigation.

4.5 Charges

This provision should be amended to reflect that estimates for repair work cannot, at times, be made without doing substantial work, for example tearing down engines or transmissions to determine the precise nature of a problem. Accordingly, dealerships should be permitted to charge for preparing estimates of this sort, as compensation for these services is appropriate and would serve to offset the cost of certain equipment used by the dealerships in preparing such estimates. Further, in the last sentence of this provision, the word "threaten" should be eliminated because it is vague and subject to various interpretations and would breed litigation.

§ 142-27-5 Authorization to Proceed

5.1 This section should be eliminated because the language is ambiguous and incomprehensible. Further, any authorization required from the consumer should be permitted to be received from any adult member of the consumer's immediate household. Further, the language should reflect that oral authorization shall supersede a prior written authorization.

5.2 and **5.3** These sections should also be amended to reflect the changes necessary to remedy **Section 5.1.**

§ 142-27-6 Return of Parts

6.1 This provision should be amended to require that the consumer must ask for any removed parts before the parts must be produced. Further, because of environmental considerations in the handling and disposal of various parts, this section should be amended to require that the parts be produced for inspection only. Further, to the extent that approval must be obtained from the consumer, the language should be amended to permit approval from any adult member of the consumer's immediate household.

6.2 The changes outlined under **Section 6.1** should be included in this subparagraph. Nevertheless, any concerns addressed in subparagraph 6.2 are also addressed in subparagraph 6.1 and it would simplify matters if subparagraph 6.2 were eliminated.

§ 142-27-7 Invoice

8.1 There is a typographical error in this section which, if taken literally, would require misrepresentation. This obviously is an error which should be corrected.

8.1.5 This language should be amended because it currently is vague and subject to various interpretations, and would undoubtedly breed litigation. The language should also be amended because, in many cases, the significance of a problem cannot be determined without substantial diagnostic work being done on the vehicle, for instance tearing down an engine. In these cases, the section would be wholly unfair and unworkable because a determination could not be made as to the precise condition of the car or any threat of harm which could result therefrom.

8.2.1 The language in this subsection should be amended to permit the authorization to be received from any adult member of the consumer's immediate household.

8.2.2 The language set forth herein is vague and provides a standard which is inconsistent with the standard of conduct required of a dealership in other portions of these regulations. The standard of conduct should be consistent throughout these regulations. Accordingly, a standard requiring good faith on the part of the dealership in regard to taking various actions should be uniformly set forth in these regulations, similar to the standard currently set forth in regulation 5.5 of Series 28. Accordingly, this subsection should be amended to require a dealership to act in good faith regarding when repairs are necessary.

8.3 This provision should be eliminated so that a dealer has the freedom to reject doing work on vehicles under certain warranties.

8.4 This language should be amended to permit authorization to be provided by a consumer or any adult member of the consumer's immediate household.

§ 142-27-9 Disclosure of Rule

9.1 This language should be amended to remove the phrase "conspicuously" because it is vague and would breed litigation. The language should be amended to state that any specific disclosure should be made in a certain sized print. To the extent this would require an addition to any existing form used by a dealership, this requirement should be phased in over a two year period and, during this interim, the language should be amended to permit the disclosure to be attached to an existing form, for instance stapled to the back of another form. Further, this provision is unnecessary because the disclosure is common knowledge to the public.

§ 142-27-10 Records

10.1 This language should be amended to eliminate reference to "payroll records" and "invoices for parts purchased by the shop." This amendment was previously agreed upon with representatives of the Attorney General's office.

§ 142-27-11 Waiver

11.1 This subsection should be eliminated because it is vague and would breed litigation, and it is in violation of the spirit and letter of West Virginia Code, 46A-6-101.

SERIES 28 - MOTOR VEHICLE SALES

§ 142-28-2 Definitions

2.6 This language should be revised to eliminate the requirement that goods operate "in normal usage" and for a "reasonable" period of time. These words are subject to various interpretations and will unquestionably breed litigation.

2.8 The definition of a "used" vehicle should be eliminated or amended to be consistent with other definitions provided by statute such as in West Virginia Code §17A and West Virginia Code, 46A-6A-3a. This provision also fails to recognize that employees of a dealership may drive a vehicle as a demonstrator, which should not result in a car being deemed to be "used."

§ 142-28-3 General Duties of a Used Vehicle Dealer; Definitions

3.2.2 This provision should be eliminated because in many circumstances, a dealership has no way to determine what type of written warranty travels with a used vehicle which has been acquired by a dealership. For example, a Chrysler dealer has no way of knowing what type of warranty a Toyota vehicle carries with it when traded in by a consumer. Accordingly, this subsection should be eliminated.

§ 142-28-4 Used Vehicle Sales

4.2 This provision should be eliminated because the provision is not required by federal law. These regulations are to be patterned after and compliment federal law and, accordingly, this provision should be eliminated.

4.3 This provision should be amended to remove the word "conspicuously" because the word is subjective in nature and will breed litigation. Any disclosure should be required to be placed in a print of a certain size.

§ 142-28-5 General Duties in All Vehicle Sales

5.1 This language should be amended to eliminate the word "exclusively" regarding the use of a car by a manufacturer because a dealer has no way to confirm or positively determine if the vehicle has been used "exclusively" for a particular purpose. The standard which should be applied is a "good faith" standard such as is otherwise required by these regulations.

5.2 This language should be amended to include the fact that demonstrator vehicles may be driven by employees of a dealership.

5.2.2 This provision should be amended to eliminate the word "clearly" because it is subject to different interpretations, and will breed litigation.

5.2.2.3 This language should be amended because it requires a dealer to represent the background and prior usage of a vehicle when a dealer at times will have no way to confirm this. At most, a good faith basis should be the standard to be applied to any representations made by a dealership. Without a revision, this language will encourage litigation.

5.2.3 To the extent this provision is in any way related to the ability of a dealership to charge a documentary fee, this provision should be amended to permit such a fee because clear, statutory law in West Virginia provides that such a fee may be charged.

5.2.4 This language should be amended to eliminate reference to "clear" and "conspicuous" because these words are subject to different interpretations and will breed litigation. Further, these requirements are unnecessary because the provision requires that the consumer initial the relevant language, which would require the consumer to read the subject language.

5.2.5 This provision should be amended to require only that a dealer act in good faith in predicting any delivery date of a vehicle so as not to punish a dealer for circumstances over which it has no control, such as the delivery of a vehicle from a manufacturer.

5.2.6.2 This provision should be amended to eliminate the language "of his choice" in that this language renders the obligations of the parties under the purchase agreement meaningless.

5.2.6.5 This provision should be amended to eliminate the eight week time period because a dealer has no control over the time frame within which the manufacturer delivers a vehicle. In further consideration of this fact, the language "and the manufacturer" should be eliminated from this subsection.

5.3 The language in the separate components of this section is internally inconsistent. The standard applied to representations of a dealer should be whether the dealer acted "in good faith", such as is set forth in §5.5.

5.4 The standard governing the conduct of a dealership should be consistent and, accordingly, it should be based upon the exercise of "good faith" by a dealership.

5.5 The "good faith" test set forth in this provision is correct. To the extent this provision requires perfect knowledge about whether a vehicle has sustained any structural or substantial skin damage, the provision should be amended.

5.6 This language should be amended to eliminate reference to "normal" usage and "reasonable" time. These phrases are vague and subject to varying interpretations, and would breed litigation.

5.9 This provision should be eliminated. The language as it presently exists would breed litigation by encouraging the written documents, and the terms contained therein, to be ignored based on a subjective belief of a party.

5.10 This provision should be amended to eliminate the words "clearly" and "conspicuously" because these words are vague and subject to varying interpretations, and would breed litigation.

5.11 This provision should be eliminated because it is vague and inconsistent with other statutory law, such as West Virginia Code, 46A-3-109, which authorizes the assessment of a documentary fee.

5.14 The language of this provision should be changed to the extent that a dealer is held accountable when a manufacturer changes the price of a vehicle without regard to a dealer's wishes. This standard, which would not hold a dealer to be responsible where a failure results from reasons beyond a dealer's control, would be the same as that required by §6.3.6 of these proposed regulations. The language should also be amended to reflect that a dealer must act in good faith, as is set forth in other provisions herein.

5.15 The language in this paragraph should be amended to add the language "trade in credits" in the seventh line down after the word "taxes."

5.17 This provision should be eliminated because it is inconsistent with the spirit and letter of West Virginia Code, 46A-6-101.

§ 142-28-6 Advertising and Sales Presentation Requirements

All provisions of §142-28-6 should be located in Series 25 with the modifications and revisions stated herein.

6.1 Portions of this language are vague and not relevant to the sale of automobiles and, accordingly, should be eliminated.

6.3.2 This provision should be eliminated because it would prevent a representative of a dealer from answering any inquiry of a consumer which might involve a response which could be considered negative or "disparaging" towards advertised goods, services, warranty, credit terms, etc.

6.3.3 This provision should be eliminated because it is inconsistent with the spirit and letter of West Virginia Code, 46A-6-101.

6.3.5 This language is vague and should be amended because in its present form, it could subject a dealer to liability if a consumer changed his/her mind regarding a vehicle they desired to purchase in favor of a different vehicle.

6.3.7 This provision should be eliminated because it is vague, incomprehensible and inconsistent with the spirit and the letter of West Virginia Code, 46A-6-101.

6.5 This provision and its subsections should be eliminated because the terms set forth therein are covered by warranty law and, thus, it is unnecessary, redundant, confusing, and in contrast to existing law. Further, the standard used in these provisions regarding the conduct of a dealership should be a good faith standard for all the reasons previously set forth herein.

6.6 The language of this provision should be amended to reflect the test by which the conduct of a dealership is judged to be that of good faith. This test would be consistent with other provisions contained in these regulations.

6.8 This provision should be eliminated in its entirety because the language is vague, confusing and inconsistent with the spirit and letter of West Virginia Code, 46A-6-101.

6.9 The language of this provision should be amended to eliminate the words "clearly" and "conspicuously" as they are vague and subject to various interpretations, which would breed litigation.

6.13 This provision should be eliminated in its entirety because the language is vague and would breed litigation.

6.14 This provision should be eliminated in its entirety because the provision requires substantial expense to be incurred by all dealerships as a result of new record keeping necessitated by the regulation. This provision is also inconsistent with the spirit and letter of West Virginia Code, 46A-6-101.

6.17 - 6.19 These provisions should be eliminated in their entirety because they are vague and confusing, and not consistent with the spirit and letter of West Virginia Code, 46A-6-101.

6.20 This provision should be amended to eliminate the words "clearly" and "conspicuously" as this language is vague and subject to varying interpretations, which would breed litigation.

SERIES 24 - SECURITY INTEREST AND REPOSSESSION PRACTICES

3.2 Repossession

Various subsections of §3.2 either restate or contradict existing law and, for that reason, are confusing and inconsistent with the spirit and letter of West Virginia Code, 46A-6-101. Further, §3.2.7 contains language (undue hardship) which is vague and subject to various interpretations. This language would unquestionably breed substantial litigation and render the repossession rights of a creditor meaningless and merely an invitation to litigation. Further, §3.2.9 involves issues which are constitutional in nature and, accordingly, this provision should be eliminated.

3.4 Sales

The various provisions contained in subsections set forth from §§3.4.1 to 3.4.12 are inconsistent with existing law and violate the spirit and letter of West Virginia Code, 46A-6-101.

SERIES 25 - ADVERTISING AND SALES

Numerous provisions set forth in Series 25 are vague and subjective and would result in varying interpretations of the meaning of the language. This would result in litigation and increased costs to both dealerships and consumers. This language also violates the spirit and letter of West Virginia Code, 46A-6-101. Various sections and subsections of Series 25 which contain language of this sort include, but are not limited to, the following: 2.1, 2.2, 2.5, 2.6, 2.7, 2.9.1, 2.9.2, 3.1, 3.2, 3.3, 3.3.3, 3.4.2, 3.4.3, 3.4.4, 4.1, 4.5, 4.8, 5.3, 6.1, 6.1.2, 6.1.4, 6.1.5, 7.1.1, 7.1.2, 7.1.6, 7.3, 9.3.2, 10.1, 10.1.1, 10.1.3, 10.1.5, 10.3, 10.4 (and all subsections), 12.2, 12.2.1, 14.1, 16.1, 16.2.1, 16.2.2, 17.1, 17.1.1 and 17.1.2.

SERIES 30 - DOOR-TO-DOOR SALES

West Virginia Code, 46A-6-101 provides that the purpose of Article 6 is to compliment the body of federal law governing unfair competition and unfair, deceptive and fraudulent acts or practices. This provision also states that in construing Article 6, the Court should be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters. Further, West Virginia Code, 46A-6-103 provides that all rules and regulations shall conform as nearly as practicable with the rules, regulations and decisions of the Federal Trade Commission and the federal courts in interpreting the provisions of the Federal Trade Commission Act. As currently drafted, Series 30 does not provide an exemption to the sellers of automobiles from the provisions of the cooling off period for door-to-door sales. The Federal Trade Commission previously created an exemption in this regard to sellers of automobiles. Please see the attached letter of February 1, 1989 and addendum attached hereto as **"Exhibit A"** which reflects the acknowledgement of the Office of the Attorney General that this FTC exemption is applicable. Accordingly, the language in Series 30 should be amended to the extent necessary to ensure that the FTC exemption discussed herein is given full force and effect in these proposed regulations.

If you have any questions regarding any aspect of these comments, please contact me.

Very truly yours,

Richard W. Gallagher

RWG:djm

Enclosures

RECEIVED
FEB - 6 1989

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
(800) 368-8808

February 1, 1989

Ms. Ruth Lemon
Executive Vice President
West Virginia Automobile and
Truck Dealers Association
P. O. Box 2028
Charleston, West Virginia 25327

Re: Amended FTC Rule on the Cooling-Off Period for Door-to-Door Sales

Dear Ruth:

Enclosed please find a brief notice regarding the recent action by the FTC which exempts sellers of automobiles from the provisions of the cooling-off period for door-to-door sales in certain instances. I understand that you will be publishing this in your monthly newsletter. Please let me know if you need further information.

Sincerely,

R. J. Lamont

ROBERT J. LAMONT, Director
Deputy Attorney General
Consumer Protection Division

RJL/lp

Exhibit A

The Federal Trade Commission, has recently created an exemption from the rule on requiring a three day cooling-off period for door-to-door sales which applies to sellers of automobiles. The exemption applies to sales of automobiles which are offered for sale at temporary places of business (for example "tent sales") provided the seller has at least one permanent place of business. This action became effective on December 12, 1988. For further information contact: Lewis Franke, Attorney, Federal Trade Commission, Washington, D.C. 20580 - (202) 326-3009.

THREE DAY COOLING OFF PERIOD APPLIES TO AUTO SHOWS/TENT SALES

The Federal Trade Commission cooling off period for door to door sales regulation appears to apply to motor vehicle sales to consumers transacted at temporary off site locations such as tent sales and auto shows as well as sales transacted at the consumer's residence.

The FTC regulation defines a door to door sales as one which is transacted "at a place other than the place of business of the seller". Place of business is defined in the regulation as "the main or permanent branch office or local address" of the seller. Therefore, it appears that sales transacted at temporary locations (other than the dealer's established place of business) such as tent sales and auto shows are subject to the regulation which makes it unlawful for the seller to:

(1) Fail to set forth on the buyer's copy of any contract pertaining to such sale at the time of its execution the following statement in at least ten point type stating "You the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for the explanation of this right";

(2) Fail to furnish each buyer at the time he signs the sales contract or agrees to buy the vehicle a completed form in duplicate captioned "NOTICE OF CANCELLATION" containing the exact notice provisions, in at least ten point type, as set forth in the regulation (see attached example of form);

(3) Fail, before furnishing copies of the "NOTICE OF CANCELLATION" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's (established) place of business, the date of the transaction, and the date no earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation;

(4) Include in the contract any waiver of any rights to which the buyer is entitled under the regulation.

(5) Fail to inform each buyer orally at the time he signs the contract or purchase of the vehicle of his right to cancel;

(6) Misrepresent in any manner the buyer's right to cancel;

(7) fail to refuse to honor any valid notice of cancellation by the buyer and within ten (10) days after the receipt of such notice; to refund all payments made under the contract; return any trade in vehicle in substantially as good condition as when received by seller; cancel and return any negotiable instrument executed by buyer in connection with the contract; and, take necessary action to promptly terminate any security interest created in the transaction;

(8) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the motor vehicle was purchased; or,

NASW

1608 Virginia Street East
Charleston, West Virginia 25311
TEL (304) 345-NASW (6279)
FAX (304) 343-3295

WEST VIRGINIA CHAPTER

August 9, 1994

State of West Virginia
Office of the Attorney General
812 Quarrier St.
Charleston, WV 25301

To Whom It May Concern:

The West Virginia Chapter of the National Association of Social Workers, a professional orgaization with over seven hundred members in the state, strongly endorses the WV Attorney General's Office new Consumer Protection regulations.

We are very supportive of measures to protect the consumer in the areas of mobile home parks; repossession practices; unfair or deceptive acts and practices in advertising and sales; landlord-tenant transactions; motor vehicle sales and repairs;door to door sales; and private vocational schools.

The consumer has long suffered under a "Buyer Beware" atmosphere. The Legislative rules outlined by the Attorney General are fair and equitable. Opposition will come only from those who prosper from deceiving the public. No reputable entity or organization should suffer under these provisions that simply require that the consumer be treated fairly.

We strongly urge the West Virginia Legislature to approve the regulations as stated.

Sincerely,

Susan Sobkoviak

Susan Sobkoviak, BSSW, LSW
Program Associate

West Virginia Bankers Association, Inc.

Suite 1212 • Commerce Square • Charleston, WV 25301-1780 • (304) 343-8838

Thomas A. Winner
President and CEO

August 9, 1994

Tom Rodd, Director
Consumer Protection Division
Office of the Attorney General
812 Quarrier Street
Charleston, WV 25301

Re: Proposed Rule, Title 142, Series 25, Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Advertising and Sales

Dear Director Rodd:

The West Virginia Bankers Association represents commercial banks and their parent companies within this State. In connection with that role, the West Virginia Bankers Association monitors the legislative rule making process in order to ascertain matters of issue to its constituents.

The Association has one conceptual comment it would like to make with respect to proposed Series 25. It appears that the focus of this Rule, as well as the statutory provisions which are the source of this proposed Rule, is to regulate advertising practices. For that reason, we suggest that the Rule should be clear, perhaps in Section 2.2 under the definition of "Advertisement," that it does not apply to actual contract documents, whether they be credit contracts or other types of contracts. These instruments are regulated by other provisions of West Virginia and federal law. With respect to credit contracts, some of the provisions of the proposed advertising rule would conflict with, by way of example, the Federal Truth and Lending Act, <u>if</u> this Rule is construed to apply to the actual contracts.

We make this comment because we are aware that in the past, the Attorney General's Consumer Protection Division has taken the position that certain contractual language constitutes "advertising" for purposes of Section 46A-6-102. Again, we do not believe this is consistent with the focus of the statute or the regulation and it creates conflicts and confusion with respect to law applicable to the contractual documents.

Again, thank you for your consideration of this comment. If you have any questions about this information, please do not hesitate to contact me.

Very truly yours,

Thomas A. Winner

Thomas A. Winner
President

TAW/bal
267025

ISSUES WITH RESPECT TO TITLE 142 SERIES 25 LEGISLATIVE RULE PERTAINING TO THE PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN ADVERTISING AND SALES

A clarification that the scope of this regulation is intended to regulate only advertising and sales practices would be helpful. For example, it should be clear that the word "advertisement" does not include an actual contract, such as a credit contract.

A question arises with respect to § 140-25-6, which imposes certain obligations or restrictions upon a seller purporting to sell on "easy credit" terms; sub-section 6.1.6 indicates that the instrument must be labeled a "Consumer Note." The reason for this requirement is unclear.

With respect to §§ 142-25-10 through 16 regarding certain material disclosures, these provisions should not apply to bank products as these products and disclosures relating to pricing of these products is extensively regulated on the credit side by the Federal Truth in Lending Act and on the deposit side by the Federal Truth in Savings Act. The regulation targets sales and advertising of goods and services related to goods (warranty, maintenance contracts and the like). Perhaps a section could be added to clarify that it does not apply to credit products.

264030

**ISSUES WITH RESPECT TO TITLE 142 SERIES 25
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES
IN ADVERTISING AND SALES**

A clarification that the scope of this regulation is intended to regulate only advertising and sales practices would be helpful. For example, it should be clear that the word "advertisement" does not include an actual contract, such as a credit contract.

A question arises with respect to § 140-25-6, which imposes certain obligations or restrictions upon a seller purporting to sell on "easy credit" terms; sub-section 6.1.6 indicates that the instrument must be labeled a "Consumer Note." The reason for this requirement is unclear.

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264030

For Comment see Interlineations

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

SERIES 25
LEGISLATIVE RULE PERTAINING TO THE PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN ADVERTISING AND SALES

§ 142-25-1. General

1.1 Rule Designation.--This rule is legislative

1.2 Scope.--This legislative rule covers certain unfair or deceptive acts or practices covering advertising and sales practices in West Virginia, its counties, and all political subdivisions.

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

1.4 Filing Date.--

1.5 Effective Date.--

1.6 Repeal of Former Rule.-- Not applicable

1.7 Penalties.--Except as otherwise indicated, a violation of this rule constitutes a violation of Article 6 of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101 et seq.

1.8 Construction.--This rule shall be liberally construed to effectuate the purpose of Article 6 of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101 et seq.

1.9 Severability.--If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provision 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.

§ 142-25-2 Definitions.

2.1 "Act or Practice" An act or practice shall include any threat or attempt to perform such act or practice.

2.2 "Advertisement" means the publication, dissemination or circulation of any matter, oral or written, including labeling, which tends to induce, directly or indirectly, andy person to enter into any obligation, sign any contract, or acquire any title or interest in any goods or services and includes every work device to disguise any form of business solicitation by using such terms as "renewal," "invoice," "bill," "statement" or "reminder," to create an impression of existing obligation when there is none, or other language to mislead any person in relation to any sought-after commercial transaction.

2.3 "Consumer" means a natural person to whom a sale is made in a consumer transaction.

2.4 "Consumer transaction" means a sale to a natural person or persons for a personal, family, household or agricultural purpose.

2.5 "Bait Advertising" is an alluring but insincere offer to sell a product which the advertiser does not intend or want to sell. Its purpose is to switch consumers from buying the advertised product in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. the primary aim of a bait advertisement is to obtain leads as to persons interested in buying a product of the type so advertised.

to [illegible] Proove [illegible]

2.6 "Blind Advertising" means an advertisement which ~~has the tendency~~ ~~to~~ induces consumers to contact the advertiser and which fails to reveal that the primary purpose of the advertisement is the sale of goods or services, and fails to reveal the identity of the advertiser.

alphabetically and order

2.7 "Clear and Conspicuous Disclosure" Without limiting any other provisions of law, disclosures required by these regulations shall be of such size or color contrast and so placed as to be readily noticeable to purchasers or prospective purchasers reading advertising, sales promotional literature, or invoices containing same, or reading any representation as to content on the container in which the product is packed, or inspecting a product before installation or with a minimum of disassembly after installation. A term is conspicuous when it is so written that a person against whom it is to operate ought to have noticed it. Language in the body of a form is "conspicuous" if it is in larger or contrasting type or color.

2.8 "Deceptive Warranty" includes

2.9.1 A guarantee or warranty that contains an affirmation, promise, description, or representation that is either false, fraudulent, or that in the light of all the circumstances would mislead the consuming public; or fails to contain the necessary information to avoid misleading the consuming public; or,

2.9.2 A guarantee or warranty created by the use of such terms as "guarantee" or "warranty" if the terms and conditions of such guarantee or warranty so limit its scope and application as to render the representation illusory, as where any costs or charges to the consumer attendant upon such work are prohibitive or approach the cost for the repairs absent any warranty or guarantee.

§ 142-25-3 False Advertising

3.1 It shall be an unfair and deceptive act or practice to advertise in violation of this section. No advertisement containing an offer to sell a product shall be made when the offer is not a bona fide effort to sell the advertised product.

3.2 No statement or illustration shall be used in any advertisement which

"Bait advertising" is the advertisement of goods ~~followed by~~ after which the merchant steers consumers responding to the advertisement to other goods by disparaging the advertised goods or otherwise discouraging their purchase.

creates a false impression of the grade, quality, make, value, currency of mode, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another. Even thought the true facts are subsequently make known to the buyer, the law is violated if the first contact or interview is secured by deception.

3.3 No act or practice shall be engaged in by an advertiser or seller to discourage the purchase of the advertised product, ~~as part of a bait scheme to sell another product. For example, among acts or practices which will be considered in determining if any advertisement is a bona fide offer are:~~ including, without limitation:

how do you prove "u" "discourage"

3.3.1 The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer.

3.3.2 The disparagement by acts or words of the advertised product or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or parts, or in any other respect, in connection with it.

3.3.3 The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonable anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the product is available only at designated outlets.

3.3.4 The refusal to take orders for the advertised product to be delivered within a reasonable period of time.

3.3.5 The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement.

3.3.6 Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product.

3.4 No practice shall be pursued by an advertiser or seller in the event of sale of the advertised product of obtaining or attempting to obtain a recision of the sale of the purpose of selling another product in its stead. Among acts or practices which are relevant in determining if the initial sales is in good faith, and not a stratagem to sell another product are:

3.4.1 Accepting a deposit for the advertised product, then switching the buyer to a higher-priced product.

3.4.2 Failure to make delivery of the advertised product within a reasonable time or to make a refund.

3.4.3 Disparagement by acts or words of the advertised product, or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it.

3.4.4 The delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement.

Sales of the advertised product do not preclude the existence of a bait and switch scheme if the sales are a mere incidental by-product of the fundamental plan and are intended to provide an aura of legitimacy to the over-all operation.

§ 142-25-4 Deceptive Advertising of Guarantees

It shall be an unfair and deceptive act or practice to advertise a guarantee in violation of this section.

4.1 In general, any guarantee in advertising shall clearly and conspicuously disclose:

4.1.1 The name and extent of the guarantee. This includes disclosure of what product or part of the product is guaranteed; what characteristics of properties of the designated product or part thereof are covered by, or excluded from, the guarantee; what is the duration of the guarantee; e;e; what, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charges; and

4.1.2 The manner in which the guarantor will perform. This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement, refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee this should be set out; and

4.1.3 The identity of the guarantor. The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. For example, it should be made clear whether the manufacturer or the retailer is the guarantor.

4.2 As to those guarantees which are adjusted by the guarantor on a pro rata basis, the advertising relating thereto should clearly disclose this fact, the basis on which they will be pro rated, e.g., the time for which the guaranteed product has been used, and the manner in which the guarantor will perform.

If these guarantees are to be adjusted on the basis of a price other than that paid by the buyer, this price should be clearly and conspicuously disclosed.

Example: During the course of a sale, "A" sells to "B" for $20 and with a 12 month guarantee a battery that he regularly sells for $35. After 6 months the battery proves defective. If "A" adjusts on the basis of the price "B" paid $20, "B" will only have to pay 1/2 of $20, or $10, for a new battery. If "A" instead adjusts on the basis of the regular selling price, "B" will owe 1/2 of $25, or $12.50 for a new battery. The guarantor would be required to disclose here the following: that this was a 12 month guarantee, that the regular selling price, rather than the actual sale price, would be used in the adjustment, that there would be an adjustment on the basis of the time that the battery was used and, if factual, that he would not pay the adjustment amount in cash, but would make an adjustment on a new battery.

4.3 "Satisfaction or your money back," "10 day free trial," or similar representations will be construed as a guarantee that the full purchase price will be refunded promptly at the option of the buyer.

If such guarantee is subject to any conditions or limitations whatsoever, they shall be set forth.

Example: A rose bush is advertised under the representation "Satisfaction or your money back." The guarantor requires return of the product within 1 year of purchase date before he will make refund. These limitations, i.e., "return" and "time" shall be clearly and conspicuously disclosed in the ad.

4.4 When a product is represented as "guaranteed for life" or as having a "lifetime" guarantee," the meaning of the term "life" or "lifetime" should be explained.

Example: "A" advertised that his transmission was guaranteed for "life", whereas his guarantee ran for the "life of the car" in which the transmission was originally installed. The advertisement is ambiguous and deceptive and should be modified to disclose the "life" referred to.

4.5 Advertisements which contain representations of guarantees that assure prospective buyers that savings may be realized in the purchase of the advertiser's products, such as "Guaranteed to save you 50%, shall include a clear and conspicuous disclosure of what the guarantor will do if the savings are not realized, together with any time or other limitations that he may impose. Guarantees of this type may constitute affirmative representations of fact.

4.6 A seller or manufacturer shall not advertise or represent that a product is guaranteed when he cannot or does not promptly and scrupulously fulfill his obligations under the guarantee.

A specific example of refusal to perform obligations under the guarantee is use of "Satisfaction or your money back" when the guarantor cannot or does not intend promptly to make full refund upon request.

4.7 Where guarantees are employed in such a manner as to constitute representations of material facts, the guarantor not only undertakes to perform under the terms of the guarantee, but also assumes responsibility under the law for the truth of the representations made.

Example 1: "Guaranteed for 36 months" applied to a battery is a representation that the battery can normally be expected to last for 36 months and should not be used in connection with a battery which can normally be expected to last for only 18 months.

Example 2: "Guaranteed to grow hair or money back" is a representation that the product will grow hair and should not be used when in fact such product is incapable of growing hair.

Example 3: "We guarantee you will earn $500 a month" is a representation that prospective employees will earn a minimum of $500 each month and should not be used unless such is the fact.

4.8 The term "unconditionally guaranteed" should not be used when a guarantee is restricted in any manner other than as to tome and when there is a time limit, it should be clearly disclosed (e.g., "unconditionally guaranteed for three years"). An "unconditional guarantee" is considered as an undertaking on the part of the guarantor either to refund the full purchase price of the product so guaranteed or to repair or replace such product should it prove defective in any respect, all at the option of the buyer.

(Note: The unqualified use of the word "guaranteed" shall be considered as a representation that an article so described is "unconditionally guaranteed".)

§ 142-25-5 Deceptive Pricing and Misrepresentation

5.1 It shall be an unfair and deceptive act or practice in advertising to make claim or representation by any means which has the capacity or tendency or effect of deceiving buyers or prospective buyers as to the value or the past, present, common or usual price of a product, or as to any reduction in price of a product, or any saving relating to product. savings or value claims utilized in connection with terms such as "originally," formerly," "regularly," "usually," "comparable value," "list price" or other like terms, expressions, or representations must be based on facts provable by the claimant or advertiser by his own records; or by reasonably substantial competitive sales in the trading area where such claims or representations are made, under circumstances and conditions are represented or implied by the claims or representations.

5.2 It shall be an unfair and deceptive act or practice to make any claim or representation by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part hereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.

5.3 No advertisement shall be used which would mislead or tend to mislead buyers or prospective buyers, through pictorial representations or in any other manner, as to the product being offered for sale. Where price is featured in advertising, any picture or depiction utilized in connection therewith, shall clearly indicate the exact product being offered for sale at the advertised price.

§ 140-25-6 Advertising or Offering to Sell on an "Easy Credit" Basis

6.1 It is an unfair and deceptive act or practice for any seller to induce a consumer to enter into a transaction by advertising or offering to sell to such buyer on easy or lenient credit terms, or words to similar effect or meaning, when the facts demonstrate that the credit or repayment terms of the credit arrangement are neither lenient nor easy. Factors indicating that the credit terms are neither lenient nor easy are:

6.1.1 The seller does not in fact extend credit to persons whose ability to pay, or credit rating, is below generally prevailing standards of credit worthiness;

6.1.2 The down-payment and repayment periods are not as low as or are shorter than those extended to persons ordinarily determined to be credit worthy;

6.1.3 The true cost of the credit being charged by the seller is in excess of the average cost being charged by other sellers in the same general merchandise retail market;

6.1.4 The mark-up over the seller's acquisition cost for the goods or services which are the subject of the transaction exceeds the average mark-up being charged for similar or comparable goods or services by sellers in the same general merchandise retail market;

6.1.5 The seller pursues a policy of using rigorous collection practices against buyers who fall behind in their payments;

6.1.6 The seller negotiates, sells or discounts the instrument which is the evidence of the buyer's indebtedness to a third party without printing or stamping on the face "Consumer Note."

§ 142-25-7 Repairs and Services Including Warranties and Service Contracts

7.1 Repairs and Services. It shall be an unfair and deceptive act or practice to:

7.1.1 Fail to provide in advance to a customer upon request a written estimate of the cost to the customer of the anticipated repairs, or the basis upon which the charge to the customer will be made and the reasonably expected time to accomplish such repairs, including any charge for reassembly of any parts disassembled for inspection or any service charge to be imposed;

7.1.2 Make or charge for repairs which have not been authorized by the customer;

7.1.3 Fail to disclose, in the case of an in-home service call where the consumer has initially contacted the repairman, that a service charge will be imposed even though no repairs are effected, before the repairman goes to the consumer's home;

7.1.4 Represent that repairs are indicated to be necessary when such is not a fact;

7.1.5 Represent that repairs have been made when such is not a fact;

7.1.6 Represent that the goods being inspected or diagnosed are in a dangerous condition or that the customer's continued use of them may be harmful to him when such is not a fact;

7.1.7 Materially understate or misstate the estimated cost of repair services.

7.2 Warranties. It shall be an unfair and deceptive act or practice to fail to perform or fulfill any promises or obligations arising under a warranty. The utilization of a deceptive warranty is unlawful. Fail to provide the customer with an itemized list of repairs performed and the reason for such repairs including:

7.2.1 A list of parts and statements of whether they are new, used, or rebuilt and the cost thereof to the customer; and the number of hours of labor charged and the name of the mechanic performing there service.

7.2.2 It shall be an unfair and deceptive act or practice to attempt to limit an implied warranty arising by operation of law, whether by language such as "as is" or by representing that a consumer's warranty is limited to an express warranty after which repairs are at the consumer's cost.

7.2.3 It shall be an unfair and deceptive act or practice to fail to make repairs that should be covered under an implied warranty.

7.3 Service Contracts. It shall be an unfair and deceptive trade practice to fail to disclose in writing, fully and conspicuously, in simple and readily understandable language that a service contract charge pays for, or that no charge may be made for that which an implied warranty should cover, or to charge the consumer a service contract charge for that which is covered by an implied warranty by operation of law.

§ 142-25-8 Lay Away Plans

It is unfair and deceptive act or practice:

8.1 To fail to disclose or to misrepresent in any way the store's policy with reference to a "lay away" plan;

8.2 To represent to a consumer who is purchasing on a "lay away" plan that the specific goods chosen by the consumer or an exact duplicate of such goods are being laid away for that buyer when such is not a fact;

8.3 To fail to disclose to the consumer that the specified goods or their exact duplicate will only be set aside for a certain period of time;

8.4 To deliver to the consumer after payments (pursuant to the lay away plan) are completed, goods which are not identical or exact substitutes to those specified, unless prior approval in writing has been received from the buyer;

8.5 To increase the price of the goods specified either by way of increasing the payments of substitution goods which are of a lower quantity of price;

8.6 To fail to deliver to the consumer on any date payment is made, a receipt showing the amount of that payment and the date thereof, and, upon request, the balance of payments made up to date;

8.7 To fail to disclose or misrepresent in any way the store's policy with reference to cancellations and repayments or non-repayment of payments already made, and in case payments are not refunded, to fail to disclose that fact in writing

§ 142-25-9 New for Used, Substitution of Products, Failure to Deliver

9.1 New for Used. It is unfair and deceptive trade practice to represent, directly, or indirectly, that a product is new or unused, or that any part of a product is new or unused when such is not the fact, or to misrepresent the extent of previous use thereof. It is further an unfair and deceptive trade practice for a seller to offer for sale or sell any product which is used, contains used parts; is rebuilt, remanufactured, reconditioned, or contains, rebuilt, remanufactured, or reconditioned, or that it contains used, rebuilt, remanufactured or reconditioned parts, made to the buyer or prospective buyer.

The disclosure that a product has been used or contains used parts as required by the previous paragraph may be made by use of a word such as, but not limited to "Used," "Second Hand," "Repaired," "Remanufactured," "Reconditioned," "Rebuilt," whichever is applicable to the product involved.

9.2 Substitution of Products. It is an unfair and deceptive practice to make a substitution of products:

9.2.1 By shipping, delivering, or installing products which do not conform to samples submitted or to specifications upon which the sale is consummated to induced, or to the representations made prior to securing the order, without advising the purchaser of the substitution and obtaining the consent thereto prior to making shipment, delivery, or installation;

9.2.2 By falsely representing the reason for making the substitution in order to induce consent; or

9.2.3 When there was no intention to deliver the original merchandise ordered.

9.3 Failure to Deliver. It is unfair and deceptive act or practice:

9.3.1 To advertise or promise prompt delivery where delivery is neither prompt nor expeditious.

9.3.2 To fail to deliver merchandise ordered by mail or otherwise on which payments has been made or undertaken, in the form of a deposit, down payment or total payment where a definite delivery date has been set unless the seller can how circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the delivery date.

9.3.3 To accept an order for goods, or service, where delivery is not, because of facts known to the seller, contemplated within four weeks, unless a later delivery date is specifically agreed upon by the consumer and the seller.

§142-25-10 Disclosure of Material Representations

10.1 It is an unfair and deceptive act or practice for a seller to fail to clearly and conspicuously disclose in any advertisement any material representation, the omission of which would have the tendency or capacity to mislead reasonable buyers or prospective buyers. For purposes of these regulations, material representations which must be clearly and conspicuously disclosed shall include but are not limited to the following.

10.1.1 The fact that a mandatory fee in addition to the advertised price will be charged for any service such as delivery, handling, installation, or an initiation fee;

10.1.2 The amount of any handling, service or other additional fee for an admission ticket to an entertainment event charged to any purchaser who purchases such ticket through a ticket service or similar entity other than the box office for the facility holding such event when the advertisement refers to the price of such ticket;

10.1.3 The fact that the product advertised is available for the advertised price only after the purchaser receives a rebate from the manufacturer of the product;

10.1.4 The fact that the product advertised is used, rebuilt, remanufactured, reconditioned, imperfect, irregular or a second;

10.1.5 In case of hard goods, the fact that a hard good advertised has been discontinued by the manufacturer, if the seller knows: (1) that there is a significant risk that the product will not have replacement parts and supplies essential to the operation of the product available during its average useful life or for three years after purchase, whichever is less; or (2) that the product has been discontinued and either: (a) is the subject of a notice from the manufacturer that the manufacturer will voluntarily add a safety improvement to the product; or (b) lacks safety improvements that the manufacturer either has agreed to make or has been required to make by a regulatory agency.

10.2 In the case of hard goods, individually identified for sale in any advertisement, the manufacturer's name or trade name, the seller's proprietary trademark, or if a seller is prohibited by law or by contract from using the manufacturer's name or trade name in an advertisement, the phrase "famous brand names" or any similar phrase, and the model number of any hard goods, unless it is the only model of the hard good currently being sold in the trade area or the item is not customarily identified and distinguished by its model number, or it is being offered for sale at a price under $25.

10.3 The fact that the product advertised at a stated price does not include parts, accessories or equipment customarily included and necessary or usual to the proper functioning, appearance, or use of such product.

10.4 With respect to tags, labels, and in-store signs:

10.4.1 a tag need only contain material representations regarding the price of ant item;

10.4.2 a label need only contain material representations regarding the quality of an item;

10.4.3 an in-store sign need only contain material representations regarding the price or quality of an item.

§ 142-25-11 Duration of Sale

11.1 It is unfair and deceptive act for a seller to advertise a price comparison for a period greater than twenty-one (21) days unless the product is being offered as part of an advertisement clearance sale in which the product will continue to be offered at a reduced price until it is sold.

§ 142-25-12 Price Comparison and Savings Claims

12.1 Unidentified Price Comparisons. It is unfair or deceptive act for a seller to state or imply that it is offering any savings as to any product by making a direct or indirect price comparison, unless the seller clearly and conspicuously describe the basis for the price comparison. Notwithstanding the foregoing, a seller claiming a savings or compare a higher and lower price without disclosing the basis for the comparison if the seller is comparing to its own former price.

12.2 Comparison to Sellers's Own Former Prices. It is an unfair or deceptive act for a seller to compare its current price with its former price for any product, unless such former price meets one of the following conditions.

12.2.1 The former price is equal to or below the price(s) at which the seller made at least 30% of its sales of such products in any state in the twelve month period immediately preceding the measurement date of the advertisement; or

12.2.2 The comparison is made during a 180-day period immediately following the establishment of the former price, and the product is not offered for sale at a lower price for more than 45 percent of that 180-day period. For purposes of this provision a former price is established by offering the product for sale at such price or a higher price openly and in good faith on each business day of a period of at least 14 consecutive calendar days immediately preceding the initial advertisement of the price comparison. A seller offers a product openly and in good faith when the seller's former price does not exceed the seller's usual and customary retail mark-up for similar merchandise, i.e., the former price is not an inflated or exaggerated price. The burden shall be on the seller to show that its former price is not an inflated or exaggerated price. The following factors may be considered in determining whether the seller has met such burden: (a) whether the seller compares its current price to its former price when the seller knows at the time it will be made at such former price; or (b) whether the former price substantially exceeds the price at which a reasonable number of non-discount sellers sell the product in the seller's trade area; or (c) where a "manufacturer's suggested retail price" or a "list price" exists for the product, whether the former price exceeds such price and by what amount; or (d) whether the product was openly and actively offered in the recent, regular course of business, such as by devoting reasonable display space to the product during the period(s) in which it was at the former price, maintaining reasonable inventory during former price periods, advertising the product at the former price periods, advertising the product at the former price; or

12.2.3 The former price is equal to or below the price(s) at which the seller has offered the product for sale for less than 14 days, and the seller clearly and conspicuously, discloses in all advertisements for the product the specific period during which the seller offered the product at the former price.

12.2.4 Unfair or deceptive act for a seller to advertise a sale with a duration of 4 days or less that involves a substantial portion of the products in a store or department.

12.2.5 It shall be an unfair or deceptive act for a seller to offer a product in accordance with an advertised price policy whereby prices are reduced by a set amount or percentage on a pre-set schedule.

§ 142-25-13 Introductory Offers and Future Price Comparison

13.1 Except for a catalog, it is an unfair or deceptive act for a seller to make an introductory offer or to compare its current price for a product with the price at which the product will be offered in the future, unless:

13.1.1 The future price takes effect immediately after the sale is over but not later than 60 calendar days after the dissemination date of the introductory offer or price comparison; and

13.1.2 Following the date the future price takes effect the product is offered openly and in good faith in the state at the future price for a period of time that is at least equal to the period of time that it was offered at the introductory price, but not less than 21 days, except where compliance becomes impossible because of unforeseeable circumstances beyond the seller's control which the seller is able to document.

§ 142-25-14 Availability of Advertised Products

14.1 It is an unfair or deceptive act for a seller to offer any product for sale when the seller does not have the product in stock or readily available for sale in sufficient quantities to meet reasonably anticipated demand at its retail locations in the trade area covered by the advertisement.

14.2 Notwithstanding the terms and provisions of 14.1 above, it shall not be an unfair or deceptive or practice to offer any product for sale if the seller does not have the product in stock or readily available for sale in sufficient quantities to meet reasonable anticipated demand at its retail location in the trade area covered by the advertisement when:

14.2.1 The seller clearly and conspicuously disclosed in the advertisement all specific exceptions, limitations or restrictions regarding the stores, products or prices applicable to the advertised offer, and: (1) States the minimum quantity of the product available in each store; or (2) States that the quantity is limited and that is the case; or rainchecks will be provided, if that is the case; or

14.2.2 The seller has acted in good faith by ordering the advertised product in adequate time for delivery and in sufficient quantities to meet reasonably anticipated demand and: (1) offers a comparable product at a comparable savings, acceptable to the reasonable consumer and to all prospective buyers unable to purchase the advertised product; or (2) provides a raincheck to each prospective buyer at the time of the attempted purchase, nd the seller: (a) informs the consumer as to when the raincheck is more than sixty 60 days from the date of issuance advertisement that a longer period applies and specifically states the length of such time period; (b) discloses to the consumer at the time the raincheck is issued that: (1) for a product advertised for $25 or more, the seller will make reasonable efforts to notify the consumer when the raincheck item is available; or (2) for a product advertised for less than $25, the seller will not notify the consumer when the raincheck product is available, if that is the seller's policy; and (c) allows the consumer a reasonable redemption period to purchase the item; or

14.2.3 The seller has acted in good faith by ordering the advertised product in adequate time for delivery and in sufficient quantity to satisfy reasonable anticipated consumer demand. Notwithstanding anything contained herein, a seller shall be presumed not to have acted in good faith if such seller has demonstrated a pattern or practice of failure to have the product in stock in sufficient quantities to satisfy reasonable anticipated consumer demand.

§ 142-25-15 Disclosure of Expiration Dates

15.1 It is an unfair or deceptive act for a seller to fail to disclose in an advertisement, other than a tag, label, or in-store sign, the earliest date upon which an offer terminates if the offer is for a limited period of time.

§ 142-25-16 Prizes

16.1 It is an unfair and or deceptive act for a seller to offer any product for free or at a reduced price (a "prize"), to a prospective buyer in conjunction with the prospective buyer's participation in a sales presentation or promotional contest, unless;

16.1.1 The seller clear and conspicuously discloses in the advertisement all material conditions or limitations imposed by the seller as a prerequisite to receipt of or on the use of the prize.

16.2 In every prize promotion in which there is a risk that each person satisfying the conditions or limitations disclosed in the advertisement will not receive the advertised prize:

16.2.1 The seller shall clearly and conspicuously disclose in the advertisement the quantity of each prize offered;

16.2.2 The seller shall clearly and conspicuously disclose the numerical odds of receiving each prize or if the odds cannot be reasonably calculated, the approximate number of individuals to whom the advertisement is disseminated or the fact that the odds of winning a prize are determined by the number of entries received; and

16.2.3 Within thirty (30) days of the award f the prize, the seller shall clearly and conspicuously disclose in each of its business locations and by mail, if so requested in writing, the manner by which a person may learn the name and the city or town of residence of each prize winner the date of receipt of the prize, the value of the prize, and the business location of the seller, if any, which the winner visited to qualify for the prize; and

16.2.4 The prize is provided to the entitled consumer at the time the conditions are met, unless: (a) The advertisement clearly and conspicuously discloses a specific later delivery date (for example, twenty days after the consumer satisfies the advertised conditions); or (b) The consumer agrees in writing to a specific later delivery date.

§ 142-25-17 Availability of Financing

17.1 It is an unfair and deceptive act or practice for a seller to state or imply that financing is available at a specified rate of interest or upon other specified terms unless:

17.1.1 Financing at such rate or upon such terms is available to the public generally through the seller; or

17.1.2 The seller clearly and conspicuously discloses any special conditions, terms, or criteria other than general creditworthiness which a purchaser must meet in order to qualify for such financing.

17.2 Compliance with Truth-in Lending Requirements. It is an unfair or deceptive act for a seller who advertises any finance terms to fail to comply with federal Truth-In Lending laws, 15 U.S.C. §§ 1601, et seq., and regulations promulgated thereunder.

§ 142-25-18 General

18.1 It is an unfair and deceptive act or practice for a seller in a consumer transaction to fail to comply with existing statutes, rules, regulations or laws meant for the protection of the publics health, safety, or welfare promulgated by the state or any political subdivision thereof intended to provide the consumers of this protection or;

18.2 To comply with the Federal Trade Commission Act, the Federal Consumer Credit Protection Act or other Federal consumer protection statutes within the purview of West Virginia Code §46A-6-101 et seq.

§ 142-25-19 Private Employment Agencies and Business Schemes

19.1 It is an unfair and deceptive act or practice to make false or deceptive representations through advertisements or otherwise regarding the actual or probable earnings of the existence of opportunities or openings in any vocation, company, business, firm or other place of employment is an unfair and deceptive trade practice.

19.2 It is an unfair and deceptive act or practice to make any representations as to opportunities available in or to promote any activity, occupation or vocation as being profitable for one engaging in it if in fact the representations as to the opportunities available or profits to be made are untrue.

19.3 It is an unfair and deceptive act or practice in the sale or offering for sale of consumer goods or services for any person to represent or imply in advertising or otherwise that persons employed in a particular position in a trade or industry or who are self employed in a particular position in a trade or industry who are self-employed earn a stated salary or income or that the goods or services offered or sold will enable the purchaser or prospective purchaser to earn the stated salary or income or "up to" the stated salary or income unless:

19.3.1 The salary or income is equal to or less than the average salary or income of persons employed less than five years in the indicated position in the state and the advertisement or representation states the basis for calculation of the average salary or income or the advertisement or representation states the basis for calculation of the salary stated and also discloses the average salary or income of persons employed less than five years in the indicated position in the State.

19.3.2 The advertisement or representation states any limitations, conditions, or other requirements such as union membership or service of an apprenticeship, which must be met before the stated salary or income can be earned; and

19.3.3 The advertisement or representation states clearly and conspicuously that no guarantee is made that a person who purchases the advertised goods of services will earn the stated salary income, unless the guarantee is actually offered by the seller.

The words "EARN $....." or "EARN UP TO $...." or word of similar import or meaning constitute a representation that a person who purchases the goods or services will earn the stated salary or income within the meaning of this Regulation.

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SUMMARY OF WRITTEN COMMENTS TO PROPOSED LEGISLATIVE RULE TITLE 142 SERIES 25 PERTAINING TO THE PREVENTION OF UNFAIR AND DECEPTIVE ACTS OR PRACTICES IN ADVERTISING AND SALES

Two commenters stated that the rule should be clear that the definition of "Advertisement" does not apply to actual contract documents. Commenter stated that this would be consistent with the focus of the regulation and would not would not create conflicts and confusion with respect to the law applicable to the contractual documents.

2.4 One commenter suggested changing this definition to "the advertisement of goods after which the merchant steers consumers responding to the advertisement of other goods by disparaging the advertised goods or otherwise discouraging their purchase."

3.3 One commenter suggested eliminating the section beginning with "a part of a bait scheme...." and adding "including without limitation."

6.1.6 One commenter objected to Section 6.1.6 on the ground that it is unclear why an instrument must be labeled a "a consumer note."

10 - 16 One commenter objected to Sections 10-16 on the ground that these provisions should not apply to bank products as these products, and disclosures relating to their pricing is covered by the Federal Truth-in-Lending Act. The commenter suggested that a section should be added to clarify that it does not apply to credit products.

One commenter objected generally to the following sections as containing subjective interpretations, resulting in litigation: 2.1, 2.2, 2.5, 2.6, 2.7. 2.9.1, 2.9.2, 3.1 - 3.3, 3.3.3, 3.4.2-3.4.4, 4.1, 4.5, 4.8, 5.3, 6.1, 6.1.2, 6.1.4, 6.1.5, 7.1.1, 7.1.2, 7.1.6, 7.3, 9.3.2, 10.1, 10.1.1, 10.1.3, 10.1.5, 10.3, 10.4, 12.2, 12.2.1, 14.1, 16.1, 16.2.1, 16.2.2, 17.1, 17.1.1, 17.12.

RESPONSE TO PUBLIC COMMENTS

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

SERIES 25
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN ADVERTISING AND SALES

The Consumer Protection Division of the Office of West Virginia Attorney General has received written and oral comments on the above-styled proposed legislative rule.

The Consumer Protection Division has read and discussed every comment submitted. In many instances, the Division has modified the proposed rule in response to public comments. In others, the Division has concluded that the proposed rule is both necessary to adequately protect consumers and is authorized by pertinent provisions of the West Virginia Code.

The Division has concluded that all proposed Advertising and Sales Rules will be submitted to the legislature as proposed, except for the following rule:

Rule 2.5: This rule will be changed to improve the definition of bait advertising.

This change is largely in response to changes requested by the regulated community. Minor typographical and grammatical errors may also be corrected.

The Attorney General wishes to thank the members of the public who took the time to study the proposed rule and comment on it.

These responses may not cover every change or respond to every comment. The reasons for most substantive changes are self-explanatory in the language changed or readily understood when read with the relevant oral and written comments on the rule. There are also typographical, grammatical and stylistic changes.

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

December 5, 1994

The Honorable Brian A. Gallagher
Legislative Rule-Making Review Committee
1900 Kanawha Boulevard, East
Building 1, Room 152
Charleston, WV 25305-0470

FILED
DEC 7 4 15
OFFICE OF WV SECRETARY

Dear Delegate Gallagher:

With this letter, I respectfully withdraw the collection of consumer protection regulations that my office proposed for consideration before the Legislative Rule-Making Review Committee. When we prepared the proposal, we knew that it was the beginning of an educational process. We developed the proposal and disseminated information about it to facilitate thought and discussion about what can be done to protect both consumers and business owners from unfair and deceptive business practices.

To do so, we sponsored five public meetings around the state in an effort to solicit input from those citizens who would be affected by our proposal. These meetings were held in Parkersburg, Morgantown, Beckley, Huntington and Sutton and were very educational, both for the representatives from my office and the citizens themselves. What we learned from these meetings is that we need more input before we can proceed with creating comprehensive and fair regulations to govern these consumer areas.

I have always sincerely believed that government should be accountable to the people. The best governments are those that are open to the participation of citizens in the process of creating or changing the rules by which they govern themselves. That is why I am withdrawing our proposal. I don't believe we have talked to enough citizens to ensure that any proposed regulations would be in the best interests of all parties involved.

I want to sincerely thank everyone who participated in the meetings and urge them to continue to participate in the governmental process. We listened and learned from what citizens said about the proposal and hope those who participated received an enhanced understanding of the problems and confusion that consumers and business owners face when they interact in today's complex world.

We are exploring ways to receive input from as many citizens as possible in the future and will continue our work to protect consumers and honest business owners from the fraudulent and deceptive practices that seem to abound in our society. I express my sincere appreciation to all members of the committee for the time and attention they gave to this matter. Thank you.

Sincerely,

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

FILED
DEC 7 4 15 PM '94
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

December 5, 1994

The Honorable Joe Manchin, III
Legislative Rule-Making Review Committee
1900 Kanawha Boulevard, East
Building 1, Room 152
Charleston, WV 25305-0470

Dear Senator Manchin:

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Sincerely,

Darrell McGraw

Title 142, Series 23 Legislative Rule Pertaining To The Prevention Of Unfair Or Deceptive Acts Or Practices In Mobile Home Parks

Title 142, Series 24 Legislative Rule Pertaining To The Prevention Of Unfair Or Deceptive Acts Or Practices In The Creation Of Security Interests And Conduct Of Repossession Practices

Title 142, Series 25 Legislative Rule Pertaining To The Prevention Of Unfair Or Deceptive Acts Or Practices In Advertising And Sales

Title 142, Series 26 Legislative Rule Pertaining To The Prevention Of Unfair Or Deceptive Acts Or Practices In Landlord Tenant Transactions

Title 142, Series 27 Legislative Rule Pertaining To The Prevention Of Unfair Or Deceptive Acts Or Practices In Motor Vehicle Repairs

Title 142, Series 28 Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Motor Vehicle Sales

Title 142, Series 29 Legislative Rule Pertaining To The Prevention of Unfair or Deceptive Acts or Practices By Private Proprietary Institutions

Title 142, Series 30 Legislative Rule Pertaining To The Prevention Of Unfair Or Deceptive Acts Or Practices In Door-To-Door Sales