

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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Jul 7 12 12 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Office of the Attorney General TITLE NUMBER: 142
RULE TYPE: Legislative; 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

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 24

TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to The
Prevention of Unfair or Deceptive Acts or Practices in
Security Interests and Repossession Practices

DATE OF PUBLIC HEARING: 8/10/94 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Charleston Civic Center
West Virginia Room 105
200 Civic Center Drive
Charleston, West Virginia 25301

COMMENTS LIMITED TO: ORAL , WRITTEN ____, BOTH ____

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Tom Rodd, Director
Consumer Protection Div.
812 Quarrier Street
Charleston, WV 25301

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

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**TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL**

**SERIES 24
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN SECURITY INTERESTS AND REPOSSESSION PRACTICES**

STATEMENT OF CIRCUMSTANCES

West Virginia law on repossession and security interest is not sufficiently explicit to, as a practical matter, adequately protect the consumer from abuse. One example of abuse is repossessing the collateral, selling it to yourself at a reduced price, and then selling it to another party.

From the FTC rule on Credit Protection has been incorporated, as have case law from other jurisdictions regarding abuses.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Security Interests and Repossession Practices

Rule Title: _____

Type of Rule: **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	HEREAFTER
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 Prevention of Unfair or Deceptive Acts or Practices in Security Interest and Repossession Practices

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.

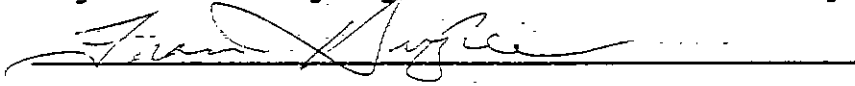
Will promote consumer confidence and assist responsible businesses, leading to job growth.

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 Representative



TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

SERIES 24
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN SECURITY INTERESTS AND REPOSSESSION PRACTICES

BRIEF SUMMARY

The proposed legislative rule incorporates provisions from the FTC Credit Practices Rule and decisions from other jurisdictions. The proposed rule includes much needed protection to the consumer which is absent in West Virginia law. These protection include using deception in repossession practices, seizing property when the consumer is not in default, and breach of peace protection.

TITLE 142
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SERIES 24
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS
PRACTICES IN SECURITY INTERESTS
AND REPOSSESSION PRACTICES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 142-24-1. General

- 1.1 Rule Designation.--This rule is legislative
- 1.2 Scope.--This legislative rule covers certain unfair or deceptive acts or practices covering security interest and repossession 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.

§ 142-24-2. Definitions

- 2.1 "Repossess" or "repossessions" means the taking or attempt to take physical possession or control over consumer goods that were the subject of a consumer transaction or other goods of a consumer for an alleged breach of a consumer transaction.
- 2.2 "Consumer transaction" means a sale to natural person or persons primarily for a personal, family, household or agricultural purpose.

2.3 "Breach of the "peace" includes but is not limited to unauthorized entry into a dwelling, assault, battery false imprisonment, threat, abusive language, or repossession over the debtor's objection.

2.4 "Strict foreclosure" means repossession of property with the purpose of counting the balance due as extinguished by virtue of the retention of the property.

§ 142-24-3. Prohibited Practices

3.1 Security interests. In connection with any consumer transaction, it shall be an unfair and deceptive act or practice to:

3.1.1 Take a security interest in goods with no intent to sell the collateral upon default.

3.1.2 Take a non-possessory security interest in household goods other than a purchase money security interest.

3.1.3 Take any other security interest prohibited by federal or state law.

3.2 Repossession. In connection with any repossession of goods sold in a consumer transaction, it shall be an unfair and deceptive act or practice to:

3.2.1 Seize property when a consumer is not in default.

3.2.2 Repossess property when the secured party agreed not to repossess if certain conditions were met, and the consumer met those conditions.

3.2.3 Seize property in which there is no valid security interest.

3.2.4 Make false threats to repossess property, including, but not limited to, household goods.

3.2.5 Make false threats about the use of law enforcement or make use of other deception.

3.2.6 Misrepresent government affiliation or otherwise the reposessor's identity.

3.2.7 Deliberately seize property from a location that causes undue hardship to a consumer.

3.2.8 Accelerate upon default without providing a right to cure in conformity with W. Va. Code § 46A-2-106.

3.2.9 Use a repossession agent that carries a firearm.

3.2.10 Breach the peace in seizing property .

3.2.11 Enter a consumer's residential premises to seize property.

3.2.12 Seize property that was security for an earlier loan or sale transaction, which indebtedness has been paid off.

3.2.13 Fail to dispose of collateral within 90 days of repossession if the consumer had paid 60% of the amount owing.

3.3 Contracts. In connection with a consumer transaction, it shall be unfair and deceptive act or practice to:

3.3.1 Include in a consumer credit contract a provision allowing the creditor to breach the peace or enter the consumer's home without consent.

3.3.2 Include a provision waiving the consumer's right to personal property taken with a repossessed vehicle.

3.3.3 Seek to have a consumer waive rights that may not be waived pursuant to W. Va. Code § 46-9-501 or W. Va. Code § 46A-1-101 et seq.

3.4 Sales. It shall be an unfair and deceptive act or practice arising out of a repossession in this state to:

3.4.1 Fail to sell repossessed collateral within a reasonable time or to provide notice of strict foreclosure.

3.4.2 Sell collateral at private sale to a secured party or to a party affiliated with the secured party.

3.4.3 Sell consumer collateral at a private sale only to wholesale bidders without deducting the retail market value from the balance due.

3.4.4 Sell collateral without providing adequate and timely notice of sale.

3.4.5 Sell collateral at an ostensible public sale which charges fee or deposit for admission.

3.4.6 Sell collateral at a public sale at which the seller waives implied warranties without deducting the retail marked value from the balance due.

3.4.7 Fail to turn over an owed surplus or seeking to obtain a consumer's waiver to a surplus.

3.4.8 Seek a deficiency not based on a bona fide sale.

3.4.9 Seek repossession, storage, repair, or other expenses that were not actually incurred or that were not bona fide.

3.4.10 Seek attorney fees not authorized by law.

3.4.11 Retain property in strict foreclosure without crediting the buyer's obligation with the retail market value and turning over any surplus to the consumer.

3.4.12 Otherwise dispose of collateral in a commercially unreasonable manner.

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