

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

Form #3

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1994 AUG 15 PM 3:19  
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 ☒

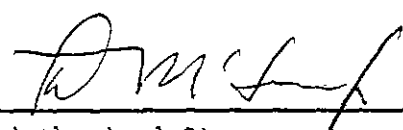
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

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

30.10

8.40 w/o Comments

**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

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

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 |
| <u>ESTIMATED TOTAL COST</u> | \$                 | \$       | \$      | \$   | \$         |
| 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**



DATE: August 15, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
Darrell V. McGraw, Attorney General  
Building 1, Room E-26, Charleston, West Virginia 25305

FROM: Title 142 Series 24 Prevention of Unfair or Deceptive Acts or  
Practices in Security and Repossession Practices

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., Attorney General  
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 \_\_\_\_\_

**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  
LEGISLATIVE RULE  
ATTORNEY GENERAL

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SECRETARY OF STATE

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

§ 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 pertaining to the taking of security interests in consumer transactions and in repossessing property in West Virginia, its counties, and all political subdivisions.

1.3 Authority.-- W.Va. Code § 46A-6-103 and 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.

§ 142-24-2. Definitions

2.1 "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.

2.2 "Commercially reasonable sale" has the same meaning ascribed in W. Va. Code § 46-9-504(3).

2.3 "Consumer goods" means goods purchased, leased or rented primarily for personal, family, or household purposes.

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

2.5 "Default" means a failure to make a scheduled payment or otherwise perform on any secured obligation for at least five (5) days.

2.6 "Deficiency" means when repossessed collateral is sold for less than the amount owing on a debt or obligation.

2.7 "Person" or "party" includes a natural person or an individual, and an organization.

2.8 "Repossession" 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.

2.9 "Purchase money security interest" has the same meaning ascribed in W. Va. Code § 46-9-107.

2.10 "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. Unfair and Deceptive Acts or Practices**

**3.1 Security Interests.** In connection with any consumer transaction, it shall be an unfair and deceptive act or practice for a person to:

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

3.1.2 Take any other security interest prohibited by federal or state law, including but not limited to a security interest prohibited by 16 C.F.R. 444 and W. Va. Code § 46A-6-107.

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

3.2.1 Repossess property when a consumer is not in default on the secured obligation.

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

3.2.3 Repossess property in which there is no valid security interest created in conformity with W. Va. Code 46-9-203 and W. Va. Code § 46A-2-107.

3.2.4 Make threats to repossess property, including, but not limited to consumer goods, without possessing the right to take such repossession action.

3.2.5 Make false or deceptive threats about the use of law enforcement, or make use of any deception or trickery in repossession.

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

3.2.7 Repossess property at a given time, place or in a manner, when the secured party knows or reasonably should know that repossession of the property at that particular time, place or in that manner will cause objectively undue hardship to the consumer, and other reasonable repossession times, places or manners are available to the secured party.

3.2.8 Accelerate the unpaid balance of any secured obligation, commence any action, or demand to take possession on account of a consumer's default, without providing a notice of right to cure default or allowing a consumer time to exercise his or her right to cure default in conformity with W. Va. Code § 46A-2-106.

3.2.9 Carry a firearm while repossessing property, or utilize any repossession agent without instructing the agent that firearms shall not be carried while repossessing property.

3.2.10 Breach the peace in repossessing property in violation of W. Va. Code § 46-9-503.

3.2.11 Enter into a consumer's residential premises to repossess property except in connection with the repossession of a mobile home.

3.2.12 Repossess property that was security for an earlier loan or sale transaction, which indebtedness had been fully paid off without refinancing.

3.2.13 Fail to dispose of collateral within ninety (90) days of repossession, if the consumer had paid sixty percent (60%) of the cash price of consumer goods in the case of a purchase money security interest in consumer goods or sixty percent (60%) of a loan secured by consumer goods and has not signed after default a statement renouncing or modifying his or her rights under W. Va. Code § 46-9-505.

**3.3 Security Agreements.** In connection with a consumer transaction, it shall be an unfair and deceptive act or practice for a person to:

3.3.1 Include in a security agreement a provision allowing the secured party to breach the peace or enter the consumer's residential dwelling without consent.

3.3.3 Attempt to have a consumer waive rights in a security agreement that may not be waived pursuant to W. Va. Code § 46-9-501 or W. Va. Code § 46A-1-107.

3.3.4 Fail to describe the collateral identified in a security agreement in detail, including, where appropriate, the manufacturer, make, model and serial number in conformity with W. Va. Code § 46A-2-107(4).

**3.4 Disposition Sales.** It shall be an unfair or deceptive act or practice arising out of a repossession of consumer goods that were the subject of a consumer transaction in this state or in another state for a person to:

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

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

3.4.3 Sell collateral at a private sale open only to wholesale bidders without crediting a reasonable retail market value from the balance owed, when the secured party does not first make a reasonable good-faith effort to sell the repossessed property by means of a commercially reasonable private sale open to purchasers from the general public.

3.4.4 Sell collateral without providing adequate and timely notice of private or public sale as required pursuant to W. Va. Code § 46A-9-504(3).

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

3.4.6 Sell collateral at a public sale in a manner that is not commercially reasonable.

3.4.7 Fail to account to a consumer and return any surplus owed after conducting a commercially reasonable repossession sale or attempting to obtain a consumer's waiver to a surplus owed.

3.4.8 Seek a deficiency not based on a commercially reasonable sale.

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

3.4.10 Seek attorney fees not authorized by law.

3.4.11 Retain property without crediting the consumer's obligation after conducting a commercially reasonable repossession sale or failing to account

to the consumer and return any surplus owed after conducting a commercially reasonable repossession sale.

3.4.12 Otherwise dispose of collateral in a manner that is not commercially reasonable.

3.4.13 Fail to provide a consumer a written notice of right to redeem the collateral prior to disposing of the collateral pursuant to W. Va. Code § 46-9-506.

#### § 142-24-4 Remedies.

4.1 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.

4.2 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.

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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

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

4 DARRELL MCGRAW: Good morning.

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

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

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

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

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

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

1 that the society allows engagement in.

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

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

12 Thank you very much.

13 MR. RODD: Thank you, Judge  
14 McGraw.

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

22 I have the sign-up sheets for the public  
23 hearing; and the first two sign-up sheets -- which  
24 seem to be the completed ones -- and I see that we

1 have about 30 people who have indicated a desire to  
2 speak.

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

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

16 MR. RODD: We have concluded that  
17 at an appropriate time limit, which, quite frankly,  
18 we will be somewhat flexible in administering, is  
19 five minutes for peoples' comments; and, of course,  
20 we can accept written comments as well. If people  
21 begin to go significantly over five minutes, we'll  
22 indicate to them that they are at that point. If  
23 they really want to deliver a 15- or 20-minute  
24 speech, we may have to ask them to give their first

1 five minutes and then fall back to the end of the  
2 line and address whoever remains here at the end of  
3 the procedure.

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

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

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

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

22 LEFF MOORE: (Interposing) Is that  
23 only today?

24 MR. RODD: The comment period will

1 end today.

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

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

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

1 submit written comments --

2 MR. RODD: (Interposing) I will.

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

5 MR. RODD: I will.

6 LEFF MOORE: Thank you.

7 MR. RODD: Your name, sir?

8 LEFF MOORE: My name is Leff  
9 Moore.

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

12 LEFF MOORE: Yes.

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

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

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

23 Other questions?

24 Okay, we'll begin with Richard Gallagher from

1     Clarksburg, West Virginia.

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

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

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

11            The 3.1 regulation limits the -- or requires  
12    only a \$50 anticipated repair before a written  
13    repair order is required.  In today's market \$50  
14    doesn't go very far, as I think we're all aware.  We  
15    would request that this be increased to at least  
16    \$200.

17            In that section also there is consent required  
18    to be given by the consumer.  We believe that in  
19    this provision, as well in a number of other  
20    provisions, the consent language should be changed  
21    to permit consent from the consumer or any adult  
22    member of the consumer's immediate household,  
23    because many times you'll have a situation where the  
24    consumer, if it's a husband at work, is unable to be

1 reached; and the spouse can call in and say, "We  
2 need this done" or "Yes, you have our approval to do  
3 that." Under these regulations that would not be  
4 feasible or appropriate.

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

17 The same type of language is used in Section  
18 4.3.1, which we contend should be, should be  
19 replaced.

20 In regard to 4.3.1, there is an alternative  
21 form there that provides three alternatives. That's  
22 something that's new. We don't think that's  
23 anything that's required under the authority of  
24 46A-6-101, but we could contend that alternative

1 three should be amended so that it reads, "I do not  
2 want an estimate, dash, just fix my car," so that  
3 people can understand what the point of that is.

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

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

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

24 In regard to Section 6.1, the "Return of

1 Parts," that creates a number of problems. We  
2 believe that the provision should be amended to  
3 require the consumer to request the parts, if they  
4 would like that; or at least request an opportunity  
5 to inspect the parts. The language as it's  
6 currently drafted creates environmental problems,  
7 because some problems -- some parts that are removed  
8 from vehicles could create environmental hazards;  
9 and what that provides -- what that regulation  
10 requires, that these parts be provided to the  
11 consumer. So, if that were to take place, the  
12 consumer could be held responsible under a different  
13 scenario of facts. But the regulation needs to be  
14 amended to address those problems.

15 In regard to invoicing, Section 7.1.1 through  
16 7.1.5, to the extent the provision requires labor to  
17 be itemized under warranty work, this request should  
18 be eliminated because it serves no useful purpose.  
19 This is, again, in regard to warranty work.

20 "Prohibited Practices," there's a typographical  
21 error in 8.1 where it requires misrepresentation,  
22 which of course is a, is a mistake; and that just  
23 needs to be corrected.

24 8.1.5, the language is vague, needs to be

1 addressed.

2       One of the problems through both this and the  
3 section on sales is that there is -- there are  
4 varying standards required. A "good faith basis" is  
5 the standard that's required in several of these  
6 regulations. We believe the regulations should be  
7 consistent in the standard of conduct that's  
8 required. That "good faith basis" requirement  
9 should be inserted throughout the regulations, and I  
10 don't have time to identify each and every  
11 regulation where it's referenced, but that needs to  
12 be addressed as well.

13       With regard to Series 28, "Motor Vehicle  
14 Sales," there in 2.6 reference is made to the  
15 vehicle in normal usage and for a reasonable time.  
16 Again, those are subjective terms which result in  
17 varying interpretations of what is normal, what is  
18 reasonable. That would breed litigation. We  
19 contend that it would be much better and much fairer  
20 for all concerned if there are specific limitations.  
21 If they are to be imposed, they should be set forth  
22 specifically so there can be no subject to  
23 interpretation which would only breed litigation.

24       As you go through that section, again words

1 such as "conspicuously" -- again, that's a  
2 subjective term. If that's to be required, then the  
3 language, we contend, should be stated, and it  
4 should be required to a certain degree of -- that --  
5 the size of the print so, again, there is no  
6 interpretation involved, and it's easier for all to,  
7 to understand what the point is.

8 Section 5.2.3 relates to a document- -- to the  
9 extent that relates to documentary fee, forbidding  
10 that being charged, the statute is on point that it  
11 permits that. So, we contend to the extent it  
12 contradicts the -- this regulation contradicts the  
13 statute, that should be addressed and changed.

14 In regard to a number of regulations which,  
15 which require the dealer to control the actions of  
16 the manufacturer to be responsible for problems with  
17 the manufacturer delivering vehicles, we contend  
18 that that's unfair to the dealer, because the dealer  
19 has no authority to control the manufacturer. So,  
20 that language should be amended.

21 Sections 5.9/5.10 include and involve vague  
22 terms that again are subject to various  
23 interpretations and will breed litigation. That  
24 should be, that should be addressed so that it can

1 be specifically understood what's required by these  
2 regulations.

3 In regard to "Advertising And Sales  
4 Presentation Requirements," there are provisions  
5 there again which are vague. 6.3.3 should be  
6 eliminated. 6.3.2 forbids a consumer's question to  
7 be answered if in fact the answer could reflect  
8 negatively on the vehicle. So, that should be  
9 changed. That would prevent a customer's questions  
10 from being answered if it in any way would reflect  
11 negatively on a vehicle.

12 Section 6.5 should be eliminated.

13 I'm almost finished. I just ask you to bear  
14 with me.

15 MR. RODD: Please take your time.  
16 You're doing -- take your time.

17 RICHARD GALLAGHER: Okay. Thank  
18 you.

19 MR. RODD: Complete your report.

20 RICHARD GALLAGHER: The Section  
21 6.1.3, the language is too vague. It should be  
22 eliminated. 6.1.4, the language should be  
23 eliminated in its entirety. It requires  
24 substantially new record-keeping purposes which have

1 not been required in the past. There are a number  
2 of regulations, jumping back to the repairs portion,  
3 which require new language should be attached or  
4 inserted on certain repair orders. That would  
5 involve, in essence, throwing away substantial  
6 amounts of forms that could be used. That would  
7 cost the dealers a substantial amount of money,  
8 depending on the circumstance.

9 We contend that there should be a phase-in  
10 period for that sort of thing so that within a  
11 24-month period those old forms could be used up;  
12 that until those forms are used up, the -- during  
13 this phase-in period, the required language could  
14 just be stapled onto the repair orders in order to  
15 permit the consumer to be advised of the new  
16 regulation.

17 Series 24, the "Repossession" statute, others  
18 will address that. One section in particular is  
19 troubling. It's 3.2.7 which forbids a vehicle to be  
20 repossessed if it would result in an undue hardship.  
21 Again, that's a subjective term, subjective phrase.  
22 That will result in, I would anticipate, a great  
23 deal of litigation, because there's no specific  
24 guidelines set, and the subjectivity of that will

1 invite litigation. We contend that that's not the  
2 purpose of these regulations, and that can be  
3 avoided.

4 There are a number of comments. We also intend  
5 to file some written follow-up comments because our  
6 time has been limited here, as by necessity, because  
7 of the number of folks here, but we do appreciate  
8 the opportunity to address you. Thank you.

9 MR. RODD: Thank you,  
10 Mr. Gallagher.

11 The second speaker is Bill Minsker from  
12 Buckhannon.

13 MR. MINSKER: Because Rick pretty  
14 much covered everything that we had, I'm going to  
15 waive my time, Mr. Speaker.

16 MR. RODD: Thank you very much,  
17 Mr. Minsker.

18 The third person signed up is Jack Albert of  
19 Belle.

20 JACK ALBERT: I also thank you for  
21 the opportunity to speak regarding these proposed  
22 regulations.

23 My name is Jack Albert, but I'm here to speak  
24 as a volunteer on behalf of the West Virginia State

1 Legislative Committee of the American Association of  
2 Retired Persons.

3 I wish to speak in favor of the proposed new  
4 Consumer Protection regulations, Legislative Rules  
5 Series 23 through 30, Title 142. My statement is  
6 regarding the general intent, not any specific item  
7 in the regulations.

8 The AARP has over 262,470 members in the state  
9 of West Virginia.

10 DARRELL MCGRAW: How many?

11 JACK ALBERT: 226,470. Almost 50  
12 percent of the people over 50 years of age in West  
13 Virginia belong to AARP. Consumer Protection  
14 regulations are especially important to the aging  
15 population of West Virginia. According to the  
16 U. S. Census Bureau, West Virginia ranks third in  
17 the nation with a population between the ages of 65  
18 and 74.

19 The state ranks tenth with the population of 75  
20 and over. This 75-and-over age group makes up 6 1/2  
21 percent of the total population of West Virginia.  
22 So, we're talking about over a 117,230 people who  
23 are primary targets of those who are involved in  
24 unfair and deceptive practices.

1           The position of the AARP regarding unfair or  
2 deceptive acts or practices statutes is that they  
3 are among the most effective tools to fight consumer  
4 fraud and abuse at the state level. These statutes  
5 provide effective remedies for consumers, encourage  
6 merchants to resolve disputes fairly, and they -- it  
7 deters misconduct.

8           The AARP believes that states should enact  
9 statutes that, one, prohibit unfair and deceptive  
10 practices in trade and commerce and, two, give the  
11 state enforcement and regulatory authority.

12           Therefore, we urge that the West Virginia State  
13 Legislature to approve these legislative rules,  
14 Title 142, Series 23 through 30 inclusive, as  
15 outline by the office of Attorney General of West  
16 Virginia.

17           Thank you very much.

18                       MR. RODD: Thank you, Mr. Albert.

19           The next person signed up is Bill Gossett from  
20 Wheeling.

21                       BILL GOSSETT: Good morning.

22           My position is Housing Resources Coordinator  
23 for Florence Crittenton Home & Services which is  
24 based in Wheeling, but we do provide a variety of

1 social services to low-income women and their  
2 families throughout West Virginia. We have over  
3 1,000 families throughout the state in our current  
4 case load.

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

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

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

23 There are a couple of inadequacies in the  
24 current law concerning consumer protections, and it

1 comes under the general heading of "Code  
2 Enforcement." Code enforcement is either unavailable  
3 in rural areas or small towns; and even in the  
4 larger towns the major problems with code  
5 enforcement and making landlords live up to building  
6 code standards, fire code standards, health code  
7 standards, it's reactive in nature, and many times  
8 it's a lengthy and complicated process that our  
9 clientele, because of their limited education, just  
10 their unfamiliarity with how the system works, are  
11 unable to negotiate. It's difficult even with the  
12 assistance of our case managers who often do try to  
13 intervene on their behalf.

14 Another problem of a reactive nature of code  
15 enforcement is in the time delays that are involved  
16 often our clients incur a fairly large financial  
17 burden in situations, such as poor building  
18 construction where heating bills are very high or a  
19 problem with plumbing where water bills are run up,  
20 where the bills are in the names of the clients.  
21 So, even if they are doing what they're supposed to  
22 do in terms of trying to rectify the situation under  
23 building code enforcement, they're still running up  
24 those water bills, still running up those heating

1 bills. And often what results, quite frankly, is  
2 they choose to pay the utility bill so that their  
3 utility service is not cut off, they don't find that  
4 they have the money to pay the rent, so they're  
5 subject to what is a very fast eviction process in  
6 West Virginia.

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

1 marketplace.

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

9 MR. RODD: Thank you, Mr. Gossett.

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

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

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

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

23 JAMES RICE: One section I'm  
24 wanting to mostly state involves 3.1 and 5.2. This

1 is regulating the restriction of the vendor when  
2 renting the lot -- when renting the space to a  
3 manufactured home.

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

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

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

15 The next speaker signed up is Alvin McCorkle  
16 from Charleston.

17 Alvin McCorkle from Charleston.

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

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

22 Let me correct what may be a misapprehension,  
23 perhaps because the information was not clearly put  
24 on the sign-up sheet. If there are folks who have

1 signed up but don't intend to make a presentation at  
2 this time or make comments, I'll, unless the people  
3 find it embarrassing, go ahead and read their name,  
4 because there may have been some confusion in that  
5 regard, and then they can indicate that they don't  
6 intend to make a presentation or, if you'd like, you  
7 can step forward and speak to Mr. Maier, and he'll  
8 write down your name, and he'll make sure that I  
9 don't call on you. —

10 Thank you.

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

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

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

22 And my understanding -- and I'm not a lawyer,  
23 thank God -- is that by definition of what you-all  
24 define here as a trust account and that also by law

1 a trust account cannot be interest-bearing, which  
2 would seem to be contradictory. (sic)

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

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

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

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

1 status from the Sanitary Department in 20 days from  
2 the time of, like, from the time that the apartment  
3 was vacated. --

4 6.5, same, same concerns.

5 MR. RODD: Mr. McCorkle.

6 ALVIN McCORKLE: Yes.

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

12 ALVIN McCORKLE: I would say 60  
13 days.

14 MR. RODD: Thank you.

15 ALVIN McCORKLE: Under  
16 142-26-7, "Evictions and Termination of Tenancy,"  
17 quite frankly 7.2, "Commence summary process for  
18 possession of a dwelling unit before time period  
19 designated in a 30-day notice," I'm not real sure  
20 what you mean. I mean, does that mean that they  
21 have to violate the lease for 30 days before you're  
22 allowed to do anything? In which case, I would like  
23 the same consideration as a landlord: that if a  
24 tenant deems an apartment uninhabitable, then I have

1 30 days before he can declare it such, which I think  
2 either way is probably a little ridiculous.

3 Again 7.3, the judicial eviction process.

4 7.4, "Provide for an acceleration of rent  
5 payments in the event the tenant defaults," I'd like  
6 a little more explanation on that. Again, what  
7 would be provided to -- once you provided this, this  
8 payment schedule, what would enforce it?

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

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

24 MR. RODD: Thank you very much,

1 Mr. McCorkle.

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

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

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

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

20 I just went through an experience which, to me,  
21 was a nightmare. The girl quit her job and did  
22 not -- was not paying her rent. I tried to get her  
23 out. It took four months to get her out, and in the  
24 meantime she's brought in a cat with kittens that

1 are using the carpets for a bathroom, all of which  
2 all had -- and I had just carpeted before she moved  
3 in. So, her place was -- you could hardly stand to  
4 get in it, let alone show it to anyone. We had to  
5 redo the carpets; we had to seal the floors. In the  
6 meantime her rent, which was 350 for a one-bedroom  
7 apartment -- it included all her utilities, which I  
8 paid for that the whole time.

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

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

22 I'm not sure what you mean on this 7.4 either  
23 about an acceleration of rent payments. I do think  
24 that we should be able to have something in the

1 contract; that if they haven't paid the rent in  
2 three to five days, that there is a late payment  
3 charge.

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

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

14       The next signer is Melody Douglas.

15                   MELODY DOUGLAS: I don't have  
16 anything.

17                   MR. RODD: Thank you. Excuse me.

18                   MELODY DOUGLAS: That's fine.

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

21                   GUY PORTER: Porter.

22                   MR. RODD: Porter, Jr. Excuse me.

23                   GUY PORTER: My name is Guy C.

24 Porter, Jr. I'm from Charleston. I'm a Certified

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

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

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

24 GUY PORTER: Yes, sir.

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

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

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

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

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

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

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

17 GUY PORTER: Yes.

18 MR. RODD: Thank you.

19 GUY PORTER: Now, I would  
20 certainly suggest that instead of 20 days, you have  
21 60 days in there. This seems to be a normal  
22 procedure in most leases at this point in time.

23 The other problem I see is the business of  
24 interest on security deposits. We turn security

1 deposits directly over to the owner and along with  
2 their rental income, net rental income. This would  
3 be a tremendous bookkeeping arrangement, and I  
4 question whether or not we can get any of the banks  
5 to pay interest on this type of a deposit.

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

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

20 MR. RODD: Thank you, Mr. Porter.

21 The next name I have signed up is Neal Walters.

22 Neal Walters from Eleanor?

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

1 his name.

2 Kathryn Maddox from Charleston.

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

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

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

10           3.7, in that "fail to reimburse the tenant  
11 within a reasonable time for service or supplies,"  
12 our policy is pretty much that we don't require the  
13 tenants to do any repairs or maintenance, and we  
14 have -- our experience is that we run into more  
15 trouble if we do that, because sometimes they'll  
16 paint woodwork that is natural woodwork. They might  
17 paint it black. I just had that last week to  
18 happen. So, if there is any kind of an agreement  
19 for painting or anything else, it should be in  
20 writing. This says it should be reimbursed by the  
21 tenant after any representation from the  
22 reimbursement (sic).

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

1 Under the next section of rental agreements,  
2 5.2.3, about the interest-bearing account for the  
3 deposits, we feel very strongly that this should not  
4 be. If you have a hundred rental units and you have  
5 deposits from a hundred tenants, think of the  
6 bookkeeping that is going to take. Plus, if you'd  
7 have to have a separate account for each one of  
8 those, I don't think you would find a bank anywhere  
9 that would let you set up a hundred different  
10 accounts.

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

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

1 deposit, we feel, would be much more reasonable.

2 No. 6.6 --

3 DARRELL MCGRAW: (Interposing)

4 When you say "reasonable," does that -- can I  
5 translate that to be an acceptable 60 days?

6 KATHRYN MADDOX: Yes.

7 DARRELL MCGRAW: All right.

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

10 KATHRYN MADDOX: 60 days instead  
11 of 20 days.

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

14 KATHRYN MADDOX: The next one is  
15 6.6.

16 MR. RODD: Your number is.

17 KATHRYN MADDOX: 6.6. The normal  
18 wear and tear, it says, for the tenant -- normal  
19 wear and tear is not to be included when you give  
20 the reimbursement -- their deposit. Many times this  
21 requires us videotaping or taking pictures when the  
22 tenant moves in and also taking pictures when the  
23 tenant moves out, because there could be a  
24 difference of opinion on this. We have checklists

1 that they can itemize. We itemize things. Like, if  
2 new carpet is put in, then when the tenant moves  
3 out, if the carpet is very badly damaged, that's  
4 really not normal wear and tear at the end of one  
5 year. So, it needs to have a definition of what is  
6 normal wear and tear.

7       The next one under "Eviction and Termination,"  
8 again we feel that the 30-day process for giving a  
9 written notice -- if the tenant has not paid their  
10 rent, you can now go to magistrate court within ten  
11 days and file, if they have not paid their rent; and  
12 we feel that that should still remain, that the  
13 landlord should be able to go after a period of ten  
14 days. Because it's going to take more than 30 days  
15 to -- in order to get a process and in order to  
16 sometimes even get an appointment, because the  
17 tenant can postpone the hearing. If the magistrate  
18 sets up the hearing date ten working days -- now, if  
19 you have a holiday, that's excluded. Weekends are  
20 excluded. So, that's ten working days which  
21 sometimes can amount to 20 days before you can get a  
22 hearing. Then the tenant can postpone that --  
23 sometimes one, two times. You can already be into  
24 60 days before you can even get a hearing, a legal

1 hearing on an eviction notice. So, we feel that the  
2 30-day notice is too long a time if they fail to pay  
3 their rent.

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

17 Under utilities --

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

20 KATHRYN MADDOX: For the  
21 eviction?

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

24 KATHRYN MADDOX: Okay, we feel

1 that after ten days, that they have --

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

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

7 MR. RODD: (Interposing) Thank  
8 you.

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

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

13 KATHRYN MADDOX: (Interposing) Okay.

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

16 KATHRYN MADDOX: (Interposing) All  
17 right.

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

20 KATHRYN MADDOX: And also 7.3  
21 then, which says the judicial eviction procedure  
22 only, a court procedure, Mr. McCorkle, I think, made  
23 mention also of this, that there -- that you should  
24 not have to go to court each time you are going to

1 evict a tenant, and this is what this regulation  
2 states, 7.3.

3 Under the next heading of "Utilities,"  
4 142-26-8, if the -- again, to refer, if the tenant  
5 then -- if the landlord is paying utilities, we do  
6 not feel that the landlord should continue to have  
7 to pay utilities when a tenant has not paid their  
8 rent. Again, if it is a hardship case, the tenant  
9 can go to different agencies, several different  
10 agencies and receive assistance in paying  
11 utilities. But if the landlord is signed up to pay  
12 the utilities, then the landlord, according to this,  
13 would have to continue paying the utilities, even  
14 when a tenant for three months or more hasn't paid  
15 rent. So, that can be very, very expensive, because  
16 usually you're going to have a big damage bill  
17 besides that.

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

22 KATHRYN MADDOX: (Interposing)  
23 Yes.

24 DARRELL McGRAW: (Continuing) --

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

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

14 DARRELL MCGRAW: I see.

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

22 DARRELL MCGRAW: I see. Thank  
23 you.

24 KATHRYN MADDOX: So, we've all

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

4 DARRELL MCGRAW: Thank you.

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

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

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

15 KATHRYN MADDOX: Uh-huh.

16 MR. RODD: It's entirely possible  
17 that you may say, "I don't think I can comment on  
18 that," and I can accept that response as well, I  
19 assure you. But on the question of security  
20 deposits, and I address this because you said you  
21 were president of the Landlords Association, so  
22 presumably you're familiar with the position of some  
23 landlords, is there a suggestion that your  
24 association or you would make which would accomplish

1 the result that tenants would reflect -- somehow  
2 accomplish the benefit of having their money held  
3 and set aside, losing value in the deposit form,  
4 other than the idea of an interest-bearing account;  
5 and secondly, isn't it true in your standing that  
6 many states do require, and landlords live with your  
7 requirement, of returning deposits to tenants with  
8 interest? Can you -- do you have any comments on  
9 that?

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

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

24 MR. RODD: Doesn't it seem unfair

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

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

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

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

19 KATHRYN MADDOX: Thank you.

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

22 ZOL MAGGIED: Maggied.

23 MR. RODD: Maggied?

24 ZOL MAGGIED: Yes, sir.

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

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

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

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

21           Utility costs, a comment was made also by  
22 another speaker. The utility cost probably should  
23 be paid for by the tenant. In some of the older  
24 buildings which provide very reasonable and good

1 housing, it's virtually impossible to do that, and  
2 that's the reason that utilities are always paid for  
3 by landlords.

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

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

20               MR. RODD: That's perfectly all  
21 right.

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

1 concerned.

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

11                   MR. RODD: Thank you very much.

12       The next person signed is Roy Stricklen.

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

15                   MR. RODD: Thank you,  
16 Mr. Stricklen.

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

24       The next person signed up is a Bryan Kett from

1 Ford Credit.

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

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

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

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

1 the following reasons:

2 3.2.7 requires the creditor to possess  
3 knowledge that is generally unavailable. The rule  
4 provides that it shall be unfair and deceptive acts  
5 or practice deliberately (sic) -- to deliberately  
6 seize property from a location that causes undue  
7 hardship to the consumer.

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

20 Rule 3.4.3 places burdens on creditors which  
21 will increase the cost of and decrease the  
22 availability of credit in West Virginia. The rule  
23 requires that a repossessed vehicle be sold at  
24 retail or that the creditor -- or that the customer

1 be given credit for retail market value. This rule  
2 appears to be based on two false premises. First,  
3 creditors will always be able to collect  
4 deficiencies from defaulted customers and, hence,  
5 have no incentive to maximize the sale price of  
6 repossessed vehicles. Second, a retail sale will  
7 result in greater proceeds applies to the -- apply  
8 to the account than a wholesale -- than a wholesale  
9 sale.

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

19       The creditors must, therefore, assume the  
20 additional amounts will not be collected and seek to  
21 obtain the highest sales price reasonable to, to  
22 minimize the potential losses. For example, Ford  
23 Credit experiences an average deficiency of over 31  
24 hundred dollars after the sale of a repossessed

1 vehicle. Less than one-third of this deficiency is  
2 recovered from post-repossession collection  
3 activities. Once again, it is critical that we  
4 maximize the sale price of a repossessed vehicle to  
5 reduce our bottom-line losses.

6 Number two, wholesale automotive auctions open  
7 to dealers obtain the highest prices at the least  
8 cost. The automotive auctions used by Ford Credit  
9 in selling recovered vehicles are sophisticated,  
10 state-of-the-art, multi-million-dollar facilities  
11 complete with marketing departments, cleaning and  
12 repair facilities. It is not uncommon to have over  
13 1500 dealers in attending and participating at these  
14 auctions. Every aspect of the process is designed  
15 and monitored by vehicle remarketing specialists to  
16 quickly and efficiently obtain the highest price for  
17 those consumers' account.

18 Three, forcing creditors to open retail outlets  
19 and/or give retail prices will increase the cost  
20 and/or reduce the availability of credit to  
21 consumers in West Virginia. Proposed Rule 3.4.3  
22 would increase the cost associated with  
23 repossessions to creditors such as Ford Credit. In  
24 response, creditors, in order to maintain acceptable

1 profit margins, will either have to raise the cost  
2 of credit to the customers or tighten credit  
3 policies. Marginal and high-risk customers will be  
4 rejected in an effort to reduce the number and cost  
5 of repossessions.

6 Number four, the proposed rule is contrary to  
7 current West Virginia law. The legislature has  
8 established the standard for rules for repossessed  
9 goods as commercially reasonable, West Virginia Code  
10 46-9-504(3). The standard for this application to  
11 wholesale automotive auctions has long been accepted  
12 in jurisdictions throughout the country.

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

24 They further concluded that this provision

1 would impose costs and would raise the cost and  
2 reduce the availability of credit in excess of  
3 offsetting benefits. Its conclusion was based on  
4 the examination of the incentive of creditors to  
5 maximize the sale price and the fact that the  
6 wholesale retail price difference is due primarily  
7 to the cost of running retail outlets.

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

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

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

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

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

24 MR. KETT: Okay.

1 MR. RODD: Just a second.

2 The next person signed up is Joe Doughton  
3 from --

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

6 MR. RODD: Thank you,  
7 Mr. Doughton.

8 The next person signed up is Alonzo Johnson.

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

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

22 Item No. 3.4 on Page 3 of the mobile home  
23 regulations you have would exclude the possibility  
24 of doing this. Item 3.5 seems a little unfair to

1 me, but I guess we are unfair in some things, that  
2 you can't rent to the highest bidder for a lot that  
3 excludes one person offering more for a lot than  
4 someone else if there's only one lot available.

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

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

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

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

23 If it's a one-year lease and the payments being  
24 monthly, then I would not be able to get my rents

1 all coming due the first of each month, which I do.  
2 I prorate the second month of rental so all payments  
3 will come due on the first of the month. This says  
4 all payments would be monthly payments.

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

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

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

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

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

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

22 MR. RODD: No, no. Please  
23 proceed. -- --

24 ALONZO JOHNSON: Item 5.3.1,

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

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

14       I have trouble reading these things sometimes.

15       Item 6.2 excludes rule changes during the terms  
16 of the rental agreement. Item 6.2 with Item 9.1, I  
17 read 9.1 to give a perpetual lease to anyone that  
18 does not break a rule in the park, the mobile home  
19 community, whatever we call it here. It appears to  
20 include those forever. I'll get back to Item 9.1  
21 again when I get over to that. If Item 9.1 was  
22 changed, that would take care of my problems with  
23 6.2.

24       And I would like to see Item 5, the one I just

1 talked about a moment ago, to allow monthly leases  
2 instead of just annual leases, which I do now  
3 monthly lease.

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

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

10 MR. RODD: Period.

11 ALONZO JOHNSON: Period.

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

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

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

18 ALONZO JOHNSON: No.

19 MR. RODD: Okay.

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

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

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

6 "Because of its age, it needs paint."

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

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

20 Item 9.1 really bothers me. "It shall be an  
21 unfair and deceptive act or practice to refuse to  
22 renew the tenancy of a resident of a mobile home  
23 park, except upon the following grounds." (sic)  
24 It lists three grounds. That's for renewing. So,

1 we're giving a one-year lease; we cannot terminate  
2 the agreement at the end of that unless one of these  
3 three things occur.

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

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

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

1 time, because this -- these regulations will require  
2 me to have everyone sign a new lease and have a new  
3 lease written.

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

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

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

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

14 ALONZO JOHNSON: Thank you.

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

17 Tom Winner.

18 TOM WINNER: Counsel will give our  
19 remarks.

20 MR. RODD: Okay.

21 DEBBIE SINK: Debbie Sink. I  
22 signed in.

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

1 DEBBIE SINK: Yes.

2 MR. RODD: Thank you.

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

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

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

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

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

24           Also, there's some concern, I guess, about

1 enforceability, given that the proposed rule is a  
2 rule as opposed to a statute, and there could be  
3 litigation in an effort to establish which prevails  
4 in the consumer context.

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

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

21                   MR. RODD: Okay. May I ask you  
22 one -- it's simply a clarification of something you  
23 said, and I understand that you may not be able to  
24 respond to this, but you said something about

1 eliminating the work-out room.

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

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

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

24           Thank you very much.

1 MR. RODD: Okay, thank you.

2 The next person signed is Bonnie Harold.

3 Bonnie Harold.

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

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

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

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

1 It's kind of contradictory.

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

6                   MR. RODD: Thank you.

7       The next speaker is a J. D. Stricklen.

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

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

18       To get specific with what my concerns are,  
19 first of all -- of course, I'm speaking on the  
20 tenant-landlord Series 26. The first item would be  
21 3.5 where "Fail within a reasonable time after  
22 receipt of notice from the tenant to make repairs"  
23 when you've been notified that something is not fit  
24 or habitable. The only concern I would have would

1 be that if in fact the problem was created by a  
2 tenant, such as someone spoke to earlier where there  
3 had been a domestic squabble and the door got busted  
4 down or a thermostat got knocked off the wall. I  
5 think there should be some special consideration to  
6 tenant responsibility due to their negligence.

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

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

24       Moving to Section 4 on "Notices and Demands," I

1 really don't have any problem with what you've  
2 written other than I'd like for it to be bilateral.  
3 I'd like for the tenants to be involved with that.  
4 For instance, on 4.2, "Fail or refuse to accept" --  
5 or backing up, it says "It shall be unfair and  
6 deceptive act or practice for a landlord to,"  
7 4.2, "Fail or refuse to accept any notice sent to  
8 any address to which customarily sent."

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

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

21       If you've got a \$200 security deposit on a  
22 tenant, 4 percent, you're talking about \$8 a year.  
23 In order to process that back to the tenant, our  
24 cost made be \$20 to process \$8. So, what we do is,

1 like in any business, when you have an increase in  
2 the cost of business, you generally pass it on to  
3 the tenant. So, in order for the tenant to get the  
4 benefit of an \$8 interest payment on their deposit,  
5 they're probably going to have their rent increased  
6 to reflect a \$20 increase in doing business.

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

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

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

1 60 days. The most, the most prevalent problem is,  
2 is getting the final utilities paid. You know,  
3 under the Public Service Commission regulations, the  
4 property owner can be held responsible for the final  
5 garbage bill or the final sewer bill; and you might  
6 think that, "Well, that could be an 8 or \$20 item,  
7 but by the time -- if that gets slipped past and  
8 they actually put a lien on your property and you  
9 get that put on your personal credit report, and  
10 then it maybe will cost you as much as \$100 to get  
11 that cleared up. So, it's important to always have  
12 those cleared up when tenants leave, and sometimes  
13 you just can't do that within 20 days.

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

21 The Section 7 which deals with the termination  
22 of leases, just generally -- someone made the  
23 comment earlier that they thought that West Virginia  
24 had a quick eviction process, which I disagree

1 with -- and I would, I would say that I think that  
2 probably what's on the books now is fair; and I  
3 think that anything that would be more stringent as  
4 reflected in Section 7 would not be fair to the  
5 landlords.

6       And the last item I'd like to make a comment on  
7 would be Section 9.1 which has to do with entering  
8 the tenant's unit. And really the only problem that  
9 I have with that -- we don't make periodic  
10 inspections or anything of that nature. We re- --  
11 it's mostly through where you reserve a right to  
12 enter at reasonable times for purposes of repairs or  
13 showing the unit to prospective tenants. And at the  
14 end of that it says that you can, you can enter if  
15 it's authorized in writing; and if you stop it  
16 there, I don't have any problem with it. But it  
17 goes on to say that "other than in a form  
18 provision," which is what a lease is. And I'd like  
19 for that to be struck, from -- the end of Section  
20 9.1, in order for us to be able to put that in the  
21 lease as opposed to have to get an individual  
22 authorization from every tenant.

23       I might also say that's all of my comments, and  
24 I'm glad that the Attorney General has decided to

1 spend his valuable time here this morning. I'm  
2 quite impressed that you stayed to hear our  
3 comments. Thank you very much.

4 DARRELL McGRAW: Thank you.

5 MR. RODD: Thanks very much.

6 The next person signed up is David Yoder.

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

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

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

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

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

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

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

22 We have had one instance where a family had  
23 rented a new duplex. They were the first tenants in  
24 this duplex. It was a 3-bedroom unit, and they had

1 a family with several children, and they couldn't  
2 pay their rent. So the, the tenants' association  
3 intervened and said, "Well, would you let us hold a  
4 check until the end of the tenancy, and then you'll  
5 be sure to get your money? And after the tenancy,  
6 then we will deliver to you the check, after we  
7 inspect the apartment, because these tenants believe  
8 that you may not be fair, you may not want to return  
9 all of their security deposit. So, after we  
10 inspected the unit," the association said, "we will  
11 assure you payment."

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

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

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

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

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

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

20           And where there's a public service district  
21 involved, the Public Service Commission provides  
22 that the District can attach the landlord's property  
23 for not paying the utilities, even though it was a  
24 tenant who had signed for the utility. I'm not sure

1 that that's always the case in a municipal utility,  
2 but I know it's true in a public service district  
3 which I chair.

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

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

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

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

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

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

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

24 Another section, 6.1, that I wish to refer to,

1 I have the following comments: The prohibition and  
2 the regulations against collecting rent in advance  
3 or any amounts in excess of one month as a security  
4 deposit makes it very difficult to collect for a  
5 12-month lease in college towns where the normal  
6 school year is less than nine months. In fact, some  
7 landlords provide for payment of the first month's  
8 rent and a security deposit with the last month's  
9 rent in installments to ensure that at least some  
10 rent is collected for the period between May and  
11 August.

12 In addition, some landlords provide for a  
13 discount for the payment of a term, such as six  
14 months or a year in advance. Our companies do  
15 that. We give as much as a ten percent discount for  
16 payment of the rent in advance. We're assured that  
17 way that the rent will be there; and, as I've  
18 indicated, we have not had any problem with this  
19 with out tenants, because we're very proud of our  
20 relations with our tenants for many years. In fact,  
21 yesterday a past tenant of about 1965 called me and  
22 wanted to see whether they couldn't stop by and say  
23 hello, and they have stopped by on occasions in  
24 years past. These are the types of things that make

1 business worthwhile, when you can refer back to  
2 relationships that you have developed with those  
3 with whom you deal.

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

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

21 We are aware that other states in some  
22 instances have a time period of 30 days. I note  
23 that others have indicated that that may not be  
24 enough time on occasion. But any term less than 30

1 days, we believe, would be quite difficult for many  
2 of the operators who do a good job and try to do a  
3 proper accounting.

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

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

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

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

3 We also find that the Section 5.2.3 and Section  
4 7.1 through 7.5 have some concerns to us. They  
5 prohibit accelerations of rent payments in the event  
6 of default or breach of a contract. Common business  
7 practice would permit a bank to accelerate payment  
8 on a note, but somehow acceleration of rent payments  
9 is found by these proposed regulations to be  
10 unacceptable. We also find that the section  
11 relating to evictions and termination of tenancy is  
12 generally restrictive.

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

21 As to Section 7.5 and 8.2, we agree with the  
22 provisions of the regulations which would prevent  
23 denying a tenant the use of utilities during any  
24 lawful occupation. We strenuously oppose the

1 requirement that all utilities shall be furnished  
2 during unlawful occupation. We object to any  
3 arrangement which would require a landlord to  
4 provide utilities when funds are being withheld by  
5 tenants in a breach of a contract.

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

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

22 And, finally, these comments are provided in  
23 the interest of promoting fair and reasonable  
24 landlord and tenant relations and dealings. We

1 believe that the proposed rules and regulations are  
2 silent concerning landlord rights or that they  
3 attempt to remove legitimate rights which the  
4 landlord may already have. It must be noted that  
5 there are no unfair and deceptive acts cited which  
6 can be attributed to the tenant.

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

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

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

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

24 The next person we have on the list is Brad

1 Sorrells.

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

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

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

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

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

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

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

18       Next would be 3.2.4, "false threats to  
19 repossess." Again, I'm not -- I think that's  
20 somewhat ambiguous. I'm not sure whether it's  
21 threatening to repossess when you have no intent;  
22 and that was already covered, so I think it must  
23 mean something else. I assume that what is meant is  
24 threatening repossession when the creditor really is

1 not a secured creditor and has no right to  
2 repossess; and I would suggest that perhaps it would  
3 be clearer if the provision read "threaten to  
4 repossess property, including but not limited to  
5 household goods when the creditor knows that it has  
6 no recoverable claim of a right to do so."

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

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

20       3.2.7 causes a great deal of concern, and I  
21 think that it's an invitation for litigation to  
22 ensue almost every time that there's a  
23 repossession. It is so subjective that I don't  
24 think any creditor can be charged with that

1 knowledge of when seizing property from a particular  
2 location might cause undue hardship.

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

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

17 I next would bring you to 3.2.9. That regards  
18 repossession agents to carry a firearm. Now,  
19 neither Green Tree nor Chrysler Credit have any  
20 interest in hiring Wyatt Earp to go out and seize  
21 their collateral, if they have to do that. On the  
22 other hand, they don't have any control, their  
23 actual control of whether or not the repossession  
24 agent is going to carry a firearm. There are

1 already state laws that govern who can carry a  
2 firearm, and when that person can carry it, and what  
3 use that person can make of it while they have it.

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

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

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

19 BRAD SORRELLS: Well, Judge, there  
20 are a lot of situations in life which are highly  
21 stressful. I think my concern as to this section  
22 deals with creditors who by and large, and I would  
23 suggest almost as a universal practice, do not go  
24 out and have their employees do the actual

1 repossession. This is accomplished by repossession  
2 agencies, people that are in that business.

3 DARRELL MCGRAW: Well, they're  
4 contractors; are they not?

5 BRAD SORRELLS: Yes, they are.

6 DARRELL MCGRAW: Yes. And would  
7 it not be possible for the contract to include a  
8 provision in the repossession contract that the  
9 repossessioners not be armed?

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

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

24 MR. RODD: Could I just ask you,

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

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

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

14 BRAD SORRELLS: I won't belabor  
15 this point.

16 MR. RODD: No. I understand.

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

24 MR. RODD: I understand your. I

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

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

6 3.2.11, I'm a little concerned over the  
7 word, "premises." I'm not sure if that's intended  
8 to mean residential property as a whole or the  
9 dwelling place. If it -- if -- either way, of  
10 course the creditor shouldn't itself or have an  
11 agent barge into the customer's home to be  
12 repossessing something. On the other hand, if we're  
13 talking about going onto that customer's property,  
14 this makes, as it's written, makes it illegal to  
15 walk up and politely knock on the door and  
16 say, "Excuse me. As you were notified, you are in  
17 default on the vehicle in the driveway. I'm here to  
18 to pick it up. It would be easier on everybody and  
19 less expensive if you just gave me the keys."

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

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

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

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

23                   DARRELL MCGRAW: (Interposing) All  
24 right. At this point ---

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

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

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

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

16                  BRAD SORRELLS: Well --

17                  DARRELL McGRAW: Unless, of  
18 course, it were (unintelligible) or something like  
19 this, in which instance it would be the cause of  
20 action called replevin, and all of those things have  
21 to be merged of course into a cause of a civil  
22 action, but -- I guess really my question goes to --  
23 my question is a philosophical one that does not  
24 necessarily relate to this process today, but rather

1 it goes to the issue of why don't we have a process  
2 by which people who are in the possession of the  
3 property of others in the instance of the failure of  
4 finance agreements and so on and such as that, why  
5 don't we have a process that requires the delivery  
6 up to an officer of the court the property?

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

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

18 And all of those things are very expensive.  
19 You've got \$70 to file the action; \$20 to file the  
20 summons and complaint; you've got costs to go back  
21 and -- attorney time and time of the individual to  
22 go and get the actual judgment; another \$20 for  
23 service of the writ. All of those costs are charged  
24 to the losing party. So, every time that an

1 absolutely meritorious claim -- which wouldn't have  
2 been objected to by the consumer in the first place  
3 if the creditor simply came up and said, "I'm here  
4 to get the keys."

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

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

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

20 Moving to provision 3.3.2, "Include a provision  
21 waiving the consumer's right to personal property  
22 taken with a repossessed vehicle," now neither  
23 Chrysler Credit nor Green Tree -- and I would  
24 suggest no responsible creditor would say that a

1 consumer just doesn't have a right to their goods in  
2 the car, mobile home, or whatever. But I would  
3 suggest to you that that needs to be somewhat  
4 limited to a reasonable period.

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

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

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

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

1 BRAD SORRELLS: Yes. It said --

2 MR. RODD: (Interposing) That you  
3 read.

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

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

8 BRAD SORRELLS: (Interposing)  
9 You're, you're right. 3.4.2 is a private sale.  
10 46-9-504-3, "Secured party may buy at public sale  
11 and, if the collateral was of a type customarily  
12 sold in a recognized market or is in a type that you  
13 can subject to widely-distributed price quotations,  
14 the secured party may buy at a private sale." And  
15 both of my clients would be involved with collateral  
16 of exactly that nature. Both of them are published  
17 NADA Guides as to the retail -- or the value of used  
18 mobile homes and value of used cars, which is what  
19 you have to own to be able to repossess.

20 I believe that the harm -- I think what's  
21 trying to be stopped here is the idea that secured  
22 parties can abide -- it's going to be a sham  
23 transaction, low dollars, high deficiency. That's  
24 already covered. The UCC requires that the entire

1 disposition, including the method, the manner, time,  
2 place, and terms, must be commercially reasonable.

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

8 3.4.3, "private sale only to wholesale bidders  
9 without deducting the retail market value," that --  
10 the retail market value provision just doesn't  
11 work. It's going to end up costing consumers more.  
12 When you get right down to it, it's just not fair;  
13 and if you work out the numbers, it doesn't make any  
14 sense. Anytime something is sold on the retail, a  
15 significant chunk of that price is profit for the  
16 seller for the work that goes into selling a  
17 product. But that's not what's going on here. But  
18 I don't want to speak much on that. I would refer  
19 instead to the Federal Trade Commission's comments  
20 when they considered a similar provision and  
21 rejected it.

22 There's a number of very good policy reasons  
23 why it's bad, and I'm going to be making a couple of  
24 slight changes to my written comments and submitting

1   them this afternoon, and that is attached as an  
2   exhibit.

3         3.4.5, "sell collateral at an ostensible public  
4   sale which charges fee or deposit for admission,"  
5   not all auto auctions do, but some do charge a fee.  
6   It's a minor fee. It's something that they use to  
7   offset the cost. But we would submit the same thing  
8   perhaps in some mobile home auctions, although  
9   generally those aren't sold at a public auction.

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

1           3.4.6, it's sort of the same problem. That's  
2 saying you can't sell it if the seller waives  
3 warranties. Well, when you are selling a piece of  
4 repossessed collateral, whether it's a mobile home  
5 or a car, you don't know where it's been, you don't  
6 know how it's been taken care of. And you are by  
7 and large selling it to a dealer, and the dealer  
8 doesn't really need that warranty. Now, he may be  
9 required by state law when he later sells it to a  
10 consumer to warrant that good; but if the seller at  
11 an auction has to warrant this vehicle, there's  
12 going to be a charge for that. And the charge is  
13 not for anything of value in the collateral as it  
14 was repossessed from the defaulting consumer. That  
15 charge is for the service that this dealer is  
16 being -- or the seller is being required to offer by  
17 this rule. It doesn't protect consumers.

18           I'm almost done here.

19           3.4.10 regarding seek -- it says you can't seek  
20 attorney fees not authorized by law. I think that's  
21 ambiguous. I'm not sure if it means you can't seek  
22 attorney's fees unless they are affirmatively  
23 authorized by law or you can't seek attorney's fees  
24 that are prohibited by law. And just one way or the

1 other it ought to be made clear.

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

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

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

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

14                      BRAD SORRELLS: Thank you, Judge.

15                      DARRELL McGRAW: Thank you.

16                      MR. RODD: Thank you.

17           The next person signed up is Norman Googel.

18                      NORMAN GOOGEL: My name is Norman  
19      Googel, and I'm here on behalf of a woman named  
20      Helen Ann Wooten. Ms. Wooten is a loving, fun  
21      person who is also a renter, and this year she  
22      formed an organization called the Renters  
23      Association and Protective Services, and this is an  
24      organization which is strictly volunteer and

1 hopefully will provide some meaningful advocacy to  
2 people that rent so that they understand what few  
3 legal rights they do have and to enable them to  
4 enforce their rights.

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

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

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

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

21               NORMAN GOOGEL: Okay. In any  
22 event, I do want to -- my comments are going to be  
23 very general. I want to offer my, my support for  
24 all of the legislative rules. I'm only going to

1 comment, however, on Series 26. I do want to say  
2 that I, I support these rules in principle. I don't  
3 see anything in here which is burdensome or that I  
4 think would be unreasonable.

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

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

20 And then you have a summary eviction statute  
21 which not only is fair to the landlords, but this  
22 statute in my experience representing tenants in 14  
23 years is absolutely brutal. It calls for a -- it  
24 doesn't require landlords to provide any type of

1 written notice of events before filing the eviction  
2 suit, and often they don't. When the suit is filed,  
3 the trial on the eviction case is five to ten days  
4 later. Often the tenants are served with the notice  
5 of trial a couple days in advance. And if they  
6 don't know their rights and they go straight to the  
7 trial and are evicted, as they almost always are, it  
8 doesn't even do them any good to appeal, because  
9 there's no possession pending appeal.

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

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

24 And what I think these rules do and the reason

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

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

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

24                 NORMAN GOOGEL: That's right, and

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

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

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

24 So, I, I think all these rules do is help to

1 enforce already existing rights.. There's no tilt  
2 here in favor of the tenants. I think -- it's just  
3 not correct to say that rules which now make it  
4 possible to enforce already existing rights  
5 constitute a tilt toward the landlord and away from  
6 the tenant -- or rather in favor of the tenant (sic).

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

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

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

5                   DARRELL MCGRAW: Thank you very  
6 much.

7                   MR. RODD: Thank you, Mr. Googel.

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

12           Mr. Anderson.

13           Which Anderson are we going to hear from?

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

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

19                   DARRELL MCGRAW: It's really  
20 interesting to see who Neal is kin to.

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

24           I would like to say that I apologize for

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

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

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

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

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

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

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

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

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

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

21           There were a few specific points that I want to  
22 mention that we have done both as members of the  
23 Kanawha Valley Landlords Association that a few of  
24 us got together and founded a while back, also other

1 members of the West Virginia Landlords Association  
2 that I'm a member of, have gone as far as trying to  
3 help people out to find them other places to live,  
4 to work through the FMHA office -- that's the  
5 Farmers Home Administration office -- so that they  
6 could find literally better housing than I'm able to  
7 rent them at the subsidization of government monies  
8 for a rent that is actually 150, sometimes \$125 a  
9 month. They're getting a bigger house, a yard. And  
10 I'm able to do that kind of thing because I enjoy  
11 helping people, and I am a compassionate person.

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

19 I'm not saying people need to live in homeless  
20 shelters if they can't afford to have a place to  
21 live, but where in American society has it ever been  
22 said that you get something without paying for it?  
23 It is no different to move into my place, tear it  
24 up, and not pay for it, and move -- or to move into

1 it, and occupy its accommodations and not pay for it  
2 and move, there's absolutely no difference in that  
3 and walking into Kmart and shoplifting at will, or  
4 going into Kroger's and eating off the stand and  
5 ruining it for everyone else and then walking away  
6 and expecting not to pay for it. Thieves are  
7 thieves.

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

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

21 I vehemently oppose people that have such poor  
22 communication skills that they do not avail  
23 themselves of opportunities where I might assist  
24 them through the Department of Human Services, FEMA,

1 local community groups that will help to subsidize,  
2 such as Heart And Hand.

3 Tenant obligations are to pay and also let us  
4 know when they are ending their occupancy. I have a  
5 unit sitting right now where the mother moved off to  
6 Maryland. She left an 18-year-old boy and a  
7 16-year-old daughter; and I have no control over  
8 that unit.

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

18 And if you're not going to expect fair-paying  
19 tenants to bear the burden for our overhead and  
20 costs -- because we like to help people, but we are  
21 not in the human services business, we are not in  
22 the charity business. We are in the business of  
23 trying to get a fair return on our investment  
24 dollar. And believe me, any store uptown does not

1 operate on the profit margin that I subject myself  
2 to. And nobody would put up with the kind of bad  
3 communications our tenants share with us.

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

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

19 My experience is if you do not share with the  
20 landlords the ability to collect (sic) more than a  
21 flat one-month security deposit, then we will be  
22 forever at a disadvantage. If a landlord only owns  
23 property in a bad part of town and you expect one  
24 month's security deposit when it's well-known that

1 the guy is moving in, and he gives you one month,  
2 that's all you see for three or four months -- they  
3 know the tricks, they go to the magistrate court,  
4 they postpone it, they're still living there. They  
5 get a -- they fight the eviction that I give them.  
6 That's another 30 days. There are up to 70 to 90  
7 days it will take to get rid of an absolute crook.

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

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

23 They have choices. They can live at home; they  
24 can share a dwelling; they can get a roommate; they

1 can go through Mountaineer Habitat; they can go  
2 through FMHA (sic); they can deal with people that  
3 are willing to help them, but they cannot move in  
4 and take advantage of the landlords or the landlords  
5 will just simply move their investment dollars  
6 elsewhere, and there will be no option left to  
7 government but to provide more expensive and more  
8 socioeconomically-deprived projects and housing  
9 units that compound the problem by concentrating  
10 crime and that kind of status.

11 And as I said, I'd like to end with Paul  
12 Harvey, and a famous quote that he always uses  
13 is: "Self-government without self-discipline will  
14 not work." And I don't want to be like Plato and  
15 overlegislate, but I do not see anything spoken to  
16 in this that would, quote, assist the responsible  
17 businesses, because we consider ourselves a very  
18 responsible and humanitarian type business -- but I  
19 see on your Appendix B, No. 4B, it says "Will  
20 promote consumer confidence and assist responsible  
21 businesses." I see nothing in this legislation that  
22 would assist me as a responsible business person if  
23 you do not give some flexibility and to hold people  
24 accountable and make sure that they are accountable

1 to their own leases that they sign, that they  
2 communicate with us, and that they actually display  
3 self-discipline so that they might have  
4 self-government and a lot less legislation. Thank  
5 you.

6 DARRELL McGRAW: Thank you.

7 MR. RODD: Thank you,  
8 Mr. Anderson.

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

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

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

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

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

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

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

1 particularly 37-15.

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

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

6 MR. RODD: Okay.

7 I'm sorry.

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

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

22 That ambiguity be clear -- is also clear in  
23 2.1 and 2 wherein mobile homes and mobile homes  
24 rather than factory-built homes are generally

1 addressed. And when you compare those definitions  
2 and apply the legal definition to the, to the  
3 proposed rule, it would indicate that we have a  
4 problem there.

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

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

23 And so, we're unsure as to why we're even  
24 including that language in the rule. We think the

1 energy might be better expended actually enforcing  
2 the law that is already there, because we do have --  
3 we clearly do have laws that protect people from  
4 tie-in sales and separate and discriminatory charges  
5 based on previous actions of the Attorney General's  
6 division.

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

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

24 The West Virginia Fair Housing Act, which is

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

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

21 We find that to be consistent throughout a lot  
22 of the activities of government generally is that  
23 those people charged with enforcing the law in many  
24 cases are not well-versed in the letter and the

1 provisions of the law, so the result there being  
2 that we try to pass another new law so that it's  
3 within our comfort zone rather than to enforce the  
4 laws that we already have on the books.

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

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

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

1 industry because of the uniqueness of the product.

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

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

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

24       If we were forced to meet the time frames that

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

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

23 Finally, I would like to, if I could, just --  
24 briefly address our history of consumerism within

1 our industry generally and how it has related to the  
2 Consumer Protection Division most particularly.

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

20 But we, we also recognize that business has a  
21 responsibility to its consumers; and as such, we  
22 formed what we call our Consumer Service Bureau  
23 through the West Virginia Manufactured Housing  
24 Association. And what we did is we worked very

1 closely with the Attorney General's Consumer  
2 Protection Division, and so the Consumer Protection  
3 Division actually would review consumer complaints  
4 emanating from our industry. They would then review  
5 the complaints to see if a statute was violated,  
6 particularly Chapter 46A; and if no violation on the  
7 surface was deemed and they couldn't mediate the  
8 complaint, they would refer it to our Consumer  
9 Protection Division for industry mediation and  
10 assistance.

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

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

1 General's Consumer Protection Division, and the  
2 Attorney General's Consumer Protection Division made  
3 a good-faith attempt to mediate. In addition, they  
4 also made a review and determined that there was not  
5 a violation or not an apparent violation of Chapter  
6 46A.

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

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

23 In many cases what they get is a review of the  
24 consumer complaint, a good faith attempt at

1 mediation, but they are left unawares of many of the  
2 laws that exist in the Code of West Virginia and the  
3 United States Code that protect them. And so, what  
4 we -- I think what happens is is that that leaves  
5 the consumer unserved to a degree, although it's not  
6 a willingness on the part of the Attorney General's  
7 office to do that. I understand their restraint --  
8 constraints by staff and budget and their  
9 legislative mandate under Chapter 46A.

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

23 So, in reviewing that consumer complaint, a  
24 knowledgeable consumer advocate, like APPALRED and

1 others, use a whole body of law to assist the  
2 consumer and not just Chapter 46A. I believe that  
3 what we are doing is we are trying to expand our  
4 realm of influence under Chapter 46A so we can act  
5 as a government agency on behalf of more aggrieved  
6 people.

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

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

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

1 consumers.

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

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

24 And so, I want to thank you for what I perceive

1 to be in your latter remarks this morning a very  
2 wise commentary with respect to how government  
3 operates generally. And inasmuch as we are able to  
4 apply your observations to the improvement of our  
5 little corner of the government, I want to, I want  
6 to, to perhaps apply your wisdom to our  
7 circumstances with a view to improving our services  
8 to the general community that we serve, consumers  
9 particularly and vendors also.

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

14 LEFF MOORE: Thank you very much.

15 MR. RODD: Thank you, Mr. Moore.

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

20 (Short recess.)

21 MR. RODD: Our court reporter has  
22 kindly acknowledged that he is able to continue, so  
23 in about two minutes we'll resume with the next  
24 speaker; and I mean that precisely, that being, in

1 the order that I have it here, Lester Caudill.

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

9 Are any of those people around?

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

12 Thereupon, at 12:17 p.m. a recess was had until  
13 12:19 p.m., at which time the following proceedings  
14 were had, all parties being present as heretofore  
15 noted:

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

18 Thanks for your patience, Mr. Caudill.

19 LESTER CAUDILL: Well, I'm  
20 actually here and going to speak on behalf of myself  
21 and Terry Snyder representing the role of United  
22 National Bank. And, of course, we're members of the  
23 West Virginia Bankers Association. We're here  
24 basically just to support Tom Winner's letter that

1 he's already submitted and addressed to you-all.

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

13 And that's basically all we have. I think  
14 there were some questions asked about some general  
15 repossession procedures earlier, and I was going to  
16 encourage anyone from the Consumer Protection Agency  
17 or the Attorney General's office simply to call.  
18 I'm sure the other banks will -- certainly mine  
19 will -- we would be happy to discuss and, as I  
20 indicated, as to our procedures and any  
21 recommendations or any conflicts or issues that  
22 we -- we all need -- you know, we need the agency  
23 as, you know, not only as an agency to keep us in  
24 line, but as individuals I'm sure we all have got

1 friends and relatives that we need protected, and we  
2 respect and appreciate the efforts of the agency and  
3 the Attorney General's office. Thank you.

4 MR. RODD: Thank you,  
5 Mr. Caudill.

6 The next speaker listed is David McMahon.

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

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

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

17 DAVID McMAHON: Okay.

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

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

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

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

22 But I support the suggestion by the man from  
23 Robinson & McElwee, that we do for deposit accounts  
24 what was done for interest on lawyers' trust

1 accounts. Have them put the money in a, in a, in an  
2 interest-bearing account. The interest will first  
3 go to the expenses of the account. And because it  
4 is so difficult to account for each tenant's  
5 interest if there is more than one tenant's money in  
6 the account, have that money go to a fund that would  
7 provide housing for homeless people.

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

17       60 days is just not workable for your typical  
18 tenant. People have a hard enough time getting  
19 together a deposit to rent one apartment. If they  
20 then need to move from one apartment to another,  
21 where do they get the money for the second deposit  
22 if they've got to wait 60 days for the deposit from  
23 the first unit to become free? It's just not a  
24 feasible thing for the tenant to be able to do, to

1 wait 60 days to get a deposit back. It should be --  
2 I say 14 sounds reasonable to me. Anything beyond  
3 30 is just -- it just deprives tenants of the  
4 ability to rent their next rental unit.

5 With regard to the complaint about there having  
6 to be a roof -- an estimated repair of \$50, one  
7 gentleman suggested \$200, I would suggest that if  
8 you are on a minimum wage, working 30 hours a week,  
9 which lots of folks are, trying to raise a family,  
10 your monthly income is going to be about 550 bucks.  
11 If you have got a surprise auto repair for 200 bucks  
12 on a car that might not be worth more than 3 or  
13 \$400, that's a significant fact. I think the \$50  
14 amount is very reasonable on that account.

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

1 of Mr. Anderson.

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

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

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

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

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

21        Another comment I want to make generally is  
22 that several of the commentators said that any  
23 little additional expense that these rules may cause  
24 are automatically passed on to the consumer. I'm

1 confused. I thought these gentlemen were all  
2 private enterprise people who live in a marketing  
3 fund where price is determined by supply and demand  
4 in addition to cost. And it depends on the  
5 flexibility and demand for the product whether in  
6 fact the industry will absorb from its profits some  
7 of the other expenses. It's simply not an accurate  
8 statment that all costs would be passed on to the  
9 consumer.

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

1 Code.

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

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

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

19 Under the Holder v. Course that stood up in  
20 UCC, the seller would have to pay the bank. It  
21 could only go against the guys that painted his roof  
22 black to get his money back. Of course, they guy  
23 that painted the roof black is in Ohio. However,  
24 46-2-101, 102, and 103 abolishes Holder v. Course.

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

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

15 The problem with that is, is that despite the  
16 apparent reputability of the people who testified  
17 here, there are lots of disreputable landlords. I  
18 find it frankly incredible that the fellow  
19 representing the Morgantown landlords association  
20 comes down, and anybody that's gone to school in  
21 Morgantown or had children gone to school in  
22 Morgantown knows that landlords take tremendous  
23 advantages of suits in those situations. I think  
24 there are other people who are not at a good

1 bargaining position, either economically or  
2 otherwise, to, to get back deposits and to otherwise  
3 protect themselves from unsrupulous practices of  
4 landlords..

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

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

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

19 MR. McMAHON: Yes.

20 They talked to us somewhat about not needing  
21 more guidance on commercially-reasonable sales.  
22 Currently the concept of commercially-reasonable  
23 sales is too flexible. I have an article that's  
24 about to be published in the Financial Quarterly

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

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

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

1 to advertise a car for sale.

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

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

18 The current law: that can only be done for  
19 full satisfaction. That is, I can only keep the  
20 goods that way from a commercially-reasonable sale  
21 if I grant full value. Oh, I have to tell you that  
22 the national conference of (unintelligible) uniform  
23 state laws has taken a change in that to be purchase  
24 satisfaction. But that -- what that -- it's only

1 supposed to apply if the secured party doesn't keep  
2 the goods for their own use. And we all know that  
3 people who finance used cars or repossess new cars  
4 which are then used cars never keep it for their own  
5 use. So, the use of strict foreclosure at all is  
6 probably inappropriate.

7 Mr. Moore, from the manufactured housing  
8 association, made some excellent points, some of --  
9 some I agree with. I am not sure either that the  
10 60-day requirement for sale will in the end work to  
11 the consumer's benefits, because particularly in the  
12 area of mobile homes I think you do better selling  
13 them in the summer than February, and it's better to  
14 wait and get a better price. On the other hand,  
15 there are times when -- with cars, you know, it  
16 doesn't make such a difference; that people do keep  
17 cars until they deteriorate in value, and they don't  
18 make enough effort. Perhaps a reasonableness time  
19 frame should be put in there which gives the burden  
20 on the industry to figure out what it is if they  
21 know this.

22 With regard to his statement that there are  
23 perhaps other areas of West Virginia law that cover  
24 some of the areas that we have covered, and a number

1 of people said that, that it is true that there are  
2 other areas of law that cover some of the ones we  
3 covered, but the particular benefit of making it an  
4 unlawful practice under the West Virginia Consumer  
5 Credit and Protection Act is that it will give the  
6 consumer a remedy for things like your -- the  
7 credit -- UCC -- FTC Credit Practices Act that West  
8 Virginia incorporated. There currently is no  
9 private remedy for the Attorney General to do that  
10 and enforce that. Only the FTC can enforce its.  
11 And I don't know about antitrust. And so this would  
12 give the consumer a remedy to enforce, which would  
13 be very beneficial.

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

1 my five minutes.

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

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

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

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

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

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

23           My closing remark is that whenever you do  
24 legislation, the rules -- the important thing: You

1 never want to hurt the good guys, but it's important  
2 to get the bad guys. The difficulty is how do you  
3 regulate the bad guys in a way that hurts the good  
4 guys the least? But the polar star -- we must  
5 always keep the light lit -- is that we do have bad  
6 guys out there operating. The good guys should not  
7 have to compete with them. We need to be sure to  
8 get the bad guys while treating the good guys as  
9 gently as we can, and still not forget that the  
10 ultimate goal is to regulate those bad ones in our  
11 business community and protect our interests.

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

15 MR. RODD: Thank you very much.

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

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

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

3 Any comments, questions?

4 Thank you. This hearing is concluded.

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

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1 STATE OF WEST VIRGINIA  
2 COUNTY OF KANAWHA, To-wit:  
3

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

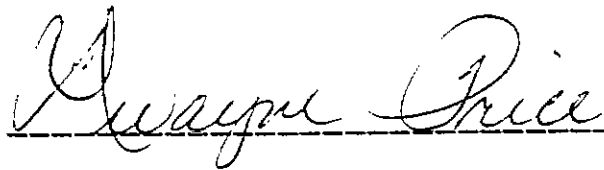
9 I do further certify that the said hearing was  
10 reported by me in stenotype notes, that the same  
11 were accurately written out in full and reduced to  
12 typewriting, and that said transcript is a true  
13 record of the proceedings.

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

20 My commission expires December 13, 1998.

21 Given under my hand this 13th day of August,  
22 1994.

23  
24

  
\_\_\_\_\_

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

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

## ROBINSON & McELWEE

Thomas W. Rodd, Esquire

August 11, 1994

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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,



Ford Motor Credit Company

Legal Office  
The American Road  
P. O. Box 6044  
Dearborn, MI 48121-6044

August 4, 1994

Mr. Thomas Rodd  
Deputy Commissioner of Consumer Protection  
Office of the Attorney General  
812 Quarter Street  
L & S Building, Sixth Floor  
Charleston, West Virginia 25301

Re: Series 24 - Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts  
or Practices in Security Interests and Repossession Practices

Dear Commissioner Rodd:

As the largest automotive finance company in the world with over \$77 billion in receivable, 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 Credit is supportive, however, we must express our deep concern over, and opposition to, provisions which would place unreasonable burdens on the automotive finance industry and ultimately work against the best interest of the consumers of West Virginia.

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:

Rule 3.2.7 requires the creditor to possess knowledge that is generally unavailable.

Rule 3.2.7 provides that it shall be an "unfair and deceptive act or practice to deliberately seize property from a location that causes undue hardship to a 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 be subjected to the burden of countless claims in 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 a repeal of the statutory right to repossess collateral, the cost of which will be borne by West Virginia consumers who pay as agreed.

Rule 3.4.3 places burdens on creditors which will increase the cost of, and decrease the availability of credit in West Virginia.

Rule 3.4.3-works to require that a repossessed vehicle be sold at "retail" or that credit be given for the "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 applied to the account than a wholesale sale. Unfortunately, such premises are flawed for the following reasons:

1. The creditor must get the highest sale price reasonably for the repossessed vehicles.

The rule assumes the creditor can simply "force" the defaulting consumer to pay 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! Creditors must, therefore, assume that additional amounts will not be collected and seek to obtain the highest sale price reasonably possible to minimize potential losses.

For example, Ford Credit experiences an average deficiency of over \$3,100 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 the repossessed vehicle to reduce bottom-line losses.

2. Wholesale automotive auctions (open to dealers only) 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 1,500 dealers in attending and participating at these auctions. Every aspect of the process is designed and monitored by vehicle remarket specialists to quickly and efficiently obtain the highest price for the consumer's account.

3. Forcing creditors to open retail outlets or give creditor "retail" prices will increase the cost and/or reduce the availability to all West Virginia consumers.

Proposed rule 3.4.3 would increase the costs 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 all customers, or tighten credits policies. [Marginal and higher risk customers will be rejected in an effort to reduce the number (and costs) of repossessions.]

4. The proposed rule in contrary to current West Virginia law.

The legislature has established the standard for rules of repossessed goods as "commercially reasonable" (W.Va Code § 46-9-504(3)).

This standard and its application to wholesale automotive auctions have long been accepted in jurisdictions throughout the country.

5. The federal government has concluded that wholesale automotive auctions are advantageous to consumers.

As part of its investigation of creditor practices which led to the adoption of the Credit Practices Rule, the FTC considered requiring that repossessed vehicles be disposed of at retail. The FTC's conclusions matched what common sense would dictate; i.e., after deducting the reasonable expenses of a retail sale, the debtor's account would not be credited an amount greater than that resulting from a wholesale sale. They further concluded that "....this provision would impose costs, and could raise the cost and reduce the availability of credit, in excess of offsetting benefits." Its conclusions was based on an examination of the incentive of creditor to maximize the sale price and the fact that the wholesale/retail price difference is due primarily to the costs of running retail outlets.

We view this rule as nothing more than an attempt to increase creditor costs on defaulting accounts, which will only hurt good paying customers.

In conclusion, let me restate that Ford Credit is supportive of fair and consistent treatment of all customers. Our specific objections are outlined above. I am available to discuss further (313-323-7460) and/or present our views at your August 10, 1994, public hearing.



Rick J. Deller  
Governmental Affairs Manager



344 High Street, P.O. Box 616 • Morgantown, WV 26507-0616 • (304) 284-2400

10/11/1994

For Rodd, Director  
Consumer Protection Division  
418 Quarrier Street  
Charleston, WV 25301

RE: Proposed Consumer Protection Legislation  
Title 142

Dear Mr. Rodd:

It appears that another attempt is being made to impede the legitimate right of lenders to recover the secured interest in our properties. Most of the items contained in your proposed legislation for the protection of the consumer already exist; it's just a matter of being able to extrapolate the information from various codes. To further define present laws is meaningless.

I must take the position of opposing this legislation for the above reason and its overall content not to be in the best interest of lending institutions or, in fact, the consumer.

Sincerely,

Mike Pr...

### SUMMARY OF OPPOSITION TO SERIES 24

The West Virginia Bankers Association ("WVBA") strongly urges the Consumer Protection Division to reconsider promulgating Series 24. The proposed regulations are not necessary to address the identified consumer issues for several reasons. First, these issues are already regulated by Article 9 of the Uniform Commercial Code, the West Virginia Consumer Credit and Protection Act ("WVCCPA"), and/or federal consumer protection regulations.

Second, some of the provisions of the proposed rule actually conflict with either Article 9 or the WVCCPA. Thus, if promulgated, the proposed rule would interject uncertainty in a well-established area of law.

Third, the WVBA is not aware of abuses in the areas of security interest creation and repossession activities which are not addressed by existing law or which would warrant such sweeping regulation.

Series 24 purports to fit the regulation of credit practices within general consumer protection provisions. Both the WVCCPA and federal law regulate credit practices and trade practices separately. Such regulation should remain separate because the credit contract and related enforcement activities are distinctly different from acts related to induce a consumer to make a purchase.

The proposed rule states that it "shall be liberally construed to effectuate the purposes of Article 6..." of the WVCCPA. While Article 6 regulates general consumer protection, regulation of credit and debt collection is actually governed by Article 2. Also, the division's authority to promulgate rules under Article 6 is limited to conformance with the the rules and regulations of the Federal Trade Commission ("FTC"). However, Series 24 is much broader than and thus beyond the scope of the FTC regulations. Thus, the topic of the proposed rule is inappropriate under Article 6.

The WVBA is also concerned that Series 24 could impact the availability of consumer credit and the cost incurred by the consumer. For example, if out-of-state lenders are required to conform to the additional restrictions of Series 24, they could charge more for their services or simply cease offering their services in West Virginia. Such a result is exactly what the legislature intended to prevent when it enacted Article 6. The statute expressly states the following intent of the legislature:

that this article not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest....

An increase in cost to obtain consumer credit and/or a decrease in available sources of consumer credit would be prohibitive to business development and clearly would be injurious to the public interest.

263991

COMMENTS OF COMMUNITY BANK OF PARKERSBURG

TO

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

INTRODUCTION

Community Bank of Parkersburg is an independent State Bank situate in Parkersburg, West Virginia, with assets of approximately of seventy five million dollars (\$75,000,000,00). It has been a lending institution for seventy seven (77) years. Throughout its history it has had a strong emphasis on consumer lending. Community Bank of Parkersburg objects to the proposed title 142 Legislative Rule in the following particulars.

OBJECTIONS TO THE RULES

1. Community Bank of Parkersburg objects generally to the Rules because their adoption, in totality, will require Community Bank to restrict the availability of credit to only the most creditworthy customers.

2. Community Bank of Parkersburg objects to specific provisions in the Rules including 3.2.7, 3.2.11, 3.2.13, 3.2.4, 3.4.2 and 3.4.6.

3. Community Bank of Parkersburg objects to the proposed Rules generally because in their totality, they tend to be duplicative of existing laws, specifically the Uniform Commercial Code, which will create confusion and uncertainty as to applicability and enforcement.

## ARGUMENT

1. Community Bank of Parkersburg will be required to limit its extension of credit to only the most creditworthy customers if these regulations are adopted. The effect of regulations such as 3.2.7, prohibiting a repossession of property that causes undue hardship, or 3.4.2, restricting the ability to sell collateral at private sale, or 3.4.6, which imposes implied warranties on the lender when selling collateral, will be to deprive the lender of the ability to reasonably recover possession of and liquidate collateral in a manner designed to minimize losses and limit expenses generated by such transactions. Therefore, the only recourse available to the lender will be to limit its lending to those customers with gilt-edged credentials which minimize the likelihood that a repossession will become necessary. If repossession is no longer a viable remedy, because it imposes undue hardship on the debtor, or because the lender is required to make implied warranties to purchasers of the collateral, the lender will only make consumer loans to customers it determines constitute no or little risk of loss. Obviously the restriction of the extension of credit only to such customers is not in the consumers' interests.

It is interesting that the economic impact statement attached to the proposed rules asserts that the adoption of the proposal will promote job growth and business development. In fact, the exact opposite will likely be the result. Imposition of these rules may effectively close down the mobile home industry in this state, now one of the fastest growing sectors of the economy.

2. Community Bank of Parkersburg objects with specificity to the following provisions:

a. 3.2.7 This prohibits the seizure of property from a location

that causes undue hardship to the consumer. It is hard to conceive of a repossession that would not cause undue hardship to a consumer. If the item to be repossessed is a car, repossessing it from a driveway of the borrower will cause the borrower undue hardship. If the collateral seized is a mobile home, removing the mobile home from the real estate upon which the consumer lives will cause the consumer undue hardship. In many instances, I would assume it causes undue hardship when the debtor voluntarily surrenders the collateral.

- b. 3.2.11 This prohibits entering a consumers' residential premises to seize property. The first question would be what are residential premises? Does this include the driveway or an off street parking area? What is the effect of this regulation when the collateral is the consumers' residential premises? In addition, there is nothing inherently wrong with the peaceable, uncontested entry upon the premises of the debtor to repossess the collateral. Often, that will be the only available means for the lender to obtain possession of the collateral.
- c. 3.2.13 This provision makes it a prohibited practice to fail to dispose of collateral within ninety (90) days of repossession if the consumer had paid sixty percent (60%) of the amount owing. One wonders what the percentage of the debt discharged by the debtor prior to the default has to do with the reasonable period of time which may be required to dispose of the collateral. Often collateral is in less than ideal condition when repossessed. By the time repairs are made it

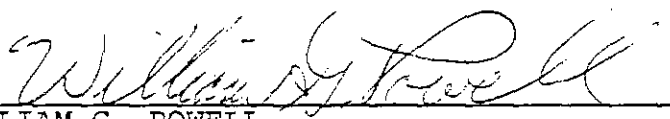
may not be possible to market the property in a commercially reasonable sale within ninety (90) days. Further, it is quite possible that a buyer at a commercially reasonable price will not be found within ninety (90) days. Perhaps the Consumer Protection Division should propose that the State of West Virginia would be the fair market value buyer of last resort for all collateral not disposed of within ninety (90) days.

- d. 3.4.2 This provision bars the sale of collateral in a private sale to a secured party or to a party affiliated to a secured party. We are provided no definition for the term "affiliated". However, it should be noted that "affiliated" parties are often an excellent source for purchasers of collateral at a commercially reasonable price. So long as the sale is in a commercially reasonable manner there appears to be no reason to deprive the lender of this source of purchasers. Sale of the collateral is to the consumers' advantage as well because it fixes the deficiency balance owed, if any.
- d. 3.4.6 This provision imposes implied warranties upon the lender as seller of the collateral unless the lender credits the debtor with full retail market value. Once again, retail market value is not defined. More importantly however, lenders are not retailers of commercial products. Given the interest of all parties in the quick liquidation of collateral, it does not appear to be in the interest of any party to apply warranties to these transactions.
- e. 3.2.4 This provision prohibits making false threats to repossess property. One wonders under the regulations how a

threat is going to be determined to be false. The fact that collection officer advises a debtor that a continued default will result in repossession, but repossession does not occur because an accommodation of some kind takes place, does not make the representation of the collection officer a "false threat". If the lender is proceeding in bad faith, the consumer has existing remedies.

3. The proposed Rules are duplicative of existing laws which would create confusion and uncertainty. In many instances, the language of the rule is similar to the meaning of the Uniform Commercial Code. In fact, some of the provision, i.e. 3.3.3 and 3.4.12 are mere redundancies. Others however, use terms which, although similar to existing law, may be interpreted differently. For example, 3.4.8 prohibits a lender from seeking a deficiency not based on a "bonafide sale". What is the difference between a "bonafide" sale and a commercially reasonable sale. Are these rules going to be interpreted to impose a new standard upon lenders not now in existence? All the provisions of the rules which are repetitive or similar to existing laws should be deleted.

Respectively submitted,

  
WILLIAM G. POWELL  
counsel for Community Bank of Parkersburg

**Comments of Chrysler Credit Corporation Regarding  
the Proposed Legislative Rule Pertaining to the  
Prevention of Unfair or Deceptive Acts or Practices  
in Security Interest and Repossession Practices**

Prepared by:

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Counsel for Chrysler Credit  
Corporation

August 10, 1994

Comments of Chrysler Credit Corporation Regarding  
the Proposed Legislative Rule Pertaining to the  
Prevention of Unfair or Deceptive Acts or Practices  
in Security Interest and Repossession Practices

Introduction

On July 7, 1994 the Office of the Attorney General filed with the Secretary of State proposed legislative rules pertaining to the prevention of unfair or deceptive acts or practices in security interest and repossession practices. The promulgation of such rules is authorized by W. Va. Code §§46A-6-103, 46A-7-102(1)(e). However, W. Va. Code §46A-6-103 specifically requires that any rules and regulations promulgated pursuant to its authority "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 amended from time to time."

### Chrysler Credit Corporation

Chrysler Credit Corporation ("Chrysler Credit") is a Delaware corporation, with its principal place of business located in Southfield, Michigan. As a corporation engaged in the "financing"<sup>1</sup> of motor vehicles in all 50 states and abroad, Chrysler Credit has obvious reasons to be interested in the rules currently proposed by the office of Attorney General of West Virginia. Chrysler Credit comments on the proposed rules because, as written, they will have a significant negative impact on West Virginia's consumer credit industry, which will ultimately result in the reduced availability of consumer credit and/or a higher cost of credit to consumers. Chrysler Credit believes that many of the proposed rules are either: (a) excessive in scope or in direct opposition to existing positive law and, thus, impermissible under the controlling statutes or (b) ambiguous and inviting of unnecessary litigation.

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<sup>1</sup> With the exception of "floor plan" financing. The financing is accomplished by the assignment to Chrysler Credit of retail installment contracts. Thus, the business of Chrysler Credit is directly affected by the provisions of W. Va. Code §§ 46A-1-101 et seq., 46-9-101 et seq. and these proposed rules.

### Comments

In specific reference to each of the numbered paragraphs of the proposed rules, Chrysler Credit would offer the following comments and proposals.

#### §142-24-2. Definitions.

- 2.1 No comment.
- 2.2 This provision should be revised to comport with the provisions of W. Va. Code §46A-1-102(12)(a)(v), in which consumer credit transactions are limited to those in which the amount financed does not exceed \$25,000.00.
- 2.3 No comment, this provision is in accord with existing law.
- 2.4 No comment, this provision would appear to simply provide a name for a practice made permissible by the provisions of W. Va. Code §46-9-505(2).

#### §142-24-3. Prohibited Practices.

##### 3.1 Security Interest.

3.1.1 This section seems to imply that a creditor must have actual intent, at the time a contract is signed, to repossess if a default occurs. This rule should allow a creditor to keep repossession as an option if default does occur. As a matter of practice, Chrysler Credit uses repossession only as a last resort. The rules

should not force a creditor to rush to repossess when other alternatives are available. Yet, such is the likely result if this provision remains.

3.1.2 No comment, in accord with existing law.

3.1.3 No comment, in accord with existing law.

**3.2 Repossession.**

3.2.1 No comment, provision is in accord with existing law.

3.2.2 No comment, provision is in accord with existing law.

3.2.3 No comment, provision is in accord with existing law.

3.2.4 This provision is ambiguous. It is believed that the provision is intended to prohibit threats of repossession when the creditor has no colorable claim of a right to do so. If that is the case, the provision should read: "Threaten to repossess property, including but not limited to household goods, when the creditor knows that it has no colorable claim of a right to do so."

3.2.5 This provision is vague and ambiguous as to making "use of other deception." This section should be rewritten to state: "Make false or deceptive threats about the use of law enforcement."

3.2.6 This provision is vague and ambiguous as to the phrase "otherwise [misrepresent] the reposessor's

identity." Clearly a reposessor should be prohibited from stating or even implying an official status that would vest him with greater authority to seize property, when he lacks the same. But this provision would prohibit a reposessor from simply giving a false name to protect himself, or his family, from possible retaliatory action. This section should be rewritten to state: "Misrepresent government affiliation or otherwise imply that the reposessor is vested with authority that he does in fact not possess."

3.2.7 This provision is highly ambiguous, overly subjective and would seem to invite litigation in almost all incidents where collateral is repossessed from a defaulting consumer. When a consumer defaults on a secured obligation, the creditor is forced to repossess the collateral when and where it can be found. Neither the creditor nor an agent (who would routinely be employed to perform the actual repossession) can reasonably be charged with or expected to possess the subjective knowledge of when a consumer might be caused "undue hardship", by reason of the location from which collateral is repossessed.

To the extent this provision is intended to prohibit intentionally malicious conduct on the part of creditors, Chrysler Credit suggest that it be reworded to state:

"Seize 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."

3.2.8 No comment, provision is in accord with W. Va. Code §46A-2-106.

3.2.9 This provision is over reaching and places an undue burden on creditors. The right to simply carry firearms is a matter already governed by state and federal law. Further, improper use of a firearm is already governed by state criminal law. If a firearm is used in an improper manner by a repossession agent, the consumer is provided, by existing law, with adequate means of relief. This provision, however, would impose strict liability upon creditors for conduct of agents that they have no ability, and arguably no right, to control. If it is truly necessary to control the carrying of fire arms by repossessioners, the rule should be primarily directed at the repossessioners. The following language is suggested for 3.2.9: "Carry a firearm while repossessing property in connection with a consumer transaction or to authorize a repossession agent to do so."

3.2.10 No comment, this provision is in accord with existing law.

3.2.11 This provision is ambiguous with respect to the meaning of "premises." If that word is intended to mean dwelling it should so state. Further, protection which appears to be intended by this provision is already offered by existing law and §3.2.10, which prohibit a breach of the peace in repossessing property. This provision, as written, would prohibit a creditor or its agent, from entering onto a consumer's "residential premises," knocking on the door and politely requesting that the collateral securing an obligation in default be surrendered. Thus, unless collateral was seized from a point distant to the consumer's "residential premises" (which would put the creditor at risk of "cause[ing] undue hardship to a consumer") no repossession could occur absent the institution of a civil action and the utilization of public officials to serve process and writs of possession. Such a requirement is unnecessary and would be unduly expensive to defaulting consumers (who would be required as a matter of law to pay the "costs" when the creditor prevails on the merits in seeking possession). Additionally, the provision would place an undue burden on public officials (and the public at large) as the fees assessed for service of process and service of writs do not begin to compensate for the actual cost involved or for the fact that requiring such unnecessary duties by the officials would necessarily

limit their ability to be involved in more pressing matters.

3.2.12 No comment, provision is in accord with existing law.

3.2.13 No comment, provision is in accord with existing law.

### 3.3 Contracts.

3.3.1 No comment, provision is in accord with existing law.

3.3.2 This provision is unreasonable in that it is open ended. Certainly consumers have a right to recover unencumbered personal property present in repossessed collateral. However, that right should not be guaranteed without limit. Creditors should be required to make such unencumbered personal property available to consumers for a specific reasonable period after repossession, but an unlimited right to recover such personal property at any point in the future would transform creditors into involuntary bailees of abandoned property.

3.3.3 No comment, provision is in accord with existing law.

### 3.4 Sales.

3.4.1 No comment, provision is in accord with existing law.

3.4.2 This provision is in direct conflict with W. Va. Code §46-9-504(3), which specifically provides:

The secured party may buy at any public sale and if the collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed price quotations [the secured party] may buy at a private sale.

The harm that this section appears intended to prevent is already prevented by the provisions of W. Va. Code §46-9-504(3) which requires that "every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable."

3.4.3 This provision is in direct conflict with W. Va. Code §46-9-504(3) which specifically provides that "[d]isposition of the collateral may be by public or private proceedings."

The provision requiring crediting of the "retail market value" not only exceeds and is in opposition to the guidelines provided by West Virginia statutory law, but was considered and specifically rejected by the Federal Trade Commission. See 49 Fed. Reg. 42 at 7740, 7783 (March 1, 1984) ("The Commission has considered but rejected a provision that would have required valuing collateral other than household goods at its retail price for purpose is of calculating deficiencies.") By reference, the full comments of the Trade Commission

regarding the proposal are incorporated herein and are attached as Exhibit A.

3.4.4 No comment, provision is in accord with existing law.

3.4.5 This provision is unduly restrictive and serves no legitimate purpose that is not already served by the requirement that all sales be commercially reasonable.

3.4.6 As to the requirement of this provision requiring "retail marke[t] value," please see comments to 3.4.3, above. With regard to the waiver of implied warranties in a public sale, Chrysler Credit comments that it is unreasonable to expect a public seller to warrant goods when that seller has little or no knowledge as to how such goods were kept or maintained and no ability to have required proper maintenance. Further, requiring such warranties would provide the defaulting consumer with an unearned windfall. Any warranty is a thing of value for which a buyer will generally be willing to pay and for which a seller must charge. The extra sum paid/charged for the warranty would not be for any intrinsic value in the collateral, but for the promise made by the seller to warrant the collateral. Nonetheless, under these rules and existing law, the full price paid for the goods (which would include payment for the warranty) would be credited to the balance due by the defaulting consumer.

3.4.7 No comment, provision is in accord with existing law.

3.4.8 No comment, provision is in accord with existing law.

3.4.9 No comment, provision is in accord with existing law.

3.4.10 This section is ambiguous. If it is intended to prohibit recovery of attorney's fees that are prohibited by law from being recovered, it should so state in unambiguous language, such as "attempt to seek attorney's fees that are prohibited by law." If this provision is intended to prohibit an attempt to recover attorney's fees unless positive loss specifically authorizes such recovery, Chrysler Credit comments that it would appear to be an impermissible interference with contract that is prohibited by the Constitution of the United States.

3.4.11 This provision is in conflict with W. Va. Code §46-9-505(2), which allows "strict foreclosure" so long as the consumer receives written notification and does not object within 30-days. As to the "retail market value" requirement of this provision, please see comments to 3.4.3, above.

3.4.12 No comment, provision is in accord with existing law.

### Conclusion

Chrysler Credit Corporation simply asks that these rules be considered in terms of their impact on the vast majority of consumers who will never default on secured consumer credit transactions. In the course of Chrysler Credit's business, repossession is the great exception, not the rule -- 1% or less of Chrysler Credit consumer contracts actually go to repossession. These rules, however, would compel action by Chrysler Credit (and other similar companies) to engage in conduct that would substantially increase costs for the majority of consumer while providing no substantial for the minority of consumer that are in default and subjected to repossession. Likewise, there is no need to burden all creditors that take security interests in consumer goods, when a) the majority of such creditors do not abuse the rights of consumers when repossession becomes necessary and b) existing law is more than adequate to protect consumer's rights. As stated by the Federal Trade Commission:

these provisions would . . . reduce the value of collateral to creditors and hence increase creditor's cost and losses due to defaults. In addition, the determination of retail value and the allocation of selling cost would involve substantial cost for creditors as well as enforcement agencies. These cost would be especially great if a vehicle required extensive repairs or was resold several times before its eventual retail disposition.

Furthermore, the retail value provision would create perverse incentives. Some debtors might intentionally default on their loans in order to obtain free retailing services, the cost of which would be imposed on creditors. The rule would also create incentives for creditors to enter retailing [or repossessing] even

though cost might be lower if more efficient retailers [or repossession agents] were used.

If the rules as currently written are enacted, secured creditors engaged in consumer credit transactions will be forced to open retail sale outlets and repossession units, despite the fact that their costs of operation, which will be passed on to consumers, will be much greater than the costs experienced by entities already engaged in such businesses. Moreover, the rules in their current posture will invite unnecessary litigation and will deprive marginal consumers of the opportunity to obtain consumer credit.

For these reasons, Chrysler Credit Corporation asks that its comments be considered and that the proposed rules be modified accordingly so that they will provided welcomed guidance without placing an unnecessary burden on creditors and consumers.

CHRYSLER CREDIT CORPORATION  
By counsel,



W. Bradley Sorrells  
Robinson & McElwee  
Post Office Box 1791  
Charleston, WV 25326  
(304) 344-5800

Thursday  
March 1, 1984

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**Part IV**

**Federal Trade  
Commission**

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16 CFR Part 444

Trade Regulation; Credit Practices; Final  
Rule

**EXHIBIT A**

requirements.<sup>2</sup> We have, however, adopted a provision (Section 444.5) that affords an opportunity for states whose laws are substantially equivalent to, or more protective than, the rule to apply for specific exemption from the rule. This provision can be invoked with respect to any provision of the rule, but we are particularly mindful of the states' role in defining what items are considered necessities, in the context of the rule's household goods definition.

Under § 444.5, the rule will not be in effect in a state to the extent specified by the Commission only if: (1) Application for an exemption is made by a state; (2) there is a state requirement or prohibition<sup>3</sup> in effect that applies to any transaction to which a rule provision applies; and (3) the state shows that its provision provides a level of protection that is as great as, or greater than, the protection afforded by the rule provision. If an exemption is granted, it shall be in effect only for as long as the state administers and enforces the state provision effectively.

As set forth in § 444.5, the Commission will determine the appropriate relationship between the rule provisions and state provision on a case-by-case basis in the context of an exemption proceeding conducted pursuant to § 1.18 of the Commission's Rule of Practice. The Commission will evaluate appropriate petitions for exemption made by state governmental agencies to determine the level of protection to consumers and whether the state regulation is administered and enforced effectively.

The requirement in § 444.5 that a comparable state requirement be "substantially equivalent" to the Commission rule provision does not, in our view, require that the state requirement mirror exactly the Commission provision. Any differences that exist, however, should be minor so as not to deprive consumers of the level of protection guaranteed by the Commission rule nor to complicate significantly compliance by interstate creditors.<sup>4</sup> Other factors that will be

considered by the Commission in determining whether an exemption is warranted include the resources committed by the state to enforce its provisions, and the extent of any private rights of action available to aggrieved consumers.

Only state governmental entities may request exemptions from provisions of the Commission's rule under § 444.5. The grant of an exemption based on state requirement will necessarily place on the state the primary burden to enforce its provision. Therefore, a decision to seek exemption should be made solely by the state entity involved.

In a number of instances, participants in the proceeding indicated that the rule might conflict with state law, or interact with state law in a confusing or unforeseen way. We have adopted modifications in the rule to eliminate these problems.<sup>5</sup>

In response to concern expressed by state officials<sup>6</sup> and others,<sup>7</sup> the Commission takes this opportunity to make clear that the rule is not intended to occupy the field of credit regulation or to preempt state law in the absence of

<sup>2</sup> For example, we have excluded certain wage assignments from Section (a)(3) of the rule because of possible problems with the California Personal Property Brokers law, clarified Section (a)(2) on waivers of exemption to avoid problems with mortgage laws in certain states, and significantly scaled back § 444.3 on late fees in such a way as to avoid conflict with state laws on late fees. See generally the sections of this Statement on individual rule provisions.

<sup>3</sup> E.g., Tucker Treutman, Colorado Assistant Attorney General, HX-252 at 3-12; Richard Gross, Massachusetts Assistant Attorney General, Tr 10928; Richard Victor, Wisconsin Assistant Attorney General, HX-151; Robert Patrick, General Counsel, Wisconsin Office of Commissioner of Banking, HX-152 at 8.

<sup>4</sup> E.g., National Consumer Law Center, R-1(c)-103 at 10-11; Jonathan Epstein, Essex-Newark Legal Services, Tr. 8947; Michael Burns, Legal Aid Society of Minneapolis, HX-45 at 13; Terry Friedman, Western Center on Law and Poverty, Tr. 6337; Ronald Gull, Wisconsin Consumer League, Tr. 3976-77; Mary Gillespie, San Francisco Neighborhood Legal Assistance Foundation, Tr. 3388-89; James Brown for Consumer Affairs, University of Wisconsin Extension, HX-153 at 12. The Presiding Officer suggested that language should be added to the rule to eliminate conflicts with certain Federal laws or regulations. Presiding Officer's Report at 352. Examination of the testimony cited by the Presiding Officer in support of this recommendation does not reveal any specific conflicts between the rule and Federal law. Although there were no direct conflicts, witnesses were concerned about the relation between various Federal laws and the rule provisions on late charges, waivers of exemption, and restrictions on non-purchase money security interests. We have adopted modifications in these provisions that eliminate the concerns expressed. In particular we have substantially reduced the scope of the late fees provision, thereby avoiding problems with Federal late fees regulation, and have clarified the waivers provision and modified the security interest provision so that they do not effect real property mortgages.

requirements that are inconsistent with the rule.

## XII. Empirical Evidence on the Benefits and Costs of Provisions Considered by the Commission But Not Adopted.

This section discusses the benefits and costs of provisions of the 1975 proposed rule that the Commission considered but did not accept, together with analysis of a disclosure alternative considered by the Commission during its final deliberations on the rule.

### A. Deficiencies

A deficiency arises when repossessed collateral is sold for less than the amount owing on a debt. The Commission has considered but rejected a provision that would have required valuing collateral other than household goods at its retail price for purposes of calculating deficiencies. The provision would have required an election of remedies in the case of household goods collateral, requiring creditors to choose between repossession or suit.

#### 1. Prevalence

Sizeable deficiencies occur in the majority of transactions involving automobile repossessions; average automobile deficiencies range from 25 to 50 percent of the balance owing at the time of default.<sup>1</sup> Little evidence addresses deficiencies for other types of collateral. Creditors apparently pursue a deficiency only infrequently, and on average creditors recover no more than 5 to 15 percent of the deficiency.<sup>2</sup> As the Presiding Officer noted, under these circumstances creditors have an incentive to obtain the best possible price, net of sales costs, for collateral.<sup>3</sup> There is, therefore, insufficient evidence that problems in the valuation of collateral are prevalent.

<sup>1</sup> E.g., Note, "Defaulting Debtors and the Judicial Process—The FTC's Proposed Restriction on Delinquency Judgments: Section 444.2(a)(7) of the Rule on Credit Practices," 8 Conn. L. Rev. 459 (HX-338, Note, "Business as Usual: An Empirical Study of Automobile Deficiency Judgment Suits in the District of Columbia," 3 Conn. L. Rev. 511 (1971) R-XI-84; Shuchman, "Profit on Default: An Archival Study of Repossession and Resale," 22 Stan. L. Rev. 20 (1969), R-XI-85; Note, "I Can Get It For You Wholesale: The Lingering Problem of Automobile Deficiency Judgments," 27 Stan. L. Rev. 1081 (1975) HX-247; (CMAC, R-1(a)-812 at 9-10; Bank of America, HX-227 at 6; Security Pacific National Bank, HX-244; Cwennap, HX-500 at Table 4; Milroy, Tr. 5436-87; Nagel, R-11(g)-64; Marsh, Tr. 2818.

<sup>2</sup> E.g., Schmidt, Tr. 6194; GMAC, R-1(a)-812 at 10; Brown, Tr. 2771; Martin, Tr. 1143; 1154-55; Marsh, Tr. 2819-20.

<sup>3</sup> Presiding Officer's Report at 250.

<sup>2</sup> See, *Mobil Oil Corp. v. Attorney General*, 330 N.Y.2d 408 (Mass. 1972) in which the court held that a state statute banning certain promotional games of chance was not preempted by a Federal Trade Commission rule regulating such games.

<sup>3</sup> For purposes of this rule, a state requirement or prohibition could include statutes and formal state regulations. It would not include informal enforcement policy statements.

<sup>4</sup> The standard is analogous to that applied by the Federal Reserve Board in determining state exemptions from requirements of the Truth in Lending Act. See Board of Governors of the Federal Reserve System, Consumer Lending: Truth in Lending: Exemption Application \* \* \*, 47 FR 16210, April 15, 1982.

## 2. Benefits

The benefits of an election of remedies requirement in repossession of household goods would be similar in nature if not magnitude to those that would result from the provision to prohibit non-purchase money security interests in household goods. When a deficiency is pursued, a requirement for valuation at the retail price would benefit borrowers, because normally resale would take place at the lower wholesale value. In the event of abuse, resale may take place below wholesale value.

Retail valuation thus raises two issues. The first is the requirement to credit consumers with the retail rather than the wholesale value of repossessed collateral before pursuing a deficiency. The second involves any remaining problems in cases where consumers are credited with less than the wholesale value of the goods. These issues will be addressed before considering the benefits and costs of the provision.

The difference between retail and wholesale prices is a result of the costs of retailing. The Commission concluded that it is not unreasonable for defaulters to bear the costs of retailing repossessed collateral and that sales at wholesale prices are therefore not inherently unfair. When retailers sell repossessed collateral themselves, they normally do sell it on the retail market.<sup>4</sup>

The fact that repossessed cars are sold for prices below wholesale book value<sup>5</sup> can often be explained by differences in the condition of repossessed cars and the average "good" used car,<sup>6</sup> and hence there is little basis for concluding that undervaluation of collateral is prevalent.

The record does, nevertheless, reveal some problems in valuation of collateral when the creditor and the buyer are closely related. When the creditor sells the car to itself or in a "sweetheart" deal, there is an incentive to undervalue it to the extent that recovery on a deficiency is possible. However, the evidence does not indicate that such undervaluations are prevalent,<sup>7</sup> and they frequently violate existing state law. The U.C.C. requires that collateral be disposed of in a "commercially reasonable" manner. As the Presiding Officer noted, a valuation requirement "is not a self-executing remedy. To secure benefits, consumers must resort to the courts just as they must do to insure that sales of collateral under current laws are made in a

commercially reasonable manner. In view of reluctance or inability to take this action as shown by the record, the provision will be largely ineffective."<sup>8</sup> We therefore conclude that a case-by-case approach to enforce existing standards of valuation in the event of abuse is preferable to a rule that would restrict the legitimate use of deficiencies.

## 3. Costs

To the extent that these provisions would reduce recovery on deficiencies, or restrict repossession of household goods used as collateral for installment credit or purchase money loans, they would reduce the value of collateral to creditors and hence increase creditors' costs and losses due to defaults. In addition, the determination of retail value and the allocation of selling costs would involve substantial costs for creditors as well as enforcement agencies.<sup>9</sup> These costs would be especially great if a vehicle required extensive repairs or was resold several times before its eventual retail disposition.

Furthermore, the retail value provision could create perverse incentives. Some debtors might intentionally default on their loans in order to obtain free retailing services, the costs of which would be imposed on creditors.<sup>10</sup> The rule would also create incentives for creditors to enter retailing even though costs might be lower if more efficient retailers were used.<sup>11</sup>

## 4. Commission Decision

A majority of the Commission decided that this provision would impose costs, and could raise the cost and reduce the availability of credit, in excess of offsetting benefits. Crediting debtors with the wholesale value is not unfair when a higher price is not obtained, there is little evidence of prevalence concerning valuation below the wholesale value, and such valuations are already illegal under current standards. Our decision is consistent with the Presiding Officer's findings concerning the retail value provision.<sup>12</sup>

## B. Attorney's Fees

The Commission considered but rejected a provision prohibiting credit

contract clauses requiring that debtors pay attorneys' fees incurred by creditor in debt collection.<sup>13</sup> This provision would not have restricted the power of the courts to impose such fees on defaulters under state law, however. Consequently, the provision might have had little effect in some states.<sup>14</sup>

## 1. Prevalence

A large majority of the states permit attorneys' fees clauses, although some ban them on small loans and/or place limits on the size of the fees.<sup>15</sup> Record evidence indicates that such clauses are included in the great majority of contracts when they are permitted by state law.<sup>16</sup> Attorneys' fees represent a significant share of the average judgment.<sup>17</sup>

## 2. Benefits

The rationales offered for this provision were that attorneys' fees exceed actual costs, that consumer liability for attorneys' fees discourages the assertion of valid defenses, and that consumer liability reduces creditors' incentives to minimize their legal costs.

The evidence shows that the attorneys' fees assessed against defaulters generally reflect what attorneys charge creditors for their services.<sup>18</sup> The evidence also shows that, in some specific instances, what attorneys charge creditors for their services bears little relation to the amount of work performed and may appear excessive. However, this is explained by the way attorneys are paid, e.g., a percentage of the unpaid obligation,<sup>19</sup> and does not imply that

<sup>13</sup> One version of the provision would have allowed exceptions where attorneys' fees are payable to the prevailing party or require a judicial determination that they are reasonable based on the value of services performed. The Commission rejected this version because it was not supported by the record. A provision that attorneys' fees are to be paid by the losing party would have little impact, because debtors have default judgments entered against them in the vast majority of cases. Nothing would be gained from a requirement of judicial determination of reasonableness, because the evidence discussed below suggests that attorneys' fees assessed against defaulters are already subject to state requirements of judicial review for reasonableness.

<sup>14</sup> Presiding Officer's Report at 322.

<sup>15</sup> NCFA, R-XIII-31 at C-22-23, and Presiding Officer's Report at 180.

<sup>16</sup> NCFA, HX-493; NCCP, Technical Studies, Vol. V at 43-45.

<sup>17</sup> The NCLC survey indicates legal aid attorneys believe the average is 20 percent. HX-467, HX-469. The record contains references to figures of 5 to 33 percent in individual cases; e.g., Baker, HX-443 at 1-2; Baker, HX-444 at 5-11; Paer, Tr. 5343; Presiding Officer's Report at 166.

<sup>18</sup> E.g., Hallenstein, Tr. 7091-92; Wehner, Tr. 9091; Kushel, HX-385 at 13-18; Goldberg, Tr. A119, 8135-37; Lavenstein, Tr. 8353; Nastlerode, Tr. 7207.

<sup>19</sup> Presiding Officer's Report at 180.

<sup>4</sup> E.g., R-XI-157.

<sup>5</sup> Note 1 *supra* at HX-536.

<sup>6</sup> E.g., R-XI-71-77 and R-XI-70.

<sup>7</sup> Presiding Officer's Report at 248.

<sup>8</sup> Presiding Officer's Report at 249.

<sup>9</sup> E.g., Friedman, Tr. 61-62; Breeden, Tr. 1400; Edwards, Tr. 8506; Boyle, Tr. 15-19; Fish, Tr. 522-23; Walther, Tr. 2312, 2315-17; Martin, Tr. 1142; Warren, Tr. 8315-8316. NCLC, R-I(c)-103 at 41, 54. NCLC, R-XIII-40 at 153.

<sup>10</sup> E.g., Brown, Tr. 2772-73; Carter, Tr. 1498-99.

<sup>11</sup> Bureau of Economics, "Comments on Credit Practices Rule," August 18, 1980, at 34-35.

<sup>12</sup> Presiding Officer's Report at 240.

debtors overcompensate creditors. As the Presiding Officer found, on average, "attorneys' fees, as limited by state laws, do not fully reimburse creditors for the amounts they actually expend for such fees."<sup>19</sup>

This provision would benefit borrowers to the extent that, in the event of default, it would increase their bargaining power with creditors and reduce the size of the judgments against them.

Because this provision would reduce the expected cost of defending a lawsuit, under some circumstances it would provide benefits by encouraging the successful assertion of valid defenses. The record contains evidence of instances in which a debtor agreed not to assert a defense in return for the creditor's agreement to waive attorney's fees.<sup>21</sup> The decision to reach a settlement reflects a mutual interest in minimizing legal costs. Although an attorney's fees clause could affect the terms of settlement, it would not necessarily affect the probability of a settlement. In any event, the Commission shares the Presiding Officer's conclusion that the "use of attorneys' fees clauses to persuade consumers to pay debts they do not owe or to forego valid defenses is simply not supported by the evidence in this record."<sup>22</sup>

The suggestion that this provision would provide benefits by encouraging creditors to limit their legal costs is not sufficiently supported by the record. As with deficiencies, creditors have an incentive to minimize attorneys' fees and other collection costs, because generally they are not fully reimbursed by defaulters.<sup>23</sup>

### 3. Costs

As is the case with any measure that reduces the costs of default to the borrower, the attorneys' fees provision might increase creditors' collection and other costs. In the event of default and a judgment, what borrowers would gain in reduced judgments as a result of this provision, creditors would lose in reduced recoveries. In addition, if the provision did encourage the assertion of defenses, total legal costs would rise.

### 4. Commission Decision

After weighing the record evidence, the Commission determined that the costs of this provision outweigh the benefits. This is consistent with the conclusion of the Presiding Officer that

"... the record does not permit an objective determination that the degree of consumer injury is sufficient to justify prohibiting the inclusion of attorneys' fees clauses in consumer credit contracts."<sup>24</sup>

### C. Third Party Contacts

The Commission considered but rejected a provision to prohibit creditor contacts with third parties except to locate the debtor, to determine the nature and extent of the debtor's income or property, or as a court permits.

#### 1. Prevalence

Record evidence indicates that many consumer credit contracts contain provisions expressly waiving the debtor's right to privacy or otherwise permitting third party contacts. At the time credit is extended creditors often obtain names of employers, relatives, friends, and neighbors.<sup>25</sup> Fifteen states limit third party contacts, and two prohibit them.<sup>26</sup>

The NCFE survey of finance company contracts indicates that third party contacts with employers in the case of delinquency occur in 1.5 percent of personal loans and 0.23 percent of sale finance contracts.<sup>27</sup> The percentage increases to 5 percent for loans delinquent 60 days or longer. Some of these contacts are incident to wage assignments and garnishments.<sup>28</sup>

The NCFE survey shows that contacts with third parties other than employers are more frequent, occurring in 12 percent of personal loans and 6 percent of sales finance contracts, and increasing to 35 percent of personal loans which have been delinquent for 60 days or longer.<sup>29</sup> Almost half these contacts are with relatives of the debtor. The vast majority are to locate or leave a message for the debtor. Nonetheless, the survey reveals that about 5 percent of these contacts are to seek collection from a third party.<sup>30</sup>

The record does not contain evidence of widespread abusive third party contacts. In the case of creditor contacts with a debtor's employer, it is in the creditor's interest to refrain from abusive conduct because to do otherwise might jeopardize the debtor's earnings.<sup>31</sup>

<sup>19</sup> Presiding Officer's Report at 188.

<sup>20</sup> E.g., NCLC, HX-487; Avco, R-XI-AVCO-018; General Finance Co., R-XI-GFC-2 at 218-2.

<sup>21</sup> NCFE, R-XIII-31 at C-25-27.

<sup>22</sup> Shay, HX-494 at 57; NCFE, HX-495 at Q11, HX-490 at Q11, HX-497 at Q11, HX-498 at Q11, HX-499 at Q11. NCFE data may understate third party contacts. Demasco, Tr. 11901-11904.

<sup>23</sup> Shay, HX-494 at 63.

<sup>24</sup> NCFE, HX-495 at Q11 and HX-499 at Q11.

<sup>25</sup> *Id.*

<sup>26</sup> Curtis, Tr. 2652; Thomasch, Tr. 8920.

#### 2. Benefits

This provision would benefit borrowers to the extent that it would reduce the ability of creditors to apply pressure to them in the event of default, reduce contacts with employers that might endanger debtors' jobs, reduce loss of privacy, or otherwise reduce abusive contracts. Examples of such abuses shown on the record include threats to reveal information to third parties, disclosures of information to third parties that amount to gross invasions of privacy, threats against third parties, or threats against debtors conveyed to third parties.

The provision requiring a contract clause ruling out third party contacts would produce few benefits because of enforcement problems. In the event of a prohibited third party contact, the debtor would have to sue for breach of contract, and the remedy would be limited to actual damages. It is unlikely that much litigation of this type would occur, because the large majority of judgments against debtors are taken by default.<sup>32</sup>

#### 3. Costs

In some cases, the restriction on third party contacts could work to the detriment of debtors because these contacts may currently prevent the use of more onerous collection methods.<sup>33</sup>

This provision would increase creditors' collection costs and perhaps losses due to default. Many contacts are efficient, legitimate business procedures, e.g., contacts with third parties who might possess the collateral or contacts with other creditors for purposes of instituting bankruptcy proceedings.<sup>34</sup> A general prohibition on third party contacts of the type contemplated by this provision as proposed would inevitably prevent some useful contacts because of problems in drawing a clear line between abusive and legitimate contacts.

#### 4. Commission Decision

The majority of the Commission decided that the costs of this provision outweigh its benefits. We consider that a case-by-case approach is more appropriate to stem abusive third party

<sup>27</sup> Caplovitz, *Consumers in Trouble: A Study of Defaulting Debtors*, at 100; and Warner, reporting results of a U. Conn. L. Rev. 412 study, Tr. 8303-04. Because of this problem, we also considered a direct prohibition on third party contacts. Even with this change, the provision was rejected because of its other costs, particularly interference with legitimate contacts.

<sup>28</sup> E.G., Schmidt, Tr. 8199-8200; Tanner, HX-171 at 15; Thomas, Tr. 8193-95.

<sup>29</sup> E.G., Childers, Tr. 1186-87.

<sup>19</sup> Presiding Officer's Report at 171.

<sup>20</sup> E.g., Bodron, Tr. 324-25.

<sup>21</sup> Presiding Officer's Report at 182.

<sup>22</sup> E.g., Gwennap, Tr. 12217-18; Wohner, Tr. 9091.

**Comments of Green Tree Financial Corporation Regarding  
the Proposed Legislative Rule Pertaining to the  
Prevention of Unfair or Deceptive Acts or Practices  
in Security Interest and Repossession Practices**

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Comments of Green Tree Financial Corporation Regarding  
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Prevention of Unfair or Deceptive Acts or Practices  
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Introduction

On July 7, 1994 the Office of the Attorney General filed with the Secretary of State proposed legislative rules pertaining to the prevention of unfair or deceptive acts or practices in security interest and repossession practices. The promulgation of such rules is authorized by W. Va. Code §§46A-6-103, 46A-7-102(1)(e). However, W. Va. Code §46A-6-103 specifically requires that any rules and regulations promulgated pursuant to its authority "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 amended from time to time."

### Green Tree Financial Corporation

Green Tree Financial Corporation ("Green Tree") is a Minnesota corporation, with its principal place of business located in St. Paul Minnesota. As a corporation engaged in the "financing"<sup>1</sup> of motor homes in West Virginia and 33 other states, Green Tree has obvious reasons to be interested in the rules currently proposed by the office of Attorney General of West Virginia. Green Tree comments on the proposed rules because, as written, they will have a significant negative impact on West Virginia's consumer credit industry, which will ultimately result in the reduced availability of consumer credit and/or a higher cost of credit to consumers. Green Tree believes that many of the proposed rules are either: (a) excessive in scope or in direct opposition to existing positive law and, thus, impermissible under the controlling statutes or (b) ambiguous and inviting of unnecessary litigation.

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<sup>1</sup> The financing is accomplished by the assignment to Green Tree of retail installment consumer credit contracts. Thus, the business of Green Tree is directly affected by the provisions of W. Va. Code §§ 46A-1-101 et seq., 46-9-101 et seq. and these proposed rules.

### Comments

In specific reference to each of the numbered paragraphs of the proposed rules, Green Tree would offer the following comments:

#### §142-24-2. Definitions.

- 2.1 No comment.
- 2.2 This provision should be revised to comport with the provisions of W. Va. Code §46A-1-102(12)(a)(v), in which consumer credit transactions are limited to those in which the amount financed does not exceed \$25,000.00.
- 2.3 No comment, this provision is in accord with existing law.
- 2.4 No comment, this provision would appear to simply provide a name for a practice made permissible by the provisions of W. Va. Code §46-9-505(2).

#### §142-24-3. Prohibited Practices.

##### 3.1 Security Interest.

3.1.1 This section seems to imply that a creditor must have actual intent, at the time a contract is signed, to repossess if a default occurs. This rule should allow a creditor to keep repossession as an option if default does occur. As a matter of practice, Green Tree uses repossession only as a last resort. The rules should not force a creditor to rush to repossess when other

alternatives are available. Yet, such is the likely result if this provision remains.

3.1.2 No comment, in accord with existing law.

3.1.3 No comment, in accord with existing law.

### 3.2 Repossession.

3.2.1 No comment, provision is in accord with existing law.

3.2.2 No comment, provision is in accord with existing law.

3.2.3 No comment, provision is in accord with existing law.

3.2.4 This provision is ambiguous. It is believed that the provision is intended to prohibit threats of repossession when the creditor has no colorable claim of a right to do so. If that is the case, the provision should read: "Threaten to repossess property, including but not limited to household goods, when the creditor knows that it has no colorable claim of a right to do so."

3.2.5 This provision is vague and ambiguous as to making "use of other deception." This section should be rewritten to state: "Make false or deceptive threats about the use of law enforcement."

3.2.6 This provision is vague and ambiguous as to the phrase "otherwise [misrepresent] the reposessor's identity." Clearly a reposessor should be prohibited

from stating or even implying an official status that would vest him with greater authority to seize property, when he lacks the same. But this provision would prohibit a reposessor from simply giving a false name to protect himself, or his family, from possible retaliatory action. This section should be rewritten to state: "Misrepresent government affiliation or otherwise imply that the reposessor is vested with authority that he does in fact not possess."

3.2.7 This provision is highly ambiguous, overly subjective and would seem to invite litigation in almost all incidents where collateral is repossessed from a defaulting consumer. When a consumer defaults on a secured obligation, the creditor is forced to repossess the collateral when and where it can be found. Neither the creditor nor an agent (who would routinely be employed to perform the actual repossession) can reasonably be charged with or expected to possess the subjective knowledge of when a consumer might be caused "undue hardship", by reason of the location from which collateral is repossessed.

To the extent this provision is intended to prohibit intentionally malicious conduct on the part of creditors, Green Tree suggest that it be reworded to state: "Seize 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."

3.2.8 No comment, provision is in accord with W. Va. Code §46A-2-106.

3.2.9 This provision is over reaching and places an undue burden on creditors. The right to simply carry firearms is a matter already governed by state and federal law. Further, improper use of a firearm is already governed by state law. If a firearm is used in an improper manner by a repossession agent, the consumer is provided, by existing law, with adequate means of relief. This provision, however, would impose strict liability upon creditors for conduct of agents that they have no ability, and arguably no right, to control. If it is truly necessary to control the carrying of firearms by repossessors, the rule should be primarily directed at the repossessors. The following language is suggested for 3.2.9: "Carry a firearm while repossessing property in connection with a consumer transaction or to authorize a repossession agent to do so."

3.2.10 No comment, this provision is in accord with existing law.

3.2.11 This provision is ambiguous with respect to the meaning of "premises." If that word is intended to mean dwelling it should so state. Further, protection which appears to be intended by this provision is already

offered by existing law and §3.2.10, which prohibit a breach of the peace in repossessing property. This provision, as written, would prohibit a creditor or its agent, from entering onto a consumer's "residential premises," knocking on the door and politely requesting that the collateral securing an obligation in default be surrendered. Thus, unless collateral was seized from a point distant to the consumer's "residential premises" (which would put the creditor at risk of "cause[ing] undue hardship to a consumer") no repossession could occur absent the institution of a civil action and the utilization of public officials to serve process and writs of possession. Such a requirement is unnecessary and would be unduly expensive to defaulting consumers (who would be required as a matter of law to pay the "costs" when the creditor prevails on the merits in seeking possession). Additionally, the provision would place an undue burden on public officials (and the public at large) as the fees assessed for service of process and service of writs do not begin to compensate for the actual cost involved or for the fact that requiring such unnecessary duties by the officials would necessarily limit their ability to be involved in more pressing matters.

**3.2.12** No comment, provision is in accord with existing law.

3.2.13 No comment, provision is in accord with existing law.

3.3 Contracts.

3.3.1 No comment, provision is in accord with existing law.

3.3.2 This provision is unreasonable in that it is open ended. Certainly consumers have a right to recover unencumbered personal property present in repossessed collateral. However, that right should not be guaranteed without limit. Creditors should be required to make such unencumbered personal property available to consumers for a specific reasonable period after repossession, but an unlimited right to recover such personal property at any point in the future would transform creditors into involuntary bailees of abandoned property.

3.3.3 No comment, provision is in accord with existing law.

3.4 Sales.

3.4.1 No comment, provision is in accord with existing law.

3.4.2 This provision is in direct conflict with W. Va. Code §46-9-504(3), which specifically provides:

The secured party may buy at any public sale and if the collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed price quotations [the secured party] may buy at a private sale.

The harm that this section appears intended to prevent is already prevented by the provisions of W. Va. Code §46-9-504(3) which requires that "every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable."

3.4.3 This provision is in direct conflict with W. Va. Code §46-9-504(3) which specifically provides that "[d]isposition of the collateral may be by public or private proceedings."

The provision requiring crediting of the "retail market value" not only exceeds and is in opposition to the guidelines provided by West Virginia statutory law, but was considered and specifically rejected by the Federal Trade Commission. See 49 Fed. Reg. 42 at 7740, 7783 (March 1, 1984) ("The Commission has considered but rejected a provision that would have required valuing collateral other than household goods at its retail price for purpose is of calculating deficiencies.") By reference, the full comments of the Trade Commission regarding the proposal are incorporated herein and are attached as Exhibit A.

3.4.4 No comment, provision is in accord with existing law.

3.4.5 This provision is unduly restrictive and serves no legitimate purpose that is not already served by the requirement that all sales be commercially reasonable.

3.4.6 As to the requirement of this provision requiring "retail marke[t] value," please see comments to 3.4.3, above. With regard to the waiver of implied warranties in a public sale, Green Tree comments that it is unreasonable to expect a public seller to warrant goods when that seller has little or no knowledge as to how such goods were kept or maintained and no ability to have required proper maintenance. Further, requiring such warranties would provide the defaulting consumer with an unearned windfall. Any warranty is a thing of value for which a buyer will generally be willing to pay and for which a seller must charge. The extra sum paid/charged for the warranty would not be for any intrinsic value in the collateral, but for the promise made by the seller to warrant the collateral. Nonetheless, under these rules and existing law, the full price paid for the goods (which would include payment for the warranty) would be credited to the balance due by the defaulting consumer.

3.4.7 No comment, provision is in accord with existing law.

3.4.8 No comment, provision is in accord with existing law.

3.4.9 No comment, provision is in accord with existing law.

3.4.10 This section is ambiguous. If it is intended to prohibit recovery of attorney's fees that are prohibited

by law from being recovered, it should so state in unambiguous language, such as "attempt to seek attorney's fees that are prohibited by law." If this provision is intended to prohibit an attempt to recover attorney's fees unless positive loss specifically authorizes such recovery, Green Tree comments that it would appear to be an impermissible interference with contract that is prohibited by the Constitution of the United States.

3.4.11 This provision is in conflict with W. Va. Code §46-9-505(2), which allows "strict foreclosure" so long as the consumer receives written notification and does not object within 30-days. As to the "retail market value" requirement of this provision, please see comments to 3.4.3, above.

3.4.12 No comment, provision is in accord with existing law.

### Conclusion

Green Tree simply asks that these rules be considered in terms of their impact on the vast majority of consumers who never default on secured transactions. In the course of Green Tree's business, repossession is the great exception, not the rule -- only a small percentage of Green Tree's consumer contracts actually go to repossession. These rules, however, would compel action by Green Tree (and other similar companies) to engage in conduct that would substantially increase costs for the majority of consumer while providing no substantial for the minority of consumer that are in default and subjected to repossession. Likewise, there is no need to burden all creditors that take security interests in consumer goods, when a) the majority of such creditors do not abuse the rights of consumers when repossession becomes necessary and b) existing law is more than adequate to protect consumer's rights. As stated by the Federal Trade Commission:

these provisions would . . . reduce the value of collateral to creditors and hence increase creditor's cost and losses due to defaults. In addition, the determination of retail value and the allocation of selling cost would involve substantial cost for creditors as well as enforcement agencies. These cost would be especially great if a vehicle required extensive repairs or was resold several times before its eventual retail disposition.

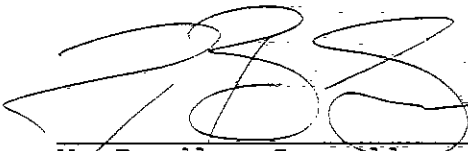
Furthermore, the retail value provision would create perverse incentives. Some debtors might intentionally default on their loans in order to obtain free retailing services, the cost of which would be imposed on creditors. The rule would also create incentives for creditors to enter retailing [or repossessing] even though cost might be lower if more efficient retailers [or repossession agents] were used.

If the rules as currently written are enacted, secured creditors engaged in consumer credit transactions will be forced to open retail sale outlets and repossession units, despite the fact that their costs of operation, which will be passed on to consumers, will be much greater than the costs experienced by entities already engaged in such businesses. Moreover, the rules in their current posture will invite unnecessary litigation and will deprive marginal consumers of the opportunity to obtain consumer credit.

For these reasons, Green Tree Financial Corporation asks that its comments be considered and that the proposed rules be modified accordingly so that they will provided welcomed guidance without placing an unnecessary burden on creditors and consumers.

GREEN TREE FINANCIAL CORPORATION

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Thursday  
March 1, 1984

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**Part IV**

**Federal Trade  
Commission**

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16 CFR Part 444

Trade Regulation; Credit Practices; Final  
Rule

**EXHIBIT A**

requirements.<sup>3</sup> We have, however, adopted a provision (Section 444.5) that affords an opportunity for states whose laws are substantially equivalent to, or more protective than, the rule to apply for specific exemption from the rule. This provision can be invoked with respect to any provision of the rule, but we are particularly mindful of the states' role in defining what items are considered necessities, in the context of the rule's household goods definition.

Under § 444.5, the rule will not be in effect in a state to the extent specified by the Commission only if: (1) Application for an exemption is made by a state; (2) there is a state requirement or prohibition<sup>4</sup> in effect that applies to any transaction to which a rule provision applies; and (3) the state shows that its provision provides a level of protection that is as great as, or greater than, the protection afforded by the rule provision. If an exemption is granted, it shall be in effect only for as long as the state administers and enforces the state provision effectively.

As set forth in § 444.5, the Commission will determine the appropriate relationship between the rule provisions and state provision on a case-by-case basis in the context of an exemption proceeding conducted pursuant to § 1.16 of the Commission's Rule of Practice. The Commission will evaluate appropriate petitions for exemption made by state governmental agencies to determine the level of protection to consumers and whether the state regulation is administered and enforced effectively.

The requirement in § 444.5 that a comparable state requirement be "substantially equivalent" to the Commission rule provision does not, in our view, require that the state requirement mirror exactly the Commission provision. Any differences that exist, however, should be minor so as not to deprive consumers of the level of protection guaranteed by the Commission rule nor to complicate significantly compliance by interstate creditors.<sup>5</sup> Other factors that will be

considered by the Commission in determining whether an exemption is warranted include the resources committed by the state to enforce its provisions, and the extent of any private rights of action available to aggrieved consumers.

Only state governmental entities may request exemptions from provisions of the Commission's rule under § 444.5. The grant of an exemption based on state requirement will necessarily place on the state the primary burden to enforce its provision. Therefore, a decision to seek exemption should be made solely by the state entity involved.

In a number of instances, participants in the proceeding indicated that the rule might conflict with state law, or interact with state law in a confusing or unforeseen way. We have adopted modifications in the rule to eliminate these problems.<sup>6</sup>

In response to concern expressed by state officials<sup>7</sup> and others,<sup>8</sup> the Commission takes this opportunity to make clear that the rule is not intended to occupy the field of credit regulation or to preempt state law in the absence of

<sup>3</sup> For example, we have excluded certain wage assignments from Section (a)(3) of the rule because of possible problems with the California Personal Property Brokers law, clarified Section (a)(2) on waivers of exemption to avoid problems with mortgage laws in certain states, and significantly scaled back § 444.3 on late fees in such a way as to avoid conflict with state laws on late fees. See generally the sections of this Statement on individual rule provisions.

<sup>4</sup> E.g., Tucker Treulman, Colorado Assistant Attorney General, HS-252 at 3-12; Richard Cross, Massachusetts Assistant Attorney General, Tr 10926; Richard Victor, Wisconsin Assistant Attorney General, HX-151; Robert Patrick, General Counsel, Wisconsin Office of Commissioner of Banking, HX-152 at 8.

<sup>5</sup> E.g., National Consumer Law Center, R-I(c)-103 at 10-11; Jonathan Epstein, Essex-Newark Legal Services, Tr 8947; Michael Burns, Legal Aid Society of Minneapolis, HX-95 at 13; Terry Friedman, Western Center on Law and Poverty, Tr 8537; Ronald Gull, Wisconsin Consumer League, Tr 3976-77; Mary Gillespie, San Francisco Neighborhood Legal Assistance Foundation, Tr 5588-89; James Brown for Consumer Affairs, University of Wisconsin Extension, HX-153 at 12. The Presiding Officer suggested that language should be added to the rule to eliminate conflicts with certain Federal laws or regulations. Presiding Officer's Report at 352. Examination of the testimony cited by the Presiding Officer in support of this recommendation does not reveal any specific conflicts between the rule and Federal law. Although there were no direct conflicts, witnesses were concerned about the relation between various Federal laws and the rule provisions on late charges, waivers of exemption, and restrictions on non-purchase money security interests. We have adopted modifications in these provisions that eliminate the concerns expressed. In particular, we have substantially reduced the scope of the late fees provision, thereby avoiding problems with Federal late fees regulation, and have clarified the waivers provision and modified the security interest provision so that they do not effect real property mortgages.

requirements that are inconsistent with the rule.

## XII. Empirical Evidence on the Benefits and Costs of Provisions Considered by the Commission But Not Adopted.

This section discusses the benefits and costs of provisions of the 1975 proposed rule that the Commission considered but did not accept, together with analysis of a disclosure alternative considered by the Commission during its final deliberations on the rule.

### A. Deficiencies

A deficiency arises when repossessed collateral is sold for less than the amount owing on a debt. The Commission has considered but rejected a provision that would have required valuing collateral other than household goods at its retail price for purposes of calculating deficiencies. The provision would have required an election of remedies in the case of household goods collateral, requiring creditors to choose between repossession or suit.

#### 1. Prevalence

Sizeable deficiencies occur in the majority of transactions involving automobile repossessions; average automobile deficiencies range from 25 to 50 percent of the balance owing at the time of default.<sup>9</sup> Little evidence addresses deficiencies for other types of collateral. Creditors apparently pursue a deficiency only infrequently, and on average creditors recover no more than 5 to 15 percent of the deficiency.<sup>10</sup> As the Presiding Officer noted, under these circumstances creditors have an incentive to obtain the best possible price, net of sales costs, for collateral.<sup>11</sup> There is, therefore, insufficient evidence that problems in the valuation of collateral are prevalent.

<sup>9</sup> E.g., Note, "Defaulting Debtors and the Judicial Process—The FTC's Proposed Restriction on Delinquency Judgments," Section 441.2(a)(7) of the Rule on Credit Practices," 8 Conn. L. Rev. 459 (1978); Note, "Business as Usual: An Empirical Study of Automobile Deficiency Judgment Suits in the District of Columbia," 3 Conn. L. Rev. 511 (1971); R-XI-84; Shuchman, "Profit on Default: An Archival Study of Repossession and Resale," 22 Stan. L. Rev. 20 (1969); R-XI-85; Note, "I Can Get It For You Wholesale: The Lingering Problem of Automobile Deficiency Judgments," 27 Stan. L. Rev. 1061 (1975); HX-247; C.M.A.C. R-I(a)-812 at 9-10; Bank of America HX-227 at 6; Security Pacific National Bank HX-204; Cwennap, HX-500 at Table 4; Milroy Tr 5436-87; Nagel, R-II(g)-64; Marsh, Tr 2818.

<sup>10</sup> E.g., Schmidt, Tr 8194; C.M.A.C. R-I(a)-812 at 10; Brown, Tr 2771; Martin, Tr 1143, 1154-55; Marsh, Tr 2819-20.

<sup>11</sup> Presiding Officer's Report at 250.

<sup>3</sup> See, *Mobil Oil Corp. v. Attorney General*, 390 N.E.2d 406 (Mass. 1972) in which the court held that a state statute banning certain promotional games of chance was not preempted by a Federal Trade Commission rule regulating such games.

<sup>4</sup> For purposes of this rule, a state requirement or prohibition could include statutes and formal state regulations. It would not include informal enforcement policy statements.

<sup>5</sup> The standard is analogous to that applied by the Federal Reserve Board in determining state exemptions from requirements of the Truth in Lending Act. See Board of Governors of the Federal Reserve System, Consumer Lending: Truth in Lending: Exemption Application \* \* \*, 47 FR 16210, April 15, 1982.

## 2. Benefits

The benefits of an election of remedies requirement in repossession of household goods would be similar in nature if not magnitude to those that would result from the provision to prohibit non-purchase money security interests in household goods. When a deficiency is pursued, a requirement for valuation at the retail price would benefit borrowers, because normally resale would take place at the lower wholesale value. In the event of abuse, resale may take place below wholesale value.

Retail valuation thus raises two issues. The first is the requirement to credit consumers with the retail rather than the wholesale value of repossessed collateral before pursuing a deficiency. The second involves any remaining problems in cases where consumers are credited with less than the wholesale value of the goods. These issues will be addressed before considering the benefits and costs of the provision.

The difference between retail and wholesale prices is a result of the costs of retailing. The Commission concluded that it is not unreasonable for defaulters to bear the costs of retailing repossessed collateral and that sales at wholesale prices are therefore not inherently unfair. When retailers sell repossessed collateral themselves, they normally do sell it on the retail market.<sup>4</sup>

The fact that repossessed cars are sold for prices below wholesale book value<sup>5</sup> can often be explained by differences in the condition of repossessed cars and the average "good" used car,<sup>6</sup> and hence there is little basis for concluding that undervaluation of collateral is prevalent.

The record does, nevertheless, reveal some problems in valuation of collateral when the creditor and the buyer are closely related. When the creditor sells the car to itself or in a "sweetheart" deal, there is an incentive to undervalue it to the extent that recovery on a deficiency is possible. However, the evidence does not indicate that such undervaluations are prevalent,<sup>7</sup> and they frequently violate existing state law. The U.C.C. requires that collateral be disposed of in a "commercially reasonable" manner. As the Presiding Officer noted, a valuation requirement "is not a self-executing remedy. To secure benefits, consumers must resort to the courts just as they must do to insure that sales of collateral under current laws are made in a

commercially reasonable manner. In view of reluctance or inability to take this action as shown by the record, the provision will be largely ineffective."<sup>8</sup> We therefore conclude that a case-by-case approach to enforce existing standards of valuation in the event of abuse is preferable to a rule that would restrict the legitimate use of deficiencies.

## 3. Costs

To the extent that these provisions would reduce recovery on deficiencies, or restrict repossession of household goods used as collateral for installment credit or purchase money loans, they would reduce the value of collateral to creditors and hence increase creditors' costs and losses due to defaults. In addition, the determination of retail value and the allocation of selling costs would involve substantial costs for creditors as well as enforcement agencies.<sup>9</sup> These costs would be especially great if a vehicle required extensive repairs or was resold several times before its eventual retail disposition.

Furthermore, the retail value provision could create perverse incentives. Some debtors might intentionally default on their loans in order to obtain free retailing services, the costs of which would be imposed on creditors.<sup>10</sup> The rule would also create incentives for creditors to enter retailing even though costs might be lower if more efficient retailers were used.<sup>11</sup>

## 4. Commission Decision

A majority of the Commission decided that this provision would impose costs, and could raise the cost and reduce the availability of credit, in excess of offsetting benefits. Crediting debtors with the wholesale value is not unfair when a higher price is not obtained, there is little evidence of prevalence concerning valuation below the wholesale value, and such valuations are already illegal under current standards. Our decision is consistent with the Presiding Officer's findings concerning the retail value provision.<sup>12</sup>

## B. Attorney's Fees

The Commission considered but rejected a provision prohibiting credit

contract clauses requiring that debtors pay attorneys' fees incurred by creditor in debt collection.<sup>13</sup> This provision would not have restricted the power of the courts to impose such fees on defaulters under state law, however. Consequently, the provision might have had little effect in some states.<sup>14</sup>

## 1. Prevalence

A large majority of the states permit attorneys' fees clauses, although some ban them on small loans and/or place limits on the size of the fees.<sup>15</sup> Record evidence indicates that such clauses are included in the great majority of contracts when they are permitted by state law.<sup>16</sup> Attorneys' fees represent a significant share of the average judgment.<sup>17</sup>

## 2. Benefits

The rationales offered for this provision were that attorneys' fees exceed actual costs, that consumer liability for attorneys' fees discourages the assertion of valid defenses, and that consumer liability reduces creditors' incentives to minimize their legal costs.

The evidence shows that the attorneys' fees assessed against defaulters generally reflect what attorneys charge creditors for their services.<sup>18</sup> The evidence also shows that, in some specific instances, what attorneys charge creditors for their services bears little relation to the amount of work performed and may appear excessive. However, this is explained by the way attorneys are paid, e.g., a percentage of the unpaid obligation,<sup>19</sup> and does not imply that

<sup>4</sup>One version of the provision would have allowed exceptions where attorneys' fees are payable to the prevailing party or require a judicial determination that they are reasonable based on the value of services performed. The Commission rejected this version because it was not supported by the record. A provision that attorneys' fees are to be paid by the losing party would have little impact, because debtors have default judgments entered against them in the vast majority of cases. Nothing would be gained from a requirement of judicial determination of reasonableness, because the evidence discussed below suggests that attorneys' fees assessed against defaulters are already subject to state requirements of judicial review for reasonableness.

<sup>5</sup>Presiding Officer's Report at 322.

<sup>6</sup>NCFA, R-XIII-31 at C-22-23, and Presiding Officer's Report at 180.

<sup>7</sup>NCFA, HX-430; NCCF, Technical Studies, Vol. V at 43-45.

<sup>8</sup>The NCLC survey indicates legal aid attorneys believe the average is 20 percent. HX-467, HX-469. The record contains references to figures of 5 to 33 percent in individual cases: e.g., Baker, HX-443 at 1-2; Baker, HX-444 at 5-11; Peer, Tr. 5343; Presiding Officer's Report at 180.

<sup>9</sup>E.g., Hellerstein, Tr. 7091-92; Wehner, Tr. 9097; Kushel, HX-368 at 13-16; Goldberg, Tr. 8119, 8130-37; Levenshtein, Tr. 8253; Nattlerode, Tr. 7207.

<sup>10</sup>Presiding Officer's Report at 180.

<sup>4</sup>E.g., R-XI-167.

<sup>5</sup>Note 1 *supra* at HX-338.

<sup>6</sup>E.g., R-XI-71-77 and R-XI-70.

<sup>7</sup>Presiding Officer's Report at 245.

<sup>8</sup>Presiding Officer's Report at 249.

<sup>9</sup>E.g., Friedman, Tr. 81-82; Breeden, Tr. 1400; Edwards, Tr. 8306; Boyle, Tr. 18-19; Fish, Tr. 822-23; Walther, Tr. 2312, 2315-17; Martin, Tr. 1142; Warren, Tr. 8315-8316; NCLC, R-I(c)-103 at 41, 54; NCLC, R-XIII-40 at 153.

<sup>10</sup>E.g., Brown, Tr. 2772-73; Carter, Tr. 1498-99.

<sup>11</sup>Bureau of Economics, "Comments on Credit Practices Rule," August 18, 1980, at 54-55.

<sup>12</sup>Presiding Officer's Report at 240.

debtors overcompensate creditors. As the Presiding Officer found, on average, "attorneys' fees, as limited by state laws, do not fully reimburse creditors for the amounts they actually expend for such fees."<sup>20</sup>

This provision would benefit borrowers to the extent that, in the event of default, it would increase their bargaining power with creditors and reduce the size of the judgments against them.

Because this provision would reduce the expected cost of defending a lawsuit, under some circumstances it would provide benefits by encouraging the successful assertion of valid defenses. The record contains evidence of instances in which a debtor agreed not to assert a defense in return for the creditor's agreement to waive attorney's fees.<sup>21</sup> The decision to reach a settlement reflects a mutual interest in minimizing legal costs. Although an attorney's fees clause could affect the terms of settlement, it would not necessarily affect the probability of a settlement. In any event, the Commission shares the Presiding Officer's conclusion that the "use of attorneys' fees clauses to persuade consumers to pay debts they do not owe or to forego valid defenses is simply not supported by the evidence in this record."<sup>22</sup>

The suggestion that this provision would provide benefits by encouraging creditors to limit their legal costs is not sufficiently supported by the record. As with deficiencies, creditors have an incentive to minimize attorneys' fees and other collection costs, because generally they are not fully reimbursed by defaulters.<sup>23</sup>

### 3. Costs

As is the case with any measure that reduces the costs of default to the borrower, the attorneys' fees provision might increase creditors' collection and other costs. In the event of default and a judgment, what borrowers would gain in reduced judgments as a result of this provision, creditors would lose in reduced recoveries. In addition, if the provision did encourage the assertion of defenses, total legal costs would rise.

### 4. Commission Decision

After weighing the record evidence, the Commission determined that the costs of this provision outweigh the benefits. This is consistent with the conclusion of the Presiding Officer that

"... the record does not permit an objective determination that the degree of consumer injury is sufficient to justify prohibiting the inclusion of attorneys' fees clauses in consumer credit contracts."<sup>24</sup>

### C. Third Party Contacts

The Commission considered but rejected a provision to prohibit creditor contacts with third parties except to locate the debtor, to determine the nature and extent of the debtor's income or property, or as a court permits.

#### 1. Prevalence

Record evidence indicates that many consumer credit contracts contain provisions expressly waiving the debtor's right to privacy or otherwise permitting third party contacts. At the time credit is extended creditors often obtain names of employers, relatives, friends, and neighbors.<sup>25</sup> Fifteen states limit third party contacts, and two prohibit them.<sup>26</sup>

The NCFE survey of finance company contracts indicates that third party contacts with employers in the case of delinquency occur in 1.5 percent of personal loans and 0.23 percent of sale finance contracts.<sup>27</sup> The percentage increases to 5 percent for loans delinquent 60 days or longer. Some of these contacts are incident to wage assignments and garnishments.<sup>28</sup>

The NCFE survey shows that contacts with third parties other than employers are more frequent, occurring in 12 percent of personal loans and 6 percent of sales finance contracts, and increasing to 35 percent of personal loans which have been delinquent for 60 days or longer.<sup>29</sup> Almost half these contacts are with relatives of the debtor. The vast majority are to locate or leave a message for the debtor. Nonetheless, the survey reveals that about 5 percent of these contacts are to seek collection from a third party.<sup>30</sup>

The record does not contain evidence of widespread abusive third party contacts. In the case of creditor contacts with a debtor's employer, it is in the creditor's interest refrain from abusive conduct because to do otherwise might jeopardize the debtor's earnings.<sup>31</sup>

<sup>20</sup> Presiding Officer's Report at 153.

<sup>21</sup> E.g. NCLC, HX-457; Avco, R-XI-AVCO-016; General Finance Co., R-XI-GFC-2 at 218-2.

<sup>22</sup> NCFE, R-XIII-31 at C-25-27.

<sup>23</sup> Shay, HX-494 at 57; NCFE, HX-495 at Q11, HX-496 at Q11, HX-497 at Q11, HX-498 at Q11, HX-499 at Q11. NCFE data may understate third party contacts. Demasco, Tr. 11901-11904.

<sup>24</sup> Shay, HX-494 at 63.

<sup>25</sup> NCFE, HX-496 at Q11 and HX-499 at Q11.

<sup>26</sup> *Id.*

<sup>27</sup> Curtis, Tr. 2652; Thomasch, Tr. 8920.

#### 2. Benefits

This provision would benefit borrowers to the extent that it would reduce the ability of creditors to apply pressure to them in the event of default, reduce contacts with employers that might endanger debtors' jobs, reduce loss of privacy, or otherwise reduce abusive contracts. Examples of such abuses shown on the record include threats to reveal information to third parties, disclosures of information to third parties that amount to gross invasions of privacy, threats against third parties, or threats against debtors conveyed to third parties.

The provision requiring a contract clause ruling out third party contacts would produce few benefits because of enforcement problems. In the event of a prohibited third party contact, the debtor would have to sue for breach of contract, and the remedy would be limited to actual damages. It is unlikely that much litigation of this type would occur, because the large majority of judgments against debtors are taken by default.<sup>32</sup>

#### 3. Costs

In some cases, the restriction on third party contacts could work to the detriment of debtors because these contacts may currently prevent the use of more onerous collection methods.<sup>33</sup>

This provision would increase creditors' collection costs and perhaps losses due to default. Many contacts are efficient, legitimate business procedures, e.g., contacts with third parties who might possess the collateral or contacts with other creditors for purposes of instituting bankruptcy proceedings.<sup>34</sup> A general prohibition on third party contacts of the type contemplated by this provision as proposed would inevitably prevent some useful contacts because of problems in drawing a clear line between abusive and legitimate contacts.

#### 4. Commission Decision

The majority of the Commission decided that the costs of this provision outweigh its benefits. We consider that a case-by-case approach is more appropriate to stem abusive third party

<sup>31</sup> Caplovitz, *Consumers in Trouble: A Study of Defaulting Debtors*, at 100, and Warner, reporting results of a U. Conn. L. Rev. 412 study, Tr. 8303-04. Because of this problem, we also considered a direct prohibition on third party contacts. Even with this change, the provision was rejected because of its other costs, particularly interference with legitimate contacts.

<sup>32</sup> E.g., Schmidt, Tr. 6199-6200; Tanner, HX-171 at 15; Thomas, Tr. 9123-25.

<sup>33</sup> E.g., Childers, Tr. 1156-87.

<sup>20</sup> Presiding Officer's Report at 171.

<sup>21</sup> E.g. Bodron, Tr. 324-26.

<sup>22</sup> Presiding Officer's Report at 182.

<sup>23</sup> E.g. Gwennap, Tr. 12217-18; Wohnner, Tr. 9001.

SUMMARY OF WRITTEN COMMENTS TO PROPOSED LEGISLATIVE RULE  
TITLE 142 SERIES 24 PERTAINING TO UNFAIR AND DECEPTIVE  
ACTS OR PRACTICES IN SECURITY  
INTEREST IN REPOSSESSION PRACTICES

One commenter objected generally to the rule and stated that most of the items covered in the proposed rule already existed in various codes.

1.8 One commenter objected to section 1.8 on the grounds that Article 6 does not specifically address the creation of the debtor creditor relationships.

2.1 One commenter suggested eliminating the section beginning with "Consumer Transaction..." and adding "Consumer Credit Sale or rent-to-own transaction."

2.2 Two commenters suggested that this provision should be revised to comport with W. Va. Code § 46A-1-102 12(4)(a)(v).

2.3 One commenter suggested that the language after the word "dwelling"... be changed to "or onto land, except to knock on a door to request surrender of property."

3.1.1 One commenter objected to Section 3.1.1 on the ground that it conflicts with U.C.C. Section 9-504 and West Virginia Code § 46-9-504. One commenter suggested adding "repossess" after the word "intent." One commenter stated that this section should allow a creditor to keep repossession as an option if default does occur.

3.1.2 One commenter objected to Section 3.1.2 on the ground that it conflicts with W. Va. Code 46A-2-107-109.

3.2 One commenter stated that this provision is inconsistent with W. Va. Code § 46A-6-101.

3.2.1 One commenter objected to Section 3.2.1 on the ground that it

is confusing. The commenter suggested that word "Seize" should be changed to "Repossess.". Once clarified, the commenter believes that this provision is not necessary as it is already addressed in the West Virginia Consumer Credit Protection Act and in federal and state law.

3.2.2 One commenter objected to Section 3.2.2 on the ground that it is vague and unnecessary.

3.2.3 One commenter objected to Section 3.2.3 on the ground that the word "valid" is troublesome.

3.2.4 One commenter objected to Section 3.2.4 on the ground that it would be impossible to determine whether an express intention was "false." The commenter further stated that the creditors would have little choice but to repossess once such intention was expressed as a matter of practice, even if other alternatives existed. One commenter stated that the provision is ambiguous. The commenter believed that the section should read "threaten to repossess property, including but not limited to household goods, when the creditor knows that it has no colorable claim of a right to do so."

3.2.5 Two commenters objected to Section 3.2.5 on the ground that the language "false" and "or make use of other deception" is troublesome and will inject uncertainty. Commenter further stated that this section may be inconsistent with existing standards pertaining to no breach of the peace, and that the federal courts recognize that the use of deception is not a breach of the peace. Commenter further stated that this concern is already addressed in greater detail by W. Va. Code § 46A-2-127. One commenter stated that the rule should read "make false or deceptive threats about the use of law enforcement."

3.2.6 Two commenters objected to Section 3.2.6 on the ground that "misrepresentation of the reposessor's identity" is a very reasonable deception. Commenter stated that no breach of the peace is involved with this type of deception. One commenter stated this section should be rewritten to state "misrepresent government affiliation or otherwise imply that the reposessor is

vested with authority that he does in fact not possess."

3.2.7 Three commenters objected to Section 3.2.7. One of those commenters objected on the grounds that the "undue hardship" language is unnecessary and inconsistent with existing law on repossession and will only create confusion in the area of repossession. The commenter further stated that any conditions other than repossession without breaching the peace may only be placed upon the secured party by including such a condition in the security agreement. Three commenters objected to this Section on the ground that any repossession would cause the consumer undue hardship, and the creditor would not know whether a repossession constitutes an undue hardship. One commenter suggested that the language be rewritten to state "seize" property from a given location, when the creditor has actual knowledge that seized the property from that location will cause objectively undue hardship to a consumer."

3.2.8 One commenter objected to Section 3.2.8 on the ground that it is already regulated by W. Va. Code § 46A-2-106.

3.2.9 Two commenters objected to Section 3.2.9 on the ground that the debt collection business has inherent risks and there is not reason why an agent otherwise legally entitled to carry firearms should not be able to do so. Commenter also stated that the rule would impose a monitoring obligation on the secured creditor which it should not be required to undertake. One commenter stated that the section should be eliminated as it involves constitutional issues. One commenter suggested changing the language to "carry a firearm while repossessing property in connection with a consumer transaction or to authorize a repossession agent to do so."

3.2.10 One commenter objected to Section 3.2.10 on the ground that the word "seize" is troublesome and should be replaced with the word "repossess." Commenter stated that this is the present statutory standard for self-help repossession in W. Va. Code § 46-9-503.

3.2.11 Three commenters objected to Section 3.2.11 on the ground

that the word "premises" is problematic as it does not include a definition as to what constitutes a premises. Commenters further stated that courts hold that the entering of a dwelling is not a breach of the peace if consented to by the debtor. A fourth commenter suggested adding the language "without permission of the owner, renter, or lessee or the consumer with an interest in the goods."

3.2.12 One commenter objected to Section 3.2.12 on the ground that the rule is ambiguous. Commenter stated that the rule could raise questions about security interest in the context of refinancing or "bill-payer" loans.

3.2.13 Two commenters objected to Section 3.2.13. One commenter stated that this provision is already covered by W. Va. Code § 46-9-505. One commenter stated that there is no reason to have a ninety-day and sixty percent relationship. Commenter further stated that it may not be possible to market the property in a commercially reasonable sale within 90 days as repossessed property, is sometimes in less than market condition. A third commenter suggested adding the language "unless consumer consents."

3.3.1 One commenter objected to Section 3.3.1 on the ground that this provision would be unenforceable under W. Va. Code § 46A-2-121. Commenter also stated that this provision is not necessary because the creditor is already restricted to the breach of peace standard under W. Va. Code § 46-9-503.

3.3.2 Two commenters objected to Section 3.3.2 on the ground that the rule is unnecessary and will create ambiguity. Commenter further stated that issues will arise with respect to personal property affixed to the collateral. Commenter stated that there are accessories which become part of a vehicle and should be excepted. Commenter further stated that there is no question that miscellaneous assorted personal property contained in the vehicle must be returned to the borrower.

3.3 One commenter objected to Section 3.3 on the ground that W. Va. Code 46A-1-107 already prohibits waiver of consumer rights under the West Virginia Consumer Credit and Protection Act, and the U.C.C. contains a similar

provision.

3.4.1 Two commenters objected to Section 3.4.1 on the ground that it is contrary to the U.C.C. and the West Virginia Consumer Credit and Protection Act. The commenter further stated that the borrower is already protected because every step of the process must be "commercially reasonable."

3.4.2 Three commenters objected to Section 3.4.2. Two commenters stated that the provision conflicts with W. Va. Code § 46-9-504. One commenter objected on the ground that there is no definition of the term "affiliated", and that affiliated parties are often an excellent source of purchasers of collateral at a commercially reasonable price. The commenter also stated that as long as a sale was in a commercially reasonable manner there appears to be no reason to deprive the lender of this source of purchasers.

3.4.3 Two commenters objected to Section 3.4.3 on the ground that it conflicts with the U.C.C. and the West Virginia Consumer Credit Protection Act's recognition of the U.C.C. provision on the disposal of the collateral. One commenter further stated that this section places a burden on the creditor because the creditor must get the higher sale price for a repossessed vehicle to cover the lost incurred by the creditor in the repossession. The commenter also stated that wholesale automobile auctions which are open to dealers only obtain the highest prices at the least cost. This commenter also stated that forcing creditors to open retail outlets or give credit of "retail" prices will increase the cost and/or reduce the availability of credit to all West Virginia consumers. This commenter further stated that the federal government has already concluded that wholesale automotive auctions are beneficial to consumers.

3.4.4 One commenter objected to Section 3.4.4 on the ground that it creates ambiguity because of existing notice requirements of W. Va. Code § 46-9-504.

3.4.5 Two commenters objected to Section 3.4.5 on the ground that this issue is already preserved by W. Va. Code § 46-9-504. These commenters

also stated that this section places an additional restriction upon the creditor which is contrary to the U.C.C. and provides no significant benefit to the consumer. The commenter further stated that such a restriction would only cause confusion and reduce the chances of obtaining the best price for the collateral.

3.4.6 Three commenters objected to Section 3.4.6. This section is contrary to existing law as the creditor/seller is not a merchant and is not required by law to give a warranty. Both commenters stated that a buyer of repossessed goods understands that the goods are sold "as is", and this section does not appear to be in the interest of any party. A third commenter stated that it is unreasonable to expect a public seller to warrant goods when a seller has little or no knowledge as to how such goods were kept or maintained.

3.4.7 One commenter objected to Section 3.4.7 on the ground that this section creates ambiguities and could conflict with existing law. Commenter elaborated that the proposed rule fails to recognize how subordinate lien holders can claim the surplus proceeds of sale. Often, a guarantor, sometimes the owner of the collateral, is entitled to the surplus proceeds.

3.4.6 Two commenters objected to Section 3.4.8 on the ground that there is no reason to replace "commercially reasonable disposition" standard with the "bona fide sale" term that is in this section.

3.4.9 One commenter objected to Section 3.4.9 on the ground that the provision is already covered by the W. Va. Code § 46-9-504. Commenter further stated that this section may create litigation on the issue of what is a "bona fide" expense. A second commenter suggested adding "or in an amount greater than the secured party's actual out of pocket expenses" after the word "incurred."

3.4.10 One commenter objected to Section 3.4.10 on the ground that this provision is already covered by W. Va. Code § 46A-2-128 and 46-9-504. A second commenter objected to this section on the grounds that it is ambiguous. A commenter also stated that if the section is intended to prohibit recovery of attorney fees, then the section should clearly say so.

3.4.11 Two commenters objected to Section 3.4.11 on the ground that this section is already covered by W. Va. Code § 46-9-504. Commenters further stated that the concept of "retail market value" is vague.

3.4.12 Two commenters objected to Section 3.4.12 on the ground that this provision is already covered by the commercially reasonable standard set forth in W. Va. Code § 46-9-504(1).

## SUMMARY OF ORAL COMMENTS TO PROPOSED LEGISLATIVE RULES

### Series 24: Legislative Rule Pertaining to the Prevention of Unfair Acts and Practices in Security Interests and Repossession Practices

General support for the entire series was expressed by several witnesses..

Several witnesses representing creditors commented as follows:

Rule 2.2: This definition does not conform to that in W. Va. Code §46A-1-102(12)(a)(5), which imposes a \$25,000 limit.

Rule 3.2.4: "False threat" is vague. This could create more repossessions as creditors would be forced to repossess once the possibility was mentioned. This would also restrict both side's ability to "work out". One creditor witness suggested the phrase "without colorable claim of right to do so."

Rule 3.2.7: The creditor can not know whether a particular repossession will cause undue hardship. This amounts to a repeal of the statutory right to repossess. This could create a huge amount of litigation. One creditor witness suggested substituting a "malicious conduct" standard.

Rule 3.2.9: This rule restricts constitutionally and statutorily protected rights. Attorney General McGraw suggested that a creditor could be required to require in its employment contract with repossession agents that they not carry firearms, particularly given the stressful nature of a repossession situation.

Rule 3.2.11: This rule seems to make the repossession of a mobile home impossible. Also: does "premises" mean the debtor's real property or merely her dwelling? Does the rule prohibit going on to the porch to knock on the door? One creditor witness commented that this rule, when combined with Rule 3.2.7, makes repossession too difficult, in that repossession of a vehicle away from the debtor's dwelling would always create undue hardship.

Rule 3.4.3: This rule will increase the cost of consumer credit. Retail market value simply won't work: wholesale sale is the only viable method. Auctions are the best and most efficient way to sell repossessed cars, and are approved by the Federal Trade Commission. Current practice is approved by W. Va. Code §46-9-504(3).

A witness representing creditors commented that some of the proposed regulations conflicted with portions of the U.C.C., thus damaging the desirable uniformity of the law and burdening interstate commerce. However, a witness representing debtors commented that a state is permitted to go beyond the provisions of the U.C.C. in protecting consumers, as in the case of "unfair or deceptive practices" generally.

A witness representing debtors commented that a "commercially reasonable sale" of repossessed goods seldom occurs, and that the sale of repossessed cars by the dealer to itself or an agent is a common abuse. The witness further commented that "strict foreclosure" is often abused when the creditor does not take the collateral both for personal use and in full satisfaction of the debt.

## RESPONSE TO PUBLIC COMMENTS

### TITLE 142 LEGISLATIVE RULE ATTORNEY GENERAL

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

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 or internal discussions, or both. In others, the Division has concluded that the proposed rule as modified is both necessary to adequately protect consumers and is authorized by pertinent provisions of the West Virginia Code.

Rule 3.4.3. The proposed rule has been substantially changed in response to comments to require crediting of a reasonable retail market value only when a creditor chooses to ignore and bypass an actual, reasonable opportunity to first try to sell the collateral at a retail price.

Rule 3.4.6. The proposed rule has been substantially changed in response to comments criticizing the retail price credit requirement for public sales.

Rule 3.4.11. The proposed rule has been substantially rewritten in response to comments.

Rule 3.2.7. has been rewritten in response to comments to avoid overbreadth. Only a secured party who disregards reasonable repossession opportunities and takes property in a deliberate and malicious fashion will be covered.

Rule 3.2.9. has been rewritten, but the import is the same, to frankly restrict repossessioners from going in an armed state to take personal property. Judicial process is always available when there is a need for armed protection of a repossessioner.

These changes are 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.



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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.

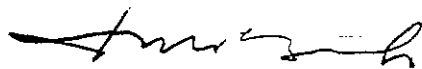
The enclosed proposed legislative rules to which my authorization extends are:

- (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.

Ken Hechler, Secretary of State  
August 15, 1994  
Page 2

Thank you for your cooperation.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Darrell V. McGraw, Jr.", with a stylized, cursive script.

Darrell V. McGraw, Jr.

DVM/mgc  
Enclosures