

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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Jul 7 12 12 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Office of the Attorney General TITLE NUMBER: 142
RULE TYPE: Legislative; CITE AUTHORITY: W. Va. Code Section 46A-6-103
W. Va. Code Section 46A-7-102(1)(e)

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 27

TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to The
Prevention of Unfair or Deceptive Acts or Practices in
Motor Vehicle Repairs

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

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

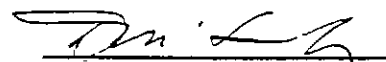
COMMENTS LIMITED TO: ORAL X, WRITTEN _____, BOTH _____

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

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

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

**TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL**

**SERIES 27
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN MOTOR VEHICLE REPAIRS**

STATEMENT OF CIRCUMSTANCES

One of the major areas of complaints in the Attorney General's Office is automobile repairs. Regulation in this area is greatly needed. The Attorney General's Office receives numerous complaints on estimates, and repair work not authorized by the consumer. The proposed rule provides regulations in these areas.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Motor Vehicle Repairs

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency: Office of the Attorney General Consumer Protection Division

Address: 812 Quarrier Street, 6th Floor
Charleston, West Virginia 25301

1. **Effect of Proposed Rule** *Not Applicable*

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

2. **Explanation of above estimates:**
No cost to State or local government.

3. **Objectives of these rules:** *Promotion of Consumer Protection*

Rule Title: Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Motor Vehicle Repairs

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

[Handwritten Signature]

**TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL**

**SERIES 27
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN MOTOR VEHICLE REPAIRS**

BRIEF SUMMARY

The Attorney General's Office routinely receives numerous complaints regarding automobile repairs. The proposed rule would provide regulations covering the source of consumer complaints.

The proposed rule would make it an unfair or deceptive act or practice for a repair shop to provide the consumer with a list of repairs to be made if the repairs would exceed Fifty Dollars (\$50.00). A written form will inform the consumer that he is entitled to a price estimate for the repairs which has been authorized by the consumer, and will provide the consumer with a selection of choices of whether the consumer wants a written estimate. The proposed rule would make it an unfair or deceptive act or practice to make unauthorized repairs, and for failure of the repair shop to return parts from the consumer's motor vehicle which have been replaced by the repair shop. The proposed rule would also require the repair shop to provide the consumer with an invoice describing the work that has been done on the car, and makes it an unfair or deceptive act or practice to make certain misrepresentations. The proposed rule would also require the repair shop to maintain repair records for inspection by the Attorney General's Office.

FILED

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

JUL 7 12 12 PM '94

SERIES 27

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN MOTOR VEHICLE REPAIRS

§ 142-27-1. General

1.1 Rule Designation.--This rule is legislative.

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

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

1.4 Filing Date.--

1.5 Effective Date.--

1.6 Repeal of Former Rule.--Not applicable

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

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

§ 142-27-2. Definitions

2.1 "Motor Vehicle" means any self propelled vehicle as defined in West Virginia which is required to be registered with the State of West Virginia division of motor vehicles, or with an equivalent governmental agency of another state, but does not include any vehicle whose manufacturer's specified gross vehicle

weight rating exceeds 16,000 lbs.

2.2 "Shop" means any individual, corporation, partnership, or other form of business organization engaged in the motor vehicle repair business, and all officers, directors, agents, employees, and representatives thereof, but excludes the following

2.1.1 A shop engaged solely in the business of repairing the motor vehicles of a single commercial, industrial or governmental establishment, or of two or more such establishments which are related by common ownership or corporate affiliation.

2.1.2 A person repairing his or her own or a family member's motor vehicle.

2.3 "Consumer" means a natural person pursuing repairs of a motor vehicle used primarily, but not necessarily solely, for a personal, family, household or agricultural purpose and includes any person authorized by the consumer to act on the consumer's behalf.

2.4 "Repair" means the service of an improvement, adjustment, replacement, examination, diagnosis, maintenance, servicing, removal or installation of any component or part of a motor vehicle, but does not include towing or the supply of motor fuel to a motor vehicle.

§ 142-27-3 Repair Order

3.1 It shall be an unfair and deceptive act or practice for a shop to fail to provide consumer, prior to the commencement of any repairs whose price to the customer may exceed \$50.00, with a copy of a dated written repair order legibly describing the repairs to be performed; except that such copy need not be provided if the consumer's motor vehicle has been brought to the shop without face-to-face contact between the consumer and a representative of the shop. The shop shall record the odometer reading of the consumer's motor vehicle on the repair order, and shall sign the consumer's copy.

§ 142-27-4 Repair Price Information

4.1 General Requirement: In connection with any motor vehicle repair transaction, it shall be an unfair or deceptive act or practice prior to the commencement of any repairs whose price to the consumer may exceed \$50.00 for any shop to fail to provide the consumer with either; (a) A price quotation for the repairs, or (b) A choice of estimate alternatives, pursuant to subparagraph 4.3 except that neither a price quotation nor a choice of estimate alternatives need be provided if the consumer's motor vehicle has been brought to the shop without face-to-face contact between the consumer and a representative of the shop. Nothing in this section

shall be construed as requiring a shop to provide a price quotation or choice of estimate alternatives if the shop does not agree to perform the requested repairs; but no shop shall make the performance of repairs contingent upon the consumer's waiver of any right under this chapter.

4.2 Price Quotation

4.2.1 If the shop elects to give the customer a price quotation the requested, repairs, rather than a choice of estimate alternatives, such quotation shall be made in writing on the repair order, and shall be accompanied by the statement, conspicuously printed on the repair order, that:

"THIS PRICE FOR THE AUTHORIZED REPAIRS WILL NOT BE EXCEEDED IF THE MOTOR VEHICLE IS DELIVERED TO THE SHOP WITHIN 5 DAYS."

4.2.2 The price quoted for the authorized repairs shall not be exceed if the consumer's motor vehicle is delivered to the shop within five days after the date on which the price is quoted in writing on the repair order.

4.3 Estimate

4.3.1 If the shop elects to give the consumer a choice of estimate alternatives, rather than a price quotation, the following statement shall be conspicuously disclosed to the customer either on the repair order or by a form, attached to the repair order, on which the repair order number has been entered:

"YOU ARE ENTITLED TO A PRICE ESTIMATE FOR THE REPAIRS YOU HAVE AUTHORIZED. THE REPAIR PRICE MAY BE LESS THAN THE ESTIMATE, BUT WILL NOT EXCEED THE ESTIMATE WITHOUT YOUR PERMISSION. YOUR SIGNATURE WILL INDICATE YOUR ESTIMATE SELECTION.

1. I request an estimate in writing before you begin repairs.

2. Please proceed with repairs but call me before continuing if the price will exceed \$_____.

3. I do not want an estimate.

A copy of the signed statement shall be given to the customer along with a copy of the repair order, if the statement is on

a separate form.

4.4 Waivers

4.4.1 The shop may accept a written revocation waiver, covering no fewer than four motor vehicles owned or leased by the consumer, under which the consumer waives the right to a prior price quotation or estimate for all repairs to such motor vehicles.

4.4.2 Neither a revocable blanket waiver made pursuant to 4.4.1, nor a single estimate waiver made by signing alternative 3 under sub. 4.3 shall have effect unless made by the consumer voluntarily and with knowledge of the meaning of the waiver.

4.5 Charges: In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice for any shop to charge for making a repair price quotation or estimate unless, prior to making the price quotation or estimate, the shop discloses to the consumer the amount of the charge, or, if the amount cannot be determined, the basis on which the charges will be calculated. Nor shall any shop impose, or threaten to impose, a charge which is clearly excessive in relation to the work involved in making the price quotation or estimate.

§ 142-27-5 Authorization to Proceed

5.1 In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice for any shop to before under taking any repairs other than those previously authorized by the customer, the shop shall call the customer and provide the customer with a description of the proposed additional repairs, together with a good faith estimate of the price for such repairs. The shop shall not then undertake the additional repairs until it receives the customer's written or oral authorization to do so.

5.2 If the shop has given the customer an estimate and the price for the authorized repairs will exceed the estimate, or if the customer has signed estimate alternative 2 under 4.3 and the price for the authorized repairs will exceed the amount designated, the shop shall call the customer before continuing with the repairs, and shall provide the customer with a new, good faith estimate of the repair price. The shop shall not then continue with the repairs until it receives the customer's written or oral authorization to do so.

5.3 Any written authorization under 4.3.1 shall be made on the repair order, or on the invoice where a repair order is not required by this chapter, and shall specify any newly authorized repairs, as well as the newly authorized repair price estimate.

If authorization under sub. 4.3.1 is received orally, the shop shall specify on the repair order or invoice any newly authorized repairs, as well as the newly authorized repair price estimate; and it shall further specify the date and time of authorization, and the person and telephone number called.

§ 142-27-6 Return of Parts

6.1 In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice for any shop to fail to return of parts from a consumer's motor vehicle which are replaced by the shop return to the consumer. If they are requested by the consumer at the time the repair order is taken; except that parts which must be returned to the manufacturer because of a warranty or exchange agreement need not be returned to the consumer upon such request, but shall instead be made available for the customer's inspection when the consumer retakes possession of the motor vehicle.

6.2 At the time the repair order is taken, the shop shall inform the consumer, either orally or in writing, that the consumer is entitled to the return of replaced parts if the consumer requests them at that time; except that such disclosure need not be made if the consumer's motor vehicle has been brought to the shop without face-to-face contact between the consumer and representative of the shop.

§ 142-27-7 Invoice

7.1 In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice to fail to provide every consumer, at the time the consumer retakes possession of the motor vehicle, with a copy of a dated invoice for any repairs to the motor vehicle. The invoice shall include the following information:

7.1.1 An itemized description of all labor, parts, and merchandise supplied, including that which is supplied without cost, or at reduced cost to the customer because of a shop or manufacturer's warranty. Where labor, parts, or merchandise carry a warranty from the shop or manufacturer, such fact shall be stated on the invoice.

7.1.2 If any used, rebuilt, or reconditioned part has been installed, a statement identifying such part as being used, rebuilt, or reconditioned, as the case may be.

7.1.3 If any part of a system is composed of both new parts and used, rebuilt, or reconditioned parts, a statement indicating such fact.

7.1.4 The price for the authorized repairs, stated

as the total price or as separate total prices for parts and labor. If units of time based on flat-rate average time are stated, the actual time required to complete the repairs shall also be stated.

7.1.5 The identity of each person performing the repairs including the name of any shop retained as a subcontractor.

§ 142-27-8 Prohibited Practices

8.1 In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice for any shop to fail to misrepresent, directly or by implication:

8.1.1 The cost of repairs authorized by the consumer;

8.1.2 The terms or conditions of any warranty or service agreement;

8.1.3 That repairs are necessary;

8.1.4 That repairs have been made; or

8.1.5 That the motor vehicle is in a dangerous condition, or that the consumer's continued use of the motor vehicle will be hazardous to persons or harmful to the motor vehicle.

8.2 In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice for any shop to collect or attempt to collect for:

8.2.1 Repairs not authorized either orally or in writing by the consumer;

8.2.2 Repairs which the shop knew or reasonably ought to have known to be unnecessary; or

8.2.3 Repairs which have not been made.

8.3 In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice for any shop which is also a warrantor or a party to a service agreement to refuse to repair a motor vehicle in accordance with the terms and conditions of the warranty or service agreement.

8.4 In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice for any shop to fail to return any consumer's motor vehicle because the consumer has refused to pay for unauthorized repairs, or because the consumer has refused to pay repair charges in excess of the price authorized pursuant to § 142-27-4, § 142-27-5 provided that the consumer pays the authorized price for the authorized repairs.

8.5 In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice for any shop to alter a consumer's motor vehicle with intent to create a condition requiring repairs.

§ 142-27-9 Disclosure of Rule

9.1 The following statement shall be conspicuously printed, either on the invoice or on another form given to every consumer for whom the shop performs repairs:

"Motor vehicle repair trade practices are regulated by the West Virginia Attorney General's Office Division of Consumer Protection."

§ 142-27-10 Records

10.1 Every shop shall maintain repair records which shall include repair orders and attached forms, repair invoices, payroll records, and invoices for parts purchased by the shop. Such records shall be available for reasonable inspection by the West Virginia Attorney General's Office Consumer Protection Division, or other law enforcement agency, and shall be retained for at least two years.

§ 142-27-11 Waiver

11.1 In connection with any motor vehicle repair transaction, it shall be an unfair and deceptive act or practice for any shop to solicit or accept the waiver of any provision of the rule, except as specifically authorized by this rule.

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