

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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JUN 7 12 13 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: 30

TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to The Prevention of Unfair or Deceptive Acts or Practices in Door-to-Door Sales

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 ___

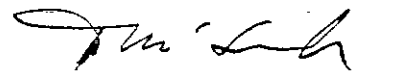
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Tom Rodd, Director
Consumer Protection Division

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.

812 Quarrier Street
Charleston, WV 25301

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

4.26

**TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL**

**SERIES 30
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN DOOR-TO-DOOR SALES**

STATEMENT OF CIRCUMSTANCES

West Virginia statutory law in this area only covers door-to-door solicitations sales involving credit transactions. The proposed rule includes the FTC rule covering all door-to-door sales, and case law from other jurisdiction.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Legislative Rule Pertaining to Unfair or Deceptive Acts or Practices

Rule Title: *in Door-to-Door Sales*

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

Agency *Office of the Attorney General Consumer Protection Division*

Address *812 Quarrier Street, 6th Floor*

Charleston, West Virginia 25301

1. Effect of Proposed Rule *Not Applicable*

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

2. Explanation of above estimates:

No cost to State or local government.

3. Objectives of these rules:

Promotion of Consumer Protection

Rule Title: Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Door-to-Door Sales

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

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

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

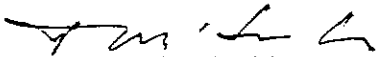
Will promote consumer confidence and assist responsible businesses, leading to job growth.

C. Economic Impact on Citizens/Public at Large.

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

Date: 6/30/94

Signature of Agency Head or Authorized Representative



**TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL**

**SERIES 30
LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN DOOR-TO-DOOR SALES**

BRIEF SUMMARY

West Virginia's explicit law governing door-to-door sales only applies to credit transactions. The FTC rule which does apply in West Virginia applies to all door-to-door sales, but this law is not commonly known to all sellers. Moreover, neither the FTC or the West Virginia law explicitly covers areas that have been addressed by state courts and other jurisdictions. The proposed rule incorporates the FTC rule and Section 4 provides for regulations on issues that arise in state courts.

Section 4 of the proposed rule would make it an unfair or deceptive act or practice for a seller to make misrepresentations regarding special offers or prizes in a door-to-door sale, and to misrepresent the identity of the seller, business, or misrepresent savings and the delivery or performance date, and misrepresentation regarding financing terms. The proposed rule would also make it an unfair or deceptive act or practice for a seller to fail to leave the premises of the buyer when requested to do so.

FILED

TITLE 142
LEGISLATIVE RULE
ATTORNEY GENERAL

JUL 7 12 13 PM '94

SERIES 30

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

LEGISLATIVE RULE PERTAINING TO THE
PREVENTION OF UNFAIR OR DECEPTIVE ACTS OR
PRACTICES IN DOOR-TO-DOOR SALES

§ 142-30-1. General

1.1 Rule Designation.--This rule is legislative.

1.2 Scope.--This legislative rule covers certain unfair or deceptive acts or practices covering home solicitation selling 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-1-101 et seq.

1.8 Construction.-- This rule shall be liberally construed to effectuate the purposes of Article 6 the West Virginia Consumer Credit and Protection Act, West Virginia 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 unconstitutional or invalidity shall not effect 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.

§ 142-30-2. Definitions For the purpose of this section the following definitions shall apply:

2.1 "Door-to-Door Sale" A sale, lease, or rental of consumer goods or services with a purchase price of \$25.00 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the

buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

2.1.1 Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

2.1.2 In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or

2.1.3 In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

2.1.4 Conducted and consummated entirely by mail or telephone and without any written documentation; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or

2.1.5 In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

2.1.6 Pertaining to the sale or rental of real property.

2.2 "Consumer Goods or Services" Goods or services purchased, leased, or rented primarily for personal, family or agricultural household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

2.3 "Seller" - Any person, partnership, corporation, or association engaged in the door-to-door sale of consumer goods or services.

2.4 "Place of Business" - The main or permanent branch office or local address of a seller.

2.5 "Purchase Price" - The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

2.6 "Business Day" - Any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, And Christmas Day.

§ 142-30-3 Cash Door-To-Door Sales

3.1 In connection with any cash door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

3.1.1 Fail to furnish the consumer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form of an explanation of this right."

The seller may select the method of providing the buyer with the duplicate notice of cancellation form set forth in paragraph (b) of this section, provided however, that in the event of cancellation the buyer must be able to retain a complete copy of the contract or receipt. Furthermore, if both forms are not attached to the contract or receipt, the seller is required to alter the last sentence in the statement above to conform to the actual location of the forms.

3.1.2 Fail to furnish each consumer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION," which shall (where applicable) contain in ten point bold face type the following information.

Notice of Cancellation
[enter date of transaction]

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE. IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO

DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [Name of seller], AT [address of seller's place of business] NOT LATER THAN MIDNIGHT OF _____ (date.

I HEREBY CANCEL THIS TRANSACTION

(Date) _____

(Buyer's Signature) _____

The form prescribed for credit transactions at forth in W. Va. Code § 46A-2-133 may be used in lieu hereof.

3.1.3 Fail, before furnishing copies of the "Notice of Cancellation" to the consumer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the consumer may give notice of cancellation.

3.1.4 Include in any door-to-door contract or receipt any confession of judgement or any waiver of any of the rights to which the consumer is entitled under this section including specifically his right to cancel the sale in accordance with the provisions of this section.

3.1.5 Fail to inform each buyer orally, at the time he signs the contract, or purchases the goods or service, of his right to cancel.

3.1.6 Misrepresent in any manner the consumer's right to cancel.

3.1.7 Fail or refuse to honor any valid notice of cancellation by a consumer and within 10 business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

3.1.8 Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

3.1.9 Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

§ 142-30-4 Prohibited Practices in Cash and Credit Door-to-Door Sales

4.1 In connection with any door-to-door sale, it shall be an unfair and

deceptive act or practice for any seller engaged in making a sale to represent directly or by implication that the seller:

4.1.1 Is making an offer to specially selected persons or that the consumer or prospective buyer has been specially selected, unless such representations are true and the specific basis on which such representatives are made is concurrently disclosed to the prospective buyer.

4.1.2 Is conducting a survey, test or research project, or engaged in a contest or other venture to win a cash award, scholarship, vacation or similar prize, when in fact the principal objective is to make a sale or lease or to obtain information to help identify sales prospects.

4.1.3 Is conducting a special sales promotion campaign or making a special offer limited to a few persons only or for a limited period of time, or is authorized to place the product or service in a few homes, unless the representations are true and the specific basis on which such representations are made is concurrently disclosed to the prospective buyer.

4.1.4 Will give any product or service free or as a gift or without cost or charge, or at a nominal cost or charge, if the furnishing of such product or service is contingent on the making of any payment or purchase of any other product or service. Other terms, conditions and obligations upon which receipt and retention of any gift or free item. This does not prohibit the making of combination offers where the purchase of one item at a reduced price is contingent upon the purchase of other items at a regular price, provided the terms and conditions of the offer are fully disclosed to the consumer, the consumer is informed of the total price the buyer must pay and the price of items included in the offer are based on the price at which such items are regularly sold by the seller.

4.1.5 Will provide any service purchase for a longer period than the seller is obligated to provide under the contract.

4.1.6 Will in any way reduce the regular price for the goods or services to the consumer for the use of the consumer's name or a written expression of his or her opinion.

4.2 In connection with any door-to-door sale, it shall be an unfair and deceptive act or practice for any seller engaged in making a sale to misrepresent, directly or by implication:

4.2.1 The identify of the seller, the business firm or organization the seller represents, or affiliation or association with other firms, businesses, or governmental entities, or the identity of the goods or services the seller offers to sell.

4.2.2 The savings which will be accorded or made available to the buyer.

4.2.3 The length of the sales presentation.

4.2.4 The delivery or performance date.

4.2.5 The nature of any document the buyer is requested or required to execute in connection with the purchase or lease of any goods or services.

4.2.6 Any limitations and restrictions on the guarantee or warranty made by the seller, including any duty which the buyer must perform as a condition precedent to the guarantee or warranty becoming effective.

4.2.7 Finance or interest charges or installments to be paid in connection with sales made on credit, or any other terms or conditions under which credit will be extended.

4.3 In connection with any door-to-door sale, it shall be an unfair and deceptive act or practice for any seller engaged in making a sale to use any false, deceptive or misleading representations to induce a sale, or use any plan, or scheme which misrepresents the true status or mission of the person making the call, or fails to promptly leave the premises at which a sales presentation is made when requested to do so.

4.4 In connection with any door-to-door sale, it shall be an unfair and deceptive act or practice for any seller engaged in making a sale to make any material representations with respect to the warranty or guarantee of the product or services he or she sells unless such representations are true and are furnished to the buyer in writing as part of any sales document or agreement, or in a separate statement of warranty or guarantee. Separate statements of warranty or guarantee shall be furnished to the buyer prior to the time first payment is due.

4.5 In connection with any door-to-door sale, it shall be an unfair and deceptive act or practice for any seller engaged in making a sale shall make any statement or representation inconsistent with or contradictory to any contract document or instrument in writing evidencing the transaction.

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