

Series 1

obsolete emergency rule

DECLARATION OF EMERGENCY

valid Aug 7, 1981 for 90 days

See other books

Pursuant to Chapter 29A, Article 3, Section 14, of the West Virginia Code of 1931, as amended, the Commissioner of Banking finds that an emergency exists which requires temporary rules and regulations be promulgated. These rules and regulations pertain to the West Virginia Consumer Credit and Protection Act (Chapter 46A of the West Virginia Code), the West Virginia Industrial Bank and Industrial Loan Company Act (Article 7 of Chapter 31 of the West Virginia Code), and the Money and Interest Act (Article 6 of Chapter 47 of the West Virginia Code).

During the 1981 session of the West Virginia Legislature, S.B. 559 was passed and signed by the Governor. That legislative enactment established rebating requirements for prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction (W. Va. Code §47-6-5d). W. Va. Code §47-6-5d(e) makes these rebating requirements effective on September 1, 1981. The Commissioner of Banking has determined that there is a pressing need to have these rules and regulations in effect before the rebating requirements included in W. Va. Code §47-6-5d become effective. Thus, the Commissioner of Banking finds that an emergency exists which requires that these rules and regulations take effect immediately and that such rules and regulations shall remain in effect for a period of ninety days.

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Phyllis Huff Arnold

Commissioner of Banking

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
Commissioner of Banking

Chapter 31-4  
Series I  
(1981)

Subject: Regulations Pertaining to the West Virginia Consumer Credit and Protection Act, the West Virginia Industrial Bank and Industrial Loan Company Act, and the Money and Interest Article of Chapter 47.

Section 1. General

1.01. Scope - These regulations establish general rules implementing and supplementing the West Virginia Consumer Credit and Protection Act, the West Virginia Industrial Bank and Industrial Loan Company Act, and the Money and Interest Article of Chapter 47.

1.02. Authority - These regulations are issued under authority of West Virginia Code, Chapter 31-A, Article 2, Section 4, Subsection (11).

1.03. Effective Date

1.04. Filing Date

1.05. Certification

Section 2. Regulations of General Application

2.01. Actuarial Method

The actuarial method under West Virginia law is simple interest computation. Because West Virginia law prohibits the capitalization of accrued and unpaid finance charges, the United States Rule method is incorporated in this regulation. The United States Rule method means that at the end of each payment period the unpaid balance of the amount financed is increased by the finance charge earned during that payment period and is decreased by the payment made at the end of that payment period. If the payment is less than the finance charge earned, the adjustment of the unpaid balance of the amount financed is postponed until the end of the next payment period. If then the sum of the two payments is still less than the total earned finance charge for the two payment periods, the adjustment of the unpaid balance of the amount financed is postponed still another payment period, and so forth.

2.02 Computation of Time

(a) Actuarial method computation:

- (1) 365 day year, actual day basis or
- (2) 360 day year, 30 day month, so long as interest computations by this method do not result in the interest charge exceeding 365 days of interest in one year. (This actuarial method computation is not available for transactions of less than 1 year.)

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- (A) Prorate actual over 30 day base
- (B) Payoffs on last day of month 28th, 29th, 31st are same as 30th.

(b) Rule of 78 computation:

Any generally accepted actuarial method for the allocation of charges consistent with the sum of the digits method.

2.03. Rebating in event of prepayment

(a) Rebating under Rule of 78:

- (1) Prepayments in full on or before the 15 days following an installment due date are deemed to have been made as of such installment due date.

Prepayments in full on or after the 16th day following an installment due date are deemed to have been made on the next succeeding installment due date.

- (2) No rebate of less than one dollar need be made.

(b) Rebating under Actuarial Method:

- (1) Daily "payoff" which is determined by calculating the interest on a daily basis in a simple interest transaction OR
- (2) The "15 day rule" method as described in 2.03(a)(1) will apply to precomputed credit transactions.
- (3) No rebate of less than one dollar need be made in a precomputed credit transaction.

(c) Rebating on precomputed loans, credit sales, or credit transactions with an original term of thirty-six months or less:

- (1) Any generally accepted actuarial method for the allocation of charges and the calculation of rebates consistent with the sum of the digits method may be used where the precomputed loan, credit sale or credit transaction is payable in equal, unequal or irregular payments and the original term of such transaction is thirty-six months or less.
- (2) An alternative method of allocation of charges and the calculation of rebates may be that described in 2.03(d) below.

(d) Rebating on precomputed loans, credit sales or credit transactions with an original term greater than thirty-six months.

The actuarial procedure or method for the allocation of charges and other calculation of rebates consistent with the actuarial method as defined in 2.01 and 2.02(a) shall be used where the precomputed loan, credit sale, or credit transaction is payable in equal, unequal or irregular payments and the original term of such transaction is greater than thirty-six months.

- (e) The terms "finance charge" as used in W. Va. Code §47-6-5d(a) and "finance charge which was required by applicable law to be disclosed" as used in W. Va. Code §47-6-5d(b) both mean "loan finance charge" as defined in Chapter 46A-1-102(23) or "sales finance charge" as defined in Chapter 46A-1-102(39), whichever is applicable.

2.04. Balloon Payments - Any precomputed agreement, entered into in a consumer credit sale or consumer loan transaction whenever any scheduled payment is at least twice as large as the smallest of all earlier scheduled payments other than any down payment, shall be rebated, if paid in full, according to Chapter 47-6-5d(b) if the credit sale or loan by application of the smallest scheduled payment will not payout within thirty-six months or less.

2.05. Calculation of deferral charges on precomputed transactions - The method of calculation of deferral charges shall be consistent with the method of rebate which would be required or selected on that specific contract.

- (a) Calculation of deferral charges under the Rule of 78.

(1) The word "attributable" in the first sentence of Chapter 46A-3-114(1) refers to charges earned on any installment on the basis of the Rule of 78, as provided in Chapter 46A-3-111(1). For example, the deferral charge for deferring the fourth installment of a 12 month contract and all remaining installments one month would be  $9/78$  of the original finance charge. If the same balances are deferred an additional two months, the same  $9/78$  charge may be made for each month. If the fourth through the seventh installments are subsequently paid and the eighth installment is deferred, the deferral charge would be the portion of the finance charge originally attributable to the eighth installment, i.e.  $5/78$ .

(2) Following a deferral, rebates for prepayment in full shall be computed by multiplying the original finance charge by a fraction, having as a numerator the sum of all scheduled balances remaining unpaid to the deferred maturity date and as a denominator the sum of the originally scheduled balances, and no separate rebate of deferral charges need be made, provided, however, that if prepayment in full occurs during a deferral period (the period in which no payment is required or made by reason of a deferral), the deferral charges for the unexpired full months in the deferral period shall be rebated and such deferrals will be deemed not to have been made.

(b) Deferral charges under actuarial method shall be the finance charge due for that payment period to be deferred.

(c) Deferral charges should be posted to the customer's account at the time such deferrals are made and, in any event, not later than the next normal updating of the customer's account record. Such charges shall be clearly identified and the installment upon which such charge is based shall be indicated. The account record shall show the new final installment due date after each deferral.

(d) If a deferral charge is made, and the customer's account record does not indicate to the contrary, it shall be reason to assume that the written authorization for such charge is a part of the contract evidencing the obligation. If a separate written agreement is used, a copy shall be provided the customer and the lender or seller shall retain the original for a period of at least two years following final entry on the customer's account record.

2.06. Deficiency Judgements - The phrase "balance owed" in Chapter 46A-2-119 subsections (2), (3), and (4), with respect to restrictions on a deficiency judgement, shall mean the gross unpaid balance of the account, excluding any unearned charges.

2.07. Delinquency Charges on Precomputed Contracts

(a) A creditor may contract for and receive delinquency charges for consumer loans or consumer credit sales not exceeding the lesser of \$5.00 or 5% of the amount of any installment unpaid, following the 10th day after the originally scheduled or deferred due date, but not less than \$1.00. Delinquency charges accrue on the 11th day after the scheduled installment due date.

Example: If the installment due date is January 1, a delinquency charge accrues on January 12 if that installment is not previously paid in full. Delinquency charge should be posted to the customer's account as they accrue and, in any event, not later than the next normal updating of the customer's account record. Delinquency charges may be collected at the time they accrue or any time thereafter.

(b) Delinquency charges, except where otherwise provided by law, shall be deemed to be earned as they accrue and do not become a part of the total finance charge for purposes of rebating unearned charges.

(c) If the alternative method of computing delinquency charges (as set forth in Chapter 46A-3-112(1)(b)) is used, the delinquency charge shall in no instance exceed the amount of a deferral charge for the same installment.

(d) A delinquency charge shall be clearly identified upon the customer's account records. The installment upon which such charge is based shall also be shown.

2.08. Electronic Data Processing - Records and accounting systems maintained in whole or in part by electronic data processing methods may be used if the Commissioner finds they provide information equivalent to that required by these

regulations. If requested by the Commissioner, a written description of the system utilized shall be provided, including all features that do not meet the regulatory requirements and a full explanation of how the equivalent information may be obtained.

#### 2.09. Minimum Charge - Revolving Loan Account

(a) With respect to a consumer credit sale made pursuant to a revolving charge account, other than sales of real estate pursuant to Chapter 46A-3-102, sellers are authorized to contract for and receive, as a minimum charge, the charge provided for in Chapter 46A-3-103(4).

(b) With respect to a consumer loan made pursuant to a revolving loan account, lenders, other than supervised lenders, are authorized to contract for and receive, as a minimum charge, the charge provided for in Chapter 46A-3-106(4).

#### 2.10. Limitation on Garnishment

(a) Chapter 46A-2-130 of the West Virginia Code provides in part: "The maximum part of the aggregate disposable earnings of an individual for any work-week which is subjected to garnishment to enforce payment of a judgement arising from a consumer credit sale or consumer loan may not exceed the lesser of

(1) Twenty percent of his disposable earnings for that week, or

(2) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 6 (a) (1) of the "Fair Labor Standards Act of 1938," U.S.C. Title 29, §206(a)(1), in effect at the time the earnings are payable."

(b) In the case of earnings for a pay period other than a week, the multiple of the federal minimum hourly wage shall be computed as follows:

(1) Multiply the number of weeks (including fractions thereof) in the pay period by 30.

(2) In determining the number of weeks in a pay period,

a year shall equal 52 weeks,  
a month shall equal 4 1/3 weeks, and  
a half-month shall equal 2 1/6 weeks.

Examples:

$4 \frac{1}{3} \times 30 = 130$ , the multiple for a monthly pay period;  
 $2 \frac{1}{6} \times 30 = 65$ , the multiple for a semi-monthly pay period;  
 $2 \times 30 = 60$ , the multiple for a biweekly pay period.

(3) The multiple times the federal minimum hourly wage establishes the amount provided for in (a) (2) of this section.

### Section 3. Regulations of Supervised Lenders

3.01. Balloon Payments - Supervised loans shall not contain balloon payments.

3.02. Financial Statements - Financial statements shall be on file in the office of the licensee or at the authorized place of examination on the last day of the month for the previous month's business.

3.03. Examination Fees - Charges for examinations by the Department of Banking shall be computed on the following basis: \$25.00 for the first \$25,000.00 of outstanding loan balances, plus \$0.40 per thousand on the remaining balance. Outstanding loan balances shall include the total of all outstanding loan contracts plus the total of all purchased consumer sales contracts, less all unearned interest, charges and discounts. Charges will be computed from the latest financial statement on file as prescribed in the previous section (3.03). If a current financial statement is not on file, the charge for the first \$25,000.00 of outstanding loan balances shall be \$50.00.

### 3.04. Advertising

(a) The supervised loan ceiling of \$1,600.00 shall be shown or stated in all advertising, regardless of the media used. This provision shall apply to newspaper advertising published in this State, radio and television advertising broadcast or rebroadcast by stations operating in this State and all printed material used to solicit business for supervised lenders licensed in this State. Mailings to customers of the licensee having existing loans are exempt from this provision. Personal calling cards are also exempt from this provision if they are not used for advertising purposes. The loan ceiling shall be prominently displayed at or near the entrance to the office of the licensee.

(b) No licensee shall advertise, in any manner, that a loan of a prospective borrower with another licensee will be paid or increased if the loan is transferred to the advertising licensee.

(c) No reference to supervision or control by the State, the Attorney General, the Commissioner of Banking, the Department of Banking, or any other State Agency, shall be made in any advertising by a supervised lender. If desired, a supervised lender may advertise that he is licensed under the provisions of Article 4, Chapter 46A, of the West Virginia Code.

(d) No licensee shall advertise in any manner that may tend to confuse the identity of the licensee with any other unrelated licensee or financial organization.

(e) Each licensee shall retain a copy of all advertising for a period of two years from the date of its use. However, when two or more offices are under the same ownership or control such copy may be kept at one central office within the State.

### 3.05. Refinancing and Consolidation

(a) A supervised loan, whether a new loan or a loan resulting from refinancing and/or consolidation, shall not exceed \$1,600.00 for principal.

(b) Supervised lenders should refrain from refinancing and consolidating loans and sales contracts where no reasonable benefit accrues to the consumer.

(c) Payments on a supervised loan resulting from the consolidation of sales contracts shall be deemed to apply first to the sales portion of the loan and thereafter to the loan portion.

(d) The finance charge for the loan portion of a consolidation may be computed on the maximum rates allowable for a supervised loan.

3.06. Revolving Loan Accounts - With respect to a supervised loan made pursuant to a revolving loan account, supervised lenders are authorized to contract for and receive, as a minimum charge, the charge provided for in subparagraph (c) of Chapter 46A-4-107(6).

3.07. Certain Other Charges Prohibited

(a) No licensee shall contract for or make any charge not specifically provided for in Chapter 46A, unless such charge results from a legal action.

(b) Examples of charges prohibited in (a) are, but are not limited to, the following: Collection charges, legal fees, credit reports, loan investigation fees, and appraisal fees.

3.08. Records

(a) Adequate records which will enable the Commissioner to reconcile outstanding balances shall be maintained for each licensed office.

(b) In the event ledger cards or similar records for loan accounts and installment sales contracts purchased are commingled in a licensee's files, there shall be a system by which such cards may be readily identified, one from the other, such as being of different colors or having corners of different colors. All such cards shall bear the date of the contract and shall readily identify the type of transaction reflected thereon.

(c) The ledger card shall indicate when an account has been placed for collection or legal action taken. It shall also indicate whether judgement was obtained, together with date and detail of judgement figure.

(d) On accounts prepaid in full, the ledger card shall clearly indicate the amount of unearned interest rebated and the amount of unearned insurance premium rebated, if any.

3.09. Reporting Periods - Effective December 31, 1981, all Supervised Lenders shall submit semiannual reports as of June 30 and December 31 in the form and content prescribed by the Commissioner. The reports shall be due 30 days after the close of the period.

3.10. Supervised Loans Not Precomputed

(a) With respect to a supervised loan (other than a revolving loan account) which is not precomputed, finance charges shall be computed on unpaid principal balances outstanding from time to time, for the actual time outstanding. Each payment shall be applied first to the accumulated finance charge and the remainder of the payment applied to the unpaid principal balance; provided, however, that if the amount of the payment is insufficient to pay the accumulated charge, the unpaid accumulated charge continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the principal balance.

(b) Loan finance charges shall not be payable in advance or compounded; however, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such new loan contract may include any unpaid loan finance charge which

has accrued to the extent that such accrued charge does not exceed the unpaid principal balance of the prior loan. The resulting loan contract shall be deemed a new and separate loan transaction for all purposes.

3.11. Out-of-State Obligations - With respect to consumer credit sales or consumer loans consummated in another state, a supervised lender shall not collect or attempt to collect a sales finance charge or loan finance charge in excess of that permitted by this chapter.

3.12. Failure to do Business - Any licensee who fails to have his office open for business at least three hours per day, at least four days per week (legal holidays may be counted as a business day), for a consecutive period of four weeks, shall be deemed to have forfeited his license. Written extensions may be obtained from the Commissioner for periods not exceeding one month upon presentation of evidence satisfactory to the Commissioner that such extensions are warranted.

### 3.13. Installment Sales Contracts

(a) A supervised lender may purchase installment sales contracts without regard to the amount of said contracts and without regard to whether or not a buyer on a contract may also be obligated on a supervised loan.

(b) A supervised lender may purchase installment sales contracts at any discount rate agreed upon with the seller.

(c) A supervised lender shall obtain from the seller a copy of the disclosure statement for each installment sales contract purchased and correct any bonafide errors in the computation of charges, so long as such corrections are not detrimental to the consumer.

## Section 4. Regulations of Industrial Loan Companies and Industrial Banks

### 4.01. Loan Finance Charges

With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account, an industrial loan company or an industrial bank may contract for and receive a loan finance charge not exceeding the aggregate of 21% on the first \$5,000 as permitted in Chapter 31-7-11(a)(5) plus the interest and charges permitted by Chapter 31A-4-30a or Chapter 47-6-5(a) and 5(b), or by Chapter 46A-3-104 on those amounts exceeding \$5,000 plus such fee as permitted in Chapter 31-7-11(a)(6).

### 4.02. Advertising

(a) No industrial loan company or industrial bank shall advertise, in any manner, that a loan of a prospective borrower with another lender will be paid or increased if the loan is transferred to the advertising institution.

(b) No reference to supervision or control by the State, the Attorney General, the Commissioner of Banking, the Department of Banking, or any other State agency, shall be made in any advertising by an industrial loan company or an industrial bank.

(c) No industrial loan company or industrial bank shall advertise in any manner that may tend to confuse the identity of the advertising institution with any other unrelated financial organization or loan company.

(d) Each industrial loan company and industrial bank shall retain a copy of all advertising for a period of two years from the date of its use.

4.03. Examination Fees - Charges for examinations by the Department of Banking shall be increased effective \_\_\_\_\_ from the present charge of \$65.00 per day per examiner to \$100.00 per day per examiner.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
Commissioner of Banking

Chapter 31-4  
Series I  
(1981)

Subject: Regulations Pertaining to the West Virginia Consumer Credit and Protection Act.

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Section 5. Dual Authority

5.01. Dual Business Authority Defined - Dual Business Authority shall be defined as conducting one or more businesses authorized to conduct business as an Industrial Loan Company or an Industrial Bank or a Secondary Mortgage Lender or Broker within the same office, room or place of business as a Supervised Lender.

5.02. Notice - Any Industrial Loan Company, Industrial Bank, Supervised Lender, or Secondary Mortgage Lender or Broker desiring to operate under dual business authority shall provide 30 days written notice to the commissioner which notice shall contain the name of the financial institutions desiring to operate under such authority and the address of the place of business.

5.03. Organization and Records - Each financial institution operating under Dual Business Authority shall be owned by a separate legal entity with separate books and records maintained for each business. All records must be maintained in conformity with generally accepted accounting principles and practices in a manner which will enable the Commissioner of Banking to determine whether the financial institution is complying with the provisions under which the License or Certificate of Authority was issued.

5.04. Allocation of Expenses - The expenses of the institutions operating under Dual Business Authority will be proportioned between them according to generally accepted accounting principles semi-annually as of June 30 and December 31 of each calendar year but more frequently at the discretion of the institutions if they so desire.

5.05. Limitation on Security Interest in Real Estate - A loan in an original amount of \$1,600 or less shall not be secured by an interest in real estate.

5.06. Related Transactions - A Supervised Lender, Industrial Loan Company, Industrial Bank or Secondary Mortgage Lender or Broker shall not make a supervised loan or industrial loan or secondary mortgage loan to the same borrower as a part of the same (or related) financing transaction(s). None of the lenders may make two loans for the purpose of obtaining a higher rate of interest or higher amount of charges than would be obtained by the making of a single loan of the same total. This subsection does not prohibit the same borrower from being extended multiple loans, so long as the purpose of the lender is not to evade this regulation.

5.07. Refinancing of an existing Contract - When refinancing of an existing contract by either a supervised lender, industrial loan company, or a secondary mortgage lender or broker should occur, then the rate of interest charged shall not exceed the rate currently authorized under State Law for that certain loan. Under no circumstances can a loan be transferred from an industrial loan company or secondary mortgage lender or broker to a supervised lender operating under Dual Business Authority for the purpose of obtaining a higher rate of interest.



JOHN D. ROCKEFELLER IV  
GOVERNOR

STATE OF WEST VIRGINIA  
DEPARTMENT OF BANKING  
CHARLESTON, 25305

PHYLLIS HUFF ARNOLD  
COMMISSIONER

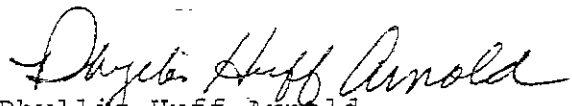
August 7, 1981

The Honorable A. James Manchin  
Secretary of State  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Manchin:

Pursuant to Chapter 29A, Article 3, of the West Virginia Code of 1931, as amended, the Commissioner of Banking is hereby filing three copies of the rules and regulations pertaining to the West Virginia Consumer Credit and Protection Act, (Chapter 46A of the West Virginia Code), the West Virginia Industrial Bank and Industrial Loan Company Act (Article 7 of Chapter 31 of the West Virginia Code), and the Money and Interest Act (Article 6 of Chapter 47 of the West Virginia Code) and three copies of a Declaration of Emergency.

Very truly yours,

  
Phyllis Huff Arnold  
Commissioner of Banking

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OFFICE  
SECY. OF STATE

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