

WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Commissioner of Banking

Chapter 31-4
Series I
(1974)

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 10-8-74

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

Section 1. General

1.01. Scope - These regulations establish general rules implementing and supplementing the West Virginia Consumer Credit and Protection Act.

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 - These regulations were promulgated on the 8th day of October, 1974, and became effective on the 8th day of November, 1974.

1.04. Filing Date - These regulations were filed in the Office of the Secretary of State on the 8th day of October, 1974.

1.05. Certification - These regulations are certified authentic by the Commissioner of Banking by certification number 10-8-74.

Section 2. Regulations of General Application

2.01. Actuarial Method

(a) The "actuarial method" of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge, if precomputed, shall be the same as that prescribed for computing the "annual percentage rate" under the provisions of the federal "Consumer Credit Protection Act" (Public Law 90-321; 82 Stat. 146), as amended.

(b) The "actuarial method" of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge, if not precomputed, means a method whereby the payment shall first, to the extent

available, be applied to the charges due and the remainder, if any, to principal.

(c) Any generally accepted actuarial procedure or 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 or consumer credit sale is payable in unequal or irregular or in other than substantially equal consecutive monthly installments.

(d) Any generally accepted actuarial procedure or method for the calculation of delinquency charges or deferral charges consistent with the other provisions of Chapter 46A of the West Virginia Code may be used where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular installments.

2.02. Computation of Time - For all purposes of computation of time, including but not limited to the calculation of all charges, a year shall be a calendar year and a month shall be a calendar month. Each full month shall be considered one-twelfth ($1/12$) of a year. A day shall be considered one-thirtieth ($1/30$) of a month when computation is made for a fraction of a month. A calendar month is that period of time from any date in a month to the corresponding date in the next month; however, if there is no such corresponding date, then to the last day of the said next month.

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

2.04. 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 charges 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.

2.05. Deferral Charges on Precomputed Contracts

(a) 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. $5/78$.

(b) 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.

(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. 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.

2.07. Minimum Charge

(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).

(c) In view of the conflict between the provisions of Chapter 46A-3-107(1) and Chapter 46A-3-111(2) of the West Virginia Code, it is the opinion of the Commissioner of Banking that the creditor may collect or retain the minimum charge within the limits stated in Chapter 46A if the sales finance charge or loan finance charge earned at the time of prepayment, refinancing or consolidation is less than any minimum charge authorized by the said Chapter 46A.

2.08. Paying for Business Prohibited - No person authorized to make consumer loans shall offer or pay any monetary consideration or other property of value to any other person for recommending or sending loan applicants to the lender, namely, engage in "paying for business" as that term is known and understood in the lending business.

2.09. 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 judgment 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 $4 \frac{1}{3}$ weeks, and

a half-month shall equal $2 \frac{1}{6}$ 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. Maximum Terms

(a) The maximum term of contracts for a loan of \$300.00 or less will be twenty-four months and an additional fifteen days if required.

(b) The maximum term of contracts for a loan of \$300.01 to \$800.00 will be thirty months and an additional fifteen days if required.

(c) The maximum term of contracts for a loan of \$800.01 to \$1,200.00 will be thirty-six months and an additional fifteen days if required.

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

3.03. 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.

3.04. 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.

3.05. Advertising

(a) The supervised loan ceiling of \$1,200.00 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 pro-

visions 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.

3.06. Refinancing and Consolidation

(a) A supervised loan, whether a new loan or a loan resulting from refinancing and/or consolidation, shall not exceed \$1,200.00 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.

3.07. 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).

3.08. 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.

3.09. 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 judgment was obtained, together with date and detail of judgment 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.

3.10. Extended First Payment Due Date

(a) If a supervised loan is precomputed and is otherwise payable in substantially equal monthly installments, the first installment period may exceed one month by not more than fifteen (15) days.

(b) The charge for such additional days may be added to the amount of the first installment or distributed among all installments.

(c) Both the additional days and the charge for such additional days may be excluded in computing the rebates of unearned finance charges, provided, however, that if the contract is prepaid in full prior to the first installment due date, the lender may retain all of the finance charge attributable to the first installment period.

(d) A precomputed supervised loan may provide for a first payment period

in excess of one month and fifteen days if no more than one month's charge is made for the first period. Such contract may be treated as one payable in substantially equal monthly installments if the contract is otherwise regular.

3.11. 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.

3.12. 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.

3.13. 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.

3.14. 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 bona fide 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

(a) 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 the interest and charges permitted by Chapter 31-7-11(a)(6) and Chapter 47-6-5a of the West Virginia Code.

(b) The charge permitted by Chapter 31-7-11(a)(6) for "expenses incurred in making the loan" may be paid by the borrower when the loan is made or if payment is deferred may be included in the principal of the loan. This charge is in addition to, and not subject to the limitation on, the interest permitted by Chapter 47-6-5a.

(c) Refund of unearned interest charges made by an industrial loan company

or an industrial bank shall be made pursuant to Chapter 47-6-5a of the West Virginia Code. The separate charge to cover expenses permitted by Chapter 31-7-11(a)(6) is earned at the time the loan is made and is not subject to refund.

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.



STATE OF WEST VIRGINIA
DEPARTMENT OF BANKING
CHARLESTON 25305

W. LOVELL HIGGINS
ACTING COMMISSIONER

October 8, 1974

The Honorable Edgar F. Heiskell, III
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia 25305

Dear Sir:

Enclosed are two copies of regulations issued by this Department pertaining to the West Virginia Consumer Credit and Protection Act. These regulations are designated Chapter 31-4, Series I (1974) of the West Virginia Administrative Regulations. These regulations will replace this Department's Administrative Regulations designated Chapter 31-4, Series I (1972), including the index.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by this Department on October 8, 1974.

Very truly yours,

W. Lovell Higgins
Acting Commissioner

WLH:ja
Enc.

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 10-8-74



STATE OF WEST VIRGINIA
DEPARTMENT OF BANKING
CHARLESTON 25305

October 8, 1974

W. LOVELL HIGGINS
ACTING COMMISSIONER

Series 1

obsolete

voided Nov. 8, 1974

for Aug. 6, 1981

when amended
by emergency
rule

The Honorable Edgar F. Heiskell, III
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia 25305

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