

LEGISLATIVE

*Title 106
Legislative Rules*

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~
Commissioner of Banking

~~West Virginia Code 31A-2-4(c)(II)~~
Series ~~2A~~ /
(1981 Amended)

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

INDEX

Section 1. General

- 1.01 Scope
- 1.02 Authority
- 1.03 Effective Date
- 1.04 Filing Date

Section 2. Regulations of General Application

- 2.01 Actuarial Method
- 2.02 Computation of Time
- 2.03 Rebate in Event of Prepayment
- 2.04 Balloon Payments
- 2.05 Calculation of Deferral Charges on Precomputed Transactions
- 2.06 Deficiency Judgements
- 2.07 Delinquency Charges on Precomputed Contracts
- 2.08 Electronic Data Processing
- 2.09 Minimum Charge - Revolving Loan Account
- 2.10 Limitation on Garnishment

Title 106

LEGISLATIVE *Rules*

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~
Commissioner of Banking

~~West Virginia Code 31A-2-4(c)(ii)~~
Series ~~7-A~~ *1*
(1981 Amended)

Subject: Regulations Pertaining to the West Virginia Consumer Credit and Protection 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 and the Money and Interest Article of Chapter 47.

1.02. Authority - These regulations are issued under authority of West Virginia Code, §31A-2-4(c)(11).

1.03. Effective Date - November 7, 1981.

1.04. Filing Date - October 7, 1981.

Section 2. Regulations of General Application

2.01. Actuarial Method

"Actuarial method" means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

The actuarial method under West Virginia law is a basic computation of principal X rate X time. 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. (A month is considered to be one twelfth (1/12) of a year and a day to be one three hundred and sixty fifth (1/365) of a year.

(A) Prorate actual over 30 day base

(B) Payoffs on last day of month 28th, 29th, 31st are same as 30th, if the installment due date is the last day of the month.

(b) Rule of 78 computation:

Any generally accepted 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. OR

(2) The "15 day rule" method as described in 2.03(a)(1) will apply to precomputed credit transactions.

(3) Rebates may be computed on the assumption that all payments were made as scheduled, or as deferred, if deferred.

(4) No rebate of less than one dollar need be made in a pre-computed 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 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, in which 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, no 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 1/3 X 30 = 130, the multiple for a monthly pay period;
2 1/6 X 30 = 65, the multiple for a semi-monthly pay period;
2 X 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.