

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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MAY 8 2 52 PM '91
OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Regulations Pertaining to the West Virginia
Consumer Credit and Protection Act and the Money and Interest Article of Chapter Forty Seven

IF NO, SERIES OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 157

SECTION § 64-7-1(a), PASSED ON April 20, 1997

THIS RULE IS FILED WITH THE SECRETARY OF STATE, THIS RULE BECOMES
EFFECTIVE ON THE FOLLOWING DATE: June 2, 1997



Authorized Signature

FILED

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING May 8 2 52 PM '97

SERIES 1
RULE PERTAINING TO THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT AND THE MONEY AND INTEREST ARTICLE OF CHAPTER FORTY SEVEN
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

§106-1-1. General.

1.1. Scope. -- This rule establishes general provisions implementing and supplementing the West Virginia Consumer Credit and Protection Act and the Money and Interest Article, W. Va. Code §§ 46A-1-101 et seq. and 47-6-1 et seq.

1.2. Authority. -- W. Va. Code §31A-2-4(c)(12)

1.3. Filing Date. -- May 8, 1997

1.4. Effective Date. -- June 2, 1997

1.5. Repeal and Replace. -- This rule repeals and replaces West Virginia Division of Banking rule entitled, Regulations Pertaining to the West Virginia Consumer Credit and Protection Act, 106 CSR 8 effective April 23, 1982.

§106-1-2. Rules of General Application.

2.1. Actuarial method.

"Actuarial method: means the method 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 multiplied by rate, multiplied by time (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 rule. 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 the payment period and is decreased by the payment made at the end of the 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. Then if the sum of the two (2) payments is still less than the total earned finance charge for the two (2) payment periods, the adjustment of the unpaid balance of the amount financed is postponed still another payment period, and so forth.

2.2. Computation of time.

2.2.a. Actuarial method computation

2.2.a.1 Three hundred sixty five (365) day year, actual day basis; or

2.2.a.2 Three hundred sixty (360) day year, thirty (30) day month, so long as interest computations by this method do not result in the interest charge exceeding three hundred sixty five (365) days of interest in one (1) 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.

2.2.a.2.A. Prorate actual over thirty (30) day base

2.2.a.2.B. Payoffs on last day of month, whether the twenty eighth, twenty-ninth, or thirty-first are same as the thirtieth, if the installment due date is the last day of the month.

2.2.b. Rule of 78 computation

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

2.3. Rebating in event of prepayment.

2.3.a. Rebating under Rule of 78.

2.3.a.1 Prepayments in full on or before the fifteen (15) days following an installment due date are considered to have been made as of the installment due date.

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

2.3.a.2 The creditor is not required to make a rebate of less than one dollar (\$1.00).

2.3.b. Rebating under actuarial method:

2.3.b.1. Daily "Payoff" which is determined by calculating the interest on a daily basis, or

2.3.b.2. The "Fifteen Day Rule" method as described in paragraph 2.3.a.1 of this rule, applies to precomputed credit transactions.

2.3.b.3. A creditor may compute a rebate on the assumption that all payments were made as scheduled, or as deferred, if deferred.

2.3.b.4. A creditor is not required to make a rebate of less than one dollar (\$1.00) in a precomputed credit transaction.

2.3.c. Rebating on precomputed loans, credit sales, or credit transactions with an original term of thirty-six (36) months or less:

2.3.c.1. A creditor may use any generally accepted method for the allocation of charges and the calculation of rebates consistent with the sum of the digits method where the precomputed loan, credit sale or credit transaction is payable in equal, unequal or irregular payments and the original term of the transaction is thirty-six (36) months or less; or

2.3.c.2. A creditor may use the method of allocation of charges and the calculation of rebates described in subdivision 2.3.d of this rule.

2.3.d. Rebating on precomputed loans, credit sales or credit transactions with an original term, greater than thirty-six (36) months.

2.3.d.1. A creditor shall use the actuarial procedure or method for the allocation of charges and other calculation of rebates consistent with the actuarial method as defined in subsection 2.1 and subdivision 2.2.a of this rule where the precomputed loan, credit sale or credit transaction is payable in equal, unequal or irregular payments and the original term of the transaction is greater than thirty-six (36) months.

2.3.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 W. Va. Code §46A-1-102(26)(a) or "Sales Finance Charge" as defined in W. Va. Code §46A-1-102(44), whichever is applicable.

2.4. Balloon payments.

2.4.a. A creditor shall rebate 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, if paid in full, according to W. Va. Code §47-6-5d(b) if the credit sale or loan by application of the smallest scheduled payment will not payout within thirty-six (36) months or less.

2.5. Calculation of deferral charges on precomputed transactions.

The creditor shall use the method of calculation of deferral charges consistent with the method of rebate which would be required or has been specified on that specific contract.

2.5.a. Calculation of deferral charges under the Rule of 78.

2.5.a.1. The word "Attributable" in the first sentence of W. Va. Code §46A-3-114(1) refers to charges earned on any installment on the basis of the Rule of 78, as provided in W. Va. Code §46A-3-111(1). For example, the deferral charge for deferring the fourth installment of a twelve (12) month contract and all remaining installments one (1) month would be nine seventy-eighths (9/78) of the original finance charge. If the same balances are deferred an additional two (2) months, the same nine seventy-eighths (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.

2.5.a.2. Following a deferral, a creditor shall compute rebates for prepayment in full 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. The creditor is not required to make a separate rebate of deferral charges: **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 creditor shall rebate the deferral charges for the unexpired full months in the deferral period and the deferrals will be considered not to have been made.

2.5.b. A deferral charge under the actuarial method is the finance charge due for that payment period to be deferred.

2.5.c. The creditor shall post deferral charges to the customer's account at the time the deferrals are made and in any event, not later than the next normal updating of the customer's account record. The creditor shall clearly identify the charges and indicate the installment upon which the charge is based. The customer's account record shall show the final installment due date after each deferral.

2.5.d. If a deferral charge is made and the customer's account record does not indicate to the contrary, it will be assumed that the written authorization for such charge is a part of the contract evidencing the obligation. If a separate written agreement is used, the creditor shall provide a copy to the customer and the lender or seller shall retain the original for a period of at least two (2) years following final entry on the customer's account record.

2.6. Deficiency judgments.

The phrase "Balance Owed" in W. Va. code §46A-2-119(2), (3) and (4), with respect to restrictions on a deficiency judgment, means the gross unpaid balance of the account, excluding any unearned charges.

2.7. Delinquency charges on precomputed contracts.

2.7.a. A creditor may contract for and receive delinquency charges for consumer loans or consumer credit sales not exceeding the lesser of ten dollars (\$10.00) or five percent (5%) of the amount of any installment unpaid, following the tenth day after the originally scheduled or deferred due date, but no less than one dollar (\$1.00). Delinquency charges accrue on the eleventh 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. A creditor should post delinquency charges 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. A creditor may collect delinquency charges at the time they accrue or any time thereafter.

2.7.b. Delinquency charges, except where otherwise provided by law, are earned as they accrue and do not become a part of the total finance charge for purposes of rebating unearned charges.

2.7.c. If the alternative method of computing delinquency charges as set forth in W. Va. Code §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.

2.7.d. A creditor shall clearly identify delinquency charges upon the customer's account records. The installment upon which the charge is based shall also be indicated.

2.8. Electronic data processing.

A creditor may use electronic data processing methods to maintain records and accounting systems, in whole or in part, which provide information equivalent to that required by this rule. If requested by the Commissioner, a creditor shall provide a written description of the system utilized, including all features that do not meet the requirements of this rule and a full explanation of how the equivalent information may be obtained.

2.9. Minimum charge - revolving loan account.

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

2.9.b. With respect to a consumer loan made pursuant to a revolving loan account, lenders, other than regulated consumer lenders, are authorized to contract for and receive, as a

minimum charge, the charge provided for in W. Va. Code §46A-3-106(4).

2.10. Limitation on garnishment.

2.10.a. W. Va. Code §46A-2-130 provides in part:

"The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce payment of a judgment arising from a consumer credit sale or consumer loan may not exceed the lesser of:

Twenty percent (20%) of his disposable earnings for that week, or

The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by section 6(a)(1) of the 'Fair Labor Standards Act of 1938,' U.S.C. Title 19, §206(a)(1), in effect at the time the earnings are payable."

2.10.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:

2.10.b.1. The number of weeks (including fractions thereof) in the pay period are multiplied by thirty (30).

2.10.b.2. In determining the number of weeks in a pay period:

A year shall equal fifty-two (52) weeks,

A month shall equal four and one third ($4 \frac{1}{3}$) weeks,
and

A half-month shall equal two and one sixth ($2 \frac{1}{6}$) weeks.

Examples:

$4 \frac{1}{3} \times 30 = 130$, is the multiple for a monthly pay period.

$2 \frac{1}{6} \times 30 = 65$, is the multiple for a semi-monthly pay period.

$2 \times 30 = 60$, is the multiple for a biweekly pay period.

2.10.b.3. The multiple times the federal minimum hourly wage establishes the amount provided for in paragraph 2.10.a.2 of this rule.

§106-1-3. Loan investigation fee, loan origination fee, loan assumption fee.

3.1. The terms "Loan Finance Charge," as defined in W. Va. Code § 46A-1-102(26), and "Sales Finance Charge", as defined in W. Va. Code § 46A-1-102(39), shall include a loan investigation fee, a loan origination fee, a loan assumption fee or any other similar fee for purposes of determining the allowable usury limits on all consumer loans as that term is defined in W. Va. Code § 46A-1-102(15) and all consumer credit sales as that term is defined in W. Va. Code § 46A-1-102(13), regardless of the rate alternative utilized in W. Va. Code § 46A-3-104.



DIVISION OF BANKING

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Promulgation History of Rule Series 1, 3, 4 and 19 of Title 106 CSR

Date

- July 19, 1996-- Filed Notice of a Comment Period on Proposed Rules (FORM 2) Proposals to amend Rules 1, 3, and 4; Delete Rules 2, 5 and 8; and to create a new Rule 19 to regulate reverse mortgages.
- Comment period runs from 7/19/96 to 8/19/96.
- August 28, 1996-- Filed Notice of Agency Approval of Proposed Rules (FORM 3) Approving proposal to amend Rules 1, 3, and 4; Delete Rules 2, 5 and 8; and to create a new Rule 19 to regulate reverse mortgages. [Note: the text of Rule 8 was largely being transferred to Rule 1 as amended; while small portions of the text to Rules 2 & 5 were being transferred to Rule 4 as amended].
- December 2, 1996-- Legislative Rule-Making Review Committee (LRMC) hearing on proposed Banking rules.
- December 19, 1996-- Notice of Action by LRMC approving Rules 1, 3, 4 and 19 as modified; and Rules 2, 5, and 8 as submitted for deletion.
- December 20, 1996-- Filed Notice of Rule Modification of a Proposed Rule for Rules 1, 3, 4 and 19. (FORM 4)
- February 21, 1997-- In response to LRMC's counsel's direction for procedural efficiency, the repeal of Rule 8 was incorporated into the amendments to Rule 1, and the repeal of Rules 2 & 5 were incorporated into the amendments to Rule 4. Filed Notice of Rule

Modification of a Proposed Rule for Rules 1 and 4 (FORM 4).
Submitted letter withdrawing filing for deletion of Rules 2, 5 and
8.

- March 3, 1997-- SB 157 introduced and referred to the Senate Judiciary Committee
- March 28, 1997-- Committee substitute for SB 157 reported by Senate Judiciary
Committee. Provides for approval of 106 CSR §§ 1, 3, 4 and 19 as
filed.
- April 20, 1997-- SB 157 passed Legislature.



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CONSENT TO FILE RULE

May 8, 1997

TO WHOM IT MAY CONCERN:

Title of Rule: Rule Pertaining to the WV Consumer Credit and Protection Act
and the Money and Interest Article of Chapter Forty Seven

Title Number: 106

Series Number: I

Pursuant to West Virginia Code §§ 5F-2-2(a) and 64-7-4(c), the undersigned hereby
consents to the filing of the foregoing rule.

Signed this 8th day of May, 1997.


Robin C. Capehart
Secretary of Tax & Revenue

E.E.O./AFFIRMATIVE ACTION EMPLOYER

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Secretary of State

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STATE OF WEST VIRGINIA

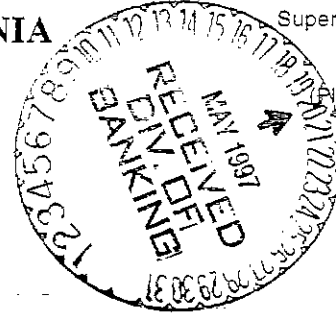
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Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations



Plus all the volunteer help we can get!

TO: TIM WINSLOW

AGENCY: BANKING

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 16, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE: 106 BANKING

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Jonathan C. Winslow

TITLE OF PERSON SIGNING: General Counsel

DATE: 5/21/97

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.