

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

1991 JUL 31 PM 2:08

WEST VIRGINIA
STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

RULE TYPE: Legislative; CITE AUTHORITY West Virginia Code 31A-2-4(c)(11)

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 NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 10, 1991 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Division of Banking

State Capitol Complex

Building 3, Room 311

Charleston, West Virginia 25305

ATTN: Julia Vermillion

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Sharon J. Bias
Deputy Commissioner of Banking

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 106

Type of Rule: Legislative Interpretive Procedural

Agency West Virginia Division of Banking Address State Capitol Complex
Building 3, Room 311, Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ None	\$ None	\$ None	\$ None	\$ None
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

None

3. Objectives of these rules:

To change regulation regarding delinquency charges on precomputed contracts from \$5.00 to \$10.00 to bring into conformity with statute.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date:

July 11, 1991

Signature of Agency Head or Authorized Representative

Sharon J. Bias
Deputy Commissioner of Banking



DIVISION OF BANKING
James H. Paige, III, Commissioner

Office of the Commissioner

Building #3, Room 311 • State Capitol Complex • Charleston, WV 25305 • (304) 348-2294 • FAX: (304) 348-0442

Gaston Caperton
Governor

John Ranson
Secretary

FILED

100 JUL 11 PM 2:08

RECEIVED

SUMMARY OF PROPOSED AMENDMENT TO LEGISLATIVE RULES

Pursuant to West Virginia Code §46A-3-112 the delinquency charge on precomputed contracts may not exceed ten dollars. The amendment to 106 CSR 1 brings the regulation into conformity with the statute by changing it from five to ten dollars.

106 CSR 1

TITLE 106
LEGISLATIVE RULES
WEST VIRGINIA DIVISION OF BANKING

SERIES 1
REGULATIONS PERTAINING TO THE WEST VIRGINIA
CONSUMER CREDIT AND PROTECTION ACT
AND THE MONEY AND INTEREST ARTICLE
OF CHAPTER FORTY SEVEN

\$106-1-1. GENERAL.

1.1. Scope. --These regulations establish general rules implementing and supplementing the West Virginia Consumer Credit and Protection Act and the Money and Interest Article, chapter forty-seven of the West Virginia Code.

1.2. Authority. --West Virginia Code §31A-2-4(c)(11)

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replace 106 CSR 1

\$106-1-2. REGULATIONS OF GENERAL APPLICATION.

2.1. 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 regulations. 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 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 (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.

(a) Actuarial method computation:

(1) Three hundred sixty five (365) day year, actual day basis or

(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.)

(A) Prorate actual over thirty (30) day base

(B) Payoffs on last day of month twenty eighth, twenty-ninth, thirty-first are same as thirtieth, 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.

2.3. Rebating in event of prepayment.

(a) Rebating under Rule of 78:

(1) Prepayments in full on or before the fifteen (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 sixteenth 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 (\$1.00) 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 "Fifteen Day Rule" method as described in Section 2.3(a)(1) of these rules, 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 (\$1.00) 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 (36) 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 (36) months or less.

(2) An alternate method of allocation of charges and the calculation of rebates may be that described in 2.3(d) below.

(d) Rebating on precomputed loans, credit sales or credit transactions with an original term greater than thirty-six (36) months. The actuarial procedure or method for the allocation of charges and other calculation of rebates consistent with the actuarial method as defined in Sections 2.1 and 2.2(a) of these rules 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 (36) months.

(e) The terms "Finance Charge" as used in West Virginia Code subsection (a), section five-d, article six, chapter forty-seven and "finance charge which was required by applicable law to be disclosed" as used in West Virginia Code subsection (b), section five-d, article six, chapter forty-seven both mean "Loan Finance Charge" as defined in subsection twenty-three, section one hundred two, article forty-six-a of the West Virginia Code or "Sales Finance Charge" as defined in subsection thirty-nine, section one hundred two, article one, chapter forty-six-a of the West Virginia Code, whichever is applicable.

2.4. 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 West Virginia Code subsection (b), section five-d, article six, chapter forty-seven 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 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 subsection (1), section one hundred fourteen, article three, chapter forty-six-a of the West Virginia Code refers to charges earned on any installment on the basis of the Rule of 78, as provided in subsection (1), section one hundred eleven, article three, chapter forty-six-a of the West Virginia Code. 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 $9/78$ 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) 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 now 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 (2) years following final entry on the customer's account record.

2.6. Deficiency judgements.

The phrase "Balance Owed" in subsections (2), (3) and (4), section one hundred nineteen, article two, chapter forty-six-a of the West Virginia Code, with respect to restrictions on a deficiency judgement, shall mean the gross unpaid balance of the account, excluding any unearned charges.

2.7. 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 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 not 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. 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 subdivision (b), subsection (1), section one hundred twelve, article three, chapter forty-six-a of the West Virginia Code) 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.

2.8. 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.

2.9. 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 section one hundred two, article three, chapter forty-six-a of the West Virginia Code, sellers are authorized to contract for and receive, as a minimum charge, the charge provided for in subsection (4), section one hundred three, article three, chapter forty-six-a of the West Virginia Code.

(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 subsection (4), section one hundred six, article three, chapter forty-six-a of the West Virginia Code.

2.10. Limitation on garnishment.

(a) Section one hundred thirty, article two, chapter forty-six-a of the West Virginia Code 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 judgement arising from a consumer credit sale or consumer loan may not exceed the lesser of:

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

(2) 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 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 thirty (30).

(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:

$4 \frac{1}{3} \times 30 = 130$, 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 subsection 2.10(a)(2) of these regulations.



DIVISION OF BANKING

James H. Paige, III, Commissioner

Office of the Commissioner

Building #3, Room 311 • State Capitol Complex • Charleston, WV 25305 • (304) 348-2294 • FAX: (304) 348-0442

Gaston Caperton
Governor

John Ranson
Secretary

FILED
JUL 11 11 PM 2:08
OFFICE OF THE SECRETARY OF STATE

July 3, 1991

The Honorable Ken Hechler
Secretary of State
State Capitol Complex
Building 1, Suite 157-K
Charleston, West Virginia

Dear Mr. Hechler:

Please be informed that I have reviewed the attached regulations, proposed by the West Virginia Division of Banking, and have approved them for submission.

Very truly yours,

John M. Ranson
Secretary
Commerce, Labor and Environmental
Resources

JMR/bl