

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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FILED  
1992 APR 22 AM 7:45  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**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: Rules Pertaning to the West Virginia  
Consumer Credit and Protection Act and the Money and Interest  
Article of Chapter 47.

IF NO, SERIES NUMBER 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) S.B. 1

SECTION 64-3-2(j), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 24, 1992

Sharon S. Bed

2.80

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 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 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. 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.

### (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 considered 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 considered to have been made on the next succeeding installment due date.

(2) The creditor does not need to make a rebate of less than one dollar (\$1.00).

### (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 regulations, applies to precomputed credit transactions.

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

(4) A creditor is not required to make a rebate of less than one dollar (\$1.00) 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) 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.

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

(d) Rebating on precomputed loans, credit sales or credit transactions with an original term greater than thirty-six (36) months. 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 Sections 2.1 and 2.2(a) of these regulations 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.

(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-1-102-24(a) or "Sales Finance Charge" as defined in W. Va. Code 46A-1-102(40), whichever is applicable.

#### 2.4. Balloon payments.

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 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 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  $9/78$  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, 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, and 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.

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

(c) The creditor shall post deferral charges 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. The creditor shall clearly identify such charges and indicate the installment upon which the charge is based. 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, 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 judgements.

The phrase "Balance Owed" in W. Va. Code 46A-2-119(2), (3) and (4), with respect to restrictions on a deficiency judgement, means 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. 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.

(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.

(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.

(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, if the Commissioner finds they provide information equivalent to that required by these regulations. A creditor shall provide a written description of the system utilized, including all features that do not meet the regulatory requirements and a full explanation of how the equivalent information may be obtained, if requested by the Commissioner.

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 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).

(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 W. Va. Code §46A-3-106(4).

2.10. Limitation on garnishment.

(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 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 1/3) weeks, and

A half-month shall equal two and one sixth (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 subsection 2.10(a)(2) of these regulations.

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Bill Banking, CCP Act 106-1

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H. B. 4264

(By Delegate Grubb)  
(Introduced January 27, 1992; referred to the  
Committee on the Judiciary)

10 A BILL to amend and reenact section two, article three, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 division of banking to promulgate legislative rules relating  
14 to the West Virginia consumer credit and protection act.

15 Be it enacted by the Legislature of West Virginia:

16 That section two, article three, chapter sixty-four of the  
17 code of West Virginia, one thousand nine hundred thirty-one, as  
18 amended, be amended and reenacted, to read as follows:

19 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND  
20 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

21 §64-3-2. Division of banking.

22 (a) The legislative rules filed in the state register on the  
23 eleventh day of June, one thousand nine hundred eighty-two,

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1 relating to commissioner of banking (communication terminals and  
2 interchange systems), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 fifteenth day of December, one thousand nine hundred  
5 eighty-three, relating to the commissioner of banking (consumer  
6 credit sales), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 nineteenth day of August, one thousand nine hundred eighty-three,  
9 relating to the commissioner of banking (legal lending limit),  
10 are authorized.

11 (d) The legislative rules filed in the state register on the  
12 seventh day of November, one thousand nine hundred eighty-six,  
13 modified by the commissioner of banking to meet the objections of  
14 the legislative rule-making review committee and refiled in the  
15 state register on the eleventh day of December, one thousand nine  
16 hundred eighty-six, relating to the commissioner of banking  
17 (implementing the West Virginia community reinvestment act), are  
18 authorized.

19 (e) The legislative rules filed in the state register on the  
20 twenty-fifth day of October, one thousand nine hundred  
21 eighty-eight, modified by the commissioner of banking to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the seventh day of December, one  
24 thousand nine hundred eighty-eight, relating to the commissioner

1 of banking (subsidiary bank holding the stock of its parent  
2 company as collateral), are authorized.

3 (f) The legislative rules filed in the state register on the  
4 twelfth day of August, one thousand nine hundred ninety-one,  
5 modified by the division of banking to meet the objections of the  
6 legislative rule-making review committee and refiled in the state  
7 register on the fifteenth day of November, one thousand nine  
8 hundred ninety-one, relating to the division of banking (West  
9 Virginia consumer credit and protection act), are authorized.

10

11 . NOTE: The purpose of this bill is to authorize the Division  
12 of Banking to promulgate legislative rules relating to the West  
13 Virginia Consumer Credit and Protection Act.

14

15 Strike-throughs indicate language that would be stricken from  
16 the present law, and underscoring indicates new language that  
17 would be added.



KEN HECHLER  
Secretary of State

WILLIAM H. HARRINGTON  
Chief of Staff

MARY P. RATLIFF  
Deputy Secretary of State

JUDY COOPER  
Director, Administrative Law

A. RENEE COE  
Deputy Secretary of State

DONALD R. WILKES  
Director, Corporations

CATHERINE FREROTTE  
Executive Assistant

(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

Telephone: (304) 558-6000  
Corporations: (304) 558-8000

TO: Rick Lancianese

AGENCY: Banking

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: December 11, 1992

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: Richard L. Lancianese

TITLE OF PERSON SIGNING: Dep. Comm / General Counsel

DATE: 12-15-92

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\* 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.

Technical  
Clean Up



FILED

KEN HECHLER  
Secretary of State

WILLIAM H. HARRINGTON  
Chief of Staff

MARY P. RATLIFF  
Deputy Secretary of State

JUL 8 11 09 AM '96  
JUDY COOPER  
Director, Administrative Law

STEPHEN N. REED  
Deputy Secretary of State

PENNEY BARKER  
Supervisor, Corporations

CATHERINE FREROTTE  
Executive Assistant

STATE OF WEST VIRGINIA

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900

(Plus all the volunteer  
help we can get)

TO: TIM WINSLOW

AGENCY: DIVISION OF BANKING

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 1, 1996

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.

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SERIES: 1 TITLE: REGS PERTAINING TO THE WV CONSUMER CREDIT & PROTECTION ACT & THE MONEY & INTEREST ARTICLE OF CHAPTER FORTY-SEVEN

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Timothy C Winslow

TITLE OF PERSON SIGNING: General Counsel

DATE: 7/1/96

\*\*\*\*\*

\* 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.