

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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) DEC 20 3 16 PM '96

) OFFICE OF WEST VIRGINIA  
) SECRETARY OF STATE

Form #4

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

CITE AUTHORITY W. Va. Code § 31A-2-4(c)(11)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Regulations Governing the Operations  
of State Chartered Financial Institutions in West Virginia

IF NO, SERIES OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING COMMITTEE IS HEREBY MODIFIED AS A RESULT OR REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

*Sharon G. Beas* *gmb*

Authorized Signature



**DIVISION OF BANKING**

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

(304) 558-2294

**CONSENT TO FILE RULE**

December 20, 1996

TO WHOM IT MAY CONCERN:

Title of Rule: Rule Governing Off-Premise Bookkeeping Services of Financial Institutions  
in West Virginia [*formerly-- Regulations Governing the Operations of  
State Chartered Financial Institutions in West Virginia*]

Title Number: 106

Series Number: 3

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 as modified.

Signed this 20th day of Dec, 1996.

A handwritten signature in cursive script, reading "James H. Paige III".

James H. Paige III  
Secretary of Tax & Revenue

TITLE 106  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF BANKING

SERIES 3  
~~REGULATIONS GOVERNING THE OPERATIONS OF  
STATE-CHARTERED FINANCIAL INSTITUTIONS IN WEST VIRGINIA~~  
RULE GOVERNING OFF-PREMISE BOOKKEEPING SERVICES  
OF FINANCIAL INSTITUTIONS IN WEST VIRGINIA

§106-3-1. General.

1.1. Scope. -- ~~This~~ ~~These~~ regulations establish general rules and regulations for the operation of financial institutions chartered by under the primary jurisdiction of the Commissioner of Banking for the State of West Virginia.

1.2. Authority. -- W. Va. Code §31A-2-4(c)(11)...

1.3. Filing Date. -- ~~April 22, 1992~~

1.4. Effective Date. -- ~~April 24, 1992~~

§106-3-2. Maintenance of Records and Accounts.

2.1. Off-premise bookkeeping services.

Prior to entering into any agreement for the provision of contracting off-premise data processing bookkeeping services, a financial institution desiring to utilize these services must obtain the written consent of shall notify the Commissioner of Banking of the contracted services. Both the financial institution and the off-premise processing servicer shall in writing assure the Commissioner that the party performing those services shall be subject to regulation and examination by the commissioner and any appropriate federal supervisory agency to the same extent as if the services were being performed by the financial institution on its own premises. Submission of a copy of the written contract for off-premises data processing bookkeeping services between the state financial institution and the service provider, signed by both parties, which contains a contractual obligation for the service provider to be subject to regulation and examination by the Commissioner and any appropriate federal agency, shall satisfy the written assurance requirement. An application for consent shall include a copy of the proposed contract for the services, which must detail the work to be performed, the reports to be provided and the frequency of the reports. The Commissioner of Banking will not consent to any contract which does not provide for sufficient records to be available

~~to the examining personnel of the Division of Banking for the  
efficient examination of the financial institution.~~

## ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Division of Banking

**Subject:** Operations of State Chartered Financial Institutions in West Virginia, 106CSR3

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### PERTINENT DATES

Filed for public comment: July 19, 1996  
Public comment period ended: August 19, 1996  
Filed following public comment period: August 28, 1996  
Filed LRMRC: August 28, 1996  
Filed as emergency:

Fiscal Impact: None

### ABSTRACT

The proposed rule amends a current legislative rule. The current rule requires a financial institution to ask the Commissioner for consent to enter into an off-premise data processing bookkeeping service agreement, prior to entering into the agreement. The amendment would require instead that the financial institution provide written notification to the Commissioner prior to entering into an agreement. It also requires both the financial institution and the service provider to provide the Commissioner with written assurance that they are aware that they are subject to regulation by the Commissioner or any appropriate federal regulatory agency. The signed agreement must be provided to the Commissioner and contain a contractual obligation to that effect.

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### AUTHORITY

Statutory authority: W.Va. Code, §31A-2-4, which provides, in part, as follows:

(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner is authorized and empowered:

...(11) To implement all of the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce by the promulgation of rules and regulations in

accordance with the provisions of article three, chapter twenty-nine-a of this code;...

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN

**COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND  
WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?**

Yes.

**VIII. OTHER.**

Counsel has technical modifications to suggest.

106-3

1 Bill-Banking, State Chartere

H. B. 2321

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9

(By Delegate(s) Douglas, Hunt, Compton,  
Faircloth, Linch and Riggs)

[Introduced March 3, 1997; referred to the  
Committee on Banking and Insurance then the  
Judiciary.]

10 A BILL to amend and reenact section one, article seven,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of banking to promulgate  
14 a legislative rule relating to the operations of state  
15 chartered financial institutions in West Virginia.

16 *Be it enacted by the Legislature of West Virginia:*

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

21 ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE  
22 TO PROMULGATE LEGISLATIVE RULES.

23 §64-7-1. Division of banking.

1           (a) The legislative ~~rules~~ rule filed in the state  
2 register on the thirty-first day of July, one thousand nine  
3 hundred ninety-five, authorized under the authority of  
4 section twenty-six, article four, chapter thirty-one-a of  
5 this code, modified by the division of banking to meet the  
6 objections of the legislative rule-making review committee  
7 and refiled in the state register on the first day of  
8 December, one thousand nine hundred ninety-five, relating  
9 to the division of banking (legal lending limit, 106 CSR  
10 9), ~~are~~ is authorized.

11           (b) The legislative ~~rules~~ rule filed in the state  
12 register on the twenty-eighth day of July, one thousand  
13 nine hundred ninety-five, authorized under the authority of  
14 section four, article two, chapter thirty-one-a of this  
15 code modified by the division of banking to meet the  
16 objections of the legislative rule-making review committee  
17 and refiled in the state register on the first day of  
18 December, one thousand nine hundred ninety-five, relating  
19 to the division of banking (permissible additional charges  
20 in connection with a consumer credit sale, 106 CSR 11), ~~are~~  
21 is authorized.

22           (c) The legislative ~~rules~~ rule filed in the state  
23 register on the twenty-eighth day of July, one thousand

1 nine hundred ninety-five, authorized under the authority of  
2 section twenty-six, article seven, chapter thirty-one of  
3 this code, modified by the division of banking to meet the  
4 objections of the legislative rule-making review committee  
5 and refiled in the state register on the first day of  
6 December, one thousand nine hundred ninety-five, relating  
7 to the division of banking (West Virginia industrial bank  
8 and industrial loan company act, 106 CSR 5), ~~are~~ is  
9 authorized.

10 (d) The legislative ~~rules~~ rule filed in the state  
11 register on the twenty-eighth day of July, one thousand  
12 nine hundred ninety-five, authorized under the authority of  
13 section four, article two, chapter thirty-one-a of this  
14 code, modified by the division of banking to meet the  
15 objections of the legislative rule-making review committee  
16 and refiled in the state register on the first day of  
17 December, one thousand nine hundred ninety-five, relating  
18 to the division of banking (West Virginia consumer credit  
19 and protection act, 106 CSR 4), ~~are~~ is authorized.

20 (e) The legislative ~~rules~~ rule filed in the state  
21 register on the twenty-eighth day of July, one thousand  
22 nine hundred ninety-five, authorized under the authority of  
23 section twenty-six, article seven, chapter thirty-one of

1 this code, modified by the division of banking to meet the  
2 objections of the legislative rule-making review committee  
3 and refiled in the state register on the first day of  
4 December, one thousand nine hundred ninety-five, relating  
5 to the division of banking (West Virginia consumer credit  
6 and protection act and the industrial bank and industrial  
7 loan company act, 106 CSR 2), ~~are~~ is authorized.

8 (f) The legislative rule filed in the state register  
9 on the twenty-eighth day of August, one thousand nine  
10 hundred ninety-six, authorized under the authority of  
11 section four, article two, chapter thirty-one-a, of this  
12 code, modified by the division of banking to meet the  
13 objections of the legislative rule-making review committee  
14 and refiled in the state register on the twentieth day of  
15 December, one thousand nine hundred ninety-six, relating to  
16 the division of banking (regulations governing the  
17 operations of state chartered financial institutions in  
18 West Virginia, 106 CSR 3), is authorized.

19

20 NOTE: The purpose of this bill is to authorize the  
21 Division of Banking to promulgate a legislative rule  
22 relating to the Operations of State Chartered Financial  
23 Institutions in West Virginia.

24

25 .Strike-throughs indicate language that would be  
26 stricken from the present law, and underscoring indicates

1 new language that would be added.

Senate Bill No. 158

1 (By Senator(s) Ross, Anderson, Macnaughtan,  
2 Boley and Buckalew)

3 [Introduced March 3, 1997; referred to the  
4 Committee on Banking and Insurance; and then to  
5 the Committee on the Judiciary.]  
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6 objections of the legislative rule-making review committee  
7 and refiled in the state register on the first day of  
8 December, one thousand nine hundred ninety-five, relating  
9 to the division of banking (legal lending limit, 106 CSR  
10 9), ~~are~~ is authorized.

11           (b) The legislative ~~rules~~ rule filed in the state  
12 register on the twenty-eighth day of July, one thousand  
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19 to the division of banking (permissible additional charges  
20 in connection with a consumer credit sale, 106 CSR 11), ~~are~~  
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17 operations of state chartered financial institutions in  
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21 Division of Banking to promulgate a legislative rule  
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23 Institutions in West Virginia.

24

25 Strike-throughs indicate language that would be  
26 stricken from the present law, and underscoring indicates

1 new language that would be added.



FILED

Dec 20 3 41 PM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**West Virginia Legislature**  
**Legislative Rule-Making Review Committee**

Room NB47-State Capitol  
Charleston, West Virginia 25305  
(304) 347-4840

Senator Mike Ross, Co-Chair  
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel  
Joe Altizer, Associate Counsel  
Marie Nickerson, Adm. Assistant

December 19, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Echler, Secretary of State, State Register

TO: Mr. Timothy Winslow  
Division of Banking  
Building 3, Room 311  
State Capitol Complex  
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Regulations Governing the Operations of State Chartered  
Financial Institutions in West Virginia

The Legislative Rule-Making Review committee recommends that the West Virginia  
Legislature:

1. Authorize the agency to promulgate part of the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency   X
2. Authorize the agency to promulgate part of the Legislative rule;  
a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with  
certain amendments; amendments and a statement of reasons for  
such recommendation is attached
4. Authorize the agency to promulgate the Legislative rule as  
modified with certain amendments; amendments and a statement  
of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reason  
for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State  
Register and with the agency proposing the rule.

106-3