

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

Form #2

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WV Division of Banking TITLE NUMBER: 106

RULE TYPE: Legislative; 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: 4

TITLE OF RULE BEING AMENDED: Regulations Pertaining to the WV Consumer  
Credit and Protection Act

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

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

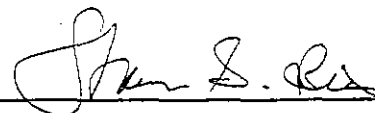
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS

COMMENT PERIOD WILL END ON July 24, 1995 AT 5<sup>53</sup> PM

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

WV Division of Banking  
State Capitol Complex  
Bldg. 3, Rm. 311  
Charleston, WV 25305

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



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.00



**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**

June 19, 1995

TO WHOM IT MAY CONCERN:

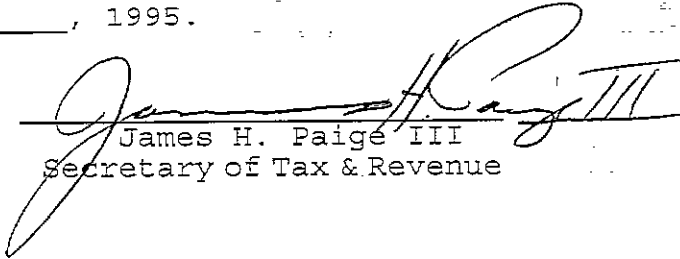
Title of Rule: Regulations Pertaining to the WV Consumer Credit  
& Protection Act

Title Number: 106

Series Number: 4

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 21st day of June, 1995.

  
James H. Paige III  
Secretary of Tax & Revenue



## DIVISION OF BANKING

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(304) 558-2294

COMMISSIONER OF BANKING  
REGULATIONS PERTAINING TO THE WEST VIRGINIA  
CONSUMER CREDIT AND PROTECTION ACT  
106 CSR 4

### Statement of Circumstances

The proposed amendments to this legislative rule are required in part by amendments to the West Virginia Code which have altered the loan limit for supervised lenders. The other changes are needed to clarify the actual working of the rule and avoid misleading interpretations. These changes need to be reflected in the rule to make it consistent with the statute.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Regulations Pertaining to the WV Consumer Credit & Protection Act  
**Type of Rule:**  **Legislative**     **Interpretive**     **Procedural**  
**Agency** WV Division of Banking  
**Address** State Capitol Complex  
Bldg. 3, Rm. 311  
Charleston, WV 25305

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THREEYEAR
<b>ESTIMATED TOTAL COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<b>PERSONAL SERVICES</b>	-	-	-	-	-
<b>CURRENT EXPENSE</b>	-	-	-	-	-
<b>REPAIRS &amp; ALTERNATIONS</b>	-	-	-	-	-
<b>EQUIPMENT</b>	-	-	-	-	-
<b>OTHER</b>	-	-	-	-	-

**2. Explanation of above estimates:**

The rule merely clarifies the rule in a manner consistent with current statutes, and conforms the rule to the statute as amended.

**3. Objectives of these rules:**

To avoid needless confusion by clarifying the rule to better explain its working and to amend the rule to conform it to changes in the statute.

**Rule Title:** Regulations Pertaining to the WV Consumer Credit & Protection Act -- 106 CSR 4

**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:** June 19, 1995

**Signature of Agency Head or Authorized Representative**

Sharon S. Bick

FILED

TITLE 106  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF BANKING

JUN 22 9 01 AM '95

SERIES 4  
REGULATIONS PERTAINING TO THE WEST VIRGINIA  
CONSUMER CREDIT AND PROTECTION ACT

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

§106-4-1. General.

1.1. Scope. -- These regulations establish general rules implementing and supplementing the West Virginia Consumer Credit and Protection Act.

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~~

§106-4-2. Regulations of Supervised Lenders.

2.1. Balloon payments - Supervised loans shall not contain balloon payments.

2.2. Financial statements.

The supervised lender shall keep financial statements on file at its office or the authorized place of examination on the last day of the month for the previous month's business.

2.3. Advertising.

(a) All supervised lenders shall prominently display the loan ceiling of ~~one two thousand six hundred dollars (\$1,600)~~ (\$2,000) at or near... The supervised loan ceiling of ~~one two thousand six hundred dollars (\$1,600)~~ (\$2,000) shall be shown or stated in all advertising, regardless of the media used. This provision applies to newspaper advertising published in this State, radio and television advertising broadcast or rebroadcast by stations operating in this State and all printed material used to solicit business for supervised lenders licensed in this State. Mailings to customers of the supervised lender having existing loans are exempt from this provision. Personal calling cards of the employees of the supervised lender are also exempt from this provision if they are not used for advertising purposes.

(b) No supervised lender shall advertise, in any manner, that a loan of a perspective borrower with another licensee will be paid or increased if the loan is transferred to the advertising supervised lender.

(c) A supervised lender shall not refer to supervision or control by the state, the Attorney General, the Commissioner of Banking, the Department of Banking, or any other state agency, in

any advertising. If desired, a supervised lender may advertise that it is licensed under the provisions of W. Va. Code §46A-4.

(d) No supervised lender shall advertise in any manner that may tend to confuse the identity of the supervised lender with any other unrelated licensee or financial organization.

(e) Each supervised lender shall retain a copy of all advertising for a period of two (2) years from the date of its use. However, when two (2) or more offices are under the same ownership or control, the copy may be kept at one (1) central office within the State.

#### 2.4. Refinancing and consolidation.

(a) A supervised loan, whether a new loan...shall not exceed ~~one~~ two thousand six hundred dollars ~~(\$1,600)~~ (\$2,000) for principal.

(b) Supervised lenders shall refrain from refinancing and consolidating loans and sales contracts where no reasonable benefit accrues to the consumer.

(c) Payments on a supervised loan resulting from the consolidation of sales contracts shall be applied first to the sales portion of the loan and thereafter to the loan portion.

(d) A supervised lender may compute the finance charge for the loan portion of a consolidation on the maximum rates allowable for a supervised loan.

#### 2.5. Revolving loan accounts.

With respect to a supervised loan made pursuant to a revolving loan account, supervised lenders may contract for and receive, as a minimum charge, the charge provided for in W. Va. Code §46A-4-107(6)(c).

#### 2.6. Certain other charges prohibited.

(a) No licensee shall contract for or make any charge not specifically provided for in chapter forty-six-a of the West Virginia Code, unless the charge results from a legal action awarded by a court.

(b) Examples of additional charges prohibited in subsection (a) of this section include, but are not limited to, the following: Collection charges and legal fees, credit reports, loan investigation fees and appraisal fees. Further, no separate charge may be made for credit reports, loan investigation fees or appraisal fees except as such fees are part of prepaid loan finance charges.

## 2.7. Records.

(a) A supervised lender shall maintain adequate records for each licensed office which will enable the Commissioner to reconcile outstanding balances.

(b) In the event ledger cards or similar records for loan accounted and installments sales contracts purchased are commingled in a supervised lender's files, there shall be a system by which such cards may be readily identified, one from the other, such as being of different colors or having corners of different colors. All such cards shall bear the date of the contract and shall readily identify the type of transaction reflected thereon.

(c) The ledger card shall indicate when an account has been placed for collection or legal action taken. It shall also indicate whether judgement was obtained, together with the date and amount of judgement.

(d) On accounts prepaid in full, the ledger card shall clearly indicate the amount of unearned interest rebated and the amount of unearned insurance premium rebated, if any.

## 2.8. Reporting periods.

Effective December 31, 1981, all Supervised Lenders shall submit semiannual reports as of June 30 and December 31 in the form and content prescribed by the Commissioner. The reports are due thirty (30) days after the close of the period.

## 2.9. Supervised loans not precomputed.

(a) With respect to a supervised loan (other than a revolving loan account) which is not precomputed, a supervised lender shall compute finance charges on unpaid principal balances outstanding from time to time, for the actual time outstanding. Each payment shall be applied first to the accumulated finance charge and the remainder of the payment applied to the unpaid principal balance: **Provided, however,** That if the amount of the payment is insufficient to pay the accumulated charge, the unpaid accumulated charge continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the principal balance.

(b) Loan finance charges shall not be payable in advance or compounded; however, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the new loan contract may include any unpaid loan finance charge which has accrued to the extent that the accrued charge does not exceed the unpaid principal balance of the prior loan. The resulting loan contract is considered a new and separate loan transaction for all purposes.

2.10. Out-of-state obligations.

With respect to consumer credit sales or consumer loans consummated in another state, a supervised lender shall not collect or attempt to collect a sales finance charge or loan finance charge in excess of that permitted by the W. Va. Code. Where a non-resident enters into a consumer credit agreement in another state the Code permits a resident lender as assignee to collect the finance charge provided in the agreement under the laws of the state where the agreement was executed.

2.11. Failure to do business.

Any supervised lender who fails to have his office open for business at least three (3) hours per day, at least four (4) days per week (legal holidays may be counted as a business day), for a consecutive period of four (4) weeks, is considered to have forfeited its license. A supervised lender may obtain a written extension from the Commissioner for periods not exceeding one (1) month upon presentation of evidence satisfactory to the Commissioner that such extensions are warranted.

2.12. Installment sales contracts.

(a) A supervised lender may purchase installment sales contracts without regard to the amount of said contracts and without regard to whether or not a buyer on a contract may also be obligated on a supervised loan.

(b) A supervised lender may purchase installment sales contracts at any discount rate agreed upon with the seller.

(c) A supervised lender shall obtain from the seller a copy of the disclosure statement for each installment sales contract purchased and correct any bona fide errors in the computation of charges, so long as such corrections are not detrimental to the consumer.



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### Summary of Proposed Rule Amendments

The proposed amendments to this legislative rule are required in part by amendments to the West Virginia Code which have altered the amount a supervised lender may loan to \$2000 [See W. Va. Code §46A-1-102(48)].

The change to the additional charges section is needed to clarify that those certain stricken charges, although impermissible as an additional charge, may be assessed as part of the finance charge; or in the case of a court awarding recoveries of certain costs-- [See W. Va. Code §46A-1-102(26)].

The rule also needs to be amended to avoid confusion over the fact that the Code provides for supervised lenders to charge the rate allowed by a finance agreement entered out-of-state by a non-resident [See W. Va. Code §46A-3-104(8)].