

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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JUL 28 3 34 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Division of Banking TITLE NUMBER: 106

CITE AUTHORITY WV 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: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

John S. Kim



DIVISION OF BANKING

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

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.



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(304) 558-2294

CONSENT TO FILE RULE

July 25, 1995

TO WHOM IT MAY CONCERN:

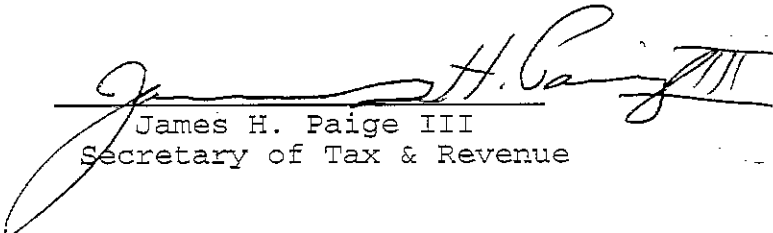
Title of Rule: Regulations Pertaining to the WV Consumer Credit
& Protection Act

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 26th day of July, 1995.


James H. Paige III
Secretary of Tax & Revenue

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		
	DECREASE	DECREASE	CURRENT	NEW	RECAPITAL
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	-	-	-	-	-
CURRENT EXPENSE	-	-	-	-	-
REPAIRS & ALTERNATIONS	-	-	-	-	-
EQUIPMENT	-	-	-	-	-
OTHER	-	-	-	-	-

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

James S. Bede

DATE: July 28, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Timothy Winslow
General Counsel
WV Division of Banking

LEGISLATIVE RULE TITLE: Regulations Pertaining to the WV Consumer
Credit and Protection Act

1. Authorizing statute(s) citation WV Code 31A-2-4(c)(11)

2. a. Date filed in State Register with Notice of ~~Hearing~~ Comment Period
June 22, 1995

b. What other notice, including advertising, did you give of the hearing?

Sent to each person/business on the WV Division of Banking's
"Official Notification" list.

c. Date of ~~Hearing~~ Comment Period
June 22, 1995 to July 24, 1995

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

Timothy Winslow 558-2294

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



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

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)].

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING

FILED

JUL 28 3 34 PM '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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Comments Received

No comments were received on this proposed amended rule.

Amendments Made to Proposed Rule

No amendments were made to the proposed rule as initially presented for comment.