

FILED

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

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APR 11 2 29 AM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #6

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE

AGENCY: WV Division of Banking TITLE NUMBER: 106

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 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) SB 171

SECTION 64-7-1(d), PASSED ON March 7, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE, THIS RULE BECOMES EFFECTIVE  
ON THE FOLLOWING DATE: May 1, 1996

Sh. S. Bi  
AUTHORIZED SIGNATURE

FILED

TITLE 106  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF BANKING

APR 4 11 29 AM '96

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

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§106-4-1. General.**

1.1. Scope. -- This rule establishes general provisions 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 4, 1996

1.4. Effective Date. -- May 1, 1996

**§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 two thousand dollars (\$2,000) at or near the entrance to the office, except those operating under dual authority. The supervised loan ceiling of two thousand dollars (\$2,000) shall be shown or stated in all advertising, regardless of the media used. This requirement 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 requirement. Personal calling cards of the employees of the supervised lender are also exempt from this requirement if they are not used for advertising purposes.

(b) No supervised lender shall advertise, in any manner, that a loan of a prospective 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 Division 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-4-1 et seq.

(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 or a loan resulting from refinancing and/or consolidation, shall not exceed two thousand dollars (\$2,000) for its 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 supervised lender 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, collection charges and legal fees. Further, a supervised lender may not make a separate charge for credit reports, loan investigation fees or appraisal fees except as those 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 accounts and installments sales contracts purchased are commingled in a supervised lender's files, the supervised lender shall have a system by which those cards may be readily identified, one from the other, such as being of different colors or having corners of different colors. All ledger 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 judgment was obtained, together with the date and amount of judgment.

(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 W. Va. Code §46A-3-104(8) 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 or her 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 written extensions from the Commissioner for periods not exceeding one (1) month upon presentation of evidence satisfactory to the Commissioner that the extensions are warranted.

#### 2.12. Installment sales contracts.

(a) A supervised lender may purchase installment sales contracts without regard to the amount of the 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 the corrections are not detrimental to the consumer.

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H. B. 4238

(By Delegates Douglas, Gallagher, Faircloth, Compton,  
Linch and Riggs )

(Introduced January 29, 1996 ; referred to the  
Committee on Banking and Insurance then the Judiciary .)

106-4

10 A BILL to amend and reenact section two, 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 legislative rules relating to the West Virginia  
15 consumer credit and protection act.

16 Be it enacted by the Legislature of West Virginia:

17 That section two, 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 **§64-7-2. Division of banking.**

24 (a) The legislative rules filed in the state register

4238

1 on the twelfth day of August, one thousand nine hundred  
2 ninety-four, authorized under the authority of section  
3 twenty-six, article four, chapter thirty-one-a, modified by  
4 the division of banking to meet the objections of the  
5 legislative rule-making review committee and refiled in the  
6 state register on the second day of November, one thousand  
7 nine hundred ninety-four, relating to the division of  
8 banking (legal lending limit, 106 CSR 9), are authorized.

9 (b) The legislative rules filed in the state register  
10 on the twelfth day of August, one thousand nine hundred  
11 ninety-four, authorized under the authority of section  
12 thirty-three, article four, chapter thirty-one-a, relating  
13 to the division of banking (notice and treatment of joint  
14 accounts, 106 CSR 17), are authorized.

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

1       NOTE: The purpose of this bill is to authorize the  
2 Division of Banking to promulgate legislative rules  
3 relating to the West Virginia Consumer Credit and  
4 Protection Act.

5  
6       Strike-throughs indicate language that would be  
7 stricken from the present law, and underscoring indicates  
8 new language that would be added.

1 SENATE BILL NO. 169  
2 (By Senators Ross, Anderson, Boley,  
3 Buckalew, Grubb and Macnaughtan)  
4 [Introduced January 29, 1996; referred  
to the Committee on

5 BANKING AND INSURANCE

6 THE JUDICIARY

106-4

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FILED

MAY 13 2 13 PM '96

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations

KEN HECHLER  
Secretary of State

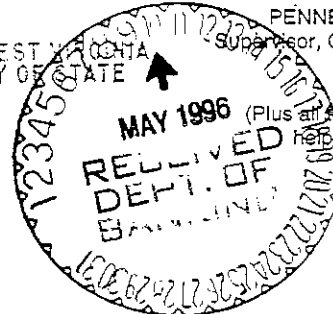
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STATE OF WEST VIRGINIA  
SECRETARY OF STATE  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770



TO: Timothy Winslow

AGENCY: Banking

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 8, 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.

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: 4 TITLE: 106 Banking

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

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Janet C. Winslow

TITLE OF PERSON SIGNING: General Counsel

DATE: 5/13/96

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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

(Plus all the volunteer  
help we can get)

March 12, 1996

Timothy Winslow  
Banking  
State Capitol Complex  
Bldg 3 Rm 311  
Charleston, WV 25305

**SB 171 authorizing, Title 106, Series 04, Regulations Pertaining to the WV Consumer Act & Protection Act passed the Legislature on **March 7, 1996**. It is now awaiting the Governor's signature.**

You have sixty (60) days after the Governor signs **SB 171** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 171 Section 64-7-1(d)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

**\*\*\*IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,  
Administrative Law Division