



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

July 19, 1996

TO WHOM IT MAY CONCERN:

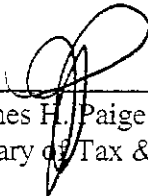
Title of Rule: Rules Pertaining to Regulated Consumer Lenders
[Previously titled—Rules Pertaining to the West Virginia Consumer Credit
and Protection Act]

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 19 day of July, 1996.



James H. Paige III
Secretary of Tax & Revenue

E.E.O./AFFIRMATIVE ACTION EMPLOYER



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COMMISSIONER OF BANKING
RULES PERTAINING TO WEST VIRGINIA
REGULATED CONSUMER LENDERS
106 CSR 4

Summary of Proposed Rules

The proposed amendments to this legislative rule are offered due to amendments to the West Virginia Code which eliminate separate licensing requirements for supervised and industrial loan companies by combining them into one new Regulated Consumer Lender (RCL) license. The act repealed Chapter 31, Article 7 of the West Virginia Code relating to Industrial Loan Companies. [See W. Va. § 46A-4-101 et seq.]

Primarily, the proposed changes replace the word "supervised" with "regulated consumer" to clarify the change in licensing requirements. The other minor changes are needed to clarify the rule to avoid misleading interpretations and to make it consistent with the statute.



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COMMISSIONER OF BANKING RULES PERTAINING TO WEST VIRGINIA REGULATED CONSUMER LENDERS 106 CSR 4

Statement of Circumstances

The proposed amendments to this legislative rule are required by amendments to the West Virginia Code which eliminate separate licensing requirements for supervised and industrial loan companies by combining them into one new Regulated Consumer Lender (RCL) license. The act repealed Chapter 31, Article 7 of the West Virginia Code relating to Industrial Loan Companies. [See W. Va. § 46A-4-101 et seq.]. These changes are needed to make the rule consistent with the statute.

E.E.O./AFFIRMATIVE ACTION EMPLOYER

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Pertaining to West Virginia Regulated Consumer Lenders
[106 CSR 4]

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Banking

Address: State Capitol Complex

Building 3, Room 311

Charleston, West Virginia 25305-0240

1. Effect of Proposed Rule:

| | ANNUAL | | FISCAL YEAR | | |
|-----------------------|----------|----------|-------------|------|------------|
| | INCREASE | DECREASE | CURRENT | NEXT | THEREAFTER |
| ESTIMATED TOTAL COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 |
| CURRENT EXPENSES | 0 | 0 | 0 | 0 | 0 |
| REPAIRS & ALTERATIONS | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 |

2. Explanation of above estimates:

The amendments merely clarify and conform the rule to the statute as amended.

3. Objectives of these rules:

To conform the rule to meet the statutory amendments and delete obsolete provisions.

Rule Title: Rules Pertaining to West Virginia Regulated Consumer Lenders

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: July 19, 1996

Signature of Agency Head or Authorized Representative:

Sharon S. Bini

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING

FILED

JUL 19 3 56 PM '96

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

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 as it relates to regulated consumer lenders.

1.2. Authority. -- W. Va. Code §31A-2-4(c) ~~(11)~~ (12)

1.3. Filing Date. -- ~~April 4, 1996~~

1.4. Effective Date. -- ~~May 1, 1996~~

§106-4-2. ~~Regulations of Supervised Lenders~~ Regulated Consumer Lender Restrictions.

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

2.2. Financial statements.

The supervised regulated consumer lender shall keep financial statements on file at its main 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.~~

~~(a)(b) No supervised regulated consumer 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 regulated consumer lender.~~

~~(b)(c) A supervised regulated consumer 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 regulated consumer lender may advertise that it is licensed under the provisions of W. Va. Code § 46A-4-1 et. seq.~~

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

~~(d)(e) Each supervised regulated consumer 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 Regulated consumer lenders shall refrain from refinancing and consolidating loans and sales contracts where no reasonable benefit accrues to the consumer. Any refinancing or consolidation which does not provide the consumer a substantial benefit when the credit agreement contains or results in an increased finance charge rate which exceeds that permitted to merchants by W. Va. Code § 46A-3-101, must contain the disclosures set forth or established under W. Va. Code § 46A-4-111. Receipt of the disclosures must be acknowledged by the borrower's signature or initials.~~

~~(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 regulated consumer loan made pursuant to a revolving loan account, supervised regulated consumer 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 regulated consumer 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 regulated consumer 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 or except as such credit report charges or appraisal fees are part of permitted reasonable closing costs in a loan secured by real property.

2.7. Records.

(a) A supervised regulated consumer lender shall maintain adequate records for each licensed office which will enable the Commissioner to reconcile outstanding balances to the corporation's financial statement.

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

(c) The ~~ledger card~~ records 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~~ records 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~~ 1997, all Supervised Regulated Consumer 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 Regulated consumer loans not precomputed.

(a) With respect to a supervised regulated consumer loan (other than a revolving loan account) which is not precomputed, a supervised regulated consumer 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 finance 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 regulated consumer 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 certain situations where a consumer credit sale or non-revolving loan is made in another state W. Va. Code §46A-3-104(9)(6) and §46A-4-107(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 regulated consumer lender who fails to have ~~his or her~~ its 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 regulated consumer 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 regulated consumer 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 regulated consumer loan.

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

(c) A supervised regulated consumer 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.