

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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) FEB 21 4 14 PM '97

) 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)(12)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Rules Pertaining to the West Virginia  
Consumer Credit Protection Act [New title to be—Rule Pertaining to West  
Virginia Regulated Consumer Lenders]

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 OF REVIEW AND COMMENT BY  
THE LEGISLATIVE RULE MAKING COMMITTEE. THE ATTACHED  
MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



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 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 as modified.

Signed this 20th day of Dec, 1996.

A handwritten signature in cursive script that reads "James H. Paige III".

James H. Paige III  
Secretary of Tax & Revenue

TITLE 106  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF BANKING

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

§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~~

1.5. Repeal and Replace. - This rule repeals and replaces West Virginia Division of Banking rules entitled, Rules Pertaining to the West Virginia Consumer Credit and Protection Act and the Industrial Loan Company Act, 106 CSR 2 effective May 1, 1996, and Rules Pertaining to the West Virginia Industrial Loan Company Act, 106 CSR 5 effective 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, except where provided by an applicable federal preemption of state law.

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 for 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.~~

2.3.a.(b) No supervised A regulated consumer lender shall not advertise, in any manner, that a loan of a perspective prospective borrower with another licensee will be paid or increased if the loan is transferred to the advertising supervised regulated consumer lender.

2.3.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.

2.3.c.(d) No supervised A regulated consumer lender shall not 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.

2.3.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 installment sales contracts where no reasonable benefit accrues to the consumer. Any refinancing or consolidation of a nonrevolving loan or credit sale which does not provide the consumer a substantial benefit and results in the consumer paying an increased finance charge rate which new and higher rate 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 consumer'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.

~~2.6.a.(a)~~ No supervised A regulated consumer lender shall not 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.

~~2.6.b.(b)~~ Examples of additional charges prohibited in subsection subdivision (a) of this subsection 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 where those fees are part of prepaid loan finance charges or except where these credit report charges or appraisal fees are part of permitted reasonable closing costs in a loan secured by real property.

## 2.7. Records.

~~2.7.a.(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.

~~2.7.b.(b)~~ In the event that 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.

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

2.7.d.(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 ~~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 reporting period.

2.9. Supervised Regulated consumer loans not precomputed.

2.9.a.(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 shall ~~continues to~~ accumulate to be paid from the proceeds of subsequent payments and ~~is~~ shall not be added to the principal balance.

2.9.b.(b) Loan finance charges shall not be payable in advance or compounded, ~~however~~ 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 West Virginia 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(8)(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. For purposes of this subsection legal holidays may be counted as a business day. 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.

2.12.a.(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.

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

2.12.c.(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.

2.13. Retention and financing of fees.

2.13.a. The non-refundable loan processing fee permitted by W. Va. Code § 46A-4-107(7) shall be included in the calculation of the loan finance charge as a prepaid

finance charge and may be paid separately or withheld from the proceeds of the loan and financed, and such financing shall not constitute interest on interest. Notwithstanding the withholding of the fee from the loan proceeds, the amount financed shall constitute the loan amount for purposes of this subsection of the code.

2.13.b. The total of any origination fees, points, or investigation fees assessed under subsection (4) of W. Va. Code § 46A-4-107 which may be retained upon prepayment of a loan in a refinancing by the same lender within any twenty-four month period may not exceed five percent of the amount financed.



FILED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

Room MB47-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 Hechler, 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: Rules Pertaining to WV Regulated Consumer Lenders

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.

106-11

## ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Division of Banking

**Subject:** West Virginia Regulated Consumer Lenders, 106CSR4

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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. Throughout the proposed rule, references to supervised lenders and supervised loans have been changed to regulated consumer lender and regulated consumer loan. The following is a synopsis of the substantive amendments.

Subsection 2.3 which required supervised lenders to prominently display the supervised loan ceiling of \$2,000 has been deleted. Reference to this ceiling has also been deleted from Subsection 2.4 of the proposed rule. That subsection has been amended to require disclosures to borrowers where any refinancing or consolidation of a non-revolving loan or credit sale does not provide the consumer a substantial benefit and results in the consumer paying an increased finance charge rate which exceeds that permitted to merchants under the Consumer Credit and Protection Act. The borrower must acknowledge receipt of the disclosures.

Subsection 2.13 is new. It allows the regulated consumer lender to include the non-refundable loan processing fee permitted by the Consumer Credit and Protection Act in the calculation of the loan finance charge as a prepaid finance charge. The fee may be paid separately or withheld from the proceeds of the loan and financed. It also provides that the total of any origination fees, points, or investigation fees which may be retained upon prepayment of a loan in a refinancing of a loan by the same lender within any 24 month period may not exceed 5% of the amount financed.

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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:

...(12) To implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code so long as said rules and regulations do not conflict with any rules and regulations promulgated by the state's attorney general;...

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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.