

FILED
MAY 8 2 53 PM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING

SERIES 4
RULE PERTAINING TO WEST VIRGINIA
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)(12)

1.3. Filing Date. -- May 8, 1997

1.4. Effective Date. -- June 2, 1997

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. Regulated Consumer Lender Restrictions.

2.1. Balloon payments - Regulated consumer loans shall not contain balloon payments, except where provided by an applicable federal preemption of state law.

2.2. Financial statements.

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

2.3. Advertising.

2.3.a. A regulated consumer lender shall not 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 regulated consumer lender.

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

2.3.c. A regulated consumer lender shall not advertise in any manner that may tend to confuse the identity of the regulated consumer lender with any other unrelated licensee or financial organization.

2.3.d. Each 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.

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.

2.5. Revolving loan accounts.

With respect to a regulated consumer loan made pursuant to a revolving loan account, 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 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. Examples of additional charges prohibited in subdivision (a) of this subsection include, but are not limited to, collection charges and legal fees. Further, a regulated consumer lender may not make a separate charge for credit reports, loan investigation fees or appraisal fees except 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 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. In the event that records for loan accounts and installments sales contracts purchased are commingled in a regulated consumer lender's files, the regulated consumer lender shall have a system by which those records may be readily identified, one from the other. The records shall bear the date of the contract and shall readily identify the type of transaction reflected thereon.

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

2.7.d. On accounts prepaid in full, the 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, 1997, all 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 reporting period.

2.9. Regulated consumer loans not precomputed.

2.9.a. With respect to a regulated consumer loan, other than a revolving loan account, which is not precomputed, a 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*, That if the amount of the payment is insufficient to pay the accumulated finance charge, the unpaid accumulated charge shall continue to accumulate to be paid from the proceeds of subsequent payments and shall not be added to the principal balance.

2.9.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 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 West Virginia Code. In certain situations where a consumer credit sale or non-revolving loan is made in another state W. Va. Code §46A-3-104(6) and §46A-4-107(8) permit 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 regulated consumer lender who fails to have its office open for business at least three (3) hours per day, at least four (4) days per week 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 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 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 regulated consumer loan.

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

2.12.c. A 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.



DIVISION OF BANKING

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(304) 558-2294

Promulgation History of Rule Series 1, 3, 4 and 19 of Title 106 CSR

Date

July 19, 1996-- Filed Notice of a Comment Period on Proposed Rules (FORM 2) Proposals to amend Rules 1, 3, and 4; Delete Rules 2, 5 and 8; and to create a new Rule 19 to regulate reverse mortgages.

Comment period runs from 7/19/96 to 8/19/96.

August 28, 1996-- Filed Notice of Agency Approval of Proposed Rules (FORM 3) Approving proposal to amend Rules 1, 3, and 4; Delete Rules 2, 5 and 8; and to create a new Rule 19 to regulate reverse mortgages. [Note: the text of Rule 8 was largely being transferred to Rule 1 as amended; while small portions of the text to Rules 2 & 5 were being transferred to Rule 4 as amended].

December 2, 1996-- Legislative Rule-Making Review Committee (LRMC) hearing on proposed Banking rules.

December 19, 1996-- Notice of Action by LRMC approving Rules 1, 3, 4 and 19 as modified; and Rules 2, 5, and 8 as submitted for deletion.

December 20, 1996-- Filed Notice of Rule Modification of a Proposed Rule for Rules 1, 3, 4 and 19. (FORM 4)

February 21, 1997-- In response to LRMC's counsel's direction for procedural efficiency, the repeal of Rule 8 was incorporated into the amendments to Rule 1, and the repeal of Rules 2 & 5 were incorporated into the amendments to Rule 4. Filed Notice of Rule

Modification of a Proposed Rule for Rules 1 and 4 (FORM 4).
Submitted letter withdrawing filing for deletion of Rules 2, 5 and
8.

- March 3, 1997-- SB 157 introduced and referred to the Senate Judiciary Committee
- March 28, 1997-- Committee substitute for SB 157 reported by Senate Judiciary
Committee. Provides for approval of 106 CSR §§ 1, 3, 4 and 19 as
filed.
- April 20, 1997-- SB 157 passed Legislature.



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CONSENT TO FILE RULE

May 8, 1997

TO WHOM IT MAY CONCERN:

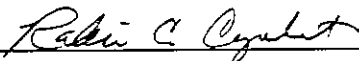
Title of Rule: Rule Pertaining to West Virginia Regulated Consumer Lenders

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 8th day of May, 1997.


Robin C. Capehart
Secretary of Tax & Revenue

E.E.O./AFFIRMATIVE ACTION EMPLOYER

H. B. 2322

1 Bill-Banking, Regulated

2 (By Delegate(s) Douglas, Hunt, Compton,
3 Faircloth, Linch and Riggs)

4
5 [Introduced March 3, 1997; referred to the
6 Committee on Banking and Insurance then the
7 Judiciary.]
8
9

10 A BILL to amend and reenact section one, 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 a legislative rule relating to West Virginia regulated
15 consumer lenders.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, 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 §64-7-1. Division of banking.

1 (a) The legislative ~~rules~~ rule filed in the state
2 register on the thirty-first day of July, one thousand nine
3 hundred ninety-five, authorized under the authority of
4 section twenty-six, article four, chapter thirty-one-a of
5 this code, modified by the division of banking to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the first day of
8 December, one thousand nine hundred ninety-five, relating
9 to the division of banking (legal lending limit, 106 CSR
10 9), ~~are~~ is authorized.

11 (b) The legislative ~~rules~~ rule filed in the state
12 register on the twenty-eighth day of July, one thousand
13 nine hundred ninety-five, authorized under the authority of
14 section four, article two, chapter thirty-one-a of this
15 code modified by the division of banking to meet the
16 objections of the legislative rule-making review committee
17 and refiled in the state register on the first day of
18 December, one thousand nine hundred ninety-five, relating
19 to the division of banking (permissible additional charges
20 in connection with a consumer credit sale, 106 CSR 11), ~~are~~
21 is authorized.

22 (c) The legislative ~~rules~~ rule filed in the state
23 register on the twenty-eighth day of July, one thousand

1 nine hundred ninety-five, authorized under the authority of
2 section twenty-six, article seven, chapter thirty-one of
3 this code, modified by the division of banking to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the first day of
6 December, one thousand nine hundred ninety-five, relating
7 to the division of banking (West Virginia industrial bank
8 and industrial loan company act, 106 CSR 5), ~~are~~ is
9 authorized.

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

22 (e) The legislative ~~rules~~ rule filed in the state
23 register on the twenty-eighth day of July, one thousand

1 nine hundred ninety-five, authorized under the authority of
2 section twenty-six, article seven, chapter thirty-one of
3 this code, modified by the division of banking to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the first day of
6 December, one thousand nine hundred ninety-five, relating
7 to the division of banking (West Virginia consumer credit
8 and protection act and the industrial bank and industrial
9 loan company act, 106 CSR 2), ~~are~~ is authorized.

10

11 . NOTE: The purpose of this bill is to authorize the
12 Division of Banking to promulgate a legislative rule
13 relating to West Virginia Regulated Consumer Lenders.

14

15Strike-throughs indicate language that would be
16 stricken from the present law, and underscoring indicates
17 new language that would be added.

Senate Bill No. 156

1 (By Senator(s) Ross, Anderson, Macnaughtan,
2 Boley and Buckalew)

3 [Introduced March 3, 1997; referred to the
4 Committee on Banking and Insurance; and then to
5 the Committee on the Judiciary.]
6
7
8
9

10 A BILL to amend and reenact section one, article seven,
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12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of banking to promulgate
14 a legislative rule relating to West Virginia regulated
15 consumer lenders.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, 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 §64-7-1. Division of banking.

106-4

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6 objections of the legislative rule-making review committee
7 and refiled in the state register on the first day of
8 December, one thousand nine hundred ninety-five, relating
9 to the division of banking (legal lending limit, 106 CSR
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20 in connection with a consumer credit sale, 106 CSR 11), ~~are~~
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2 section twenty-six, article seven, chapter thirty-one of
3 this code, modified by the division of banking to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the first day of
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8 and industrial loan company act, 106 CSR 5), ~~are~~ is
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11 register on the twenty-eighth day of ~~July~~ August, one
12 thousand nine hundred ~~ninety-five~~ ninety-six, authorized
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17 register on the ~~first~~ twentieth day of December, one
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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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CATHERINE FREROTTE
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FILED



MAY 22 11 22 AM '97

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations



Plus all the volunteer help we can get!

TO: TIM WINSLOW

AGENCY: BANKING

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 16, 1997

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: Jonathan C. Dushoff

TITLE OF PERSON SIGNING: General Counsel

DATE: 5/21/97

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

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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