



**STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE**

CECIL H. UNDERWOOD
GOVERNOR

Charleston, West Virginia
P. O. Box 963
Charleston, WV 25324-0963
Ph. (304) 558-0211 - Fax (304) 558-2324

ROBIN C. CAPEHART
SECRETARY

CONSENT TO PROPOSAL OF RULE

June 27, 1997

To Whom It May Concern:

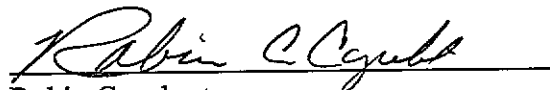
Title of Rule: Permissible Additional Charges in Connection with
a Consumer Credit Sale

Title Number: 106

Series Number: Series 11

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 27th day of June, 1997.


Robin Capehart
Secretary of Tax and Revenue



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

COMMISSIONER OF BANKING
RULE PERTAINING TO
PERMISSIBLE ADDITIONAL CHARGES
IN CONNECTION WITH A CONSUMER CREDIT SALE
106 CSR 11

Summary of Proposed Rules

The proposed rule amendments set forth the regulations governing the treatment and permissibility of certain debt cancellation contracts and insurance in lieu of credit insurance. It allows consumers to purchase GAP insurance to avoid liability for the amount remaining due on a car loan where the car has been totaled, as well as the option at the end of a car loan having a balloon note, to satisfy the remaining indebtedness by returning the vehicle and making an agreed payment.

The amendment also extends the rule's treatment of required flood mapping fees as an additional charge to apply to second mortgage transactions. The current rule refers only to first lien residential transactions. However, notwithstanding the rule, such flood mapping charges on second mortgage transactions generally already qualify as additional charges since they would be considered reasonable closing costs under W. Va. Code § 46A-3-109(a)(5). The rule change merely clarifies and confirms this interpretation.

E.E.O./AFFIRMATIVE ACTION EMPLOYER



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
RULE PERTAINING TO
PERMISSIBLE ADDITIONAL CHARGES
IN CONNECTION WITH A CONSUMER CREDIT SALE
106 CSR 11

Statement of Circumstances

The proposed rule is needed to address the issue of debt cancellation and similar insurance which are presently being offered by lenders in other states, and to conform the treatment of such fees as additional charges and not finance charges in a manner conforming to their treatment under the federal Truth-in-Lending Act and Regulation Z thereof as recently amended.

E.E.O./AFFIRMATIVE ACTION EMPLOYER

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Permissible Additional Charges in Connection with
a Consumer Credit Sale [106 CSR 11]

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	NEXT	THEREAFTER
	INCREASE	DECREASE	CURRENT		
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 rule merely adds language which allows lenders to offer and charge for certain types of debt cancellation contracts and similar insurance products as a permissible additional charge, and thus contains no additional costs.

3. Objectives of these rules:

To permit lenders to offer certain debt cancellation contracts and insurance in lieu of credit insurance, and to allow consumers to purchase GAP insurance to avoid liability on paying the amount remaining due on a car loan where the car has been totaled, or returned in connection with payment of a balloon loan or note. Conforms treatment of such fees with federal law.

Rule Title: Permissible Additional Charges in Connection with
a Consumer Credit Sale [106 CSR 11]

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:**

No significant impact. Will allow lenders to offer certain debt cancellation contracts in lieu of and in competition with other credit insurance products.

C. Economic Impact on Citizens / Public at Large:

None. The additional charges permitted cannot be required but rather are optional to the consumer.

Date:

June 26, 1997

Signature of Agency Head or Authorized Representative:

John S. Ben

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING

SERIES 11
PERMISSIBLE ADDITIONAL CHARGES IN CONNECTION
WITH A CONSUMER CREDIT SALE

FILED
JUN 30 10 07 AM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§106-11-1. General.

1.1. Scope. -- This rule establishes certain other "Permissible Additional Charges", for benefits conferred on the consumer in a consumer credit sale, pursuant to W. Va. Code §46A-3-109(a)(4).

1.2. Authority. -- W. Va. Code §§46A-3-109(a)(4) and 31A-2-4(c)(12).

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

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

§106-11-2. Documentary Fee or Documentary Charge.

2.1. Benefit to Consumer. -- The "Documentary Fee" or "Documentary Charge" provided for in West Virginia Code §46A-3-109(a)(6) applies to a documentary service. The documentary service is limited to securing a title and services related to securing a title actually provided to the consumer in a consumer credit sale. (Except as authorized under W. Va. Code § 17A-4A-4, documentary services do not include services that the seller is required by law to perform. It is not mandatory under this rule for the seller to provide documentary services for which a "Documentary Fee" or "Documentary Charge" apply, and the consumer, unless otherwise precluded by law, has the option to accept the documentary service for which the "Documentary Fee" or "Documentary Charges" apply. The "Documentary Fee" or "Documentary Charge" must represent a benefit of value to the consumer and there must be a reasonable relationship between the fee or charge and the benefit conferred on the consumer. The seller in a consumer credit sale must demonstrate that there was a documentary service actually performed, that the documentary service was of value to the consumer, and that there was a reasonable relationship between the fee or charge and the benefit conferred upon the consumer.

§106-11-3. Flood Mapping Service Fee for Residential Property.

3.1. Third Party Providers. -- A lender in making a consumer loan secured by a first or subsequent lien on residential property, including a loan for mobile home purchase or refinancing where the home is to be placed on a certain parcel of real estate known to the lender, may charge the consumer and recover the reasonable fee incurred by the lender in obtaining information from a non-affiliated third party on the flood map location of the property; Provided that this flood map location information is required by federal law or regulation to be ascertained by the lender. The flood mapping service fee must be reasonable in relation to the actual service provided.

§106-11-4. Over-the-limit Fees.

4.1. Revolving Credit. -- A lender may assess, as a permissible additional charge in connection with a revolving line of credit, a charge to the consumer for exceeding his or her credit limit. The charge may not in any billing period exceed two percent (2%) of the consumer's established credit limit or ten dollars (\$10), whichever is less. This charge is also subject to the monthly periodic finance charge if not paid upon initial billing.

§106-11-5. Cash Advance Charges.

5.1. Lender Credit Cards. -- A lender may impose charges for a cash advance obtained by a consumer in connection with use of a lender credit card as a permissible additional charge. The charge may not, per occurrence, exceed one and one-half percent (1.5%) of the amount of the cash advance, or five dollars (\$5), whichever is less. These charges are also subject to the monthly periodic finance charge if not paid upon initial billing.

§106-11-6. Debt Cancellation Contracts and Insurance.

6.1. Fee for Cancellation of Debt. -- A lender or creditor may charge and collect a fee in connection with a contract to cancel (i) all of the debtor's liability for amounts exceeding the value of the collateral securing the obligation, or (ii) the remaining liability in the event of the loss of life, health, or income or in case of an accident. The fee shall be a permissible additional charge: Provided, That,

6.1.a. The debt cancellation agreement is not required by the lender or the creditor, and this fact is disclosed in writing;

6.1.b. The fee is disclosed in writing and the term of the agreement is equal to the term of the loan or credit transaction;

6.1.c. The borrower signs or initials an affirmative written request for coverage after receiving the above-required disclosures;

6.1.d. In the case where the debt cancellation contract covers the remaining liability exceeding the value of the collateral securing the obligation, the amount of the debt at the time of the contract, excluding any insurance or additional charges, exceeds \$2,000;

6.1.e. In the case where the debt cancellation contract covers the remaining liability in the event of the loss of life, health, or income or in case of an accident, such contract is sold in lieu of corresponding credit life, health, loss of income or accident insurance; and

6.1.f. The debt cancellation fee is one which is not treated as a finance charge for purposes of the federal Truth-in-Lending Act.

6.2. Fee for GAP Insurance for Cancellation of Debt-- A lender or creditor may impose and collect a fee in connection with an insurance contract for Guaranteed Automobile Protection ("GAP") to cancel all of the debtor's liability for amounts exceeding the value of the collateral securing the obligation: Provided, That,

6.2.a. The loan or credit sale is secured by a motor vehicle and the amount of the debt at the time of the contract, excluding any insurance or additional charges, exceeds \$2,000;

6.2.b. The GAP insurance agreement canceling the debt is not required by the lender or the creditor, and this fact is disclosed in writing;

6.2.c. The premium fee is disclosed in writing and the term of the policy coverage is equal to the term of the loan or credit transaction;

6.2.d. The borrower signs or initials an affirmative written request for coverage after receiving the above-required disclosures; and

6.2.e. The GAP insurance policy fee is one which is not treated as a finance charge for purposes of the federal Truth-in-Lending Act.

6.3. Determination of Insurance-- The Commissioner of Insurance retains the authority to determine whether any debt cancellation agreement constitutes an insurance product.

6.4. Authorization for Financial Institutions-- No state-chartered depository institution or regulated consumer lender may offer or provide debt cancellation agreements without prior written authorization from the Commissioner of Banking.

§106-11-7. Optional End Term Debt Cancellation Fee.

7.1. Balloon Note Secured by Motor Vehicle-- A lender or creditor may, at the end of the term of a balloon loan or note secured by a motor vehicle, offer as an option to accept return of the vehicle and charge and collect a fee to cancel all of the debtor's liability for amounts exceeding the value of the collateral securing the obligation. The fee shall be a permissible additional charge: Provided, That,

7.1.a. The borrower is provided the option to pay off the loan or debt, or to refinance the loan or debt without penalty; and

7.1.b. The amount of the initial balloon loan or note exceeded \$2,000 and the amount actually owing at the end of that balloon loan or note and at the time the fee is imposed exceeds \$1,000.