

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Division of Banking TITLE NUMBER: 106

CITE AUTHORITY W. Va. Code §§ 46A-3-109(a)(4) & 31A-2-4(c)(12)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Permissible Additional Charges in Connection with a
Consumer Credit Sale

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Sharon G. Bias
Sharon G. Bias, Commissioner

Robin C. Capehart
Robin C. Capehart, Secretary of Tax & Revenue

October 3, 19 97

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING

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

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 or loan, 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 a 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 non-delinquent amounts which exceed the value received by the creditor or its assignee for the collateral securing the obligation, or (ii) the remaining liability in the event of the loss of life, health, or income of the debtor, or in case of an accident. The fee is 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 the plan after receiving the disclosures required by subdivisions a and b of this subsection;

6.1.d. In the case of a debt cancellation plan for collateral, 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 of a debt cancellation plan for loss of life, health, or income or in case of an accident, the 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 non-delinquent amounts which exceed the value received by the creditor or its assignee for 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 disclosures required by subdivisions b and c of this subsection; 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. Coverage Limitations-- Debt cancellation contracts and GAP insurance permitted by this section need not cancel or cover any other insurance deductible, amount owed by failure to maintain any required insurance, or any late fees or accrued and unpaid charges for other goods or services rendered. Nor, where such contracts or insurance are used to protect against excess collateral liability, are they required to provide any cancellation or coverage if the debtor's property insurance on the collateral fails to pay the lender or creditor, or the debtor's insurance company determines that the collateral is not a total loss resulting from theft or physical damage.

§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 motor 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 may include or be in addition to excess mileage fees and payments for damages to the vehicle. The fee is 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.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

September 15, 1997

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Timothy Winslow
West Virginia Division of Banking
State Capitol Complex
Building 3, Room 311
Charleston, WV 25305-0240

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: *Permissible Additional Charges in Connection with a Consumer Credit Sale*
(106CSR11)

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate 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 reasons 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.