

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

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**EXPIRATION OF LEGISLATIVE RULE  
DUE TO LEGISLATIVE DISAPPROVAL**

(W. VA. CODE §64-1-1)

AGENCY: BANKING TITLE NUMBER: 106

SERIES NUMBER: 11

TITLE OF RULE: PERMISSIBLE ADDITIONAL CHARGES IN CONNECTION WITH A  
CONSUMER CREDIT SALE

THE ABOVE RULE EXPIRED DUE TO THE 1998 LEGISLATIVE DISAPPROVAL OF THIS  
RULE.



DIRECTOR, ADMINISTRATIVE LAW DIVISION

H. B. 4150

0517

106-11

1 Bill-Banki (By Delegates Hunt, Linch, Compton, Jenkins,  
2 Faircloth and Riggs)

3 [Introduced January 30, 1998; referred to the  
4 Committee on Banking and Insurance then the  
5 Judiciary.]

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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 permissible additional  
15 charges in connection with a consumer credit sale.

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.**

4150

1 (a) The legislative rule filed in the state register  
2 on the twenty-eighth day of August, one thousand nine  
3 hundred ninety-six, authorized under the authority of  
4 section four, article two, chapter thirty-one-a of this  
5 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 twenty-first  
8 day of February, one thousand nine hundred ninety-  
9 seven, relating to the division of banking (regulations  
10 pertaining to the West Virginia consumer credit and  
11 protection act and the money and interest article of  
12 chapter forty-seven, 106 CSR 1), is authorized.

13 (b) The legislative rule filed in the state register  
14 on the twenty-eighth day of August, one thousand nine  
15 hundred ninety-six, authorized under the authority of  
16 section four, article two, chapter thirty-one-a of this  
17 code, modified by the division of banking to meet the  
18 objections of the legislative rule-making review committee  
19 and refiled in the state register on the twentieth day of  
20 December, one thousand nine hundred ninety-six, relating to  
21 the division of banking (regulations governing the  
22 operations of state chartered financial institutions in  
23 West Virginia, 106 CSR 3), is authorized.

1 (c) The legislative rule filed in the state register  
2 on the twenty-eighth day of August, one thousand nine  
3 hundred ninety-six, authorized under the authority of  
4 section four, article two, chapter thirty-one-a of this  
5 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 twentieth day of  
8 December, one thousand nine hundred ninety-six, relating to  
9 the division of banking (West Virginia regulated consumer  
10 lenders, 106 CSR 4), is authorized.

11 (d) The legislative rule filed in the state register  
12 on the twenty-eighth day of August, one thousand nine  
13 hundred ninety-six, authorized under the authority of  
14 section eight, article twenty-four, chapter forty-seven of  
15 this 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 twentieth day of  
18 December, one thousand nine hundred ninety-six, relating  
19 to the division of banking (reverse mortgage loans, 106 CSR  
20 19), is authorized.

21 (e) The legislative rule filed in the state register  
22 on the first day of August, one thousand nine hundred  
23 ninety-seven, authorized under the authority of section

1 four, article two, chapter thirty-one-a, of this code,  
2 modified by the division of banking to meet the objections  
3 of the legislative rule-making review committee and refiled  
4 in the state register on the third day of October, one  
5 thousand nine hundred ninety-seven, relating to the  
6 division of banking (permissible additional charges in  
7 connection with a consumer credit sale, 106 CSR 11), is  
8 authorized.

9

10 NOTE: The purpose of this bill is to authorize the  
11 Division of Banking to promulgate a legislative rule  
12 relating to Permissible Additional Charges in Connection  
13 With a Consumer Credit Sale.

14

15 Strike-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. 276**

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

3 [Introduced January 30, 1998; referred to the  
4 Committee on Banking and Insurance; and then to  
5 the Committee on the Judiciary.]  
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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 permissible additional  
15 charges in connection with a consumer credit sale.

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 rule filed in the state register  
2 on the twenty-eighth day of August, one thousand nine  
3 hundred ninety-six, authorized under the authority of  
4 section four, article two, chapter thirty-one-a of this  
5 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 twenty-first  
8 day of February, one thousand nine hundred ninety-  
9 seven, relating to the division of banking (regulations  
10 pertaining to the West Virginia consumer credit and  
11 protection act and the money and interest article of  
12 chapter forty-seven, 106 CSR 1), is authorized.

13           (b) The legislative rule filed in the state register  
14 on the twenty-eighth day of August, one thousand nine  
15 hundred ninety-six, authorized under the authority of  
16 section four, article two, chapter thirty-one-a of this  
17 code, modified by the division of banking to meet the  
18 objections of the legislative rule-making review committee  
19 and refiled in the state register on the twentieth day of  
20 December, one thousand nine hundred ninety-six, relating to  
21 the division of banking (regulations governing the  
22 operations of state chartered financial institutions in  
23 West Virginia, 106 CSR 3), is authorized.

1           (c) The legislative rule filed in the state register  
2 on the twenty-eighth day of August, one thousand nine  
3 hundred ninety-six, authorized under the authority of  
4 section four, article two, chapter thirty-one-a of this  
5 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 twentieth day of  
8 December, one thousand nine hundred ninety-six, relating to  
9 the division of banking (West Virginia regulated consumer  
10 lenders, 106 CSR 4), is authorized.

11           (d) The legislative rule filed in the state register  
12 on the twenty-eighth day of August, one thousand nine  
13 hundred ninety-six, authorized under the authority of  
14 section eight, article twenty-four, chapter forty-seven of  
15 this 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 twentieth day of  
18 December, one thousand nine hundred ninety-six, relating  
19 to the division of banking (reverse mortgage loans, 106 CSR  
20 19), is authorized.

21           (e) The legislative rule filed in the state register  
22 on the first day of August, one thousand nine hundred  
23 ninety-seven, authorized under the authority of section

1 four, article two, chapter thirty-one-a, of this code,  
2 modified by the division of banking to meet the objections  
3 of the legislative rule-making review committee and refiled  
4 in the state register on the third day of October, one  
5 thousand nine hundred ninety-seven, relating to the  
6 division of banking (permissible additional charges in  
7 connection with a consumer credit sale, 106 CSR 11), is  
8 authorized.

9

10 NOTE: The purpose of this bill is to authorize the  
11 Division of Banking to promulgate a legislative rule  
12 relating to Permissible Additional Charges in Connection  
13 With a Consumer Credit Sale.

14

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

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Division of Banking

**Subject:** Permissible Additional Charges in Connection with a Consumer Credit Sale, 106CSR11

Aug 13 9 33 AM '97  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
FILED

PERTINENT DATES

Filed for public comment: June 30, 1997  
Public comment period ended: July 31, 1997  
Filed following public comment period: August 1, 1997  
Filed LRMRC: August 1, 1997  
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 1.1 has been amended to extend the scope of the proposed rule to consumer credit loans as well as sales.

Section 6 relating to debt cancellation contracts and insurance is new. It allows a lender or creditor to collect a fee in connection with a contract to cancel (1) all of the debtor's liability for non-delinquent amounts which exceed the value received by the creditor for the collateral securing the obligation or (2) the remaining liability in the event of the loss of life, health or income or in the case of an accident. This section specifies several conditions which must be met in order for the fee to be permissible, including, the debt cancellation contract may not be required by the lender and the fee must be disclosed in writing.

This section also allows a lender or a creditor to collect a fee in connection with an insurance contract for Guaranteed Automobile Protection. This section specifies several conditions which must be met in order for the fee to be permissible, including, the sale is secured by a motor vehicle and the amount of the debt at the time of the contract exceeds \$2,000.

Section 7 allows a lender or creditor, at the end of a term of a balloon loan or note secured by a motor vehicle, to offer to

accept return of the vehicle and charge a fee to cancel all of the debtor's liability for amounts exceeding the value of the collateral securing the obligation. This section also contains conditions for charging the fee.

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**AUTHORITY**

Statutory authority: W.Va. Code, §§46A-3-109 & 31A-2-4, which provide, in part, as follows:

(a) In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:

...(4) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him or her and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner: Provided, That as to insurance, the policy as distinguished from a certificate of coverage thereunder must be issued by an individual licensed under the laws of this state to sell such insurance and the determination of whether the charges therefor are reasonable in relation to the benefits shall be determined by the insurance commissioner of this state;...

§31A-2-4.

...(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?

Section 6.1.b differs from Regulation Z of the Federal Reserve Board which does not require the term of the agreement to equal the term of the loan.

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.