

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

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JUL 31 9 50 AM '98

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Division of Banking TITLE NUMBER: 106

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

AMENDMENT TO AN EXISTING RULE: YES NO

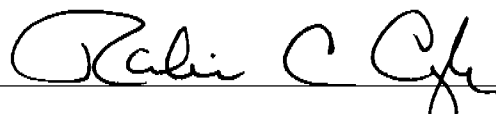
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 11

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Robin C. Capehart, Cabinet Secretary
July 31, 1998

Date

\$5.00



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 Rule Amendments

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 amendments also extend 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). This rule change thus merely clarifies and confirms this interpretation.

E.E.O./AFFIRMATIVE ACTION EMPLOYER



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

Statement of Circumstances

The proposed rule amendments are 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

QUESTIONNAIRE

Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period: Proposed Rule, and if needed, Emergency and Modified Rule.

DATE July 29, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone . . .) WV Division of Banking,, State Capitol Complex
Building 3 Room 311, Charleston, Wv 25305-0240 PH: 558-2294

LEGISLATIVE RULE TITLE Permissible Additional Charges in Connection with a Consumer Credit Sale

1. Authorizing statute(s) citation W.Va. Code 46A-3-109(a)(4) and 31A-2-4(c)(12)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 1, 1998

b. What other notice, including advertising, did you give of the hearing?

No hearing scheduled or held.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 2, 1998 at 4pm ended comment period. No hearing scheduled or held.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

- Attached xxx

No comments received 1

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

No hearing held; but agency approved rules to be filed July 30, 1998

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Sharon G. Bias, Commissioner of Banking
Division of Banking, Building 3 Room 311, State Capitol Complex,
Charleston, WV 25305-0240 PH: 558-2294 FAX: 558-0442

g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same as above.

3 If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

No hearing scheduled or conducted.

b. Date of hearing or comment period:

No hearing, comment period from June 1, 1998 through July 2, 1998 at 4:00pm

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

No required findings.

d. Attach findings and determinations and reasons:

Attached No findings and determinations included.

BOWLES RICE
MCDAVID GRAFF & LOVE, PLLC

ATTORNEYS AT LAW

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WRITERS DIRECT DIAL NUMBERS

(304) 347-1713
(304) 343-3058 (Facsimile)

July 2, 1998

E-MAIL

jchinche@bowlesrice.com

Sharon G. Bias, Commissioner of Banking
West Virginia Division of Banking
State Capitol Complex
1800 Washington Street, East
Building 3, Room 311A
Charleston, WV 25305-0240

VIA HAND DELIVERY

Re: Title No. 106, Series 11
Permissible Additional Charges In Connection
With A Consumer Credit Sale

Dear Ms. Bias:

The Huntington National Bank, by the undersigned counsel, is commenting with regard to proposed Rule, Title No. 106, Series 11, pertaining to Permissible Additional Charges In Connection With A Consumer Sale. We appreciate the opportunity to review the proposed rules and to provide comments. We have enumerated our thoughts on the significant remaining issue, in brief, below. We will be glad to follow up with any additional information which would be helpful in your efforts to finalize the rules.

1. Coverage Limitations. We strongly encourage you to amend this section to include the highlighted language so that it would provide as follows:

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 or unpaid charges, or any refunds 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

BOWLES RICE
MCDAVID GRAFF & LOVE, PLLC

Sharon G. Bias, Commissioner of Banking
July 2, 1998
Page 2

collateral is not a total loss resulting from theft or physical damage.

Under Section 6.4 as currently proposed, it is unclear how the creditor/lender may treat refunds for charges for various other products, such as credit insurance rebates and refunds of warranties or service contracts. Section 6.01 permits the lender/creditor to charge and collect a fee in connection with a contract to cancel all of the debtor's liability for non-delinquent amounts exceeding the collateral value received. This rule certainly implies that refunds would be included in determining the amount of the underlying indebtedness. The Huntington suggests amending Section 6.4 to treat these refund amounts as reducing the outstanding indebtedness before it is cancelled, rather than cancelling the indebtedness first and then paying over to the borrower the refund amounts, even if The Huntington receives these amounts after the indebtedness has been cancelled. Of course, such an arrangement would be appropriately disclosed to the borrower.

I will be glad to assist in any way to supply background or other information which would help in your efforts to implement these new rules.

Very truly yours,



Julia A. Chincheck

JAC/awr

CHS-170068



DIVISION OF BANKING

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Changes made to this proposed rule amendment as a result of comments received:

The Division of Banking received only one comment in response to its request for comments. The one comment was received from the law firm of Bowles Rice McDavid Graff & Love, PLLC on behalf of its client The Huntington National Bank. The comment requested that the rule be changed to further clarify the coverage limitations of the debt cancellation and GAP insurance permitted by the amendments to the rule. Essentially, the requested change would make clear that these two products are not intended to cover the making of refunds to the borrower that may be due to him/her on other products or services purchased at the time the loan was made.

The Division agrees that this is a reasonable change that provides additional clarity to the rule and thus the additional language requested by The Huntington National Bank has been added to this agency approved rule.

A copy of the comment letter follows this page.

A handwritten signature in black ink, consisting of a stylized 'B' followed by a horizontal line extending to the right.

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		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
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 9, 1998

Signature of Agency Head or Authorized Representative:

Shenan S. Bed Affirmed 1/29/98 (80)

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING

FILED

JUL 31 9 50 AM '98

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, or any refunds 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.