

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

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

Form #5

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

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 RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

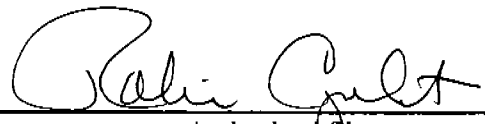
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2570

SECTION 64-7-1 (a) PASSED ON March 10, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: May 1, 1999


Authorized Signature

\$3.00

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING

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

§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 15, 1999.

1.4. Effective Date. -- May 1, 1999

§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.



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

April 15, 1999

Judy Cooper, Director
Administrative Law Division
State of West Virginia
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

Re: Legislative Rules Final Filing
Title 106, Series 2, The Sale of Insurance by State-Chartered Banks
Title 106, Series 11, Permissible Additional Charges in Connection with
a Consumer Credit Sale or Loan

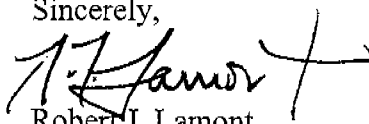
Dear Ms. Cooper:

I enclose for final filing of the above-referenced Legislative Rules the following:

- a Form 5 Notice of Final Filing and Adoption of a Legislative Rule Authorized By the West Virginia Legislature for each Rule;
- a paper copy of each rule; and
- a 3 ½" disk with both Rules saved on it in Word Perfect 5.X for Windows format.

If you need any further information, please feel free to contact me. Thank you for your cooperation.

Sincerely,


Robert J. Lamont
General Counsel

E875

H. B. 2483

1 Bill

2 (By Delegates Hunt, Linch, Compton, Faircloth,
3 Jenkins and Riggs)

3

4 [Introduced February 1, 1999; referred to the
5 Committee on Banking and Insurance then the
6 Judiciary.]

6

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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.

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 thirty-first day of July, one thousand nine hundred
23 ninety-eight, authorized under the authority of section

1 four, article two, chapter thirty-one-a, of this code,
2 relating to the division of banking (permissible additional
3 charges in connection with a consumer credit sale, 106 CSR
4 11), is authorized.

5

6 NOTE: The purpose of this bill is to authorize the
7 Division of Banking to promulgate a legislative rule
8 relating to Permissible Additional Charges in Connection
9 with a Consumer Credit Sale.

10

11 Strike-throughs indicate language that would be
12 stricken from the present law, and underscoring indicates
13 new language that would be added.