





**DIVISION OF BANKING**

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • (304) 558-2294  
FAX: (304) 558-0442

**CONSENT TO FILE RULE**

June 19, 1995

TO WHOM IT MAY CONCERN:

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

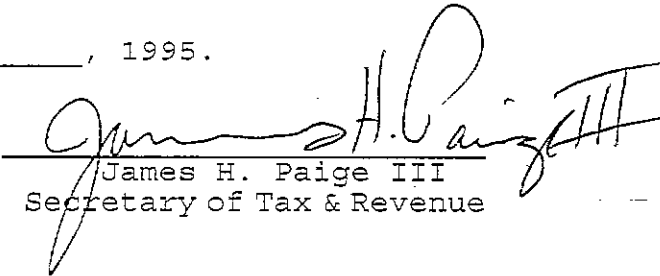
Title Number: 106

Series Number: 11

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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 21<sup>st</sup> day of June, 1995.

  
James H. Paige III  
Secretary of Tax & Revenue



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

### Statement of Circumstances

The proposed amendments to this legislative rule are required in part by amendments to the West Virginia Code which has mandated that auto dealers conduct the documentary services for titling vehicles on which there is a lien, and provides that they may receive payment for those services. The current rule states that the consumers must have the option to do the titling themselves.

The change regarding flood mapping service charges is needed to clarify that they constitute a reasonable closing cost, and even are allowed when the debt is not secured by land, so long as they are necessitated by federal law (i.e. certain mobile home financing transactions). The separate business of conducting flood mapping services has newly arisen since it is more efficient than lenders actually keeping track of all the flood data themselves, a cost that was previously passed on imbedded within the transaction price.

The changes to allow additional charges for over-the-limit revolving credit transactions, and for cash advances on lender credit cards are needed to promote responsible use of credit and to allow the cash advance option to consumer creditors by in-state lenders. They both also provide West Virginia banks parity with out-of-state bank card lenders who already assess their West Virginia consumers such charges.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

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

**Type of Rule:**  **Legislative**     **Interpretive**     **Procedural**

**Agency** WV Division of Banking

**Address** State Capitol Complex  
Bldg. 3, Rm. 311  
Charleston, WV 25305

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<b><u>ESTIMATED TOTAL COST</u></b>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<b>PERSONAL SERVICES</b>	-	-	-	-	-
<b>CURRENT EXPENSE</b>	-	-	-	-	-
<b>REPAIRS &amp; ALTERNATIONS</b>	-	-	-	-	-
<b>EQUIPMENT</b>	-	-	-	-	-
<b>OTHER</b>	-	-	-	-	-

**2. Explanation of above estimates:**

The rule amendments merely conform the rule to a change in the statute and provides banks with parity to charge credit customers over-the-limit fees and charge for cash advances. These items do not affect any cost to the state.

**3. Objectives of these rules:**

To conform the rule to statutory changes on documentary fees being assessed by auto dealers, and to provide parity with out-of-state banks by allowing charges for over-the-limit fees and cash advances on credit cards. Clarifies treatment of flood mapping charges.

**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.**

Limited impact on banks and credit consumers. Amended rule makes clear bank's ability to pass on flood mapping charges as a separate charge, and encourages banks to retain credit card operations in WV. Certain consumers will face these new additional fees

**C. Economic Impact on Citizens/Public at Large. (cont)**

None

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(cont) but these charges are already common to WV consumers on out-of-state credit cards.

**Date:**

June 19, 1995

**Signature of Agency Head or Authorized Representative**

Sharon S. Bels



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106 CSR 11

### Summary of Proposed Rule Amendments

The proposed amendments to this legislative rule are offered in part due to amendments to the West Virginia Code which now mandate that auto dealers handle titling of motor vehicles if there is a lien on the vehicle following its sale through the extension of credit or financing, and authorizes such auto dealer to assess a documentary fee for that service. [See W. Va. Code §17A-4A-4].

The change to the additional charges section with regard to flood insurance mapping fees is needed to clarify that those charges are connected to reasonable closing costs when the information is required by federal rule. Reasonable closing costs are not generally viewed as part of finance charges [See W. Va. Code §46A-3-109(a)(5)]. The rule further makes clear that such charges are also to be treated as permissible additional charges when the flood mapping service is done as required by federal law in connection with financing the sale of mobile homes, even though the sale is not necessarily a debt secured by an interest in land.

The rule has also been amended to permit lenders which offer revolving credit, to charge a penalty fee to borrowers who exceed their line of credit with the lender. Although such fees are common in credit card transactions involving out-of-state bank lenders, it is presently unlawful for banks in West Virginia to do the same. The change will thus promote parity with out-of-state bank lenders.

Lastly, the rule is amended to allow lenders to charge a fee for the privilege of allowing the consumer to obtain a cash advance by use of their lender credit card. Again, although such fees are common in credit card transactions involving out-of-state bank lenders, it is presently unlawful for banks in West Virginia to do the same. The change will thus promote parity with out-of-state bank lenders.

TITLE 106  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF BANKING

FILED

JUN 22 9 02 AM '95

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

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

§106-11-1. General.

1.1. Scope. -- These regulations establish specific rules with regard to "Permissible Additional Charges", for benefits conferred on the consumer in a consumer credit sale, pursuant to W. Va. Code §46A-3-109(1)(f).

1.2. Authority. -- W. Va. Code §§46A-3-109(1)(f) and 31A-2-4(c)(12).

1.3. Filing Date. -- ~~April 22, 1992~~

1.4. Effective Date. -- ~~April 24, 1992~~

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

2.1. Benefit to Consumer. -- The "Documentary Fee" or "Documentary Charge" 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 does do not include services that the seller is required by law to perform~~) actually provided to the consumer in a consumer credit sale. It is not mandatory under this rule for the seller to provide documentary services for which ~~the 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 ~~of~~ 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, ~~the 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 a consumer loan secured by a first lien on residential property, including 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/her credit limit, which 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; But such 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.