

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

RECEIVED
1995 JUL 28 PM 3:34
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**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 WV Code 46A-3-109(1)(f) and 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 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.

Shan S. Bai

460



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

July 25, 1995

TO WHOM IT MAY CONCERN:

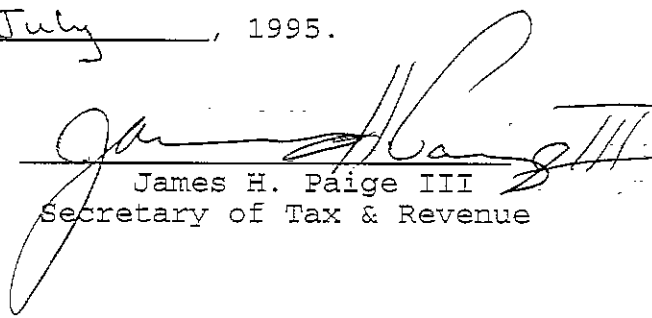
Title of Rule: Permissible Additional Charges in Connection
with a Consumer Credit Sale

Title Number: 106

Series Number: 11

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 26th day of July, 1995.


James H. Paige III
Secretary of Tax & Revenue



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
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	CHANGE	NET	TOTAL
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	-	-	-	-	-
CURRENT EXPENSE	-	-	-	-	-
REPAIRS & ALTERNATIONS	-	-	-	-	-
EQUIPMENT	-	-	-	-	-
OTHER	-	-	-	-	-

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

(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. Bick

DATE: July 28, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Timothy Winslow
General Counsel
WV Division of Banking

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

1. Authorizing statute(s) citation _____

WV Code 46A-3-109(1)(f) and 31A-2-4(c)(12)

2. a. Date filed in State Register with Notice of ~~Hearing~~ Comment Period
June 22, 1995

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

Sent to each person/business on the WV Division of Banking's
"Official Notification" list.

c. Date of ~~Hearing~~ Comment Period _____

June 22, 1995 to July 24, 1995

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

Attached X No comments received _____

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

July 28, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

Timothy Winslow 558-2294

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.

N/A

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A



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 PERMISSIBLE ADDITIONAL CHARGES IN CONNECTION WITH A CONSUMER CREDIT SALE 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

RECEIVED

1995 JUL 28 PM 3:34

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 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.



DIVISION OF BANKING

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

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

Comments Received

Only one comment was received regarding the above-referenced rule. This comment letter is attached, and concerns deleting the requirement that flood insurance mapping charges only be treated as a closing cost in first lien transactions; but rather be extended to reach other second lien transactions, since the federal rules now require banks to undertake flood mapping findings in those situations as well.

Response to Comment

The proposed rule was amended to reflect the comment suggestion.



DIVISION OF BANKING

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

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

Amendment Made in Response to Comment

The word "first" was deleted from 106 CSR § 11-3.1 before the word "lien" so as to make clear that such flood insurance mapping service charges would be viewed as a closing charge in non-first lien situations, so long as the lender was still required by federal law to ascertain the flood map location of the property.

Reason for the Amendment

The amendment was made to accommodate the situation where federal law required the lender to ascertain the flood map location prior to approving the loan, even though the transaction would not result in a first lien on that property securing the loan.

BOWLES RICE McDAVID GRAFF & LOVE

ATTORNEYS AT LAW

200 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26502
TELEPHONE 304-256-2500
FACSIMILE 304-256-2510

601 AVERY STREET
POST OFFICE BOX 48
PARKERSBURG, WEST VIRGINIA 26102
TELEPHONE 304-485-6500
FACSIMILE 304-425-7970

16TH FLOOR COMMERCE SQUARE • LEE STREET
POST OFFICE BOX 1386
CHARLESTON, WEST VIRGINIA 25325-1386
TELEPHONE 304-347-1100
FACSIMILE 304-349-2887

105 W. BURKE STREET
POST OFFICE DRAWER 1419
MARTINSBURG, WEST VIRGINIA 25401-1419
TELEPHONE 304-263-0838
FACSIMILE 304-267-3822

July 24, 1995

WRITER'S DIRECT DIAL NUMBER
347-1124

WV Division of Banking
State Capitol Complex
Bldg. 3, Room 311
Charleston, WV 25305

Re: Proposed Rule, CSR Title 106, Permissible Additional
Charges

Dear Commissioner Bias:

We appreciate the opportunity to submit comments on the above referenced proposed rule on behalf of the West Virginia Bankers Association. Monitoring of proposed regulations is one of the functions of the Association.

The Association concurs in the proposal and offers one suggestion. With respect to Section 106-11-3, relating to flood mapping service fees, we suggest that the word "first" in the second line be deleted so that such fees would be permissible additional charges, regardless of the lien priority position of the bank. This change would permit the charge as an additional permissible charge when federal law requires banks to ascertain the flood map location of property serving as collateral for junior lien loan products, such as home equity loans. The proviso in this section would still assure that the fee would be classified as an additional permissible charge only if federal law requires that the bank ascertain the flood map location of the real property collateral.

Thank you for your consideration of this comment. Please call if you have questions.

Very truly yours,
Deborah A. Sink
Deborah A. Sink

cc: Thomas A. Winner
chs-2531

Post-It [®] Fax Note	7671	Date	# of pages 1
To	T. Winslow, Esq	From	D Sink
Co./Dept.		Co.	
Phone #		Phone #	347-1124
Fax #	558-0442	Fax #	