

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

Form #2

Do Not Mark In this Box

**FILED**

JUL 15 11 31 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

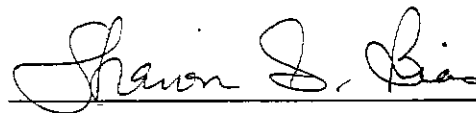
**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WV Division of Banking TITLE NUMBER: 106  
RULE TYPE: Legislative; CITE AUTHORITY WV Code §31A-4-33 and §31A-2-4(c)(11)  
AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO x  
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_  
TITLE OF RULE BEING AMENDED: \_\_\_\_\_  
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 17  
TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to Notice and  
Treatment of Joint Accounts

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 16, 1993 AT 8:30 a.m.  
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV Division of Banking  
State Capitol Complex  
Building #3, Room 311  
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Legislative Rule Pertaining to Notice of Treatment of Joint Accounts

Type of Rule:  Legislative  Interpretive  Procedural

Agency WV Division of Banking

Address State Capitol Complex

Building #3, Room 311

Charleston, WV 25305

1. Effect of Proposed Rule

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

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

To provide consumers with proper notice regarding law and procedure on jointly held bank accounts.

Rule Title: Legislative Rule Pertaining to Notice and Treatment of Joint Accounts.

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 economic impact on political subdivisions.  
The expense to the banking industry negligible.

C. Economic Impact on Citizens/Public at Large.

No economic impact although citizens are better informed and may make better decisions.

Date: July 14, 1993

Signature of Agency Head or Authorized Representative

Sharon S. Bias

COMMISSIONER OF BANKING  
LEGISLATIVE RULE PERTAINING TO  
NOTICE AND TREATMENT OF JOINT ACCOUNTS

Summary of Proposed Rule

This legislative rule is required by the passage of HB 2250 which amended W. Va. Code § 31A-4-33 so as to clarify the rights and liabilities of joint account holders, and mandated consumer notification of those rights.

The rule sets forth the forms and procedures to be utilized in providing joint account holders with notification. Banks are given three basic compliance options: (1) incorporate the notice of disclosure in the signature card agreement; (2) maintain the disclosure notice as a separate document which is signed by the joint account holders; or (3) place a check-off box within the signature card agreement whereby the account holders acknowledge receipt of the disclosure form.

The rule also establishes the rights and liabilities of joint account holders and banks upon the latter's receipt of a written demand pursuant to W. Va. Code § 31A-4-33 to deny one of the named joint account parties access to the account.

TITLE 106  
LEGISLATIVE RULES  
COMMISSIONER OF BANKING

SERIES 17  
LEGISLATIVE RULE PERTAINING TO  
NOTICE AND TREATMENT OF JOINT ACCOUNTS

FILED  
JUL 15 11 31 AM '93  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

§ 106-17-1. General.

1.1. Scope-- These regulations establish rules for the notice to holders of joint deposit accounts regarding their rights and liabilities as to such accounts. In addition, these regulations pertain to the treatment of joint deposit accounts in the event of receipt of written notice by a bank from one of their joint deposit account holders informing the bank not to pay, pledge, or encumber the account upon the demand or request of another named party to the joint account.

1.2. Authority-- W. Va. Code §§ 31A-4-33 and 31A-2-4(c)(11).

1.3. Filing Date--

1.4. Effective Date--

§ 106-17-2. Definitions.

2.1. "Joint Account" means a federally insured deposit account at a bank which is held in the name of two or more individual persons, wherein any one of the named account holders may, without the signature or approval of any other persons to the account, obtain account funds, close the account, or otherwise withdraw the whole amount in the account. Such accounts include, but are not limited to, joint checking accounts, joint savings accounts, joint passbook savings accounts, joint Christmas/Vacation club accounts, and joint certificate of deposit accounts.

2.2. "Bank" means any state-chartered or federally-chartered banking institution authorized to conduct the business of banking in West Virginia, including any such savings bank, or savings and loan association.

§ 106-17-3. Notice.

3.1. Existing Joint Account Holders-- If a bank has not notified its existing joint account holders by January 6, 1994 of their rights and liabilities under a joint account by using forms and procedures previously approved by the Commissioner of Banking, then such bank will be required, within thirty (30) days of the effective date of this rule, to send a special separate mailing to each and every of its joint account holders using the forms and

procedures approved by the Commissioner of Banking pursuant to this rule.

3.2. Opening New Joint Accounts-- Upon the request of a customer to open a new joint account, a bank shall provide notice to the joint account holders that such accounts may be paid out to, pledged by, or otherwise encumbered by each and any of the individuals to the joint account-- unless prior written notice is given by one of the account holders not to permit it. The wording of the notice provided by the banks to their customers must be approved by the Commissioner of Banking and printed in a clearly legible type size. Compliance may be made in one of three ways:

3.2.1. Obtaining the signature of each joint account holder on a separate document containing the required disclosures and approved for such use by the Commissioner of Banking, and then maintaining such signed separate document either together with the joint account's signature card, or in another manner whereby such document is easily retrievable as to each such account;

3.2.2. Incorporating the required and approved disclosure notice within the signature card or the account opening agreement with the bank, which card or agreement is signed by all the joint account holders; or

3.2.3. Establishing a procedure for ensuring that all persons opening a covered joint account are given the required notice in a form approved by the Commissioner of Banking, and that fact is recorded by a checkbox marked upon the signature card or the account opening agreement accompanying that joint account, which card or agreement is signed by all the joint account holders.

3.3. Notice Forms-- The form of the notice, including the wording contained in the disclosures and any restriction or specific use of a particular form, shall be approved and established by the Commissioner of Banking. In addition to any other notice form which may be, from time to time, approved by the Commissioner of Banking, banks may use the forms set forth in Appendix A and B of this rule as prescribed hereunder:

3.3.1. The form in Appendix A may be used when the bank is following the notice procedure set forth in subsection 3.2.1 of this rule.

3.3.2. The form in Appendix B may be used when the bank is following the notice procedure set forth in subsections 3.2.2. or 3.2.3 of this rule.

3.4. Use of Previously Approved Forms-- Unless a change in law, legislative rule, or determination by a court necessitates immediately altering a notice form previously approved for use by the Commissioner of Banking, banks shall have a reasonable amount of time, up to six months, to replace their existing approved forms. And during such time may continue to use their previously approved forms.

§ 106-17-4. Effect of Written Notice.

4.1. Checking/NOW/Draft Accounts-- Upon receipt by the bank of written notice from a customer holding a joint checking account, joint NOW account, or other similar joint draft account requesting that the bank not allow one or more of the other named parties to that joint account to withdraw funds, close the account, pledge or otherwise encumber the account solely on that party's own signature, then the bank shall freeze the so named party's access to that account for a period of fourteen (14) calendar days, pending other disposition of the account funds. The bank shall promptly notify the person requesting the freeze, that they must close that account and transfer the funds within fourteen (14) calendar days, and if they or one of the other joint account holders still having free access to the account do not do so, the bank will at the end of such period either (i) close the account by issuing a check for the account balance in the names of all the joint account parties, which check requires all such parties' signatures; or (ii) place the remaining balance in an escrow account pending distribution by court order or agreement by all parties. Such notice by the bank shall be in writing and shall be sent to each joint account holder still having access to the account via first class U.S. mail postage prepaid to their last known address on record with the bank.

Upon the receipt of written notice to freeze the access of a joint account holder, the bank shall, unless otherwise agreed pursuant to these rules, refuse to honor checks drawn on the joint checking account or NOW account by the person named to be frozen from access; and the bank may impose dishonored check charges on the account caused thereby. However, such charges may not exceed one-hundred dollars (\$100) in total.

Upon the request and agreement of all the joint account holders a bank may elect to continue to honor checks to third parties drawn on the joint accounts by the person(s) frozen from access to the account, provided each such check is approved for payment and countersigned by all parties to that joint account during the fourteen day freeze period. A fee, not to exceed the amount generally charged by the bank for a dishonored customer account check, may be imposed by the bank on each transaction where it permits a check on such an account to be made good by countersignature. The bank shall promptly notify the person to

whom the freeze is directed, that such freeze has been requested and imposed, indicating the person requesting the freeze, the date the freeze occurred and, if applicable, whether the bank will, upon agreement of all joint account holders, continue to accept that person's checks upon countersignature. Such notice shall be in writing and shall be sent via first class U.S. mail postage prepaid to that person's last known address on record with the bank.

The bank shall cancel any ATM access, Point of Sale access, or other similar electronic access to a checking account, NOW account, or similar draft account when necessary to effectuate a freeze imposed in accordance with this rule. If ATM or other electronic access is cancelled, then this fact must be made part of any notice given to the joint account holders required by this subsection.

4.2. Saving Accounts-- Upon receipt by the bank of written notice from a customer holding a joint savings account, including a joint passbook savings account or special joint savings club account, requesting that the bank not allow one or more of the other named parties to that joint account to withdraw funds, close the account, pledge or otherwise encumber the account solely on that party's own signature, then the bank shall freeze the so named party's access to that account for a period of fourteen (14) calendar days, pending other disposition of the account funds. The bank shall promptly notify the person requesting the freeze, that they must close that account and transfer the funds within fourteen (14) calendar days, and if they or one of the other joint account holders still having free access to the account do not do so, the bank will at the end of such period either (i) close the account by issuing a check for the account balance in the names of all the joint account parties, which check requires all such parties' signatures; or (ii) place the remaining balance in an escrow account pending distribution by court order or the agreement of all parties. Such notice by the bank shall be in writing and shall be sent to each joint account holder still having access to the account via first class U.S. mail postage prepaid to their last known address on record with the bank.

Upon the request and agreement of all the joint account holders a bank may elect to permit the person(s) to whom the freeze applies to make a withdrawal on, or pledge of, such an account upon the countersignatures of each and every joint account holder. A one time fee may be imposed by the bank if it then agrees to permit such withdrawals on, or pledges of, the account upon the countersignatures of each and every joint account holder during the fourteen day freeze period. The bank shall promptly notify the person to whom the freeze is directed, that such freeze has been requested and imposed, indicating the person requesting the freeze, the date the freeze occurred and, if applicable, whether the bank

will, upon agreement of all joint account holders, continue to allow account access to that person upon countersignature. Such notice shall be in writing and shall be sent via first class U.S. mail postage prepaid to that person's last known address on record with the bank.

The bank shall cancel any ATM access, Point of Sale access, or other similar electronic access to a savings account, when necessary to effectuate a freeze imposed in accordance with this rule. If ATM or other electronic access is cancelled, then this fact must be made part of any notice given to the joint account holders required by this subsection.

4.3. Certificates of Deposit-- Upon receipt by the bank of written notice from a customer holding a joint certificate of deposit account, requesting that the bank not allow one or more of the other named parties to that joint account to withdraw funds, close the account, pledge or otherwise encumber the account solely on that party's own signature, then the bank shall freeze the so named party's access to that account for a period of fourteen (14) calendar days, pending other disposition of the account funds. The bank shall promptly notify the person requesting the freeze, that they must close that account and transfer the funds within fourteen (14) calendar days, and if they or one of the other joint account holders still having free access to the account do not do so, the bank will at the end of such period either (i) close the account by issuing a check for the account balance minus any penalties in the names of all the joint account parties, which check requires all such parties' signatures; or (ii) place the funds minus any penalties in an escrow account pending distribution by court order or the agreement of all parties. Such notice by the bank shall be in writing and shall be sent to each joint account holder still having access to the account via first class U.S. mail postage prepaid to their last known address on record with the bank.

Upon the request and agreement of all the joint account holders a bank may elect to permit the person(s) to whom the freeze applies to make a withdrawal on, or pledge of, such an account upon the countersignatures of each and every joint account holder during the fourteen day freeze period. In addition to any fees or penalties that would regularly accrue on that type of joint certificate of deposit account, a one time fee may be imposed by the bank if it then agrees to permit such withdrawals on, or pledges of, the account upon the countersignatures of each and every joint account holder. The bank shall promptly notify the person to whom the freeze is directed, that such freeze has been requested and imposed, indicating the person requesting the freeze, the date the freeze occurred and, if applicable, whether the bank will, upon agreement of all joint account holders, continue to allow account access to that person upon countersignature. Such notice shall be in writing and shall be sent via first class U.S.

mail postage prepaid to that person's last known address on record with the bank.

4.4. Payment of Interest-- Unless the account is closed by issuing a check to the joint account holders, all interest that should accrue on the account shall be paid into that account. Provided further, however, that if the account is closed and the monies therein placed in an escrow account, then the interest owed is that normally paid by the bank on its escrow accounts.

4.5. Noninterference with Bank Pledging Policy-- Nothing within these rules shall prohibit a bank from adopting as a matter of bank policy, a requirement that all joint account holders must agree and/or sign before any pledge of a joint account can be made.

#### 4.6. Set-Offs, Automatic Transfers & Automatic Deposits

4.6.1. Upon receipt of written notice to freeze the access of a joint account holder, all agreements between such person and the bank which provide for set-off, or transfer from the frozen joint account to make good any shortfall or overdraft in any other account such person holds at that bank which is not frozen as to that person, are preempted.

4.6.2. Upon receipt of written notice to freeze the access of a joint account holder, the bank shall promptly seek to prevent any automatic transfer from that joint account to any other account which is in the name of the person frozen therefrom, unless such account also names the person requesting the freeze as a joint holder, or the payee receiving the transfer is a third-party to whom such payment was originally authorized by the person requesting the freeze.

4.6.3. Upon receipt of written notice to freeze the access of a joint account holder, the bank may continue to accept automatic deposits payable to the person frozen from the joint account, until such time as that person arranges to have such automatic deposits stopped or made to another account.

#### § 106-17-5. Claims of Creditors Through Legal Process.

Despite any notice received by a bank from a joint account holder pursuant to W. Va. Code § 31A-4-33, the bank shall make payment from such accounts or attachments to such accounts in accordance with any court or administrative order setting an award, penalties, damages or other monetary judgment against any one of the joint account holders, including, but not limited to, any garnishment, suggestion, or execution.

§ 106-17-6. Non-Liability of Bank

To the extent the bank either elects or is required to: (1) Temporarily treat the joint account as one requiring all the joint account holders signatures; (2) Freeze account access as requested by a joint account holder pursuant to law and this rule; (3) Freeze account access via any ATM, Point of Sale, or similar electronic fund transfer system pursuant to this rule; (4) Accept any deposit or prevent any set-off or automatic transfer in good faith compliance with this rule; (5) Close the account after the appropriate period and place the funds into an escrow account pending resolution of the funds' proper disposition; or (6) Close the account after the appropriate period and issue a check for the account balance in the name of all the joint account holders requiring all of their signatures, the bank has no liability to any affected joint account holder in consequence for taking such action.

To the extent the bank follows or complies with an agreement among and between all the parties to a joint account as to the apportionment or disposition of funds held in said joint account, the bank has no liability to any affected joint account holder in consequence for taking such action.

To the extent the bank follows or complies in good faith with an order from a court as to the apportionment or disposition of funds held in a joint account affected by notice pursuant to W. Va. Code § 31A-4-33, or makes any payment or attachment to a creditor or other legal claimant pursuant to legal process, the bank has no liability to any affected joint account holder in consequence for taking such action.

To the extent the bank, in good faith, takes all commercially reasonable action to promptly prevent a joint account holder from withdrawing, closing, pledging or otherwise encumbering such account as directed by another joint account holder's written notice received by the bank, the bank shall have no liability to any affected joint account holder for being unable to prevent such withdrawal, closing, pledge, or encumberment.

To the extent the bank relies upon the address(es) furnished to it by that account holder for a particular joint account as the proper address(es) to which to provide notice and the bank has not been furnished with any new or changed address, the bank shall have no liability to any affected joint account holder in consequence for relying on such address(es) in sending any notice required by this rule.

§ 106-17-7. Severability.

If any word, phrase, or provision of this rule shall be held to be invalid, the remainder of the rule shall not be affected thereby.

Acct. No. \_\_\_\_\_

**NOTICE TO JOINT ACCOUNT HOLDERS**

This joint account is payable in both your name "or" in the name of the other person(s) listed on the account (Example "Mr. Smith or Mrs. Smith").

Please be advised and forewarned that:

- o All the money in this joint account may be withdrawn by anyone named on this account; or may be pledged as security for a loan or debt by anyone named on the account.  
-- UNLESS, prior written notice is given to the bank not to permit it.
  
- o Despite any notification to the bank  
-- The bank may pay the entire account balance to a creditor or other legal claimant pursuant to legal process.

I have read and understand the above rules about this joint account.

Signature of Joint Account Holder 1: \_\_\_\_\_

Signature of Joint Account Holder 2: \_\_\_\_\_

Signature of Joint Account Holder 3: \_\_\_\_\_

7/1/93

**NOTICE TO JOINT ACCOUNT HOLDERS**

This joint account is payable in both your name "or" in the name of the other person(s) listed on the account (Example "Mr. Smith or Mrs. Smith").

Please be advised and forewarned that:

- o All the money in this joint account may be withdrawn by anyone named on this account; or may be pledged as security for a loan or debt by anyone named on the account.  
-- UNLESS, prior written notice is given to the bank not to permit it.
  
- o Despite any notification to the bank  
-- The bank may pay the entire account balance to a creditor or other legal claimant pursuant to legal process.

[This form is to be used in incorporating the language in the signature card, or where a checkbox indicating the above disclosure has been made is part of the signature card.]

7/13/93



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
OFFICE OF THE SECRETARY

State Capitol, Room M-146  
Charleston, West Virginia 25305-0310  
Telephone: (304) 558-0400  
Fax No.: (304) 558-4983

GASTON CAPERTON  
Governor

JOHN M. RANSON  
Cabinet Secretary

July 15, 1993

Sharon G. Bias  
Commissioner  
Banking  
Building 3, Room 311-A  
State Capitol Complex  
Charleston, West Virginia 25305

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

JUL 15 11 31 AM '93

FILED

Re: Proposed Rule - Title 106, Series 17  
Legislative Rule Pertaining to Notice and Treatment of  
Joint Accounts

Dear Commissioner Bias:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby  
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the  
Secretary of State as evidence of my consent.

Sincerely yours,

*John M. Ranson*  
John M. Ranson  
Cabinet Secretary

JMR\lab

t:\jtachbank.rul