WEST VIRGINIA CODE: §47-6-5D

§47-6-5d. Rebate upon prepayment, refinancing, consolidation or otherwise; liability and penalties for excess charges.

(a) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction repayable according to its original terms over a period of thirty-six months or less, the creditor shall rebate that portion of the finance charge attributable to the prepaid periodic installment periods. When the total is payable in substantially equal consecutive monthly installments, the portion of such finance charge attributable to any particular monthly installment period shall be that proportion of charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78"). For prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction: (i) Repayable according to its original terms over a period of thirty-six months or less; (ii) in which unequal or irregular or other than substantially equal consecutive monthly installments are payable, the commissioner of banking shall prescribe by rule the method or procedure for the allocation of charges and the calculation or rebates consistent with the Rule of 78.

(b) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction, repayable by its original terms over a period of greater than thirty-six months, an amount shall be rebated of not less than the unearned portion of the finance charge calculated by applying the rate of finance charge which was required by applicable law to be disclosed in the transaction according to the actuarial method to the unpaid balance for the time remaining as originally scheduled or as extended by deferral or otherwise for the period following prepayment. In instances where no rate of finance charge was required by law or otherwise to be disclosed, the unearned portion of the finance charge shall be calculated by applying the finance charge which was charged in the transaction according to the actuarial method to the unpaid balance for the time remaining as originally scheduled or as extended by deferral or otherwise for the period following prepayment.

(c) Unearned prepaid finance charges upon prepayment includes all prepaid finance charges for points, loan or credit origination fees, or loan or credit investigation fees retained by the lender or creditor or its affiliates: Provided, That: (i) In calculating the rebate for a consumer loan or credit sale unsecured by real property where such prepaid finance charges have been imposed, the lender or creditor may deduct such charges up to a maximum of two percent of the amount financed; and (ii) in calculating the rebate for a consumer loan or credit sale secured by real property where such prepaid finance charges have been imposed, the lender or creditor may deduct such charges up to a maximum of five percent of the amount financed: Provided, however, That no such deduction totaling more than five percent

WV Legislature

of the amount financed may be made by the same lender within a twenty-four month period as a result of a refinancing. Upon prepayment in full of a consumer loan or credit sale, any unearned prepaid finance charges may be rebated by using the Rule of 78 where the original loan term is thirty-six months or less. Where the original loan term is greater than thirty-six months, any such charges shall be rebated by using the actuarial method. To the extent that this section overrides the preemption on limiting points and other such charges on first lien residential mortgages for nonpurchase money loans contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply: Provided further, That this subsection does not apply to loans made by federally-insured depository institutions.

(d) For purposes of the rebate of unearned finance charges as required by this section, a prepayment in full shall include repayment by a new loan, extension of credit, refinancing, consolidation, forbearance or otherwise. The term "loan or credit investigation fees" does not include the reasonable costs of credit reports paid to third parties as part of the bona fide closing costs in real estate transactions, where such costs are not included as part of the finance charge.

(e) As an alternative to the Rule of 78 method of rebate of determining the unearned finance charge required by this section, a creditor may rebate unearned finance charges under any other method which gives a greater rebate to the debtor than the rebate determined by the Rule of 78.

(f) The provisions governing rebates as set forth in this section shall apply to all transactions entered into on or after September 1, 1996. For transactions entered into prior to September 1, 1996, the provisions in effect prior to the effective date of this section of the respective chapters of this code shall be utilized to determine the rebate of unearned finance charges.

(g) For consumer credit sales or consumer loans subject to the provisions of chapter forty-six-a of this code, the provisions of article five of said chapter, govern the imposition of liability and penalties for charging interest or a finance charge in excess of the maximum rate allowed under the provisions of this section. In all other instances, the provisions of this article govern the imposition of liability and penalties for charging interest or a finance charge in excess of the maximum allowed under this section.

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