

August 20, 1996

Re: Licensure of Consumer Loan and Finance Companies

Dear Mr. :

I am writing in regard to your letter of May 22, 1996 which summarized our prior telephone conversation concerning the requirements of West Virginia law for the licensure of consumer loan and finance companies.

Companies making automobile loans or purchasing retail sale contracts from West Virginia automobile dealers, which companies do not have offices within this state, are not required to obtain a license from the Division of Banking. W. Va. Code § 31A-2-5(b) states that "No person shall operate an office in West Virginia which regularly makes consumer loans in this state other than first mortgage loans unless they are a financial institution..." While subsection (a) of that same code section provides that "No person shall engage or continue to engage in the business of a financial institution in this state without a license or certificate to do so..." Thus, except as may be provided by some other specific statute, e.g., secondary mortgage lenders (W. Va. Code § 31-17-1 et seq.), out-of-state lenders having no offices in West Virginia are not required to obtain licenses from the Division of Banking in order to make loan transactions through interstate commerce.

Such loans and credit sales are, however, subject to the provisions and protections provided under the WV Consumer Credit and Protection Act. W. Va. Code § 46A-1-101 et seq. At present the maximum general finance charge rate is 18% APR as set forth by the WV Lending and Credit Rate Board in its Order of April 2, 1996 pursuant to W. Va. Code § 47A-1-1 et seq.

Broker fees are considered part of finance charges under state law, as are dealer fees and other similar charges. W. Va. Code § 46A-1-102(26). However, to the extent that dealer fees are imposed on the dealer and not passed on to the consumer, such that they are not treated as finance charges for purposes of the federal Truth-in-Lending Act and Regulation Z, then such fees would not be viewed as a finance charge under state law since state law and federal law would be coextensive on that point.

Businesses which operate from offices in West Virginia and either make loans or purchase retail installment contracts from their affiliates pursuant to a standing arrangement, must, though, first obtain a license from the Commissioner of Banking pursuant to W. Va. Code § 31A-2-5.

Please note that although many out-of-state lenders and finance companies do not need a special license to provide loans to or purchase installment sales paper of West Virginia consumers, state tax laws do require registration and payment of taxes under W. Va. Code § 11-23-5a. Further, such businesses must comply with the notification provisions to the tax department and the Attorney General with regard to their lending or financing activities pursuant to W. Va. Code § 46A-7-115.

I trust that this letter has been responsive to your inquiry. Should you have any other questions, please contact me.

Sincerely,

Timothy C. Winslow
General Counsel