

WEST VIRGINIA CODE: §47-6-5b

§47-6-5b. Legislative findings; fixing maximum interest rate on certain loans and forbearances of money secured by mortgages or deeds of trust upon real property; authorizing commissioner of banking to fix maximum interest rate on such loans and forbearances of money; prohibiting penalty upon prepayment and escalation of interest clause; quarterly reports required.

(a) The Legislature hereby finds and declares that:

(1) Changes in permissible interest rates on nonprecomputed loans or forbearances of money require specialized knowledge of the needs for credit for the construction and purchase of adequate housing and of buildings and improvements for the establishment and expansion of businesses and agricultural enterprises and of the availability of such credit at reasonable rates while affording a competitive return to persons extending such credit;

(2) Maximum interest rates on nonprecomputed loans or forbearances of money to be secured by mortgages or deeds of trust on real property should be prescribed from time to time to reflect changed economic conditions, current interest rates throughout the United States and the availability of credit in order to promote the making of such loans or forbearances of money; and

(3) The prescribing of such maximum interest rates can be accomplished effectively and flexibly by the West Virginia commissioner of banking.

(b) In view of the foregoing findings, it is the purpose of this section to authorize the West Virginia commissioner of banking to prescribe from time to time the maximum interest rates on nonprecomputed loans or forbearances of money made pursuant to this section to be secured by mortgages or deeds of trust on real property, subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders to charge up to the maximum interest rates so fixed.

(c) The West Virginia commissioner of banking is hereby authorized and directed to prescribe each month by order a maximum rate of interest for the next succeeding month for any nonprecomputed loan or forbearance of money made pursuant to this section to be secured by a mortgage or deed of trust upon real property, which maximum rate of interest shall not exceed the monthly index of long-term United States government bond yields for the preceding calendar month, plus an additional one and one-half percent per year rounded off to the nearest quarter of one percent per year and such maximum rate shall be valid for the term of the loan contract. For the purpose of this section, the monthly index of long-term United States government bond yields means the monthly unweighted average of the daily unweighted average of the closing bid yield quotations in the over-the-counter market for all outstanding United States treasury bond issues, based on available statistics, which mature in twenty years or more from the date the index is calculated, but shall not include such

bonds as are redeemable at par for payment of federal estate taxes. In fixing said maximum rates of interest, the commissioner of banking shall take into consideration prevailing economic conditions including said monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional home and multifamily housing mortgage and deed of trust loans throughout the United States and on corporate interest-bearing securities of high quality, and the availability of credit at reasonable rates which will afford a competitive return to persons extending such credit.

(d) On or before the twentieth day of each month the West Virginia banking commissioner shall ascertain the monthly index of long-term United States government bond yields for the preceding calendar month and shall then prescribe by order in accordance with subsection (c) of this section the maximum rate of interest for the next succeeding month for any nonprecomputed loan or forbearance of money made pursuant to this section to be secured by a mortgage or deed of trust upon real property, and shall cause such maximum rate of interest to be issued to the public, such maximum rate of interest to be effective on the first day of the next succeeding month.

(e) Notwithstanding any other provisions of this section, the commissioner of banking shall on or before the effective date of this section prescribe by order the maximum rate of interest for any nonprecomputed loan or forbearance of money pursuant to this section to be secured by a mortgage or deed of trust upon real property for the month in which this section becomes effective and shall at the earliest possible date prescribe the maximum rate of interest for any such loan or forbearance of money for the next succeeding month, and shall issue such maximum rates of interest to the public; and the state commissioner of banking shall thereafter determine and issue the maximum rate of interest for any such loan or forbearance of money in conformity with the other provisions of this section.

(f) As an alternative to the interest rate authorized by any other provision of this code, where a nonprecomputed loan or forbearance of money is secured by a mortgage or deed of trust upon real property, the parties may, after the effective date of this section, contract in writing for the payment of interest for such loan or forbearance of money at a rate, including points expressed as a percentage of the loan or forbearance divided by the number of years of the loan or forbearance contract, not to exceed the then effective maximum rate prescribed by the state banking commissioner pursuant to the provisions of this section and such rate shall be valid for the term of such contract: Provided, That the points charged shall not exceed one percent of the original bona fide principal amount of the loan or forbearance of money, except that in the case of a construction loan, the points charged shall not exceed two percent of the original bona fide principal amount of the loan: Provided, however, That the parties may contract in writing for the payment of interest for such loan or forbearance of money at the rate specified in this subsection (f) only if such contract in writing also specifies that there shall be no penalty whatever for prepayment of the loan or forbearance of money in whole or in part by cash, a new loan, forbearance of money or otherwise, and such contract provision prohibiting any such penalty shall govern and control notwithstanding any other provision of this code to the contrary, whether such other provision was enacted before or after the enactment of this section: Provided further,

That no such contract shall contain an escalation of interest clause which would allow an increase in the rate of interest being charged.

(g) For the purpose of subsection (f) of this section, the term "points" is defined as the amount of money, or other consideration, received by the lender or forebearer from whatever source, as a consideration for making the loan or forbearance of money and not otherwise expressly permitted by statute.

(h) A commitment to make a nonprecomputed loan or forbearance of money pursuant to this section to be secured by a mortgage or deed of trust upon real property which provides for consummation within some future time may be consummated pursuant to the provisions, including interest rate, of such commitment notwithstanding the fact that the maximum rate of interest at the time the mortgage or deed of trust is entered into is less than the commitment rate of interest: Provided, That the commitment rate of interest does not exceed the maximum interest rate in effect on the date the commitment was issued: Provided, however, That the commitment when agreed to by the borrower constitutes a legally binding obligation on the part of the lender or forebearer to make such a loan or forbearance of money within a specified time period in the future at a rate of interest not exceeding the maximum rate of interest effective as of the date of commitment, and the commitment does not include any condition for increase of the interest rate at the time of the consummation of the loan or forbearance of money even though the maximum rate of interest is then higher.

(i) Nothing contained in this section shall prohibit the parties to any loan transaction or forbearance from contracting for a rate of interest authorized by any other provision of this code.

(j) The commissioner of banking shall promulgate rules and regulations requiring all banking institutions, savings and loan associations and other financial institutions making loans in this state of the type specified in this section to file with him quarterly reports as to the number and amount of such loans made during the preceding quarter, and such quarterly reports shall contain sufficient detail to ascertain whether the provisions of this section have promoted the making of such loans.