
WEST VIRGINIA CODE CHAPTER 47
ARTICLE 6

WV Legislature

§47-6-1. Money of account.

The money of account of this state shall be the dollar, cent and mill. All accounts by public officers shall be so kept.

WV Legislature

§47-6-2. Writing, account or entry valid although sum expressed in other money.

No writing shall be invalid, nor the force of any account or entry be impaired, because a sum of money is expressed therein otherwise than in such money of account.

WV Legislature

§47-6-3. In suits for foreign or other money, value in money of account to be fixed.

In any suit for a sum of money expressed in any foreign currency, or otherwise than in the money of account of this state, the jury, if there be one impaneled for any other purpose, and if not, the court, shall ascertain the value in such money of account of the sum so expressed, making such allowance for the difference of exchange as shall be just; and the judgment or decree may either be for what may be so ascertained, or for the sum of money expressed as aforesaid to be discharged by the sum so ascertained.

§47-6-4. Silver coin as legal tender.

The silver coin issued by the government of the United States shall be a legal tender for the payment of all debts heretofore or hereafter contracted by the citizens of this state, and the same shall be received in payment of all debts due to the citizens of this state, and in satisfaction of all taxes levied by the authority of the laws of this state.

WV Legislature

§47-6-5. Legal rate of interest; agreements in writing fixing rate of interest; agreements in writing fixing rate of interest for residential real estate purposes; providing there may be no penalty upon prepayment; quarterly reports required.

(a) Except in cases where it is otherwise specially provided by law, legal interest shall continue to be at the rate of \$6 upon \$100 for a year, and proportionately for a greater or less sum, or for a longer or shorter time, and no person upon any contract other than a contract in writing shall take for the loan or forbearance of money, or other thing, above the value of such rate: Provided, That a charge of \$1 may be made for any loan or forbearance of money or other thing, where the interest at the rate aforesaid would not amount to that sum, and the same shall not be a usurious charge or rate of interest.

(b) Parties may contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed \$8 upon \$100 for a year, and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract.

(c) As an alternative to the interest rate authorized by the provisions of subsections (a) or (b) of this section and any interest rate authorized by any other provision of this code, where a loan of money is made for the purpose of purchasing real estate upon which is situate a single-family or multifamily residential unit or units, or for the construction of a single-family or multifamily residential unit or units upon real estate, or additions or improvements thereto, or for the purpose of the payment of a loan theretofore made for the construction of a single-family or multifamily residential unit or units upon real estate, and any such loan is secured by a first mortgage or first deed of trust upon such real property, after the effective date of this section and until July 1, 1975, the parties may contract in writing for the payment of interest for such loan of money at a rate not to exceed \$9 upon \$100 for a year and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract, and such maximum rate shall be valid for the term of such contract: Provided, That the parties may contract in writing for the payment of interest for such loan of money at the rate specified in this subsection (c) only if such contract in writing also specifies that there shall be no penalty whatever for prepayment of the loan in whole or in part by cash, a new loan 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, however, That no such contract shall contain an escalation of interest clause which would allow an increase in the rate of interest being charged.

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

(e) In order for the Legislature to determine whether the period of time during which parties may enter into a contract for the payment of the maximum rate of interest authorized in

subsection (c) of this section should be extended beyond June 30, 1975, 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 said subsection (c) to file with him quarterly reports as to the number and amount of loans of the type specified in said subsection (c) made during the preceding quarter, and such quarterly reports shall contain sufficient detail for the Legislature to ascertain whether the authorization of the maximum interest rate provided in said subsection (c) has resulted in the making of more loans of the type specified in said subsection (c). The first such report shall cover the quarter which began on April 1, 1974.

§47-6-5a. Interest charges on loans repayable in installments.

Except in cases where it is otherwise specially provided by law, parties may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instruments evidencing the obligation to repay the loan, for the entire period of the loan and deduct such charge in advance but in no case shall the interest on such a discount loan exceed an annual percentage rate of fifteen percent per annum calculated according to the actuarial method: Provided, That upon prepayment in full of a precomputed loan, the creditor shall rebate that portion of such charge in the manner set forth in section five-d of this article. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable. Nothing herein contained shall affect or restrict the right of the parties under section five of this article to contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed \$8 upon \$100 a year, and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract.

§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.

§47-6-5c. Interest on the forbearance of money.

Wherever any law authorizes any person to loan money at a certain rate of interest it shall also be lawful for such person to charge a like rate of interest for the forbearance of money.

WV Legislature

§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 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.

§47-6-6. Usury and usurious contracts; penalties and forfeitures.

All contracts and assurances made directly or indirectly for the loan or forbearance of money or other thing at a greater rate of interest than is permitted by law shall be void as to all interest provided for in any such contract or assurance, and the borrower or debtor may, in addition, recover from the original lender or creditor or other holder not in due course an amount equal to four times all interest agreed to be paid and in any event a minimum of \$100. Every usurious contract and assurance shall be presumed to have been wilfully made by the lender or creditor, but a bona fide error, innocently made, which causes such contract or assurance to be usurious shall not constitute a violation of this section if the lender or creditor shall rectify the error within fifteen days after receiving notice thereof.

§47-6-7. Pleading usury; reply; evidence; issues; trial; judgment.

Any defendant may plead in general terms that the contract or assurance on which the action is brought was for the payment of interest at a greater rate than is allowed by law, to which plea the plaintiff shall reply generally, but may give in evidence upon the issue made up thereon any matter which could be given in evidence under a special replication. Under the plea aforesaid, the defendant may give in evidence any fact showing, or tending to show, that the contract, or assurance, or other writing upon which the action was brought, was for an usurious consideration. Upon such plea the court shall direct a special issue to try and ascertain: (a) Whether or not the contract, assurance or other writing is usurious; (b) if usurious, to what extent; (c) whether or not interest has been paid on such contract, assurance or other writing, above the legal rate, and if so, to what extent; (d) if a verdict be found for the defendant upon the plea of usury, a judgment shall be rendered for the plaintiff for the principal sum due, with interest at the legal rate, and, if any interest has been paid above the legal rate, the excess over and above that rate, shall be entered as a credit on the sum due; but if nothing be found due after applying all credits and all excesses of interest paid above the legal rate, judgment shall be entered for the defendant; and if the total of such credits and interest paid exceed the principal sum due with legal interest thereon, the defendant shall have judgment for the difference. The provisions of this section shall not apply in any case where suit is brought on a contract, assurance or writing, and the defendant undertakes to show that the contract, assurance or writing is for the payment of interest at a rate which is prohibited by the terms of the following article.

§47-6-8. Remedy in equity; injunction against sale of security.

Any borrower of money or other thing may exhibit a bill in equity against the lender, and compel him to discover upon oath the money or thing really lent, and all bargains, contracts, or shifts relative to such loan, and the interest or consideration of the same; and, if it appear that more than lawful interest was reserved, the lender shall recover his principal money or other thing with six percent interest only, but shall recover no costs. If property has been conveyed to secure the payment of the debt, and a sale thereof is about to be made, or is apprehended, an injunction may be awarded to prevent such sale pending the suit. But nothing in this section shall have the effect of permitting a recovery on any contract which is void under the provisions of the following article.

§47-6-9. Action or suit to recover back usurious interest.

If an excess beyond the lawful interest be paid in any case for the loan or forbearance of money or other thing, the person paying the same may in a suit or action recover the full amount of such payment from the person with whom the contract was made or to whom the assurance was given; and it may be so recovered from such person notwithstanding the payment of the excess be made to his indorsee or assignee.

WV Legislature

§47-6-10. Corporations, partnerships, and limited partnerships not entitled to defense of usury.

No corporation, partnership, limited partnership or limited liability company may interpose the defense of usury in any civil action, nor may any bond, note, debt or contract of a corporation, partnership, limited partnership or limited liability company be set aside, impaired or adjudged invalid by reason of anything contained in the laws prohibiting usury.

WV Legislature

§47-6-11. Certain business debts exempt from usury laws.

No law limiting interest rates or providing for forfeiture, penalty, or other loss or liability because of the rate of interest charged may be applied:

(1) To any debt that is incurred by a loan, installment sale, or other similar transaction, and is incurred primarily for a business purpose; or

(2) To any addition to or refinancing in whole or in part of a debt meeting the requirements of subdivision (1) of this section, providing such addition or refinancing is also primarily for a business purpose: Provided, That if the debt described in subdivision (1) of this section is incurred by a natural person, the provisions of this section shall not apply unless such debt is in a principal amount of \$20,000 or more.

For the purpose of determining the applicability of this section, the term "business" means and includes any activity that is engaged in primarily for the purpose of generating "gross income," as that term is defined in section one, article thirteen, chapter eleven of this code: Provided, That "business" does not mean or include farming or any other agricultural activity engaged in by a producer of agricultural commodities, livestock, or other farm products.