WEST VIRGINIA CODE CHAPTER 47A ARTICLE 1

WV Legislature

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; termination of board.

(a) The Legislature finds and declares that:

(1) Changes in the permissible charges on loans, credit sales or transactions, forbearance or other similar transactions requires specialized knowledge of the needs of the citizens of West Virginia for credit for personal and commercial purposes and knowledge of the availability of such credit at reasonable rates to the citizens of this state while affording a competitive return to persons extending such credit;

(2) Maximum charges on loans, credit sales or transactions, forbearance or other similar transactions executed in this state should be prescribed from time to time to reflect changed economic conditions, current interest rates and finance charges throughout the United States and the availability of credit within the state in order to promote the making of such loans in this state; and

(3) The prescribing of such maximum interest rates and finance charges can be accomplished most effectively and flexibly by a board comprised of the heads of designated government agencies, university schools of business and administration and members of the public.

(b) In view of the foregoing findings, it is the purpose of this section to establish the West Virginia Lending and Credit Rate Board and authorize said board to prescribe semiannually the maximum interest rates and finance charges on loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders, sellers and other creditors to charge up to the maximum interest rates or finance charges so fixed. The rates prescribed by the board are alternative rates and any creditor may utilize either the rate or rates set by the board or any other rate or rates which the creditor is permitted to charge under any other provision of this code.

(c) The West Virginia Lending and Credit Rate Board shall be comprised of:

(1) The director of the Governor's office of Economic and Community Development;

(2) The West Virginia State Treasurer;

(3) The West Virginia Banking Commissioner;

(4) The deans of the schools of business and administration at Marshall University and West Virginia University;

(5) The Director of the Division of Consumer Protection of the Attorney General's Office; and

(6) Three members of the public appointed by the Governor with the advice and consent of

WV Legislature

the Senate. The members of the public shall be appointed for terms of six years each, and until their successors are appointed and qualified; except that of the members first appointed, one shall be appointed for a term of two years, one for a term of four years and one for a term of six years. A member who has served one full term of six years shall be ineligible for appointment for the next succeeding term. Vacancies shall be filled by appointment of the Governor with the advice and consent of the Senate, or if any vacancy remains unfilled for three months, by a majority vote of the board. The West Virginia Banking Commissioner shall serve as chairperson of the board and the rate or rates set by the board shall be determined by a majority vote of those members of the board in attendance at the respective board meeting.

(d) The West Virginia Lending and Credit Rate Board is authorized and directed to meet after December 31, 1983, on the first Tuesday of April and on the first Tuesday of October of each year or more or less frequently as required by the circumstances and to prescribe by order a maximum rate of interest and finance charge for the next succeeding six months, effective on June 1 and on December 1, for any loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section. In fixing said maximum rates of interest and finance charge, the board shall take into consideration prevailing economic conditions, including the monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional commercial short-term loans and notes throughout West Virginia and throughout the United States and on corporate interest-bearing securities of high quality, the availability of credit at reasonable rates to the citizens of this state which afford a competitive return to persons extending credit and other factors as the board may determine.

(e) Any petition proposing a change in the prescribed maximum rates of interest and finance charges must be filed in the office of the Banking Commissioner no later than February 15 in order to be voted on at the board meeting on the first Tuesday of April and no later than August 15 in order to be voted on at the board meeting on the first Tuesday of October. Whenever any change in the prescribed maximum rates of interest and finance charges is proposed the board shall schedule a hearing, at least fifteen days prior to the board meeting at which the proposed rates of interest and finance charge will be voted on by the members of the board, and shall give all interested parties the opportunity to testify and to submit information at such public hearing that is relevant. Notice of the scheduled public hearing shall be issued and disseminated to the public at least twenty days prior to the scheduled date of the hearing.

(f) The board shall prescribe by order issued not later than April 20 and not later than October 20, in accordance with the provisions of subsection (d) of this section, the maximum rates of interest and finance charge for the next succeeding six months for any loan, credit sale, forbearance or similar transaction made pursuant to this section and shall cause the maximum rate of interest and finance charge to be issued and disseminated to the public, to be effective on June 1 and December 1 for the next succeeding six months.

(g) Notwithstanding the other provisions of this chapter, the West Virginia Lending and

WVLegislature

Credit Rate Board shall not be required to meet if no petition has been filed with the board requesting a hearing and interest rates and economic conditions have not changed sufficiently to indicate that any change in the existing rate order would be required, and there are not at least two board members who concur that a meeting of the board is necessary. If the board does not meet, the maximum rates of interest and finance charges prescribed by the board in the existing rate order shall remain in full force and effect until the next time the board meets and prescribes different maximum rates of interest and finance charges.

(h) If circumstances and economic conditions require, the chairperson or any three board members, at any time, may call an emergency interim meeting of the West Virginia Lending and Credit Rate Board, at which time the chairperson shall give ten days' notice of the scheduled emergency meeting to the public. All interested parties shall have the opportunity to be heard and to submit information at the emergency meeting that is relevant. Any and all emergency rate board orders shall be effective within thirty days from the date of the emergency meeting.

(i) Each member of the board, except those whose regular salary is paid by the State of West Virginia, shall receive $75 per diem while actually engaged in the performance of the duties of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party the members shall not be reimbursed by the state. The reimbursement shall be paid out of the special revenue account of the Division of Banking upon a requisition upon the State Auditor, properly certified by the Banking Commissioner.

(j) In setting the maximum interest rates and finance charges, the board may set varying rates based on the type of credit transaction, the term of transaction, the type of debtor, the type of creditor and other factors relevant to determining the rates. In addition, the board may set varying rates for ranges of principal balances within a single category of credit transactions.

WV Legislature

§47A-1-2. Board staff, offices, funding.

Under the direction of the chairperson of the board, the board shall be entitled to utilize the staff of the West Virginia banking department and the offices of the board shall be those of the West Virginia banking department, in order to defray the cost of the board's operations.

On or before the first day of July of each year, the commissioner of banking may charge and collect from each supervised financial organization and supervised lender a yearly fee of $50 and pay it into the special revenue account of the division of banking. The fees paid into this account shall be utilized to pay the costs and expenses of the board and all incidental costs and expenses necessary for its operations.

WV Legislature

§47A-1-3. Report to and review by Legislature; validity of contracts; usury.

On or before January 15, of each calendar year commencing with January 15, 1982, the board shall prepare a report to the Legislature detailing its (i) activities during the prior year including all rules and regulations adopted or modified during the year, (ii) recommendations regarding legislative action on rates of interest, finance charges, and usury in light of the credit needs of West Virginia's residents and businesses, and (iii) plans for staffing and organization of the board. Unless the Legislature or committee of the Legislature delegated to review the report and actions of the board specifically rejects certain portions of the report or certain prior or proposed acts of the board, the board may continue to implement prior actions or implement proposed aspects of its actions which are within the scope of its duties under this article.

Contracts made in good faith in conformity with an order of the board setting the maximum rates of interest and finance charge are valid, notwithstanding that after such contract is made or finance charge is received, such order is amended or rejected by the Legislature. No person who contracts for or receives a finance charge in good faith in conformity with an order of the board is liable in any action or suit for any penalty, forfeiture or recovery based on a charge of usury, notwithstanding that after such contract is made or finance charge is received, such order is amended or rejected by the Legislature.

WV Legislature

§47A-1-4. Applicability of the West Virginia Administrative Procedures Act; legislative and judicial review.

Because of the volatile nature of the credit market and the necessity of prompt action by the board, all orders, rules and regulations, and other procedures adopted by the board relating to setting maximum interest rates and finance charges are specifically exempted from the provisions of the West Virginia Administrative Procedures Act, chapter twenty-nine- a of this code. All other orders, rules and regulations, and other procedures adopted by the board not relating to the setting of maximum rates of interest and finance charges shall be made in accordance with the provisions of the Administrative Procedures Act, chapter twenty-nine-a of this code.

All actions of the board relating to the setting of maximum interest rates and finance charges are subject to review as set forth under section three of this article. In instances when the board exceeds or fails to appropriately exercise its authority under this article to set maximum interest rates and finance charges, the actions of the board may be reviewed initially only in the circuit court of Kanawha County, West Virginia.

WV Legislature