

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

*Committee Substitute for*

HOUSE BILL No. 909

(By Mr. Blevins)



PASSED March 8, 1978

In Effect ninety days from Passage



**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 909**

**(By MR. BLEVINS)**

---

**(Originating in the House Committee on Banking and Insurance)**

---

[Passed March 8, 1978; in effect ninety days from passage.]

---

AN ACT to amend article six, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-b, relating to the maximum permissible interest rate for nonpre-computed loans of money made pursuant to this section secured by mortgages or deeds of trust on real property located in this state; setting forth certain legislative findings and a legislative purpose; authorizing and directing the West Virginia commissioner of banking to prescribe each month a maximum rate of interest for such loans which shall not exceed one and one-half percent above the average of yields on certain long-term United States government bonds; specifying criteria to be considered by the commissioner of banking fixing such maximum rate of interest; authorizing parties to contract in writing for the payment of interest not to exceed such maximum rate; prohibiting penalty upon prepayment and escalation of interest clause; fixing at time of commitment and interest rate on certain loans to be consummated in the future; and directing the commissioner of banking to require banking institutions, savings and

loan associations and certain other financial institutions to file quarterly reports with respect to certain loans of money secured by mortgages or deeds of trust on real property.

*Be it enacted by the Legislature of West Virginia:*

That article six, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-b, to read as follows:

**ARTICLE 6. MONEY AND INTEREST.**

**§47-6-5b. Legislative findings; fixing maximum interest rate on certain loans secured by mortgages or deeds of trust upon real property; authorizing West Virginia commissioner of banking to fix maximum interest rate on such loans from time to time in accordance with specified criteria and subject to limitation; prohibiting penalty upon prepayment and escalation of interest clause; quarterly reports required.**

1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in permissible interest rates on nonprecomput-  
3 ed loans require specialized knowledge of the needs of citizens  
4 of West Virginia for credit for the construction and purchase  
5 of adequate housing and of buildings and improvements for  
6 the establishment and expansion of businesses and agricultural  
7 enterprises situate in the state and of the availability of such  
8 credit at reasonable rates to the citizens of the state of West  
9 Virginia while affording a competitive return to persons ex-  
10 tending such credit;

11 (2) Maximum interest rates on nonprecomputed loans to be  
12 secured by mortgages or deeds of trust on real property located  
13 in this state should be prescribed from time to time to reflect  
14 changed economic conditions, current interest rates throughout  
15 the United States and the availability of credit within the state  
16 in order to promote the making of such loans in this state; and

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

20 (b) In view of the foregoing findings, it is the purpose of  
21 this section to authorize the West Virginia commissioner of  
22 banking to prescribe from time to time the maximum interest  
23 rates on nonprecomputed loans of money made pursuant to  
24 this section to be secured by mortgages or deeds of trust on  
25 real property located in this state, subject to the provisions,  
26 conditions and limitations hereinafter set forth and to autho-  
27 rize lenders to charge up to the maximum interest rates so  
28 fixed.

29 (c) The West Virginia commissioner of banking is hereby  
30 authorized and directed to prescribe each month by order a  
31 maximum rate of interest for the next succeeding month for  
32 any nonprecomputed loan of money made pursuant to this  
33 section to be secured by a mortgage or deed of trust upon real  
34 property located in this state, which maximum rate of interest  
35 shall not exceed the monthly index of long-term United States  
36 government bond yields for the preceding calendar month,  
37 plus an additional one and one-half percent per year  
38 rounded off to the nearest quarter of one percent per year  
39 and such maximum rate shall be valid for the term of the  
40 loan contract. For the purpose of this section, the monthly  
41 index of long-term United States government bond yields  
42 means the monthly unweighted average of the daily unweighted  
43 average of the closing bid yield quotations in the over-the-  
44 counter market for all outstanding United States treasury bond  
45 issues, based on available statistics, which mature in twenty  
46 years or more from the date the index is calculated, but shall  
47 not include such bonds as are redeemable at par for payment  
48 of federal estate taxes. In fixing said maximum rates of inter-  
49 est, the commissioner of banking shall take into consideration  
50 prevailing economic conditions including said monthly index  
51 of long-term United States government bond yields for the  
52 preceding calendar month, yields on conventional home and  
53 multifamily housing mortgage and deed of trust loans through-  
54 out the United States and on corporate interest-bearing securi-  
55 ties of high quality, and the availability of credit at reasonable  
56 rates to the citizens of this state which will afford a competi-  
57 tive return to persons extending such credit.

58 (d) On or before the twentieth day of each month the West

59 Virginia banking commissioner shall ascertain the monthly  
60 index of long-term United States government bond yields for  
61 the preceding calendar month and shall then prescribe by order  
62 in accordance with subsection (c) of this section the maximum  
63 rate of interest for the next succeeding month for any non-  
64 precomputed loan of money made pursuant to this section to  
65 be secured by a mortgage or deed of trust upon real property  
66 located in this state, and shall cause such maximum rate of  
67 interest to be issued to the public, such maximum rate of  
68 interest to be effective on the first day of the next succeeding  
69 month.

70 (e) Notwithstanding any other provisions of this section, the  
71 commissioner of banking shall on or before the effective date  
72 of this section prescribe by order the maximum rate of  
73 interest for any nonprecomputed loan of money pursuant  
74 to this section to be secured by a mortgage or deed of  
75 trust upon real property located in this state for the month  
76 in which this section becomes effective and shall at the  
77 earliest possible date prescribe the maximum rate of in-  
78 terest for any such loan for the next succeeding month, and  
79 shall issue such maximum rates of interest to the public;  
80 and the state commissioner of banking shall thereafter deter-  
81 mine and issue the maximum rate of interest for any such loan  
82 in conformity with the other provisions of this section.

83 (f) As an alternative to the interest rate authorized by any  
84 other provision of this code, where a nonprecomputed loan of  
85 money is secured by a mortgage or deed of trust upon real  
86 property located in this state, the parties may, after the effec-  
87 tive date of this section, contract in writing for the payment of  
88 interest for such loan of money at a rate, including points  
89 expressed as a percentage of the loan divided by the number  
90 of years of the loan contract, not to exceed the then effective  
91 maximum rate prescribed by the state banking commissioner  
92 pursuant to the provisions of this section and such rate shall  
93 be valid for the term of such contract: *Provided*, That the  
94 points charged shall not exceed one percent of the original  
95 bona fide principal amount of the loan, except that in the  
96 case of a construction loan, the points charged shall not  
97 exceed two percent of the original bona fide principal amount

98 of the loan: *Provided, however,* That the parties may contract  
99 in writing for the payment of interest for such loan of money  
100 at the rate specified in this subsection (f) only if such contract  
101 in writing also specifies that there shall be no penalty whatever  
102 for prepayment of the loan in whole or in part by cash, a new  
103 loan or otherwise, and such contract provision prohibiting  
104 any such penalty shall govern and control notwithstanding any  
105 other provision of this code to the contrary, whether such  
106 other provision was enacted before or after the enactment of  
107 this section: *Provided further,* That no such contract shall  
108 contain an escalation of interest clause which would allow an  
109 increase in the rate of interest being charged.

110 (g) For the purpose of subsection (f) of this section, the  
111 term "points" is defined as the amount of money, or other  
112 consideration, received by the lender, from whatever source,  
113 as a consideration for making the loan and not otherwise ex-  
114 pressly permitted by statute.

115 (h) A commitment to make a nonprecomputed loan of  
116 money pursuant to this section to be secured by a mortgage or  
117 deed of trust upon real property located in this state which  
118 provides for consummation within some future time may be  
119 consummated pursuant to the provisions, including interest  
120 rate, of such commitment notwithstanding the fact that the  
121 maximum rate of interest at the time the mortgage or deed of  
122 trust is entered into is less than the commitment rate of inter-  
123 est: *Provided,* That the commitment rate of interest does not  
124 exceed the maximum interest rate in effect on the date the  
125 commitment was issued: *Provided, however,* That the com-  
126 mitment when agreed to by the borrower constitutes a legally  
127 binding obligation on the part of the lender to make such a  
128 loan within a specified time period in the future at a rate of  
129 interest not exceeding the maximum rate of interest effective  
130 as of the date of commitment, and the commitment does not  
131 include any condition for increase of the interest rate at the  
132 time of loan consummation even though the maximum rate of  
133 interest is then higher.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*James L. Davis*  
Chairman Senate Committee

*Lawrence C. Thurston Jr.*  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*J. C. Sheehan Jr.*  
Clerk of the Senate

*V. A. Blankenship*  
Clerk of the House of Delegates

*W. T. Battle*  
President of the Senate

*Donald L. Topp*  
Speaker House of Delegates

The within *is approved* this the *27*  
day of *March*, 1978.

*John D. Rhyne*  
Governor

APPROVED AND SIGNED BY THE GOVERNOR

Date March 27, 1978

Time 8:45 A.M.

RECEIVED  
MAR 11 1 40 PM '78  
OFFICE OF THE GOVERNOR

RECEIVED

78 MAR 29 P 3: 41

OFFICE  
SECY. OF STATE