WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

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ENROLLED
Committee Substitute for
HOUSE BILL No. 909

(By Mr. Blevins)

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PASSED March 8, 1978

In Effect ninety days from Passage

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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 nonprecomputed 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.

(a) The Legislature hereby finds and declares that:

(1) Changes in permissible interest rates on nonprecomputed loans require specialized knowledge of the needs of citizens of West Virginia 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 situate in the state and of the availability of such credit at reasonable rates to the citizens of the state of West Virginia while affording a competitive return to persons extending such credit;

(2) Maximum interest rates on nonprecomputed loans to be secured by mortgages or deeds of trust on real property located in this state should be prescribed from time to time to reflect changed economic conditions, current interest rates 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 can be accomplished effectively and flexibly by the West Virginia commissioner of banking.
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 of money made pursuant to this section to be secured by mortgages or deeds of trust on real property located in this state, subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders to charge up to the maximum interest rates so fixed.

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 of money made pursuant to this section to be secured by a mortgage or deed of trust upon real property located in this state, 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 Unitd States and on corporate interest-bearing securities of high quality, and the availability of credit at reasonable rates to the citizens of this state which will afford a competitive return to persons extending such credit.

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 non-
precomputed loan of money made pursuant to this section to
be secured by a mortgage or deed of trust upon real property
located in this state, 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 of money pursuant
to this section to be secured by a mortgage or deed of
trust upon real property located in this state 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 for the next succeeding month, and
shall issue such maximum rates of interest to the public;
and the state commissioner of banking shall thereafter deter-
mine and issue the maximum rate of interest for any such loan
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 of
money is secured by a mortgage or deed of trust upon real
property located in this state, the parties may, after the effec-
tive date of this section, contract in writing for the payment of
interest for such loan of money at a rate, including points
expressed as a percentage of the loan divided by the number
of years of the loan 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, except that in the
case of a construction loan, the points charged shall not
exceed two percent of the original bona fide principal amount
Provided, however, That the parties may contract in writing for the payment of interest for such loan 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 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 further, That no such contract shall contain an escalation of interest clause which would allow an increase in the rate of interest being charged.

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, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

A commitment to make a nonprecomputed loan of money pursuant to this section to be secured by a mortgage or deed of trust upon real property located in this state 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 to make such a loan 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 loan consummation even though the maximum rate of interest is then higher.

Nothing contained in this section shall prohibit the parties to any loan transaction from contracting for a rate of 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

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within _____________ this the _____________ day of _____________, 1978.

Governor