WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

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ENROLLED
Committee Substitute for
SENATE BILL NO. 59

(By Mr.
[Signature]

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PASSED February 27, 1980

In Effect from Passage
AN ACT to amend and reenact section five-b, article six, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article six by adding thereto a new section, designated section five-c, relating to money and interest; and including forbearances of money in fixing maximum interest rate on certain loans secured by mortgages or deeds of trust upon real property; eliminating the requirement that the real property covered by such mortgages or deeds of trust be located in this state; interest on the forbearance of money.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. MONEY AND INTEREST.

§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.

1. (a) The Legislature hereby finds and declares that:
2. (1) Changes in permissible interest rates on non-
precomputed 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
43 government bond yields means the monthly unweighted
44 average of the daily unweighted average of the closing
45 bid yield quotations in the over-the-counter market for
46 all outstanding United States treasury bond issues, based
47 on available statistics, which mature in twenty years
48 or more from the date the index is calculated, but shall
49 not include such bonds as are redeemable at par for
50 payment of federal estate taxes. In fixing said maximum
51 rates of interest, the commissioner of banking shall take
52 into consideration prevailing economic conditions in-
53 cluding said monthly index of long-term United States
54 government bond yields for the preceding calendar
55 month, yields on conventional home and multifamily
56 housing mortgage and deed of trust loans throughout
57 the United States and on corporate interest-bearing
58 securities of high quality, and the availability of credit
59 at reasonable rates which will afford a competitive re-
60 turn to persons extending such credit.
61 (d) On or before the twentieth day of each month
62 the West Virginia banking commissioner shall ascertain
63 the monthly index of long-term United States govern-
64 ment bond yields for the preceding calendar month and
65 shall then prescribe by order in accordance with sub-
66 section (c) of this section the maximum rate of interest
67 for the next succeeding month for any nonprecomputed
68 loan or forbearance of money made pursuant to this
69 section to be secured by a mortgage or deed of trust
70 upon real property, and shall cause such maximum rate
71 of interest to be issued to the public, such maximum
72 rate of interest to be effective on the first day of the
73 next succeeding month.
74 (e) Notwithstanding any other provisions of this
75 section, the commissioner of banking shall on or before
76 the effective date of this section prescribe by order the
77 maximum rate of interest for any nonprecomputed loan
78 or forbearance of money pursuant to this section to be
79 secured by a mortgage or deed of trust upon real
80 property for the month in which this section becomes
81 effective and shall at the earliest possible date prescribe
82 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 for-
bearer from whatever source, as a consideration for
making the loan or forbearance of money and not other-
wise 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 prop-
erty which provides for consummation within some future
time may be consummated pursuant to the provisions,
including interest rate, of such commitment notwith-
standing 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 con-
istitutes a legally binding obligation on the part of the
lender or forbearer to make such a loan or forbear-
ance 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 consum-
umation 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 insti-
tutions 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 con-
tain 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Colburn E. Douthat
Chairman House Committee

 Originated in the Senate.

To take effect from passage.

John E. Williams
Clerk of the Senate

W.A. Blankenship
Clerk of the House of Delegates

W.C. Battle
President of the Senate

J.R. Lodge
Speaker House of Delegates

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The within ________ this the ________

day of ________ 1980.

John D. Challenge
Governor