

Date 3-5-80

Time 3:30 p.m.

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980



ENROLLED

Committee Substitute for

SENATE BILL NO. 59

(By Mr. *Moreland, original sponsor*)



PASSED February 27, 1980

In Effect from Passage



Mo: 59

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 59

(MR. MORELAND, *original sponsor*)

[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-

3 precomputed loans or forbearances of money require
4 specialized knowledge of the needs for credit for the
5 construction and purchase of adequate housing and of
6 buildings and improvements for the establishment and
7 expansion of businesses and agricultural enterprises and
8 of the availability of such credit at reasonable rates
9 while affording a competitive return to persons extend-
10 ing such credit;

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

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

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

30 (c) The West Virginia commissioner of banking is
31 hereby authorized and directed to prescribe each month
32 by order a maximum rate of interest for the next
33 succeeding month for any nonprecomputed loan or
34 forbearance of money made pursuant to this section to
35 be secured by a mortgage or deed of trust upon real
36 property, which maximum rate of interest shall not
37 exceed the monthly index of long-term United States
38 government bond yields for the preceding calendar
39 month, plus an additional one and one-half percent per
40 year rounded off to the nearest quarter of one percent
41 per year and such maximum rate shall be valid for the
42 term of the loan contract. For the purpose of this

43 section, the monthly index of long-term United States
44 government bond yields means the monthly unweighted
45 average of the daily unweighted average of the closing
46 bid yield quotations in the over-the-counter market for
47 all outstanding United States treasury bond issues, based
48 on available statistics, which mature in twenty years
49 or more from the date the index is calculated, but shall
50 not include such bonds as are redeemable at par for
51 payment of federal estate taxes. In fixing said maximum
52 rates of interest, the commissioner of banking shall take
53 into consideration prevailing economic conditions in-
54 cluding said monthly index of long-term United States
55 government bond yields for the preceding calendar
56 month, yields on conventional home and multifamily
57 housing mortgage and deed of trust loans throughout
58 the United States and on corporate interest-bearing
59 securities of high quality, and the availability of credit
60 at reasonable rates which will afford a competitive re-
61 turn to persons extending such credit.

62 (d) On or before the twentieth day of each month
63 the West Virginia banking commissioner shall ascertain
64 the monthly index of long-term United States govern-
65 ment bond yields for the preceding calendar month and
66 shall then prescribe by order in accordance with sub-
67 section (c) of this section the maximum rate of interest
68 for the next succeeding month for any nonprecomputed
69 loan or forbearance of money made pursuant to this
70 section to be secured by a mortgage or deed of trust
71 upon real property, and shall cause such maximum rate
72 of interest to be issued to the public, such maximum
73 rate of interest to be effective on the first day of the
74 next succeeding month.

75 (e) Notwithstanding any other provisions of this
76 section, the commissioner of banking shall on or before
77 the effective date of this section prescribe by order the
78 maximum rate of interest for any nonprecomputed loan
79 or forbearance of money pursuant to this section to be
80 secured by a mortgage or deed of trust upon real
81 property for the month in which this section becomes
82 effective and shall at the earliest possible date prescribe
83 the maximum rate of interest for any such loan or

84 forbearance of money for the next succeeding month,
85 and shall issue such maximum rates of interest to the
86 public; and the state commissioner of banking shall
87 thereafter determine and issue the maximum rate of
88 interest for any such loan or forbearance of money in
89 conformity with the other provisions of this section.

90 (f) As an alternative to the interest rate authorized
91 by any other provision of this code, where a nonpre-
92 computed loan or forbearance of money is secured by a
93 mortgage or deed of trust upon real property, the parties
94 may, after the effective date of this section, contract in
95 writing for the payment of interest for such loan or
96 forbearance of money at a rate, including points ex-
97 pressed as a percentage of the loan or forbearance
98 divided by the number of years of the loan or forbear-
99 ance contract, not to exceed the then effective maximum
100 rate prescribed by the state banking commissioner pur-
101 suant to the provisions of this section and such rate
102 shall be valid for the term of such contract: *Provided,*
103 That the points charged shall not exceed one percent
104 of the original bona fide principal amount of the loan
105 or forbearance of money, except that in the case of a
106 construction loan, the points charged shall not exceed
107 two percent of the original bona fide principal amount
108 of the loan: *Provided, however,* That the parties may
109 contract in writing for the payment of interest for such
110 loan or forbearance of money at the rate specified in
111 this subsection (f) only if such contract in writing also
112 specifies that there shall be no penalty whatever for
113 prepayment of the loan or forbearance of money in
114 whole or in part by cash, a new loan, forbearance
115 of money or otherwise, and such contract provision
116 prohibiting any such penalty shall govern and control
117 notwithstanding any other provision of this code to the
118 contrary, whether such other provision was enacted be-
119 fore or after the enactment of this section: *Provided*
120 *further,* That no such contract shall contain an escala-
121 tion of interest clause which would allow an increase
122 in the rate of interest being charged.

123 (g) For the purpose of subsection (f) of this section,
124 the term "points" is defined as the amount of money,

125 or other consideration, received by the lender or for-
126 bearer from whatever source, as a consideration for
127 making the loan or forbearance of money and not other-
128 wise expressly permitted by statute.

129 (h) A commitment to make a nonprecomputed loan
130 or forbearance of money pursuant to this section to be
131 secured by a mortgage or deed of trust upon real property
132 which provides for consummation within some future
133 time may be consummated pursuant to the provisions,
134 including interest rate, of such commitment notwith-
135 standing the fact that the maximum rate of interest at
136 the time the mortgage or deed of trust is entered into
137 is less than the commitment rate of interest: *Provided*,
138 That the commitment rate of interest does not exceed
139 the maximum interest rate in effect on the date the
140 commitment was issued: *Provided, however*, That the
141 commitment when agreed to by the borrower con-
142 stitutes a legally binding obligation on the part of the
143 lender or forbearer to make such a loan or forbear-
144 ance of money within a specified time period in the
145 future at a rate of interest not exceeding the maximum
146 rate of interest effective as of the date of commitment,
147 and the commitment does not include any condition for
148 increase of the interest rate at the time of the consum-
149 mation of the loan or forbearance of money even though
150 the maximum rate of interest is then higher.

151 (i) Nothing contained in this section shall prohibit
152 the parties to any loan transaction or forbearance from
153 contracting for a rate of interest authorized by any
154 other provision of this code.

155 (j) The commissioner of banking shall promulgate
156 rules and regulations requiring all banking institutions,
157 savings and loan associations and other financial insti-
158 tutions making loans in this state of the type specified
159 in this section to file with him quarterly reports as to
160 the number and amount of such loans made during the
161 preceding quarter, and such quarterly reports shall con-
162 tain sufficient detail to ascertain whether the provisions
163 of this section have promoted the making of such loans.

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

1 Wherever any law authorizes any person to loan money
2 at a certain rate of interest it shall also be lawful for
3 such person to charge a like rate of interest for the for-
4 bearance of money.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chubbuck
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Todd C. Willis
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. D. B. Nelson
President of the Senate

Clide M. Lee
Speaker House of Delegates

The within approved this the 5
day of March, 1980.

John R. Ruppel
Governor



RECEIVED
FEB 29 11 32 AM '80
OFFICE OF THE GOVERNOR

OFFICE
GOV. OF STATE

MAR 6 AID: 31

RECEIVED