WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
Committee Substitute
for SENATE BILL NO. 559

(By Mr. and Mr. Rogers)

PASSED April 10, 1981
In Effect from Passage
AN ACT to amend and reenact section eleven, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirty, article four, chapter thirty-one-a of said code; to amend and reenact section one hundred two, article one, chapter forty-six-a of said code; to further amend said chapter forty-six-a by amending and reenacting sections one hundred one, one hundred three, one hundred four, one hundred six and one hundred eleven, article three; to further amend and reenact sections one hundred seven and one hundred eleven, article four, of said chapter forty-six-a; and to amend and reenact section five-a, article six, chapter forty-seven; and to further amend said article six by adding thereto a new section, designated section five-d; and to further amend said code by adding thereto a new chapter, designated chapter forty-seven-a, all relating to maximum interest rates and finance charges; increasing the maximum allowable finance charge for certain industrial loan company loans, consumer credit sales, motor vehicle and motor home sales and loans involving a specified quantity of real estate, revolving charge
accounts, revolving loan accounts, lenders other than supervised lenders, and supervised lenders, all of which increased maximum allowable finance charges terminate after the first day of July, one thousand nine hundred eighty-two; eliminating the use of the sum of the digits method, commonly referred to as the “Rule of 78,” in the computation of rebates upon prepayment of installment loans payable over more than thirty-six months; and providing for determination of rebates upon prepayment of loans payable over thirty-six months or more by applying the rate of finance charge required to be disclosed in the transaction, according to the actuarial method; definition of “supervised loan”; establishing the West Virginia lending and credit rate board; authorizing said board to prescribe quarterly alternative maximum interest rates or finance charges on loans, credit sales or transactions, forbearances or other similar transactions, and providing for compensation for its members; requiring quarterly reports; specifying factors to be considered in setting rates; allowing different rates within ranges of balances; staffing of and offices for the West Virginia lending and credit rate board; creation of revolving fund and assessment of fee for revolving fund for board operations; requiring report to and review by Legislature; validity of contracts, and usury; applicability of the West Virginia Administrative Procedures Act; legislative and judicial review.

Be it enacted by the Legislature of West Virginia:

That section eleven, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirty, article four, chapter thirty-one-a of said code be amended and reenacted; that section one hundred two, article one, chapter forty-six-a of said code be amended and reenacted; that said chapter forty-six-a be amended by amending and reenacting sections one hundred one, one hundred three, one hundred four, one hundred six and one hundred eleven, article three; that said chapter forty-six-a be further amended by amending and reenacting sections one hundred seven and one hundred eleven, article four; that section five-a, article six, chapter forty-seven, be amended and reenacted; that said article six, chapter forty-seven, be further amended by adding thereto a new section, designated section five-d; and that said code be further amended by adding thereto a new chapter, designated chapter forty-seven-a, all to read as follows:
CHAPTER 31. CORPORATIONS.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-11. Powers of industrial loan companies; limitation of powers.
1 (a) In addition to the general powers conferred upon corporations by the laws of this state, each industrial loan company shall have power to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers as shall be necessary to:
2 (1) Lend money to any person, firm or corporation, secured by the obligation of such person, firm or corporation, or otherwise; and, in addition, to receive and require uniform periodical installments for the repayment of the loan;
3 (2) Sell or offer for sale its secured or unsecured evidences or certificates of indebtedness, and such secured or unsecured evidences or certificates of indebtedness are hereby defined as money for the purpose of taxation, but every such evidence or certificate of indebtedness shall state, on its face, in a clearly visible manner approved by the commissioner, that such evidence or certificate of indebtedness is not federally insured;
4 (3) Buy and sell bonds or choses in action of any person, firm or corporation;
5 (4) Impose a charge of five cents for each default in the payment of one dollar, or fraction thereof, at the time at which any periodical installment for the repayment of a loan becomes due;
6 (5) Demand and receive for loans or for notes, bills or evidences of debt discounted or purchased, such rate of interest as may be agreed upon by the parties, not exceeding the lawful rate of interest, and it shall be lawful to receive such interest in advance. As an alternative to the loan finance charge allowed by this subsection, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, an industrial loan company may contract for and receive a loan finance charge not exceeding twenty-one percent per annum calculated according to the actuarial method on that part of the unpaid balance of the principal which is five thousand dollars or less.
7 This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of
add-on, discount or otherwise, so long as the rate of loan
finance charge does not exceed that permitted by this section.

(6) Charge for a loan made pursuant to this section, one
dollar for each fifty dollars, or fraction thereof, loaned, for
expenses including any examination or investigation of the
character and circumstances of the borrower, comaker or
surety, and the drawing and taking the acknowledgement of
necessary papers, or other expenses, incurred in making the
loan. No additional charge shall be made except to reimburse
the corporation for money actually expended for additional
service actually rendered the borrower. No charge shall be
collected unless a loan shall have been made as the result of
such examination or investigation;

(7) Purchase, hold and convey real estate as follows:

(A) Such as shall be necessary for the convenient
transaction of its business, including with its office other
apartments or offices to rent as a source of income, which
investment shall not exceed twenty-five percent of its paid-in
capital stock and surplus;

(B) Such as is mortgaged to it in good faith by way of
security for loans made by or money due to such industrial
loan company;

(C) Such as is conveyed to it in satisfaction of debts
previously contracted in the course of its dealings;

(D) Such as is acquired by sale on execution or judgment
or decree of any court in its favor.

Industrial loan companies shall not purchase, hold or
convey any real estate in any other case or for any other
purpose whatever. Real estate shall be conveyed only by
authority of the board of directors of any such industrial loan
company. No real estate acquired in the cases contemplated
in paragraphs (B), (C) and (D) of subdivision (7) shall be held
for a longer time than five years, unless such period shall be
extended by the commissioner of banking.

(b) An industrial loan company shall not:

(1) Accept or receive deposits;

(2) Make any loan under the provisions of this article for a
longer period than two years from the date thereof, except
upon express authorization of the board of directors of such
company;

(3) Hold at any one time the primary obligation or
obligations of any one person, firm or corporation, for more
than ten percent of the amount of the paid-up capital and surplus of such industrial loan company;

(4) Hold at any one time the obligation or obligations of persons, firms or corporations purchased from any person, firm or corporation in excess of twenty percent of the aggregate paid-up capital and surplus of such industrial loan company;

(5) Make any loan or discount on the security of its own capital stock (controlling and voting stock, if there be more than one class), unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within ninety days from the time of its purchase or acquisition;

(6) Have outstanding at any time its evidences or certificates of indebtedness, in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital (voting and controlling stock) and surplus;

(7) Deposit any of its funds with any other moneyed corporation unless such corporation has been designated as such depository by a vote of the majority of the board of directors;

(8) Pledge or hypothecate any of its securities or notes owned by it to any creditor, except that such companies shall have the power to rediscount or to borrow money from any source in addition to selling its evidences or certificates of indebtedness, but the aggregate amount of such rediscounting and borrowing shall at no time exceed the sum total of the capital, surplus and reserve funds of such company, and the security so pledged therefor shall not exceed two times the amount borrowed and rediscounted;

(9) Pay any fees, bonuses, commissions, rewards, or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used; nor shall any industrial loan company under this article enter into any contract for such purpose or purposes, or for the purpose of giving to or vesting in any other corporation any power or authority over the organization or management of corporations under this article.
CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.

1 In addition to the interest rate provided in article six of chapter forty-seven of this code and elsewhere by law, a banking institution may charge and collect a reasonable amount to cover the expenses incurred in procuring reports and information respecting loans and the value of and title to property offered as security therefor, and a charge of three dollars may be made for any loan or forbearance of money or other thing where the interest at the rate of six percent per annum would not amount to that sum and the same shall not be a usurious charge or rate of interest. Except in cases where it is otherwise specially provided by law, any banking institution authorized to do, and doing business in this State, may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instruments evidencing the obligation to repay the loan, for the entire period of the loan, and deduct such charge in advance but in no case shall the interest on such a discount loan exceed an annual percentage rate of fifteen percent per annum calculated according to the actuarial method: Provided, That upon prepayment in full of a precomputed loan, the bank shall rebate the unearned portion of such charge as specified in section five-d, article six, chapter forty-seven of this code. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


1 In addition to definitions appearing in subsequent articles, in this chapter:
(1) "Actuarial method" means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. A "consumer credit agreement" is an agreement where credit is granted.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Amount financed" means the total of the following items to the extent that payment is deferred:
   (a) The cash price of the goods, services or interest in land, less the amount of any down payment whether made in cash or in property traded in;
   (b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and
   (c) If not included in the cash price:
      (i) Any applicable sales, use, privilege, excise or documentary stamp taxes;
      (ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and
      (iii) Additional charges permitted by this chapter.

(5) "Average daily balance" in a billing cycle for which a sales finance charge or loan finance charge is made is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and
(6) The “cash price” of goods, services or an interest in land means the price at which the goods, services or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (a) applicable sales, use, privilege, and excise and documentary stamp taxes, (b) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations and improvements, and (c) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

(7) “Closing costs” with respect to a debt secured by an interest in land include:

(a) Fees or premiums for title examination, title insurance or similar purposes including surveys;

(b) Fees for preparation of a deed, deed of trust, mortgage, settlement statement or other documents;

(c) Escrows for future payments of taxes and insurance;

(d) Official fees and fees for notarizing deeds and other documents;

(e) Appraisal fees; and

(f) Credit reports.

(8) “Code” means the official code of West Virginia, one thousand nine hundred thirty-one, as amended.

(9) “Commissioner” means the commissioner of banking of West Virginia.

(10) “Conspicuous”: A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(11) “Consumer” means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan.

(12) (a) Except as provided in paragraph (b), “consumer credit sale” is a sale of goods, services or an interest in land in which:

(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

(ii) The buyer is a person other than an organization;

(iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;
(iv) Either the debt is payable in installments or a sales
finance charge is made; and
(v) With respect to a sale of goods or services, the amount
financed does not exceed twenty-five thousand dollars.
(b) "Consumer credit sale" does not include a sale in
which the seller allows the buyer to purchase goods or
services pursuant to a lender credit card or similar
arrangement.
(13) (a) "Consumer lease" means a lease of goods:
(i) Which a lessor regularly engaged in the business of
leasing makes to a person, other than an organization, who
takes under the lease primarily for a personal, family,
household or agricultural purpose;
(ii) In which the amount payable under the lease does not
exceed twenty-five thousand dollars; and
(iii) Which is for a term exceeding four months.
(b) "Consumer lease" does not include a lease made
pursuant to a lender credit card or similar arrangement.
(14) "Consumer loan" is a loan made by a person regularly
engaged in the business of making loans in which:
(a) The debtor is a person other than an organization;
(b) The debt is incurred primarily for a personal, family,
household or agricultural purpose;
(c) Either the debt is payable in installments or a loan
finance charge is made; and
(d) Either the principal does not exceed twenty-five
thousand dollars or the debt is secured by an interest in land.
(15) "Credit" means the privilege granted by a creditor to a
debtor to defer payment of debt or to incur debt and defer its
payment.
(16) "Earnings" means compensation paid or payable to
an individual or for his account for personal services
rendered or to be rendered by him, whether denominated as
wages, salary, commission, bonus or otherwise, and includes
periodic payments pursuant to a pension, retirement or
disability program.
(17) "Federal Consumer Credit Protection Act" means the
"Consumer Credit Protection Act" (Public Law 90-321; 82
Stat. 146), as amended, and includes regulations issued
pursuant to that act.
(18) "Goods" includes goods not in existence at the time
the transaction is entered into and gift and merchandise
certificates, but excludes money, chattel paper, documents of title and instruments.

(19) "Home solicitation sale" means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller's business establishment at a fixed location and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end-credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller's business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the Federal Truth in Lending Act (being Title I of the Federal Consumer Credit Protection Act). A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for in whole or in part by a consumer loan in which the creditor is subject to claims and defenses arising from the sale.

(20) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender.

(21) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

(a) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;
(b) By the lender's payment or agreement to pay the consumer's obligations; or
(c) By the lender's purchase from the obligee of the consumer's obligations.

(22) "Loan" includes:
(a) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer other than debts created pursuant to a seller credit card;
(b) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;

c) The creation of debt pursuant to a lender credit card or similar arrangement; and

d) The forbearance of debt arising from a loan.

(23) (a) "Loan finance charge" means the sum of (i) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: Interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the consumer's default or other credit loss; and (ii) charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges.

(b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

(24) "Merchandise certificate" or "gift certificate" means a writing issued by a seller or issuer of a seller credit card, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(25) "Official fees" means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit sale or consumer loan; or

(b) Premiums payable for insurance or fees escrowed in a special account for the purpose of funding self-insurance or its equivalent in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease or loan, if such premium or fee does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.
(26) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(27) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale or consumer loan is "Payable in installments."

(28) "Person" or "party" includes a natural person or an individual, and an organization.

(29) "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister or sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, or (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(30) "Precomputed loan." A loan, refinancing or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(31) "Precomputed sale." A sale, refinancing or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the sales finance charge computed in advance.
(32) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(33) "Principal" of a loan means the total of:

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;

(b) The amount of any discount excluded from the loan finance charge; and

(c) To the extent that payment is deferred:

(i) Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) Additional charges permitted by this chapter.

(34) "Revolving charge account" means an agreement between a seller and a buyer by which (a) the buyer may purchase goods or services on credit or a seller credit card, (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account, (c) a sales finance charge if made is not precomputed but is computed periodically on the balances of the account from time to time, and (d) there is the privilege of paying the balances in installments.

(35) "Revolving loan account" means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which (a) the lender may permit the consumer to obtain loans from time to time, (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer's account from time to time, and (d) there is the privilege of paying the balances in installments.

(36) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.
(37) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(38) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(39) "Sales finance charge" means the sum of (a) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit, including any of the following types of charges which are applicable: Time-price differential, however denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss, and (b) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable; unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(40) Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller.

(41) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.

(42) "Services" includes (a) work, labor and other personal services, (b) privileges with respect to transportation, use of vehicles, hotel and restaurant accommodations, education,
entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

(43) "Supervised financial organization" means a person, other than a supervised lender or an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the person to make consumer loans; and

(b) Subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

(44) "Supervised lender" means a person authorized to make or take assignments of supervised loans.

(45) "Supervised loan" means a consumer loan made by other than a supervised financial organization, including a loan made pursuant to a revolving loan account, where the principal does not exceed two thousand dollars, and in which the rate of the loan finance charge exceeds eight percent per year as determined according to the actuarial method.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-101. Sales finance charge for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts; subject to exceptions as to motor vehicles and mobile homes and a specified quantity of real estate involved with consumer credit sales of mobile homes.

(1) With respect to a consumer credit sale, other than a sale of real estate subject to the provisions of section one hundred two of this article or a sale pursuant to a revolving charge account, a seller may contract for and receive a sales finance charge not exceeding eighteen percent per year on that part of the unpaid balance of the amount financed which is fifteen hundred dollars or less and twelve percent per year on that part of the unpaid balance of the amount financed which is in excess of fifteen hundred dollars calculated according to the actuarial method.

(2) This section does not limit or restrict the manner of calculating the sales finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the sales
14 finance charge does not exceed that permitted by this section.  
15 If the sale is precomputed:  
16 (a) The sales finance charge may be calculated on the  
17 assumption that all scheduled payments will be made when  
18 due; and  
19 (b) The effect of prepayment, refinancing or consolidation  
20 is governed by the provisions on rebate upon prepayment,  
21 refinancing or consolidation, contained in section one  
22 hundred eleven of this article.  
23 (3) For the purposes of this section, the term of a sale  
24 agreement commences on the date the credit is granted or, if  
25 goods are delivered or services performed ten days or more  
26 after that date, with the date of commencement of delivery or  
27 performance. Differences in the lengths of months are  
28 disregarded and a day may be counted as one thirtieth of a  
29 month. Subject to classifications and differentiations the  
30 seller may reasonably establish, a part of a month in excess of  
31 fifteen days may be treated as a full month if periods of fifteen  
32 days or less are disregarded and if that procedure is not  
33 consistently used to obtain a greater yield than would  
34 otherwise be permitted.  
35 (4) Subject to classifications and differentiations the seller  
36 may reasonably establish, he may make the same sales  
37 finance charge on all amounts financed within a specified  
38 range. A sales finance charge so made does not violate  
39 subsection (1) if:  
40 (a) When applied to the median amount within each range,  
41 it does not exceed the maximum permitted by subsection (1);  
42 and  
43 (b) When applied to the lowest amount within each range,  
44 it does not produce a rate of sales finance charge exceeding  
45 the rate calculated according to subdivision (a) by more than  
46 eight percent of the rate calculated according to subdivision  
47 (a).  
48 (5) Notwithstanding subsection (1), the seller may contract  
49 for and receive a minimum sales finance charge of not more  
50 than five dollars when the amount financed does not exceed  
51 seventy-five dollars, or seven dollars and fifty cents when the  
52 amount financed exceeds seventy-five dollars.  
53 (6) Notwithstanding any provision of this section to the  
54 contrary, with respect to a consumer credit sale involving a  
55 motor vehicle or a mobile home or a consumer credit sale  
56 from the same seller of both a mobile home and the real estate
upon which such mobile home is or will be located, or a consumer credit sale of a mobile home where a security interest in real estate owned by the buyer is given to the seller as collateral, a seller may from the effective date of this section until and including the first day of July one thousand nine hundred eighty-two contract for and receive a sales finance charge not exceeding eighteen percent per year on the unpaid balance calculated according to the actuarial method: Provided, That the quantity of real estate involved with the consumer credit sale of a mobile home upon which such finance charge is contracted for and received shall not exceed one acre.

(7) As an alternative to the loan finance charge allowed by section one hundred one, subsection (1) of this article, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, with respect to a consumer credit sale, other than a sale of real estate subject to the provisions of section one hundred two of this article or a sale pursuant to a revolving charge account, a seller may contract for and receive a sales finance charge not exceeding eighteen percent per year on the unpaid balance of the amount financed calculated according to the actuarial method.

§46A-3-103. Sales finance charge for revolving charge accounts other than certain sales of real estate.

(1) With respect to a consumer credit sale made pursuant to a revolving charge account, other than sales of real estate pursuant to section one hundred two of this article, the parties may contract for the payment by the buyer of a sales finance charge not exceeding that permitted in this section.

(2) A sales finance charge may be made in each billing cycle which is a percentage of an amount not exceeding the greatest of:

(a) The average daily balance of the account, or
(b) The balance of the account at the beginning of the first day of the billing cycle, less all payments on and credits to such account during such billing cycle and excluding all charges to such account during such billing cycle, or
(c) The median amount within a specified range within which the average daily balance of the account or the balance of the account at the beginning of the first day of the billing cycle, less all payments on and credits to such account during such billing cycle and excluding all charges to such account.
during such billing cycle, is included. A charge may be made
pursuant to this paragraph only if the seller, subject to
classifications and differentiations he may reasonably
establish, makes the same charge on all balances within the
specified range and if the percentage when applied to the
median amount within the range does not produce a charge
exceeding the charge resulting from applying that percentage
to the lowest amount within the range by more than eight
percent of the charge on the median amount.

(3) If the billing cycle is monthly, the sales finance charge
may not exceed one and one-half percent on the first seven
hundred fifty dollars of unpaid balance and one percent on
the unpaid balance in excess of seven hundred fifty dollars. If
the billing cycle is not monthly, the maximum charge is that
percentage which bears the same relation to the applicable
monthly percentage as the number of days in the billing cycle
bears to thirty. A billing cycle is monthly if the billing
statement dates are on the same day each month or do not
vary by more than four days therefrom.

(4) Notwithstanding subsection (3), if there is an unpaid
balance on the date as of which the sales finance charge is
applied, the seller may contract for and receive a charge not
exceeding fifty cents if the billing cycle is monthly or longer,
or the pro rata part of fifty cents which bears the same
relation to fifty cents as the number of days in the billing
cycle bears to thirty if the billing cycle is shorter than
monthly.

(5) As an alternative to the loan finance charge allowed by
section one hundred three, subsection (3) of this article, from
the effective date of this subsection until and including the
first day of July, one thousand nine hundred eighty-two, with
respect to a consumer credit sale made pursuant to a
revolving charge account, other than sales of real estate
pursuant to section one hundred two of this article, if the
billing cycle is monthly, the sales finance charge may not
exceed one and one-half percent on the unpaid principal
balance. If the billing cycle is not monthly, the maximum
charge is that percentage which bears the same relation to the
applicable monthly percentage as the number of days in the
billing cycle bears to thirty. A billing cycle is monthly if the
billing statement dates are on the same day each month or do
not vary by more than four days therefrom.
§46A-3-104. Loan finance charge for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charge on assigned contracts; subject to exceptions as to loans involving motor vehicles and mobile homes and a specified quantity of real estate upon which mobile homes are or will be located.

1 (1) With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account, (a) a bank, as defined in section two, article one, chapter thirty-one-a of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section thirty, article four, chapter thirty-one-a or by the provisions of section five, section five-a, or section five-b, article six, chapter forty-seven of this code, (b) an industrial loan company, as defined in section three, article seven, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the aggregate of the interest and charges permitted by subdivisions (5) and (6), subsection (a), section eleven, article seven, chapter thirty-one of this code or by the provisions of section five, article six, chapter forty-seven of this code, (c) a building and loan association, as defined in section two, article six, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section seventeen, article six, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, (d) a credit union, as defined in section one, article ten, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, and (e) any other lender, other than a supervised lender, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section five, section five-a, or section five-b, article six, chapter forty-seven of this code.

2 (2) As an alternative to the loan finance charge allowed by section one hundred four, subsection (1) of this article, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, a
lender, other than a supervised lender, may contract for and receive a loan finance charge not exceeding eighteen percent per annum calculated according to the actuarial method.

(3) This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of add-on, discount or otherwise, so long as the rate of loan finance charge does not exceed that permitted by this section.

(4) Notwithstanding any provision of this section to the contrary, with respect to a consumer loan involving a motor vehicle or a mobile home or with respect to a consumer loan to finance the sale from one seller of both a mobile home and the real estate upon which such mobile home is or will be located, or with respect to a consumer loan where a security interest in real estate owned by the borrower is given to the lender as collateral for such loan, a lender may from the effective date of this section and until and including the first day of July, one thousand nine hundred eighty-two contract for and receive a loan finance charge not exceeding eighteen percent per year on the unpaid balance calculated according to the actuarial method: Provided, That the quantity of real estate involved in such consumer loan transactions involving a mobile home and real estate where such finance charge is contracted for and received shall not exceed one acre.

(5) If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven of this article.

(6) Notwithstanding subsection (1), the lender may contract for and receive a minimum loan finance charge of not more than five dollars when the amount loaned does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount loaned exceeds seventy-five dollars.

(7) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits permitted to be charged by a seller under the provisions of this chapter.
§46A-3-106. Loan finance charge for revolving loan accounts.

(1) With respect to a consumer loan made pursuant to a revolving loan account, a supervised financial organization permitted to establish revolving loan accounts may contract for and receive a loan finance charge not exceeding that permitted in this section.

(2) A loan finance charge may be made in each billing cycle which is a percentage of an amount not exceeding the greatest of:

(a) The average daily balance of the debt,

(b) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, or

(c) The median amount within a specified range within which the average daily balance of the debt or the balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, is included. A charge may be made pursuant to this subdivision only if the lender, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

(3) If the billing cycle is monthly, the loan finance charge may not exceed one and one-half percent on the first seven hundred fifty dollars of unpaid principal balance and one percent on the unpaid principal balance in excess of seven hundred fifty dollars. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the loan finance charge is applied the lender may contract for and receive a charge not exceeding fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same
relation to fifty cents as the number of days in the billing cycle bears to thirty if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subsection if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

(5) As an alternative to the loan finance charge allowed by section one hundred six, subsection (3) of this article, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, with respect to a consumer loan made pursuant to a revolving loan account, if the billing cycle is monthly, a supervised financial organization permitted to establish revolving loan accounts may contract for and receive a loan finance charge not exceeding one and one-half percent on the unpaid principal balance. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

(1) When a consumer credit sale or consumer loan is precomputed all payments on account shall be applied to installments in the order in which they fall due, except as provided in subsection (3), section one hundred twelve of this article. When the total amount is payable in substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the “Rule of 78.”)

(2) Upon prepayment in full of a precomputed consumer credit sale or consumer loan by cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the
consumer that portion of the sales finance charge or loan finance charge in the manner specified in section five-d, article six, chapter forty-seven of this code.

(3) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date maturity is accelerated. Such judgment shall bear interest until paid at the rate of six percent per annum.

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-107. Loan finance charge for supervised lenders.

1 (1) With respect to a supervised loan, including a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

2 (2) The loan finance charge, calculated according to the actuarial method, may not exceed the total of:

3 (a) Thirty-six percent per year on that part of the unpaid balances of the principal which is two hundred dollars or less;

4 (b) Twenty-four percent per year on that part of the unpaid balances of the principal which is more than two hundred dollars but does not exceed twelve hundred dollars; and

5 (c) Eighteen percent per year on that part of the unpaid balances of the principal which is more than twelve hundred dollars.

6 (3) This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of add-on, discount or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section.

7 If the loan is precomputed:

8 (a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

9 (b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven, article three of this chapter.

10 (4) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and
differentiations the licensee may reasonably establish, a part
of a month in excess of fifteen days may be treated as a full
month if periods of fifteen days or less are disregarded and if
that procedure is not consistently used to obtain a greater
yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the
lender may reasonably establish, he may make the same loan
finance charge on all principal amounts within a specified
range. A loan finance charge so made does not violate
subsection (2) if:

(a) When applied to the median amount within each range,
it does not exceed the maximum permitted by subsection (2),
and

(b) When applied to the lowest amount within each range,
it does not produce a rate of loan finance charge exceeding
the rate calculated according to subdivision (a) of this
subsection (5) by more than eight percent of the rate
calculated according to said subdivision (a).

(6) With respect to a revolving loan account:

(a) A charge may be made by a supervised lender in each
monthly billing cycle which is one twelfth of the maximum
annual rates permitted by this section computed on an
amount not exceeding the greatest of:

(i) The average daily balance of the debt,

(ii) The balance of the debt at the beginning of the first day
of the billing cycle, less all payments on and credits to such
debt during such billing cycle and excluding all additional
borrowings during such billing cycle, or

(iii) Subject to subsection (5), the median amount within a
specified range within which the average daily balance of the
debt or the balance of the debt at the beginning of the first
day of the billing cycle, less all payments on and credits to
such debt during such billing cycle and excluding all additional
borrowings during such billing cycle, is included.

For the purpose of this subdivision (a) a billing cycle is
monthly if the billing statement dates are on the same day
each month or do not vary by more than four days therefrom.

(b) If the billing cycle is not monthly, the maximum loan
finance charge which may be made by a supervised lender is
that percentage which bears the same relation to an
applicable monthly percentage as the number of days in the
billing cycle bears to thirty.
(c) Notwithstanding subdivisions (a) and (b) of this subsection (6), if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to thirty if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision (c) if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

(7) As an alternative to the loan finance charge allowed by section one hundred seven, subsection (2) of this article, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, with respect to a supervised loan, including a revolving loan account, a supervised lender may contract for and receive a loan finance charge, calculated according to the actuarial method, which may not exceed the total of:

(a) Thirty-six percent per year on that part of the unpaid balances of the principal which is five hundred dollars or less;

(b) Twenty-four percent per year on that part of the unpaid balances of the principal which is more than five hundred dollars but does not exceed fifteen hundred one dollars; and

(c) Eighteen percent per year on that part of the unpaid balances of the principal which is more than fifteen hundred one dollars.

§46A-4-111. Maximum interest when loan is in excess of sixteen hundred dollars.

No licensee shall directly or indirectly charge, contract for, or receive any interest, discount or consideration greater than six percent per annum upon the loan, use or forbearance of money, goods or things in action, or upon the loan, use or sale of credit, when the amount or value thereof is more than sixteen hundred dollars. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor or surety for any borrower, or otherwise, to owe directly or contingently, or both, to the licensee at any time the sum of more than sixteen hundred dollars for principal.
CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-5a. Interest charges on loans repayable in installments.

Except in cases where it is otherwise specially provided by law, parties may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instruments evidencing the obligation to repay the loan, for the entire period of the loan and deduct such charge in advance but in no case shall the interest on such a discount loan exceed an annual percentage rate of fifteen percent per annum calculated according to the actuarial method: Provided, That upon prepayment in full of a precomputed loan, the creditor shall rebate that portion of such charge in the manner set forth in section five-d of this article. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable. Nothing herein contained shall affect or restrict the right of the parties under section five of this article to contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed eight dollars upon one hundred dollars a year, and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract.

§47-6-5d. Rebate upon prepayment, refinancing, consolidation or otherwise; alternative method of rebate; transactions to which rebate applies; liability and penalties for excess charge.

(a) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction repayable according to its original terms over a period of thirty-six months or less, the creditor shall rebate that portion of the finance charge attributable to the prepaid periodic installment periods. When the total is payable in substantially equal consecutive monthly installments, the portion of such
finance charge attributable to any particular monthly
installment period shall be that proportion of the charge
originally contracted for, as the balance scheduled to be
outstanding on the last day of the monthly installment period
before deducting the payment, if any, scheduled to be made
on that day bears to the sum of all the monthly installment
balances under the original schedule of payments. (This
method of allocation is the sum of the digits method,
commonly referred to as the “Rule of 78.”) For prepayment in
full of a precomputed loan, credit sale or transaction,
forbearance or similar transaction (i) repayable according to
its original terms over a period of thirty-six months or less, (ii)
in which unequal or irregular or other than substantially
equal consecutive monthly installments are payable, the
commissioner of banking shall prescribe by rule the method
or procedure for the allocation of charges and the calculation
of rebates consistent with the Rule of 78.

(b) Upon prepayment in full of a precomputed loan, credit
sale or transaction, forbearance or similar transaction,
repayable by its original terms over a period of greater than
thirty-six months, an amount shall be rebated of not less than
the unearned portion of the finance charge calculated by
applying the rate of finance charge which was required by
applicable law to be disclosed in the transaction according to
the actuarial method to the unpaid balance for the time
remaining as originally scheduled or as extended by deferral
or otherwise for the period following prepayment. In
instances where no rate of finance charge was required by law
or otherwise to be disclosed, the unearned portion of the
finance charge shall be calculated by applying the finance
charge which was charged in the transaction according to the
actuarial method to the unpaid balance for the time
remaining as originally scheduled or as extended by deferral
or otherwise for the period following prepayment.

(c) For purposes of the rebate of unearned finance charges
as required by this section, a prepayment in full shall include
repayment by a new loan, extension of credit, refinancing,
consolidation, forbearance or otherwise.

(d) As an alternative to the Rule of 78 method of rebate of
determining the unearned finance charge required by this
section, a creditor may rebate unearned finance charges
under any other method which gives a greater rebate to the
debtor than the rebate determined by the Rule of 78.
(e) The provisions governing rebates as set forth in this section shall apply to all transactions entered into on or after the first day of September, one thousand nine hundred eighty-one. For transactions entered into prior to the first day of September, one thousand nine hundred eighty-one, the provisions in effect prior to the effective date of this section of the respective chapters of this code shall be utilized to determine the rebate of unearned finance charges.

(f) For consumer credit sales or consumer loans subject to the provisions of chapter forty-six-a of this code the provisions of article five, chapter forty-six-a, govern the imposition of liability and penalties for charging interest or a finance charge in excess of the maximum rate allowed under the provisions of this section. In all other instances, the provisions of this article govern the imposition of liability and penalties for charging interest or a finance charge in excess of the maximum allowed under this section.

CHAPTER 47A. WEST VIRGINIA LENDING AND CREDIT RATE BOARD.

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; establishing the West Virginia lending and credit rate board; authorizing said board to prescribe alternative quarterly maximum interest rates and finance charges on loans, credit sales or transactions, forbearances or similar transactions, including consumer loans and consumer credit sales; providing for compensation therefor; requiring quarterly reports; specifying factors to be considered in setting rates; allowing different rates within ranges of balances.

(a) The Legislature hereby finds and declares that:

(1) Changes in the permissible charges on loans, credit sales or transactions, forbearances 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, forbearances 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
board and authorize said board to prescribe quarterly the
maximum interest rates and finance charges on loans, credit
sales or transactions, forbearances 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;
(6) Three members of the public appointed by the
governor with the advice and consent of 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 for the remainder of any unexpired term in the same
manner as the original appointment.
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 hereby authorized and directed to meet at least quarterly or more frequently as required by the circumstances and to prescribe by order a maximum rate of interest and finance charge for the next succeeding quarter for any loans, credit sales or transactions, forbearances 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 such credit, and such other factors as the board may determine.

(e) Within twenty days next preceding the end of the given quarter, the board shall prescribe by order in accordance with the provisions of subsection (d) of this section the maximum rates of interest and finance charge for the next succeeding quarter for any loan, credit sale, forbearance, or similar transaction made pursuant to this section and shall cause such maximum rate of interest and finance charge to be issued and disseminated to the public, such maximum rate of interest and finance charge to be effective on the first day of the next succeeding quarter.

(f) Notwithstanding any other provisions of this section, not later than the first day of September, one thousand nine hundred eighty-one, the board shall prescribe by order the maximum rate of interest and finance charge for loans, credit sales or transactions, forbearances, or similar transactions pursuant to this section for the quarter in which this section shall become effective and shall, at the earliest possible date, prescribe the maximum rate of interest and finance charge for any such loan, credit sale or transaction, forbearance or similar transaction for the next succeeding quarter. The board shall issue and disseminate such maximum rates of
interest and finance charge to the public. The board shall
thereafter determine and issue and disseminate the
maximum rate of interest and finance charge for any such
loan, credit sale or transaction, forbearance or similar
transaction in conformity with the other provisions of this
section.

(g) Each member of the board, except those whose regular
salary is paid by the state of West Virginia, shall receive
seventy-five dollars 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 revolving fund
established by section two of this article upon a requisition
upon the state auditor, properly certified by the banking
commissioner.

(h) 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
determination of such rates. In addition, the board may set
varying rates for ranges of principal balances within a single
category of credit transactions.

§47A-1-2. Staffing of and offices for the West Virginia lending
and credit rate board; creation of revolving fund
and assessment of fee for revolving fund for board
operations.

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 including the cost of
its utilization of the staff of the West Virginia banking
department, the board shall establish the West Virginia
lending and credit rate board revolving fund.

On or before the first day of July of each year, all supervised
financial organizations and supervised lenders shall pay a
yearly fee of fifty dollars into the revolving fund established
by the board. The fees paid into this revolving fund shall be
utilized to pay the costs and expenses of the board and all
incidental costs and expenses necessary for its operations.
§47A-1-3. Report to and review by Legislature; validity of contracts; usury.

On or before the fifteenth day of January of each calendar year commencing with the fifteenth day of January, one thousand nine hundred eighty-two, 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.

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

R. P. Bagley
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Sida A. Wilks
Clerk of the Senate

Clerk of the House of Delegates

Warren R. Morask
President of the Senate

Speaker House of Delegates

The within bill was approved this the 15th day of April, 1981.

Governor