ENROLLED

House Bill No. 4393

(By Delegate R. M. Thompson)

Passed March 7, 2002

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections one and two, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia lending and credit rate board; abolishing the lending and credit rate board revolving fund; and providing that the board use the division of banking special revenue account.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; termination of board.

(a) The Legislature hereby finds and declares that:
(1) Changes in the permissible charges on loans, credit sales or transactions, forbearance 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, forbearance 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 rate board and authorize said board to prescribe semiannually the maximum interest rates and finance charges on loans, credit sales or transactions, forbearance 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; and

(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 by appointment of the governor with the advice and consent of the Senate, or if any vacancy remains unfilled for three months, by a majority vote of the board. 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 after the thirty-first day of December, one thousand nine hundred eighty-three, on the first Tuesday of April and on the first Tuesday of October of each year or more or less frequently as required by the
circumstances and to prescribe by order a maximum rate of
interest and finance charge for the next succeeding six months,
effective on the first day of June and on the first day of
December, for any loans, credit sales or transactions,
forbearance 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) Any petition proposing a change in the prescribed
maximum rates of interest and finance charges must be filed in
the office of the banking commissioner no later than the
fifteenth day of February in order to be voted on at the board
meeting on the first Tuesday of April and no later than the
fifteenth day of August in order to be voted on at the board
meeting on the first Tuesday of October. Whenever any change
in the prescribed maximum rates of interest and finance charges
is proposed the board shall schedule a hearing, at least fifteen
days prior to the board meeting at which the proposed rates of
interest and finance charge will be voted on by the members of
the board, and shall give all interested parties the opportunity to
testify and to submit information at such public hearing that is
relevant. Notice of the scheduled public hearing shall be issued
and disseminated to the public at least twenty days prior to the
scheduled date of the hearing.

(f) The board shall prescribe by order issued not later than
the twentieth day of April and not later than the twentieth day
of October, in accordance with the provisions of subsection (d) of this section the maximum rates of interest and finance charge for the next succeeding six months 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 June and the first day of December for the next succeeding six months.

(g) Notwithstanding the other provisions of this chapter, the West Virginia lending and credit rate board shall not be required to meet if no petition has been filed with the board requesting a hearing and interest rates and economic conditions have not changed sufficiently to indicate that any change in the existing rate order would be required, and there are not at least two board members who concur that a meeting of the board is necessary. If the board does not meet, the maximum rates of interest and finance charges prescribed by the board in the existing rate order shall remain in full force and effect until the next time the board meets and prescribes different maximum rates of interest and finance charges.

(h) If circumstances and economic conditions require, the chairperson or any three board members, at any time, may call an emergency interim meeting of the West Virginia lending and credit rate board, at which time the chairperson shall give ten days’ notice of the scheduled emergency meeting to the public. All interested parties shall have the opportunity to be heard and to submit information at such emergency meeting that is relevant. Any and all emergency rate board orders shall be effective within thirty days from the date of such emergency meeting.

(i) 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 special revenue account of the division of banking upon a requisition upon the state auditor, properly certified by the banking commissioner.

(j) 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.

(k) Pursuant to the provisions of article ten, chapter four of this code, the West Virginia lending and credit rate board shall continue to exist until the first day of July, two thousand five.

§47A-1-2. Board staff, offices, funding.

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.

On or before the first day of July of each year, the commissioner of banking may charge and collect from each supervised financial organization and supervised lender a yearly fee of fifty dollars and pay it into the special revenue account of the division of banking. The fees paid into this account shall be utilized to pay the costs and expenses of the board and all incidental costs and expenses necessary for its operations.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 18th day of March, 2002.

Governor