# Guest Commentary: Senate Bill 900 Overrides Voters, Could Signal Return Of Payday Lenders

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Arkansas voters in approving Amendment 89 to our state’s Constitution in 2010 voted voluntarily to raise the interest rate charged on consumer loans. Senate Bill 900 would override the will of the voters and, based on recent history, ultimately pave the way for out-of-state lenders to set up shop in Arkansas and roll back hard-won consumer protections.

As pointed out in a Monday report by Arkansas News Bureau reporter Rob Moritz, SB 900 provides that interest rates on consumer loans, currently capped at 17 percent annual percentage rate (APR) under Amendment 89, would instead be set “as defined” by the Arkansas General Assembly. A famous quote from Spanish philosopher George Santayana crystallizes the danger posed to consumers by SB 900: “Those who cannot remember the past are condemned to repeat it.”

In the case of SB 900, remembering the recent past is critically important. From 1999-2009, hundreds of payday lenders operated in Arkansas, flouting our state’s Constitution by charging triple-digit interest rates on loans and ensnaring consumers in long-term debt traps. Payday lenders set up shop in Arkansas thanks to a 1999 state law in which payday loan costs were defined as “fees” instead of interest.

The last payday lender closed its doors in Arkansas in August 2009, following a 2008 Arkansas Supreme Court ruling that threw out the 1999 law, a pro-consumer crackdown by the Arkansas Attorney General, and consumer education efforts by the Arkansans Against Abusive Payday Lending (AAAPL) coalition, of which AARP Arkansas is a founding member.

Out-of-state lenders during the 2011 legislative session attempted to secure passage of legislation similar to SB 900 that would have overridden the interest-rate protections in Arkansas 89 and enabled these lenders to set up shop in Arkansas, offering high-interest loans with terms very similar to payday loans. The 2011 legislation allowed add-on fees that increased the effective interest rate paid by consumers. AAAPL, AARP and the Arkansas Attorney General strongly opposed the 2011 legislation, and the sponsors withdrew it from consideration.

Amendment 89 increased the maximum lawful rate of interest on consumer loans from a sliding scale to a flat 17 percent APR. This increase opened many additional lending opportunities while still protecting the citizens of Arkansas from high-cost predatory loans.

Section 12 of Amendment 89 authorizes the Arkansas General Assembly “by a three-fourths vote of each house” to “amend the provisions of this amendment so long as the amendments are germane to this amendment and consistent with its policy and purposes.”

SB 900, backed by some of the same proponents of the 2011 legislation, would be the first step toward giving high-cost lenders a foot in the door, by authorizing the Legislature to “define” interest rates for consumer loans. SB 900 as currently drafted states that the loan APR “would not exceed” 17 percent annually. However, the effective interest rate paid by consumers would all depend on how the Legislature decided to “define” interest.

No legislation is necessary to charge up to 17 percent APR on consumer loans, so the only logical reason behind SB 900 is to authorize ultimately a higher effective rate, likely through add-on fees. This frankly doesn’t seem very “germane” to the intent of voters who already agreed to raise loan interest rates less than three years ago.

A second bill, which would require only a simple majority to pass, could then authorize the higher effective rate, opening the door for a repeat of Arkansas’ long payday lending nightmare. SB 900 includes an “emergency clause” in which it would take effect immediately if adopted, meaning the higher effective rate could be passed during this very same legislative session.

The bottom line for Arkansas consumers is frighteningly simple: SB 900 will unlock the door nailed shut for less than four years and once again expose Arkansas to the abuses of predatory lending. It took nearly 10 years for payday lenders to be driven out of our state. Arkansas does not need to repeat this unfortunate period in our state's history.

Arkansans already increased the state's interest rate cap in 2010. If another increase is sought, lenders and others supporting higher-interest loans should be upfront, transparent and seek a specific constitutional amendment to achieve this. The voters and consumers of Arkansas deserve no less.

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