

State of Arkansas

77th General Assembly

Regular Session, 1989

H.J.R. 1019

By: Representatives Mahony, Hankins, Turner, Wingfield, Calhoun, Allen,
McCuiston, Hatfield, Arnold, Teague, Dietz and Rice

HOUSE JOINT RESOLUTION

PROVIDING FOR A PROPOSED CONSTITUTIONAL AMENDMENT TO
ESTABLISH A MAXIMUM LAWFUL RATE OF INTEREST IN THIS STATE.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES, AND BY THE SENATE, OF THE SEVENTY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

THAT the following is hereby proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the State for approval or rejection at the next general election for Representatives and Senators, if a majority of the electors voting thereon at such election adopt such amendment, the same shall become a part of the Constitution of the State of Arkansas, to wit:

SECTION 1. Section 13, Article XIX, of the Arkansas Constitution of 1874, is hereby amended to read as follows:

"Section 13. In order to better serve the public interest and economic welfare of the state and its citizens by placing limits on interest charges which will encourage the availability of credit on reasonable terms, the following shall be applicable after the effective date hereof.

(a) Definitions. As used herein, the terms:

(i) "Consumer credit" means any loan, credit sale or other extension of credit to a natural person in which the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes.

(ii) "General credit" means any loan, credit sale or other extension of credit which is not consumer credit, including, by way of example, credit in which the money, property or service which is the subject of the transaction is primarily for business, investment or agricultural purposes.

(iii) "Credit contract" means any legally enforceable agreement or

arrangement whereby a creditor extends credit or a creditor agrees in writing to extend credit at a specified rate of interest or a rate of interest to be determined in the future by reference to an index or other formula, whether or not such agreement is subject to the future occurrence or satisfaction of conditions, including conditions within the control of either of the parties to the transaction.

(iv) "Formula rate" means that rate which is five percent (5%) per annum above the average bond equivalent yield of the fifty-two week (sometimes referred to as one year) U. S. Treasury Bill auction rates for such Treasury Bills offered by the U. S. Treasury during the immediately preceding calendar quarter, as calculated in the manner hereinafter provided to the nearest one-fourth of one percent (0.25%) and announced by the State Bank Commissioner (or such successor official who may be performing substantially the same duties) from information available from the Federal Reserve System of the United States.

(b) Consumer Credit. (i) Maximum Rate. The maximum lawful rate of interest on any credit contract for consumer credit shall be seventeen percent (17%) per annum, regardless of whether any higher or lower rate is applicable to general credit under subsection (c) hereof.

(ii) Penalties. All credit contracts for consumer credit having a greater rate of interest than seventeen percent (17%) per annum shall be void as to principal and interest.

(c) General Credit. (i) Maximum Lawful Fixed Rates. Parties to credit contracts for general credit may agree for interest to accrue on such general credit at a constant rate throughout the term thereof, including a constant interest rate which is to be determined by reference to an index or other formula. The maximum lawful rate of interest for such credit contract for fixed rate general credit is the formula rate in effect on the date when such credit contract is made, regardless of when such interest is to begin to accrue.

(ii) Maximum Lawful Variable Rates. Parties to credit contracts for general credit may also agree for interest to accrue on such general credit at a rate which may vary at such times and under such circumstances as the parties may agree, whether or not the interest rate in fact varies. The maximum lawful rate of interest for such credit contracts for variable rate general credit is the formula rate in effect when such interest accrues.

(iii) Renewals, Extensions or Modifications. Parties to a credit contract for general credit may subsequently agree to renew, extend, modify or otherwise amend such credit contract. Any such renewal, extension, modification or other amendment in writing which alters the rate of interest or the method of calculating the rate of interest shall be deemed to be a new credit contract for the purpose of determining the maximum rate of interest applicable thereto. In the event the rate of interest or the method of calculating the rate of interest is not changed by any such renewal, extension, modification or other amendment the maximum rate of interest applicable thereto shall not be changed by reason thereof.

(iv) Penalties. Any general credit having a rate of interest in excess of the formula rate applicable thereto in accordance with either subsection (c)(i) or subsection (c)(ii) hereof shall be void as to unpaid interest. A person who has paid interest in excess of the applicable formula rate may recover, within the time provided by law, twice the amount of interest paid. It shall be unlawful for any person to knowingly charge a rate of interest in excess of the applicable formula rate, and any person who does so shall be subject to such punishment as may be provided by law.

(d) Miscellaneous. (i) The calculation of the formula rate shall be made on or before the tenth day after each calendar quarter ends. When calculating the formula rate, the bond equivalent yield shall be the rate which results from subtracting the discounted price of such Treasury Bills from the amount to be paid thereon at maturity and dividing the difference by such discounted price. The formula rate so calculated for any calendar quarter shall be effective on the eleventh day following the end of the immediately preceding calendar quarter and shall continue in effect until the formula rate for the succeeding calendar quarter shall have been calculated and becomes effective. If, for any reason, the United States ceases to issue fifty-two week (sometimes referred to as one year) Treasury Bills, such calculation shall be made using a debt instrument of the United States having substantially the same general character and maturity.

(ii) The rate of interest for contracts in which no rate of interest is agreed upon shall be six percent (6%) per annum.

(iii) The provisions hereof shall revoke all constitutional and statutory state law provisions which are inconsistent herewith, including, without limitation, amendment 60 to section 13 of Article XIX of the

Constitution of the State of Arkansas.

(iv) In determining whether a credit contract is to be for consumer credit or general credit, a creditor may rely conclusively on the written representations of a debtor as to the primary purpose of such credit."

SECTION 2. The provisions of this amendment are severable. If any provision is invalid, or if its application to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given without the invalid provision or application.

SECTION 3. The effective date of this amendment is January 1, 1991.

SECTION 4. The ballot title for this amendment shall be: An amendment to Section 13 of Article XIX of the Constitution of the State of Arkansas to Control Interest Rates and Set the Penalty for Violations Thereof.

SECTION 5. The popular name for this amendment shall be: The 1989 Interest Rate Control Amendment.