

Bill would fine lenders charging above 17% interest

BY MICHAEL R. WICKLINE ARKANSAS DEMOCRAT-GAZETTE

Several lawmakers unveiled legislation Thursday that would authorize a \$300 fine for anyone convicted of knowingly charging an annual interest rate above 17 percent in a transaction involving a consumer loan.

Each transaction would be a separate offense under House Bill 1036 by Rep. David Johnson, D-Little Rock.

The bill would exempt consumer loans made by a financial institution, which the bill defines as federally-insured depositories, including state banks, out-of-state state-chartered banks, savings banks, savings and loan associations, or credit unions organized under state or federal laws and subject to state or federal regulation.

In 2005, similar legislation narrowly failed in the Senate Judiciary Committee after some senators questioned whether it would adversely affect pawnshops, the rent-to-own industry or credit-card companies.

Accompanied by several lawmakers and Lt. Gov.-elect Bill Halter at a news conference in the state Capitol, Johnson said Amendment 60 to the Arkansas Constitution sets the maximum interest rate charged on a consumer loan at 17 percent a year and allows for the General Assembly to set a penalty for exceeding that rate.

"It's prohibited by the constitution already and what we are doing is setting the penalty," he said.

Voters approved Amendment 60 in 1982, he said.

The Senate sponsor of the bill, Sen. Shawn Womack, R-Mountain Home, said he understands why people need access to credit and "when the payday lending industry kind of started out that was the idea."

"But the concern that has been brought up since then is what many people view as an abusive practice where often times the most vulnerable members of our society and elderly people who are in desperate financial situations end up finding themselves in need of a short-term access to credit and then they get into an endless cycle of debt," said Womack.

Halter, a Democrat from North Little Rock, said a Pentagon report in 2004 called on states to enforce their usury laws to prohibit predatory payday lending. The report said that predatory lending undermines military readiness, harms the morale of the troops and their families and adds to the cost of fielding a volunteer army, he said.

"Despite Arkansas' low constitutional usury cap, the state has permitted payday lenders to charge triple digit interest rates, including to airmen stationed at Little Rock," he said of the report.

Afterward, lobbyist Don Tilton of Little Rock, who represents payday lenders for the Arkansas Financial Services Association, said the association probably will oppose the legislation.

"There are some questions about the fairness issue of exempting some [under the bill]," he said after the news conference.

"I have to take a look at what the interest rate cap looks like because the court is still dealing with the issue of interest rates," Tilton said.

Last month, the Arkansas Supreme Court declined to make a decision on whether the law permitting payday lending violates the Arkansas Constitution. It sent the case back to Pulaski County Circuit Court.

In November 2005, Pulaski County Circuit Judge Barry Sims ruled that the Arkansas Check Cashiers Act of 1999 is constitutional. But his ruling from the bench was not included in the written order, which addressed several issues, so the Supreme Court determined that it could not make a decision at that time on the constitutionality of the law.

When that law was enacted, it said money earned by payday lenders was to be considered fees and not interest.

A payday loan works like this in Arkansas: A customer writes a check for \$400, for example, and receives \$350. The lender normally does not cash the check for two weeks.

The \$50 charge on a \$350 loan for 14 days equals 371 percent in annual interest. If the borrower cannot repay the loan in two weeks, another check is written, another fee paid and the loan is

extended for two more weeks. The process sometimes continues for months. Some payday lending borrowers spend more than \$1,000 before paying off one loan, consumer advocates say.

Tilton said he doesn't question the intentions of the lawmakers proposing the bill.

"The question is at some point do we exempt some who obviously have figured a way around the issue of usury or interest rates or do we take a look at all of it and what it means in terms of credit needs in the state whether it is short term loans or small loans and make certain that the customers have their choice," Tilton said.

"Truthfully, if there was a better model than the payday loan model I have no doubt that someone in the financial services industry would have already run them out of business," he said.