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Payday Lending Days Numbered (Rep. David Johnson Commentary)

By Rep. David Johnson
4/23/2007

Arkansas' future prosperity hinges in large part on the well-being of its workforce, and increasing the state's per capita income should remain a chief goal of lawmakers. Improving the quality of education of our future work force is a very significant part of that job, and the Legislature has made historic gains on that front over the last few years. Continuing to try to attract high-paying employers to the state remains an important priority as well.

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One area in which lawmakers could do more is ending a practice with a harmful impact on low-income workers: payday lending. Payday lenders target low-income citizens who need cash and offer two-week loans at triple-digit interest. The debtor writes a check for the principal and the associated fee, and the lender maintains possession of the check for the two-week period. Inevitably, of course, the borrower cannot pay the check. Knowing that the payday lender will soon attempt to cash the check and fearing typical hot check penalties, the borrower will go to the payday lender and begin the cycle anew, all for another fee. Soon enough, debtor after debtor is caught in the debt trap.

The AARP says that, in Arkansas, the average payday loan's principal is \$300, but the average payoff in just a few short months is \$800. I am told that payday lenders, to keep debtors from walking away, threaten criminal prosecution, although criminal prosecution over payday loans is not an option for payday lenders under the law.

In Arkansas, interest charged by payday lenders on consumer loans technically is limited to 17 percent per annum by Amendment 60 of the Arkansas Constitution. The Constitution provides, "All contracts for consumer loans and credit sales having a greater rate of interest than seventeen percent (17%) per annum shall be void as to principal and interest and the General Assembly shall prohibit the same by law." The only problem is that the General Assembly still has not finished the job by enacting a penalty measure to enforce the cap.



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In recent years, there have been attempts in the Legislature to address the issue. In 2005, members filed a bill to enact a penalty provision pursuant to Amendment 60, but it failed. Earlier this year, the House of Representatives passed House Bill 1036, which would have enacted a penalty provision and limited the “fees” that payday lenders may charge to the 17 percent cap. It, however, ultimately failed in the Senate committee that considered the bill.

In addition to the AARP, the U.S. Department of Defense encourages action on the issue of payday lending. After studying the impact of payday loans on many enlisted men and women in the armed forces, the Department of Defense called for an end to the practice. In an August 2006 report on the subject, the Department of Defense said, “Predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all volunteer fighting force.” The report recalled that, in 2004, the Department of Defense had called on the states to enforce their usury laws. After praising other states for ending triple-digit interest rates for payday loans, however, the report hit home. “Despite Arkansas’s low constitutional usury cap,” the report observed, “the state has permitted payday lenders to charge triple-digit interest rates, including to airmen stationed at Little Rock.”

Congress recently acted to protect members of the armed forces from payday lenders by passing legislation that limits the interest that payday lenders charge to members of the Armed Forces to the lower of 36 percent per annum or the prevailing state’s interest rate. What is good for enlisted members of the armed forces surely must be good for others as well. Despite recent history, I remain confident that payday lenders’ days in business are numbered. How many days are left is the big question. The Arkansas Supreme Court ultimately may step in. The Legislature, within the next several years, may yet enact meaningful reform to enforce the Constitution. Even Congress, following on its efforts to protect members of the armed forces, could act to limit payday lending abuse across the county.



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Businesses should be able to offer legitimate services, and consumers, of course, are charged with making informed decisions. When, however, a business practice preys so prevalently on those who can least afford the consequences under such unfair and harmful circumstances, something must

be done. One way or another, payday lending in Arkansas must stop.

Little Rock lawyer David Johnson represents House District 38 in the Arkansas General Assembly and sponsored HB 1036 in the recent legislative session. E-mail him at johnsond@arkleg.state.ar.us.

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