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Regulation chief wants law to deter jailing of debtors

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SPRINGFIELD — Too many people end up in jail as a result of debts owed to payday loan companies and other small lenders, Illinois Department of Financial and Professional Regulation Secretary Brent E. Adams said.

During the last two years, Adams said, his office received several reports of consumers sued by a lender for not repaying a debt, then jailed after failing to appear at court proceedings. In some cases, the individuals did not know they needed to appear in court, he said, and imprisoning them only further delayed repayment.

More individuals shared similar stories at public hearings in two downstate cities last week, Adams said, and the testimony will fuel reform legislation he hopes to see introduced in the Illinois

General Assembly this year.

"This is a practice which is able to flourish, to some extent, because no one has cast a light on it," said Adams, whose department regulates and licenses lending companies.

Steve Brubaker, executive director of the Illinois Small Loan Association, said lending companies have a right to use the courts to reclaim debts and any reform should be directed toward the judges.

Investigations by Adams' office show several payday lenders, installment lenders and collection agencies frequently use the court system to take action against clients with unpaid debts.

While companies are entitled to do that, Adams said, it creates a bigger problem when the client fails to appear in court. Individuals often don't know about the proceedings, he said, or don't attend because they have no way to pay their debt.

Some courts, primarily in southern Illinois, ask plaintiffs if they want a body attachment issued on a defendant who fails to appear, Adams said. Many companies use that option, he said, which can result in the defendant's arrest. Some courts also set the individual's bond at the amount of the debt owed, Adams said, and once repaid, that money goes directly to the creditor.

Brubaker, however, said he considers the allegations of debtors sent to jail a "misnomer that's being put out" by Adams' department. The court bears the responsibility of issuing body attachments, he said.

"It's up to judges to decide what to do when people don't show up in court," he said. "It's not the fact that people owe money, it's that they don't come to court when they're ordered to come to court."

Adams said he doesn't want to force reform on the judiciary, so his legislation would focus only on the responsibilities of creditors. A law could require lenders to investigate whether their client is financially able to repay the debt before suing them, Adams said. The affidavit would need to be signed by an officer or shareholder of the creditor before the suit could proceed, he said.

"It basically would attest that this was a justified use of the court system," Adams said, "and not wasting the court's time — and not doing what they're doing, putting people in jail."

While the department refers to the controversy as the re-emergence of "debtor's prisons," Sen. William R. Haine, D-Alton, said the term goes "a bit over the top."

But the issue does concern him, he said.

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said, primarily due to the lack of scrutiny used by courts in issuing orders for arrests.

Efforts must be made to ensure debtors are fully admonished and aware of the repercussions of missing court, he said. While legislation might improve the process, he said, reforms could also come from within the court system.

"This is a matter really for the judges to look at first, to see if it can be rectified," Haine said. "There are instances of situations which should not occur."

Bill Bartmann, owner of the Oklahoma-based debt collection company CFS II, said creditors don't need to sue their clients to get paid. Personal contact and phone calls helped him settle 4.5 million accounts in 19 years of business, he said.

"The court system wasn't designed to

become a tool to hang payment over the head of an unsuspecting consumer and threaten that they will put them in jail if they don't pay," said Bartmann, a former attorney who testified at a department hearing last week.

Daniel A. Edelman, a principal at Edelman, Combs, Latturmer & Goodwin LLC who practices in consumer protection law, said the controversy could be resolved by requiring a debtor to sign for their court appearance documents.

And when a person gets put in jail for contempt, judges shouldn't set bail at the dollar level owed to a creditor, especially if the figure is high, he said.

"Once you're requiring bonds like that, it's simply a collection method," Edelman said.

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