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Court: Check Cashers Act violated constitution

By ANDREW DeMILLO
Thursday, November 6, 2008 4:46 PM CST

LITTLE ROCK, Ark. - The Arkansas Supreme Court ruled Thursday that a 1999 act "unmistakably" allowed payday lenders to charge triple and maybe even quadruple-digit interest rates in violation of the state constitution, which limits interest rates to 17 percent.

The court overturned a Pulaski County judge who had ruled last year that, under the 1999 Check Cashers Act, consumers were paying fees _ not interest _ when obtaining short-term loans from check-cashing outlets.

Justice Paul Danielson wrote in the court decision Thursday that the act "clearly and unmistakably conflicts" with the constitution.

"In sum, because the Check Cashers Act clearly authorizes loans charging usurious rates of interest in contravention of the limit set forth in Article 19, Section 13, we hold that the act in its entirety clearly and unmistakably conflicts with the Arkansas constitution and is unconstitutional," the ruling states.

The court had ruled in 2001 that legislators had no power to determine what is or isn't interest, but didn't rule then on whether the law was constitutional.

The court agreed with opponents of the act in finding that fees allowed under the law were essentially interest.

"Because that fee is in reality an amount owed to the lender in return for the use of borrowed money, we must conclude that the fees authorized clearly constitute interest," Danielson wrote.

Offering an example, the court said that payday lenders charging a \$10 fee to hold a \$100 check for six days were really charging 1,521 percent interest. The interest rate for the same loan over a 31-day period could be 294 percent, the court estimated.

Justices heard oral arguments in the case last week _ the third time the challenge to the law had appeared before the state's highest court. In previous rulings, the court did not directly address the issue of whether the law was constitutional before sending the case back to Circuit Judge Barry Sims.

Todd Turner, an Arkadelphia attorney who represented plaintiffs challenging the law, said the ruling makes it impossible for payday lenders to operate in the state.

"It's great for all the Arkansas residents who have been paying 600 percent for these loans, particularly the ones who have been paying them to companies who point to a license on the

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wall and say this is legal," Turner said.

Tom Hardin, an attorney who represented the Arkansas Financial Services Association in the case, did not immediately return a call seeking comment.

Court: Check Cashers Act violated constitution

The state Board of Collection Agencies had defended the law and said that it did not prevent legal action against firms that charged high interest rates. Peggy Matson, the board's executive director, said the ruling effectively takes away the state's regulation of firms that cash checks for a fee but do not issue a loan in exchange for it.

TO says Cowboys let doubt creep in weeks ago

Matson said overturning the law removes the maximum fees that can be charged for those transactions, as well as requirements that those firms clearly post the fees charged.

"Consumers can now be held hostage by a check casher," Matson said.

Deputy Attorney General Justin Allen said legislation may need to be crafted before next year's session to address the regulations on check cashers that were also thrown out.

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"As it stands now, (check cashers) do not have to have a license and are not subject to the rules and regulations of the Board of Collections," Allen said. "The only person out there now to look over the shoulder of deferred-presentment lenders and straight check-cashers is the attorney general, to the extent anything they do violates the Deceptive Trade Practices Act or constitutes usury."

Newly sworn-in Justice Elana Wills, who previously worked in the attorney general's office, did not participate in the decision. The court ruled 6-0 against the Check Cashers Act.

The act was tossed out as the number of payday lenders in the state has dwindled in response to threats of lawsuits from the state's attorney general. An advocacy group said in a report last month that the number of payday lenders operating in the state has dropped from 237 in March to just 33 following the cease-or-desist letters sent by Attorney General Dustin McDaniel.

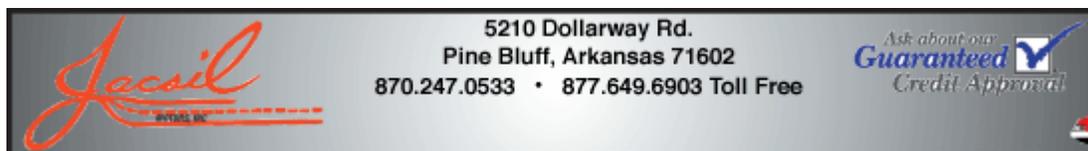
McDaniel told the firms that their high-interest loans violated the usury provision of Arkansas' constitution and demanded that the firms stop issuing high-interest loans and forgive any outstanding debts.

Through a payday loan in Arkansas, a customer writing a check for \$400, for example, typically would receive \$350. The lender would keep the check for about two weeks without cashing it and thereby allow the customer time to buy back the check.

The \$50 charge on the \$350 loan for 14 days equates to 371 percent.

A service of the Associated Press(AP)

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