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Payday lending law unconstitutional, court says

Friday, Nov 7, 2008

By Rob Moritz

Arkansas News Bureau

LITTLE ROCK - The state Supreme Court declared the Arkansas Check Cashers Act unconstitutional Thursday, saying the 1999 law allows companies to make consumer loans at interest rates that exceed the state's 17 percent usury limit.

In a 6-0 ruling, the high court reversed a Pulaski County circuit judge's decision that the law passed constitutional muster.

Justices rejected arguments that provisions of the law that termed the charges imposed by payday lenders as fees, the charges that opponents decried as triple-digit interest were legal.

The Supreme Court said the law "clearly authorizes loans charging usurious rates of interest" in contravention of the limits set forth in Article 19, Section 13 of the constitution.

"We hold that the act, in its entirety, clearly and unmistakably conflicts with our constitution and is unconstitutional," Justice Paul Danielson wrote.

Todd Turner, attorney for opponents who challenged the law in court, said the ruling was good for Arkansas consumers.

"The aim of this lawsuit was to stop the state from licensing usurious payday lenders and to remove this unconstitutional law from the books. After five years of litigation, we have accomplished that objective," Turner said. "We have always maintained that the practice of imposing triple-digit interest rates on borrowers was immoral. Today, the Arkansas Supreme Court confirmed that the practice is also illegal."

The Supreme Court had previously considered challenges to the law but before Thursday had never ruled on its constitutionality.

During oral arguments before the Supreme Court last week, Tom Thrash, attorney for the State Board of Collection Agencies, argued the law did not allow interest rates higher than the state usury rate, and said several companies that charged the higher rates have been sued and shutdown.

The court said Thursday the fact that the Check Cashers Act labels payday lending charges as fees rather than interest rates "does not

make it so."

Peggy Matson, director of the State Board of Collection Agencies, the agency that regulates payday lenders, said Thursday the court's decision deregulates the state's check-cashing industry and could be a hardship on people who don't have bank accounts.

"The problem with striking down the act is it could possibly have a negative effect on Arkansas consumers who do not have checking accounts and need rely on a check cashers to cash their social security checks and payroll checks," she said. "Doing away with the act means there is no limit on the fees that can be charged."

In March, Attorney General Dustin McDaniel issued cease-and-desist letters to payday lending operations in the state, accusing them of violating the state constitution. The attorney general demanded the practice stop and that outstanding debts be forgiven.

McDaniel made the demand on the basis of two opinions in which the state Supreme Court found the high interest rates payday lenders charge on short-term loans "unconscionable" and deceptive trade practices prohibited by the Arkansas Deceptive Trade Practices Act.

In May, McDaniel filed four lawsuits against 20 stores he said did not comply with the cease-and-desist letters.

In July, opponents of payday lenders released a report showing 55 of the 156 operations McDaniel ordered to shut down or face lawsuits were still operating. The report by Arkansans Against Abusive Payday Lending showed the number of operations had fallen from 237 in March to 136.

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