

# BUSINESS & FARM

Arkansas Democrat-Gazette

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SUNDAY, NOVEMBER 14, 2004

## Supreme Court asked to quash payday loan fees

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A case before the Arkansas Supreme Court seeks to nullify a 5-year-old state law that seems to contradict the Arkansas Constitution.

The Arkansas Check Cashers' Act says that fees charged for so-called payday loans "shall not be deemed interest." If considered interest, the fees would violate the usury provision of the state Constitution, which limits interest rates on loans to 8 percent a year.

Federal law allows banks, savings and loans and credit unions in Arkansas to charge interest rates above 8 percent. But because of competition, most creditworthy consumers can get such loans below 8 percent.

All other lenders — auto dealerships and home-furnishing stores, for example — are prohibited by the Arkansas Constitution from charging more than 8 percent in annual interest for loans provided directly by the business.

A hearing date has not been set for the case, but Arkadelphia lawyer Todd Turner, an advo-

cate for check-cashing customers, believes the Supreme Court probably will hear arguments by the end of the year.

A typical payday loan works like this: The borrower writes a check for, say, \$400 and receives a loan of \$350. The payday lender agrees not to cash the check for two weeks. The \$50 interest — payday lenders call it a fee — on a \$350 loan for 14 days equals a 373 percent annual rate.

The borrower often does not have \$350 to buy back the check in two weeks. So he pays another \$50 to keep the check from being cashed. Some borrowers caught up in this cycle have paid two or three times the amount of their original check in interest.

Many payday loans have interest rates much higher than 373 percent, opponents of the Check Cashers Act say.

The state agency that regulates check-cashing companies has a table on its Web site to inform the companies what the interest rate is on different payday loans. The reason, Turner

said, is that the federal Truth in Lending Act requires lenders to disclose interest rates on loans before the borrower signs paperwork.

"There are several things that make payday loans predatory," Jean Ann Fox, director of consumer protection with the Consumer Federation of America, said last week. "They are generally regarded as unsafe banking practices. The interest rates are usurious, with many that are 390 percent and up. They're designed to be flipped time and again. The loans are made for too much for the borrowers to be able to pay them back in full."

A state regulator in Iowa reports that the average consumer who takes out payday loans has more than 12 loans a year, Fox said.

"It is a debt trap and it is a great burden to lower-income consumers who are doing well enough to have a bank account but not well enough to make it from payday to payday," Fox said.

Jim Mead of Jonesboro, president of the Arkansas Check Cashers Association, argues that payday lenders provide a service.

"Jesus said you have the poor with you always," Mead said. "What about someone who gets sick and misses a week's work or has a little fender bender or gets a ticket that costs \$120? That's important money to them. All we're

doing is providing that need."

Turner sued the Arkansas State Board of Collection Agencies on behalf of a group of Arkansans who have taken out payday loans at check-cashing companies. The board's Division of Check Cashing Companies was established by a 1999 law to license payday lenders.

Since 1999, Turner has filed more than 30 lawsuits, contending the check casher's law allows usurious loans and violates the state Constitution. Many have been settled before going to trial.

But five times, the lawsuits have been classified as class-action cases, representing hundreds of Arkansans who have paid millions of dollars in payday fees.

Each time, Turner and his clients won, with state circuit court judges ruling the Arkansas Check Cashers Act violated the state Constitution. Judgments exceeded \$4 million, including one for more than \$2.5 million.

But each time, Turner was unable to collect the judgment when the check cashers filed for bankruptcy or closed down.

And every time, owners of the transgressor companies have reopened payday lending operations under different names in Arkansas. The State Board of Collection Agencies gave the new companies licenses to practice again in Arkansas.

"It's very frustrating," said Turner, who gets the bulk of payday lending cases because he has more experience at it than any other lawyer in Arkansas. "It's

just impossible for me in my little country law practice to spend a lot of time on all these cases."

Even though he won some large settlements in 2001 and 2002, Turner said, "I promise you, I've lost money on these cases."

"There is not a profit motive for me," Turner said. "People call me every week wanting help. It's the right thing to do."

Mead said profit *is* Turner's motive.

"He's made millions of dollars off the check-cashing industry and he presents himself as a defender of the downtrodden," said Mead, 65, who owns two stores in Jonesboro, Cash Today and Cash Now.

In an attempt to stop the practice, Turner sued the Board of Collection Agencies last year, saying the Check Cashers Act was unconstitutional.

Pulaski County Circuit Judge Barry Sims dismissed the case, and Turner appealed to the Arkansas Court of Appeals.

The justices at the Court of Appeals deferred, passing the case up to the Arkansas Supreme Court.

Technically, Turner said, the Supreme Court could refer the case back to Sims. But he said he has asked the court to decide on the constitutionality of the 1999 check-casher's law.

"I believe that the court will do that," Turner said.

The attorney general's office, which will defend the Check Cashers Act, did not return phone calls Friday for comment.