



Time up for payday lenders?

IN SHORT

Check advance firms feel the heat in the courts, while the Legislature is also considering putting a tight rein on money lenders who charge exorbitant fees.

By **ROB MORITZ**
Arkansas News Bureau

While opponents of payday lenders await a state Supreme Court ruling on whether fees charged for short-term loans are actually interest, legislation is being drafted that would outlaw the practice in the state.

"It's nothing but a debt trap for people living from paycheck to paycheck," said credit union president H.C. Klein, who is chairman of Arkansans Against Abusive Payday Lending, a coalition formed to fight the payday lenders.

Klein likened giving a high-interest payday loan to a person floundering financially to throwing an anchor to a drowning man.

Last year, Arkadelphia attorney Todd Turner filed a lawsuit in Pulaski County Circuit Court arguing the Arkansas Check Cashers Act of 1999, which regulates the check-cashing industry in the state, is unconstitutional.

He said the fees charged by the

companies, often reaching triple digits, are actually interest and illegal because they are in excess of the rate allowed by the state Constitution. Payday lenders target the poor, elderly and unsophisticated borrowers, trapping them in an endless cycle of payments, he argued.

Circuit Judge Barry Sims later dismissed the lawsuit, which also challenged the state Board of Collection Agencies for granting the licenses to the payday lenders. Earlier this year Turner appealed that ruling to the state Court of Appeals, which then referred it to the state Supreme Court.

Everyone is waiting for the high court ruling — the justices have taken the rest of the month off because of the holidays, so a decision isn't expected until sometime early next year. State Sen. Tracy Steele, D-North Little Rock, is working with the coalition to develop legislation that would also address the issue.

"I am working on the issue of making sure that we don't have any businesses that are illegally operating in this state," Steele said this week. "I'm confident the state Supreme Court will make the right decision, but I want to make sure that it doesn't happen again. We want to end the practice of violating the usury law."

The legislation Steele and Arkansans Against Abusive Payday Lending are developing will be patterned after a law approved by the Georgia Legislature earlier this year, said Paul Kelly, a coalition member and senior policy analyst at Arkansans Advocates for Children and Families.

The Georgia Legislature began drafting its law after commanders at military bases in that state complained that the payday lending companies were preying on soldiers and their families, who often need cash between paychecks.

The Georgia law makes payday lending subject to a racketeering charge punishable by up to 20 years in prison and fines of up to \$25,000 per transaction.

The proposed legislation in Arkansas would, among other things, prevent payday lending companies from using out-of-state banks to circumvent the state usury law, said Klein, president of the Arkansas Federal Credit Union. It also would prevent companies from using the Internet to offer online loans in the state.

"It isn't enough just for the state Supreme Court to say the law is unconstitutional because there have been payday lenders who know that it is unconstitutional but have developed schemes to get around the cur-

rent law," Klein said.

Along with the Arkansas Federal Credit Union and Advocates for Children and Families, other members of the coalition are AARP, Better Business Bureau, NAACP, Good Faith Fund, ACORN, AFL-CIO, Family Services Agency and Pulaski County Cooperative Extension Service.

Turner said he has filed more than numerous lawsuits since 1999 arguing the state check casher's law is illegal. Many of those cases have been settled before going to trial, he said.

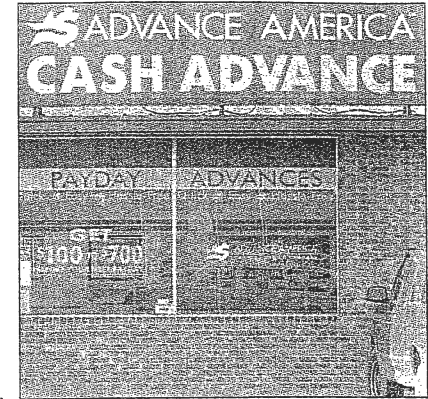
Several times, however, the lawsuits were class-action cases and he represented hundreds of Arkansans who were awarded damages or awards. The problem, Turner continued, is that when his clients went to get their money from the payday lending companies, the firms had already filed for bankruptcy or shut down.

Often, the owners of the businesses would later reopen other payday-lending stores under different names in the state.

In 2001, the state Supreme Court ruled that a section of the Arkansas Check Cashers Act that regulates the check-cashing industry in the state is unconstitutional. The high court said that as long as the state has a such an act, the courts, not the Legislature, should determine whether check-cashing fees qualify as interest under the usury provision of the state constitution.

That case out of Benton County Circuit Court, involved a woman who was charged an additional \$50 to cash a \$400 check. She argued the business' fees were too high and violates state usury laws.

Jim Mead, president of the Arkansas Financial Services Association, formerly known as the Arkansas Check Cashers Association, did not return a telephone call to his business in Jonesboro.



DAVID SCOLLI/Leader photo

Cash advance businesses have grown into a \$40 billion a year industry nationwide. Many states have banned them, and Arkansas could do the same.