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CU-Led Coalition Against Payday Lenders Awaits Ruling

By Ed Roberts, *Washington Bureau Chief*

LITTLE ROCK, Ark.–In a case that could reverberate around the country, lenders of all sorts are anxiously waiting for the state Supreme Court to rule whether fees charged by payday lenders should be considered as interest and thus, subject to the state's usury law.

While the case targets the state's payday lenders and the 1999 Check Cashers Act, which exempted payday loan fees from calculating the annual percentage rate of payday loans, credit unions and banks are worried it could have much broader ramifications by affecting fees such as non-sufficient fund (or bounced-check) fees, as well.

Hank Klein, CEO of Arkansas Federal Credit Union, the state's largest credit union and a leading opponent of the proliferating payday lenders in this state, said he knows how the state's High Court should rule. "The Federal Reserve has already ruled on this issue and they said it (the fees) should be calculated in the APR," said Klein.

Klein, whose credit union conducted a study of 72 payday lenders across the state of Arkansas earlier this year, has organized a coalition of consumer groups to support a proposal in next year's legislature to rein in the payday lenders.

What The Study Found

The credit union study, titled, "Payday Lenders in Arkansas: The Regulated and the Unregulated," found that despite the nation's only constitutionally-set interest rate cap, payday lenders charging annual interest of as much as 660% are inundating Arkansas through a variety of back-door ploys. Among them; the creation by national payday loan chains of subsidiaries in South Dakota, where there are no usury laws, to make payday loans over the Internet. Or local lenders making loans through the so-called rent-a-charter of nationally chartered banks, which are not subject to state usury laws.

The study also found that as many as a third of the state's payday lenders are not licensed, and 45% of them have been sued at least once. "And the poorer the community, the more payday lenders there are there," said Klein, long angered by payday lenders preying on his credit union's core membership, enlisted personnel at Little Rock Air Force Base.

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But the main dodge used by the payday lenders, according to the study, is the use of fees to avoid the state's interest rate cap, currently 17% under the formula set by a constitutional amendment. So the $49 in fees charged by some lenders for a $300, nine-day loan, equates to an APR of 662.4%. But while the lenders are required by the Federal Reserve to disclose these exorbitant rates, they are still allowed to charge them under the check-cashers 1999 law being reviewed by the state court.

To fight the payday lenders and lobby for legislation to limit their ability to charge the high rates, Klein has organized a broad coalition of consumer groups called Arkansans Against Abusive Payday Lending. So far the coalition has enlisted the Consumer Federation of America, American Association of Retired People, NAACP, Consumer Credit Counseling, Better Business Bureau, Advocates for Children and Families, ACORN, Good Faith Fund, Family Services Agency, AFL-CIO, and others, but has yet to convince credit unions or banks to join, said Klein. They fear that efforts to define fees as interest could impact the credit unions/banks, as well as the payday lenders, he said.

What Proposed Bill Would Do

The proposed legislation would, among other things, prevent payday lenders from using out-of-state banks to avoid the state's usury law, and prevent companies from using the Internet to offer online loans in Arkansas in violation of the usury law.

Reta Kahley, president of the Arkansas CU League, said they have met with and talked to Klein about the issue but have yet to come to any conclusions about whether to support legislation. "We haven't seen anything yet so we can't comment on it," she said.

Kansas Bankers Association Convinces Legislature To Review CU Oversight

TOPEKA, Kan.–The state legislature's Post Audit Committee, based on prompting from the Kansas Bankers Association (KBA) has initiated a review of the state's oversight of credit unions.

The review, formerly requested by the legislature's Financial Institutions and Insurance Committee, will try to determine whether the Department of Credit Unions is properly overseeing interstate branching, field of membership, and safety and soundness of the 98 state-chartered credit unions in Kansas, according to Chuck Stones, president of the KBA, who convinced the legislature to ask for the audit.

Stones said their interest was prompted by the American Bankers Association's "Operation Credit Union," which seeks to shine the spotlight on credit union practices and regulatory oversight in the states, but he insisted it is not an attack on the tax exemption.

"Frankly, I think credit unions are paranoid and single-minded in what the banking industry may have in mind for them," he told *The Credit Union Journal.*

The bankers' concern, he said, has been piqued by the operations of credit union giant Community America Credit Union, which serves the entire state of Kansas but is headquartered in Kansas City, just over the state line; and by the oversight of U.S. Central Credit Union, the central bank for credit unions, which is regulated by the state, among other things, said Stones.

"There's some interesting things going on in Kansas," said Stones. "I'm not saying that (CU Supervisor) Jerel Wright is doing a bad job. We just want a third-party, independent, unbiased review of the whole situation." *–Ed Roberts*