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Judge rules payday lending law is constitutional

Wednesday, Nov 23, 2005

By Wesley Brown
Arkansas News Bureau

LITTLE ROCK - A circuit judge upheld Arkansas' payday lending law Tuesday.

Opponents who challenged the six-year-old said they would appeal Pulaski County Circuit Judge Barry Sims' ruling that the Check Cashers Act of 1999 is constitutional.

Sims ruled after a 40-minute hearing that there has been no misuse of taxpayers funds by the State Board of Collection Agencies, and that the 1999 statute passed by the Legislature to regulate payday lending is legally sound.

"The statute as written is constitutional," Sims said in his one-sentence decision.

The issue was back before Sims after the state Supreme Court in January reversed his earlier decision dismissing the original complaint for failure to state facts upon which relief could be granted.

The plaintiffs in the case, represented by attorney Todd Turner of Arkadelphia, argued Tuesday that the check-cashing law violates state usury laws, allowing pay-day lenders to charge annual interest rates in excess of 400 percent despite the state constitution's usury cap of 17 percent on consumer loans.

"What I am asking the court to do is overrule what the General Assembly did when it passed the checking-cashing law ... and declare it unconstitutional," Turner told the judge.

But lawyers for the state Board of Collection Agencies and the Arkansas Financial Services Association, which represent the payday lending industry, disputed Turner's arguments on two fronts.

Thomas Thrash, representing the ABCA, contended Turner could not argue the 1999 act's legal integrity unless he proved that state funds were misused in applying the law.

"This is a very simple (issue), but we've done our very best to complicate it," Thrash said.

If the plaintiffs were going to attack the constitutionality of the law, then

they must first exhaust all their remedies before the ABCA, he said.

"This entire case hinges on whether or not there were taxpayer funds in use to finance the ABCA's division of checking cashing," the Little Rock attorney said.

Tom Hardin, representing the check-cashing industry, said the plaintiffs' usury argument was irrelevant.

"They keep talking like this is a usury case - there is no usury case because it is not relevant," Hardin argued. "What they want is for this court to act as a super-Legislature."

Following the hearing, several members of an anti-payday lending coalition expressed frustration with Sims' ruling.

Representatives of the group, including AARP, the Better Business Bureau, NAACP, Good Faith Fund, ACORN and the AFL-CIO, openly decried the industry's practices as abusive because they target the poor, elderly and minorities.

Turner said he plans to appeal Sims' ruling because he believes that the state Supreme Court will ultimately strike down the 1999 law.

"It seems sort of futile to do that, but that is what we are going to do," he said. He said he also would bring several abusive payday lending cases to the ABCA board.

In 2001, the Supreme Court did rule that a section of the act that regulates the check-cashing industry in the state was unconstitutional. The high court said that as long as the state has 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 violated state usury laws.

The Legislature has since stricken that provision from the law, but several attempts to repeal the remainder of the act have been unsuccessful.

Anti-payday lending forces worked to introduce two bills during this year's regular session to eliminate payday lenders. One bill would have imposed a criminal penalty for violating the state's constitutional prohibition against usury. The second would have eliminated the 1999 Arkansas law altogether. Neither of these bills passed out of the Senate Judiciary Committee.

"We haven't had any success with those efforts," Turner said. "If you don't have the (money) to hire a lobbyist, then you don't have access to the Legislature."