



The Dow Jones industrial average closed at **10,871.43.**

+51.15

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State's Check Cashers Act is constitutional, judge rules

BY DAVID SMITH
ARKANSAS DEMOCRAT-GAZETTE

Arkansas' Check Cashers Act is constitutional, Pulaski County Circuit Judge Barry Sims ruled Tuesday, a decision that means a resolution on the issue could be reached within a year.

The act, passed in 1999, says

fees charged for so-called payday loans "shall not be deemed interest." If considered interest, the fees would violate the Arkansas Constitution, which says loans with interest rates above 17 percent a year are void.

If the fees on payday loans were considered to be interest, See **ACT**, Page 6D

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they would often exceed 300 percent annually.

Todd Turner, an Arkadelphia lawyer who filed the lawsuit against the Arkansas State Board of Collection Agencies in 2003, said he will appeal the ruling to the Arkansas Supreme Court. The state board would have appealed the case if Sims had ruled that the law was unconstitutional, said Tom Thrash, who represented the board.

Turner estimated Tuesday that the state Supreme Court probably will rule on the constitutionality of the act within a year.

A typical payday loan works like this: The borrower writes a check for \$400, for example, and receives a loan of \$350. The payday lender agrees not to cash the check for two weeks. The \$50 interest, which payday

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lenders call 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.

Thrash believes that the Supreme Court will not rule the law unconstitutional. If some payday lenders are violating the state's laws on excessive interest they should be sued and forced to pay back the usurious interest, Thrash said. But that in itself doesn't make the Check Cashers Act unconstitutional,

he said.

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

At least 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 circuit court judges across the state issuing judgments totaling more than \$4 million, including one in excess of \$2.5 million.

But each time, Turner was unable to collect the judgment

when the check cashers filed for bankruptcy or closed down.

Turner said Tuesday that the charging of the fees is unconstitutional regardless of whether a state law says the fees aren't interest.

"We're saying the face of the statute is unconstitutional," Turner said. "We don't have to show that every check cashing transaction is usurious."

Sims ruled that Turner's clients also must take the case to the Arkansas State Board of Collection Agencies, which regulates check cashers in Arkansas.

Turner said he will file a complaint with the board that check cashers' loans exceed constitutional limits on interest, but he expects that the board will rule against him. He'll then appeal that decision also, Turner said Tuesday.

North Little Rock Mayor Patrick Hays, one of the plaintiffs in the lawsuit, said he was disap-

pointed by Sims' decision.

Hays joined the lawsuit when it was filed in 2003 because he had an acquaintance who had borrowed money from a check casher. When he was unable to pay it back, his friend borrowed from another check casher to pay the first one, Hays said.

"It was almost unbelievable to me that some people are paying 100, 200, 300 percent interest on some of these loans," said Hays, who is also a lawyer.

Federal law allows banks, savings and loans and credit unions in Arkansas to charge interest rates higher than the state Constitution allows. But because of competition, most creditworthy consumers can get such loans well below 17 percent interest.

All other local lenders — used car dealerships and home-furnishing stores, for example — are prohibited by the Arkansas Constitution from charging more than 17 percent in annual

interest for loans provided directly by the business.

In 2003, Turner sued the Arkansas State Board of Collection Agencies on behalf of a group of Arkansans who had 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.

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. The Supreme Court never ruled on the constitutionality of the act, but sent the case back to Sims, saying the case shouldn't have been dismissed.

Opponents of the act have tried to persuade the Legislature to repeal the law, but have been unsuccessful in the two most recent sessions of the General Assembly.