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[arkansas business news story](#)**Payday Lenders Face Hurdles**

By Mark Friedman

9/3/2007

For years after the Check Cashers Act of 1999 was adopted by the General Assembly, businesses known as payday lenders operated with virtual immunity across Arkansas.

Many payday lenders ignored the act's requirement that they be licensed and carry surety bonds, but the Arkansas State Board of Collection Agencies, which is charged with regulating the industry, did little to enforce the law.

Judges have routinely ruled that the "fees" charged for short-term loans were actually triple-digit interest in violation of the state's constitutional interest cap of 17 percent, but the state Supreme Court has left the question unsettled despite several opportunities to address it head on.

Bills that would effectively quash the industry have been



H.C. "Hank" Klein, president of Arkansas Against Abusive Payday Lending, says state officials have improved their regulation of the industry he would like to banish.

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filed in every legislative session since the Check Cashers Act, with no success.

Still, the controversial industry's free ride is clearly over.

North Little Rock Mayor Patrick Hays has introduced an ordinance that would prevent payday lenders from opening new shops in North Little Rock for two years while the city studies new zoning restrictions on the businesses.

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1	2006 Assets	2005 Assets	2005 Deposits	Total Gross Income	2005 Members
2	\$999,679,714	\$306,591,197	312,493,651	\$22,592,053	57904
3	\$142,237,395	\$196,064,379	111,082,630	\$8,203,699	18730
4	\$109,283,224	\$100,310,459	92,719,752	\$8,378,198	10640
5	\$107,455,469	\$80,387,476	84,717,254	\$4,816,074	12850
6	\$76,691,193	\$72,892,661	65,761,299	\$4,326,159	15000
7	\$81,868,233	\$81,346,471	45,331,329	\$3,521,695	8285
8	\$56,791,038	\$50,760,406	48,508,824	\$2,697,638	6860
9	\$43,261,721	\$41,789,055	37,158,206	\$2,453,667	6240
10	\$37,949,332	\$32,634,054	34,343,394	\$2,708,028	7785
11	\$33,111,111	\$35,396,885	31,421,399	\$2,008,998	51000
12	\$33,111,111	\$35,396,885	31,421,399	\$2,008,998	51000
13	\$33,111,111	\$35,396,885	31,421,399	\$2,008,998	51000
14	\$33,111,111	\$35,396,885	31,421,399	\$2,008,998	51000
15	\$33,111,111	\$35,396,885	31,421,399	\$2,008,998	51000
16	\$33,111,111	\$35,396,885	31,421,399	\$2,008,998	51000

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Hays said his brother-in-law in El Dorado used several payday lenders and found it "extremely difficult" to stop because new loans were needed to cover the cost of earlier loans.

"Before you know it, you have several of them going and it causes ... folks to become much more swamped or engulfed by the process than helped by it," Hays said.

"I feel very strong about this," Hays said. "I'm not sure exactly how strong the council or the community feels."

The ordinance had its first reading last week, and Hays wasn't sure when the council will vote on it.

Meanwhile, the State Board of Collection Agencies is cracking down on payday lenders that aren't licensed or



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violate the law.

In May, the board handed down fines totaling \$237,000 against James Kelley, owner of The Payment Center of Batesville LLC, which does business as Cash Advance of Batesville, for several violations of the 1999 Check Cashers Act.

In July, a fine of \$41,000 was delivered to Karnish & Hultquist Inc., which operated Show Me The Money in Springdale, for violating several sections of the act. The company also lost its license.

Getting More Serious

"It does appear that [the board is] getting a little more serious and the board is getting more serious about people being licensed and people following the Arkansas rules," said H.C. "Hank" Klein, founder and president of an activist coalition called Arkansans Against Abusive Payday Lending. "If they don't, [the board] is fining them."

In March 2006, Klein's group issued a report that showed only 66 of 275 payday lenders operating in the state were properly licensed and regulated by the Board of Collection Agencies. By November 2006, the number of lenders was down to 265 and more than half were licensed.

Now, all 253 payday lenders in the state are licensed and 25 applications are pending, according to Peggy Matson, executive director of the Board of Collection Agencies.

The makeup of the board has changed. In December, Gary Frala's term on the board expired. Frala had been appointed by Gov. Mike Huckabee to represent the "public at large" despite the fact that Frala is the controller of a payday lender.

In March, Gov. Mike Beebe replaced Frala with the Rev. Stephen Copley, regional attorney of Justice For Our

Neighbors and former senior pastor of First United Methodist Church in North Little Rock. Copley was the chairman of a coalition of churches and community groups that succeeded in persuading the General Assembly to raise the minimum wage in Arkansas last year.

Copley believes his work on the minimum wage led to his appointment to the Board of Collection Agencies.

"I'm concerned that all consumers are protected from payday lenders," Copley said. "I see that as the position I represent."

Klein predicted "an interesting fall for the payday lending industry."

On Nov. 20, a class-action lawsuit filed by consumers of check cashers against the Board of Collection Agencies is scheduled to go before Pulaski County Circuit Judge Barry Sims once again to determine the constitutionality of payday lending.

The Arkansas Supreme Court has heard the case twice and twice sent it back to Sims without answering the burning question: Are payday loans a violation of the constitutional limit on usury?

Borrow Responsibly

The payday lending industry isn't taking the attack on its business model quietly.

In February, the Community Financial Services Association in Washington, D.C., a trade association for payday lenders, announced a \$10 million campaign to warn people about the dangers of payday loans.

"We have listened to concerns raised about our industry and have developed innovative solutions to address them," CFSFA President Darrin Andersen said in a news release.

"These new initiatives will ensure that CFSA members hold themselves to a higher standard of responsible service."

In ads reminiscent of the liquor industry, the CFSA is telling potential customers to use its products "responsibly."

Other tips include: "Use payday advances only for short-term assistance - never as a long-term solution. If you need long-term assistance seek credit counseling"; and, "Only borrow an amount you feel comfortable being able to repay."

On July 31, CFSA members agreed to give customers who need it more than the typical term of two weeks to repay their loans at no additional cost. The customer will be able to repay the loan over several weeks.

"This option will be provided to customers for any reason with no additional cost, thus giving customers a safe and reliable way to close out their loans," the news release said.

CFSA member Advance America operates 30 payday lending stores in Arkansas, but whether any of its customers have taken advantage of the extra time was unclear, Jamie Fulmer, director of investor relations for Advance America, said last week.

Fulmer said the CFSA campaign is designed to improve the perception of the industry.

Payday lenders are typically used by middle-income Americans who need help for unexpected emergencies, he said.

Borrowing money at Advance America costs just under \$17 per \$100 borrowed up to two weeks, which is a lot cheaper than bouncing a check, Fulmer said. If someone bounces a check, the bank charges about \$27 and the vendor adds a \$25 fee.

Other potential problems occur when a customer can't make his credit card payment and faces a \$35 late fee, Fulmer said.

Fulmer also said the industry has thrived because of consumer demand for the payday lending services.

Still, Klein is intent on stopping payday lenders.

"We certainly are concerned that the whole payday lending scheme of things charges interest rates that far exceed the usury limit as established in the Arkansas Constitution," Klein said. "The maximum you can charge is 17 percent, but these people are making loans for 50 times that.

"We think 17 percent is enough money for anybody to make money off of. Anybody [who] charges more than that is a loan shark."

In some cases the fees, calculated as an annual percentage rate, exceed 500 percent.

Matson said that when the board locates an unlicensed payday lender, the store owner usually cooperates and applies for the license.

"Whenever we find somebody with a violation, we give them the choice: either pay the fine that we've proposed or come to a board hearing," Matson said. "I always explain to them ... I'm not offended if you want the hearing. It's not going to affect how we will treat you in the future."

But if the check casher decides to go before the board, the maximum fines could be \$1,000 per day or \$1,000 per violation.

"They're usually much more likely to pay it up front than to risk the board imposing the maximum," Matson said.

For those owners who take their chances with the board,

the results can be expensive.

The highest fine the board has handed down was \$1.3 million to Dennis D. Bailey of Fordyce in June 2006.

Matson said the board discovered that Bailey was operating 14 payday lender stores without a license and ordered him to get licensed. But the applications he subsequently submitted were rejected.

"We said, 'Look, we've already caught you operating without a license, and the law requires us to have a reasonable belief that you will operate in accordance with the law,' and we don't have that belief," Matson said.

Bailey was then told to shut down, but he didn't.

Matson said the board couldn't swoop in and close his stores down immediately because he claimed the loans were given through his firm, BMB Finance of West Plains, Mo. "The problem was, in order to shut off those loans, we needed the help of the state of Missouri," she said.

Missouri officials eventually sent a letter saying Bailey could make the loans only in Missouri. When Bailey still didn't stop making loans, charges of violating the Check Cashers Act were brought before the board.

The board found he was in violation, ordered the fine against him, and Bailey's stores across the state were finally closed.

Matson said Bailey first tried to pay the fine with a check but stopped payment on it. The board then tried to collect, but because Bailey didn't have any surety bonds, though they are required under the law, there was nothing to collect.

Matson said Bailey has been transferring his property and assets to his other family members to avoid paying the

money. The Arkansas State Board of Collection Agencies has sued Bailey in Pulaski County Circuit Court for fraudulent conveyance.

Bailey's case is pending.

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