Ark. AG asks payday lenders to shut down or face lawsuits

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LITTLE ROCK (AP) -- Arkansas Attorney General Dustin McDaniel moved Tuesday to shut down payday lending companies in the state, saying the fees they charge harmed the working poor and violated the state constitution's ban on high-interest loans.

McDaniel sent letters to about 60 companies that operate 156 payday lending locations in the state, asking them to shut down immediately and void customers' debts or face the likelihood of lawsuits.

"It is the position of this office that you must cease and desist your payday lending practices," McDaniel said in the letters. "In addition, I hereby demand you void any and all current and past-due obligations of your borrowers and refrain from any collection activities related to these payday loans."

He added that failure to comply "will likely lead to litigation to enforce the laws of Arkansas."

McDaniel based his actions on two recent state Supreme Court opinions that he said in his letter make it clear that the high interest rates charged by payday lenders violate the state constitution and the Arkansas Deceptive Trade Practices Act.

According to the constitution, no one should charge an interest rate higher than 17 percent. But the state Check Cashers Act that allows payday lenders to operate says a fee paid for holding a check written before the date it is to be cashed "shall not be deemed interest."

The Supreme Court opinions in two separate cases addressed this conflict. Justices said the Check Cashers Act, passed by the state Legislature in 1999, did not provide "blanket protection" for going over the constitutional cap. And in both cases, the court ruled that customers can collect the surety bond from a payday lender accused of violating the state constitution by charging more than 17 percent a year to borrow money.

In payday lending practices, typically someone wanting a loan goes to a check-cashing company and writes a check for a certain amount. The company then agrees not to cash the check for a specified time - often waiting until the check-writer's payday, when money can be deposited to cover the amount of the check.

Through a payday loan in Arkansas, a customer writing a check for $400, for example, typically would receive $350. The lender would keep the check for about two weeks without cashing it, thereby allowing the customer time to buy back the check.

The $50 charge on the $350 loan for 14 days equates to 371 percent interest, well above Arkansas' 17 percent limit.

McDaniel told reporters at a news conference that his office mailed out the letters Tuesday morning. The attorney general said he hoped the payday lending firms would comply, although he expects many will try to restructure their businesses in an attempt to avoid a court battle.

"These businesses will not disappear overnight. Some will restructure themselves to avoid the law, some will operate without a license, making it more difficult for us to find them. Some will fold and some will fight us in court," McDaniel said.

McDaniel said his office has prepared for a "long and difficult" legal fight, but it would end the "illegal and immoral" high-interest rates charged by the companies.

"This may be something that will be battled for years in court, but it's the right thing to do," he said.

A spokesman for Advance America, the nation's largest payday lender, said the South Carolina-based company had not yet received McDaniel's letter. The company operates 30 payday lending businesses in Arkansas.

Jamie Fulmer, Advance America's public affairs director, said he was concerned that the attorney general's office was infringing on the rights of businesses operating under licenses issued by the state.

"It appears the attorney general has determined we operate in violation of state law. However, no determination to that effect has been issued by any Arkansas court. We're troubled by the apparent lack of our due process," he said. "We're a business that is specifically licensed by the state of Arkansas and we operate in full and strict compliance of the laws which regulate all our aspects of our business, including the rates and fees we charge."

Lindsey Medsker, a spokeswoman for the Community Financial Services Association of America, had no immediate comment on McDaniel's announcement. The association is an industry trade group. Cheney Pruett, president of the Arkansas Financial Services Association, said singling out payday lenders would hurt consumers.

"The hard reality is that many hard-working, well-informed Arkansans sometimes fall short of cash between paydays. Efforts to prohibit or limit the supply of products in this market hurt consumers," Pruett said.

The attorney general said last month his office was considering pursuing legal action against payday lending firms, adding that the Supreme Court rulings had removed the industry's "last bastion of legitimacy."

Todd Turner of Arkadelphia, an attorney for the plaintiffs in both Supreme Court challenges, said he would still move ahead with another appeal that challenges the Check Cashers Act. Ironically, McDaniel's office will defend the state law in court as it has in the previous cases.

Turner said he was pleased with McDaniel's call to shut down the payday lending firms.

"The constitution is clear and I think he's doing his job by enforcing the constitution," Turner said. "We've been at this for years with people pretending this act gives them immunity from the constitution and it doesn't."

A spokesman for McDaniel's office said the attorney general has not given any instructions to the Arkansas State Board of Collection Agencies, which regulates payday lenders, on whether it should continue licensing the businesses.