

Stop, McDaniel tells payday lenders

BY DAVID SMITH ARKANSAS DEMOCRAT-GAZETTE

Arkansas' attorney general sends cease-and-desist letters to 156 businesses

Attorney General Dustin McDaniel began a process Tuesday to try to close all payday lending stores in Arkansas.

McDaniel mailed letters to 156 Arkansas payday lenders Tuesday telling them to "cease and desist your payday lending practices." They were told to stop doing business because the practice violates the state's constitutional usury limit, McDaniel said.

"[This] will prove to be a massive undertaking that may take thousands of hours of work," McDaniel said in a news conference at the attorney general's office. He demanded that payday lenders close permanently. McDaniel said he realizes that payday lenders won't disappear overnight.

"Some will restructure themselves in an attempt to avoid our law," McDaniel said. "Some will operate without a license, making them harder to find. Some will fold, and some will fight us in court. The truth is: This will be a long and difficult effort. However, it is the right thing to do."

Cheney Pruett, president of the Arkansas Financial Services Association Inc., which represents payday lenders, said trying to prohibit or limit the supply of payday loans will "hurt consumers."

"Arkansans choose payday lending because it costs less than paying bank and merchant overdraft fees and late payment fees on credit cards and utilities and is preferable to costs and fees or losing collateral to pawnshops," Pruett said in an e-mail response. "Singling out one source of consumer credit, when other choices are actually more expensive, does not resolve the need or demand for the product in the marketplace."

In the letters, McDaniel also demanded that payday lenders void any current or past-due obligations from borrowers and stop any collection activities related to those loans.

Payday lenders were asked to respond to the letter by April 4.

"If they do not respond or do not agree to shut down, we are prepared to take them to court," McDaniel said.

DECISIONS ARE IMPETUS

Two decisions by the Arkansas Supreme Court in January and February were the impetus for the letters, he said.

In both cases regarding bonds on payday lending stores, the Supreme Court said that payday lending was "unconscionable and deceptive, in addition to being prohibited by the Arkansas Constitution," McDaniel said.

After the February decision, McDaniel said the two rulings "may potentially sound the death knell" for payday lending in Arkansas.

At the time, McDaniel said he considered the January decision "to be somewhat of a green light" for his office to take "more aggressive action" against payday lenders.

The February ruling reaffirmed that position, McDaniel said.

McDaniel's letters listed two interest rate limits mentioned in the Constitution, the highest being 17 percent.

McDaniel said that if a payday lender uses a defense relying on the Arkansas Checkcashers Act of 1999, that reliance "is misplaced."

"In addition, Arkansas law prohibits unconscionable trade practices," McDaniel said. "The attorney general is authorized to enforce this law and protect the interest of Arkansas consumers. Loaning money at exorbitant rates that exceed 300 percent is about as unconscionable as I can imagine."

Payday lenders have operated in Arkansas for years. In the late 1990s, Attorney General Winston Bryant filed several lawsuits against payday lenders, saying they violated the state's usury limit.

ACT PASSED

In 1999, the Legislature passed the Check-cashers Act, which said the money earned by payday lenders should be considered fees and not interest, thereby skirting the state's usury limit. But in 2001, the Arkansas Supreme Court ruled that the Legislature did not have the authority to decide what is and isn't usury. The language about fees was struck from the act in 2005, but payday lenders continued to operate.

In Arkansas, taking out a payday loan works like this: The customer writes a check for \$400, for example, and receives \$350 in cash. The lender usually keeps the check for two weeks before cashing it.

A \$50 charge on a \$350 loan for 14 days equals 371 percent in annual interest. Under the Check-cashers Act, the customer must repay the loan before the agreed-upon date or the lender must deposit the check. Once the loan is repaid or the check deposited, the customer can take out another loan by exchanging another check for cash and promising to repay the loan.

Often a customer who takes out a \$300 payday loan may end up paying more than \$1,000 in interest and fees, McDaniel said.

277 LICENSED

There are 277 payday lenders licensed by the Arkansas State Board of Collection Agencies, said Peggy Matson, executive director of the agency.

But some of those utilize financing from other states, making it more difficult to pursue litigation.

Addressing the fact that letters were not sent to all 277 state-licensed payday lenders, Gabe Holmstrom, spokesman for the attorney general's office, said: "This is going to be a monumental undertaking, and we have to start somewhere. That being said, the others are far from being safe."

H.C. "Hank" Klein, president of Arkansas Against Abusive Payday Lending, said he was glad "a public official is taking a stand."

"It just shows what we've thought all along — that 400 percent is definitely higher than the 17 percent that the constitution calls for," Klein said in a telephone interview.

Other states, such as Georgia and West Virginia, have passed laws prohibiting payday lending in recent years. In those states, it also took time before the businesses closed, Klein said.

"The bottom line is eventually they got pushed into such a corner that they had to leave," Klein said. "I think the same will happen here. They'll lose case after case,

and it will become clearer and clearer, and eventually they will have to go.”

Todd Turner, an Arkadelphia lawyer who has filed numerous lawsuits against payday lenders and tried the two Supreme Court cases this year, said he was pleased at the position Mc-Daniel has taken.

Turner has one other case pending before the Supreme Court, challenging the constitutionality of the Check-cashers Act. Turner said he will continue pursuing that case. A decision in the case is likely later this year.

“But if he shuts them all down, I guess it might not be as important as it was to go on with this appeal,” Turner said. “We’ve come this far with my lawsuit, so I guess we’ll keep going with it.”

Matson, whose office licenses and regulates payday lenders as well as other businesses, said she was surprised by McDaniel’s announcement.

“My attorney from the AG’s office and her supervisor came to my office on Friday and told me that we should continue to do audits and how we should treat [payday lenders] in light of the recent rulings,” Matson said. “But none of this was mentioned.”

Matson said she is unsure how her agency will handle payday lenders now.

“If we continue to operate as we have, are we in conflict with the AG’s stance?” Matson asked. “I don’t know. [The Check-cashers Act] is a law that’s on the books. It states the maximum that [payday lenders] can charge. And that law has never been declared unconstitutional.”

Rep. David Johnson, D-Little Rock, who has sponsored bills to outlaw payday lending in Arkansas, said the attorney general’s position on payday lending should help in getting a bill through the Legislature, if it is necessary.

“Passing a bill is a matter of momentum,” Johnson said. “We had a growing momentum a year ago. I think with the attorney general’s aggressive and bold step today, we have even greater momentum.”

As attorney general, Mc-Daniel is within his authority to demand that payday lenders close their stores instead of filing a lawsuit challenging their legality, said Scott Dodson, an assistant professor of law at the University of Arkansas School of Law in Fayetteville.

“His letter is just a letter saying, ‘This is in violation of the law,’” Dodson said. “And if you don’t stop it, we may file a suit. My suspicion is that if they followed normal cease-and-desist letters, it isn’t an order that they [have to] stop, necessarily. It’s a ‘stop or else we’ll file suit to get an injunction for you to stop.’ It’s not as if the attorney general can go around and tell people what they have to do. But he can certainly tell people, ‘If you don’t do this, I’m going to file a lawsuit.’”

An attempt to reach Tom Hardin, an attorney who represents the payday lenders association, was unsuccessful.



McDaniel



Arkansas Democrat-Gazette/RICK McFARLAND

With state Rep. David Johnson (center) and Matthew Hass (right) of Arkansans Against Abusive Payday Lending, Attorney General Dustin McDaniel says payday lenders must stop doing business in Arkansas.