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McDaniel confuses payday lenders

BY DAVID SMITH ([CONTACT](#))

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LITTLE ROCK — Payday lenders in Arkansas said Wednesday that they were puzzled by Attorney General Dustin McDaniel's warning that they close their businesses.

McDaniel's office mailed letters to 156 payday lending stores in Arkansas on Tuesday, telling them to shut down by April 4 or face closure lawsuits.

At the same time, McDaniel is defending before the state Supreme Court the constitutionality of the Arkansas Check-cashers Act, which allows payday lending, said Jamie Fulmer, director of public affairs for Advance America Cash Advance Centers.

"And he's punishing us for adhering to the same law," Fulmer said. "We're troubled by the apparent lack of due process. Our belief is that we're in full and strict compliance with the laws."

Spartanburg, S.C.-based Advance America, which operates 30 stores in Arkansas, will respond to the letter and work with the attorney general "in hopes of resolving his concerns," Fulmer said.

The Legislature passed the Check-cashers Act in 1999. It declared that income earned by payday lenders was a fee and not interest, avoiding Arkansas' constitutional limit on annual interest made on loans at 17 percent. The Supreme Court ruled in 2001 that the Legislature had no power to determine what is or isn't interest, but the court didn't rule on the constitutionality of the act itself.

A lawsuit filed in 2003 is pending before the state's highest court on the constitutionality of the act. The court is expected to rule this year.

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Jerry McCoy, who owns All American Cash Advance in Wynne, said McDaniel was premature in threatening payday lenders.

“The Supreme Court has technically not ruled on whether the business is in violation of the Arkansas Check-cashers Act,” McCoy said.

He said he thought McDaniel’s announcement Tuesday was “rhetoric more than anything.”

“Why not wait until a few more months down the road [when the Supreme Court rules]?” said McCoy, who added that he thought McDaniel made his statements Tuesday “for political reasons.”

McDaniel said Tuesday that he decided to demand that the payday stores be closed because of two rulings made by the Supreme Court this year.

Each case regarded bonds on payday lending stores.

In the decisions, the court said payday lending was “unconscionable and deceptive, in addition to being prohibited by the Arkansas Constitution,” Mc-Daniel said.

Suing the initial 156 stores could cost hundreds of hours and thousands of dollars, said Gabe Holmstrom, spokesman for the attorney general’s office. There are 277 payday lending stores licensed by the state.

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.

Because the loans are high risk, payday lenders say they cannot operate profitably with a 17 percent limit on their loans, McDaniel said Tuesday.

Jim Mead, who owns Cash Today in Jonesboro, also said he’s unsure how he will respond to the demand made by McDaniel, who is from Jonesboro.

“I’m totally surprised to tell you the truth,” Mead said. “It absolutely amazes me. I know Dustin, I know his daddy and I knew his grandfather.”

McCoy said he will wait until attorneys for the payday lenders’ state association analyze McDaniel’s statements.

“We’ll definitely abide by whatever laws that are passed down,” McCoy said. “I’m not sure what we’re going to do now, but we’ll be in compliance with the law.”

Mead said he will meet with his lawyer before deciding what to do next.

He said there isn’t a good alternative for consumers who take out payday loans.

“It’s a need-driven business,” Mead said. “If the need wasn’t there, we wouldn’t be in business. We’ve got 2,000 customers. I’m going to have to say, ‘No, you can’t have any money. I don’t care if your kids are sick or your momma has died and you need to go to the funeral or you need to pay the light bill. Dustin McDaniel has put you out of business.’”

But consumers do have alternatives to payday loans, said Michael Rowett, chairman of Arkansas Against Abusive Payday Lending.

Rowett said consumers may be able to get paycheck advances from their employers, work out debt repayment plans through accredited consumer credit counselors, get small loans through credit unions or the military or get cash advances on credit cards. The majority of borrowers of payday loans have credit cards, said Rowett, who is employed by Southern Good Faith Fund, a partner with the group opposing payday lending.

Other options are available at www.stop payday predators.org/Alternatives.html, Rowett said.

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