Supreme Court and Attorney General Have Payday Lenders on the Run

Court ruling calls payday loans usurious; bonds due and payable

By: States: Arkansas | Source: AARP.org | Date Posted:

Precedent-setting state Supreme Court decisions are making it more difficult – some say impossible - for payday lenders to do business in Arkansas. That is good news to the coalition called Arkansans Against Abusive Payday Lending, of which AARP Arkansas is a leading member.

According to the Arkansas Democrat-Gazette newspaper, the court rulings state that bonding companies are liable for paying bonds to partly cover judgments against payday lenders. State Attorney General Dustin McDaniel says the rulings "may potentially sound the death knell" for payday lending in Arkansas, and Gail Barraza with The Bond Exchange in Little Rock, a broker for bonding companies, says bond companies are likely to consider posting bonds for payday lenders as too risky. Payday lenders are required to have a $50,000 bond for every store they operate. Peggy Matson, executive director of the Arkansas State Board of Collection Agencies, told the Democrat-Gazette that some payday lenders may have to go out of business. "If they cannot obtain a bond, then we cannot grant them a license," Matson said.

In 2002, Emma Staton of Pulaski County won a summary judgment in the County Circuit Court and Kentucky Cash was ordered to pay $834,000, plus $50,000 in attorneys' fees in the class action lawsuit. Staton could not collect the judgment because Kentucky Cash had gone out of business, so she sued the bonding company and the Arkansas State Board of Collection Agencies. The Board of Collection Agencies had ruled that American Manufacturers did not have to pay the bond because Kentucky Cash never violated the Check-cashers Act. But the Supreme Court said Thursday that because Kentucky Cash charged usurious interest in violation of the state's constitution, the company took part in a deceptive practice that violates the Check-cashers Act. American Manufacturers Mutual Insurance Co. was found liable to pay $200,000 for the surety bonds it posted for four Kentucky Cash Connection payday lending stores.

In 2003, Sharon McGhee won a $191,419.20 summary judgment in Pope County Circuit Court in a class action lawsuit against Old Republic Surety Company. In a subsequent appeal of lower court rulings, Arkansas Board of Collection Agencies and Old Republic Surety Company v. Sharon McGhee, et al., the Arkansas Supreme Court ruled:

"While Old Republic and the Board would like to limit liability to violations of the Check Cashers Act and the Board's Rules and Regulations, the plain reading of the bond language is not so limited. It protects against loss or damage suffered by any person resulting from RCE's violation of the "applicable laws of the State [of] Arkansas." Without question, a violation of this state's usury laws is a violation of an applicable law of Arkansas… Old Republic is liable to McGhee under the bond."

Most payday loan borrowers fall into a debt trap when they are unable to repay their loan within 14 days.

They take out a new loan to cover the first, entering a debt trap that is difficult to escape. The Center for Responsible Lending reports that the interest rate on these loans typically climbs to more than 300 percent annual percentage rate. Lawsuits have been filed on behalf of some of these consumers, to recoup some of the outrageous interest they have been charged by payday lenders.

Other Resources

Arkansas Supreme Court Opinions

Arkansans Against Abusive Payday Lending Web site