Some payday lenders shutting down, one chain may resist AG's order

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LITTLE ROCK - More than half of the 60 companies that run 156 payday lending outlets in Arkansas have indicated they will close since Attorney General Dustin McDaniel issued a cease and desist order last month, but at least one chain appears to be trying to remain in business, McDaniel said Tuesday.

Six companies operating 12 stores have submitted a formal written response, while anecdotal evidence - information from consumers, media reports and phone calls from the businesses - suggests that another 30 stores have or will close, McDaniel said.

"None of them will confirm that they will or have voided loans or will stop collections," and substantial evidence suggests they are still collecting, he said in a conference call with reporters.

He said he still may sue some stores for collecting, even if they have or will close, because each instance of issuing a loan and every substantive instance of attempting to collect is punishable by up to a $10,000 fine.

"We are developing a list of potential defendants for litigation, which we expect to commence real quickly after the deadline for communication has passed," McDaniel said.

No businesses have stated they intend to fight the McDaniel's March 18 letter in court, McDaniel spokesman Gabe Holmstrom said..

In those letters, McDaniel demanded the companies "void any and all current and past due obligations of your borrowers, and refrain from any collection activities related to these payday loans."

He gave the companies until Friday to respond.

McDaniel based the demand on two recent opinions in which the state Supreme Court found triple-digit interest rates payday lenders charge on short-term loans "unconscionable" and deceptive trade practices prohibited by the Arkansas Deceptive Trade Practices Act.

Opponents of the practice contend payday lenders prey upon the poor and other consumers who are unable to get loans from conventional lenders. Payday lenders contend their service meets a consumer demand, and they say their charges are considered fees, not interest, under the 1999 Check Cashiers Act.

The Supreme Court opinions said the law did not shield companies from lawsuits alleging the charges violate the 17 percent usury limit set by the state constitution.

Cheney Pruett, spokesman for Arkansas Financial Services Association, and industry trade group, said Tuesday some payday lenders want to stay open.

"I know it's the goal of many members of the association to continue to serve our customers while still operating lawfully," Pruett said. "Bottom line is that, if successful and if all payday lenders do close, Arkansans will pay more for short-term cash."

If an annual percentage rate were applied to the fees that banks charge for ATM withdrawals, those too would be above the usury limit, said Jamie Fulmer, spokesman for payday lender Advance America.

Advance America, which has 30 operations in Arkansas and bills itself as the nation's largest payday lender, is the group that appears it will try to remain in business, according to McDaniel and Arkansans Against Abusive Payday Lending, a payday lending opposition group.

McDaniel said Advance America has displayed signs at its Central Arkansas locations stating the company will not make loans to new customers, but that loans to existing customers can be renewed at 0 percent interest.

"As these folks are trying to dress up the pig and make it look like a kitten, we are going to talk about just how far back we have to go in reviewing their conduct," the attorney general said.

Fulmer said he did not believe Advance America had operated illegally and said the company's objective was "to remain in full and strict compliance with the law."

He said it would be premature to talk further about any "changes to the way we operate in Arkansas" prior to formally responding to McDaniel.

Michael Rowett, chairman of Arkansans Against Abusive Payday Lending, said Advance America's actions mirror similar steps the company took to stay in business in Pennsylvania during a payday lending crackdown in 2006. There, payday lending was never allowed, but the company operated through a partnership with a bank until the Federal Deposit Insurance Corporation discouraged the partnership.

The company charged 0 percent interest for 3 months to retain its customer base during the crackdown, then began charging a 5.98 annual percentage rate with a $149.95 "monthly participation fee," before the state eventually sued and shut down the business for good.

"We believe this is the same song, second verse," Rowett said. "I don't think anyone seriously believes they're going to charge 0 percent interest for a very long time."