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THE ONLINE EDITION OF THE COURIER

Monday, April 7, 2008

Impact of AG action on city's payday lenders uncertain

Story date: April 6, 2008

Following attorney general's announcement lenders must "cease and desist" operations or face lawsuits, local operations remain in business

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A viable short-term credit option for those unable to secure more traditional forms of credit — or a predatory, not to mention illegal, practice that seeks to take advantage of those least able to afford it.

That's the question that has arisen regarding the practices of so-called "payday lenders" statewide since March 19, when Arkansas Attorney General Dustin McDaniel announced such lenders must cease their lending practices immediately, void any and all current and past-due obligations of their borrowers and refrain from any collection activities related to such loans or face potential lawsuits.

With McDaniel's deadline for lenders to respond to his announcement having passed Friday, though, the question of what impact McDaniel's action will have on Arkansans, and residents of the Arkansas River Valley specifically, is no closer to being answered.

Of the seven "check cashing services" listed in Russellville and Dardanelle contacted by The Courier on Friday, none indicated any plans to shut down operations, with most declining comment.

Traditionally, payday lenders offer cash "payday advance loans" on the security of a postdated personal check they will hold through a prearranged future date. Typically, customers are required to write the check for an amount above the cash advance in order to compensate the lender.

It's a cost McDaniel said is too much.

"These businesses have made a lot of money on the backs of Arkansas consumers, mostly the working poor. Charging consumers interest in the range of 300-500 percent is unlawful and unconscionable, and it is time that it stops," McDaniel said in the press release. "It is my hope that they comply with my demand; but, if they do not, I stand ready to

The Courier
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take them to court."

The release cited a 2005 study by the Center for Responsible Lending that estimated payday lenders cost Arkansas consumers $25 million in fees and excessive interest each year.

But according to a release issued last Tuesday by the Arkansas Financial Services Association (AFSA), an organization representing payday lenders, the AFSA believes payday lenders to be regulated under the Arkansas Check Casher's Act.

McDaniel, however, refuted that claim in the letter he sent to lenders in mid-March, saying reliance upon the act "as a defense against usury," "other applicable Arkansas laws" and Arkansas Supreme Court and Court of Appeals rulings against payday lenders was invalid.

Among the court rulings McDaniel cited was a January ruling in which the Arkansas Court of Appeals affirmed a lower court's decision to award $191,419.20 to a plaintiff after finding it was the responsibility of a surety bond company that insured a Russellville check-cashing company to "know and abide by the clear public policy of this state as expressed by the Arkansas people in the Arkansas Constitution regardless of one legislative act (the Check-Casher Act) that runs counter to that policy."

Article 19, Section 13 of the Arkansas Constitution prohibits lenders from charging usurious rates, establishing "all contracts for consumer loans and credit sales having a greater rate of interest than seventeen percent per annum shall be void as to principal and interest and the General Assembly shall prohibit the same."

The release issued by the AFSA indicated the outlook for payday lenders in Arkansas remained uncertain.

"We do not know the future of the payday advance industry in Arkansas," the organization said in the release. "We do expect many lenders to close their doors while waiting for decisions to be made by the court. One thing we do know is that if all payday lenders are forced to close their doors in Arkansas, Arkansans will pay more for short term credit. The bottom line is that working adults are best served when given a variety of options and trusted to make financial decisions based on what's best for them and their families.

"Eliminating payday loans as an option does not eliminate the need for short-term credit. Instead it forces consumers to choose between more expensive alternatives such as fees for bounced checks, overdraft protection, or late bill payments or even unregulated off-shore Internet lenders. All products or fees which consumers say they use payday loans [sic]," the release noted.

Gabe Holmstrom, a representative of McDaniel's office, said when contacted Friday afternoon the office would likely release further information regarding the status of McDaniel's action later this week.