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Payday loan suit is heard 3rd time Strike down law, high court urged

BY DAVID SMITH (CONTACT)

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LITTLE ROCK — The Arkansas Check-cashers Act violates the state constitution

and should be struck down, Arkadelphia lawyer Todd Turner told the Arkansas Supreme Court on Thursday.

It was the third time in three years that the state Supreme Court has heard arguments in the same lawsuit that questions the constitutionality of the 1999 law. In 2005 and last year, the Supreme Court sent the case back to Pulaski County Circuit Court.

Turner represents Sharon McGhee of Perry County and others who sued the Arkansas State Board of Collection Agencies in 2003, arguing that the Check-cashers Act is unconstitutional because it allows payday lenders to charge usurious interest rates. The state's constitution limits interest charged by Arkansas businesses to 5 percent above the federal discount rate, or a maximum of 17 percent.

As the act was written originally, fees charged by payday lenders were declared not to be interest. But the Supreme Court ruled in 2001 in another case that the Legislature didn't have the authority to determine what constitutes interest. The reference to fees not being interest was removed from the act.

But even after that decision, there were still payday lenders operating in Arkansas "in clear violation" of the state's usury law, Turner said Thursday.

Interest rates charged by payday lenders range from about 100 percent to 1,700 percent, said Chris Averitt, a Jonesboro attorney who assisted Turner.

Tom Thrash, a Little Rock lawyer representing the state Board of Collection Agencies, argued that Turner presented no evidence in the case and simply asked that the Supreme Court find the law unconstitutional. Turner countered that there was much evidence presented in the case in its earlier stages.

Hank Klein, founder of Arkansans Against Abusive Payday Lending, said there are about 80 payday lending operations still in business in Arkansas. Primarily, those are businesses

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that say they finance their loans through out-of-state finance companies.

Turner said if the Supreme Court declares the Arkansas Check-cashers Act unconstitutional, those payday lenders with out-of-state financing probably could continue operating because they aren't subject to Arkansas law.

The Supreme Court could make a decision in the case in as little as two weeks, lawyers on both sides said.

Earlier this year, Attorney General Dustin McDaniel began fighting payday lending in the state. He mailed letters to 156 payday lenders in Arkansas, demanding they "cease and desist" their lending practices.

That represented more than half of the licensed check-cashing stores in the state. Some not targeted by McDaniel only cashed checks and did not offer payday loans.

Most that received McDaniel's letters have closed their stores.

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 has said.

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