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Court rules out payday lender act Justices: High rates unconstitutional

BY DAVID SMITH (CONTACT)

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LITTLE ROCK — The Arkansas Check-cashers Act of 1999 violates the state's

constitution, the state Supreme Court ruled Thursday, outlawing payday lending by Arkansas businesses.

But the decision won't necessarily shut down the 80 payday lending stores that still operate in more than 40 Arkansas communities.

DECISION
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The lenders say the loans are financed outside the state - similar to credit card transactions that are financed outside Arkansas and are not governed by the state constitution.

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The state attorney general, however, is considering taking those stores to court.

More than 150 Arkansasbased payday lending stores closed earlier this year in reaction to a push in March by Attorney General Dustin Mc-Daniel, who sent letters to 156 stores demanding they "cease and desist." But loans from those stores were financed in the state.

The 6-0 decision written by Associate Justice Paul Danielson in Sharon McGhee vs. Arkansas State Board of Collection Agencies states that interest rates that payday lenders charge "are clearly and unmistakably usurious."

Danielson pointed out that the rate of interest on some payday loans outlined in case documents was higher than 550 percent. The state constitution limits rates of interest to 5 percent above the federal discount rate, a maximum of 17 percent.

The case cannot be appealed because the Arkansas Supreme Court is the highest court that can hear a case concerning the Arkansas Constitution.

"This is a big ruling," said Justin Allen, the chief deputy attorney general. "Anytime the Supreme Court strikes down as unconstitutional a whole statutory scheme passed by the

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General Assembly, that's a big deal.”

Although there is no immediate effect on the 80 stores, Allen said the attorney general's position is that such companies are operating illegally. Thursday's decision, which defines “fees” as interest, still could be helpful in lawsuits, Allen said.

“Is it as clear-cut, perhaps? No,” Allen said.

“That's the reason they have taken a back seat to those who didn't even try to argue they were governed by law other than Arkansas law. It's going to be a rather complex legal analysis. We've looked at it, and we take the position that these entities doing the banking model through South Dakota institutions are subject to Arkansas law, and we have let them know that.”

More than 50 stores owned in part by W. Cosby Hodges of Fort Smith and Robert A. Srygley of Fayetteville are financed through two companies in Sioux Falls, S.D. - Mount Rushmore Loan Co. and Dakota Loan Co.

Those stores - which go by names such as Cash Advance and American Check Cashers - are in Arkadelphia, Benton, Bentonville, Blytheville, Clarksville, Conway, Dardanelle, El Dorado, Fayetteville, Fort Smith, Greenwood, Harrison, Helena-West Helena, Hot Springs, Jacksonville, Jonesboro, Little Rock, Mountain Home, North Little Rock, Osceola, Paragould, Pine Bluff, Rogers, Russellville, Searcy, Sherwood, Siloam Springs, Springdale, Texarkana, Van Buren, West Memphis, Wynne and Texarkana.

First American Cash Advance, based in Georgia, has fewer than 30 Arkansas stores in many of the same cities and also in Camden, Forrest City, Hope, Magnolia, Malvern, Monticello, Pocahontas and Stuttgart.

Hodges declined to comment but Mount Rushmore Loan Co. issued a prepared statement that said the stores do not offer payday loans but promissory notes.

“[They are] very similar to products provided by out-of-state lenders that provide financing for automobiles, furniture and credit card purchases,” the company said in the statement. “The products offered by Mount Rushmore meet every aspect of the laws of the state of South Dakota and conform with Arkansas law which allows parties to contract to select the laws of another state to govern their contract or transactions.”

Mount Rushmore operates with a money-lending license through the South Dakota division of banking, which regulates the company, the statement said.

None of the 80 stores is regulated by the Arkansas Board of Collection Agencies, said Peggy Matson, the board's executive director. The firms' check-cashing arms - which simply cashed checks - were licensed by the board, but now they no longer will be, Matson said.

This is the third time the Supreme Court has heard the same case. In 2005 and 2007, the Supreme Court sent the case back to Pulaski County Circuit Court for further review.

The Supreme Court has ruled several times in other cases about payday lending. In 2001, it ruled that the Legislature did not have the authority to decide what is or is not interest and struck from the act the reference that fees are not interest.

And two decisions by the Arkansas Supreme Court early this year prompted McDaniel to send the 156 letters to payday lenders.

In both cases regarding bonds on payday lending stores, the Supreme Court said that payday lending was “unconscionable and deceptive, in addition to being prohibited by the Arkansas Constitution,” McDaniel said at the time.

After the February decision, McDaniel said the two rulings “may potentially sound the death knell” for payday lending in Arkansas.

Todd Turner, an Arkadelphia lawyer who represented Mc-Ghee in the case, called the Supreme Court's decision Thursday “a great victory for Arkansas consumers.”

“They say these transactions are loans and the fees are interest,” Turner said. “I was happy that they struck the

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whole act down.”

The Arkansas Board of Collection Agencies is holding more than \$611,000 collected in fees from payday lending businesses, Matson said. It’s uncertain what will happen to that money.

Partial reimbursement of victims of payday lending would be difficult and costly, Allen said.

Matson also oversees the regulation and licensing of collection agencies, which will continue.

Payday loans in Arkansas work like this: A 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.

The annual interest rate on such a 14-day loan is 371 percent. 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 is deposited, the customer can take out another loan by exchanging another check for cash and promising to repay the loan.

Often a payday-loan customer who borrows \$300 may pay more than \$1,000 in interest and fees, McDaniel has said.

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