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Ark. Supreme Court hears arguments in payday-lending case

By ANDREW DeMILLO
Associated Press Writer

LITTLE ROCK (AP) -- An attorney for a consumers' group on Thursday asked the Arkansas Supreme Court to repeal the state's Check Cashers Act, saying it allows payday lenders to issue loans with triple-digit interest rates.

Todd Turner, an Arkadelphia attorney, also told justices that the state could be subject to a claim for illegal exaction for the license fees it collects from payday lenders in the state.

Turner said the act, passed by the Legislature in 1999, violates the state constitution because it allows payday lenders to make consumer loans with interest rates of more than 17 percent annually.

"This act gives cover to check cashers to do what they're doing," Turner said.

Turner, who represents Arkansans Against Abusive Payday Lending, appealed a Pulaski County judge's denial of the request to have the check cashers act declared unconstitutional. Judge Barry A. Sims also said the State Board of Collection Agencies was not subject to a claim for illegal exaction.

Tom Thrash, an attorney for the board, told justices that Turner's clients should have gone to the board before taking the complaint to court.

"They have not exhausted their administrative remedies," Thrash said. "They should have raised the issue with the board."

Justices appeared skeptical of the notion of taking the complaint about the board and the check cashers law before the board itself.

"Who do the petitioners sue?" Justice Annabelle Clinton Imber said. "You're petitioning with the party that you're going to sue."

Through a payday loan in Arkansas, a customer writing a check for \$400, for example, typically would receive \$350. The lender would keep the check for about two weeks without cashing it and, thereby, allowing the customer time to buy back the check.

The \$50 charge on the \$350 loan for 14 days equates to 371 percent interest, well above Arkansas' usury limit of 17 percent.

The consumer group filed suit in April 2003, arguing that the Arkansas Check Cashers Act was a violation of the maximum interest rates. The law says money charged for holding a check written in advance is to be considered a fee, not interest.

The case made its way to the Arkansas Supreme Court, which in 2005 sent the case back to Pulaski County Circuit Court. Sims ruled that the act was constitutional in November 2005.

The plaintiffs in the case include several customers who have used check cashing businesses and several private individuals, including North Little Rock Mayor Patrick Hays, Turner said.

Turner's argument before the justices focused almost entirely on the constitutionality of the Check Cashers Act and not the illegal exaction claim. Turner said the group's main focus is on overturning the law allowing payday lenders to operate.

"Our main focus is to try and get the statute struck down," Turner said. "The illegal exaction claim, we made that because we just don't think the state should be in the business of giving licenses to companies that violate the law."

A study released by Arkansans Against Abusive Payday Lending released in March found that 139 out of 275 payday lenders in the state are neither licensed nor regulated by the state.