

Act a cover for lenders, court told

Plaintiff battles payday loan law

BY DAVID SMITH ARKANSAS DEMOCRAT-GAZETTE

Arkansas' law that permits "payday lending" was written in 1999 for the purpose of allowing payday loans to exceed the state's usury limit, an Arkadelphia lawyer told the state Supreme Court Thursday.

The lawyer, Todd Turner, argued that the law, the Arkansas Check Cashers Act, allows payday lenders to charge interest rates on their loans in excess of the state's constitutional limit of 17 percent. Many payday loans charge annual rates of 300 percent and more.

Turner wants the Supreme Court to rule that the law is unconstitutional.

Before the law was passed, Turner said, Arkansas Attorney General Winston Bryant sued several payday lenders in the 1990s, claiming they charged usurious rates of interest in violation of the state constitution. The payday lenders eventually settled each of Bryant's lawsuits.

But in 1999, the Legislature passed the Check Cashers Act, which said that the money pay-day lenders receive is fees and not interest.

"This act gives cover to [payday lenders] to do what they're doing," Turner said. "The state shouldn't be involved in illegal action."

Little Rock lawyer Tom Thrash, who argued the state's case, said after the hearing that he expects the court to rule in two to three weeks.

A payday loan works like this in Arkansas: A customer writes a check for \$400, for example, and receives \$350. The lender normally keeps the check for two weeks, but does not cash it.

The \$50 charge on a \$350 loan for 14 days equals 371 percent in annual interest. If the borrower cannot pay the loan in two weeks, another check is written, another fee paid and the loan is extended for two more weeks. The process often continues for months.

Some payday lending borrowers spend more than \$1,000 before paying off one loan, according to H.C. "Hank" Klein, president of Arkansans Against Abusive Payday Lending, a consumer advocate group.

There are about 275 payday lending stores in Arkansas. Arkansas is one of 38 states that have laws allowing payday lending, according to the Consumer Federation of America in Washington.

Only six of seven justices heard Thursday's arguments. Chief Justice Jim Hannah was absent, but will join the other justices in ruling on the case, Associate Justice Donald Corbin said.

Thrash argued that the plaintiff in the case, Sharon McGhee, should have taken her case first to the Arkansas Board of Collection Agencies, the agency that regulates payday lenders, before filing the lawsuit in Pulaski County Circuit Court.

The case, McGhee v. Arkansas State Board of Collection Agencies, was filed in 2003. The case went to the Supreme Court last year, but the court ordered it sent back to Pulaski County Circuit Judge Barry Sims. Sims ruled last November that the state law was constitutional and Turner appealed the case back to the Supreme Court.

Thrash fielded several questions from justices questioning his arguments.

If the plaintiff took the case before the Board of Collection Agencies, claiming the state law was unconstitutional, "what relief does the board have, other than declaring themselves unconstitutional?" Associate Justice Annabelle Clinton Imber asked Thrash.

Associate Justice Tom Glaze noted that litigation on the issue, including this lawsuit and others, has been ongoing for six years.

One of those cases, Luebbers vs. Money Store Inc., went to the Supreme Court in 2001. The Supreme Court declared in that case that the Legislature did not have the authority to determine what is and isn't interest. But the court didn't say the Arkansas Check Cashers Act is unconstitutional.

Last year, the Legislature struck the language from the law that said charges on the loans are fees and not interest. The Legislature, though, has not repealed the Check Cashers Act in the past three sessions, even though efforts have been made to overturn the measure.

And payday lending continues in Arkansas. Based on industry averages, Klein estimates that payday lenders in Arkansas make about \$68 million a year.

If the Supreme Court rules that the Check Cashers Act is unconstitutional, Arkansas could not license any of the payday lenders, Turner said after oral arguments.

"Then the attorney general could determine if someone is violating the Constitution and shut them down," Turner said. "Unlike a civil case, where we can get a judgment we may never collect, the attorney general could fine them, get them held in contempt. He has powers that private lawyers don't have."

If the law is declared unconstitutional, "some [payday lenders] would go out of business, others would try to stay in business but you would have no one regulating their activities," said Peggy Matson, head of the Board of Collection Agencies. "At least it is regulated at this point and they are held to the standards of the law. And, remember, [payday lending] did exist before the law was passed."

But Thrash said he believes the Supreme Court will not address the issue of constitutionality in its decision, but will tell both sides to take the case to the Board of Collection Agencies.

"I think what was before the court today was just a procedural issue," Thrash said in an interview after Thursday's session before the Supreme Court. "In prior decisions, [the Supreme Court] has told us we have to go through the administrative process first on a challenge on the constitutionality of a statute administered by a state agency."

"So I think we're waiting on the Supreme Court to tell us whether we go first to the [Board of Collection Agencies] and then to the trial court or go directly to the trial court" to get an initial ruling on the constitutionality of the Check Cashers Act, Thrash said.