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Without legislation, payday lending battle shifts back to court

Wednesday, Apr 11, 2007

By Jason Wiest
Arkansas News Bureau

LITTLE ROCK - With the Legislature's failure to further regulate payday lenders for the fourth consecutive session, the battle over the constitutionality of the industry's practices will shift back to the judicial branch this fall.

Legislation to cap check-cashers' rates at the state usury limit and fine operators who charge more passed the House but died in the Senate during the recently concluded regular session.

An industry-backed bill that critics said repeated reforms, such as banning rollover loans, that are already law while doing nothing to limit lenders' fees passed the Senate but died in the House.

With the stalemate, opponents said they would fall back on a 2003 lawsuit in their fight to end practices they say allow payday lenders to charge triple-digit rates for short-term loans, far exceeding the state's 17 percent usury limit.

"This is such a clear cut, legal black and white issue. You can't charge people 300 percent for credit in Arkansas under our constitution," Arkadelphia lawyer Todd Turner, who represents plaintiffs in the lawsuit, said Tuesday.

In November, the state Supreme Court reversed a lower court's finding that it lacked jurisdiction to decide the constitutionality of the 1999 Arkansas Check Cashers Act and sent the case back to Pulaski County Circuit Court. Circuit Judge Barry A. Sims is scheduled to hear the case again beginning Nov. 20.

"It's been ripe to be decided since the day we filed the lawsuit," Turner said.

The suit asks the judge to declare unconstitutional the 1999 act, which specifies that fees charged for payday loans "shall not be deemed interest." Charging interest above 17 percent would violate the constitution's usury limit.

Until the issue is decided, payday lenders will continue to operate under the eight-year-old law.

It requires businesses to be licensed by the Arkansas State Board of Collection Agencies, that they issue loans for no less

than 6 days and no more than 31 days, that they assess fees based on the face amount of the check, which cannot exceed \$400, and that they be subject to audits by the board.

Peggy Matson, executive director of the collection agencies board, said to be licensed, businesses must pay a \$500 fee, prove they have \$20,000 in liquid assets and maintain that amount, have the business experience to operate such a business, prove they will operate in compliance of the law, and post a \$50,000 assurity bond.

Turner has won judgments against individual lenders whose fees were ruled to have exceeded the usury limit, but in some cases awards could not be collected because the operations were insolvent, he said. Turner made claims against the assurity bonds, but the board has ruled that the bonds do not cover those judgments.

Turner said he is appealing, but that the state board's ruling caused him suspicion, he said.

"It's my impression that the State Board of Collection Agencies is trying to protect the industry," he said.

"Oh, baloney," Matson said when asked about Turner's comment in a separate interview.

The judgments exceeded what the bond is worth but that is not the state agency's concern, Turner said.

"Why would they care if an insurance company has to be responsible for a judgment or not? It doesn't cost the state anything," he said.

"There's my argument right there," Matson said.

Rules and regulations require the person requesting the pay to show that the check casher violated the act, and Turner has never shown that, Matson said.

"They don't have the authority to make the claim if he doesn't present the evidence," she said.

Turner sued the board in April 2003 on behalf of people who have used check-cashing businesses as well as some who have not, including North Little Rock Mayor Patrick Hays.

In the case, Turner contends that the operations the board regulates charge interest on payday loans as high as 500 percent or more under the 1999 law.

During the session, opponents of payday lenders said they prey on the poor, the elderly and minorities, many of whom don't qualify for loans from banks and other conventional lenders.

"When someone's on fire, you pour water on them, you don't pour gasoline on them," H.C. "Hank" Klein, founder of Arkansans Against Abusive Payday Lending, said after a legislative hearing.

The coalition includes AARP, the NAACP and ACORN, the Association of Community Organizations for Reform Now.

Some lawmakers defended the industry, saying it provided needed services for people who otherwise could not get a loan.

"To what point should the government protect you, and to what point should the buyer have some responsibility?" Rep. Keven Anderson, R-Rogers, said during a hearing on payday lending legislation.

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