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State News

Court: Ark. check cashing law not 'blanket protection'

*By JON GAMBRELL
Thursday, January 17, 2008 11:45 AM CST*

LITTLE ROCK - The Arkansas Check Cashers Act does not provide "blanket protection" for payday lenders who charge customers more than the 17 percent a year to borrow money, the state Supreme Court ruled Thursday.

The ruling, written by Associate Justice Robert L. Brown, affirms a lower court decision that ordered a Russellville check casher to forfeit a \$50,000 surety bond it had with Old Republic Surety Company Inc. to operate in the state. The high court also ordered a state board to rule in accordance with the opinion.

The Supreme Court opinion runs counter to a 1999 law passed by the Legislature that says fees paid by check-cashing customers do not amount to interest, which the constitution caps at 17 percent a year.

"The usury laws of this state, including what constitutes interest or fees, have been part of our constitution, statutory law and case law for decades," Brown wrote. "It was incumbent upon Old Republic to know and abide by the clear public policy of this state as expressed by the Arkansas people in the Arkansas Constitution, regardless of one legislative act (the Check Cashers Act) that runs counter to that public policy."

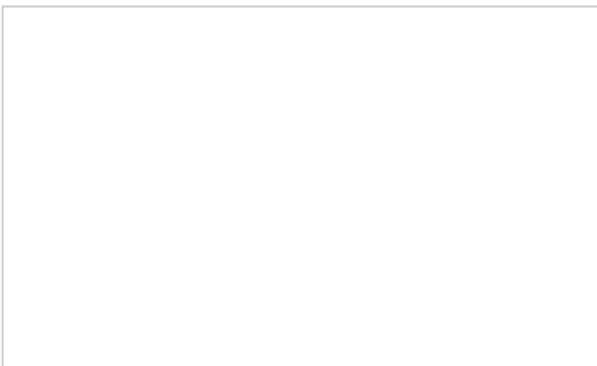
Sharon McGhee and others sued Old Republic in 2003, asking for the \$50,000 bond the company issued on behalf of Russellville Check Express Inc., claiming the check casher charged unconstitutional interest rates that were "unconscionable." A Pope County court found in favor of McGhee, but the Arkansas Supreme Court later reversed its decision, saying she hadn't exhausted all of her appeals.

The Arkansas Board of Collection Agencies then rejected McGhee's claim, saying she presented no evidence the Russellville company violated the state's Check Cashers Act. A Pulaski County court disagreed and ruled in her favor, which the board then appealed to the Supreme Court

Todd Turner, an Arkadelphia lawyer representing McGhee, said Thursday's ruling showed the Supreme Court's opposition to the Check Cashers Act.

"I think this opinion makes it really clear that you can't ignore the constitution, regardless of what the General Assembly said in the Check Cashers Act," Turner said.

Turner is handling another case, also in Pulaski County, that Thursday's ruling could directly affect. In that case, Pulaski County Judge Barry Sims ruled the 1999 law was constitutional, but the Supreme Court sent the case back to Sims without making a ruling on its merits. Sims again ruled the law constitutional, and Turner said he planned to appeal again to the state



Supreme Court.

Peggy Matson, executive director of the state Board of Collection Agencies, said she had yet to read the opinion Thursday morning. Joel Taylor, a lawyer representing Old Republic, did not immediately return a call for comment.

The Arkansas Check Cashers Act says a fee paid for holding a check written before the date it is to be cashed "shall not be deemed interest." Typically, someone wanting a payday loan goes to a check-cashing company and writes a check for a certain amount, and the company agrees not to cash the check for a specified time — often waiting until the check-writer's payday, when money can be deposited to cover the amount of the check.

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.

A service of the Associated Press(AP)

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