

## Court Rules Check Cashing Law Not A Defense Against Claim

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LITTLE ROCK - In a ruling that could signal trouble for Arkansas' payday lending industry, the state Supreme Court said on Thursday the 1999 Check Cashers Act does not give "blanket protection" to companies that violate the state usury law.

In a unanimous decision, the high court affirmed a circuit judge's ruling that a payday lender's surety bond could be used to pay a part of a judgment against a check-cashing business ruled to have violated Arkansas law that limits interest rates to 17 percent.

In the case decided Thursday, the ruling cleared customers who won a \$191,000 judgment against a Russellville payday lender to move forward with a \$50,000 claim they filed against the check-cashing firm's surety company.

Opponents of the 1999 law, who claim it allows payday lenders to charge triple-digit interest in violation of the usury law, said Thursday's ruling bodes well for a separate lawsuit challenging the constitutionality of the Check Cashers Act.

"It's wonderful," said Hank Klein, president of Arkansans Against Abusive Payday Lending. "They're already questioning the (constitutionality of) the Check Cashers Act. It would appear the next time they get this (issue), the conclusion has already been drawn in this case. This is great for consumers."

The 1999 law terms the charges payday lenders impose on short-term loans as fees, exempt from the usury law.

Thursday, the Supreme Court rejected arguments by Old Republic Surety Co., which issued a \$50,000 surety bond to Arkansas Check Express in Russellville, that it did not have to pay the money because the circuit judge who handled the Check Express case never ruled the company violated the Check Cashers Act.

Writing for the court, Justice Robert L. Brown said Arkansas' usury laws, including what constitutes interest or fees, "have been part of our constitution, statutory law and case law for decades."

"It was incumbent upon Old Republic to know and abide by the clear public policy of this state ... regardless of one legislative act (the Check Cashers Act) that runs counter to that public policy," Brown wrote. "Old Republic did not do so, and by this failure, it violated the laws of this state and became liable under the bond."

Arkadelphia lawyer Todd Turner, who represented the customers in the case, said he was pleased with the Supreme Court ruling.

"The court made it clear that they are not going to let the check cashers law be a defense to these actions," Turner said.

Turner's clients won a lawsuit against Arkansas Check Express after a judge concluded the lender violated the usury law. They were awarded in late 2003, but the lender was unable to pay and has since gone out of business.

Turner sued the surety company in Pope County Circuit Court. A judge ordered Old Republic to pay \$50,000 to cover part of the judgment. The company appealed the decision to the Supreme Court, which ruled Turner and his clients had to go to the State Board of Collection Agencies first. That agency regulates the state's payday lending industry.

In 2005, Turner asked the board to tap the payday lender's surety bond to help pay the judgment. The board denied the request, saying the surety bonds did not cover usury law violations.

A Pulaski County circuit judge later ruled that the surety bonds did cover the violation of any law and said the surety bond could be used to pay the \$191,000 judgment.

Old Republic appealed that decision to the state Supreme Court.



In Thursday's ruling, the court said the board's decision "is at odds with the clear language of the Old Republic bond because the state's anti-usury policy as expressed by ... the Arkansas Constitution has been violated."

Peggy Matson, executive director of the Arkansas Board of Collection Agencies, did not immediately return calls to her office seeking comment Thursday.

Turner said Thursday's Supreme Court ruling signaled the high court's sentiment regarding the Check Cashers Act. He is challenging the constitutionality of the law in a separate lawsuit he expects to come before the high court this year.

Turner has appealed Pulaski County Circuit Judge Barry Sims' ruling in November that the 1999 law is constitutional.

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