

Payday-loan rulings to spur state action

BY DAVID SMITH ARKANSAS DEMOCRAT-GAZETTE

Attorney General Dustin Mc-Daniel said Thursday that his office will begin taking action against payday lending stores in Arkansas based on two similar Arkansas Supreme Court rulings in the past month.

The court ruled Thursday in a unanimous decision that bonding companies are liable for paying bonds to partly cover judgments against payday lenders. The court made a similar decision in January.

Thursday's decision overrules judgments made by Pulaski County Circuit Court and the Arkansas State Board of Collection Agencies, which regulates payday lenders. The state Supreme Court called the board's ruling "arbitrary and capricious and an abuse of discretion."

The two decisions "may potentially sound the death knell" for payday lending in Arkansas, McDaniel said.

"I considered [the January case] to be somewhat of a green light for more aggressive action by the attorney general's office on behalf of consumers with regard to payday lenders," McDaniel said. "I think that [Thursday's decision] reaffirms that position."

Thursday's ruling means bond companies are likely to consider posting bonds for payday lenders as too risky, said Gail Barraza with The Bond Exchange in Little Rock, a broker for bonding companies. Payday lenders are required to have a \$50,000 bond for every store they operate.

McDaniel said his office is considering its options.

"But we anticipate following the court's direction that these operations are usurious and do in fact take advantage of consumers," McDaniel said. "We should protect the citizens of Arkansas with all legal tools at our disposal."

McDaniel said it may not be necessary at first to file lawsuits against payday lenders. His office may start by writing to payday lenders in the state, advising them of the court's decision, McDaniel said.

"We will have to look at them on a case-by-case basis," Mc-Daniel said. "But if I were in the [payday lending] business, reading this opinion and the one in January, I would be very nervous about my ability to continue doing business in Arkansas."

Matt DeCample, spokesman for Gov. Mike Beebe, said, "The Supreme Court is continuing to rule on the side of consumers and in the interest of consumers in our state."

There is one other related case pending before the state Supreme Court, arguing whether the Arkansas Check-cashers Act, which governs payday lending, is constitutional. That case could be heard by the court this summer.

Several times in Thursday's ruling, the Supreme Court referred to the charges made by payday lenders as usurious. The Arkansas Constitution's limit on loans in the state is 17 percent.

Taking out a payday loan in Arkansas works like this: The customer writes a check for \$400, for example, and receives \$350 in cash. The lender usually keeps the check for two weeks before cashing it.

A \$50 charge on a \$350 loan for 14 days equals 371 percent in annual interest. Under the Arkansas Check-cashers Act, the customer must repay the loan before the agreed-upon date or the lender must deposit the check. Once the loan is repaid or the check deposited, the customer can take out another loan by exchanging another check for cash and promising to repay the loan.

Under the Arkansas Checkcashers Act, which passed in 1999, each payday lending store in the state is required to post a \$50,000 bond.

Cheney Pruettt, president of the Arkansas Financial Services Association Inc., which represents payday lenders, said he does not think Thursday's ruling will affect payday lending in Arkansas.

"There are still thousands of Arkansans who need short-term credit, and we are the cheapest alternative," Pruettt said. "One thing we do when you walk in, [interest rates] are right there on the wall and are not hidden."

The court's decision Thursday, written by Justice Donald Corbin, said that American Manufacturers Mutual Insurance Co. was required to pay \$200,000 for the surety bonds it posted for four Kentucky

Cash Connection payday lending stores.

Emma Staton, a Pulaski County resident, filed a class-action lawsuit against Kentucky Cash in 2001 that contended the company's fees violated Arkansas' constitutional usury limit. In 2002, Staton won a summary judgment in Pulaski County Circuit Court and Kentucky Cash was ordered to pay \$834,000, plus \$50,000 in attorneys' fees.

Staton could not collect the judgment because Kentucky Cash had gone out of business, so she sued the bonding company and the Arkansas State Board of Collection Agencies. The Board of Collection Agencies had ruled that American Manufacturers did not have to pay the bond because Kentucky Cash never violated the Check-cashers Act.

But the Supreme Court said Thursday that because Kentucky Cash charged usurious interest in violation of the state's constitution, the company took part in a deceptive practice that violates the Check-cashers Act.

Peggy Matson, executive director of the Arkansas State Board of Collection Agencies, said some payday lenders may have to go out of business.

"If they cannot obtain a bond, then we cannot grant them a license," Matson said.



McDaniel