

Payday Lenders Assess Next Move

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Two days after Arkansas Attorney General Dustin McDaniel sent 60 owners of the 156 payday lenders operating in the state a cease and desist order, companies are assessing their next move.

Of the 156 payday lenders, 11 operate in Fort Smith, according to the attorney general's office.

McDaniel's action comes from the state Supreme Court's opinions that the legislature's 1999 Check Cashiers Act cannot be used to consider fees for holding checks not an interest rate.

A normal payday loan of \$400 would be charged a fee of \$50 to hold a check for 14 days — that's an annual interest rate of 371 percent. The Arkansas constitution says no one can charge an interest rate higher than 17 percent.

"The Check Cashiers Act is no longer a defense for charging 300 or 400 percent in interest rates," said Michael Rowett, chairman for Arkansans Against Abusive Payday Lending in Little Rock. "They've (payday lenders) been well aware of that (constitution), it's just the act has been a way to circumvent that."

But Jamie Fulmer, spokesperson for Advance America/Cash Advance in Spartanburg, S.C., said his company has been operating under the law and is even licensed and regulated by the state.

"The state regulates every aspect of our business, and they regularly audit us," Fulmer said. "Based on all those factors, we believe that supports our contention that we're operating legally and ethically in the state of Arkansas. So this is somewhat puzzling."

Fulmer argues that the product they offer — small loans with a short loan term — is a needed and wanted product used by millions of consumers "satisfactorily" every year throughout the country. Taking away the product could in turn produce more bounced checks, overdraft fees and late payments.

But Rowett said there's other options for consumers who need to borrow money or get behind on bills, such as consumer credit counseling and payment plans with creditors. Even cash advances on credit cards have lower interest rates than payday lenders, he added.

Fulmer said it's an attractive consumer good that shouldn't have to go away because some people abuse it.

"I like ice cream, but I shouldn't have it taken away because some people eat too much of it," Fulmer said.

But it has been taken away in North Carolina and Pennsylvania.

In December, the publicly-traded company closed 66 of its payday loan centers in Pennsylvania as Advance America awaits the appeal on a lower court's decision in the summer to suspend operations and discontinue its "Choice Line of Credit."

"Choice Line of Credit" was a credit product they introduced in the state after BankWest Inc., the bank for which the company markets, processes and services payday cash advances and installment loans in Pennsylvania, discontinued its services in 2006.

The new credit product, Fulmer said, was an alternative to meet consumer demand. However,

the Pennsylvania Department of Banking said it was only sidestepping the law.

In 2006, North Carolina did the same behind efforts of its attorney general, shutting down payday lenders.

Asked if the same would happen with the 30 Advance America payday loan centers in Arkansas, Fulmer said, "It's obviously not our intent or hope, but circumstances were different (in Pennsylvania)."

Fulmer said he has about 65 employees in the state, with about two or three employees at each center. The company has two locations in Fort Smith and one in Van Buren.

Still, there are operations in Oklahoma that do business across state lines, which could provide options to those in Arkansas who may not have it in their state much longer. Fulmer said he's seen consumers in states that have discontinued the service drive across state lines for loans.

Rowett said he's sure that will be the case, but that won't stop him or the efforts to rid payday lenders in Arkansas.

David Blatt, director of public policy for the Community Action Project in Tulsa, said Oklahoma doesn't have as much of a restrictive cap on interest rates as Arkansas does. The state set the maximum possible APR at 456 percent on a \$300, 12-day loan with a maximum finance charge of \$45.

"I would imagine that Oklahoma lenders in the eastern part of the state may see this as an untapped market," Blatt said of Arkansas consumers going across state lines for payday loans.

While the law would be less effective in Fort Smith than Little Rock, he still applauds the state for pushing such a measure.

"There's no question there are people in financial distress who are vulnerable and strongly tempted by payday loans," Blatt said. "They sound kind of harmless, but that's not what experience shows."

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