

59 payday lenders call a halt, McDaniel says

Will be watching to make sure, he states

BY DAVID SMITH ARKANSAS DEMOCRAT-GAZETTE

All but one of the 60 payday lending companies that were told last month to stop making high-interest loans have stopped the practice, Attorney General Dustin McDaniel said Tuesday.

Fifty-two responded to Mc-Daniel by his April 4 deadline, indicating they have discontinued offering payday loans above Arkansas' constitutional 17 percent annual interest limit. On the basis of reports from consumers, seven other companies also stopped the practice, McDaniel said. The 59 companies represent 154 of the 156 stores that McDaniel targeted in a March 18 letter.

"It's important to say that this is not a declaration of victory," McDaniel said at a news conference in Little Rock. "'Trust but verify' will be the watchwords for our office as we go forward. In the coming days and weeks, we will be working to determine the accuracy of the representations that have been made to us."

McDaniel declined to say how he will verify that the stores have stopped the practice. And he has set no deadline on his office for ensuring compliance.

If the businesses continue making the loans, lawsuits "will be inevitable," said McDaniel, who added that he was surprised that so many payday lenders agreed to stop making the loans.

Justin Allen, chief deputy attorney general, said he isn't sure when McDaniel's office will complete its confirmation that the stores have stopped making payday loans.

"We've never done anything like this before," Allen said. "We're talking about 156 locations. If we're going to confirm all of them, which we owe to ourselves to do, it could literally be months. And the reality of it is some of them may be lying low, doing the right thing for now, and will for the next few months, and then the next thing you know they are back at it. In those instances, we'll have to rely on the consumers and the media."

Peggy Matson, executive director of the Arkansas State Board of Collection Agencies, which regulates payday lenders and check-cashing companies, said she has been told by officials at only 28 stores that they actually are closing.

And just because the companies have told McDaniel they have discontinued making usurious payday loans doesn't mean the stores will close.

Almost all of the payday lenders have licenses to cash checks and could legally continue that business, Matson said. Some have told her office that they will make payday loans for less than 17 percent, Matson said.

Some stores also sell phone cards, money orders and prepaid debit cards, all of which are legal and would allow the stores to remain open, Matson said.

"It's important for people to realize that just because a business is still at a location and the lights are on and people are coming and going doesn't mean they are doing anything illegal or defying the attorney general's orders," Matson said.

The largest of the companies targeted by McDaniel — Advance America Cash Advance Centers of Spartanburg, S.C. — agreed with McDaniel's request to stop making the high-interest payday loans, said Jamie Fulmer, a spokesman for the company. Advance America has 30 stores in Arkansas.

Fulmer said there is still a "healthy dialogue" between Advance America and McDaniel about McDaniel's concerns. Mc-Daniel said he has told Advance America he needs to know what products the company will offer and what its business model will look like.

Fulmer said Advance America doesn't believe it is in violation of Arkansas law. The Arkansas Check-Cashers Act, passed in 1999, allowed payday lenders to charge interest rates above the 17 percent cap allowed by the state constitution.

Two decisions by the Arkansas Supreme Court in January and February were the motivation for McDaniel to crack down on payday lenders.

In both cases regarding bonds on payday lending stores, the Supreme Court said that payday lending is "unconscionable and deceptive," in addition to being prohibited by the Arkansas Constitution, McDaniel said last month.

A case pending before the state Supreme Court also challenges the constitutionality of the Arkansas Check-Cashers Act. The court may make a decision on the case this year.

Even though it has agreed to stop the high-interest loans, Fulmer said Advance America will begin to offer its existing customer loans at zero interest.

Last month the consumer group Arkansans Against Abusive Payday Loans said Advance America had already started the zero-interest loans. The group said Advance America used the strategy in Pennsylvania two years ago but soon began to charge a monthly participation fee of \$149.95. The practice eventually was found to be illegal in Pennsylvania, the consumer group said.

Fulmer declined to comment on whether the Arkansas loans are similar to what was offered in Pennsylvania.

In Arkansas, taking out a payday loan 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 Check-Cashers Act, the customer must repay the loan before the agreed-upon date or the lender deposits 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.

Often a customer who takes out a \$350 payday loan may end up paying more than \$1,000 in interest and fees, McDaniel said last month.

Cheney Pruettt, president of the Arkansas Financial Services Association Inc., which represents payday lenders, said he does not know the future of the payday loan industry in Arkansas.

"One thing we do know is that if all payday lenders are forced to close their doors in Arkansas, Arkansans will pay more for short-term credit," Pruettt said.

Pruett warned that some consumers may begin to use Internet payday loan businesses. Matson said her office receives very few complaints about payday lenders — maybe six a year — but most are complaints against Internet payday lenders.

When McDaniel sent his letter to "cease and desist" making payday loans, there were about 275 check-cashing stores licensed by the state, Matson said. About 240 of those offered payday loans. The remainder offered only check-cashing services, she said.

But more than 80 of the 240 payday lenders did not receive letters from McDaniel.

Of those, 30 First American Cash Advance stores offer loans at 10 percent interest and also do not hold a customer's check, Matson said. Neither of those practices violate Arkansas law, Matson said.

More than 50 of the stores that did not receive the letter finance their payday loans through a finance company in South Dakota, Matson said. Most of those stores are owned by the W. Cosby Hodges Trust of Fort Smith. Those stores operate under names such as American Check Cashers, Show Me the Money, Payday Money Store and Cash Advance.

By financing through an outof-state company, Hodges' businesses argue, they operate under a "choice of law" arrangement, meaning they are governed by South Dakota law and not Arkansas law.

"That [choice of law] group is still on the horizon," McDaniel said. "They believe they have completely structured themselves like a credit-card company, and therefore they are governed under federal law. We'll get to that. We're taking it one step at a time."



Arkansas Democrat-Gazette/STEPHEN B. THORNTON

An Advance America Cash Advance store operates at 4123 E. Broadway in North Little Rock. The company has stopped making high-interest payday loans, according to a company spokesman.



McDaniel