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McDaniel walks fine line with payday lending crackdown

LITTLE ROCK — Attorney General Dustin McDaniel has become the champion of payday lending opponents, vowing to shut down an industry that they say preys on the poor and traps them in debt.

But at the same time, he defends the law that advocates say payday lenders have tried to use as a shield in charging triple-digit interest rates.

McDaniel announced last week that the majority of payday lenders in Arkansas have said they'll shut down or stop issuing high-interest loans after he threatened to sue them for violating the state's constitution.

Later this year, McDaniel may be called upon to help defend the 1999 Check Cashers Act before Arkansas' highest court in a lawsuit challenging the law's constitutionality.

The 1999 law declared that income earned by payday lenders was a fee and not interest, avoiding the 17 percent limit on interest set out in the Arkansas Constitution.

The Supreme Court in 2001 ruled that the Legislature had no power to determine what is or isn't interest, but the court didn't rule on the constitutionality of the act.

McDaniel said that ruling struck down the part of the law that could have been challenged as unconstitutional. The problem is not with the law, but how payday lenders are interpreting it, he says.

"Make no mistake, I think the act is constitutional and I think



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the questions being litigated are completely separate from and irrelevant to the action I'm taking against the payday lenders," McDaniel said. "The unconstitutional part of it has been struck down. ... You can write a law that's perfectly constitutional and apply it in a way that's unconstitutional."

Payday lenders have been quick to point out what they see as a conflict between defending the 1999 law and his zeal in vowing to shut down all payday lenders in the state.

Advance America, which announced it would restructure its 30 payday lending outlets in the state to comply with state law, nonetheless has complained that no court has said its practices are violating the law.

"It appears the attorney general has determined we operate in violation of state law. However, no

determination to that effect has been issued by any Arkansas court. We're troubled by the apparent lack of our due process," Advance America spokesman Jamie Fulmer said a week before his company announced the restructuring.

The director of the Arkansas State Board of Collection Agencies, which regulates payday lenders, has said it has no plans to stop issuing licenses to the companies.

"As you can imagine, it's a strange situation for a check casher to be in, to be in compliance with a valid law but still be told that what they're doing is illegal," board director Peggy Matson said.

Todd Turner, attorney for those who filed the lawsuit challenging the act's constitutionality, said the 2001 ruling didn't completely solve the problem partly because payday lenders did not abide by it. Turner said other portions of the act still allow the companies to charge fees above the 17 percent interest limit set out in the constitution.

"The entire act is a subterfuge for lenders to avoid the usury limit," Turner said.

Opponents of payday lending, however, say they don't see a conflict between McDaniel's efforts to close down the industry and his defense of the law.

"He's made it clear that his defense of the law doesn't mean he's going to allow payday lenders to continue to do what they've been doing," said Michael Rowett, chairman of Arkansans Against

Abusive Payday Lending, a coalition opposed to payday lending.

For now, McDaniel's actions and the pending lawsuit may be the best options for advocates who saw efforts to crack down on payday lenders falter in the Legislature. A proposal to fine payday lenders every time they charge interest above 17 percent failed in the Legislature last year.

McDaniel, citing the response he's received so far from the lenders, says he's not planning to push for additional payday-lending restrictions in his legislative package.

"I certainly don't need any more law. I can't make them any more closed than they already are," McDaniel said.

McDaniel also concedes that he hasn't completely shut down payday lenders in the state. Some of those who weren't targeted include businesses that finance their payday loans through a company in South Dakota and claim they operate under a "choice of law" arrangement where they are governed by South Dakota and not Arkansas law.

McDaniel said his office is researching that argument, but it is still also trying to verify the claims of the companies that say they're already shut down.

"I'm not prepared to declare mission accomplished yet," he said.

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