



Arkansans Against Abusive Payday Lending

www.StopPaydayPredators.org

Payday Lenders in Arkansas:

Consumers Win as Predatory Industry Leaves Arkansas for Good

August 2009



Introduction

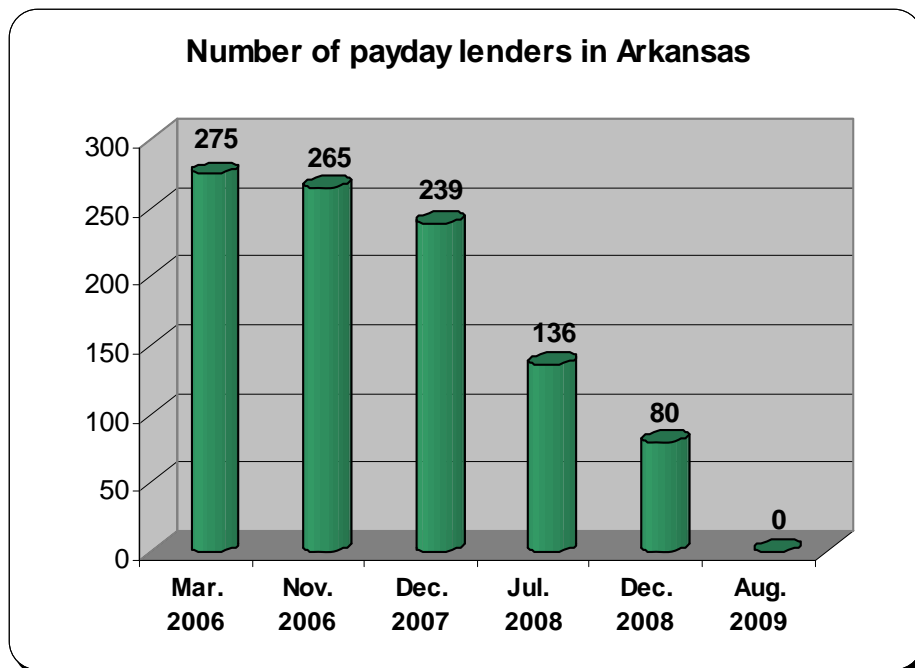
On July 31, 2009, Arkansas formally became the 15th state without payday lenders - and consumers are the ultimate victors.

At the industry's peak in early 2006, payday lenders operated 275 stores across the Natural State, ensnaring borrowers in a triple-digit interest rate debt trap - despite the state Constitution's interest rate limit of 17 percent a year on consumer loans. The industry operated with minimal oversight; fewer than 25 percent of payday lenders were then licensed and regulated by the state. Ironically, payday lenders were supposedly regulated under a 1999 law they drafted themselves, designed specifically to *evade* the Constitution. The industry-drafted Check-cashers Act as enacted in 1999 stated, nonsensically, that payday loans were not loans.

In 2006, payday lenders in Arkansas were riding high; there were more than twice as many payday lenders in Arkansas as McDonald's restaurants. The Check-cashers Act contained no requirement that loan volume be tracked by the state or reported by the industry, but research estimated that, conservatively, Arkansas borrowers incurred \$25 million annually in interest on payday loans.

Arkansans Against Abusive Payday Lending (AAAPL) was founded in 2004 to combat this abusive and predatory financial practice. In a series of independent research reports, AAAPL called for comprehensive regulation of all payday lenders pending resolution of the industry's legal authority to operate in Arkansas at all. Such resolution came in 2008 amid decisive actions by Arkansas Attorney General Dustin McDaniel and a series of decisions by the Arkansas Supreme Court that ultimately invalidated the Check-cashers Act.

The chart below illustrates the industry's decline in Arkansas.



AAAPL's most recent research report, issued in July 2008, found that 136 payday lenders were still making loans. Gradually, however, the industry recognized its days were numbered. The nation's largest payday lender, Advance America, closed all 30 of its Arkansas stores effective October 31, 2008. The Arkansas Supreme Court in a landmark November 6, 2008, opinion decided unanimously that the Check-cashers Act "in its entirety, clearly and unmistakably conflicts with our Constitution and is unconstitutional."

The remaining payday lenders gradually recognized the industry's days were numbered. The last "holdout" payday lender, First American Cash Advance, officially threw in the towel on April 30, 2009, announcing it would close all 27 of its Arkansas locations effective July 31, 2009.

Developments Since Last AAAPL Report

After nearly nine years of essentially operating with impunity, payday lenders received one round of bad news after another in 2008. In January 2008 the Arkansas Supreme Court in the first of two regulatory rulings found that payday lenders could not "rely on the Check-cashers Act for legal cover." In a February 2008 ruling, the high court found that the triple-digit interest rates charged by payday lenders were "unfair" and "unconscionable," and, significantly, violated the Arkansas Deceptive Trade Practices Act - the latter of which is enforced by the Attorney General.

In March 2008, Attorney General McDaniel, citing the Supreme Court rulings, initiated a crackdown on payday lenders, ordering lenders licensed and regulated by the Arkansas State Board of Collection Agencies to stop making loans, void all outstanding loans, and refrain from any collection activities. As noted above, the Attorney General's decisive actions met with considerable success; by the time AAAPL issued its July 2008 report, the total number of payday lenders had declined by 43 percent, to 136.

In the 13 months following release of AAAPL's last research report, continued vigorous enforcement by the Attorney General, and additional actions by the Arkansas State Board of Collection Agencies and the Arkansas Supreme Court, further narrowed - and ultimately eliminated - payday lenders' justifications to keep making high interest loans.

- On August 27, 2008, the five-member board of the Arkansas State Board of Collection Agencies voted 4-1 (with the sole dissent from the payday lending industry representative) to consider the taking of an Automated Clearing House (ACH) authorization the equivalent of a check, and that payday lenders who took such an ACH authorization would have to comply with all of the payday lending provisions of the Check-cashers Act. A letter was written on September 12, 2008, to all 136 remaining payday lenders giving them until October 15, 2008 to come into compliance with the Check-cashers Act. Instead of complying, 53 of the 136 stores - including 30 operated by Advance America, the nation's largest payday lender, stopped making payday loans. However, the remaining majority (80), owned by two companies whose operations had previously not been regulated by the ASBCA, continued to make loans.
- On November 6, 2008, the Arkansas Supreme Court, deciding a lawsuit challenging the constitutionality of the Check-cashers Act, ruled unanimously and definitively that "the act in its entirety, clearly and unmistakably conflicts with our Constitution and is unconstitutional."

Payday Lenders Who Remained in Arkansas in December 2008

As 2008 ended, the aforementioned two companies with a total of 80 stores continued to make payday loans in Arkansas in defiance of the Arkansas Supreme Court, the Attorney General, and the State Board of Collection Agencies.

- **Rent-A-Finance Company (South Dakota) Payday Loans** – 53 payday lending stores (American Check Cashers, Money Depot and Payday Money Store) continued to purportedly use lending licenses from South Dakota to make loans to borrowers in Arkansas, from stores located in Arkansas.

These 53 stores continued to make loans despite court rulings that found using out of state licenses to make payday loans was not legally justifiable. One of the other operators identified by AAAPL in its November 2006 report as using South Dakota licenses (Advance Cash of South Dakota) closed its operation in South Dakota and its stores in Arkansas after being sued in Benton County Circuit Court for violating the usury provisions of the Arkansas Constitution. The Arkansas Supreme Court found the owners also personally liable.

A second operator identified by AAAPL in its July 2008 report (Quick Cash of Arkansas) as using South Dakota licenses scheme (Freedom Finance Company) suspended its lending operations in October 2008. The Arkansas Attorney General sued Quick Cash in Pulaski Circuit Court on September 27, 2008. On February 9, 2009, the Attorney General obtained a consent judgment against Quick Cash in which the lender was required to void all loan obligations, agree never to make payday loans again, and pay a fine of \$200,000. Quick Cash also is liable to pay an additional \$200,000 should they be caught making usurious loans in Arkansas again within 5 years.

- **Money Order Payday Loans** – First American Cash Advance (with 27 stores) continued to operate using this method, making loans with a stated interest rate of 4 percent APR while effectively charging borrowers triple-digit interest rate through coercive tactics. Instead of issuing the loans in cash as required by the Check-cashers Act, First American issued Western Union money orders until Western Union stopped providing money orders to First American. First American then began issuing a corporate check to borrowers instead of cash, pressuring borrowers to pay an additional 10 percent of the face amount of the check to convert it to cash. AAAPL was repeatedly told by victims that they had been chased down in the parking lot when they tried to leave with the uncashed check with the intent of cashing it at their financial institution at no cost. As an example, First American charging the 10 percent flat fee for cashing a \$350 check resulted in an effective APR of more than 300 percent.

Payday Lending Ends in Arkansas

American Check Cashers, Money Depot, and Payday Money Store, bowing to the inevitable, in early 2009 finally stopped lending and closed all stores in Arkansas. The 23 stores owned by W. Cosby Hodges stopped lending on December 19, 2008, and closed for good on February 10, 2009. Similarly, on January 31, 2009, the 30 stores owned by Robert Srygley stopped lending and then closed for good on February 9, 2009.

The last holdout, First American Cash Advance, finally threw in the towel on April 30, 2009, stopping its lending activities while keeping a decreasing number of stores open to collect remaining loans until July 31, 2009.

Lawsuits Still Pending in Arkansas Courts

While no payday lenders are still open and making loans in Arkansas, several outstanding lawsuits are still pending in which the industry faces potential financial penalties for past abusive activities.

1. **Advance America** – Attorney Todd Turner filed a lawsuit on behalf of his client Brenda McGinnis against this national payday lender (as noted above, the largest in the nation) on February 27, 2007, in Clark County Circuit Court (CV2007-32). Advance America lost on the issue of arbitration in Circuit Court and appealed to the Arkansas Supreme Court. The Supreme Court issued an opinion on November 6, 2008, allowing the lawsuit to go forward. Advance America then petitioned the Circuit Court on the issue of class action. Advance America lost on the issue of class certification in Circuit Court and appealed to the Arkansas Supreme Court. The Supreme Court issued an opinion on March 19, 2009, again allowing the lawsuit to go forward. A trial date has been set for February 19, 2010.
2. **First Union Cash Advance and Patrick Patton** – A lawsuit was filed against First Union Cash Advance and its owner Patrick Patton by the Attorney General in Pulaski County on May 1, 2008 (CV2008-4717). This payday lender operated 14 stores in Arkansas. This case is still in process with the last action on June 22, 2009.
3. **Pawn Express and Phillip Caudle** – A lawsuit was filed against Pawn Express and its owner Phillip Caudle by the Attorney General in Pulaski County on May 1, 2008 (CV2008-4716). This payday lender operated 14 stores in Arkansas. A default judgment was issued on July 7, 2009, against Phillip Caudle due to fact that he destroyed his customers' records. Sentencing is scheduled for September 9, 2009.
4. **Cash Advance of Hope and Dan Hughes** - This payday lender told the Attorney General they had closed their stores, but instead continued to solicit loans in Hope, Arkansas and then send potential borrowers to Texarkana, Texas, to pick up their loan. This lender also took payments and rewrote loans from its Hope, Arkansas, location. A lawsuit was filed against Cash Advance of Hope (1 store) and its owner Dan Hughes by the Attorney General in Pulaski County on June 30, 2009 (CV2009-4537-3).

Conclusion

Arkansas now joins 14 other states - Connecticut, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, and West Virginia - plus the District of Columbia and the U.S. military, all of which are protected under interest rate caps that prevent high-cost payday lending. The industry's exemption to an interest rate cap in Arizona is expected to expire in July 2010, bringing the total to 16 states.

In Arkansas, AAAPL's commitment to protect consumers from triple-digit interest loans is a matter of both conscience and constitutionality. Arkansas is the only state in the nation with an interest rate cap enshrined in the state's Constitution - the ultimate expression of the state's public policy. More than a decade after payday lenders' initially successful attempt to evade this public policy, the Constitution's true intent has been restored. Arkansas consumers - and the rule of law - are the ultimate victors.

About AAAPL

Arkansans Against Abusive Payday Lending (AAAPL) is a coalition of Arkansans dedicated to improving the lives of their fellow citizens (particularly the working poor) by removing the abuses of payday lending from our state. This coalition consists of: AARP Arkansas; Air Force Sergeants Association - Chapter 658; Arkansas Advocates for Children and Families; Arkansas Consumer Law Center; Arkansas Education Association; Arkansas Hunger Coalition; Arkansas Trial Lawyers Association; Arnold, Batson, Turner & Turner, Attorney-at-Law; Association for Community Organizations for Reform Now (ACORN); AFL/CIO; Best Credit Services, Inc.; Better Business Bureau of Arkansas; Central Arkansas Development Council; Clark County Quorum Court Justice of the Peace Wayne Bowen; College Station Community Development Corporation; Community Development Department of the City of Jacksonville; Consumer Credit Counseling Service (CCCS); Crawford-Sebastian Community Development Council, Inc.; Family Council; Family Service Agency; Family Support on Little Rock Air Force Base (ex officio); Federal Reserve Bank of Little Rock; Jewish War Veterans of the U.S.A. - Arkansas Post 436; League of Latin American Citizens (LULAC); Legal Aid of Arkansas, Inc.; Military Officers Association of America (MOAA) - Arkansas Council of Chapters; NAACP/Arkansas; Nicholson Communications; North Little Rock Ministerial Alliance; Private Citizens; Pulaski County Cooperative Extension Service; Silver Haired Legislators Alumni Association (SHLAA); Southern Good Faith Fund; Springer's of Granite Mountain; The Interfaith Alliance of Arkansas; The Law Offices of Blankenship & Warner; United Way - Heart of Arkansas; U.S. Citizens for Fair Credit Card Terms, Inc.; and victims.