

Payday Reform

Suits: Reform payday loan rules

By Andrew Conte

Post Staff Reporter

The Cincinnati woman borrowed more than \$3,000 from nine payday loan companies between Fairfield and Northern Kentucky before admitting that she could not repay them. Soon after, the companies started threatening her with criminal action and steep fines.

The Caldwell man had tried to make good on most of the \$2,000 he borrowed from payday lenders over six months ending in May. But when he came up \$287 short, the company sued him in small claims court for the balance plus \$175.

Another woman from Portsmouth had borrowed \$300 from a payday loan company and could not pay it back. Collectors told her she may have committed a "theft offense" under the state's bad check laws and said she owed more than \$500 for penalties and fees.

All three people - or any one of them - could set new standards for the controversial payday loan industry in Ohio. Each one has either filed a lawsuit or plans to do so in the coming weeks.

State lawmakers may be reluctant to change payday regulations, but individual Ohioans - and their civil attorneys - are looking to re-shape the industry themselves. Often believing the lending practice should be totally abolished, the lawyers see the court system as an avenue for reform.

"These are unsophisticated consumers - people living paycheck to paycheck," said Nicholas DiNardo, an attorney with the Legal Aid Society of Cincinnati. "The only thing I want is the law to be tightened up."

The Post conducted a four-part investigation into the payday lending industry in June. That series of articles recently spurred a round of legislative hearings into the practice by State Sen. Mark Mallory, D-Cincinnati.

If the lawsuit succeeds, it could force all Ohio payday loan companies to give borrowers more explicit warnings and information about lending rates. It also could generate winnings for Piskula and anyone else who signed a contract with National Check Exchange.

Kristel Davis of Portsmouth has filed another class action lawsuit against the collection agency that tried to recover the \$345 she owes to a payday loan there. The company sent her a letter saying she "committed a theft offense" by passing a bad check.

In a typical payday loan, the consumer writes a post-dated check for the loan amount plus fees equal to an annual percentage rate topping 300 percent. By the end of the loan period - often two weeks - the borrower must pay back the full amount or let the lender cash the check.

Mrs. Davis argues that the company cannot pursue bad check violations because it always knew she did not have the money to pay back the fee.

"Eventually there comes a time when (the borrower) is trapped in a cycle of poverty so that they can't repay," said Shane, the Bellevue, Ky., lawyer who also represents her. "These (lenders) are not bone-breakers or mobsters, but what these people typically do is threaten charges of having committed a crime."

Kevin J. O'Brien, a named defendant and owner of Asset Recovery Systems Ltd., which is also named in the lawsuit, declined to comment while the case remains pending.

But industry representatives have responded that a personal check in these transactions generally acts as collateral. If the check bounces after two weeks, the borrower must be liable for the face amount plus legal costs and fees.

If Mrs. Davis wins the suit, it could prevent lenders from pursuing defaults under bad-check laws and provide winnings for others who have

Industry representatives vigorously defend their practices. They argue that the stores provide a necessary service - as illustrated by their explosive growth from 88 Ohio stores two years ago to more than 444 today.

But the court cases suggest lenders often stretch the limits of the law, and sometimes break it.

Robert Piskula, a Caldwell resident, had gotten four two-week loans of \$500 each from a National Check Exchange outlet in Marietta. The first three times he paid back the principle and fees. But when he defaulted the final time, the lender sued him in small claims court.

Now Piskula and his attorney, Steven Shane, argue the company did not follow the letter of Ohio law: required warnings were written too small on the contract and the annual percentage rate - 391 percent - was not highlighted for him to see.

The suit, filed last Tuesday, seeks more than \$500,000 in damages and attorney fees.

National Check Exchange already has changed its contract to make the warnings more visible and will do anything else to comply with the law, said Bennett Bayer, a Lexington attorney representing the company. Its owners also have submitted the contract to state regulators for their review.

"They're not doing anything to deceive anybody," Bayer said about his clients. "The information is there. If it is a problem, we will deal with it."

received similar letters from the collection agency.

The third case, which has not yet been filed, will likely bring into question violations of state law and the state's enforcement practices.

The plaintiff, an unidentified Cincinnati woman, obtained loans from nine different payday loan companies and could not pay them back, said DiNardo, her attorney.

Despite state laws preventing companies from "rolling over" accounts - or letting clients continually renew two-week loans by only paying the fee amount - the lenders allowed her to keep the loans current for 10 months, he said.

Besides the rollovers, he plans to argue that the lender's contract warnings also were too small and that the company illegally threatened bad check violations. As a Legal Aid attorney, DiNardo cannot file a class action lawsuit, but he could file an individual claim or refer the case to a private attorney.

"The fact of the matter is that most places are not obeying the law as it is now," he said.

What the series found

The Post's investigation into the payday lending industry in June found fees for loans often exceed an annual interest rate of 400 percent, and the industry preys on persons with poor credit histories.

Publication date: 11-23-99

Send mail to webmaster@fairdebtcollection.com with questions or comments about this web site.
Copyright © 2001 Steven C. Shane Law Office
Last modified: January 1, 2002