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Payday lenders could be restricted

Interest curbs a trade-off to assure business survives

By Howard Fischer

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PHOENIX — The state's payday lenders have agreed to sharp new curbs on their practices and fees in exchange for ensuring they are not forced out of business in three years.

The deal put together by Rep. Marian McClure, R-Tucson, would prevent "rollovers," in which a lender essentially forces someone who cannot pay up in the two-week period to take a new loan, and incur another loan fee.

Instead, lenders would be required to offer those who can't pay promptly up to 90 days to repay. Further, they could not charge additional interest or fees as long as the borrowers make the required interim payments.

That, said McClure, is significant as it drives the effective annual interest down from about 350 percent to less than 60 percent.

The lenders also agreed to new state oversight and to limits on how often they can redeposit a check that bounces. And there would have to be a 48-hour cooling-off period between loans.

What the industry gets is the repeal of existing law, which would "sunset" the payday loan practice in 2010, ensuring the more than 720 payday loan stores throughout the state remain open.

The deal is set for review today before the House Committee on Financial Institutions and Insurance.

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In essence, payday lenders agree to accept a check both they and the borrowers know is not good and hold it for up to two weeks.

The customer actually writes out the check for 15 percent more than the amount he or she receives in cash. That becomes the fee for the company.

Lawmakers agreed to allow the practice in 2000 based on the argument that people with bad credit or no credit history who need money quickly would have no other alternatives, other than, perhaps, an illegal loan shark.

But lawmakers remained leery enough of the practice to give it just a 10-year trial run, setting up the law so the ability to offer these loans disappears automatically Jan. 2, 2010, without legislative intervention.

"The statutory sunset date is a growing hassle for the industry," said Lee Miller who lobbies on behalf of the Arizona Community Financial Services Association, which represents the lenders. He said the question of what would happen in 2010 creates "uncertainty" for the industry, like whether to sign a new retail lease, which typically has a five-year term.

McClure, who never has been a fan of the high-interest loans, said lenders' desire for action now gave her the ammunition she needed to extract concessions.

The biggest, she said, is that repayment plan.

Existing law allows borrowers to extend a loan up to three times. But each of those "extensions" constitutes a new loan, and a new 15 percent fee.

Those extensions now are gone. Instead, lenders must set up a plan of six payments over 90 days to let the borrower repay the money owed.

"And there's no additional fees or interest added as long as you're making the payments," McClure said. Only if there is a default in any of the scheduled payments can the lender charge 3 percent of the unpaid balance.

McClure acknowledged that effectively makes all 14-day loans into 104-day loans, with no additional compensation for the lender. But she said lenders are so anxious to get rid of the sunset, they agreed to the terms.

Miller said the repayment plan was better than what McClure originally wanted: a straight ban on extensions.

"It is in the lender's best interest to be repaid," he said. "If it takes us an extra 90 days to get our money back, it's a heck of a lot better than not getting our money back."

That 48-hour cooling-off period, said McClure, ensures that lenders don't skirt the legal requirement to offer an extension by instead pressuring borrowers to immediately take out a new loan to pay off the old one.

The deal also says lenders cannot take advantage of other state laws that allow merchants who get a bad check to sue for twice as much. She said that law is designed to benefit retailers who accept a check on the premise that there are funds in the account to cover it.

The legislation also contains some teeth. McClure said the state Department of Financial Institutions will get money to audit these payday-loan operations to ensure compliance.

Other provisions in the measure include:

- A ban on payday loans being made over the Internet.
- Prohibiting lenders from re-depositing a check that bounces more than twice to rack up those $25 bad-check charges.
- Fines of $5,000 per day per occurrence for violators.
- A requirement that documents be in English or Spanish at the customer's request.

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