

ALBERTA REGULATION 157/2009

Fair Trading Act

PAYDAY LOANS REGULATION

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Definitions

1 In this Regulation,

- (a) "Act" means the *Fair Trading Act*;
- (b) "cash card" means a card or other device issued by a payday lender to the borrower of a payday loan instead of advancing cash or transferring money to the order of the borrower that can be used to obtain cash or acquire goods and services, but does not include a credit card;
- (c) "discounting" means the practice of deducting or withholding from the initial advance of a payday loan an amount representing any portion of the cost of borrowing;
- (d) "licence" means a payday loan business licence;
- (e) "payday lender" means a person who offers, arranges or provides payday loans;
- (f) "payday loan" means any advancement of money with a principal of \$1500 or less and a term of 62 days or less made in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature, but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card;
- (g) "payday loan business" means the activity of offering, arranging or providing payday loans by a payday lender;
- (h) "rollover loan" means the extension or renewal of a payday loan that imposes additional fees or charges on the borrower, other than interest, and includes the advancement of a new payday loan to pay out an existing payday loan.

Application

2(1) The provisions of this Regulation apply

(a) to every payday lender who offers, arranges or provides a payday loan to a borrower in Alberta, whether the payday lender operates from business premises or on the Internet, and

(b) to each payday loan, regardless of the number of payday lenders involved in the payday loan.

(2) The *General Licensing and Security Regulation* (AR 187/99) applies to the payday loan business.

(3) This Regulation does not apply to a payday loan made before the coming into force of this Regulation, except to the extent that it relates to an extension or renewal of a payday loan made or granted after the coming into force of this Regulation.

Licensing

3(1) The class of licence to be known as the payday loan business licence is established.

(2) A person who holds a payday loan business licence is authorized to engage in the payday loan business.

Multiple locations

4(1) If a payday lender engages in the business of making payday loans at more than one location, the licence referred to in section 3(2) must specify each location at which the payday lender engages in the business of making payday loans.

(2) A payday lender must prominently display a copy of the licence in each location named to which the licence pertains.

(3) If the payday lender engages in the payday loan business by means of the Internet, the payday lender must display a copy of the licence, prominently at or near the top of the introductory page of the website for Alberta borrowers.

Prohibition

5(1) A payday lender shall not engage in the business of making payday loans at any of the payday lender's locations in Alberta under a business name that differs from the name on the licence.

(2) Where a payday lender who holds a licence in respect of one or more locations intends to engage in the payday loan business at a new location, the payday lender shall not engage in any business at the new location until the payday lender has obtained a licence for that location.

Representations

6(1) A payday lender shall not represent, expressly or by implication, that a payday loan business licence is an endorsement or approval of the payday lender by the Government of Alberta.

(2) Subsection (1) does not preclude a payday lender from representing that the payday lender is licensed under this Regulation.

Term and fee

7(1) The term of a licence under this Regulation shall not exceed 2 years.

(2) The fee for a licence and the first location is \$1000 per year plus \$500 per year for each additional location specified on the application.

(3) The fee to issue an amended licence, including the transfer of a licence to another licensed payday lender, is \$75.

(4) The fee to add new locations to a licence is \$500 per year for each location.

Requirements for licence

8 An applicant for a licence must submit to the Director

(a) a copy of each of the following documents that the applicant uses or intends to use:

- (i) the standard loan agreement;
- (ii) the cancellation notice form;
- (iii) the form for acknowledging the receipt of the loan cancellation;
- (iv) the form for acknowledging receipt of payments made by the borrower;
- (v) a copy of the signs required under section 20(1),

and

(b) any other information or documentation required by the Director.

Security

9(1) A payday loan business licence shall not be issued or renewed unless the applicant submits to the Director a security in a form and an amount approved by the Director.

(2) The Director may, if the Director considers it appropriate, increase the amount of the security that is to be provided by a payday lender before the term of the payday lender's licence expires.

Notification required

10(1) Subject to subsection (3), the holder of a payday loan business licence shall notify the Director in writing respecting any change in

(a) any licensing information provided to the Director in accordance with section 8, and

(b) the number of locations and the addresses of the locations at which the holder is operating as a payday lender,

within 15 days of the change.

(2) If a payday lender makes changes to any document that was submitted to the Director under section 8, the payday lender must submit copies of the changed document to the Director within 15 days of making the change.

(3) Where a payday lender who holds a licence in respect of one or more locations intends to engage in the payday loan business at a new location, the notice referred to in subsection (1) must be provided to the Director, together with the applicable fee, prior to conducting any business at the new location.

Prohibited practices

11(1) A payday lender shall not engage in any of the following practices:

(a) discounting the principal amount of a payday loan;

(b) granting a rollover loan;

(c) accepting a cheque from the borrower unless it is payable to the payday lender;

(d) requiring that a payday loan be due before the first day after the first banking day on which the borrower will receive his or her pay or other income following the date of the loan;

(e) requiring, requesting or accepting information that would give the payday lender direct access to a borrower's bank account, except for pre-authorization for repayment of a specific payday loan;

(f) making unauthorized withdrawals from a borrower's account;

(g) charging any fee to a borrower for whom the payday lender acts in addition to those fees provided for in the agreement with that borrower in relation to the payday loan;

(h) failing to include the name of the payday lender as shown on the payday lender licence in all contacts and correspondence with the borrower;

(i) making any personal call or telephone call for the purpose of collecting or attempting to collect a debt on any day except between 7 a.m. and 10 p.m. in Alberta;

(j) directly or indirectly threatening or stating an intention to proceed with any action for which there is no lawful authority;

(k) contacting or attempting to contact the borrower, any member of the borrower's household, any relative of the borrower, the borrower's employer or any neighbour, friend or acquaintance of the borrower by any means in such a manner as to constitute harassment, including but not limited to

(i) the use of threatening, profane, intimidating or coercive language,

(ii) the use of undue, excessive or unreasonable pressure, or

(iii) the use of telephone, e-mail or other methods of contact, other than traditional mail, to call or send messages excessively;

(l) giving any person, directly or indirectly, by implication or otherwise, any false or misleading information, including but not limited to references to the police, a law firm, prison, credit history, court proceedings or a lien or garnishment;

(m) contacting a borrower's spouse or adult interdependent partner, relative, neighbour, friend or acquaintance unless the contact is limited to the purpose of obtaining the borrower's residential address, personal telephone number or employment telephone number;

(n) contacting the borrower's employer for any purpose other than to confirm the borrower's employment status, business title, the address of the business or the date of the next payday;

(o) contacting a borrower at the borrower's place of employment if the borrower

(i) requests the payday lender not to contact the borrower there,

(ii) makes reasonable arrangements to discuss the payday loan with the payday lender, and

(iii) discusses the payday loan with the payday lender in accordance with the arrangements;

(p) communicating information about the payday loan or the existence of the payday loan to any person except the borrower unless the borrower has expressly consented to the communication;

(q) entering into or arranging wage assignments with a borrower or the employer of a borrower;

(r) publishing or threatening to publish a borrower's failure to pay;

(s) giving false, misleading or deceptive information in advertisements, solicitations or negotiations with respect to a payday loan.

(2) A payday lender shall not attempt to collect an outstanding payday loan more than 3 years after the date of the last payment or written acknowledgement by the borrower.

Tied selling prohibited

12(1) A payday lender shall not make a payday loan contingent on the supply of other goods or services.

(2) A payday loan agreement shall not include a term or condition relating to the supply of other goods or services.

(3) A payday loan agreement must include a statement that the supply of other goods or services is separate and optional.

(4) The statement referred to in subsection (3) must be initialled by the borrower.

Cooling off period

13(1) A borrower under a payday loan agreement may, without any reason, cancel the agreement at any time up to the end of

(a) the 2nd day after the payday lender gives a copy of the agreement to the borrower, if the payday lender is open for business on that day, or

(b) the next day that the payday lender is open for business following the 2nd day described in clause (a), if the payday lender is not open for business on that 2nd day.

(2) A borrower who wishes to cancel a payday loan agreement must

(a) give written notice within the time period set out in subsection (1) to the payday lender, and

(b) return the full amount received by the borrower to the payday lender.

(3) In giving notice of cancellation under subsection (2), a borrower may

(a) use the copy of the cancellation notice provided by the payday lender under section 14(2), or

(b) provide notice in writing, signed by the borrower, of the borrower's intention to cancel the payday loan agreement.

(4) On receiving notice of cancellation from a borrower under this section, the payday lender shall give the borrower a receipt in the form referred to in section 8 acknowledging receipt of the loan cancellation.

(5) A payday lender shall not charge a fee for the cancellation of a payday loan.

Agreement and advance

14(1) A payday lender shall ensure that the terms, information and statements contained in its standard loan agreement are written in a clear and comprehensible manner.

(2) A payday lender shall give a borrower a copy of the agreement at the time it is signed by the borrower, together with a copy of the cancellation notice that may be used by the borrower for the purposes of section 13.

(3) A payday lender shall ensure that the proceeds of the payday loan are delivered to the borrower no later than at the time of entering into the agreement.

Receipt for payment

15 On receiving payment, a payday lender shall immediately give the borrower a receipt for that payment in the form referred to in section 8 that specifies

- (a) the name of the borrower,
- (b) the date of payment,
- (c) the agreement number of the payday loan on which the payment was made,
- (d) the amount paid, and
- (e) the amount still owing on the payday loan, if any.

Payout of balance on cash card

16(1) If in respect of a payday loan the payday lender issues a cash card to the borrower, the borrower is entitled to be paid in cash the amount of credit remaining on the card where

(a) the balance of credit remaining on the cash card is less than \$25, or

(b) the payday loan has been repaid by the borrower and the cash card has expired.

(2) If the borrower is entitled to be paid a balance under subsection (1) and returns the cash card to the payday lender, the payday lender shall immediately pay the balance on demand by the borrower.

Maximum allowable cost of borrowing

17(1) The maximum total cost of borrowing that may be charged, required or accepted by a payday lender is 23% of the principal amount of the loan.

(2) In addition to subsection (1), if a borrower fails to repay the amount specified in the agreement, the payday lender may charge the following:

(a) interest at a rate of 2.5% per month, not to be compounded;

(b) a one-time fee in an amount determined by the Director for each dishonoured cheque or dishonoured pre-authorized debit.

(3) The maximum charges under this section include all amounts that can be collected directly or indirectly from a borrower.

Prepayment

18 A borrower may pay the full outstanding balance under a payday loan agreement at any time without incurring any prepayment charge or penalty.

Consequence of failure to comply

19 If a payday lender fails to comply with any of the requirements of section 11, 12, 14(2) or (3), 15, 16, 17 or 18,

(a) all amounts in respect of the payday loan except the principal cease to be permissible charges, and

(b) the borrower is not liable to pay the payday lender any amount that exceeds the principal of the payday loan.

Signs and notices

20(1) A payday lender shall prominently display at each of the payday lender's locations

(a) a sign visible to borrowers immediately on entering the location, and

(b) a sign visible to borrowers at each place where a payday loan is negotiated.

(2) The signs required under subsection (1) shall consist of only the following information in the following order:

(a) the words "Maximum charges permitted in Alberta for a payday loan: \$23 per \$100 lent";

(b) the words "We charge _____", representing the payday lender's total charges for a payday loan;

(c) the words "For a \$300 loan for 14 days:

Total cost of borrowing = _____", representing the payday lender's total charges for a \$300 loan for 14 days;

(d) the words "Annual Percentage Rate = _____" representing the annual percentage rate charged by the payday lender for a \$300 loan for 14 days;

(e) the words "This information meets the requirements of the *Payday Loans Regulation* under the *Fair Trading Act*";

(f) the payday lender's licence number.

(3) A payday lender who engages in the payday loan business

(a) by means of the Internet must display the information required under subsection (2) on a page of the payday lender's website that precedes the payday loan application, and

(b) by telephone must disclose to a prospective borrower the information required under subsection (2).

Creation of records

21 A payday lender shall create and maintain records relating to the payday lender's collection activities with respect to each payday loan, including but not limited to logs of telephone calls and other records of contact such as note lines.

Use of information

22 A payday lender shall ensure that applications for payday loans, payday loan agreements and other documents in respect of payday loans

(a) are used only for the purpose of providing, administering or collecting payday loans, and

(b) are not used in connection with the provision of any other goods or services.

Retention of documents

23(1) A payday lender shall retain each payday loan agreement, receipts and other documents in respect of the payday loan, including logs of telephone calls, records of contact such as note lines and other records relating to collection activities, for a period of 3 years after the date on which the payday loan is fully repaid.

(2) Where a payday loan is not repaid, a payday lender shall retain the documents referred to in subsection (1) in respect of the payday loan until a date 3 years after the date referred to in section 11(2).

Offences

24 A person who contravenes or fails to comply with any of the following provisions is guilty of an offence:

section 5;

section 10;
section 11;
section 12;
section 14(2), (3);
section 15;
section 16;
section 17;
section 18;
section 20;
section 21;
section 22;
section 23.

Review

25 The maximum total cost of borrowing established under section 17(1) must be reviewed within 3 years from the date on which section 17 comes into force.

Expiry

26 For the purposes of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on June 30, 2016.

Coming into force

27**(1)** This Regulation, except section 17, comes into force on September 1, 2009.

(2) Section 17 comes into force on January 31, 2010.