

## BILL 4

### An Act Respecting Payday Loans

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

#### *Cost of Credit Disclosure Act*

**1(1)** *The title of the Cost of Credit Disclosure Act, chapter C-28.3 of the Acts of New Brunswick, 2002, is repealed and the following is substituted:*

#### **Cost of Credit Disclosure and Payday Loans Act**

**1(2)** *If in any Act, other than this Act, or in any regulation, rule, order, by-law, agreement or other instrument or document, reference is made to the Cost of Credit Disclosure Act, it shall be read, unless the context otherwise requires, as a reference to the Cost of Credit Disclosure and Payday Loans Act.*

**1(3)** *Subsection 1(1) of the Act is amended*

*(a) by striking out subparagraph (a)(iii) of the definition “credit grantor” and substituting the following:*

*(iii) except in the case of a credit agreement in relation to a payday loan, the credit is for \$100 or more, or*

*(b) by adding the following definitions in alphabetical order:*

*“inspector” means an inspector appointed under section 52.1; (inspecteur)*

*“payday loan” means a payday loan as defined in section 37.1; (prêt sur salaire)*

**1(4)** *The Act is amended by adding before section 6 the following:*

#### **Non-application of Part**

**5.1** This Part does not apply in respect of credit agreements in relation to payday loans.

**1(5)** *The Act is amended by adding before section 16 the following:*

#### **Non-application of Part**

**15.1** This Part, except sections 17, 22 and 23, does not apply in respect of credit agreements in relation to payday loans.

**1(6)** *The Act is amended by adding before section 26 the following:*

#### **Non-application of Part**

**25.1** This Part does not apply in respect of credit agreements in relation to payday loans.

**1(7)** *Section 28 of the Act is repealed and the following is substituted:*

**28(1)** Subject to subsection (2), this Part applies in respect of credit agreements for fixed credit.

**28(2)** This Part, except subsections 30(1), (2), (5) and (6), does not apply in respect of credit agreements in relation to payday loans.

**1(8)** *The Act is amended by adding after Part V the following:*

**PART V.1**  
**PAYDAY LOANS**

**Division A**  
**Definitions**

**Definitions**

**37.1** The following definitions apply in this Part.

“applicant” means a person who applies for a licence or for the renewal of a licence under this Part. (*demandeur*)

“Board” means the New Brunswick Energy and Utilities Board continued under the *Energy and Utilities Board Act*. (*Commission*)

“borrower” means a person who is a borrower in relation to a payday loan.  
(*emprunteur*)

“cash card” means a card or other device that (*carte porte-monnaie électronique*)  
(a) can be used to obtain cash or acquire goods or services, and  
(b) is issued by a payday lender to a borrower instead of advancing cash or transferring money to the borrower or to the order of the borrower,  
but does not include a credit card.

“cheque cashing fee” means (*frais d’encaissement de chèque*)  
(a) a fee, rate, commission, charge or other amount or consideration charged, paid or given for cashing or negotiating a government cheque, and  
(b) any other fee, rate, commission, charge or other amount or consideration designated by regulation as a cheque cashing fee.

“Court of Appeal” means The Court of Appeal of New Brunswick. (*Cour d’appel*)

“government agency” means any division or portion of the Public Service, as defined in the *Public Service Labour Relations Act*, that is designated by regulation as a government agency. (*organisme gouvernemental*)

“government cheque” means a cheque, or other written order to pay, drawn on an account of (*chèque du gouvernement*)  
(a) the Government of Canada,  
(b) the Government of New Brunswick,

- (c) a government agency, or
- (d) a local government agency.

“licence” means a licence issued under this Part, unless the context requires otherwise. (*permis*)

“licensee” means a person who holds a licence under this Part. (*titulaire de permis*)

“local government agency” means a municipality or rural community, as defined in the *Municipalities Act*, that is designated by regulation as a local government agency. (*organisme d’administration locale*)

“payday lender” means a credit grantor who offers, arranges or provides a payday loan. (*prêteur*)

“payday loan” means a loan of money (*prêt sur salaire*)

- (a) with a principal of no more than \$1,500,
- (b) with a term that is no longer than 62 days, and
- (c) that is 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.

“payday loan agreement” means, in relation to a payday loan, the written agreement required under section 37.28. (*contrat de prêt sur salaire*)

“rollover” means (*reconduction*)

- (a) the extension or renewal of a payday loan that imposes additional fees or charges on the borrower, other than interest, or
- (b) the advancement of a new payday loan to pay out an existing payday loan.

“term” means, in relation to the duration of a payday loan, the period between the first advance and the last payment anticipated by the payday loan agreement. (*durée*)

“third party service charge” means, in relation to a cash card issued by a payday lender, any fee, rate, commission, charge or other amount that is charged or required by a person who is not the payday lender, or that is paid to such a person, for use of the cash card. (*frais de services offerts par un tiers*)

“wages” includes salary and periodic payments in respect of loss of future income or loss of earning capacity. (*salaire*)

## **Division B**

### **Application**

#### **Non-application of Part**

**37.11(1)** This Part does not apply in respect of a payday loan that was made before the commencement of this subsection.

**37.11(2)** Notwithstanding subsection (1), subsection 37.34(1) and the remedies and penalties available under section 37.34 and section 54 for contravention of subsection 37.34(1) apply in respect of

(a) an extension or renewal granted after the commencement of this subsection of a payday loan that was made before or after the commencement of this subsection, or

(b) an advancement of a new payday loan after the commencement of this subsection to pay out a payday loan that was made before or after the commencement of this subsection.

**37.11(3)** This Part does not apply in respect of financial products or services regulated under the *Loan and Trust Companies Act*, the *Insurance Act*, the *Credit Unions Act* and any other Act prescribed by regulation.

**37.11(4)** A transaction or class of transactions or a person or class of persons may by regulation be exempted from the application of this Part or the regulations or any provision of this Part or the regulations.

## **Division C**

### **Licensing**

#### **Licence required to provide payday loans**

**37.12** No person shall offer, arrange or provide a payday loan from a location except under the authority of a licence issued to the person or the person's employer for that location.

#### **Application for licence or renewal of licence**

**37.13(1)** A person may apply to the Minister, on a form provided by the Minister, for

(a) a licence authorizing the person to offer, arrange or provide payday loans at a location specified in the licence, or

(b) a renewal of a licence.

**37.13(2)** A person who wishes to offer, arrange or provide payday loans at more than one location shall apply for a separate licence for each location.

**37.13(3)** When applying for a licence or a renewal of a licence, the applicant shall provide the information or documents required by the regulations or the application form and any other information or documents that the Minister may require.

**37.13(4)** Before a licence is issued or renewed by the Minister, the applicant shall pay the licence fee or licence renewal fee specified in the regulations.

#### **Issuance or renewal of licence**

**37.14** The Minister may

(a) issue a licence to an applicant, or renew the licence of an applicant, if the Minister is satisfied that the applicant meets all the qualifications and satisfies all the requirements of this Part and the regulations in relation to the application for a licence or for the renewal of a licence, or

(b) refuse under section 37.2 to issue a licence to an applicant or under section 37.21 to renew the licence of an applicant.

#### **Bond or other security required**

**37.15(1)** Before a licence is issued by the Minister, the applicant shall provide the Minister with a bond or other form of security acceptable to the Minister.

**37.15(2)** The terms, conditions and amount of the bond or other security shall be satisfactory to the Minister and shall meet the requirements of the regulations.

#### **Licence not transferable or assignable**

**37.16** A licence is not transferable or assignable.

#### **Terms and conditions of licence**

**37.17(1)** The Minister may impose terms and conditions he or she considers appropriate on a licence at the time of issuing or renewing the licence or, by written notice to the licensee, at any other time.

**37.17(2)** In addition to the terms and conditions imposed by the Minister under subsection (1), a licence is subject to any terms and conditions set out in the regulations.

**37.17(3)** A licensee shall comply with the terms and conditions of the licence.

#### **Further information or documents**

**37.18** In addition to any information or documents required under this Act or the regulations to be provided to the Minister by a licensee or an applicant, a licensee or an applicant shall, if requested to do so by the Minister and within the period specified by the Minister,

(a) provide to the Minister any further information or documents that the Minister may reasonably require for the purposes of ensuring compliance with this Part or the regulations, and

(b) verify, by affidavit or otherwise, any information or documents provided to the Minister under paragraph (a) or under any other provision of this Act or the regulations.

### **Duration of licence**

**37.19(1)** A licence ceases to be valid one year after the day it is issued or, in the case of any renewal, on the next anniversary date of its issuance.

**37.19(2)** Notwithstanding subsection (1), if a payday lender applies for a renewal of the payday lender's licence before it would otherwise cease to be valid under that subsection and pays the fee specified in the regulations, the licence shall be deemed to continue to be valid until the later of the date determined under subsection (1) and

(a) the date the licence is renewed, if a notice under subsection 37.21(2) is not served on the payday lender in respect of the application,

(b) the date on which the time for making a written submission or requesting a hearing in accordance with paragraph 37.21(2)(b) has expired, if the payday lender is served with a notice under subsection 37.21(2) in respect of the application and does not make such a written submission or make such a request for a hearing,

(c) the date scheduled for a hearing that the payday lender requests in accordance with paragraph 37.21(2)(b), if the payday lender is served with a notice under subsection 37.21(2) in respect of the application and makes such a request for a hearing, but does not attend the requested hearing on the date scheduled for it, or

(d) the date the payday lender is served under subsection 37.21(6) with a notice of the Minister's decision with respect to the renewal of the licence, if the payday lender is served with a notice under subsection 37.21(2) in respect of the application and either makes a written submission in accordance with paragraph 37.21(2)(b) or attends a hearing requested in accordance with that paragraph on the date scheduled for it.

### **Refusal to issue licence**

**37.2(1)** The Minister may refuse to issue a licence to an applicant if

(a) the applicant has been convicted of

(i) an offence under this Act or the regulations, or

(ii) an offence under the *Criminal Code* (Canada) or any other Act or any regulation under any other Act that, in the opinion of the Minister, involves a dishonest action or intent,

(b) the applicant is an undischarged bankrupt,

- (c) the applicant provides incomplete, false, misleading or inaccurate information in support of the application,
- (d) a licence previously issued to the applicant under this Part, or by an authority responsible for issuing licences with respect to the lending of money in any jurisdiction, is suspended or has been cancelled, or the applicant has applied for a renewal of such a licence and the renewal has been refused,
- (e) the applicant fails to meet any qualification or satisfy any requirement of this Part or the regulations,
- (f) in the Minister's opinion, the applicant will not carry on business according to law and with integrity and honesty, or
- (g) in the Minister's opinion, it is not in the public interest to issue a licence to the applicant.

**37.2(2)** The Minister may refuse to issue a licence to

- (a) a corporation, if a director or officer of the corporation could be refused a licence under subsection (1), or
- (b) a partnership, if a member of the partnership could be refused a licence under subsection (1).

**37.2(3)** If the Minister refuses to issue a licence to an applicant under this section, the Minister shall serve written notice of the refusal, together with written reasons for the refusal, on the applicant.

#### **Refusal to renew or cancellation or suspension**

**37.21(1)** Subject to subsection (2), the Minister may refuse to renew or may cancel or suspend a payday lender's licence

- (a) for any reason for which the Minister may refuse to issue a licence under section [37.2](#),
- (b) if the payday lender fails to provide information or documents required by the Minister or the regulations, or provides incomplete, false, misleading or inaccurate information to the Minister,
- (c) if the payday lender contravenes or fails to comply with this Act or the regulations, or
- (d) if the payday lender contravenes or fails to comply with a term or condition of the licence.

**37.21(2)** Before refusing to renew or cancelling or suspending a licence, the Minister shall, by notice in writing, advise the payday lender

- (a) that the Minister intends to refuse to renew the licence, or to cancel or suspend it, and of the reasons why the Minister intends to do so, and
- (b) that the payday lender may, within 14 days after being served with the notice,
  - (i) make a written submission to the Minister as to why the renewal should not be refused or the licence should not be cancelled or suspended, or
  - (ii) request a hearing before the Minister.

**37.21(3)** If the payday lender does not, in accordance with paragraph (2)(b), make a written submission or request a hearing or does not attend such a hearing on the date scheduled for it, the Minister may take the action stated in the notice.

**37.21(4)** After considering a written submission or holding a hearing, the Minister shall decide whether or not to renew or to cancel or suspend the licence, as the case may be.

**37.21(5)** Nothing in this section requires the Minister to give an oral hearing to any person who has made a written submission in accordance with this section.

**37.21(6)** The Minister shall serve written notice of a decision under subsection (4) on the payday lender in respect of whom the decision was made.

**37.21(7)** If the Minister refuses to renew the licence or decides to cancel or suspend the licence, notice of the decision served under subsection (6) shall include written reasons for the decision.

**37.21(8)** A decision to cancel or suspend a payday lender's licence takes effect when notice of the decision is served on the payday lender, or on the date specified in the decision, whichever is later.

### **Taking immediate action**

**37.22(1)** Notwithstanding subsection 37.21(2), if the Minister considers that it is necessary and in the public interest to take immediate action, the Minister may make an interim decision cancelling or suspending a payday lender's licence for any of the reasons set out in subsection 37.21(1) without giving the payday lender an opportunity to be heard.

**37.22(2)** If the Minister makes an interim decision under subsection (1), the Minister shall, by notice in writing, advise the payday lender

- (a) that an interim decision cancelling or suspending the payday lender's licence has been made and of the reasons why it was made, and
- (b) that the payday lender may, within 14 days after the date of the making of the interim decision,
  - (i) make a written submission to the Minister as to why the payday lender objects to the cancellation or suspension, or
  - (ii) request a hearing before the Minister.

**37.22(3)** An interim decision under subsection (1) takes effect immediately.

**37.22(4)** If the payday lender does not, in accordance with paragraph (2)(b), make a written submission or request a hearing or does not attend such a hearing on the date scheduled for it, the cancellation or suspension of the licence shall be deemed to be confirmed.

**37.22(5)** If, in accordance with paragraph (2)(b), the payday lender makes a written submission or requests a hearing, the interim decision expires 14 days after the date it was made, but the Minister may, subject to subsection (6), extend the interim decision until the Minister makes a decision under subsection (7).

**37.22(6)** If a hearing has been requested by a payday lender in accordance with paragraph (2)(b), the Minister shall not extend an interim decision under subsection (5) unless the hearing is commenced within the 14-day period referred to in that subsection.

**37.22(7)** After considering a written submission or holding a hearing, the Minister shall decide whether to confirm the cancellation or suspension of the licence or to reinstate the licence.

**37.22(8)** Nothing in this section requires the Minister, before making a decision under subsection (7), to give an oral hearing to any person who has made a written submission in accordance with this section.

**37.22(9)** The Minister shall serve written notice of a decision under subsection (7) on the payday lender in respect of whom the decision was made.

**37.22(10)** If the Minister's decision under subsection (7) confirms the cancellation or suspension of the licence, notice of the decision served under subsection (9) shall include written reasons for the decision.

**37.22(11)** A decision under subsection (7) takes effect when notice of the decision is served on the payday lender.

### **Voluntary cancellation**

**37.23** The Minister may cancel a licence upon the request in writing of the licensee and section 37.21 does not apply to the cancellation.

### **Further application**

**37.24** A person who has been refused a licence or renewal of a licence under this Part or whose licence has been cancelled under this Part, other than under section 37.23, shall not reapply for a licence unless

- (a) the period of time prescribed by regulation to reapply has passed since the refusal or cancellation, and
- (b) the person satisfies the Minister that new or other evidence is available or that material circumstances have changed.

### **Appeal**

**37.25(1)** An appeal lies to the Court of Appeal from a decision of the Minister not to issue or renew a licence, or to cancel or suspend a licence, other than an interim decision under subsection 37.22(1), if the appeal is made within 30 days after the date of the decision of the Minister.

**37.25(2)** An appeal under this section does not stay the operation of the decision of the Minister, unless the Court of Appeal orders otherwise, but the Minister may himself or herself suspend the operation of the decision until the Court of Appeal has rendered its decision.

**37.25(3)** A notice of appeal shall be served on the Minister and on such other persons as the Court of Appeal directs.

**37.25(4)** Upon being served with a notice of appeal, the Minister shall file with the Registrar of the Court of Appeal all documents in his or her possession relating to the appeal, all transcripts of evidence and a copy of the reasons for the decision.

**37.25(5)** The Minister is entitled to be heard by the Court of Appeal upon the appeal of any of his or her decisions.

**37.25(6)** After hearing the appeal, the Court of Appeal may

- (a) dismiss the appeal, or
- (b) allow the appeal and set aside or vary the decision of the Minister, and, where it considers it appropriate to do so, refer the matter back to the Minister with directions.

**37.25(7)** Except as otherwise provided in this section, the Rules of Court apply to appeals under this section.

### **Serving of notices by the Minister**

**37.26(1)** A notice or other document to be served on a person by the Minister under this Part shall be served

- (a) by delivering a copy of it to the person or to an officer or employee of the person,
- (b) by sending a copy of it by registered mail to the person at the last address appearing in the Minister's records for the person or the person's business, or
- (c) in any other manner provided for in the regulations.

**37.26(2)** A notice or other document sent to a person in accordance with paragraph (1)(b) shall be deemed to have been served on the person not later than the fifth day after the day of mailing.

### **Disclosure and publication of decisions**

**37.27** The Minister may disclose to any person or publish any decision he or she makes under this Part, including the Minister's written reasons, if any, for making the decision.

## **Division D**

### **Obligations and Prohibitions**

#### **Subdivision a**

### **Regulation of Payday Lenders**

#### **Payday loan agreements**

**37.28(1)** A payday lender shall ensure that the terms of a payday loan are included in a written agreement that is signed and dated by the borrower.

**37.28(2)** A payday lender shall ensure that the payday loan agreement includes all of the following terms, information and statements:

- (a) the payday lender's name and any business name used by the payday lender;
- (b) the payday lender's business address and, if different, the payday lender's mailing address;
- (c) the payday lender's licence number, telephone number and, if the payday lender has a fax number or e-mail address, that fax number and e-mail address;
- (d) the borrower's name;
- (e) the date of the agreement and the date or dates on which the first advance and any other advance will be made to the borrower or to the order of the borrower;

- (f) the principal of the payday loan;
- (g) the term of the payday loan;
- (h) with respect to each advance referred to in paragraph (e), the amount of cash to be advanced to the borrower or the amount of money to be transferred to the borrower or to the order of the borrower;
- (i) the amount of credit available on a cash card issued to the borrower;
- (j) if a cash card issued to the borrower has an expiry date, the date of that expiration;
- (k) the total cost of credit and the APR;
- (l) the rate of interest that applies, together with a statement of the total amount of interest that is payable under the agreement;
- (m) each of the fees, penalties, rates, commissions or charges regulated by the Board under this Part that apply, together with a statement of the amount of each of those fees, penalties, rates, commissions or charges;
- (n) the amount and timing of any payments to be made by the borrower;
- (o) a statement that the payday loan is a high cost loan;
- (p) a statement of the borrower's rights of cancellation under section 37.29, setting out how those rights can be exercised and identifying the time by which the borrower can exercise them;
- (q) a statement of the remedies available to the borrower under subsection 37.31(2), 37.34(2) or (3) or 37.37(2);
- (r) if a cash card is to be issued to the borrower, a statement identifying that third party service charges may apply for use of the card; and
- (s) any other term, information or statement prescribed by regulation.

**37.28(3)** The payday lender shall ensure that the terms, information and statements required under subsection (2) are written in a clear and comprehensible manner.

**37.28(4)** A payday lender may base information required by subsection (2) to be included in a payday loan agreement on an estimate or assumption if

- (a) the information required to be included depends on other information that is not ascertainable by the payday lender at the time the payday loan agreement is entered into, and
- (b) the estimate or assumption is reasonable and is clearly identified as an estimate or assumption.

**37.28(5)** Before the borrower signs the payday loan agreement, the payday lender shall review with the borrower the matters described in paragraphs (2)(k) and (p) and require that the borrower initial each of those matters in the agreement.

**37.28(6)** The payday lender shall give the borrower a copy of the payday loan agreement at the time it is signed by the borrower, together with a notice of cancellation, in the form and containing the information prescribed by regulation, which may be used by the borrower for the purposes of subsection [37.29\(4\)](#).

### **Cancellation**

**37.29(1)** In subsections (4) and (5), “payday lender” includes an officer or employee of the payday lender at the location at which the payday loan was arranged or provided.

**37.29(2)** A borrower may cancel a payday loan within 48 hours, excluding Sundays and other holidays, after receiving the first advance or a cash card enabling the borrower to access funds under the loan.

**37.29(3)** In addition to having a cancellation right under subsection (2), a borrower may cancel a payday loan at any time, if

(a) the payday lender did not notify the borrower of his or her right under subsection (2) to cancel the loan, or

(b) the notice of cancellation given to the borrower does not meet the requirements of subsection [37.28\(6\)](#).

**37.29(4)** To cancel a payday loan under subsection (2) or (3), the borrower shall

(a) give written notice of the cancellation to the payday lender, and

(b) repay, by cash, certified cheque or money order or in a manner prescribed by regulation, the outstanding balance of all advances made, less any portion of the total cost of credit that was paid by or on behalf of the borrower or deducted or withheld from the advances.

**37.29(5)** For the purposes of paragraph (4)(b),

(a) if the first advance was made in the form of a cheque, a return of the unnegotiated cheque to the payday lender is to be considered a repayment of the first advance, and

(b) if the first advance was made in the form of a cash card that enabled the borrower to access funds under the payday loan, returning that card to the payday lender is to be considered a repayment of the first advance to the extent of the credit balance remaining on the card.

**37.29(6)** Upon the cancellation of a payday loan under this section,

(a) the payday lender shall immediately give the borrower a receipt, in the form and containing the information prescribed by regulation, for the amount that the borrower paid or returned to the payday lender upon cancelling the loan, and

(b) the payday lender shall immediately reimburse the borrower, in cash, for all amounts paid, and the value of any other consideration given, by or on behalf of the borrower in relation to the total cost of credit for the loan, less any amount deducted or withheld from the advances or from the repayment of them under paragraph (4)(b).

**37.29(7)** The cancellation of a payday loan under this section extinguishes every liability and obligation of the borrower under, or related to, the payday loan agreement.

**37.29(8)** No payday lender shall charge or require or accept the payment of, or arrange for or permit any other person to charge or to require or accept the payment of, any amount or consideration for, or as a consequence of, the cancellation of a payday loan under this section.

**37.29(9)** The cancellation rights under this section are in addition to, and do not affect, any other right or remedy the borrower has under the payday loan agreement or at law.

### **Information to be posted**

**37.3(1)** A payday lender shall, in accordance with the regulations, post prominently and at each location at which the payday lender is licensed to offer, arrange or provide payday loans, signs that clearly and understandably set out, in the form required by the regulations,

(a) all components of the total cost of credit, including all fees, penalties, rates, commissions, charges, interest and other amounts and consideration for a representative payday loan transaction, and

(b) any other information required by the regulations.

**37.3(2)** For the purposes of subsection (1), a transaction is a representative payday loan transaction if its terms are typical of the terms of the payday loan agreements to which the advertisement relates.

### **Limit regarding cost of credit**

**37.31(1)** No payday lender shall, in relation to a payday loan, charge or require or accept the payment of, or arrange for or permit any other person to charge or to require or accept the payment of, any amount or consideration that would result in the total cost of credit,

or any component of the total cost of credit, of the loan being greater than the maximum fixed by order of the Board.

**37.31(2)** If a payday lender contravenes subsection (1),

(a) the borrower is not liable for any amount charged in relation to the total cost of credit for the payday loan, and

(b) the payday lender shall reimburse the borrower, in cash, immediately on demand by the borrower or the Minister, for the total of all amounts paid and the value of any other consideration given in respect of the borrower's total cost of credit for the payday loan.

**No security to be taken**

**37.32** No payday lender shall, as security for the payment of a payday loan or the performance of an obligation under a payday loan agreement, require, take or accept, directly or indirectly,

(a) real or personal property,

(b) an interest in real or personal property, or

(c) a guarantee.

**Tied selling prohibited**

**37.33** No payday lender shall make a payday loan contingent on the purchase of insurance or another product or service.

**No rollovers**

**37.34(1)** No payday lender shall grant a rollover.

**37.34(2)** If a payday lender contravenes subsection (1) by granting a rollover that is an extension or renewal of a payday loan,

(a) the borrower is not liable for any amount charged in relation to the total cost of credit for the payday loan, and

(b) the payday lender shall reimburse the borrower, in cash, immediately on demand by the borrower or the Minister, for the total of all amounts paid and the value of any other consideration given in respect of the borrower's total cost of credit for the payday loan.

**37.34(3)** If a payday lender contravenes subsection (1) by granting a rollover that is an advancement of a new payday loan to pay out an existing payday loan,

(a) the borrower is not liable for any amount charged in relation to the total cost of credit for the existing payday loan, and

(b) the payday lender shall reimburse the borrower, in cash, immediately on demand by the borrower or the Minister, for the total of all amounts paid and the value of any other consideration given in respect of the borrower's total cost of credit for the existing payday loan.

### **Concurrent payday loans prohibited**

**37.35** No payday lender shall enter into a payday loan agreement with a borrower if

(a) the borrower has already entered into a payday loan agreement with the payday lender, and

(b) the payday loan agreement mentioned in paragraph (a) is still in effect.

### **Payday loans in excess of maximum percentage**

**37.36** No payday lender shall enter into a payday loan agreement with a borrower under which the amount of credit to be extended to the borrower is in excess of the maximum percentage, fixed by order of the Board, of the net pay or other net income that will be received by the borrower during the term of the payday loan.

### **Limit on amounts payable for default**

**37.37(1)** No payday lender shall, in relation to any default by the borrower under a payday loan, charge or require or accept the payment of, or arrange for or permit any other person to charge or to require or accept the payment of, any penalty or other amount except as permitted under an order of the Board.

**37.37(2)** If a payday lender contravenes subsection (1),

(a) the borrower is not liable for any amount charged in relation to his or her default under the payday loan, and

(b) the payday lender shall reimburse the borrower, in cash, immediately on demand by the borrower or the Minister, for any amount paid by the borrower in respect of that default.

### **Wage assignments**

**37.38(1)** In this section, "assignment of wages" includes an order or direction by an employee to pay all or any part of his or her wages to another person.

**37.38(2)** An assignment of wages is not valid if it is given in consideration of a payday loan or an advance under a payday loan, or to secure or facilitate a payment in relation to a payday loan.

**37.38(3)** No payday lender shall request or require a person to make an assignment of wages in relation to a payday loan.

**Other prohibited practices**

**37.39** No payday lender shall engage in any practice that is prohibited by the regulations.

**Minimum working capital**

**37.4** A payday lender shall, at all times, maintain the minimum working capital prescribed by regulation.

**Records to be maintained**

**37.41** A payday lender shall maintain records in accordance with the regulations, including, without limiting the generality of the foregoing, records of all payday loans that it offers, arranges or provides, and all payday loan agreements that the payday lender enters into.

**False, misleading or inaccurate statement**

**37.42** No payday lender shall make a false, misleading or inaccurate statement in an application under this Part or in any information or document required to be provided under this Part or the regulations to the Minister.

**Joint liability**

**37.43** If a payday loan is arranged by one payday lender and provided by another payday lender, both payday lenders are jointly and severally liable

(a) to the borrower for any amount to be refunded or reimbursed to the borrower under this Part or the regulations, and

(b) to comply with any other requirements set out in this Part or the regulations.

**Subdivision b**

**Cash Cards**

**Payout of balances on cash cards**

**37.44(1)** In subsection (6), “delinquent borrower” means a borrower who fails to repay a payday loan by the end of the term of the payday loan.

**37.44(2)** 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 the balance of credit remaining on the card in either of the following circumstances:

(a) the balance of credit remaining on the cash card is less than the amount prescribed by regulation; or

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

**37.44(3)** If a borrower is entitled under subsection (2) to be paid a balance of credit remaining on a cash card and returns the cash card to the payday lender, the payday lender shall pay the balance to the borrower, in cash, immediately on demand by the borrower or the Minister.

**37.44(4)** On the return of a cash card by a borrower to a payday lender under this section, the payday lender shall immediately give the borrower a receipt for the cash card.

**37.44(5)** On the payment of an amount to a borrower under subsection (3), a payday lender shall

(a) include in the receipt given to the borrower under subsection (4) a statement of the amount paid, or

(b) immediately give the borrower a separate receipt indicating the amount paid.

**37.44(6)** The balance of credit remaining on an expired cash card issued to a delinquent borrower may, in accordance with the regulations, be applied by the payday lender as payment towards the payday loan.

### **Subdivision c**

#### **Government Cheque Cashing Fees**

##### **Government cheque cashing fees**

**37.45(1)** In this section, “payer” means a person who pays or is charged or required to pay a cheque cashing fee.

**37.45(2)** No person shall charge or require or accept the payment of, or permit any other person to charge or to require or accept the payment of, a cheque cashing fee except as permitted under an order of the Board.

**37.45(3)** If a person contravenes subsection (2),

(a) the payer is not liable to pay the cheque cashing fee or any part of it, and

(b) the person shall reimburse the payer, in cash, immediately on demand by the payer or the Minister, for the total amount paid as a cheque cashing fee and the value of any other consideration given.

### **Division E**

#### **Guidelines**

##### **Guidelines regarding payday loan agreements**

**37.46(1)** To assist payday lenders in developing payday loan agreements that are clear and understandable, the Minister may issue guidelines about the form of such agreements.

**37.46(2)** The *Regulations Act* does not apply to guidelines issued under subsection (1).

## **Division F**

### **Energy and Utilities Board**

#### **Orders of the Board respecting payday lending**

**37.47(1)** The Board shall, by order,

(a) for the purposes of section 37.31, fix the maximum total cost of credit, or establish a rate, formula or tariff for determining the maximum total cost of credit, that may be charged, required or accepted in respect of a payday loan,

(b) for the purposes of section 37.37, fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of a default by the borrower under a payday loan, or

(c) for the purposes of determining under section 37.36 the maximum amount of credit that may be extended under a payday loan agreement, fix a maximum percentage, or establish a rate, formula or tariff for determining a maximum percentage, of the net pay or other net income a borrower will receive during the term of a payday loan.

**37.47(2)** For the purposes of section 37.31, the Board may, by order, fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any component of the total cost of credit of a payday loan.

**37.47(3)** In making an order under this section, the Board may consider

(a) the operating expenses and revenue requirements of payday lenders in relation to their payday lending business,

(b) the terms and conditions of payday loans,

(c) the circumstances of, and credit options available to, payday loan borrowers generally, and the financial risks taken by payday lenders,

(d) the regulation of payday lenders and payday loans in other jurisdictions,

(e) any other factors that the Board considers relevant and in the public interest, and

(f) any other data that the Board considers relevant.

**37.47(4)** The Board shall at least once a year review its existing orders under this section.

**37.47(5)** After a review referred to in subsection (4), the Board shall make a new order that replaces the existing orders.

**37.47(6)** The Board shall, on the request of the Minister, review any existing order under this section.

**37.47(7)** The Board may, on its own motion, review any existing order under this section.

**37.47(8)** After a review referred to in subsection (6) or (7), the Board shall make a new order that continues, modifies or replaces the order that was reviewed.

#### **Orders of the Board respecting cheque cashing fees**

**37.48(1)** For the purposes of section 37.45, the Board shall, by order, fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted as a cheque cashing fee.

**37.48(2)** In making an order under this section, the Board may consider

(a) the business operating requirements of persons who cash or negotiate cheques for a fee,

(b) the financial risks taken by persons who cash or negotiate government cheques for a fee,

(c) any other factors that the Board considers relevant and in the public interest, and

(d) any other data that the Board considers relevant.

**37.48(3)** The Board shall at least once a year review its existing orders under this section.

**37.48(4)** After a review referred to in subsection (3), the Board shall make a new order that replaces the existing orders.

**37.48(5)** The Board shall, on the request of the Minister, review any existing order under this section.

**37.48(6)** The Board may, on its own motion, review any existing order under this section.

**37.48(7)** After a review referred to in subsection (5) or (6), the Board shall make a new order that continues, modifies or replaces the order that was reviewed.

#### **Non-application of *Regulations Act* to orders**

**37.49** The *Regulations Act* does not apply to an order of the Board referred to in section 37.47 or 37.48.

#### **Recommendations to Minister**

**37.5** The Board may make recommendations to the Minister on matters in respect of payday loans and payday lenders.

**1(9) *The Act is amended by adding after section 52 the following:***

**Appointment of inspectors**

**52.1** The Minister may appoint any person as an inspector for the purposes of ensuring compliance with this Act and the regulations.

**1(10) *Section 53 of the Act is amended***

**(a) *by repealing subsection (1) and substituting the following:***

**53(1)** For the purposes of ensuring compliance with this Act and the regulations, an inspector may, during normal business hours, enter the premises of a credit grantor where any business is carried on, or anything is done in connection with the extension of credit, and may inspect any book, record, account or document that, in the opinion of the inspector, relates to or may relate to the extension of credit.

**(b) *in subsection (2) by striking out “a credit grantor” and substituting “the credit grantor and any employee or agent of the credit grantor”;***

**(c) *by repealing subsection (3) and substituting the following:***

**53(3)** For the purposes of ensuring compliance with this Act and the regulations, an inspector may, during normal business hours, enter the premises of a lessor where any business is carried on, or anything is done in connection with the leasing of goods, and may inspect any book, record, account or document that, in the opinion of the inspector, relates to or may relate to the leasing of goods.

**(d) *in subsection (4) by striking out “lessor” and substituting “lessor and any employee or agent of the lessor”;***

**(e) *by repealing subsection (5) and substituting the following:***

**53(5)** For the purposes of ensuring compliance with this Act and the regulations, an inspector may, during normal business hours, enter the premises of a credit broker where any business is carried on, or anything is done in connection with arranging, negotiating or facilitating or attempting to arrange, negotiate or facilitate an extension of credit, and may inspect any book, record, account or document that, in the opinion of the inspector, relates to or may relate to arranging, negotiating or facilitating or attempting to arrange, negotiate or facilitate an extension of credit.

**(f) *in subsection (6) by striking out “credit broker” and substituting “credit broker and any employee or agent of the credit broker”;***

**(g) *by adding after subsection (6) the following:***

**53(6.1)** An inspector shall not enter a private dwelling under subsection (1), (3) or (5) unless the inspector has the consent of the occupier or has obtained an entry warrant under the *Entry Warrants Act*.

**53(6.2)** Before or after attempting to enter or to have access to any premises, an inspector may apply for an entry warrant under the *Entry Warrants Act*.

**53(6.3)** In carrying out an inspection, an inspector may

(a) use a data processing system at the premises where the books, records, accounts and documents are kept,

(b) reproduce any book, record, account or document, and

(c) use any copying equipment at the premises where the books, records, accounts or documents are kept to make copies of any book, record, account or document.

**(h)** *in subsection (7) by striking out “the Minister” and substituting “an inspector”;*

**(i)** *in subsection (8) by striking out “the Minister removes any book, record, account or document under subsection (7), the Minister” and substituting “an inspector removes any book, record, account or document under subsection (7), the inspector”;*

**(j)** *by adding after subsection (8) the following:*

**53(8.1)** If books, records, accounts or documents are removed from a premises under subsection (7), they shall be returned to the occupier as soon as possible after the examination or the making of the copies or extracts.

**(k)** *by repealing subsection (9) and substituting the following:*

**53(9)** A copy or extract of any book, record, account or document related to an inspection and purporting to be certified by an inspector is admissible in evidence and is proof, in the absence of evidence to the contrary, of the original without proof of the appointment, authority or signature of the inspector.

**(l)** *by adding after subsection (9) the following:*

**53(10)** A credit grantor, lessor or credit broker and any employee or agent of the credit grantor, lessor or credit broker shall give all reasonable assistance to an inspector when the inspector is carrying out an inspection under this section.

**53(11)** No person shall make a false, misleading or inaccurate statement, either orally or in writing, to an inspector engaged in carrying out his or her duties under this Act.

**53(12)** No person shall obstruct or interfere with an inspector when the inspector is carrying out or attempting to carry out an inspection under this section, or withhold,

destroy, conceal, alter or refuse to furnish any information or thing reasonably required by the inspector for the purposes of the inspection.

**53(13)** A refusal of consent to enter a private dwelling is not and shall not be considered to be interfering with or obstructing within the meaning of subsection (12), except where an entry warrant has been obtained.

**1(11) Subsection 57(1) of the Act is amended**

**(a) in paragraph (b) of the English version by striking out “or” at the end of the paragraph;**

**(b) by adding after paragraph (b) the following:**

**(b.1)** that a payday lender as defined in Part V.1 holds or does not hold a licence under that Part;

**(b.2)** that the licence of a payday lender referred to in paragraph (b.1) is suspended or cancelled under Part V.1; or

**(c) by repealing paragraph (c) and substituting the following:**

**(c)** that a credit grantor, lessor or credit broker has provided or submitted or has failed to provide or submit any information or document required to be provided or submitted to the Minister under this Act or the regulations.

**1(12) Section 59 of the Act is repealed and the following is substituted:**

**59(1)** This section does not apply in respect of credit agreements in relation to payday loans.

**59(2)** The Minister may require any credit grantor, lessor or credit broker to provide a bond or collateral security in accordance with the regulations.

**1(13) Section 62 of the Act is amended**

**(a) by renumbering the section as subsection (1);**

**(b) in subsection (1) by adding after paragraph (aa) the following:**

**(aa.1)** designating a fee, rate, commission, charge or other amount or consideration as a cheque cashing fee for the purposes of paragraph (b) of the definition “cheque cashing fee” in section 37.1;

**(aa.11)** designating any division or portion of the Public Service, as defined in the *Public Service Labour Relations Act*, as a government agency for the purposes of the definition “government agency” in section 37.1;

(aa.12) designating a municipality or rural community, as defined in the *Municipalities Act*, as a local government agency for the purposes of the definition “local government agency” in section 37.1;

(aa.13) prescribing Acts for the purposes of subsection 37.11(3);

(aa.14) for the purposes of subsection 37.11(4), exempting any transaction or class of transactions or any person or class of persons from the application of Part V.1 or the regulations or any provision of that Part or the regulations;

(aa.15) respecting licences under Part V.1, including, without limiting the generality of the foregoing,

- (i) applications for licences and for renewals of licences,
- (ii) qualifications of, and requirements to be satisfied by, applicants and payday lenders,
- (iii) information and documents to be provided to the Minister by applicants and payday lenders,
- (iv) licence fees and licence renewal fees, and
- (v) the terms and conditions of a licence;

(aa.16) for the purposes of section 37.15, respecting bonds and other security, including, without limiting the generality of the foregoing,

- (i) the terms, conditions and amount of a bond or other security,
- (ii) the forfeiture of bonds and other security and the disposition of proceeds of the forfeiture, and
- (iii) the powers and duties of the Minister in respect of bonds and other security;

(aa.17) respecting hearings under Part V.1 and the procedures for such hearings;

(aa.18) prescribing the period of time for reapplication for the purposes of section 37.24;

(aa.19) for the purposes of paragraph 37.26(1)(c), respecting the manner of serving notices and other documents;

(aa.2) for the purposes of paragraph 37.28(2)(s), prescribing terms, information or statements;

(aa.21) for the purposes of subsection 37.28(6), prescribing the form of a notice of cancellation and information to be contained in the notice;

(aa.22) prescribing manner of repayment for the purposes of paragraph 37.29(4)(b);

(aa.23) for the purposes of paragraph 37.29(6)(a), prescribing the form of a receipt and information to be contained in the receipt;

- (aa.24) for the purposes of subsection 37.29(7), specifying whether a liability or obligation is, or is not, related to a payday loan agreement;
- (aa.25) for the purposes of section 37.3, respecting the posting of signs, and the form and content of information to be placed on the signs;
- (aa.26) prescribing prohibited practices for the purposes of section 37.39;
- (aa.27) for the purposes of section 37.4, prescribing the minimum working capital that shall be maintained by a payday lender;
- (aa.28) for the purposes of section 37.41, respecting the records to be maintained by payday lenders, including, without limiting the generality of the foregoing, the length of time for which and location at which records must be retained;
- (aa.29) for the purposes of Part V.1, respecting information and documents that payday lenders are required to provide to the Minister and the times, form and manner in which the information and documents are to be provided;
- (aa.3) prescribing an amount of credit remaining on a cash card for the purposes of paragraph 37.44(2)(a);
- (aa.4) for the purposes of Part V.1, respecting the expiry of cash cards and setting minimum terms;
- (aa.5) respecting the application of the balance of credit remaining on a cash card as payment towards a payday loan under subsection 37.44(6);

**(c) by adding after subsection (1) the following:**

**62(2)** A regulation may be general or particular in its application and may vary for or be made in respect of different credit grantors, lessors or credit brokers or different classes of credit grantors, lessors or credit brokers.

**1(14) Schedule A of the Act is amended**

**(a) by striking out**

37..... **D**

**and substituting the following:**

37..... D

37.12..... E

37.17(3)..... D

37.18(a)..... D

37.18(b).....	D
37.28(1).....	D
37.28(2).....	D
37.28(3).....	D
37.28(5).....	D
37.28(6).....	D
37.29(6)(a).....	D
37.29(8).....	D
37.3(1).....	D
37.31(1).....	D
37.32(a).....	D
37.32(b).....	D
37.32(c).....	D
37.33.....	D
37.34(1).....	D
37.35.....	D
37.36.....	D
37.37(1).....	D
37.38(3).....	D
37.39.....	B
37.4.....	D
37.41.....	D
37.42.....	E
37.44(4).....	D
37.44(5).....	D
37.45(2).....	D
<i>(b) by striking out</i>	
<b>53(6).....</b>	<b>D</b>

*and substituting the following:*

53(6).....	D
53(10).....	D
53(11).....	E
53(12).....	E

***Consumer Product Warranty and Liability Act***

**2 Section 20 of the Consumer Product Warranty and Liability Act, chapter C-18.1 of the Acts of New Brunswick, 1978, is repealed and the following is substituted:**

**20(1)** The buyer may reject the product under section 16 notwithstanding that the buyer has granted a security interest in the product to a third person, unless the amount outstanding on the security agreement exceeds any amount that the buyer is entitled to recover from the seller under section 17.

**20(2)** Where the buyer has granted a security interest in the product to a third person, the seller may exercise the buyer’s rights under section 23 of the *Cost of Credit Disclosure and Payday Loans Act* on behalf of the buyer.

**20(3)** The buyer is liable to the seller for any payments, except finance charges, that the seller makes under subsection (2) and the seller may treat such payments as a refund of payments to the buyer for the purposes of sections 17 and 18.

***Direct Sellers Act***

**3 Subparagraph 9(1)(j)(ii) of New Brunswick Regulation 84-151 under the Direct Sellers Act is repealed and the following is substituted:**

(ii) the cost of credit disclosed in accordance with the *Cost of Credit Disclosure and Payday Loans Act*; and

***Energy and Utilities Board Act***

**4(1) Subsection 23(1) of the Energy and Utilities Board Act, chapter E-9.18 of the Acts of New Brunswick, 2006, is amended by adding after paragraph (b) the following:**

(b.01) the *Cost of Credit Disclosure and Payday Loans Act*,

**4(2) Subsection 50(2) of the Act is amended by adding after paragraph (b) the following:**

(b.1) licensees under Part V.1 of the *Cost of Credit Disclosure and Payday Loans Act*;

**COMMENCEMENT**

**5 This Act or any provision of it comes into force on a day or days to be fixed by proclamation.**

## EXPLANATORY NOTES

### Section 1

1) The *Cost of Credit Disclosure Act* is now entitled the *Cost of Credit Disclosure and Payday Loans Act*.

2) Transitional provision.

3)

(a) Consequential amendment.

(b) New definitions.

4) New provision.

5) New provision.

6) New provision.

7) Consequential amendment.

8) New provisions.

9) New provision.

10)

(a) The existing provision is as follows:

**53(1)** The Minister may, during normal business hours, enter upon the business premises of a credit grantor and may inspect any book, record, account or document that, in the opinion of the Minister, relates or may relate to the extension of credit.

(b) The existing provision is as follows:

**53(2)** During an inspection under subsection (1), a credit grantor shall produce for inspection any book, record, account or document referred to in subsection (1).

(c) Consequential amendment.

(d) Consequential amendment.

(e) Consequential amendment.

(f) Consequential amendment.

(g) New provisions.

(h) Consequential amendment.

(i) Consequential amendment.

(j) New provision.

(k) Consequential amendment.

(l) New provisions.

11)

(a) Consequential amendment.

(b) New provisions.

(c) Consequential amendment.

12) Consequential amendment.

13)

(a) Consequential amendment.

(b) New regulation-making authority.

(c) New provision.

14)

(a) Consequential amendment.

(b) Consequential amendment.

**Section 2**

Consequential amendment.

**Section 3**

Consequential amendment.

**Section 4**

1) Consequential amendment.

2) Consequential amendment.

**Section 5**

Commencement provision.