

Payday Loans Act, 2008

EXPLANATORY NOTE

The Bill enacts a new Act.

Part I

The Act regulates payday loans, which are defined as in section 347.1 of the *Criminal Code* (Canada) to be an advancement of money 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. The Act also regulates payday loan agreements which are defined to be agreements under which a lender makes a payday loan to a borrower, with or without the assistance of a loan broker. Regulations made under the Act can provide that the Act applies to other loans or can exempt classes of persons, entities or payday loans from the application of the Act.

Part II

A person or entity that acts as a payday lender, whether or not parties enter into a payday loan agreement, is required to hold a licence issued by the Registrar under the Act. A person or entity that acts as a loan broker, whether or not parties enter into a payday loan agreement, is also required to hold a licence issued by the Registrar under the Act. The Registrar can suspend or revoke a licence in some cases. In some cases, but not all cases, the applicant for a licence or the renewal of a licence or a licensee affected by a decision of the Registrar is entitled to a hearing before the Licence Appeal Tribunal.

Part III

An applicant for a licence or renewal of a licence or a licensee is required to disclose to the Registrar certain changes, such as a change in address for service or changes relating to corporate control. The Registrar may at any time require a licensee to provide the Registrar with copies of materials that the licensee uses or proposes to use in the course of conducting business.

The Act contains many provisions for the protection of borrowers. For example, a licensee is prohibited from making false, misleading or deceptive statements relating to a payday loan or payday loan agreement. All payments that a borrower is required to make under a payday loan agreement must go to the lender, and not to any other person or entity, such as a loan broker. A lender under a payday loan agreement must deliver a copy of the agreement to the borrower no later than entering into the agreement. The borrower then has two days to cancel the agreement for any reason. A lender under a payday loan agreement is not entitled to demand payment of any portion of the cost of borrowing under the agreement until the end of the term of the agreement. The cost of borrowing must not exceed the limits prescribed by the regulations made

under the Act. If a payday loan agreement does not comply with this Part, the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.

Part IV

If a borrower cancels a payday loan agreement under the Act, the lender is required to refund to the borrower all payments made under the agreement, except for repayments of any part of the advance, and to return to the borrower all post-dated cheques, pre-authorized debits and authorizations for future payments under the agreement that the borrower has provided. The borrower is required to repay the advance, but is not required to pay the cost of borrowing under the agreement. If the lender or a loan broker receives a payment from the borrower that the borrower is not liable to make, the borrower is entitled to a refund of the payment.

Part V

The Act contains a number of enforcement measures, including the following.

If the Registrar receives a complaint about a licensee, the Registrar may request information in relation to the complaint from any licensee.

The Registrar or a person designated in writing by the Registrar may conduct an inspection and may, as part of the inspection, enter and inspect at any reasonable time the business premises of a licensee, other than any part of the premises used as a dwelling, for the purpose of ensuring compliance with the Act and the regulations made under it, dealing with a complaint or ensuring the licensee remains entitled to a licence.

A justice of the peace can issue a search warrant to an investigator appointed by the Director designated by the Minister of Government and Consumer Services.

The Director can make orders freezing money or assets of persons or entities involved in proceedings in relation to a contravention of the Act or involved in other matters in relation to the Act.

The Registrar can make orders with respect to false advertising by licensees.

It is an offence to contravene any section of the Act or the regulations made under it.

An assessor designated in writing by the person prescribed by the regulations made under the Act can, by order, impose an administrative penalty against a licensee if the assessor is satisfied that the licensee has contravened or is contravening a provision of the Act or the regulations that is prescribed by the regulations. The amount of the administrative penalty is the amount set by regulations made by the Minister, not to exceed \$10,000.

Part VI

Part VI contains a number of general provisions relating to the confidentiality of information, service of notices, orders or requests and the use in evidence of statements certified by the Director.

Part VII

A fund known as the Ontario Payday Lending Education Fund is established for the purpose of educating persons respecting the rights and obligations of persons and entities under the Act. The Minister can, by order, establish payments that licensees are required to make to the Fund. The Minister can, by regulation, designate a not-for-profit corporation to administer the Fund. The corporation so designated has the name, Ontario Payday Lending Education Fund Corporation. The Minister can revoke the designation, in which case the corporation is dissolved.

Part VIII

Part VIII contains the power of the Minister to make fee orders and certain regulations with respect to administrative penalties. The Lieutenant Governor in Council has broad power to make regulations under the Act, including specifying the responsibilities of licensees, governing their activities and governing the required contents for payday loan agreements.

Part IX

The Bill makes consequential amendments to the *Consumer Protection Act, 2002* and the *Licence Appeal Tribunal Act, 1999*.

An Act to regulate payday loans and to make consequential amendments to other Acts

Note: This Act amends or repeals more than one Act. For the legislative history of these Acts, see the Table of Consolidated Public Statutes – Detailed Legislative History on www.e-Laws.gov.on.ca.

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

PART I**INTERPRETATION, APPLICATION AND ADMINISTRATION****Interpretation**

1. (1) In this Act,

“administrative penalty” means an administrative penalty imposed under section 59; (“pénalité administrative”)

“advance” means the money transferred to or to the order of the borrower under a payday loan agreement and any other value, as prescribed, that the borrower receives under the agreement; (“avance”)

“assessor” means a person designated in writing by the prescribed person as authorized to make an order under section 59 imposing an administrative penalty; (“évaluateur”)

“borrower” means a corporation, partnership, sole proprietor, association or other entity or individual that receives a payday loan or indicates an interest in receiving a payday loan; (“emprunteur”)

“Corporation” means the Ontario Payday Lending Education Fund Corporation designated under section 68; (“Société”)

“cost of borrowing” means the total of all amounts that a borrower is required to pay under, or as a condition of entering into, a payday loan agreement and all amounts that are prescribed as included in the cost of borrowing, but does not include default charges and the repayment of the advance; (“coût d’emprunt”)

“default charge” means a charge imposed against a borrower who does not make a payment as it comes due under a payday loan agreement or who does not comply with any other obligation under a payday loan agreement, but does not include interest on an overdue payment; (“frais de défaut”)

“Director” means the person designated as the Director under the *Ministry of Consumer and Business Services Act*; (“directeur”)

“equity share” means, in respect of a corporation, a share of a class or series of shares of a corporation, where the class or series carries a voting right either under all circumstances or under circumstances that have occurred and are continuing; (“action participante”)

“Fund” means the Ontario Payday Lending Education Fund established in section 66; (“Fonds”)

“investigator” means an investigator appointed under subsection 48 (1); (“enquêteur”)

“lender” means a corporation, partnership, sole proprietor, association or other entity or individual that makes a payday loan to a borrower or that holds oneself out as available to make such a loan; (“prêteur”)

“licence” means a licence issued under this Act; (“permis”)

“licensee” means a person who holds a licence issued under this Act; (“titulaire de permis”)

“loan broker” means a corporation, partnership, sole proprietor, association or other entity or individual that assists a borrower in obtaining a payday loan or that holds oneself out as available to provide such assistance; (“courtier en prêts”)

“Minister” means the Minister of Government and Consumer Services or whatever other member of the Executive Council to whom administration for this Act is assigned under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“officer” includes,

- (a) with respect to a corporation, the chair and any vice-chair of the board of directors, the president and any vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager and assistant general manager of the corporation,
- (b) with respect to a partnership, a partner or general manager and assistant general manager of the partnership, and
- (c) with respect to a corporation or partnership, any other individual designated as an officer by by-law or resolution or any other individual who performs functions normally performed by an individual occupying such office; (“dirigeant”)

“payday loan” means an advancement of money 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; (“prêt sur salaire”)

“payday loan agreement” means an agreement under which a lender makes a payday loan to a borrower; (“convention de prêt sur salaire”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act; (“règlements”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or whatever other tribunal is prescribed. (“Tribunal”)

Associated persons and entities

(2) For purposes of this Act, one person or entity is associated with another person or entity in any of the following circumstances:

1. One person or entity is a corporation of which the other person or entity is an officer or director.
2. One person or entity is a partnership of which the other person or entity is a partner.
3. Both persons or entities are partners of the same partnership.
4. One person or entity is a corporation that is controlled directly or indirectly by the other person or entity.
5. Both persons or entities are corporations and one corporation is controlled directly or indirectly by the same person or entity who controls directly or indirectly the other corporation.
6. Both persons or entities are members of the same voting trust relating to shares of a corporation.
7. Both persons or entities are associated within the meaning of paragraphs 1 to 6 with the same person or entity.

Application of Act

2. (1) Subject to the regulations, this Act applies in respect of all payday loans if the borrower, lender or loan broker is located in Ontario when the loan is made or to be made.

Other loans

(2) Except for section 32, this Act applies with necessary modifications to those loans, other than payday loans, that are prescribed and in that case the references to payday loans in this Act shall be read as references to those other loans.

Exemptions

3. This Act does not apply to the persons, entities or payday loans or classes of persons, entities or payday loans that are prescribed.

Anti-avoidance

4. In determining whether this Act applies to a person, entity, agreement or transaction, a court or other tribunal shall consider the real substance of the person, entity, agreement or transaction and in so doing may disregard the outward form.

Registrar

5. (1) The Deputy Minister shall appoint a person as Registrar for the purposes of this Act.

Powers and duties

(2) The Registrar may exercise the powers and shall perform the duties conferred on the Registrar under this Act under the supervision of the Director.

PART II LICENCES

Requirement for licence

6. (1) No person or entity shall act as a lender unless the person or entity,

- (a) is licensed as a lender and, subject to section 17, has received notice in writing from the Registrar of the licence; or
- (b) is deemed to be licensed under section 18.

Same, loan broker

(2) No person or entity shall act as a loan broker unless the person or entity,

- (a) is licensed as a loan broker and, subject to section 17, has received notice in writing from the Registrar of the licence; or
- (b) is deemed to be licensed under section 18.

Consequence

(3) If a lender who is not licensed enters into a payday loan agreement with a borrower, the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.

Dealings between lenders and loan brokers

7. (1) For the purposes of this Act, no lender shall deal with or through a loan broker who is not licensed.

Same

(2) For the purposes of this Act, no loan broker shall deal with or through a lender who is not licensed.

Change in partnership

8. A change in the membership of a partnership is deemed to create a new partnership for the purpose of a licence.

No right to hearing

9. (1) If an applicant for a licence or renewal of a licence does not meet the prescribed requirements, the Registrar shall refuse to issue or renew the licence, as the case may be.

Non-application

(2) Section 13 does not apply to a refusal under subsection (1) to issue or renew a licence.

Notice of refusal

(3) The Registrar shall give the applicant written notice of a refusal under subsection (1), setting out the reasons for the refusal.

Service of notice

(4) Subsection 64 (3) does not apply to the notice.

Right to hearing

10. (1) If an applicant for a licence or renewal of a licence meets the prescribed requirements, the applicant is entitled to have the Registrar issue or renew the licence, as the case may be, unless,

- (a) the applicant is not a corporation and,
 - (i) having regard to the applicant's financial position or the financial position of an interested person or entity in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,
 - (ii) the past conduct of the applicant or of an interested person or entity in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty, or

- (iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in the application;
- (b) the applicant is a corporation and,
 - (i) having regard to its financial position or the financial position of an interested person or entity in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
 - (ii) having regard to the financial position of its officers or directors or an interested person or entity in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
 - (iii) the past conduct of its officers or directors or of an interested person or entity in respect of its officers or directors or of an interested person or entity in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or
 - (iv) an officer, director, employee or agent of the corporation makes a false statement or provides a false statement in the application;
- (c) the applicant or an interested person or entity in respect of the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;
- (d) the applicant is in breach of a condition of the licence;
- (e) the applicant fails to comply with a request made by the Registrar under subsection (3); or
- (f) the applicant is deemed to be licensed under section 18 and does not consent to having the Registrar apply conditions to the licence for which the applicant is applying.

Interested person or entity

(2) For the purposes of this section, a person or entity is deemed to be an interested person or entity in respect of another person or entity if the person or entity is associated with the other person or entity or if, in the opinion of the Registrar,

- (a) the person or entity has or may have a beneficial interest in the business of the other person or entity;

- (b) the person or entity exercises or may exercise control either directly or indirectly over the other person or entity; or
- (c) the person or entity has provided or may have provided financing either directly or indirectly to the business of the other person or entity.

Request for information

(3) The Registrar may request an applicant for a licence or renewal of a licence to provide to the Registrar, in the form and within the time period specified by the Registrar,

- (a) information specified by the Registrar that is relevant to the decision to be made by the Registrar as to whether or not to issue the licence or renewal; and
- (b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant is providing or has provided to the Registrar.

Conditions of licence

11. (1) A licence is subject to the conditions to which the applicant for the licence or the licensee consents, that the Registrar applies under subsection (2), that the Tribunal orders or that are prescribed.

Conditions of Registrar

(2) Upon issuing or renewing a licence or at any other time, the Registrar may apply to the licence the conditions that the Registrar considers appropriate.

Licence not transferable

(3) A licence is not transferable.

No licence

12. Subject to section 13, the Registrar may refuse to issue a licence or renewal of a licence or may suspend or revoke a licence if, in the opinion of the Registrar, the applicant or the licensee, as the case may be, is not entitled to a licence under section 10.

Notice of proposal

13. (1) The Registrar shall notify the applicant or licensee, as the case may be, in writing if the Registrar proposes to,

- (a) refuse to issue a licence or renewal of licence;
- (b) suspend or revoke a licence; or
- (c) apply conditions to a licence to which the applicant or licensee has not consented.

Content of notice

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if the applicant or licensee, within 15 days after service of the notice, serves a written request for a hearing on the Registrar and the Tribunal.

Service

(3) The notice of proposal shall be served on the applicant or licensee in accordance with section 64.

If no request for hearing

(4) If the applicant or licensee does not request a hearing in accordance with subsection (2), the Registrar may carry out the proposal.

Hearing

(5) If the applicant or licensee requests a hearing, the Tribunal shall hold the hearing.

Parties

(6) The Registrar, the applicant or licensee and the other persons that the Tribunal specifies are parties to the proceedings before the Tribunal.

Powers of Tribunal

(7) After holding the hearing, the Tribunal may,

- (a) by order, direct the Registrar to carry out the Registrar's proposal or substitute its opinion for that of the Registrar; and
- (b) may attach conditions to its order or to a licence.

Immediate effect

(8) Even if a licensee appeals an order of the Tribunal under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Service of hearing request

14. (1) A request for a hearing under section 13 is sufficiently served if delivered personally or sent by registered mail to the Registrar and to the Tribunal.

Registered mail

(2) If service is made by registered mail, it is deemed to be made on the third day after the day of mailing.

Other methods

(3) Despite subsection (1), the Tribunal may order any other method of service it considers appropriate in the circumstances.

Immediate suspension

15. (1) If the Registrar proposes to suspend or revoke a licence under section 13 and if the Registrar considers it in the public interest to do so, the Registrar may, by order, suspend the licence.

Immediate effect

(2) The order takes effect immediately.

Expiry of order

(3) If the licensee requests a hearing under section 13,

- (a) the order expires 15 days after the Tribunal receives the written request for a hearing;
or
- (b) the Tribunal may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period mentioned in clause (a).

Extension of order

(4) Despite subsection (3), if the Tribunal is satisfied that the conduct of the licensee has delayed the commencement of the hearing, it may extend the time of the expiration for the order,

- (a) until the hearing commences; and
- (b) once the hearing commences, until the hearing is concluded.

Voluntary cancellation

16. The Registrar may cancel a licence upon the request in writing of the licensee and section 13 does not apply to the cancellation.

Continuation pending renewal

17. If, within the time prescribed or, if no time is prescribed, before the expiry of a licence, the licensee has applied for renewal of the licence and paid the required fee, the licence is deemed to continue,

- (a) until the renewal is issued;
- (b) until the Registrar gives the licensee written notice of the Registrar's refusal under section 9 to issue the renewal; or

- (c) if the licensee is served notice that the Registrar proposes to refuse, under subsection 13 (1), to issue the renewal,
 - (i) until the time for requesting a hearing has expired, if the licensee does not request a hearing, or
 - (ii) until the Tribunal makes its order, if the licensee requests a hearing.

Transition, licences

18. (1) A corporation, partnership, sole proprietor, association or other entity or individual acting as a lender or a loan broker on the day this section comes into force is deemed to be licensed as a lender or loan broker, as the case may be, until the expiry of the prescribed time.

Application for licence

(2) If a corporation, partnership, sole proprietor, association or other entity or individual that is deemed to be licensed under subsection (1) applies for a licence and pays the required fee within the prescribed time mentioned in that subsection, the applicant continues to be deemed to be licensed until,

- (a) the Registrar issues the licence to the applicant;
- (b) the Registrar gives the applicant written notice of the Registrar's refusal under section 9 to issue the licence;
- (c) the time for requesting a hearing expires, if the Registrar, under section 12, has proposed to refuse to issue the licence and the applicant has not requested a hearing; or
- (d) the Tribunal makes an order directing the Registrar to carry out the Registrar's proposal to refuse to issue the licence, if the Registrar, under section 12, has proposed to refuse to issue the licence and the applicant has requested a hearing.

Further application

19. If the refusal to issue a licence or renewal of a licence has become final or if the revocation of a licence has become final, the applicant or licensee, as the case may be, may reapply for a licence only if,

- (a) the prescribed time has passed since the refusal or revocation; and
- (b) new or other evidence is available or it is clear that material circumstances have changed.

**PART III
REGULATION OF LICENSEES**

DISCLOSURE TO REGISTRAR

Information on corporation

20. (1) An applicant for a licence or renewal of a licence that is a corporation shall disclose to the Registrar the identity of,

- (a) each person or entity that beneficially owns or controls 10 per cent or more of the equity shares of the corporation issued and outstanding at the time of the application; and
- (b) persons or entities that are associated with each other and that together beneficially own or control 10 per cent or more of the equity shares of the corporation issued and outstanding at the time of the application.

Calculating number of shares

(2) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purposes of subsection (1), the total number shall be calculated as the total number of all shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes carried.

Notice of changes in shares

21. (1) In addition to the disclosure required under section 20, every licensee that is a corporation shall notify the Registrar in writing within 30 days after the issue of any equity shares of the corporation, if the issue results in,

- (a) any person or entity, or any persons or entities that are associated with each other, acquiring or accumulating beneficial ownership or control of 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation; or
- (b) an increase in the percentage of issued and outstanding equity shares of the corporation beneficially owned or controlled by any person or entity, or any persons or entities that are associated with each other, if the person, entity or the associated persons or entities already beneficially owned or controlled 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation before the issue.

Transfer of shares

(2) In addition to the disclosure required under section 20, every licensee that is a corporation shall notify the Registrar in writing within 30 days after it comes to the attention of any of its officers or directors that a transfer of any equity shares of the corporation has occurred, if the transfer produces either of the results described in clause (1) (a) or (b).

Calculating number of shares

(3) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purpose of this section, the total number shall be calculated as the total of all the shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes it carries.

Notice of identity of persons or entities

(4) The notice required under subsection (1) or (2) shall identify the persons or entities described in the applicable clause of subsection (1) or in subsection (2), as the case may be.

Notice of changes to Registrar

22. (1) Every licensee shall, within five days after the event, notify the Registrar in writing of,

- (a) any change in the licensee's address for service; and
- (b) in the case of a corporation or partnership, any change in the officers or directors of the licensee.

Timing

(2) The Registrar is deemed to have received the notice mentioned in subsection (1),

- (a) on the day on which the Registrar actually received it, if it was not sent by mail; or
- (b) on the day of mailing, if it was sent by mail.

Business materials

23. (1) The Registrar may at any time require a licensee to provide the Registrar with copies of any letters, forms, form letters, notices, pamphlets, brochures, payday loan agreements or other materials, including prescribed materials, that the licensee uses or proposes to use in the course of conducting business.

Compliance

(2) If the Registrar requires a licensee to provide material to the Registrar under subsection (1), the licensee shall comply with the requirement as soon as practicable.

Registrar's order

(3) If the Registrar believes on reasonable grounds that any of the material mentioned in subsection (1) is false, misleading or deceptive or contravenes this Act or the regulations, the Registrar may, by order, amend, restrict or prohibit the use of the material.

Right to hearing

(4) Section 13 applies with necessary modifications to the order in the same manner as to a proposal by the Registrar to refuse to issue a licence.

Immediate effect

(5) The order takes effect immediately, but the Tribunal may grant a stay until the order becomes final.

PROTECTION OF BORROWERS

Offices of a licensee

24. (1) Unless the regulations specify otherwise, in acting as a licensee, a licensee shall not operate any office unless the licence authorizes the licensee to operate it.

Main office

(2) If a licence authorizes the licensee to operate more than one office, the licence shall designate one office as the main office and the remainder as branch offices.

Business names

25. (1) Subject to the regulations and subsections (2) and (3), a licensee shall not carry on business, including at any of its branch offices, under a name other than the name authorized by the licence.

Sole proprietor

(2) A licensee carrying on business as a sole proprietor shall not use any description or device that would indicate that the licensee's business is being carried on by more than one individual or by a corporation or other entity.

Exception

(3) Despite subsection (2), a surviving or remaining partner may carry on business in the name of the original partnership if the surviving or remaining partner publishes on all letterhead, circulars and advertisements used in connection with the business the fact that the surviving or remaining partner is the sole proprietor.

Representations

26. (1) No licensee shall make or shall facilitate the making of false, misleading or deceptive statements relating to a payday loan or a payday loan agreement in any advertisement, circular, pamphlet or material published by any means.

Requirements

(2) No licensee shall make or shall facilitate the making of representations or cause representations to be made relating to a payday loan or a payday loan agreement, whether orally, in writing or in any other form, unless the representations comply with the prescribed requirements, if any.

False information

27. (1) No licensee shall falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document relating to a payday loan or a payday loan agreement.

Furnishing false information

(2) No licensee shall furnish, assist in furnishing or induce or counsel another person to furnish or assist in furnishing any false or deceptive information or documents relating to a payday loan or a payday loan agreement.

No payments to loan broker

28. (1) No loan broker shall receive or demand any payment from a borrower for assisting the borrower in obtaining a payday loan.

Same, under payday loan agreement

(2) All payments that a borrower is required to make under a payday loan agreement shall be made to the lender, and not to any other person or entity, including a loan broker.

Duty of lender

(3) No lender shall facilitate a contravention of subsection (1) or (2).

Consequence

(4) If parties enter into a payday loan agreement that results in a contravention of subsection (2), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing or any payment in contravention of that subsection.

Requirements for agreements

29. (1) A lender under a payday loan agreement shall ensure that the agreement is in writing and meets the prescribed requirements, if any, and shall deliver a copy of the agreement to the borrower no later than upon entering into the agreement.

Advance

(2) A lender under a payday loan agreement shall ensure that the advance is delivered to the borrower no later than upon entering into the agreement.

Duties of loan broker

(3) No loan broker shall facilitate a contravention of subsection (1) or (2).

Consequence

(4) If parties enter into a payday loan agreement that results in a contravention of subsection (1) or (2), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.

Cancellation

30. (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 second day after the time that the lender complies with subsections 29 (1) and (2), if the lender is open for business on that day; or
- (b) the next day that the lender is open for business following the second day described in clause (a), if the lender is not open for business on that second day.

Notice

(2) To cancel a payday loan agreement under subsection (1), the borrower shall give notice, within the time required by that subsection, to the prescribed person or entity.

No deductions from advance

31. (1) Subject to section 34, a lender under a payday loan agreement shall not receive or demand payment of any portion of the cost of borrowing from the borrower until the end of the term of the agreement.

Duty of loan broker

(2) No loan broker shall facilitate a contravention of subsection (1).

Consequence

(3) If parties enter into a payday loan agreement that results in a contravention of subsection (1), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.

Cost of borrowing

32. (1) This section applies to a payday loan agreement if,

- (a) the advance under the agreement is \$1,500 or less or, if another amount is prescribed, that amount or less; and
- (b) the term of the agreement is 62 days or less or, if another number of days is prescribed, that number of days or less.

Duty of lender

(2) The lender under a payday loan agreement shall ensure that the cost of borrowing under the agreement does not exceed the prescribed limits.

Duty of loan broker

(3) No loan broker shall facilitate a contravention of subsection (2).

Consequence

(4) If the cost of borrowing under a payday loan agreement exceeds the prescribed limits, the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.

Restriction on default charges

33. (1) A lender shall not impose against a borrower under a payday loan agreement, and the borrower is not liable to pay, default charges other than,

- (a) reasonable charges in respect of legal costs that the lender incurs in collecting or attempting to collect a required payment by the borrower under the agreement; or
- (b) reasonable charges reflecting the costs that the lender incurs because a cheque or other instrument of payment given by the borrower under the agreement has been dishonoured.

Duty of loan broker

(2) No loan broker shall facilitate a contravention of subsection (1).

Prepayment

34. A borrower is entitled to pay the full outstanding balance under a payday loan agreement at any time without any prepayment charge or penalty.

No concurrent or replacement payday loan agreements

35. (1) The lender under a payday loan agreement shall not enter into a new payday loan agreement with the borrower before at least seven days have passed since the borrower has paid the full outstanding balance under the first agreement.

Duty of loan broker

(2) No loan broker shall facilitate a contravention of subsection (1).

Same loan broker, different lenders

(3) No loan broker shall facilitate the making of more than one payday loan agreement between the same borrower and different lenders unless at least seven days have passed since the borrower has paid the full outstanding balance under the first agreement.

Duty of lender

(4) No lender shall facilitate a contravention of subsection (3).

Consequence

(5) If parties enter into a payday loan agreement that results in a contravention of subsection (1) or (3), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.

Extensions of payday loan agreements

36. (1) The lender under a payday loan agreement shall not extend the agreement unless the regulations permit extensions of payday loan agreements and the extension complies with the prescribed requirements.

Duty of loan broker

(2) No loan broker shall facilitate a contravention of subsection (1).

GENERAL

Form of disclosure of information

37. (1) A licensee who is required to disclose information under this Act shall ensure that the disclosure is clear, comprehensible and prominent.

Information to borrower

(2) A licensee who is required to deliver information to a borrower under this Act shall ensure that the information, in addition to complying with subsection (1), is in a form that allows the borrower to retain it.

**PART IV
BORROWERS' RIGHTS AND REMEDIES**

GENERAL

Rights reserved

38. Nothing in this Act shall be interpreted to limit any right or remedy that a borrower may have in law.

No waiver of rights

39. (1) The substantive and procedural rights given under this Act apply despite any agreement or waiver to the contrary.

Term requiring arbitration

(2) Without limiting the generality of subsection (1), any term or acknowledgment in a payday loan agreement that requires or has the effect of requiring that disputes arising out of the payday loan agreement be submitted to arbitration is invalid in so far as it prevents a borrower from exercising a right to commence an action in the Superior Court of Justice given under this Act.

Procedure to resolve dispute

(3) Despite subsections (1) and (2), after a dispute over which a borrower may commence an action in the Superior Court of Justice arises, the borrower, the licensee and any other person involved in the dispute may agree to resolve the dispute using any procedure that is available in law.

Settlements or decisions

(4) A settlement or decision that results from the procedure agreed to under subsection (3) is as binding on the parties as the settlement or decision would be if it were reached in respect of a dispute concerning an agreement to which this Act does not apply.

Non-application of *Arbitration Act, 1991*

(5) Subsection 7 (1) of the *Arbitration Act, 1991* does not apply in respect of any proceeding to which subsection (2) applies unless, after the dispute arises, the borrower agrees to submit the dispute to arbitration.

Class proceedings

40. (1) A borrower may commence a proceeding on behalf of members of a class under the *Class Proceedings Act, 1992* or may become a member of a class in such a proceeding in respect of a dispute arising out of a payday loan agreement despite any term or acknowledgment in the payday loan agreement that purports to prevent or has the effect of preventing the borrower from commencing or becoming a member of a class proceeding.

Procedure to resolve dispute

(2) After a dispute that may result in a class proceeding arises, the borrower, the licensee and any other person involved in it may agree to resolve the dispute using any procedure that is available in law.

Settlements or decisions

(3) A settlement or decision that results from the procedure agreed to under subsection (2) is as binding on the parties as the settlement or decision would be if it were reached in respect of a dispute concerning an agreement to which this Act does not apply.

Non-application of *Arbitration Act, 1991*

(4) Subsection 7 (1) of the *Arbitration Act, 1991* does not apply in respect of any proceeding to which subsection (1) applies unless, after the dispute arises, the borrower agrees to submit the dispute to arbitration.

Ambiguities to benefit borrower

41. Any ambiguity that allows for more than one reasonable interpretation of a payday loan agreement that a licensee provides to a borrower or of any information that this Act or the regulations require to be disclosed to a borrower shall be interpreted to the benefit of the borrower.

PROCEDURES

Form of notice from borrower

42. (1) A notice that a borrower is required to give to a person or entity under this Act may be expressed in any way, as long as it indicates the purpose of the notice and complies with the requirements, if any, that are prescribed.

Means of giving notice

(2) Unless the regulations prescribe otherwise, the notice may be oral or in writing and may be given by any means.

Timing

(3) If notice in writing is given other than by personal service, the notice is deemed to be given when sent.

Address

(4) The borrower may send the notice to,

- (a) the address of the person or entity who is to receive the notice as the address is set out in the payday loan agreement, if the address is set out in the agreement; or
- (b) if the address is not set out in the payday loan agreement or if the borrower did not receive the copy of the agreement under subsection 29 (1) to,
 - (i) any address of the person or entity on record with the Government of Ontario or the Government of Canada, or
 - (ii) an address of the person or entity known by the borrower.

Cancellation

43. (1) If a borrower cancels a payday loan agreement under subsection 30 (1), the cancellation takes effect when the borrower gives the notice required by subsection 30 (2).

Effect of cancellation

(2) The cancellation operates to cancel the payday loan agreement as if it had never existed.

Obligations of parties

(3) If a borrower cancels a payday loan agreement under subsection 30 (1),

- (a) the lender shall, in accordance with the prescribed requirements, if any,
 - (i) refund to the borrower all payments, if any, made under the agreement or made as a condition of entering into the agreement, except repayments of any part of the advance,
 - (ii) return to the borrower all post-dated cheques, pre-authorized debits and authorizations for future payments provided under the agreement, if those cheques, debits and authorizations are in tangible form, and

- (iii) destroy all pre-authorized debits and authorizations for future payments provided under the agreement, if those debits and authorizations are created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means; and
- (b) the borrower shall, in accordance with the prescribed requirements, if any,
- (i) repay the advance to the lender, and
 - (ii) return to the lender all goods, if any, received under the agreement.

Illegal payments

44. (1) If a licensee has received a payment from a borrower to which the licensee is not entitled under this Act or that the borrower is not liable to make under this Act, the borrower may demand a refund of the payment by giving notice to the prescribed person or entity in accordance with section 42 within one year after making the payment.

Refund

(2) A person or entity that receives a notice demanding a refund under subsection (1) shall take the prescribed action.

Right of action

(3) The borrower may commence an action in accordance with section 45 to recover the refund mentioned in subsection (1).

Action in Superior Court of Justice

45. (1) A borrower who has a right to commence an action under this Act may commence the action in the Superior Court of Justice.

Waiver of notice

(2) If a borrower is required to give notice under this Act in order to obtain a remedy, the court may disregard the requirement to give the notice or any requirement relating to the notice if it is in the interest of justice to do so.

Judgment

(3) If the borrower is successful in the action, the court,

- (a) shall order that the borrower recover the full payment to which the borrower is entitled under this Act, unless in the circumstances it would be inequitable to do so; and

- (b) may order exemplary or punitive damages or other relief that the court considers proper.

PART V COMPLAINTS, INSPECTIONS AND ENFORCEMENT

COMPLAINTS

Complaints

46. (1) If the Registrar receives a complaint about a licensee, the Registrar may request information in relation to the complaint from any licensee.

Request for information

- (2) A request for information under subsection (1) shall indicate the nature of the complaint.

Duty to comply

(3) A licensee who receives a written request for information shall provide the information as soon as practicable.

Procedures

- (4) In handling complaints, the Registrar may do any of the following, as appropriate:

1. Attempt to mediate or resolve the complaint.
2. Give the licensee a written warning that, if the licensee continues with the activity that led to the complaint, the Registrar may take action against the licensee.
3. Take an action under section 12, subject to section 13.
4. Take further action as is appropriate in accordance with this Act.

INSPECTIONS AND INVESTIGATIONS

Inspection

47. (1) The Registrar or a person designated in writing by the Registrar may conduct an inspection and may, as part of the inspection, enter and inspect at any reasonable time the business premises of a licensee, other than any part of the premises used as a dwelling, for the purpose of,

- (a) ensuring compliance with this Act and the regulations;
- (b) dealing with a complaint under section 46; or
- (c) ensuring the licensee remains entitled to a licence.

Powers on inspection

- (2) While carrying out an inspection, an inspector,
- (a) is entitled to free access to all money, valuables, pre-authorized debits and authorizations for future payments, documents and records of the licensee that are relevant to the inspection;
 - (b) may use any data storage, processing or retrieval device or system used in carrying on business in order to produce information that is relevant to the inspection and that is in any form; and
 - (c) may, upon giving a receipt for them, remove for examination and may copy anything relevant to the inspection, including any data storage disk or other retrieval device in order to produce information, but shall promptly return the thing to the licensee.

Identification

(3) An inspector shall produce, on request, evidence of the authority to carry out an inspection.

No obstruction

(4) No person shall obstruct an inspector conducting an inspection or withhold from the inspector or conceal, alter or destroy any money, valuables, pre-authorized debits or authorizations for future payments, documents or records that are relevant to the inspection.

No use of force

(5) An inspector shall not use force to enter and inspect premises under this section.

Assistance

(6) An inspector may, in the course of an inspection, require a person to produce a pre-authorized debit or authorization for future payments, document or record and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce information that is relevant to the inspection and that is in any form, and the person shall produce the pre-authorized debit or authorization for future payments, document or record or provide the assistance.

Admissibility of copies

(7) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Appointment of investigators

48. (1) The Director may appoint persons to be investigators for the purposes of conducting investigations.

Certificate of appointment

(2) The Director shall issue to every investigator a certificate of appointment bearing the Director's signature or a facsimile of the signature.

Production of certificate of appointment

(3) Every investigator who is conducting an investigation, including under section 49, shall, upon request, produce the certificate of appointment as an investigator.

Search warrant

49. (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person or entity has contravened or is contravening this Act or the regulations or has committed an offence under the law of any jurisdiction that is relevant to the fitness, under this Act, of the person or entity for a licence; and
- (b) there is,
 - (i) in any building, dwelling, receptacle or place anything relating to the contravention of this Act or the regulations or to the fitness, under this Act, of the person or entity for a licence, or
 - (ii) information or evidence that relates to the contravention of this Act or the regulations or the fitness, under this Act, of the person or entity for a licence and that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant.

Powers under warrant

(2) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an investigator,

- (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and examine and seize anything described in the warrant;
- (b) to use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form;
- (c) to exercise any of the powers specified in subsection (10); and
- (d) to use any investigative technique or procedure or do anything described in the warrant.

Entry of dwelling

(3) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,

- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice of the peace authorizes the entry into the dwelling.

Conditions on warrant

(4) A warrant obtained under subsection (1) shall contain the conditions that the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

Expert help

(5) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the investigator in respect of the execution of the warrant.

Time of execution

(6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise.

Expiry of warrant

(7) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator.

Use of force

(8) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant.

No obstruction

(9) No person shall obstruct an investigator executing a warrant under this section or withhold from the investigator or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant.

Assistance

(10) An investigator may, in the course of executing a warrant, require a person to produce the evidence or information described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the evidence or information described in the warrant and the person shall produce the evidence or information or provide the assistance.

Return of seized items

(11) An investigator who seizes any thing under this section or section 50 may make a copy of it and shall return it within a reasonable time.

Admissibility

(12) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Seizure of things not specified

50. An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of the investigator's duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations.

Searches in exigent circumstances

51. (1) An investigator may exercise any of the powers described in subsection 49 (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant.

Dwellings

(2) Subsection (1) does not apply to a building or part of a building that is being used as a dwelling.

Use of force

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary.

Applicability of s. 49

(4) Subsections 49 (5), (9), (10), (11) and (12) apply with necessary modifications to a search under this section.

ORDERS AND OFFENCES

Freeze orders

52. (1) The Director may make an order described in subsection (2) in respect of the money or assets of a person or entity that is not licensed and that is alleged to have conducted business for which a licence is required at a time when the person or entity was not licensed if,

- (a) the Director receives an affidavit in which it is alleged, and in which facts are set out supporting the allegation, that the person or entity that is not licensed,

- (i) is subject to criminal proceedings or proceedings in relation to a contravention under this Act or any other Act that are about to be or have been instituted against the person or entity in connection with or arising out of conducting business for which a licence is required, or
 - (ii) owns a building, dwelling, receptacle or place, or carries on activities in a building, dwelling, receptacle or place, in respect of which a search warrant has been issued under section 49; and
- (b) the Director, based on the affidavit mentioned in clause (a), finds reasonable grounds to believe that,
- (i) in the course of conducting business for which a licence is required, the person or entity that is the subject of the allegation mentioned in that clause has received money or assets from borrowers or customers, and
 - (ii) the interests of those borrowers or customers require protection.

Order respecting non-licensee

- (2) In the circumstances described in subsection (1), the Director may, in writing,
- (a) order any person having on deposit or controlling any money or asset of the person or entity that is the subject of the allegation mentioned in clause (1) (a) to hold the money or asset; or
 - (b) order the person or entity that is the subject of the allegation mentioned in clause (1) (a),
 - (i) to refrain from withdrawing any money or asset from a person having it on deposit or controlling it, or
 - (ii) to hold any money or asset of a borrower, customer or other person in trust for the person who is entitled to it.

Order respecting licensee

- (3) If the conditions in subsection (4) are met, the Director may in writing,
- (a) order any person having on deposit or controlling any money or asset of a licensee or former licensee to hold that money or asset;
 - (b) order a licensee or former licensee to refrain from withdrawing any money or asset from a person having it on deposit or controlling it; or

- (c) order a licensee or former licensee to hold any money or asset of a borrower, customer or other person in trust for the person entitled to it.

Conditions

(4) The Director may make an order under subsection (3) if, in the opinion of the Director, it is advisable for the protection of the borrowers or customers of a licensee or former licensee and,

- (a) a search warrant has been issued under this Act; or
- (b) criminal proceedings or proceedings in relation to a contravention under this Act or under any other Act are about to be or have been instituted against the licensee or former licensee in connection with or arising out of the business in respect of which the licensee or former licensee is or was licensed.

Limitation

(5) In the case of a financial institution described in subsection (6), an order made under subsection (2) or (3) applies only to the offices and branches named in the order.

Financial institutions

(6) A financial institution mentioned in subsection (5) is,

- (a) a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada);
- (b) a corporation registered under the *Loan and Trust Corporations Act*; or
- (c) a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*.

Release of assets

(7) The Director may consent to the release of any particular money or asset from the order or may wholly revoke the order.

Exception

(8) The Director shall not make an order under subsection (2) or (3) if the person or entity that is the subject of the allegation mentioned in clause (1) (a), the licensee or former licensee, as the case may be, files with the Director, in the manner and amount that the Director determines,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;

- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another prescribed form of security.

Application to court

(9) An application may be made to the Superior Court of Justice for a determination in respect of the disposition of money or an asset,

- (a) by a person in receipt of an order made under subsection (2) or (3), if the person is in doubt as to whether the order applies to the money or asset; or
- (b) by a person who claims an interest in the money or asset that is subject to the order.

Notice

(10) If an order is made under this section, the Director may register in the appropriate land registry office a notice that the Director has made the order and that the order may affect land belonging to the person mentioned in the notice, and the notice has the same effect as the registration of a certificate of pending litigation, except that the Director may in writing revoke or modify the notice.

Cancellation or discharge application

(11) The person or entity that is the subject of the allegation mentioned in clause (1) (a) and in respect of which an order is made under subsection (2) or the licensee or former licensee in respect of which an order is made under subsection (3) or any person having an interest in land in respect of which a notice is registered under subsection (10) may apply to the Tribunal for cancellation in whole or in part of the order or for discharge in whole or in part of the registration.

Disposition by Tribunal

(12) The Tribunal shall dispose of the application after a hearing and may cancel the order or discharge the registration in whole or in part if the Tribunal finds,

- (a) that the order or registration is not required in whole or in part for the protection of borrowers or customers of the applicant or of other persons having an interest in the land; or
- (b) that the interests of other persons are unduly prejudiced by the order or registration.

Parties

(13) The applicant, the Director and the other persons that the Tribunal specifies are parties to the proceedings before the Tribunal.

Court application

(14) If the Director has made an order under subsection (2) or (3) or registered a notice under subsection (10), the Director may apply to the Superior Court of Justice for directions or an order relating to the disposition of money, assets or land affected by the order or notice.

Notice not required

(15) The Director may make an application under subsection (14) without notice to any person or entity.

Order of Registrar re: false advertising

53. (1) If the Registrar believes on reasonable grounds that a licensee is making a false, misleading or deceptive statement relating to a payday loan or a payday loan agreement in any material published by any means, including an advertisement, circular or pamphlet, the Registrar may,

- (a) order the cessation of the use of the material;
- (b) order the licensee to retract the statement or publish a correction of equal prominence to the original publication; or
- (c) order both a cessation described in clause (a) and a retraction or correction described in clause (b).

Procedures

(2) Section 13 applies with necessary modifications to an order under this section in the same manner as to a proposal by the Registrar to refuse to issue a licence.

Effect

(3) The order of the Registrar shall take effect immediately, but the Tribunal may grant a stay until the Registrar's order becomes final.

Pre-approval

(4) If the licensee does not appeal an order under this section or if the Tribunal upholds the order or a variation of it, the licensee shall, upon the request of the Registrar, submit all statements in any advertisement, circular, pamphlet or material to be published by any means to the Registrar for approval before publication for the time period that the Registrar specifies.

Specified period

(5) The Registrar shall not specify under subsection (4) a period,

- (a) that exceeds a period that is prescribed; or
- (b) any part of which falls outside the period that is prescribed.

Restraining orders

54. (1) If it appears to the Director that a person or entity is not complying with this Act or the regulations or an order made under this Act, the Director may apply to the Superior Court of Justice for an order directing the person or entity to comply, and, upon the application, the court may make the order that the court thinks fit.

Same

(2) Subsection (1) applies in addition to any other procedures that may be available to the Director, whether or not the Director has exercised his or her rights under such procedures.

Appeal

(3) An appeal lies to the Divisional Court from an order made under subsection (1).

Offence

55. (1) A person or entity is guilty of an offence who,

- (a) furnishes false information in any application under this Act or in any statement or return required under this Act;
- (b) fails to comply with any order under this Act;
- (c) contravenes or fails to comply with any section of this Act or the regulations; or
- (d) attempts to commit any offence mentioned in clause (a), (b) or (c).

Corporations

(2) An officer or director of a corporation who fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1) is guilty of the offence.

Penalties

(3) A person or entity that is convicted of an offence under this Act is liable to,

- (a) a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both, if the person or entity is an individual; or
- (b) a fine of not more than \$250,000, if the person or entity is not an individual.

Limitation

(4) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the Director.

Orders for compensation, restitution

56. If a person or entity is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person or entity convicted to pay compensation or make restitution.

Default in payment of fines or penalties

57. (1) If a charge mentioned in subsection (2) is in default for at least 60 days, the Director may disclose to a consumer reporting agency the name of the defaulter, the amount of the charge and the date the charge went into default.

Same

(2) Subsection (1) applies to the following charges:

1. A fine payable as a result of a conviction for an offence under this Act.
2. An administrative penalty payable as a result of an order under section 59 or, if the order is varied on appeal, the varied order.

If payment made

(3) Within 10 days after the Director has notice that the charge has been paid in full, the Director shall inform the consumer reporting agency of the payment.

Liens and charges

58. (1) If a charge mentioned in subsection 57 (2) is in default for at least 60 days, the Director may by order create a lien against the property of the person who is liable to pay the charge.

Liens on personal property

(2) If the lien created by the Director under subsection (1) relates to personal property,

- (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act;
- (b) the lien is deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
- (c) the Director may perfect the security interest mentioned in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act.

Charges on real property

(3) If the lien created by the Director under subsection (1) relates to real property, the Director may register the lien in the proper land registry office against the property of the person liable to pay the charge covered by the lien and, on registration, the obligation under the lien becomes a charge on the property.

Initiation of sale proceedings prohibited

(4) The Director shall not initiate sale proceedings in respect of any real property against which the Director has registered a lien under subsection (3).

Proceeds of sale

(5) If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the Director shall ensure that the funds that the Director receives as a result of the sale are used to pay the charge covered by the lien.

Discharge of lien

(6) Within 10 days after the Director has knowledge of the payment in full of the charge covered by the lien, the Director shall,

- (a) discharge the registration of any financing statement registered under clause (2) (c); and
- (b) register a discharge of a charge created on registration of a lien under subsection (3).

ADMINISTRATIVE PENALTIES**Order**

59. (1) An assessor who is satisfied that a licensee has contravened or is contravening a prescribed provision of this Act or the regulations may, by order, impose an administrative penalty against the licensee in accordance with this section and the regulations made by the Minister.

Purpose

(2) The purpose of an administrative penalty is to promote compliance with the requirements established by this Act and the regulations.

Amount

(3) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be the amount prescribed by the Minister, which prescribed amount shall not exceed \$10,000.

Form of order

(4) An order made under subsection (1) imposing an administrative penalty against a licensee shall be in the form that the prescribed person who is authorized to designate assessors determines.

Service of order

(5) The order shall be served on the licensee in the manner that the prescribed person mentioned in subsection (4) determines.

Absolute liability

(6) An order made under subsection (1) imposing an administrative penalty against a licensee applies even if,

- (a) the licensee took all reasonable steps to prevent the contravention on which the order is based; or
- (b) at the time of the contravention, the licensee had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

No effect on offences

(7) For greater certainty, nothing in subsection (6) affects the prosecution of an offence.

Other measures

(8) Subject to section 61, an administrative penalty may be imposed alone or in conjunction with the exercise of any measure against a licensee provided by this Act or the regulations, including the application of conditions to a licence by the Registrar, the suspension or revocation of a licence or the refusal to renew a licence.

Limitation

(9) An assessor shall not make an order under subsection (1) more than two years after the day the assessor became aware of the licensee's contravention on which the order is based.

No hearing required

(10) Subject to the regulations made by the Minister, an assessor is not required to hold a hearing or to afford a licensee an opportunity for a hearing before making an order under subsection (1).

Non-application of other Act

(11) The *Statutory Powers Procedure Act* does not apply to an order of an assessor made under subsection (1).

Appeal

60. (1) The licensee against whom an order made under subsection 59 (1) imposes an administrative penalty may appeal the order to the person prescribed by the Minister by delivering a written notice of appeal to the person within 15 days after receiving the order.

Extension of time for appeal

(2) The prescribed person mentioned in subsection (1) may extend the time period for appealing and may determine the circumstances in which extensions are given.

Form of notice

(3) The notice of appeal shall be in the form that the prescribed person mentioned in subsection (1) determines.

Filing of notice

(4) The licensee shall file the notice of appeal in the manner that the prescribed person mentioned in subsection (1) determines.

Stay

(5) An appeal commenced in accordance with subsection (1) operates as a stay of the order until disposition of the appeal.

Opportunity for submissions

(6) Before disposing of an appeal, the prescribed person mentioned in subsection (1) shall give the licensee a reasonable opportunity to make written submissions.

Powers on appeal

(7) On an appeal, the prescribed person mentioned in subsection (1) may confirm, revoke or vary the order within the limits, if any, established by the regulations made by the Minister.

Non-application of other Act

(8) The *Statutory Powers Procedure Act* does not apply to an appeal made under this section.

Effect of paying penalty

61. If a licensee pays an administrative penalty in accordance with the terms of the order imposing it against the licensee or, if the order is varied on appeal, in accordance with the terms of the varied order, the licensee cannot be charged with an offence under this Act in respect of the same contravention on which the order is based and no other prescribed measure shall be taken against the licensee in respect of the same contravention on which the order is based.

Enforcement

62. (1) If a licensee fails to pay an administrative penalty in accordance with the terms of the order imposing it against the licensee or, if the order is varied on appeal, in accordance with the terms of the varied order, the order may be filed with the Superior Court of Justice and enforced as if it were an order of the court.

Date of order

(2) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court shall be deemed to be the date of the order.

Debt due to Crown

(3) An administrative penalty that is not paid in accordance with the terms of the order imposing it or, if the order is varied on appeal, in accordance with the terms of the varied order is a debt due to the Crown and is enforceable as such.

PART VI GENERAL

Confidentiality

63. (1) A person who obtains information in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations shall preserve secrecy with respect to the information and shall not communicate the information to any person except,

- (a) as may be required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;
- (b) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act or legislation that protects consumers or to any other entity to which the administration of legislation similar to this Act or legislation that protects consumers has been assigned;
- (c) as authorized under the *Regulatory Modernization Act, 2007*;
- (d) to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- (e) to a law enforcement agency;
- (f) to the person's counsel; or
- (g) with the consent of the person to whom the information relates.

Testimony

(2) Except in a proceeding under this Act, no person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations.

Information about licensees

(3) As required by regulation, the Registrar shall make available to the public, in the prescribed form and manner, the names of licensees and other information about licensees that is prescribed.

Service

64. (1) Any notice, order or request of the Director or the Registrar is sufficiently given or served if it is delivered personally or sent by registered mail or by another manner if the sender can prove receipt of the notice, order or request.

Deemed service

(2) If service is made by registered mail, the service is deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice, order or request until a later date.

Exception

(3) Despite subsections (1) and (2), the Tribunal may order any other method of service it considers appropriate in the circumstances.

Certificate as evidence

65. (1) For all purposes in any proceeding, a statement purporting to be certified by the Director is, without proof of the office or signature of the Director, admissible in evidence as proof in the absence of evidence to the contrary, of the facts stated in it in relation to,

- (a) the licence or non-licensing of any person or entity;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (c) the time when the facts upon which the proceedings are based first came to the knowledge of the Director; or
- (d) any other matter pertaining to the licensing or non-licensing of persons or entities or to the filing or non-filing of information.

Proof of document

(2) Any document made under this Act that purports to be signed by the Director or a certified copy of the document is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, that the document is signed by the Director without proof of the office or signature of the Director.

**PART VII
ONTARIO PAYDAY LENDING EDUCATION FUND**

FUND ESTABLISHED

Fund

66. (1) A fund is established to be known as the Ontario Payday Lending Education Fund in English and Fonds ontarien de sensibilisation au crédit sur salaire in French.

Composition

(2) The Fund is composed of,

- (a) the payments that licensees are required to make to the Fund;
- (b) all money received from any other source; and
- (c) all income on the payments and money mentioned in clauses (a) and (b), including any rights or benefits occurring from the investment of the payments and money or any property obtained from the investment of the payments and money.

Minister's orders

(3) The Minister may, by order,

- (a) establish the amount of payments that licensees are required to make to the Fund or the method for determining the amount of those payments;
- (b) require the making of the payments described in clause (a); and
- (c) make rules governing the making of the payments described in clause (a).

Non-application of other Act

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under subsection (3).

Purposes of Fund

67. The purposes of the Fund are,

- (a) to promote the education of persons respecting the rights and obligations of persons and entities under this Act and respecting financial planning, where the education is done through the use of publications, training, advertising, and similar initiatives, including by making grants and transfer payments; and
- (b) to achieve other objectives that are consistent with the purposes of this Act and that are prescribed by the Minister.

DESIGNATION OF CORPORATION

Designation of Corporation

68. (1) The Minister may, by regulation, designate a not-for-profit corporation incorporated without share capital under the *Corporations Act* to administer the Fund if,

- (a) the corporation meets the requirements prescribed by the Minister; and
- (b) the Minister and the corporation have entered into an agreement with respect to the administration of the Fund.

Name

(2) The name of the corporation designated under subsection (1) shall be the Ontario Payday Lending Education Fund Corporation in English and Société de gestion du Fonds ontarien de sensibilisation au crédit sur salaire in French.

Objects and powers

(3) The corporation designated under subsection (1) shall have the purposes set out in section 67 as its objects and shall have the capacity, rights and powers of a natural person, except as prescribed.

Revocation of designation

69. (1) The Minister may, by regulation, revoke the designation of a corporation as the Corporation.

No hearing required

(2) The Minister is not required to hold a hearing or to afford the corporation an opportunity for a hearing before making a regulation under subsection (1).

Dissolution

(3) If the Minister makes a regulation under subsection (1) revoking the designation of a corporation, the corporation is dissolved.

Dissolution of Corporation

70. (1) If the corporation designated as the Corporation is voluntarily dissolved before its designation as the Corporation has been revoked under section 69, the designation of the corporation is deemed to be revoked as of the date on which the dissolution takes effect.

Results

(2) If the corporation designated as the Corporation is dissolved, whether voluntarily or not, then, subject to any order of a court of competent jurisdiction, after payment of all debts and liabilities, the remaining property of the corporation shall be distributed to,

- (a) whatever other corporation is designated as the Corporation, if any; or
- (b) the Crown, otherwise.

CORPORATION

Administration of Fund

71. (1) The Corporation shall administer the Fund in accordance with this Act and the regulations.

Minister's direction

(2) The Minister may direct the Corporation to take any action or to refrain from taking any action if the Minister considers it appropriate in the public interest to so direct.

Not Crown agents

72. (1) The Corporation and its members, officers, directors, employees and agents, together with the persons whose services the Corporation retains, are not agents of the Crown and shall not hold themselves out as agents of the Crown.

No Crown liability

(2) No action or other proceeding for damages shall be instituted against the Crown for damages that a person suffers as a result of any act or omission of a person who is not an employee or agent of the Crown.

Application of corporate Acts

73. (1) The *Corporations Act* and the *Corporations Information Act* apply to the Corporation unless the regulations made by the Minister specify otherwise.

Directors and officers

(2) Subject to this Act and the regulations made by the Minister, section 132, subsection 134 (1) and section 136 of the *Business Corporations Act* apply to the directors and officers of the Corporation with necessary modifications.

Reports

74. (1) The Corporation shall make a report annually to the Minister, within the time prescribed by the Minister.

Contents

(2) The report shall deal with the administration of the Fund by the Corporation and shall contain the other information that the Minister prescribes.

Tabling

(3) The Minister shall,

- (a) submit the report to the Lieutenant Governor in Council;
- (b) lay the report before the Assembly, if it is in session; and
- (c) deposit the report with the Clerk of the Assembly, if the Assembly is not in session.

Disclosure by Corporation

(4) The Corporation may give a copy of its report under subsection (1) to other persons before the Minister complies with subsection (3).

Other reports

(5) The Corporation shall give the Minister whatever other information and reports on its administration of the Fund that the Minister requires.

PART VIII REGULATIONS AND FEE ORDERS

Minister's fee orders

75. (1) The Minister may, by order, establish and require the payment of fees that an applicant for a licence or the renewal of a licence or a licensee is required to pay in respect of the licence or other administrative matters.

Same, branch offices

(2) In establishing fees under subsection (1), the Minister may require that an applicant for a licence or a licensee pay a separate fee for the main office and for each branch office that the licence authorizes the applicant or the licensee to operate.

Non-application of other Act

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under subsection (1).

Minister's regulations

76. The Minister may make regulations,

- (a) governing any matter that this Act describes as being prescribed by the Minister or provided for in regulations made by the Minister;
- (b) specifying a different administrative penalty for a contravention of different prescribed provisions of this Act or the regulations, different portions of those prescribed provisions or different prescribed requirements in those prescribed provisions;
- (c) providing that the prescribed amount of an administrative penalty mentioned in subsection 59 (3) shall be calculated on the basis specified in the regulation, including an amount reflecting the number of transactions involved in the contravention on which an order for the administrative penalty is based;
- (d) governing the procedure for making an order under section 59 for an administrative penalty and the rights of the parties affected by the procedure, including the time at which the order is deemed to be served on the licensee against whom the order is made;
- (e) governing the procedure for appealing an order made by an assessor under section 59 and the rights of the parties affected by the appeal, including the time at which the notice of appeal is deemed to be received.

Lieutenant Governor in Council regulations

77. The Lieutenant Governor in Council may make regulations,

1. governing any matter or thing that this Act describes as being prescribed, done in accordance with the regulations or provided for in the regulations, other than a matter or thing that this Act describes as being prescribed by the Minister;
2. specifying payday loan agreements and classes of payday loan agreements to which this Act applies or does not apply;
3. exempting any person, entity or payday loan or class of persons, entities or payday loans from any provision of this Act or the regulations and attaching conditions to an exemption;
4. governing the form and content of any notice or document required under this Act;
5. specifying rules relating to addresses for service under this Act;
6. authorizing the Director to conduct quality assurance programs in relation to the administration of this Act or the regulations and to use information collected under this Act for the purposes of those programs;

7. providing for any transitional matter necessary for the effective implementation of this Act or the regulations;
8. defining, for the purposes of this Act and the regulations, any word or expression that is used in this Act but not defined in this Act;
9. governing applications for a licence or renewal of a licence;
10. requiring licensees to provide information to the Registrar concerning persons or entities, other than the licensees, in order to assist in determining whether the persons or entities are or may be interested persons or entities for the purposes of section 10;
11. requiring that any information that licensees are required to provide under this Act be in a form approved by the Director, the Registrar or the Minister, as specified in the regulation;
12. requiring licensees to provide, on request and in the prescribed circumstances, proof of their licence and prescribing the nature of the proof and the manner in which it is to be provided;
13. requiring licensees to notify the Registrar in writing of any change in the information that they were required to include in the application for their licence or the renewal of their licence, as applicable, and specifying the time and other conditions for providing the notice;
14. requiring licensees to provide information to the Registrar that is relevant to the administration of this Act and requiring that the information be verified by affidavit;
15. authorizing the Registrar to require licensees to provide information to the Registrar about their business, including financial information, within the time and in the manner that the Registrar specifies;
16. specifying the responsibilities of licensees and governing their activities;
17. governing the requirements that parties are required to satisfy in order to make a payday loan agreement;
18. specifying what constitutes and what does not constitute delivery of the advance to the borrower at the time that the parties enter into a payday loan agreement;
19. prohibiting lenders from making a payday loan agreement with a borrower if the amount of the payday loan exceeds the prescribed amounts or the amounts calculated according to the prescribed manner;

20. governing the rights and obligations of parties to a payday loan agreement described in paragraph 19, including remedies available to them and procedures for exercising those remedies;
21. governing information, text or terms that a lender is required to include in a payday loan agreement, including requiring that a payday loan agreement contain a form that constitutes the notice of cancellation required by subsection 30 (2) when the borrower fills it out;
22. governing the form that a lender is required to use for the information, text or terms mentioned in paragraph 21;
23. specifying limits for the purposes of section 32 or specifying a method of setting limits for the purposes of that section;
24. defining what constitutes an extension of a payday loan agreement for the purposes of section 36;
25. governing the rights and obligations of parties to a payday loan agreement that is extended in contravention of subsection 36 (1), including remedies available to them and procedures for exercising those remedies;
26. governing information and statements that a licensee is required to provide to a borrower with respect to a payday loan or a payday loan agreement and governing the form that the licensee is required to use for the information and statements;
27. requiring that a prescribed person or entity who receives a notice from a borrower under this Act forward the notice to another prescribed person or entity within the prescribed time period and in the prescribed manner;
28. requiring that licensees maintain business premises that comply with the prescribed requirements;
29. governing the offices, including the main office and branch offices, that a licence authorizes a licensee to operate;
30. governing names under which a licensee is authorized to carry on business;
31. requiring that a licensee display prescribed things at its place of business and governing those things, including specifying the content and manner for displaying the things;

32. prohibiting licensees from engaging in practices specified in the regulation, in addition to practices in which this Act prohibits them from engaging, and specifying the consequences from engaging in those additional practices;
33. respecting financial security requirements for licensees, including requiring them to be insured or to have collateral security;
34. governing the documents, records and bank accounts that licensees are required to keep, including the manner and location in which they are to be kept and the time periods for retaining them and authorizing the Registrar to specify the location at which they are to be kept;
35. governing procedures and other matters related to complaints under section 46;
36. governing inspections and investigations under this Act;
37. varying the manner in which a notice under subsection 52 (10) or a lien under subsection 58 (3) is registered as a result of technological or electronic changes in the filing of documents in the land registry office.

General or specific application of regulations

78. (1) A regulation made under this Act may be of general application or specific to any person, entity, place or thing or any class of persons, entities, places or things in its application.

Classes

(2) A class described in the regulations made under this Act may be described according to any characteristic or combination of characteristics and may be described to include or exclude any specified member, whether or not with the same characteristics.

PART IX CONSEQUENTIAL AMENDMENTS

Consumer Protection Act, 2002

79. (1) The definition of “year” in section 1 of the *Consumer Protection Act, 2002* is repealed.

(2) The French version of section 3 of the Act is amended by adding “judiciaire ou autre” after “tribunal”.

(3) The French version of subsection 8 (3) of the Act is amended by striking out “que s’il résultait d’un différend” and substituting “que s’il avait été atteint à la suite d’un différend”.

(4) The French version of subsection 8 (4) of the Act is amended by adding “,après la naissance du différend,” after “sauf si”.

(5) The French version of subsection 18 (15) of the Act is amended by striking out “un recours” and substituting “réparation”.

(6) The definition of “borrower” in section 66 of the Act is repealed and the following substituted:

“borrower” means a consumer who, as a party to a credit agreement, receives or may receive credit or a loan of money from the other party or who indicates an interest in becoming such a party, but does not include a guarantor; (“emprunteur”)

(7) The definition of “cost of borrowing” in section 66 of the Act is amended by striking out the portion before clause (a) and substituting the following:

“cost of borrowing” means all amounts that a borrower is required to pay under or as a condition of entering into a credit agreement and all prescribed amounts other than,

.

(8) Subsection 67 (1) of the Act is amended by striking out the portion before clause (a) and substituting the following:

Non-application of Part

(1) This Part and the regulations made under it do not apply to a payday loan agreement as defined in subsection 1 (1) of the *Payday Loans Act, 2008* and do not apply to a supplier credit agreement that,

.

(9) The French version of subsections 76 (1) and (2) of the Act is amended by striking out “le solde impayé intégral relatif à une convention” wherever that expression appears and substituting in each case “l’intégralité des sommes impayées dans le cadre d’une convention”.

(10) The French version of subsection 76 (4) of the Act is amended by striking out “une partie du solde impayé relatif à une convention” and substituting “une partie des sommes impayées dans le cadre d’une convention”.

(11) The French version of section 101 of the Act is amended by striking out “un recours” and substituting “réparation”.

Licence Appeal Tribunal Act, 1999

80. Section 11 of the *Licence Appeal Tribunal Act, 1999* is amended by adding “*Payday Loans Act, 2008*”.

**PART X
COMMENCEMENT AND SHORT TITLE**

Commencement

81. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

82. The short title of this Act is the *Payday Loans Act, 2008*.