

2007

CHAPTER P-4.3

An Act respecting Payday Loan Agreements, Payday Lenders and Borrowers

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(Assented to May 17, 2007)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Payday Loans Act*.

Interpretation

2(1) In this Act:

- (a) “**borrower**” means a person that enters into a payday loan;
- (b) “**business day**” means a day on which the payday lender is open for business;
- (c) “**court**” means, except in sections 48, 56, 58 and 61, the Court of Queen’s Bench;
- (d) “**director**” means the director appointed pursuant to section 4 and includes any deputy director;
- (e) “**licence**” means a valid licence issued pursuant to this Act;
- (f) “**licensee**” means a person that holds one or more licences issued pursuant to this Act;
- (g) “**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (h) “**payday lender**” means a person that offers or provides a payday loan, and includes any person that arranges a payday loan or that facilitates, enables or acts as a conduit for another person that offers or provides a payday loan;
- (i) “**payday loan**” means any advancement of money that is:
 - (i) in an amount of \$1,500 or less;
 - (ii) for a term of 62 days or less; and
 - (iii) 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;
- (j) “**person**” includes a partnership;
- (k) “**prescribed**” means prescribed in the regulations.

(2) In Parts IV and VII of this Act, any reference to this Act includes the regulations and any orders or directions of the director issued pursuant to this Act.

(3) Notwithstanding any other provision of this Act or the regulations or of any other Act or law, if, pursuant to *The Saskatchewan Financial Services Commission Act*, the Saskatchewan Financial Services Commission is assigned the performance of all or any of the responsibilities imposed on the director and the exercise of all or any of the powers given to the director by this Act or the regulations:

(a) any reference with respect to those responsibilities or powers in this Act or the regulations to the director is to be interpreted as a reference to the Saskatchewan Financial Services Commission; and

(b) this Act and the regulations are to be interpreted subject to the provisions of *The Saskatchewan Financial Services Commission Act*.

(4) For the purposes of this Act, a person is considered as carrying on business in Saskatchewan if:

(a) the person solicits, provides, promotes, advertises, markets, sells or distributes any products or services by any means that cause communication from the person or the person's agents or representatives to reach a person in Saskatchewan;

(b) the person has a resident agent or representative or maintains an office or place of business in Saskatchewan;

(c) the person holds himself or herself out as carrying on business in Saskatchewan; or

(d) the person otherwise carries on business in Saskatchewan.

Non-application of Act

3 All or any prescribed portion of any prescribed provision of this Act does not apply:

(a) to any prescribed person or any prescribed class of persons; or

(b) in any prescribed circumstance.

Director appointed

4(1) The minister may appoint a person as director and may appoint one or more other persons as deputy directors.

(2) The director is responsible to the minister for the administration of this Act and the regulations.

(3) The director may appoint any person to carry out any responsibility imposed on the director pursuant to this Act or to exercise any of the powers conferred on the director pursuant to this Act that the director believes may be more conveniently carried out or exercised by that person.

(4) The director may impose any limitations or terms and conditions that the director considers appropriate on an appointment pursuant to subsection (3).

(5) The exercise of any of the director's powers or the carrying out of any of the director's responsibilities by a person who is appointed pursuant to subsection (3) is deemed to be the exercise or the carrying out by the director.

PART II
Licensing

Licence required

5(1) No person shall carry on business as a payday lender unless that person has a licence authorizing the person to carry on business as a payday lender.

(2) A separate licence is required for each location from which a person carries on business as a payday lender.

Application for licence or renewal of licence

6(1) Every applicant for a licence or a renewal of a licence shall:

- (a) apply to the director in the form provided by the director;
- (b) provide the director with:
 - (i) an address for service in Saskatchewan; and
 - (ii) any other information or material that the director may reasonably require;
- (c) if financial security is required pursuant to section 7, file financial security with the director in accordance with that section;
- (d) comply with any prescribed capital or net worth requirements;
- (e) submit to the director any prescribed fees; and
- (f) comply with any other prescribed requirements and satisfy any other prescribed criteria.

(2) A person who intends to carry on business as a payday lender from more than one location shall submit a separate application for each location.

(3) The director may require an applicant to verify, by affidavit or otherwise, any information or material submitted to the director pursuant to this section.

Financial security may be required

7(1) The director may require:

- (a) an applicant to file financial security with the director as part of the applicant's application;
- (b) a licensee whose licence has been suspended to file financial security with the director before the licence is reinstated; or
- (c) a licensee to file financial security with the director at any time during the term of a licence.

(2) A person required to file financial security with the director pursuant to this section must, at all times, maintain that financial security.

(3) Financial security filed pursuant to this section:

- (a) must be in the amount and in the form that the director considers appropriate; and
- (b) may be forfeited in the manner set out in the regulations.

Issuance or renewal of licence

8(1) The director may:

- (a) issue a licence to an applicant, or renew the licence of an applicant, if the director:
 - (i) receives an application pursuant to section 6;
 - (ii) is satisfied that the applicant meets the requirements and satisfies the criteria for the licence set out in this Act and the regulations and has otherwise complied with this Act and the regulations; and
 - (iii) is satisfied that the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable; or
 - (b) refuse to issue or renew a licence.
- (2) Not more than one location shall be maintained under the same licence, but the director may issue more than one licence to the same applicant or licensee who applies in accordance with this Act.

Effect of licence

9 A licence authorizes the licensee to carry on business as a payday lender at a location specified in the licence.

Terms and conditions

- 10(1)** Subject to section 17, at the time a licence is issued or renewed, the director may impose any terms and conditions that the director considers necessary.
- (2) Subject to section 17, at any time after a licence is issued, the director may do all or any of the following:
- (a) amend, modify or vary terms and conditions imposed on a licence;
 - (b) impose new terms and conditions on a licence;
 - (c) repeal terms and conditions imposed on a licence and substitute new terms and conditions in their place.
- (3) No payday lender that holds a licence shall fail to comply with the terms and conditions imposed on the payday lender's licence.

Suspension or cancellation of licence

11(1) Subject to section 17, the director may suspend or cancel a licence:

- (a) on any ground on which the director might have refused to issue or renew the licence pursuant to section 8;
 - (b) if a licensee has failed to comply with this Act or the regulations; or
 - (c) in accordance with section 12.
- (2) If the director considers it appropriate to do so, and on receipt of any prescribed reinstatement fee, the director may reinstate a licence that has been suspended.

Automatic cancellation of licence

12(1) A licence issued to a payday lender is automatically cancelled if there is a change in ownership of the payday lender.

(2) In the event of a change in ownership of a payday lender, the person acquiring ownership of the payday lender must apply for a new licence for each location from which the person intends to carry on business as a payday lender.

Licence not transferable

13 A licence issued, renewed or reinstated pursuant to this Act is not transferable or assignable.

Expiry of licence

14 Every licence expires one year from the date that it was issued, unless the licence has been renewed.

Further information or material

15(1) At any time, the director may:

- (a) require an applicant or a licensee to submit to the director any further information or material that the director may reasonably require; and
- (b) require verification, by affidavit or otherwise, of any information or material submitted to the director pursuant to clause (a).

(2) No applicant or licensee who receives a request from the director pursuant to subsection (1) shall fail to comply with that request within the period specified by the director.

Licensee to notify director if circumstances change

16 Within seven days after a prescribed change in circumstances, an applicant or licensee shall notify the director in writing.

Opportunity to be heard

17(1) In this section, “**action**” means:

- (a) an action that the director may take pursuant to clause 8(1)(b), section 10 or clause 11(1)(a) or (b); or
- (b) an order that the director may make pursuant to subsection 51(1), 52(2) or 54(1), (2) or (3).

(2) Before taking an action, the director shall give the person that is the subject of the action a written notice:

- (a) setting out the action proposed to be taken by the director and the grounds that, in the director’s opinion, justify the proposed action; and
- (b) informing the person of the person’s right to make representations to the director on why the action should not be taken.

(3) A person to whom a notice is sent pursuant to subsection (2) may, within 15 days after receiving that notice, advise the director that:

- (a) the person requests an oral hearing; or
- (b) the person wishes to make written representations to the director respecting why the action should not be taken.

- (4) A person that requests an oral hearing pursuant to clause (3)(a) must, within seven days after requesting the hearing, contact the director and arrange a date, time and place for the hearing.
- (5) Written representations pursuant to clause (3)(b) must be received by the director within 30 days after the person receives the notice pursuant to subsection (2).
- (6) The director may take the actions stated in the notice without considering any representations of the person if the person fails to:
- (a) advise the director in accordance with subsection (3);
 - (b) meet the requirements of subsection (4) or (5) within the required time; or
 - (c) appear on the date and at the time and place arranged for the hearing without the prior approval of the director.
- (7) The director may extend the periods mentioned in subsection (3), (4) or (5) if, in the director's opinion, it is appropriate to do so.
- (8) Nothing in this section requires the director to give an oral hearing to any person who has made written representations in accordance with this section.
- (9) Notwithstanding subsection (2), if the director considers that it is necessary and in the public interest to take immediate action, the director may immediately do any of the things described in section 10, clause 11(1)(a) or (b) or subsection 52(2) without giving the person an opportunity to be heard, but the director shall give the person an opportunity to make written representations or attend a hearing before the director within 15 days after the date on which the director takes the action.
- (10) On holding a hearing or receiving a person's written representations pursuant to this section, the director shall, within a reasonable period:
- (a) consider the submissions and make a decision;
 - (b) notify the person, in writing, of the director's decision;
 - (c) provide written reasons for the director's decision; and
 - (d) provide the person with information respecting the right of appeal pursuant to section 42.
- (11) Subsection (12) applies if:
- (a) a licensee holds more than one licence; and
 - (b) the director is satisfied that the same grounds for taking action apply to more than one of the licensee's licences.

(12) In the circumstances mentioned in subsection (11), the director is not required to provide the licensee:

- (a) with more than one written notice pursuant to subsection (2) that references all of the licensee's licences that are to be the subject of the action; and
- (b) with more than one oral hearing pursuant to this section that deals with all of the licensee's licences that are to be the subject of the action.

PART III Regulation of Payday Lenders

Written agreement required

18(1) An agreement to enter into a payday loan must be in writing and signed by the borrower.

(2) The payday loan agreement required by subsection (1) must include the following information:

- (a) the name, address and telephone number of the payday lender;
- (b) the borrower's name and address;
- (c) the date of the advance;
- (d) the principal amount of the advance;
- (e) the repayment terms;
- (f) the date the payday loan comes due under the agreement;
- (g) an itemization of all amounts, fees, rates, penalties or other charges to be paid by the borrower;
- (h) any other prescribed information.

Copy of agreement

19 After a payday lender and a borrower enter into a payday loan agreement, the payday lender must provide a copy of the agreement to the borrower within the prescribed period and in the prescribed manner.

Required disclosure before entering into a payday loan agreement

20(1) Before entering into a payday loan agreement, a payday lender shall provide a written disclosure statement to the borrower or prospective borrower that is separate from the written payday loan agreement required pursuant to section 18.

(2) The disclosure statement mentioned in subsection (1) must:

- (a) indicate that the payday loan is a high-cost loan;
- (b) include an explanation of all amounts, fees, rates, penalties or other charges that may be payable by the borrower;
- (c) provide notice of the borrower's right to cancel the payday loan, without reason or cost, at any time before the end of the business day following the date that the payday loan agreement was entered into;

- (d) include a form of notice, satisfactory to the director, that the borrower may use to give written notice that he or she is cancelling the payday loan agreement;
 - (e) include a form of receipt, satisfactory to the director, that the payday lender must use to acknowledge receipt of what was paid or returned by the borrower on cancelling the payday loan agreement;
 - (f) include any other prescribed information; and
 - (g) be accompanied by any other prescribed documents.
- (3) Documents and information required to be provided to a borrower or prospective borrower pursuant to this section must:
- (a) be clear and understandable; and
 - (b) display the required information prominently in the document.

Information to be posted

- 21(1)** A payday lender must post signs in accordance with this section at each location at which the payday lender is licensed to carry on business as a payday lender.
- (2) The signs required pursuant to subsection (1) must:
- (a) be posted prominently and in accordance with the regulations;
 - (b) clearly and understandably set out all of the following information, in the prescribed manner:
 - (i) a schedule of all amounts, fees, rates, penalties or other charges payable in relation to a payday loan agreement;
 - (ii) any other prescribed information.

Cancellation of payday loan agreement

- 22(1)** A borrower may cancel a payday loan agreement:
- (a) at any time before the end of the business day following the date that the payday loan agreement was entered into;
 - (b) at any time, if:
 - (i) the payday lender did not notify the borrower in accordance with clause 20(2)(c) of his or her right to cancel the loan; or
 - (ii) the notice of the right to cancel provided to the borrower does not meet the requirements of subsection 20(3).
- (2) To cancel a payday loan agreement pursuant to subsection (1), the borrower shall:
- (a) give written notice of the cancellation to the payday lender by leaving the notice at the address of the payday lender set out in the payday loan agreement with any person appearing to have authority to accept the notice; and

- (b) repay to the payday lender, in the form of cash, certified cheque or money order, the amount that was advanced to the borrower under the payday loan.
- (3) For the purpose of clause (2)(b):
- (a) if the advance was made in the form of a cheque, a return of the unnegotiated cheque to the payday lender is to be considered a repayment of the advance; and
- (b) if the advance was made in the form of a cash card or other device that enabled the borrower to access funds under the payday loan agreement, returning that card or device to the payday lender is to be considered a repayment of the advance to the extent of the cash or credit balance remaining on the card or device.
- (4) No payday lender shall, directly or indirectly, charge any amount, fee, rate, penalty or other charge for, or as a consequence of, the cancellation of a payday loan agreement pursuant to this section.
- (5) On the cancellation of a payday loan agreement pursuant to this section, the payday lender must immediately:
- (a) give the borrower a receipt, in the form mentioned in clause 20(2)(e), respecting the amount the borrower paid or returned to the payday lender on cancelling the payday loan agreement; and
- (b) refund to the borrower, in the form of cash, any amount, fee, rate, penalty or other charge paid to the payday lender in relation to the payday loan.
- (6) The cancellation of a payday loan agreement pursuant to this section extinguishes every liability and obligation of the borrower under, or related to, the payday loan agreement.
- (7) The cancellation rights in this section are in addition to, and do not affect, any other right or remedy the borrower has under the payday loan agreement or at law.

Limits on fees and charges

- 23(1)** No payday lender shall, in relation to a payday loan, charge or receive, directly or indirectly, any amount, fee, rate, penalty or other charge that would result in the total cost of borrowing under the payday loan, or any component of the cost of borrowing, being in excess of the maximum prescribed limits.
- (2) No payday lender shall, with respect to the extension or renewal of a payday loan, charge or receive, directly or indirectly, any amount, fee, rate, penalty or other charge except as permitted by the regulations.
- (3) No payday lender shall, with respect to any default by the borrower under a payday loan, charge or receive, directly or indirectly, any amount, fee, rate, penalty or other charge except as permitted by the regulations.
- (4) No payday lender shall, in relation to a payday loan, charge or receive, directly or indirectly, any other amount, fee, rate, penalty or charge that is in excess of the maximum amounts, fees, rates, penalties or charges determined in accordance with the regulations.

(5) A payday lender shall not charge or receive, directly or indirectly, any amount, fee, rate, penalty or other charge that is not provided for in this Act or the regulations.

Borrower not liable for excess or prohibited charges

24(1) The borrower is only liable to repay a payday lender the principal amount borrowed and is not liable to pay the payday lender any amounts, fees, rates, penalties or other charges in excess of the principal amount if the payday lender charges or receives, directly or indirectly, an amount, fee, rate, penalty or other charge:

- (a) that is not permitted by the Act or the regulations; or
- (b) that is in excess of the amount permitted by the Act or the regulations.

(2) If the borrower has paid an amount mentioned in clause (1)(a) or (b), the borrower is entitled to a refund of all moneys paid in excess of the principal amount borrowed.

(3) If the borrower is entitled to a refund pursuant to subsection (2), the payday lender shall provide the refund immediately on demand by the borrower or the director.

Discounting not permitted

25 A payday lender shall not discount the principal amount of the payday loan by deducting or withholding from the advance an amount representing any portion of the cost of borrowing or other charges.

Prepayment

26 No payday lender shall charge a penalty or other fee for the early repayment of a payday loan.

No security to be taken

27 A payday lender shall not require, take or accept, directly or indirectly, any of the following as security for the payment of a payday loan or for the performance of an obligation under a payday loan agreement:

- (a) real or personal property;
- (b) an interest in real or personal property;
- (c) a guarantee.

Concurrent payday loans prohibited

28 No payday lender shall enter into a payday loan agreement with a borrower if:

- (a) the borrower has already entered into a payday loan agreement with the payday lender; and
- (b) the payday loan agreement mentioned in clause (a) is still in effect.

Tied selling prohibited

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

Payday loans in excess of prescribed amount prohibited

30 No payday lender shall enter into a payday loan agreement with a borrower that is in excess of the prescribed amount of the borrower's net pay.

Wage assignments not valid

31(1) In this section:

- (a) **“assignment of wages”** includes an order or direction by a person to pay all or any part of his or her wages to another person;
- (b) **“wages”** means:
 - (i) wages as defined in *The Assignment of Wages Act*; and
 - (ii) any periodic payments with respect to loss of future income or loss of earning capacity.

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

Unlawful practices

32(1) In this section, **“unlawful practice”** means a practice that a collection agent or collector is prohibited from undertaking pursuant to section 29 of *The Collection Agents Act*.

(2) No payday lender shall engage in any practice that would be an unlawful practice if the payday lender were a collection agent or collector within the meaning of *The Collection Agents Act*.

(3) For the purposes of this section, section 29 of *The Collection Agents Act* applies, with any necessary modification, to a payday lender as if that payday lender were a collection agent or collector within the meaning of that Act.

Other prohibited practices

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

Business name

34 A licensee shall not carry on business as a payday lender under a business name or style that differs from the business name or style specified in the payday lender's licence.

Capital and net worth requirements, etc.

35 Every payday lender required to comply with any capital or net worth requirements set out in the regulations made pursuant to clause 6(1)(d) shall, at all times:

- (a) maintain that capital or net worth; and
- (b) comply with any other prescribed requirements and satisfy any other prescribed criteria.

Duty to maintain records

36(1) A licensee shall ensure that the following records are kept:

- (a) complete and accurate records of the licensee's operations in Saskatchewan that include the prescribed information;
- (b) complete and accurate records respecting all payday loans that the licensee has offered, arranged, provided or entered into;
- (c) any other prescribed records.

(2) A licensee shall retain the records mentioned in this section for the prescribed period.

Joint liability

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

- (a) to the borrower for any amount to be refunded or reimbursed to the borrower pursuant to this Act and the regulations; and
- (b) to comply with any other requirements set out in this Act or the regulations.

PART IV

Inspections, Investigations and Enforcement

Interpretation of Part

38 In this Part:

- (a) “**property**” includes computer software;
- (b) “**record**” includes any information that is recorded or stored in any medium or by means of any device, including a computer or electronic media.

Inspections

39(1) The director may make inquiries and conduct examinations of the business and activities of each licensee to ensure that the licensee is complying with the requirements established pursuant to this Act.

(2) If, in the director’s opinion, a person who is not a licensee is or was required to have a licence, the director may make such inquiries and conduct such examinations of the business and activities of the person as the director considers appropriate in the circumstances.

(3) Subject to subsection 40(4), the director may do all or any of the following things in the course of making an inquiry or conducting an examination:

- (a) enter at any reasonable time and inspect any commercial premises used by a person required to be licensed pursuant to this Act;
- (b) enter at any reasonable time premises containing any records or property required to be kept pursuant to this Act or related to the administration of this Act and inspect those records or that property;
- (c) require the person and any agent, representative, partner, director, officer or employee of the person to:
 - (i) answer any questions that may be relevant to the inspection; and
 - (ii) provide the director with all reasonable assistance, including using any computer hardware or software or any other data storage, processing or retrieval device or system to produce information;
- (d) in order to produce information, use any computer hardware or software or any other data storage, processing or retrieval device or system that is used in connection with the business or activities of any person required to be licensed pursuant to this Act;

- (e) remove for examination and copying anything that may be relevant to the inquiry or examination, including removing any computer hardware or software or any other data storage, processing or retrieval device or system in order to produce information.
- (4) The director may serve a written demand on any person requiring that person to produce any records or property:
 - (a) required to be kept pursuant to this Act; or
 - (b) related to the administration of this Act.
- (5) No person on whom a written demand is served pursuant to this section shall fail to produce the records or property mentioned in the written demand within the time specified in the written demand.
- (6) If the director demands any records or property pursuant to this section, the director may examine the records or property and make copies of the records with reasonable dispatch and promptly return the originals of the records to the person who produced them.
- (7) If the director requires a person to answer questions, to produce a record or other property or to provide assistance in accordance with this section, the person shall do so in the manner and within the period specified by the director.
- (8) The director shall:
 - (a) give a receipt for anything that the director removes for examination and copying;
 - (b) promptly return anything removed pursuant to this section to the place from which it was removed or any other place agreed to by the director and the person who furnished it; and
 - (c) take all reasonable steps to ensure that, if a record is taken, a copy of the record is left at the premises to allow business to be carried on.

Investigations

- 40(1)** If a justice or a provincial court judge is satisfied by information under oath that there are reasonable grounds to believe that an offence against this Act has occurred and that evidence of that offence is likely to be found, the justice or the provincial court judge may issue a warrant to do all or any of the following:
- (a) enter and search any place or premises named in the warrant;
 - (b) stop and search any vehicle described in the warrant;
 - (c) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Act.
- (2) With a warrant issued pursuant to subsection (1), the director may:
- (a) enter at any time and search any place or premises named in the warrant;
 - (b) stop and search any vehicle described in the warrant;

- (c) open and examine the contents within any trunk, box, bag, parcel, closet, cupboard or other receptacle that the director finds in the place, premises or vehicle;
 - (d) require the production of and examine any records or property that the director believes, on reasonable grounds, may contain information related to an offence against this Act;
 - (e) remove, for the purpose of making copies, any records examined pursuant to this section; and
 - (f) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Act.
- (3) Subject to subsection (4), the director may exercise all or any of the powers mentioned in subsection (2) without a warrant issued pursuant to this section if:
- (a) the conditions for obtaining a warrant exist; and
 - (b) the director has reasonable grounds to believe that the delay necessary to obtain a warrant would result:
 - (i) in danger to human life or safety; or
 - (ii) in the loss, removal or destruction of evidence.
- (4) The director shall not enter any premises that are a private dwelling without the consent of the occupier or a warrant issued pursuant to this section.

Travel costs

- 41(1)** If the director or any person engaged, appointed or retained by the director for the purpose of assisting the director in carrying out an inspection or investigation is required to travel outside Saskatchewan to conduct an inspection or investigation of a person, the director may direct the person being inspected or investigated to pay all of the reasonable costs associated with the inspection or investigation.
- (2) No person shall fail to pay an amount that the person is directed to pay pursuant to subsection (1).

PART V
Appeals

Appeal to court

- 42(1)** Any person who is directly affected by an order or decision of the director pursuant to this Act may appeal the order or decision to the court on a question of law only.
- (2) An appeal must be made within 30 days after a decision or order of the director.
- (3) An appellant shall serve a notice of appeal on the director and any other person that the court may order.

Documents to be filed with the court for purposes of appeal

43 On receipt of a notice of an appeal pursuant to section 42, the director shall file with the court true copies of:

- (a) all documents and materials that were before the director when the director made his or her decision or order;
- (b) the director's decision or order; and
- (c) the director's written reasons for the decision or order.

Decision by court

44(1) On hearing an appeal pursuant to section 42, the court may:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms and conditions;
- (d) vary the decision or order of the director;
- (e) refer the matter back to the director for:
 - (i) further consideration; and
 - (ii) a decision or order; or
- (f) make any other order that the court considers appropriate.

(2) The court may make any order as to costs on an appeal that the court considers appropriate.

(3) Except where otherwise specifically provided, every order or decision of the director is final, and no order or decision of the director shall be questioned or reviewed, restrained or removed by prohibition, injunction, *certiorari*, mandamus or any other process or proceeding in any court.

Application for stay

45 The commencement of an appeal pursuant to section 42 does not stay the effect of the decision or order appealed from, unless a judge of the court orders otherwise.

PART VI Offences and Penalties

Offences and penalties

46(1) No person shall:

- (a) fail to comply with any order or direction made pursuant to this Act; or
- (b) contravene any provision of this Act or the regulations.

(2) No person shall make a false or misleading statement in any application or in any proceeding or in response to any inspection or investigation.

(3) Every person who contravenes any provision of this Act or the regulations is guilty of an offence.

- (4) Every person who is guilty of an offence is liable on summary conviction:
- (a) for a first offence:
 - (i) in the case of an individual, to a fine of not more than \$5,000, to imprisonment for a term of not more than one year or to both; and
 - (ii) in the case of a corporation, to a fine of not more than \$100,000; and
 - (b) for a second or subsequent offence:
 - (i) in the case of an individual, to a fine of not more than \$10,000, to imprisonment for a term of not more than one year or to both; and
 - (ii) in the case of a corporation, to a fine of not more than \$500,000.
- (5) If a corporation commits an offence pursuant to this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable on summary conviction to the penalties mentioned in this section whether or not the corporation has been prosecuted or convicted.

Special penalties

- 47(1)** A licensee that defaults in making, delivering or filing a report, return or statement required pursuant to this Act is liable to a penalty of \$100, plus \$10 for each day or part of a day after the first 10 days during which the default continues.
- (2) On receipt of a notice from the director demanding payment of a penalty pursuant to this section, the licensee shall immediately pay the penalty to the director.
- (3) A penalty payable pursuant to this section is a debt due to and recoverable by the Crown in right of Saskatchewan and may be recovered in the manner authorized by *The Financial Administration Act, 1993* or in any other manner authorized by law.

Compliance orders and restitution

- 48** If the court convicts a person of an offence, the court may, in addition to any penalty it may impose, do all or any of the following:
- (a) order that person to comply with the provision of this Act with respect to which that person was convicted;
 - (b) if the court is satisfied that the convicted person has acquired any monetary benefits or that monetary benefits have accrued to the convicted person or to another person associated with or related to the convicted person:
 - (i) order the convicted person to pay an additional fine in an amount equal to the amount of the monetary benefits;
 - (ii) order the convicted person to pay compensation or make restitution to any person to whom the monetary benefits should be paid.

Offence - destruction, etc., of evidence

- 49(1)** No person shall, or shall attempt to, destroy, alter, conceal or withhold any information, property or thing reasonably required for an inspection, investigation or proceeding pursuant to this Act.

(2) No person shall hinder or interfere with the director, or any employee, appointee or agent of the director, in the performance of his or her powers, functions and duties pursuant to this Act.

(3) A person contravenes subsection (1) if the person knows or ought reasonably to know that an inspection, investigation or proceeding is to be conducted and takes any action mentioned in subsection (1) before the inspection, investigation or proceeding.

Limitation on prosecution

50 No prosecution for a contravention of this Act or the regulations is to be commenced more than three years after the facts on which the alleged contravention is based first came to the knowledge of the director.

PART VII
Alternative Enforcement

Administrative penalties

51(1) Subject to subsection (4) and section 17, if the director is satisfied that a person has contravened a provision of this Act, the director may make an order imposing all or any of the following penalties:

- (a) an administrative penalty of up to \$10,000;
 - (b) a penalty obliging the person to pay the cost, to a maximum of \$10,000, of producing material specified by the director to promote education or knowledge in areas related to borrowers and activities of payday lenders.
- (2) The director may make an order pursuant to this section notwithstanding the imposition of any other penalty on the person or the making of any other order by the director related to the same matter.
- (3) No penalty is to be assessed by the director more than three years after the date the facts on which the alleged contravention is based first came to the knowledge of the director.
- (4) The written notice required to be provided to the person pursuant to subsection 17(2) must, in addition to the requirements set out in that subsection:
- (a) set out the facts and circumstances that, in the director's opinion, render the person liable to a penalty; and
 - (b) specify the amount of the penalty that the director considers appropriate in the circumstances.
- (5) On holding a hearing or receiving a person's written representations pursuant to section 17, the director shall, in addition to the requirements set out in subsection 17(10), provide a notice to the person who is the subject of the order that sets out a date by which the penalty is to be paid in full.
- (6) Any penalty imposed pursuant to this section is a debt due to and recoverable by the Crown in right of Saskatchewan and may be recovered in the manner authorized by *The Financial Administration Act, 1993* or in any other manner authorized by law.

(7) After the time for filing an appeal of the director's order pursuant to this section has passed and if there is no appeal or if an appeal has been made but dismissed, the director may file a certificate with the court certifying the amount of the penalty imposed pursuant to this section.

(8) A certificate filed with the court pursuant to subsection (7) has the same force and effect as if it were a judgment of that court for the recovery of a debt in the amount specified in the certificate, together with the costs of filing.

Power of director to order compliance

52(1) The director may issue an order pursuant to subsection (2) if the director is satisfied that it is in the public interest or that any of the following circumstances exists:

- (a) a person is not complying with this Act;
- (b) a person's activities or failure or neglect to undertake any activities will result in that person not complying with this Act;
- (c) a person's activities or failure or neglect to undertake any activities may harm the interests of borrowers.

(2) Subject to section 17, in any of the circumstances mentioned in subsection (1), the director may order a person to do all or any of the following:

- (a) cease doing an act or cease failing or neglecting to do an act;
- (b) comply with this Act;
- (c) do or refrain from doing any other thing that the director considers necessary.

Power of court to order compliance

53(1) If the director is of the opinion that a person has failed to comply with this Act, the director may apply to the court for all or any of the following:

- (a) an order directing the person to comply with this Act or restraining that person from contravening this Act;
- (b) an order directing the directors and officers of a corporation or the partners of a partnership to comply with this Act or restraining those directors and officers or partners from contravening this Act;
- (c) any other order, relief or remedy that the director may request or that the court may consider necessary.

(2) On an application pursuant to subsection (1), the court may make any order that the court considers necessary.

Costs

54(1) Subject to section 17, after conducting a proceeding respecting a person, including an inspection or investigation pursuant to this Act, the director may order the person to pay the costs of or related to the proceeding if the director is satisfied that the person whose affairs were the subject of the proceeding has not complied with a provision of this Act.

(2) For the purposes of subsection (1), the costs that the director may order the person to pay include all or any of the following:

- (a) costs incurred with respect to services provided by a person engaged, appointed or retained by the director for the purposes of the proceeding;
- (b) costs of obtaining a warrant;
- (c) costs of matters preliminary to the proceeding;
- (d) costs for time spent by the director, by any members of the public service of Saskatchewan employed in the office of the director or by any persons engaged, appointed or retained by the director;
- (e) fees paid to a witness;
- (f) costs of legal services provided to the director.

(3) If a person is convicted of an offence pursuant to this Act, the director may, subject to section 17, order the person to pay the costs of any investigation carried out with respect to that offence, including any costs incurred with respect to either or both of the following:

- (a) the provision of services by persons engaged, appointed or retained by the director;
- (b) the appearance of any witnesses.

(4) The director may file a certificate with the court certifying the amount of the costs that the person is required to pay pursuant to subsections (1) to (3).

(5) A certificate filed pursuant to subsection (4) with the court has the same force and effect as if it were a judgment of that court for the recovery of a debt in the amount specified in the certificate, together with the costs of filing.

(6) *The Queen's Bench Rules* respecting costs and the taxation of costs do not apply to costs mentioned in this section.

(7) No provision of this Act is to be interpreted as precluding the court from ordering costs payable to the director.

(8) If costs are awarded to the director in any proceeding, the costs of the director are not to be disallowed or reduced because the lawyer representing the director was a member of the public service of Saskatchewan.

PART VIII General

Proceedings before director

55(1) In this section, “**record**” includes any information that is recorded or stored in any medium or by means of any device, including a computer or electronic media.

(2) For the purpose of carrying out an inspection or investigation pursuant to this Act or of carrying out any proceeding before the director, the director has the same power as is vested in the court for the trial of civil actions:

- (a) to summon and enforce the attendance of witnesses;

- (b) to compel witnesses to give evidence; and
 - (c) to compel witnesses to produce records or property.
- (3) The director may issue a summons if the director believes that it is necessary in order to determine whether a person is complying with a requirement established pursuant to this Act or the regulations.
- (4) If a person summoned as a witness pursuant to subsection (2) fails or refuses to attend, answer questions or produce records or property in that person's custody or possession, the failure or refusal makes that person liable, on application to the court by the director, to be committed for contempt by the court in the same manner as if that person were in breach of an order or judgment of the court.
- (5) The director may accept any evidence the director considers appropriate and is not bound by the rules of law concerning evidence.
- (6) The director may issue orders prescribing the rules, forms and procedures to be followed in proceedings before the director.

Agreements waiving provisions of Act null and void

56 Every agreement or bargain, verbal or written, express or implied, that any of the provisions of this Act or the regulations shall not apply or that any benefit or remedy provided by those provisions shall not be available, or which in any way limits or abrogates or in effect limits, modifies or abrogates any such benefit or remedy, is null, void and of no effect, and moneys paid under or by reason of any such agreement or bargain are recoverable in any court of competent jurisdiction.

Immunity

57 No action or other proceeding lies or shall be instituted against:

- (a) the Crown in right of Saskatchewan, the minister, the director or any member of the public service of Saskatchewan employed in the office of the director;
- (b) any representative of the director; or
- (c) any person engaged, appointed or retained by the director to make or conduct any inspection or investigation or to do any other thing pursuant to this Act;

if the person mentioned in clause (a), (b) or (c) is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any responsibility imposed by this Act or the regulations.

Director and others not compellable to give evidence

58 Except in the case of a prosecution respecting a contravention of this Act, the director, any member of the public service employed in the office of the director, any representative of the director, and any person engaged, appointed or retained by the director to make or conduct any inspection or investigation or to do any other thing pursuant to this Act are not compellable to give evidence in a court or in a proceeding of a judicial nature to which the director is not a party concerning any information obtained by them or that came to their attention in the exercise of the powers, carrying out of the responsibilities or carrying out of the functions of the director pursuant to this Act.

Evidence re certificate of director

59(1) A certificate of the director certifying all or any of the following facts is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate without proof of the signature or official position of the person purporting to have signed the certificate:

- (a) that a person named in the certificate was or was not licensed;
 - (b) that a licence was issued to a person on a date set out in the certificate;
 - (c) that the licence of a person was suspended, cancelled or reinstated at a particular time;
 - (d) that a licence issued to a person was made subject to terms and conditions.
- (2) A record certified by the director to be a copy made pursuant to Part IV:
- (a) is admissible in evidence without proof of the office or signature of the person making the certificate; and
 - (b) has the same probative force as the original record.

Evidence of carrying on business without a licence

60 If, in a prosecution for an alleged contravention of this Act, it is alleged that the accused carried on business as a payday lender without a licence, evidence of one transaction involving products or services of a type normally offered or provided by a payday lender is proof, in the absence of evidence to the contrary, that the accused carried on business as a payday lender without a licence.

Restrictions on access to records

61(1) Any information submitted or provided to the director or obtained by the director as a result of an investigation or inspection pursuant to this Act is not open to inspection or available for access except by:

- (a) those members of the public service of Saskatchewan employed in the office of the director whose responsibilities require them to inspect or allow them to have access to the information; and
 - (b) those persons who are authorized in writing by the director to inspect or to have access to the information.
- (2) Unless authorized by this Act or by any other law or with the consent of the person to whom any information relates, no member of the public service of Saskatchewan employed in the office of the director and no person authorized by the director to inspect or have access to the information shall:
- (a) communicate or allow to be communicated any information obtained pursuant to this Act to any person who is not legally entitled to the information; or
 - (b) allow any person who is not legally entitled to the information obtained pursuant to this Act to inspect or have access to it.

(3) Notwithstanding subsections (1) and (2), the director may authorize the release of, inspection of or access to the information mentioned in those subsections to or by any person employed by a government, regulatory authority, law enforcement agency or investigative body inside or outside Canada if:

- (a) the information will be used solely for the purpose of administering or enforcing an Act or law of Saskatchewan or Canada or of another jurisdiction inside or outside Canada;
- (b) the release, inspection or access is pursuant to an agreement made pursuant to section 62; or
- (c) the director believes that it is in the public interest to allow the release, inspection or access.

(4) No person to whom information is provided pursuant to this section is compellable to give evidence concerning that information unless:

- (a) the person to whom the information relates consents; or
- (b) a court orders the evidence to be given.

(5) Notwithstanding subsections (1) and (2), the director may authorize the publication of, or make available to the public, the following information:

- (a) all information appearing on a licence;
- (b) the address of the place of business and mailing address and address for service of a licensee;
- (c) any other information mentioned in subsection (1) if, in the opinion of the director, it is in the public interest to do so.

(6) On an application for an order pursuant to clause (4)(b):

- (a) the director and the person to whom the information relates are entitled to appear before the court and to make submissions; and
- (b) the person seeking the order compelling the evidence has the onus of showing why it is in the public interest that the order be made.

Agreements with other jurisdictions

62 Subject to the approval of the Lieutenant Governor in Council, the director may enter into an agreement with any other government, regulatory authority, law enforcement agency, investigative body or person inside or outside Canada:

- (a) for the purpose of administering or enforcing this Act or any Act or law of the other jurisdiction that is similar to this Act, including an agreement authorizing the director to perform responsibilities and exercise powers on behalf of the other government, regulatory authority, law enforcement agency, investigative body or person and authorizing the other government, regulatory authority, law enforcement agency, investigative body or person to perform responsibilities and exercise powers on behalf of the director; or
- (b) for any other purpose that the director believes is in the public interest.

Experts

63(1) The director may retain any person the director considers to be expert in a field of knowledge to assist the director in carrying out the director's responsibilities or in exercising the director's powers pursuant to this Act.

(2) The director may apply to the court for an order directing any licensee to pay the costs, fees and other expenses of an expert retained pursuant to subsection (1).

(3) On an application pursuant to subsection (2), the court may make any order respecting the payment of costs, fees and expenses that it considers appropriate.

Publication of decisions and orders

64 Notwithstanding any other provision of this Act, if the director has made a decision or order pursuant to this Act, the director may:

(a) disclose the decision or order to any person, including the director's written reasons for making the decision or order; and

(b) publish the decision or order, including the director's written reasons for making the decision or order.

Service

65(1) Any notice or other document that is required to be served pursuant to this Act or in any proceeding or matter under the jurisdiction of the director may be served:

(a) by personal service made:

(i) in the case of an individual, on that individual;

(ii) in the case of a partnership, on any partner; or

(iii) in the case of a corporation, on any officer or director of the corporation;

(b) by registered mail addressed to the last address of the person to be served known to the director;

(c) in the case of a notice to the public, or to persons who are too numerous to be served individually, by publishing the notice in any manner that the director may direct; or

(d) by any other prescribed means.

(2) A notice or document sent by registered mail is deemed to have been served on the seventh day following the date of its mailing unless the person to whom it was mailed establishes that, through no fault of his or her own, the person did not receive the notice or document or received it at a later date.

(3) Service of a notice or document to be sent by any other prescribed means is to be proved in the prescribed manner.

(4) A notice or other document required to be served on the director may be served:

(a) by leaving it at the office of the director with any person appearing to have authority to accept the notice or document;

(b) by registered mail addressed to the address of the office of the director;
or

(c) by any other prescribed means.

Regulations

66 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) exempting any person or any class of persons from all or any prescribed portion of any provision of this Act and, as a condition of the exemption, requiring any exempted person or class of exempted persons to comply with any prescribed term or condition, and prescribing any circumstance in which all or any portion of any provision of this Act does not apply;
- (c) respecting the forfeiture of financial security, including prescribing the conditions under which and the manner in which a bond or other financial security may be forfeited;
- (d) prescribing fees to be paid for the issuance of licences, the renewal of licences, the reinstatement of licences that have been suspended and any other fees for services in connection with the administration of this Act and the regulations;
- (e) prescribing any other requirements that an applicant for a licence must comply with and prescribing any other criteria that must be satisfied by an applicant for a licence;
- (f) for the purposes of section 16, prescribing changes in circumstances;
- (g) prescribing any other information that must be included in a payday loan agreement;
- (h) for the purposes of section 19, prescribing the period in which, and the manner in which, a payday lender must provide a copy of the payday loan agreement to the borrower;
- (i) for the purposes of clause 20(2)(f), prescribing any other information that a payday lender must include in the disclosure statement provided to a borrower or prospective borrower;
- (j) for the purposes of clause 20(2)(g), prescribing any documents that must accompany the disclosure statement provided to a borrower or prospective borrower;
- (k) respecting the posting of signs and the form and content of the information to be placed on the signs;
- (l) for the purposes of section 23:
 - (i) prescribing the maximum amount for the total cost of borrowing in relation to a payday loan, including prescribing the maximum amount for any component of the cost of borrowing in relation to a payday loan;
 - (ii) permitting a payday lender to charge an amount, fee, rate, penalty or other charge with respect to the extension or renewal of a payday loan, and prescribing the maximum amount that may be charged with respect to that amount, fee, rate, penalty or other charge;
 - (iii) permitting a payday lender to charge an amount, fee, rate, penalty or other charge with respect to a default by the borrower under a payday loan, and prescribing the maximum amount that may be charged with respect to that amount, fee, rate, penalty or other charge;

- (iv) permitting a payday lender to charge any other amount, fee, rate, penalty or other charge in relation to a payday loan, and prescribing the maximum amount that may be charged with respect to that amount, fee, rate, penalty or other charge;
- (m) respecting the maximum amount of the borrower's net pay that may be loaned by a payday lender;
- (n) for the purposes of section 33, prescribing prohibited practices;
- (o) for the purposes of section 35:
 - (i) prescribing the capital and net worth requirements that must be maintained by a payday lender; and
 - (ii) prescribing any other requirements that a payday lender must comply with and prescribing any other criteria that must be satisfied by a payday lender;
- (p) for the purposes of section 36:
 - (i) prescribing information to be included in the records; and
 - (ii) requiring that certain records be kept and prescribing periods for keeping records;
- (q) respecting the service of documents;
- (r) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (s) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

PART IX Transitional and Coming into Force

Transitional

67(1) Subject to subsection (2), this Act does not apply to a payday loan that was made before the coming into force of this section.

(2) A payday loan that was made before the coming into force of this section but that is renewed or extended on or after the coming into force of this section shall be dealt with pursuant to this Act as if it had been made on or after the coming into force of this section.

Coming into force

68 This Act comes into force on proclamation.