

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 144, Approved and Ordered MAR - 2 2009

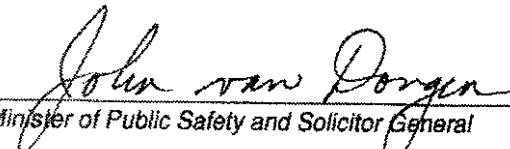


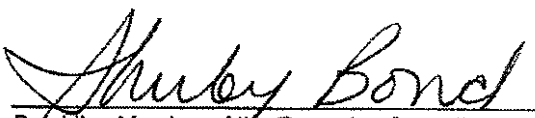
Lieutenant Governor
Administrator

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the ~~Lieutenant Governor~~ ^{Administrator}, by and with the advice and consent of the Executive Council, orders that, effective November 1, 2009,

- (a) *the Business Practices and Consumer Protection (Payday Loans) Amendment Act, 2007, S.B.C. 2007, c. 35, other than sections 112.12 to 112.15 of the Business Practices and Consumer Protection Act as enacted by section 4 and section 189 (4) (f.6) of the Business Practices and Consumer Protection Act as enacted by section 8, is brought into force,*
- (b) *the Business Practices and Consumer Protection Regulation, B.C. Reg. 294/2004, is amended as set out in the attached Schedule 1, and*
- (c) *the attached regulation is made as set out in Schedule 2.*


Minister of Public Safety and Solicitor General


Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Business Practices and Consumer Protection (Payday Loans) Amendment Act, 2007, S.B.C. 2007, c. 35, s. 12

Other (specify):- Business Practices and Consumer Protection Act, S.B.C. 2004, c. 12, ss. 112.02, 142.1, 194, 197.1 & 199; OIC 656/2004

04 February 2009

SCHEDULE 1

1 The Business Practices and Consumer Protection Regulation, B.C. Reg. 294/2004, is amended by adding the following sections:

Prescribed provisions of the Act – payday loans

5.1 For the purposes of section 164 (1) (a) and (5) (a) *[administrative penalties]* of the Act, the following provisions of the Act are prescribed:

- (a) section 112.05 (6) *[cancellation rights]*;
- (b) section 112.06 (1) *[required terms and disclosure statements]*;
- (c) section 112.06 (3) *[required terms and disclosure statements]*;
- (d) section 112.06 (4) *[required terms and disclosure statements]*;
- (e) section 112.09 (2) *[payout of balances on cash cards]*;
- (f) section 112.09 (3) *[payout of balances on cash cards]*;
- (g) section 112.10 (7) *[remedies]*.

Prescribed provisions of the Payday Loans Regulation

7.2 For the purposes of section 164 (1) (a) and (5) (a) *[administrative penalties]* of the Act, the following provisions of the Payday Loans Regulation are prescribed:

- (a) section 5 *[licence for each location]*;
- (b) section 7 *[display of licence]*;
- (c) section 8 *[business name on licence]*;
- (d) section 10 *[reporting changes to the director]*;
- (e) section 11 *[retention of documents]*;
- (f) section 13 *[signs and notices]*;
- (g) section 16 *[cash cards]*.

SCHEDULE 2

PAYDAY LOANS REGULATION

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Definitions

- (1) In this regulation:

 - “**Act**” means *Business Practices and Consumer Protection Act*;
 - “**licence**” means a licence as defined in section 1 of the Act, to engage in a designated activity referred to in section 2 of this regulation;
 - “**representation**” means a representation as defined in section 4 (1) of the Act.
- (2) The definitions in section 1 and Part 6.1 of the Act apply for the purposes of this regulation.

Designated activities

- 2 The business of payday lender is designated for the purposes of the definition of “designated activity” in section 142 of the Act.

Application of the Act and regulation

- 3 The provisions of the Act and this regulation that apply to a payday loan apply to each loan, regardless of the number of lenders involved in the loan.

Application for a licence

- 4 (1) An applicant for a licence must submit the following to the director:
- (a) if the applicant is a corporation, the names and addresses of
 - (i) the senior officers, as defined in the *Business Corporations Act*, of the corporation, and
 - (ii) the beneficial owners of the shares of the corporation;
 - (b) if the applicant is a partnership, the name and address of each partner in the partnership;
 - (c) if the applicant is a sole proprietor, the name and address of the proprietor;
 - (d) if the head office of an applicant is located outside British Columbia, a certificate of registration in the applicant's home jurisdiction showing the applicant's name and any other names under which the applicant is doing business.
- (2) An applicant for a licence must also submit to the director
- (a) a copy of the following documents that the applicant uses or intends to use:
 - (i) the standard loan agreement;
 - (ii) a sample loan agreement for \$300 for 14 days, with all fees and charges;
 - (iii) the rate structure for a payday loan, including interest and permissible charges;
 - (iv) the cancellation notice form;
 - (v) a form acknowledging the receipt of the loan cancellation;
 - (vi) a sample debt collection notification as required by section 115 of the Act, and
 - (b) aggregate data from the last completed fiscal year of the applicant, in a form and containing the information required by the director.
- (3) Without limiting paragraph (b) of subsection (2), the aggregate data submitted under that paragraph must include data respecting the number of loans, number of transactions, loan amounts, loan duration and number of default charges.

Licence for each location

- 5 A payday lender must have a separate licence for each location from which the payday lender conducts business in British Columbia.

Term of licence

- 6 The director may issue a licence for a term not exceeding 3 years.

Display of licence

- 7 (1) A payday lender must prominently display the licence in the location for which the licence is issued.
- (2) If the payday lender does business by means of the internet, the payday lender must display the licence number and other identification, in a form approved by

the director, prominently at, or near, the top of the introductory page of the website for British Columbia borrowers.

- (3) The payday lender must include the licence number in all representations and visual advertisements.

Business name on licence

- 8 A payday lender must not carry on a business in a name other than the name on the licence.

Licence application fees

- 9 Subject to any applicable fees set by the administrative authority, a person must pay the following licence application fees and submit the fees with the person's application for a licence:
 - (a) \$1 500 per year for the head office or primary location;
 - (b) \$750 per year for each additional location from which the licensee conducts business.

Reporting changes to the director

- 10 (1) A payday lender must submit the following information to the director within 14 days of the change occurring:
 - (a) a change in address for the head office or for a location from which a licensee conducts business;
 - (b) if the licensee is a corporation,
 - (i) a change in the senior officers, as defined in the *Business Corporations Act*, of the licensee, or
 - (ii) a material change in the beneficial ownership of the shares of the licensee.
- (2) If a payday lender makes changes to the documents required by section 4 (2), the applicant must submit copies of the changed documents to the director within 14 days of the change occurring.

Retention of documents

- 11 A payday lender must retain all payday loan agreements, receipts and other documents used for each payday loan for a period of 2 years after the payday loan is fully repaid.

Out of Province payday lenders

- 12 If a payday lender is located outside British Columbia, the payday lender must ensure that the payday loan agreement contains the address of the payday lender's office in British Columbia for service of documents.

Signs and notices

- 13 (1) A payday lender must display at each of the lender's places of business
 - (a) a sign visible to borrowers immediately on entering the place of business, and
 - (b) a sign visible to borrowers at each place where a payday loan is negotiated.

- (2) A sign under subsection (1) (a) must contain the information referred to in subsection (4) and
 - (a) be a minimum of 61 centimetres in width by 76 centimetres in height,
 - (b) be white and have a 5 centimetres wide purple border,
 - (c) have text in a colour that contrasts with the background, and
 - (d) have text at least 72 points in size.
- (3) A sign under subsection (1) (b) must contain the information referred to in subsection (4) and have text at least 28 points in size.
- (4) A sign required under this section must consist of only the following information in the following order:
 - (a) the words:
 - “Maximum charges permitted in British Columbia for a payday loan: 23% of the principal”;
 - (b) the words:
 - “We charge:..... [*the payday lender’s total charges for a payday loan*]”;
 - (c) the words:
 - “For a \$300 loan for 14 days:
Total cost of borrowing = [*the payday lender’s total charges for a \$300 loan for 14 days*]”;
 - (d) the words:
 - “Annual Percentage Rate = [*the annual percentage rate charged by the payday lender for a \$300 loan for 14 days*] per year”;
 - (e) the words:
 - “This information meets the requirements of the *Business Practices and Consumer Protection Act*”;
 - (f) the payday lender’s licence number.
- (5) A payday lender doing business on the internet must display a notice that is
 - (a) of the colour and has the content required under subsections (2) and (4), and
 - (b) visible to borrowers
 - (i) at or near the top of the introductory page of the website for British Columbia borrowers, and
 - (ii) in a location on the website that precedes the application for the loan.
- (6) A payday lender that offers, arranges or provides a payday loan by telephone must disclose to a prospective borrower the information in subsection (4).

Notice in loan agreement

14 A payday loan agreement must include a statement that reads as follows:

“Payday loans are regulated under the *Business Practices and Consumer Protection Act*. For information on the requirements relating to payday loans, please contact the Business Practices and Consumer Protection Authority.”

Other methods of repayment on cancellation

- 15** In addition to the methods set out in section 112.05 (4) (b) of the Act, a borrower may repay advances made to the borrower
- (a) if the payday lender used an electronic method for providing the payday loan, by an electronic method, or
 - (b) by any other method acceptable to the lender.

Cash cards

- 16** (1) For the purposes of section 112.09 (1) (a) of the Act, \$25 is prescribed as the balance remaining on a cash card.
- (2) If a delinquent borrower, as defined in section 112.09 (5) of the Act, has a balance of credit remaining on an expired cash card, the payday lender may recover from the cash card only the amount due on the delinquent loan, including default fees, and must return any remaining balance to the borrower immediately on demand by the borrower or by the director.
- (3) The payday lender must issue a receipt to the borrower for money recovered from a cash card under subsection (2), and must inform the borrower of any remaining balance on the cash card and how the balance may be refunded.

Permissible charges

- 17** (1) The maximum amount that may be charged, required or accepted by a payday lender for a loan is 23% of the principal.
- (2) In addition to subsection (1), if the repayment amount specified in the agreement is not paid, a payday lender may charge an amount up to the following maximum amounts as default fees:
- (a) interest at a rate of 30% per annum on the outstanding principal;
 - (b) a one time fee of \$20 for a dishonoured cheque or a dishonoured pre-authorized debit.
- (3) The maximum charges under this section include all amounts collected directly or indirectly from the borrower.

Prohibited practices – amount of loan

- 18** A payday lender must not issue a payday loan in excess of 50% of the borrower's net pay or other net income to be received during the term of a payday loan.

Prohibited practices – tied selling

- 19** (1) A payday lender must not make a payday loan contingent on the supply of other goods or services.
- (2) A payday loan agreement must not include a term or condition relating to the supply of other goods or services.
- (3) A payday loan agreement must include a statement that the supply of other goods or services is separate and optional.

Prohibited practices – collection from employer

- 20 A payday loan agreement must not contain a provision giving the lender permission to collect on a delinquent loan from the borrower's employer.

Prohibited practices – miscellaneous

- 21 (1) A payday lender must not require that a payday loan be due before the first day on which the borrower will receive his or her pay or other income following the date of the loan.
- (2) A payday lender must not state or imply that a payday loan will improve the borrower's credit rating if it will not do so.
- (3) A payday lender must not require, request or accept information that would give the payday lender direct access to a borrower's bank account, other than pre-authorization for repayment of a specific payday loan.
- (4) A payday lender must not include an enticement to enter into a payday loan for a prize or reward in a representation or advertisement.
- (5) A payday lender must not enter into a payday loan agreement that does not comply with this regulation.

Prohibited practices – repayment

- 22 A payday lender must not accept a cheque from the borrower unless it is payable to the lender.

Prohibited practices – maximum repayment

- 23 (1) In this section, "pay period" means
- (a) the period from the date on which the payday loan is entered into until the day on which the borrower next receives his or her pay or other income, or
- (b) a period during the term of a payday loan from the day on which a borrower receives his or her pay or other income until the day on which the borrower next receives his or her pay or other income.
- (2) A payday lender who enters into a third or subsequent payday loan agreement with a borrower in a 62-day period must,
- (a) if the borrower is paid or otherwise receives income on a bi-weekly, semi-monthly or more frequent basis, provide in the loan agreement that repayment is to be spread over at least 3 pay periods, or
- (b) if the borrower is paid or otherwise receives income on a less frequent basis than that referred to in paragraph (a), provide in the loan agreement that repayment is to be spread over at least 2 pay periods.
- (3) A payday lender must not require a repayment under a loan agreement referred to in subsection (2) that is more than,
- (a) for a borrower referred to in paragraph (a) of that subsection, 35% of the sum of the principal and the cost of borrowing in relation to the loan, or
- (b) for a borrower referred to in paragraph (b) of that subsection, 50% of the sum of the principal and the cost of borrowing in relation to the loan.

- (4) This section does not apply with respect to a payday loan that is made in anticipation of income that is to be received by the borrower as a lump sum on a one-time basis during the term of the payday loan.

Consequence of failure to comply with section 23

- 24** Despite section 17, if a payday lender contravenes section 23,
 - (a) all amounts in relation to the payday loan other than the principal cease to be permissible charges, and
 - (b) the borrower is not liable to pay the lender any amount that exceeds the principal of the payday loan.