

2016 Bill 15

Second Session, 29th Legislature, 65 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 15

**AN ACT TO END
PREDATORY LENDING**

THE MINISTER OF SERVICE ALBERTA

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 15

2016

AN ACT TO END PREDATORY LENDING

(Assented to _____, 2016)

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

Definitions

1 In this Act,

- (a) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (b) “payday lender” means a payday lender as defined in the *Fair Trading Act*;
- (c) “payday loan” means a payday loan as defined in the *Fair Trading Act*.

Promotion of alternatives to payday loans

2 The Minister shall, in consultation with provincial financial institutions and community advocacy groups, promote the development, implementation and use of short-term lending options as an alternative to payday loans.

Payday lender information, data

3 A payday lender shall submit information and data to the Minister in accordance with the regulations.

Ministerial report

4(1) The Minister shall, on an annual basis, as soon as practicable after receipt of the applicable information and data, prepare a report respecting

- (a) progress in the development, implementation and use of the short-term lending options referred to in section 2, and
- (b) the status of the payday loan industry, including
 - (i) the total value of payday loans provided in Alberta,
 - (ii) the number of payday loan agreements entered into,
 - (iii) the number of repeat payday loan agreements entered into,
 - (iv) the average size and term length of payday loans, and
 - (v) the total value of payday loans that have gone into default and been written off.

(2) The Minister shall, on an annual basis beginning in 2018, on completion of the report referred to in subsection (1), lay the report before the Legislative Assembly if the Legislative Assembly is sitting and if it is not sitting, within 15 days after the commencement of the next sitting.

(3) This section is repealed on the coming into force of section 5(1) and (2).

Maximum total cost of borrowing

5(1) Despite Part 12.1 of the *Fair Trading Act*, a payday lender shall not, with respect to a loan offered, arranged or provided by the lender, charge, require or accept a total cost of borrowing that exceeds 60% of the principal amount of the payday loan when the cost of borrowing is calculated on an annual basis.

(2) The maximum total cost of borrowing under subsection (1) must include the fees for all mandatory and optional services provided by the payday lender in relation to a payday loan and any fees and charges set out in the regulations.

(3) Subsections (1) and (2) come into force on Proclamation.

(4) A Proclamation may be issued under subsection (3) only if the Lieutenant Governor in Council is satisfied, pursuant to a report prepared by the Minister under section 4, that alternative options to payday loans are available, and that the alternative options are being utilized by a sufficient number of individuals who would otherwise enter into payday loan agreements.

Offences and penalties

6 A person who contravenes section 3 or 5(1) is guilty of an offence and is liable to a fine of not more than

- (a) \$300 000, or
- (b) 3 times the amount obtained by the defendant as a result of the offence,

whichever is greater, or to imprisonment for a term of not more than 2 years.

Regulations

7 The Minister may make regulations

- (a) respecting the total cost of borrowing, including, without limitation, regulations respecting
 - (i) the calculation of the total cost of borrowing, and
 - (ii) the fees and charges to be included in and excluded from the total cost of borrowing;

- (b) respecting the provision of information and data by payday lenders.

Amends RSA 2000 cF-2

8(1) The *Fair Trading Act* is amended by this section.

(2) Section 3 is amended by adding the following after clause

(c):

- (d) a borrower to whom Part 12.1 applies.

(3) The following is added after section 124:

Part 12.1 Payday Loans

Interpretation

124.1 In this Part,

- (a) “cash card” means a card or other device issued, supplied or provided by a payday lender to the borrower of a payday loan, instead of an advance of cash or a transfer of money to the order of the borrower, that can be used to obtain cash or acquire goods and services, but does not include a credit card;
- (b) “discounting” means the practice of deducting or withholding from the initial advance of a payday loan an amount representing any portion of the cost of borrowing;
- (c) “licence” means a payday loan business licence;
- (d) “pay period” means

Explanatory Notes

8(1) Amends chapter F-2 of the Revised Statutes of Alberta 2000.

(2) Section 3 presently reads:

3 None of the rights or remedies under this Act or the regulations restrict, limit or derogate from any legal, equitable or statutory right or remedy that the following may have:

(a) a consumer;

(b) a person dealing with a reporting agency as defined in Part 5, licensee or loan broker;

(c) a borrower or lessee to which Part 9 applies.

(3) Adds Part 12.1 Payday Loans.

- (i) the period from the date on which a payday loan is entered into until the day on which the borrower next receives his or her pay or other income, or
 - (ii) 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;
- (e) “payday lender” means a person who offers, arranges or provides payday loans;
- (f) “payday loan” means any advancement of money with a principal of \$1500 or less and a term of 62 days or less made in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature, but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbrokering, a line of credit or a credit card;
- (g) “payday loan business” means the activity of offering, arranging for or providing payday loans by a payday lender;
- (h) “rollover loan” means the extension or renewal of a payday loan that imposes additional fees or charges on the borrower, other than interest, and includes the advancement of a new payday loan to pay out an existing payday loan.

Application

124.11 This Part applies

- (a) to every payday lender who offers, arranges or provides a payday loan to a borrower in Alberta, whether the payday lender operates from business premises or on the Internet, and
- (b) to each payday loan, regardless of the number of payday lenders involved in the payday loan.

Express consent

124.12 The express consent referred to in this Part must be in a verifiable form, including, but not limited to, writing and audio recordings.

Prohibited practices

124.2(1) A payday lender shall not engage in any of the following practices:

- (a) discounting the principal amount of a payday loan;
- (b) collecting or receiving any fees or charges before the first payday loan instalment payment is due;
- (c) granting a rollover loan;
- (d) accepting a cheque from a borrower that is not payable to the payday lender;
- (e) subject to the regulations, requiring a payday loan instalment payment to be due on a day before the day on which a borrower will receive his or her pay or other income for the pay period to which that instalment payment relates;
- (f) requiring, requesting or accepting information or consent that would give the payday lender or a third party direct access to a borrower's bank account, other than information required for pre-authorization for repayment of a specific payday loan;
- (g) attempting to process a payday loan instalment payment before the day on which it is due;
- (h) making withdrawals from a borrower's account without the express consent of the borrower;
- (i) charging any amount to a borrower to whom the payday lender provides a payday loan in addition to the fees provided for in the agreement with that borrower in relation to the payday loan;
- (j) charging a fee for converting a payday loan cheque issued by the payday lender to cash;

- (k) failing to include the name of the payday lender as shown on the payday lender's licence in all contact and correspondence with the borrower;
- (l) making any call in person or by telephone for the purpose of collecting or attempting to collect an outstanding payday loan payment except between 7 a.m. and 10 p.m. in Alberta;
- (m) directly or indirectly threatening or stating an intention to proceed with any action for which there is no lawful authority;
- (n) contacting an individual other than the borrower for the purposes of collecting or attempting to collect an outstanding payday loan payment;
- (o) contacting or attempting to contact any individual in respect of an outstanding payday loan payment by any means in such a manner as to constitute harassment, including but not limited to
 - (i) the use of threatening, profane, intimidating or coercive language,
 - (ii) the use of undue, excessive or unreasonable pressure, or
 - (iii) the use of telephone, e-mail, a call in person or other methods of contact, other than traditional mail, to call or send messages excessively;
- (p) giving any person, directly or indirectly, by implication or otherwise, any false or misleading information, including but not limited to references to the police, a law firm, prison, credit history, court proceedings or a lien or garnishment;
- (q) contacting a borrower's spouse or adult interdependent partner, relative, neighbour, friend or acquaintance unless the contact is limited to the purpose of obtaining the borrower's residential address, personal telephone number or employment telephone number;

- (r) contacting a borrower's employer for any purpose other than to confirm the borrower's employment status and business title, the business address of the borrower's place of employment or the date of the borrower's next payday;
- (s) contacting a borrower at the borrower's place of employment for the purposes of collecting or attempting to collect an outstanding payday loan payment;
- (t) contacting a borrower at the borrower's place of employment, for any reason other than collecting or attempting to collect an outstanding payday loan payment, if the borrower
 - (i) requests the payday lender not to contact the borrower there,
 - (ii) makes reasonable arrangements to discuss the payday loan with the payday lender, and
 - (iii) discusses the payday loan with the payday lender in accordance with the arrangements;
- (u) communicating information about a payday loan or the existence of a payday loan to any person without the express consent of the borrower;
- (v) entering into or arranging wage assignments with a borrower or the employer of a borrower;
- (w) publishing or threatening to publish a notice of a borrower's failure to pay;
- (x) giving false, misleading or deceptive information in advertisements, solicitations or negotiations with respect to a payday loan;
- (y) soliciting, negotiating or entering into an agreement with a borrower respecting another form of credit at a time when a payday loan entered into by the borrower is outstanding;
- (z) actively soliciting individuals through direct contact by mail, phone, fax, e-mail or a social media website.

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

Tied selling prohibited

124.21(1) A payday lender shall not make a payday loan contingent on the supply of other goods or services.

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

(3) A payday lender shall ensure that each payday loan agreement includes a statement that the supply of other goods or services is separate and optional.

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

Instalment payments

124.3(1) A payday lender shall ensure that a payday loan agreement provided to a borrower contains a term requiring the borrower to repay the payday loan through an instalment plan.

(2) The payday lender shall ensure that the instalment plan allows the borrower to repay the loan over a period of at least 42 days and no more than 62 days regardless of any other term stated in the payday loan agreement.

(3) A payday lender shall ensure that

- (a) if the borrower is paid or otherwise receives income on a semi-monthly, bi-weekly or more frequent basis, the payday loan agreement specifies 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 basis that is less frequent than those referred to in clause (a), the payday loan agreement specifies that repayment is to be spread over at least 2 pay periods.

(4) A borrower may pay all or part of the outstanding balance under a payday loan agreement at any time without incurring any prepayment charge or penalty, regardless of the number of instalments remaining.

(5) A payday lender shall comply with requirements respecting instalment plans as set out in the regulations.

Financial literacy information

124.31 A payday lender shall

- (a) display financial literacy information, and
- (b) provide borrowers with financial literacy information

as required by the regulations.

Cancellation period

124.4(1) A borrower under a payday loan agreement may, without any reason, cancel the agreement

- (a) until the end of the 2nd day after the payday lender gives a copy of the agreement to the borrower, if the payday lender is open for business on that day, or
- (b) if the payday lender is not open for business on the day referred to in clause (a), until the end of the first day after that day that the payday lender is open for business.

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

- (a) give written notice to the payday lender within the time period set out in subsection (1), and
- (b) return to the payday lender the full amount received by the borrower.

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

- (a) use the copy of the cancellation notice provided by the payday lender under section 124.5(2), or
- (b) provide notice in writing, signed by the borrower, of the borrower's intention to cancel the payday loan agreement.

(4) On receiving notice of cancellation from a borrower and repayment of the full amount received by the borrower in accordance with subsections (2) and (3), the payday lender

shall give the borrower an acknowledgment of the receipt of the loan cancellation.

(5) An acknowledgment of the receipt of a loan cancellation under subsection (4) must be in the form submitted to the Director under the regulations.

(6) A payday lender shall not charge

- (a) interest on a payday loan that has been cancelled, or
- (b) a fee for the cancellation of a payday loan.

Standard content of agreements, forms, other documents

124.41(1) The Director may establish standard content for agreements, forms and other documents used by payday lenders, including, but not limited to, payday loan agreements, cancellation forms, receipts and pre-authorized debit agreements.

(2) If the Director establishes standard content for a document, a payday lender shall use that standard content.

Agreement and advance

124.5(1) A payday lender shall ensure that the terms, information and statements contained in payday loan documents are clear and comprehensible.

(2) A payday lender shall give a borrower a copy of the payday loan agreement at the time it is entered into by the borrower, together with a copy of the cancellation notice that may be used by the borrower for the purposes of section 124.4.

(3) With the borrower's express consent, a payday lender may, for the purposes of subsection (2), provide a copy of the full payday loan agreement and any required accompanying documentation by e-mail sent to the address provided by the borrower for that purpose, or by other electronic means.

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

(5) In the case of a payday loan obtained by means of the Internet or by telephone, the payday lender is deemed to have

complied with subsection (4) if the payday lender delivers instructions to the payday lender's financial services provider to transfer the amount of the advance to the borrower on the same day as the day on which the payday loan agreement is entered into by both the borrower and the payday lender.

(6) For the purposes of subsection (5), "financial services provider" includes a bank listed in Schedule I, II or III of the *Bank Act* (Canada), a treasury branch, a credit union, a trust corporation or loan corporation registered under the *Loan and Trust Corporations Act* or an organization that provides remote funds transfers, electronic funds transfers or any similar method of transferring money.

Acknowledgment of receipt of payment

124.51(1) On receiving payment from a borrower in person at its business premises, the payday lender shall immediately give the borrower an acknowledgment of the receipt of that payment, in the form submitted to the Director under the regulations.

(2) The payday lender shall ensure that the acknowledgment referred to in subsection (1) or (4) specifies

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

(3) For the purposes of subsection (1), with the express consent of the borrower, a payday lender may provide a copy of an acknowledgment of the receipt of payment by e-mail or by other electronic means.

(4) On receiving payment from a borrower by means other than in person at its business premises, the payday lender shall provide an acknowledgment of the receipt of that payment to the borrower electronically sent to the e-mail address provided by the borrower, in the form submitted to the Director under the regulations.

Payout of balance on cash card

124.6(1) If in respect of a payday loan the payday lender issues a cash card to the borrower, the borrower is entitled to be paid in cash the amount of credit remaining on the card where

- (a) the balance of credit remaining on the cash card is less than \$25, or
- (b) the payday loan has been repaid by the borrower and the cash card has expired.

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

Maximum allowable cost of borrowing

124.61(1) A payday lender shall not charge, require or accept a total cost of borrowing that exceeds 15% of the principal amount of the payday loan.

(2) The maximum total cost of borrowing under subsection (1) must include the fees for all mandatory and optional services provided by the payday lender in relation to a payday loan and any other fees or charges set out in the regulations.

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

- (a) interest at a rate of 2.5% per month, not to be compounded;
- (b) a one-time fee in an amount determined by the Director for each dishonoured cheque or dishonoured pre-authorized debit.

Consequence of failure to comply

124.7 If, in respect of section 124.2, 124.21, 124.3, 124.5(2) or (4), 124.51(1), (2) or (4), 124.6 or 124.61, any requirement is not complied with or any prohibition is contravened,

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

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

Signs and notices

124.8(1) A payday lender shall prominently display at each of the payday lender's business premises

- (a) a sign visible to borrowers immediately when they enter the premises, and
- (b) a sign visible to borrowers at each place within the premises where a payday loan is negotiated.

(2) Subject to the regulations, the payday lender shall ensure that the signs required under subsection (1) contain only the following wording or information in the following order:

- (a) the words "Maximum total cost of borrowing permitted in Alberta for a payday loan: \$15 per \$100 lent";
- (b) the words "We charge _____", indicating the payday lender's total charges for a payday loan;
- (c) the words "Payday loans are a form of high-cost credit";
- (d) the words "This information meets the requirements of the *Fair Trading Act*";
- (e) the payday lender's licence number;
- (f) any other wording or information prescribed by the regulations.

(3) If a payday lender offers payday loans with varying costs of borrowing, the payday lender shall ensure that the sign wording referred in subsection (2)(a) indicates the highest cost of borrowing that the payday lender charges any borrower.

(4) A payday lender who engages in the payday loan business by means of the Internet shall display the wording and information required under subsection (2) on a page of the payday lender's website that precedes the payday loan application.

(5) A payday lender who engages in the payday loan business by telephone shall disclose to a prospective borrower the wording and information required under subsection (2).

Creation, retention of records

124.81(1) A payday lender shall create and maintain records relating to the payday lender's collection activities with respect to each payday loan, including but not limited to records respecting

- (a) letters, e-mail and other correspondence sent to the borrower, and
- (b) logs of telephone calls and other records of contact such as note lines.

(2) A payday lender shall retain the following documents and records in respect of each payday loan for a period of 3 years after the date on which the payday loan was fully repaid, or after the later of the date of default or the date of last payment, if the loan is not fully repaid:

- (a) each payday loan agreement;
- (b) each acknowledgment of receipt of payment;
- (c) any notice of cancellation;
- (d) the documents and records referred to in subsection (1);
- (e) any other documents in respect of the payday loan.

Use, disclosure of personal information

124.9 A payday lender shall ensure that personal information that is contained in an application for a payday loan, a payday loan agreement or other documents in respect of a payday loan

- (a) is used or disclosed only for the purpose of providing, administering or collecting a payday loan, and
- (b) is not used or disclosed in connection with the provision of any other goods or services.

Regulations

124.91 The Minister may make regulations

- (a) respecting repayment of payday loans by instalment payments;
- (b) respecting pre-authorized debit, including pre-authorized debit agreements;
- (c) respecting advertising, including advertising outside and inside the business premises of a payday lender;
- (d) respecting the provision and display of financial literacy information;
- (e) respecting the total cost of borrowing, including, without limitation, regulations respecting
 - (i) the calculation of the total cost of borrowing, and
 - (ii) the fees and charges to be included in and excluded from the total cost of borrowing;
- (f) respecting the signs and notices at a payday lender's business premises;
- (g) respecting the duties and obligations of payday lenders;
- (h) respecting standards or rules governing payday lenders;
- (i) defining words used but not defined in this Part;
- (j) providing for any transitional matters the Minister considers necessary to ensure the transition of matters respecting payday loans to this Part.

(4) Section 161 is amended by adding the following after clause (i):

- (i.1) in Part 12.1
 - (i) sections 124.2, 124.21(1), (2) and (3), 124.4(4) and (6), 124.41(2), 124.5(2) and (4), 124.51(1), (2) and (4), 124.6(2), 124.61, 124.8, 124.81 and 124.9;

(4) Section 161 presently reads in part:

161 Any person who contravenes any of the following provisions is guilty of an offence:

(ii) section 124.3;

(5) This section, except as provided for in subsection (6), comes into force on August 1, 2016.

(6) The following provisions come into force on Proclamation:

- (a) subsection (3) to the extent that it enacts sections 124.3, 124.31 and 124.91(a), (b) and (d);
- (b) subsection (4) to the extent that it enacts section 161(i.1)(ii).

(5) Coming into force.

(6) Coming into force on Proclamation.

