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2007 Legislative Session: 3rd Session, 38th Parliament
THIRD READING

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Certified correct as passed Third Reading on the 23rd day of October, 2007
Ian D. Izard, Q.C., Law Clerk

HONOURABLE JOHN LES
MINISTER OF PUBLIC SAFETY
AND SOLICITOR GENERAL

BILL 27 — 2007
BUSINESS PRACTICES AND CONSUMER PROTECTION
(PAYDAY LOANS) AMENDMENT ACT, 2007

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

1 Section 1 (1) of the Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2, is amended by adding the following definition:

"payday loan" has the meaning given to it in section 112.01
[definitions]; .

2 Section 18 is amended by adding the following subsection:

(3) Part 6.1 applies instead of this Part in respect of any contract for the supply, arrangement or provision of a payday loan.

3 Section 58 is amended

(a) in subsection (2) by striking out "subsection (3)," and substituting "subsections (3) and (4)," and

(b) by adding the following subsection:

(4) For the purposes of credit agreements that are payday loans, Part 6.1 applies instead of Divisions 3 to 9 and section 104 of this Part.

4 The following Parts are added:

Part 6.1 — Payday Loans

Definitions

112.01 In this Part:

"advance" has the same meaning as in Part 5;

"APR" has the same meaning as in Part 5;

"assignment of wages" has the same meaning as in the *Employment Standards Act*;

"borrower" has the same meaning as in Part 5;

"cash card" means a card or other device that

(a) can be used to obtain cash or acquire goods or services, but does not include a credit card, and

(b) is issued by a payday lender to the borrower of a payday loan instead of advancing cash or transferring money to the borrower or to the order of the borrower;

"credit card" has the same meaning as in Part 5;

"default charge" has the same meaning as in Part 5;

"interest" means charges that accrue over time and are determined by applying a rate to the principal of a payday loan from time to time under the loan agreement;

"loan agreement" means, in relation to a payday loan, the written agreement required under section 112.06 [*payday loan agreements*];

"payday lender" means a supplier who offers, arranges or provides payday loans to or for consumers;

"payday loan" means a credit agreement, as defined in section 57, that is a loan of money, with a principal of \$1 500 or less and for 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, pawnbroking, a line of credit or a credit card;

"payday loan term" means, in relation to the duration of a payday

loan, the period between the first advance and the end of the period in respect of which payments are required under the payday loan;

"payment" has the same meaning as in Part 5;

"permissible charge" means a fee, penalty, rate, commission or charge specified by regulation under section 197.1 (1) (a);

"rollover" means any of the following:

the extension or renewal of a payday loan that imposes additional fees or charges on the borrower, other than interest;

the advancement of a new payday loan to pay out an existing payday loan;

"third party service charge" means, in relation to a cash card issued by a payday lender, any fee, rate, commission, charge or other amount that is charged or required by a person who is not the payday lender, or that is paid to such a person, for use of the cash card.

Limits on total cost of borrowing — payday loans

112 . 02 (1) The Lieutenant Governor in Council may, by regulation, set the maximum amount, or establish a rate, formula, tariff or method of determining the maximum amount, that may be charged, required or accepted by a payday lender in respect of

(a) the total cost of credit for a payday loan,

(b) any interest, and

(c) any permissible charge.

(2) A payday lender must not charge, require or accept from the borrower or consumer any amount that exceeds a maximum set or determined under subsection (1).

Prohibitions respecting interest charges

112 . 03 (1) A payday lender must not charge, require or accept any interest in respect of a payday loan for any period of time

(a) before the first advance is received by the borrower, or

(b) after

(i) the date on which the last payment from the borrower is required under the loan agreement, or

(ii) if the borrower repays the payday loan before the end

of the payday loan term under the loan agreement, the date of that payment.

(2) Despite subsection (1) (b) (i), if the borrower fails to make the last payment required under the loan agreement, the payday lender must not charge, require or accept any interest in respect of the payday loan for any period of time that exceeds the maximum number of days prescribed under section 197.1 (1) (c).

(3) A payday lender must not charge, require or accept interest on anything other than the outstanding principal of a payday loan.

Fees, penalties and charges prohibited unless allowed by regulation

112.04 (1) A payday lender must not charge, require or accept

- (a) any fee, penalty, rate, commission, consideration, charge or other amount unless it is a permissible charge,
- (b) any amount that is not disclosed in the loan agreement,
- (c) any amount that exceeds the amount disclosed in the loan agreement,
- (d) any amount for cancellation of a payday loan under section 112.05 [*payday loan cancellation rights*],
- (e) any amount for making a payment before it is due under the loan agreement or for repayment of a payday loan before the end of the payday loan term under the loan agreement, or
- (f) any amount for or in relation to a cash card issued to a borrower.

(2) Subject to sections 112.02 (2) [*limits on total cost of borrowing*] and 112.03 [*prohibitions respecting interest charges*], subsection (1) (e) of this section does not prevent the payday lender from requiring interest in accordance with those sections.

(3) For certainty, the prohibition in subsection (1) (f) applies even if

- (a) the borrower fails to make any payment under the loan agreement, or
- (b) the payday loan in respect of which the card is issued has been repaid by the borrower.

Payday loan cancellation rights

112.05 (1) A borrower may cancel a payday loan at any time before the end of

the next day that the payday lender is open for business following the date on which the borrower receives the first advance, or before the end of any longer period that may be prescribed in the regulations.

(2) For the purposes of subsection (1),

(a) receipt of a cash card constitutes an advance if the cash card is in immediate effect on that receipt and can be used by the borrower to obtain cash or acquire goods or services at that time, and

(b) if the next business day falls, or the prescribed cancellation period expires, on a holiday, the time for exercising the cancellation right under that subsection is extended to the end of the next day that the payday lender is open for business that is not a holiday.

(3) A borrower may cancel a payday loan at any time if the payday lender

(a) does not advise the borrower of the borrower's cancellation right under subsection (1),

(b) fails to satisfy any of the requirements of section 112.06 (2), (4) (a) and (5) [*payday loan agreements*], or

(c) contravenes a prescribed provision of this Act or the regulations.

(4) To exercise cancellation rights under this section, the borrower must

(a) complete the cancellation notice provided by the payday lender under section 112.06 (5) and give that notice to the payday lender in accordance with the regulations, and

(b) repay, by cash, certified cheque or money order or in another prescribed manner, the amount of all advances made to the borrower under the payday loan on or before the date of cancellation.

(5) For the purposes of subsection (4) (b),

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

(b) if the first advance was made in the form of a cash card referred to in subsection (2), a return of that card to the payday lender is to be considered a repayment of the first advance to the extent of the cash or credit balance remaining

on the cash card.

(6) On the cancellation of a payday loan under this section, the payday lender must immediately give the borrower a receipt for the amount the borrower paid or returned to the payday lender on cancelling the loan.

(7) Cancellation of a payday loan under this section extinguishes every liability and obligation of the borrower under or related to the loan agreement.

Payday loan agreements: required terms and disclosure statements

112 . 06 (1) The terms of a payday loan must be included in a written agreement that is signed and dated by the borrower.

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

- (a) the payday lender's name and, if different, the name under which the payday lender carries on business;
- (b) the payday lender's business address and, if different, the payday lender's mailing address;
- (c) the payday lender's licence number, telephone number and, if the lender has a fax number or email address, that fax number and email address;
- (d) the borrower's name;
- (e) the date of the agreement and the date or dates on which the first advance and any other advance will be made to the borrower or to the order of the borrower;
- (f) the principal of the payday loan;
- (g) the payday loan term of the payday loan;
- (h) the amount of cash advanced to the borrower or the amount of money transferred to the borrower or to the order of the borrower;
- (i) the amount of credit available on a cash card issued to the borrower;
- (j) if a cash card issued to the borrower has an expiry date, the date of that expiration;
- (k) the total cost of credit and the APR for the payday loan;
- (l) a statement that interest applies only to the principal of the payday loan;

- (m) the rate of interest that applies to the principal of the payday loan, together with a statement of the total amount of interest that is payable under the loan;
 - (n) each of the permissible charges that apply, together with a statement of the amount of each of those permissible charges;
 - (o) the date on which each payment is due to the payday lender and the amount of each of those payments;
 - (p) a statement that the payday loan is a "high cost loan";
 - (q) a statement of the borrower's rights of cancellation under section 112.05, setting out how those rights can be exercised and identifying the time by which the borrower can exercise them;
 - (r) a statement of the remedies available to the borrower under section 112.10 [*remedies*];
 - (s) if a cash card is to be issued to the borrower, a statement identifying that third party service charges may apply for use of the card;
 - (t) any other term, information or statement that may be prescribed under section 197.1 (1) (i).
- (3) The payday lender must ensure that the terms, information and statements required under subsection (2) are written in a clear and comprehensible manner.
- (4) Before the borrower signs the loan agreement, the payday lender must
- (a) review with the borrower the matters described in subsection (2) (k) and (q), and
 - (b) require that the borrower initial each of those matters in the agreement.
- (5) The payday lender must give the borrower a copy of the loan agreement at the time it is signed by the borrower, together with a cancellation notice in the form, approved by the director, which may be used by the borrower for the purposes of section 112.05 [*payday loan cancellation rights*].

Application of payments, entitlement to prepay loan and receipts for payments

112.07 (1) Despite anything in the loan agreement,

- (a) the payday lender must apply payments towards the payday loan first to any interest accrued or accruing on the amount payable under the loan, then to any permissible charges under this Part and subsequently to the principal of the loan, and
 - (b) the borrower is entitled to prepay, at any time,
 - (i) the full outstanding balance owing under the loan agreement, and
 - (ii) any amount, whether full or partial, before it is due under the loan agreement.
- (2) On receiving payment, the payday lender must immediately give the borrower a receipt for that payment and, if there is a balance outstanding on the payday loan, the receipt must
- (a) specify the amount of the payment that has been applied to
 - (i) interest,
 - (ii) any permissible charges, and
 - (iii) the principal of the loan, and
 - (b) if another payment is due under the loan agreement, specify
 - (i) the balance of the principal outstanding on the loan,
 - (ii) the date on which the next payment is due under the agreement, and
 - (iii) the amount of that next payment.

Other prohibited payday lender practices

112 . 08 (1) A payday lender must not do any of the following:

- (a) grant rollovers;
- (b) issue a new payday loan to a borrower who already has a payday loan issued by the lender;
- (c) issue a payday loan in excess of a prescribed portion of a borrower's net pay or other net income to be received during the payday loan term;
- (d) require or request from a borrower any payment in excess of a prescribed portion of the borrower's net pay or other net income to be received during the payday loan term;
- (e) discount the principal amount of a payday loan by

deducting or withholding from the initial advance an amount representing any portion of the total cost of credit;

(f) require, request or accept any undated cheque;

(g) require, request or accept any post-dated cheque, pre-authorized debit or future payment of a similar nature, for any amount exceeding the amount to repay the payday loan by the due date, including interest and permissible charges;

(h) require or request any payment from the borrower before it is due under the loan agreement;

(i) require or request that the borrower insure a payday loan;

(j) require, request or accept an assignment of wages from the borrower of a payday loan;

(k) require, request or accept from the borrower or any other person, as security for a payday loan, any personal property or real property;

(l) require, request or accept from the borrower or any other person, as security for a payday loan, any documentation that may be used to transfer title in the borrower's personal property or real property;

(m) engage in any other practice prohibited by regulations under section 197.1.

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

Payout of balances on cash cards

112 . 09 (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 the balance of credit remaining on the card in either of the following circumstances:

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

(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 must pay the balance immediately on demand by the borrower or by the

director.

(3) On return of a cash card under this section, the payday lender must immediately give the borrower a receipt for the cash card and the receipt must specify the amount paid to the borrower.

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

(5) In subsection (4), "**delinquent borrower**" means a borrower who fails to repay a payday loan by the end of the payday loan term under the loan agreement.

Remedies

112.10 (1) The borrower is not liable to pay the payday lender any amount that

(a) exceeds the maximum set by regulation under section 112.02 (1), or

(b) a lender is prohibited from charging, requiring or accepting under section 112.03 [*prohibitions respecting interest charges*] or 112.04 [*fees, penalties and charges prohibited unless allowed by regulation*].

(2) If the borrower has paid an amount referred to in subsection (1), the borrower is entitled to a refund of all monies paid in excess of the principal of the payday loan.

(3) If a payday lender contravenes section 112.08 (1) (a) [*other prohibited payday lender practices*] by granting a rollover of a payday loan, the borrower is not liable to pay the payday lender any amount that exceeds the principal of that payday loan, and, for certainty, if the rollover is an advancement of a new payday loan to pay out an existing payday loan, the borrower is not liable to pay the payday lender any amount that exceeds the principal of the existing payday loan.

(4) If the borrower has paid an amount in excess of the principal referred to in subsection (3), the borrower is entitled to a refund of that amount.

(5) If a payday lender contravenes section 112.08 (1) (e) [*prohibited payday lender practices — discount the principal*] by deducting or withholding any portion of the total cost of credit from the first advance under a payday loan, the borrower is not liable to pay the payday lender any amount that exceeds that advance less the portion deducted or withheld.

(6) If the borrower has paid an amount in excess of the advance less the portion described in subsection (5), the borrower is entitled to a refund of that amount.

(7) If the borrower is entitled to a refund under subsection (2), (4) or (6), the payday lender must provide the refund immediately on demand by the borrower or by the director.

(8) If the terms of a loan agreement require the borrower to pay an amount referred to in subsection (1), the borrower is responsible to repay only the principal of the payday loan and subsections (2) and (7) apply in respect of any payments made in excess of the principal.

(9) If the terms of a loan agreement provide for a rollover and require the borrower to pay an amount in excess of the principal referred to in subsection (3), the borrower is responsible to repay only that principal and subsections (4) and (7) apply in respect of any payments made in excess of that principal.

(10) If the terms of a loan agreement provide for a deduction or withholding described in subsection (5) and require the borrower to pay an amount in excess of the advance less the portion described in that subsection, the borrower is only responsible to repay an amount equal to the sum of the advance less that portion and subsections (6) and (7) apply in respect of any payments made in excess of that amount.

(11) The remedies under this section are in addition to any other remedy available to the borrower and are additional to any other penalty that the payday lender may be subject to under this Act or the regulations.

Application of Part 6.1 to savings institutions

112 . 11 This Part does not apply to savings institutions that offer, arrange or provide payday loans to or for consumers, except to the extent provided by the regulations.

Part 6.2 — Government Cheque Cashing Fees

Definitions

112 . 12 In this Part:

"cheque cashing fee" means any of the following:

- (a) a fee, rate, commission, consideration, charge or other amount charged, paid or given for cashing or negotiating a government cheque;

(b) any other fee, rate, commission, consideration, charge or other amount designated by regulation as a cheque cashing fee;

"government body" means a government body within the meaning of the *Financial Administration Act* that is designated by regulation under section 112.15;

"government cheque" means a cheque, or other written order to pay, that is drawn on an account of any of the following:

- (a) the government of British Columbia;
- (b) the government of Canada;
- (c) a government body;
- (d) a local government body;

"local government body" means a local authority within the meaning of the *Community Charter* that is designated by regulation under section 112.15.

Unauthorized cheque cashing fees prohibited

112.13 A person must not charge, require or accept a cheque cashing fee except as permitted by regulations under this Part.

Consequence of failure to comply

112.14 (1) If a person contravenes section 112.13,

- (a) a consumer who pays or is charged or required to pay the cheque cashing fee or any part of it is not liable to pay that cheque cashing fee, and
- (b) the person must, immediately on demand by the consumer or the director, reimburse the consumer in cash for
 - (i) the total amount paid as a cheque cashing fee, and
 - (ii) the value of any other consideration given.

(2) Subsection (1) is in addition to any other penalty that the person may be subject to under this Act or the regulations.

Regulations

112.15 The Lieutenant Governor in Council may make regulations as follows:

- (a) designating a fee, rate, commission, consideration, charge or other amount as a cheque cashing fee for the purposes of

this Part;

(b) designating a government body under the *Financial Administration Act* as a government body for the purposes of this Part;

(c) designating a local authority under the *Community Charter* as a local government body for the purposes of this Part;

(d) setting the maximum amount, or establishing a rate, formula, tariff or method of determining the maximum amount, that may be charged, required or accepted as a cheque cashing fee;

(e) exempting any transaction or class of transactions or any person or class of persons from the application of this Part or a regulation under this Part;

(f) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable for the administration of this Part.

5 Section 142 is amended by adding the following definition:

"**payday lender**" has the same meaning as in section 112.01 [definitions]; .

6 Section 143 is amended by adding the following paragraph:

(h) payday lender.

7 Section 183 (1) is amended by adding the following paragraphs:

(d.1) giving a cancellation notice under section 112.05 (4) (a) [payday loan cancellation rights];

(d.2) giving a receipt under section 112.05 (6) [payday loan cancellation rights];

(d.3) giving a copy of a payday loan agreement under section 112.06 (5) [payday loan agreements: required terms and disclosure statements] or a cancellation notice referred to in that provision;

(d.4) giving a receipt under section 112.07 (2) [application of payments, entitlement to prepay loan and receipts for payments];

(d.5) giving a receipt under section 112.09 (3) [payout of balances on cash cards]; .

8 Section 189 (4) is amended by adding the following paragraphs:

(f.1) section 112.02 (2) [*limits on total cost of borrowing — payday loans*];

(f.2) section 112.03 (1), (2) or (3) [*prohibitions respecting interest charges*];

(f.3) section 112.04 (1) [*fees, penalties and charges prohibited unless allowed by regulation*];

(f.4) section 112.06 (2) or (5) [*payday loan agreements: required terms and disclosure statements*];

(f.5) section 112.08 (1) [*other prohibited payday lender practices*];

(f.6) section 112.13 [*unauthorized cheque cashing fees prohibited*]; .

9 The following section is added:

Payday loans

197.1 (1) The Lieutenant Governor in Council may make regulations as follows:

(a) specifying fees, penalties, rates, commissions or charges allowed to be charged by payday lenders under Part 6.1 for or in relation to

(i) a payday loan, or

(ii) any goods or services supplied by the payday lender to a borrower or consumer;

(b) respecting the minimum payday loan term;

(c) prescribing the maximum number of days over which interest may accrue under a payday loan;

(d) prescribing a cancellation period for the purposes of section 112.05 (1) [*payday loan cancellation rights*];

(e) prescribing a provision of this Act or the regulations for the purposes of section 112.05 (3) (c) [*payday loan cancellation rights*];

(f) respecting how a borrower may give a cancellation notice for the purposes of section 112.05 (4) (a) [*payday loan cancellation rights*];

(g) respecting when a cancellation notice given in accordance with regulations under paragraph (f) is to be considered

received by the payday lender;

(h) prescribing the manner of repayment for the purposes of section 112.05 (4) (b) [*payday loan cancellation rights*];

(i) prescribing any term, information or statement that must be included in a loan agreement;

(j) respecting loan agreements between borrowers and payday lenders that are not entered into in person;

(k) regulating or prohibiting the offering, arrangement or provision of payday loans by means described in paragraph (j);

(l) prescribing the maximum portion of a borrower's net pay or income for the purposes of section 112.08 (1) (c) and (d) [*other prohibited payday lender practices*];

(m) prohibiting certain practices with respect to payday loans or payday lenders under Part 6.1;

(n) prescribing an amount of credit remaining on a cash card for the purposes of section 112.09 (1) (a) [*payout of balances on cash cards*];

(o) respecting the expiry of cash cards and setting minimum terms;

(p) respecting the application of outstanding credit on a cash card as payment towards a payday loan under section 112.09 (4) [*payout of balances on cash cards*];

(q) providing that one or more provisions of Part 6.1 apply to savings institutions that offer, arrange or provide payday loans to or for consumers;

(r) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable for the administration of Part 6.1.

(2) The definitions in Part 6.1 apply for the purposes of this section.

10 The following section is added:

Transitional — payday loans

203.1 (1) Subject to this section, Part 6.1 does not apply in respect of a payday loan made before this subsection comes into force.

(2) Despite subsection (1), section 112.08 (1) (a) [*other prohibited payday lender practices — rollovers*] and the remedies and penalties available under section 112.10 (3), (4), (7) and (9) [*remedies*] and Part

13 [*Offences and Penalties*] for contravention of section 112.08 (1) (a) apply in respect of a payday loan made before or after this subsection comes into force.

(3) In addition to the exception in subsection (2), the Lieutenant Governor in Council may, by regulation, set the maximum amount, or establish a rate, formula, tariff or method of determining the maximum amount, that may be charged, required or accepted, other than interest, for failure to make a payment as it comes due under a payday loan made before this subsection comes into force.

(4) A payday lender must not charge, require or accept from the borrower any amount that exceeds a maximum set or determined under subsection (3).

(5) Subsections (6) and (7) apply in respect of a payday loan that was made before this subsection comes into force if on or after that date

(a) the borrower fails to make a payment under the payday loan, and

(b) the payday lender contravenes subsection (4) of this section.

(6) If the borrower has paid an amount referred to in subsection (4), the borrower is entitled to a refund of all monies paid in excess of the principal of the payday loan.

(7) If the borrower is entitled to a refund under subsection (6), the payday lender must provide the refund immediately on demand by the borrower or by the director.

(8) The definitions in Part 6.1 apply for the purposes of this section.

(9) This section is repealed 6 months after section 112.02 [*limits on total cost of borrowing — payday loans*] comes into force.

Related Amendment

11 Section 142.1 of the Business Practices and Consumer Protection Act, as enacted by section 3 of the Miscellaneous Statutes Amendment Act (No. 2), 2005, S.B.C. 2005, c. 35, is amended by adding the following subsection:

(5) Subsection (4) (c) does not apply if the designated activity is the offering, arranging or providing of payday loans to or for consumers.

Commencement

12 This Act comes into force by regulation of the Lieutenant Governor in

Council.

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