
EXPLANATORY NOTES

SECTION 1 revokes and replaces the Schedule of reciprocating jurisdictions, adding to the jurisdictions of the United States of America.

SECTION 2 provides for the commencement of these regulations.

Certified a true copy,

Wendy I. MacDonald

Clerk Assistant of the Executive Council

EC2013-67

**PAYDAY LOANS ACT
REGULATIONS**

(Approved by His Honour the Lieutenant Governor in Council dated January 22, 2013.)

Pursuant to section 60 of the *Payday Loans Act* R.S.P.E.I. 1988, Cap. P-2.1, the Lieutenant Governor in Council made the following regulations:

DEFINITIONS

1. In these regulations

- | | Definitions |
|--|------------------------------|
| (a) “Act” means the <i>Payday Loans Act</i> R.S.P.E.I. 1988, Cap. P-2.1; | Act |
| (b) “device” means an instrument, including a debit card or a cheque, that the lender under a payday loan agreement uses to deliver or provide access to all or part of the advance to the borrower in a form other than cash; | device |
| (c) “remote payday loan agreement” means a payday loan agreement entered into when | remote payday loan agreement |
| (i) the borrower is not present with the lender, if no loan broker assisted the borrower in obtaining the payday loan, or | |
| (ii) the borrower is not present with the loan broker or the lender, if a loan broker assisted the borrower in obtaining the payday loan. | |

LICENCES OR RENEWAL OF LICENCES

2. (1) An applicant for a licence or renewal of a licence shall provide the Registrar with

- | | |
|---|---------------------|
| (a) the legal name of the applicant; | |
| (b) the address of each office that the applicant intends to operate when acting as a licensee; | Application process |

	<p>(c) the names of the applicant registered under the <i>Partnership Act</i> R.S.P.E.I. 1988, Cap. P-1 that the applicant intends to use at any office when licensed and an indication of the address of each office at which the applicant intends to use each of the names when licensed; and</p> <p>(d) for each account that the applicant intends to maintain under section 11, the address of the branch of the institution in which the account is located, the account number of the account, an indication for which offices the applicant intends to use the account and the names of all persons with signing authority over the account.</p>
Contents of application and fees	<p>(2) An application for a licence or renewal of a licence shall</p> <p>(a) contain, in the form that the Registrar specifies, the information that the Registrar specifies and that is relevant to the decision to be made by the Registrar as to whether to issue or renew the licence; and</p> <p>(b) be accompanied by the fees required under section 37.</p>
Eligibility requirements	<p>3. The following are the prescribed requirements mentioned in subsections 9(1) and 10(1) of the Act for an applicant for a licence or renewal of a licence:</p> <p>(a) if the applicant is an individual, the applicant must be at least 18 years of age;</p> <p>(b) the applicant shall have paid the fees required under section 37;</p> <p>(c) if the applicant is a corporation, all of its officers and directors who are individuals must be at least 18 years of age;</p> <p>(d) if the applicant is a corporation, at least one officer or director of the corporation must be an individual who is ordinarily resident in Canada.</p>
Certificates of licence	<p>4. (1) Upon issuing a licence or a renewal of a licence, the Registrar shall give the licensee a certificate of licence for the licensee's main office and a certificate of licence for each of the licensee's branch offices, if any.</p>
Main office	<p>(2) If the licensee operates only one office, references in this section to the licensee's main office shall be read as references to that office of the licensee.</p>
Contents of certificate	<p>(3) A certificate of licence mentioned in subsection (1) shall include</p> <p>(a) the licensee's legal name;</p> <p>(b) if the licensee uses a name registered under the <i>Partnership Act</i> at the office in respect of which the certificate is given, the name used at that office;</p> <p>(c) an indication of whether the licensee is a lender or a loan broker;</p> <p>(d) the licence number of the licensee;</p> <p>(e) the address of the office to which the certificate relates;</p> <p>(f) if the licensee operates more than one office, an indication whether the office to which the certificate relates is the main office or a branch office; and</p>

(g) the expiry date of the term of the licence.

(4) At a licensee's main office and each of the licensee's branch offices, if any, the licensee shall post the certificate of licence that relates to the office so that the certificate is visible to persons immediately upon entering the office. Branch offices

(5) If the licensee is a lender that offers to make a remote payday loan agreement with a borrower or is a loan broker that offers to assist a borrower in obtaining a remote payday loan agreement, the licensee shall communicate to the borrower the information that is required to be on the certificate of licence for the main office of the licensee as soon as the borrower makes contact with the licensee. Remote agreement

(6) If the Registrar revokes, suspends, cancels or refuses to renew the licence of a licensee, the licensee shall Revocation,
cancellation,
suspension or
refusal

(a) immediately return to the Registrar all certificates of licence that relate to the licensee's main office and branch offices, if any; and

(b) no longer communicate the information that subsection (5) required the licensee to communicate before the revocation, suspension, cancellation or the refusal to renew, as the case may be.

(7) If a suspension of a licence ends before the term of the licence would have otherwise expired, then, when the suspension ends, End of suspension

(a) the Registrar shall immediately return to the licensee the certificates of licence mentioned in clause (6)(a); and

(b) the licensee shall immediately resume complying with subsection (4) or (5), as the case may be.

(8) A person who is required to return a certificate of a licence to another person under clause (6)(a) or (7)(a) shall do so using a form of delivery that provides proof of delivery. Return of certificate

5. The following are conditions of a licence:

(a) at each office authorized by the licence, the licensee shall display and provide educational materials about the payday lending industry, financial planning, the Act and the regulations that the Registrar approves and that are visible to borrowers immediately upon entering the office; Conditions of
licence

(b) if the licensee is a lender that offers to make a remote payday loan agreement with a borrower or is a loan broker that offers to assist a borrower in obtaining a remote payday loan agreement, the licensee shall

(i) communicate to the borrower, as soon as the borrower makes contact with the licensee, that the educational materials described in clause (a) are available, and

(ii) at the request of the borrower, immediately provide the educational materials to the borrower;

(c) if the licensee is a corporation, all of its officers and directors who are individuals must be at least 18 years of age;

	(d) if the licensee is a corporation, at least one officer or director of the corporation must be an individual who is ordinarily resident in Canada.
Transition, licences	6. The time prescribed for the purposes of subsection 18(1) of the Act is 120 days after the day that subsection comes into force.
Time for further application	7. The time prescribed for the purposes of clause 19(a) of the Act is 12 months.
Change of information	8. (1) If there is a change to any of the information that was included in an application for a licence or renewal of a licence after the applicant makes the application, whether or not the Registrar has issued or renewed the licence, the applicant or the licensee shall notify the Registrar, in writing, within five days after the change occurs and shall set out the nature of the change.
Other notice of the change	(2) Subsection (1) does not apply if any other provision of the Act or the regulations requires the applicant or the licensee to give notice of the change to the Registrar.

GENERAL REGULATION OF LICENSEES

Name of licensee	9. (1) A licence shall not authorize the licensee to operate an office except under the licensee's legal name or a name of the licensee registered under the <i>Partnership Act</i> R.S.P.E.I. 1988, Cap. P-1.
More than one office	(2) A licence shall not authorize the licensee to operate any office under more than one name registered under the <i>Partnership Act</i> , but the name registered under that Act under which the licensee operates any one office may be different from the name registered under that Act under which the licensee operates any other office.
Location of offices	10. (1) A licensee shall maintain at least one office that is physically located in Prince Edward Island.
Dwelling	(2) A licence shall not authorize the licensee to operate an office from a dwelling.
Address for service	(3) A licensee shall maintain an address for service that is in Prince Edward Island.
Bank account or similar account	11. (1) A licensee shall, in respect of the activity for which the licensee is licensed, maintain an account that <ul style="list-style-type: none"> (a) is in the legal name of the licensee; and (b) is located in Canada <ul style="list-style-type: none"> (i) in a bank or an authorized foreign bank within the meaning of section 2 of the <i>Bank Act</i> (Canada), or (ii) in a credit union as defined in the <i>Credit Unions Act</i> R.S.P.E.I. 1988, Cap C-29.1.
More than one account	

(2) A licensee may maintain more than one account under subsection (1) but shall not use more than one such account for any one of the licensee's offices.

(3) The licensee shall ensure that all amounts that the licensee receives or disburses in connection with the activity of the licensee for which an account mentioned in subsection (1) is maintained are deposited into or disbursed from the account, as the case may be.

Deposits and
disbursements

(4) If there is any change in respect of an account mentioned in subsection (1), including a change in the address of the branch of the institution in which the account is located, the offices for which the licensee uses the account or the persons who have signing authority over the account, the licensee shall notify the Registrar in writing of the change and the nature of the change within five days after the change occurs.

Notification of
change

12. (1) A licensee shall keep all documents and records relating to the activity in respect of which the licensee is licensed separate and apart from the documents and records of any other activity that the licensee conducts and shall keep them in electronic or paper form at the office authorized by the licence to which they relate.

Documents and
records

(2) The licensee shall keep the documents and records at the office required under subsection (1) for a time period of at least two years from the end of the term of the payday loan agreement to which they relate.

Records retention

13. (1) Upon request, a licensee shall provide information to the Registrar that is relevant to the administration of the Act.

Disclosure to
Registrar

(2) If the Registrar so requests, the licensee shall provide the information in a form that is verified by affidavit.

Idem

(3) Within three months of the end of the licensee's fiscal year, a licensee shall file with the Registrar a financial statement in respect of the activities, during the fiscal year, of the business for which the licensee is licensed.

Idem

(4) The Registrar may require licensees to provide information to the Registrar about their business, including financial information, within the time and in the manner that the Registrar specifies.

Idem

PROTECTION OF BORROWERS

14. (1) A licensee shall display a poster in English at each of the offices authorized by the licence and shall ensure that the poster is visible to borrowers immediately upon entering the office and that it complies with this section.

Poster for payday
loans

(2) The poster shall be of a minimum size of 61 centimetres in width by 76 centimetres in length.

Minimum width and
length

Contents

(3) The poster shall consist of the following with respect to a payday loan agreement that the licensee offers to make with a borrower, if the licensee is a lender, or that the licensee offers to assist a borrower in obtaining, if the licensee is a loan broker, and shall not include anything else:

- (a) a heading setting out
 - (i) the words "Maximum Allowable Cost per \$100 Borrowed:" in 144 point font, and
 - (ii) the amount "\$25" in 144 point font, immediately below the text described in subclause (i);
- (b) a heading setting out
 - (i) the words "Our cost per \$100 borrowed:" in 72 point font, and
 - (ii) the total cost of borrowing per each \$100 advanced under the agreement in 144 point font, immediately below the text described in subclause (i);
- (c) a subheading in 54 point font with the words "Example: Your \$300 loan for 14 days";
- (d) the following in 54 point font:
 - (i) the words "Amount Advanced \$300.00", and
 - (ii) the words "Total Cost of Borrowing" followed by the total cost of borrowing per each \$300 advanced under the agreement;
- (e) a horizontal line extending across the width of the text on the poster immediately below the text described in clause (d);
- (f) the following in 54 point font: the words "Total You Repay" followed by the total of \$300 plus the total cost of borrowing per each \$300 advanced under the agreement;
- (g) the words "This poster is required under the *Payday Loans Act*" in 36 point font.

Communication for remote lending

(4) If a licensee is a lender that offers to make a remote payday loan agreement with a borrower or is a loan broker that offers to assist a borrower in obtaining a remote payday loan agreement, the licensee shall communicate to the borrower the information required by subsection (3) for the poster before discussing with the borrower anything about payday loans.

Advertising

15. (1) Any licensee who makes representations in respect of a payday loan, or causes representations to be made in respect of a payday loan, in an advertisement shall do so in accordance with this section, regardless of whether the representations are made orally, in writing or in any other form.

Cost of borrowing disclosure

(2) If an advertisement about a payday loan mentions cost of borrowing, the amount advanced, the repayment of the loan or the term of a payday loan agreement, the advertisement shall also disclose the following information:

- (a) the maximum allowable cost of borrowing under payday loan agreements is \$25 per each \$100 advanced;

- (b) the actual cost of borrowing per each \$100 advanced under the payday loan agreement that the licensee offers or that the licensee offers to assist the borrower in obtaining;
- (c) the cost of borrowing described in clause (b) applied to \$300 advanced for a term of 14 days;
- (d) the cost of borrowing under the agreement mentioned in clause (b), expressed as a total amount;
- (e) the term of the agreement mentioned in clause (b), expressed in days;
- (f) the amount of the advance under the agreement mentioned in clause (b);
- (g) the total amount that the borrower is required to pay under the agreement mentioned in clause (b).

- 16.** If, under subsection 50(4) of the Act, the Registrar requests a licensee to submit all statements to the Registrar for approval before publication, the time period prescribed for the purposes of subsection 50(5) of the Act is six months. Registrar's approval before publication
- 17.** (1) Before the parties enter into a payday loan agreement, the lender shall ensure that the borrower is informed orally or in writing of all the means available for obtaining a payday loan from the lender. Information to borrower
- (2) The lender shall ensure that the advance is provided to the borrower using the means that the borrower selects. Advance to be provided by means selected by borrower
- (3) No loan broker shall facilitate a contravention of subsection (1) or (2). Facilitating contravention
- (4) If a lender contravenes subsection (1) or (2), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing. Repayment of advance
- 18.** (1) The following amounts are prescribed as included in the cost of borrowing with respect to a payday loan agreement: Cost of borrowing
- (a) any amount that must be paid by the borrower to process a payment provided by the borrower under the agreement;
 - (b) any other amount that is connected directly or indirectly to the payday loan agreement and,
 - (i) that the borrower has paid upon entering into the agreement, or
 - (ii) that the borrower is obliged to pay upon entering into the agreement.
- (2) Without limiting the generality of clause (1)(b), the amount described in that clause includes any amount the borrower paid or is obliged to pay in relation to a device. Inclusion of amounts paid or obliged to pay in relation to a device
- 19.** (1) For the purposes of subsection 27(1) of the Act, a payday loan agreement shall include the following: Contents of payday loan agreements

(a) the following table, which is set out on the first page of the agreement and which does not include anything else:

Details of Payday Loan Agreement	
Amount Borrowed	A
Term of the Agreement in Days	B
Total Cost of Borrowing	C
Maximum Allowable Cost per \$100 Borrowed	D
Cost per \$100 Borrowed	E
Total Amount Due under the Agreement	F
Payment Due Date	G
Borrower's Signature	H

where,

A = the amount of money transferred to the borrower under the agreement,

B = the term of the agreement in days,

C = the cost of borrowing expressed as a total amount,

D = \$25 per \$100 borrowed,

E = the actual cost of borrowing expressed as an amount per \$100 advanced under the agreement,

F = the total of all payments that the borrower is required to make in connection with the agreement,

G = the date at which the borrower is required to pay amount F, and

H = the borrower's signature;

(b) the date of the agreement;

(c) the borrower's signature and name and, if any, the borrower's address and telephone number;

(d) the signature and legal name of the lender under the agreement;

(e) the name, if any, registered under the *Partnership Act* for the office from which the lender entered into the agreement, the address of that office, the telephone number of that office and information respecting other ways, if any, in which the borrower can contact the lender, such as facsimile number and e-mail address;

(f) if a loan broker assisted the borrower in obtaining the payday loan under the agreement,

(i) the legal name of the loan broker, and

(ii) the name, if any, registered under the *Partnership Act* for the office from which the loan broker assisted the borrower, the address of that office, the telephone number of that office and information respecting other ways, if any, in which the borrower can contact the loan broker, such as facsimile number and e-mail address;

(g) if the lender delivers or provides access to all or part of the advance to the borrower by way of a device, the following information about the device:

- (i) information about where the borrower can access the terms and conditions governing the device, if the device is not a cheque,
- (ii) an indication of the restrictions or exclusions of use, if any, related to the device, if the device is not a cheque,
- (iii) instructions on how to use the device, if the device is not a cheque,
- (iv) a statement that there may be a transaction charge for using the device,
- (v) information about how the borrower can verify the amount of the balance on the device or accessible by the device, if the device is not a cheque,
- (vi) if the device is not a cheque, a statement that the borrower may request the lender or the loan broker that assisted the borrower in obtaining the payday loan to disclose the balance on the device or accessible by the device and that the licensee who receives the request shall make the disclosure at no charge to the borrower,
- (vii) the process for the borrower to obtain a replacement for the device and the amount, if any, that the borrower is required to pay for the replacement,
- (viii) if the device is not a cheque, whether or not the device that the borrower obtains from the lender can be used under a subsequent payday loan agreement that the borrower enters into with the lender;
- (h) the methods by which the borrower may make payment to the lender;
- (i) the statements set out in subsection (2) in the language of the agreement;
- (j) a statement that the borrower is entitled to receive a copy of the agreement by requesting it at any time before the end of one year from the end of the term of the agreement from,
 - (i) the lender, if no loan broker has assisted the borrower in obtaining the payday loan, or
 - (ii) the loan broker who assisted the borrower in obtaining the payday loan;
- (k) information for contacting the Registrar, including an address, facsimile number and telephone number, as well as a toll-free number, if any;
- (l) the website address of Consumer Services (Government of Prince Edward Island).

(2) The statements mentioned in clause (1)(i) are the following:

Statements

ATTENTION

This payday loan is intended to address short-term financial needs. The cost of borrowing for this loan may be significantly higher than the cost of borrowing from other lenders.

YOUR CANCELLATION RIGHTS UNDER THE PAYDAY LOANS ACT

You may cancel the agreement within two business days of entering into it. You do not have to give a reason for cancelling the agreement.

To cancel the agreement, you must provide your notice of cancellation, together with the amount you borrowed, to the business you dealt with to get your loan. If you have made any payments under the loan, the lender must return those payments to you at the earliest reasonable opportunity.

You may cancel the agreement at any time if you are not provided with the loan or with a copy of this agreement that complies with the Act when you enter into the agreement. For remote payday loan agreements, you may cancel the agreement at any time if the lender did not deliver instructions for transfer on the date of the loan agreement or if you are not provided with a copy of this agreement that complies with the Act when you enter into the agreement. You do not have to give a reason for cancelling the agreement.

* A remote payday loan agreement is one in which the borrower is not present with the lender or the loan broker when the payday loan agreement is made (for example a loan made over the Internet or by phone).

REFUNDS UNDER THE PAYDAY LOANS ACT

Under certain circumstances, you may demand a refund of a payment you made under a payday loan agreement within one year of having made that payment. If the licensee has received a payment to which it is not entitled or if a payday lender was not licensed as required, you are entitled to a refund of the cost of borrowing that you paid. To obtain a refund you must give a notice demanding it to the business that you dealt with to get your payday loan. Your notice must set out your demand for the refund and the reason for it, as well as your name and telephone number. Note that the business has two business days to provide the refund to you. You may choose to collect your refund in person or have it mailed to you.

Please contact Consumer Services (Government of Prince Edward Island) for more information on when you may be entitled to a refund and how to make your demand for a refund. You may contact Consumer Services at 1-800-658-1799.

Font

(3) For the purposes of subsection 27(1) of the Act, it is a prescribed requirement that a payday loan agreement be in at least 12 point font and that headings in the agreement be in at least 14 point font.

Availability and
accessibility

(4) Before a borrower enters into a remote payday loan agreement, the lender shall ensure that the agreement is available and accessible in a manner that ensures that the borrower has accessed it and is able to retain and print it.

- (5) In a remote payday loan agreement, after complying with subsection (4) and before delivering the advance to the borrower, the lender shall ensure that the borrower has consented to entering into the agreement in a manner that allows the lender to prove that the borrower has so consented. Consent
- (6) If a loan broker assisted the borrower in obtaining the payday loan, the loan broker shall facilitate compliance with subsections (4) and (5). Facilitate compliance
- 20.** (1) A borrower under a payday loan agreement who cancels the agreement under subsection 28(1) of the Act shall give the notice required by subsection 28(2) of the Act to Cancellation
- (a) the lender if no loan broker has assisted the borrower in obtaining the payday loan; or
- (b) the loan broker who assisted the borrower in obtaining the payday loan.
- (2) At the time of giving the notice, the borrower shall repay the advance, as required by clause 40(3)(b) of the Act. Timing of repayment
- (3) The lender shall comply with clause 40(3)(a) of the Act at the earliest reasonable opportunity after the borrower gives the notice. Compliance with settlement or decision
- (4) If a loan broker assisted the borrower in obtaining the payday loan, the loan broker shall facilitate compliance with subsection (3). Cancellation
- 21.** (1) In addition to the copy of the payday loan agreement that a borrower under the agreement receives under subsection 27(1) of the Act, the borrower may, at any time before the end of one year from the end of the term of the agreement, request a copy of the agreement from Copy of payday loan agreement
- (a) the lender if no loan broker has assisted the borrower in obtaining the payday loan; or
- (b) the loan broker who assisted the borrower in obtaining the payday loan.
- (2) The borrower may make the request orally or in writing. Requests by borrower
- (3) The licensee shall provide the requested copy of the agreement to the borrower within Compliance with request
- (a) the first day after the time that the licensee receives the request, if the licensee is open for business on that day; or
- (b) the next day that the licensee is open for business following the first day described in clause (a), if the licensee is not open for business on that first day.
- (4) The licensee shall not charge any fee for providing the requested copy of the agreement to the borrower the first time that the borrower requests a copy of the agreement under subsection (1). No fee for first request
- 22.** (1) Under a remote payday loan agreement, the lender is deemed to have complied with subsection 27(2) of the Act if the lender delivers instruction to the lender's financial services provider to transfer the Deemed delivery of advance

	amount of the advance to the borrower on the same day on which the agreement is entered into by both the borrower and the lender.
Financial services provider	(2) For the purposes of subsection (1), “financial services provider” includes a bank listed in Schedule I, II or III of the <i>Bank Act</i> (Canada), a treasury branch, a credit union, a trust company or loan corporation registered under the <i>Extra-Provincial Corporations Registration Act</i> R.S.P.E.I. 1988, Cap. E-14 or an organization that provides remote funds transfers, electronic funds transfers or any similar method of transferring money.
Convertibility of advance into cash	23. (1) Upon delivering or providing access to all or part of the advance under a payday loan agreement to the borrower by way of a device, the lender shall ensure that the borrower is informed orally of the borrower’s rights under subsections (2), (3), (4) and (6).
<i>Idem</i>	(2) If a lender under a payday loan agreement delivers or provides access to all or part of the advance to the borrower by way of a device and if the borrower makes a request to the applicable one of the following persons, the borrower is entitled to receive in cash the balance of the advance that is on the device or that is accessible by the device at the time of the request, whether that balance represents all or part of the advance: <ul style="list-style-type: none"> (a) the lender if no loan broker has assisted the borrower in obtaining the payday loan; (b) the loan broker who assisted the borrower in obtaining the payday loan.
Form of request	(3) The borrower may make the request orally or in writing.
Provision of cash	(4) When a borrower makes a request under subsection (2), the lender shall, immediately and at no charge to the borrower, provide in cash to the borrower the balance of the advance that is on the device or that is accessible by the device at the time of the request.
Facilitation of provision of cash	(5) If a loan broker assisted the borrower in obtaining the payday loan, the loan broker shall facilitate compliance with subsections (1) and (4).
Failure to provide cash	(6) If the lender contravenes subsection (1) or (4), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.
Maximum allowable cost of borrowing	24. The prescribed limit on the cost of borrowing under a payday loan agreement for the purposes of subsection 30(2) of the Act is \$25 per \$100 advanced under the agreement.
Refund of illegal payments	25. (1) The person or entity prescribed for the purposes of subsection 41(1) of the Act is <ul style="list-style-type: none"> (a) the lender in respect of the payday loan to which the refund relates, if no loan broker has assisted the borrower in obtaining the loan; or

(b) the loan broker who assisted the borrower in obtaining the payday loan to which the refund relates.

(2) A notice demanding a refund described in subsection 41(1) of the Act shall include Contents of notice demanding refund

- (a) the name of the borrower;
- (b) a telephone number, if any, at which the borrower may be contacted;
- (c) a statement that the borrower demands a refund;
- (d) the grounds on which the borrower demands the refund; and
- (e) a statement of the amount of the charge, if any, of which the borrower demands recovery if the charge is a charge levied against the borrower as described in subsection 33(1).

(3) A loan broker who, under clause (1)(b), receives a notice demanding a refund under subsection 41(1) of the Act shall immediately forward the notice to the lender in respect of the payday loan to which the refund relates. Immediate forwarding of notice

(4) If the borrower gives a notice demanding a refund in accordance with subsection 41(1) of the Act, the lender shall ensure that the refund is paid to the borrower and, subject to subsection (6), shall ensure that it is sent by regular mail to the address of the borrower mentioned in subsection (5) by the end of Delivery of payment to borrower

- (a) the second day after the time that the recipient of the notice receives the notice, if the recipient is open for business on that day; or
- (b) the next day that the recipient of the notice is open for business following the second day described in clause (a), if the recipient is not open for business on that second day.

(5) For the purposes of subsection (4), the address of the borrower shall be Address of borrower

- (a) the address that the borrower specifies when the borrower gives the notice demanding the refund; or
- (b) the address, if any, of the borrower set out in the payday loan agreement, if the borrower does not specify an address under clause (a).

(6) The lender shall ensure that the refund is available for the borrower to collect in person, by the end of the time period described in subsection (4), from the recipient of the borrower's notice demanding the refund if Availability of payment

- (a) there is no address for the borrower set out in the payday loan agreement, if any, relating to the payday loan and the borrower does not specify an address when giving the notice; or
- (b) the borrower indicates in the notice that the borrower intends to collect the refund in person.

(7) If a loan broker assisted the borrower in obtaining the payday loan, the loan broker shall facilitate compliance with subsections (4) and (6). Facilitation of payment to borrower

Subsequent payday loan agreements **26.** The Registrar may specify what constitutes sufficient proof for the purposes of clauses 33(1)(b) and (3)(b) of the Act in the circumstances that the Registrar specifies with respect to the particular borrower involved.

PROHIBITED PRACTICES

Definitions **27.** (1) In this section

contact (a) "contact" includes communication by e-mail or voice mail;

spouse (b) "spouse" means a spouse as defined in clause 29(1)(b) of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1.

Prohibited contacts (2) No licensee shall contact or attempt to contact the borrower's spouse, a member of the borrower's family or household, or a relative, friend, neighbour or acquaintance of the borrower in respect of a payday loan.

Prohibited contact with employer (3) Except with the consent of the borrower, no licensee shall contact an employer of a borrower or any employees of that employer unless

(a) the contact occurs before the borrower enters into a payday loan agreement; and

(b) the contact is for the sole purpose of confirming the borrower's employment, length of employment, employment income, occupation or business address.

Goods and services other than loan **28.** (1) A lender shall ensure that all applications for a payday loan and all documentation relating to such an application or a payday loan agreement are not used for any purpose other than providing a payday loan and are not used in connection with any other good or service.

No conditions (2) A lender shall not require a borrower to transact in any good or service, other than a payday loan, as a condition of entering into a payday loan agreement.

No provision of other good or service (3) A licensee, acting on the licensee's own behalf or on behalf of any other person, shall not offer to provide or provide any good or service in connection with a payday loan agreement, other than the payday loan, whether or not it is provided for consideration.

No facilitation of other good or service (4) No loan broker shall facilitate a contravention of subsection (1) or (2).

Borrower liable to repay advance but not cost of borrowing (5) If a lender contravenes subsection (1) or (2) or if a licensee contravenes subsection (3), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.

Device with respect to a payday loan (6) For greater certainty, a device with respect to a payday loan agreement shall be considered to be part of the payday loan.

No wage assignment from borrower **29.** (1) No lender under a payday loan agreement shall request or accept an assignment of wages or any part of them from the borrower.

- (2) No loan broker shall facilitate a contravention of subsection (1). No facilitation of wage assignment
- (3) If a lender contravenes subsection (1), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing. Borrower liable to repay advance but not cost of borrowing
30. (1) No lender in respect of a payday loan shall, without the borrower's consent, use any post-dated cheques, pre-authorized debits or future payments of a similar nature received from the borrower under a payday loan agreement by applying them to a payday loan made under another payday loan agreement. No future payments re one payday loan may be applied to another payday loan
- (2) No licensee in respect of a payday loan shall, without the borrower's consent, use any information obtained from the borrower in connection with the loan for any purpose not connected with the loan, including to obtain payment in respect of another payday loan. No use of information without consent
- (3) No loan broker shall facilitate a contravention of subsection (1) or (2). No facilitation of future payments or use of information without consent
- (4) If there is a contravention of subsection (1) or (2) with respect to a payday loan agreement, the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing. Not liable to pay cost of borrowing
31. (1) No licensee in respect of a payday loan agreement in which the licensee was involved shall refuse to disclose the balance on the device or accessible by the device to the borrower at the request of the borrower or shall charge the borrower a fee for disclosing that balance. Devices used to deliver an advance not in cash
- (2) If a licensee contravenes subsection (1), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing. Borrower liable to repay advance but not cost of borrowing
- (3) No licensee in respect of a payday loan agreement in which the licensee was involved shall charge the borrower an amount that is not reasonable to replace the device. No unreasonable replacement charge
- (4) No loan broker shall facilitate a contravention of subsection (1) or (3). No facilitation of contravention
32. (1) A licensee shall not request or require the borrower under a payday loan agreement to do any of the following or suggest to the borrower that the borrower do any of the following: Time for payments
- (a) repay or pay the advance or any part of it to the lender or anyone else until the end of the term of the agreement;

	(b) pay the cost of borrowing or any part of it to anyone until the end of the term of the agreement.
No request or requirement to contravene subsection (1)	(2) A licensee shall not, directly or indirectly on behalf of any other person, request or require the borrower under a payday loan agreement to do any of the actions described in clause (1)(a) or (b) or suggest to the borrower that the borrower do any of those actions.
Borrower liable to repay advance but not cost of borrowing	(3) If a licensee contravenes subsection (1) or (2), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.
No repeat processing charges	33. (1) No lender under a payday loan agreement shall attempt to process the same payment instrument provided by the borrower under the agreement in exchange for the advance more than once if such a subsequent attempt would result in any charge being levied against the borrower, other than the amount of the payment.
No facilitation	(2) No loan broker shall facilitate a contravention of subsection (1).
Not liable to pay cost of borrowing	(3) If the lender contravenes subsection (1), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing.
Recovery of amount of charge	(4) If the lender contravenes subsection (1) and a charge is levied against the borrower, other than the amount of the payment, the borrower is entitled to recover the amount of the charge from the lender.
Manner of recovery	(5) The borrower may demand recovery of the charge in the same manner as the borrower is entitled, under subsection 41(1) of the Act, to demand a refund of a payment.
Definitions	34. (1) In this section,
agent	(a) "agent" includes any person employed, appointed or authorized by a licensee, including a collection agency, <ul style="list-style-type: none"> (i) to collect any amount owing to the licensee under a payday loan agreement from a borrower, or (ii) to deal with or to find or trace borrowers for a licensee;
collection agency	(b) "collection agency" means a collection agency as defined in the <i>Collection Agencies Act</i> R.S.P.E.I. 1988, Chap. C-11;
contact	(c) "contact" includes communication by e-mail or voice mail;
licensee	(d) "licensee" includes an agent of a licensee;
person	(e) "person" includes a partnership and unincorporated association.
Methods of collection	(2) No licensee shall <ul style="list-style-type: none"> (a) collect or attempt to collect an amount owing under a payday loan agreement from a person who is not the borrower; or

(b) contact or attempt to contact a person for the purpose of collecting an amount owing under a payday loan agreement if the person has informed the licensee that the person is not the borrower, unless the licensee first takes all reasonable precautions to ensure that the person is, in fact, the borrower.

(3) No licensee shall engage in conduct described in any of the following clauses with respect to a borrower: Prohibited conduct

(a) make a telephone call or call in person at any of the following times, except at the request of the borrower:

(i) on any day of the week, between the hours of 9 p.m. and 8 a.m. local time in Prince Edward Island,

(ii) notwithstanding subclause (i), on any holiday listed in subsection (4);

(b) publish or threaten to publish the borrower's failure to pay;

(c) use threatening, profane, intimidating or coercive language;

(d) use undue, excessive or unreasonable pressure;

(e) communicate or attempt to communicate by a means that enables the charges or costs of communication to be payable by the borrower;

(f) otherwise communicate in a manner or with a frequency that constitutes harassment.

(4) For the purposes of subclause (3)(a)(ii), the following days are holidays: Holidays

(a) New Year's Day;

(b) Islander Day;

(c) Good Friday;

(d) Victoria Day;

(e) Canada Day;

(f) Labour Day;

(g) Thanksgiving Day;

(h) Christmas Day;

(i) Sundays.

35. No licensee shall, in respect of a payday loan in default, give any person, directly or indirectly, by implication or otherwise, any false, misleading or deceptive information with respect to a payday loan. False information

36. (1) A lender shall not enter into a payday loan agreement with a borrower if the term of the agreement ends before the day on which the borrower is next regularly due to receive income. Expiry of payday loan agreement

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

(3) If the lender contravenes subsection (1), the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing. Not liable to pay cost of borrowing

37. The fees that an applicant for a licence is required to pay are Fees

(a) \$750 for the main office of the applicant; and

(b) \$750 for each branch office of the applicant.

Commencement **38.** These regulations come into force on the day that the Act comes into force.

EXPLANATORY NOTES

SECTION 1 sets out definitions for words and terms used in these regulations.

SECTION 2 explains the application process for the issuance and renewal of licenses.

SECTION 3 prescribes the eligibility requirements for an applicant for the issuance or renewal of a licence.

SECTION 4 requires the Registrar, on issuing or renewing a licence, to give the licensee a certificate of licence for the licensee's main office and a certificate of licence for each of the licensee's branch offices, if any. The section also sets out the required contents of such certificates and requires their return to the Registrar if the Registrar revokes, suspends, cancels or refuses to renew the licence of a licensee.

SECTION 5 sets out the conditions of a licence.

SECTIONS 6 and 7 prescribe certain periods of time for the purposes of the Act.

SECTION 8 requires an applicant for a licence and a licensee to notify the Registrar of any change in the information that was included in an application for the issuance or renewal of a licence after the application is made.

SECTION 9 indicates that a licence shall not authorize the licensee to operate an office except under the licensee's legal name or a name of the licensee registered under the *Partnership Act*.

SECTION 10 requires a licensee to maintain at least one office that is physically located in Prince Edward Island. The section also indicates that a licence shall not authorize the licensee to operate an office from a dwelling.

SECTION 11 requires a licensee to maintain an account that is in the legal name of the licensee and located in a bank in Canada or a credit union in Prince Edward Island.

SECTION 12 requires a licensee to keep all documents and records relating to a payday loan agreement separate and apart from the documents and records of any other activity that the licensee conducts. The section also requires a licensee to keep such documents and records

in electronic or paper form at the office authorized by the licence and for a time period of at least two years.

SECTION 13 requires a licensee, on request, to provide information to the Registrar that is relevant to the administration of the Act. The section also requires a licensee to file with the Registrar an annual financial statement.

SECTION 14 requires a licensee to display a poster in English, at each of the offices authorized by the licence, that is visible to borrowers and that meets the size and content requirements specified in the section.

SECTION 15 governs the representations or advertising that may be made by a licensee in respect of a payday loan and requires the disclosure of the cost of borrowing.

SECTION 16 prescribes a six-month period as the maximum period during which a licensee, after publishing a false or misleading statement relating to a payday loan, may be required to obtain the Registrar's approval before publishing any further advertisement.

SECTION 17 requires a lender, before entering into a payday loan agreement with a borrower, to ensure that the borrower is informed orally or in writing of all of the means available for obtaining a payday loan from the lender.

SECTION 18 prescribes the amounts that are included in the cost of borrowing with respect to a payday loan agreement. These amounts include any amount that must be paid by the borrower to process a payment provided by the borrower under the agreement and any amount the borrower paid or is obliged to pay in relation to a device.

SECTION 19 sets out the required contents of a payday loan agreement. These include statements indicating

- that the cost of borrowing for a payday loan may be significantly higher than the cost of borrowing from other lenders;
- the borrower's cancellation rights; and
- the borrower's refund rights.

SECTION 20 explains how and when a borrower who cancels a payday loan agreement shall give notice of the cancellation to the lender or loan broker involved. The section also requires the borrower to repay the advance given in respect of the loan.

SECTION 21 permits the borrower under a payday loan agreement to request a copy of the agreement at any time and requires the licensee to comply with the request, free of charge, within a specified time.

SECTION 22 clarifies when a lender, under a remote payday loan agreement, is deemed to have complied with a provision of the Act that requires a lender to ensure that the advance is delivered to the borrower no later than upon entering into the agreement.

SECTION 23 indicates that where the lender delivers or provides access to the advance under a payday loan agreement to the borrower by way of a device, such as a debit card, the borrower is entitled, on making a request orally or in writing, to receive in cash the balance of the advance that is on the device or that is accessible by the device at the time of the request. The section also requires the lender, on receiving such a request, to immediately and at no charge to the borrower, provide in cash, the balance of the advance that is on or accessible by the device at the time of the request.

SECTION 24 indicates that the prescribed limit on the cost of borrowing under a payday loan agreement is \$25 per \$100 advanced under the agreement.

SECTION 25 indicates who is liable to refund to a borrower an illegal payment made by the borrower. The section also explains the required contents of a notice from the borrower demanding the refund.

SECTION 26 authorizes the Registrar to specify what constitutes sufficient proof that a borrower has paid the full outstanding balance due under one agreement for the purposes of determining, under the Act, whether the lender may enter into a new payday loan agreement with the borrower.

SECTION 27 prohibits a licensee from contacting the borrower's spouse, a member of the borrower's family or household, or a relative, friend, neighbour or acquaintance of the borrower in respect of a payday loan. The section also prohibits a licensee, without the consent of the borrower, from contacting an employer of a borrower, unless the contact occurs before the borrower enters into a payday loan agreement and for the sole purpose of confirming specified details of the borrower's employment.

SECTION 28 requires a lender to ensure that all applications for a payday loan, and all related documentation, are not used for any purpose other than providing a payday loan and are not used in connection with any other good or service. The section also prohibits a lender from requiring a borrower to transact in any good or service, other than a payday loan, as a condition of entering into a payday loan agreement.

SECTION 29 prohibits a lender under a payday loan agreement from requesting or accepting an assignment of wages from the borrower.

SECTION 30 prohibits a lender, without the borrower's consent, from applying any post-dated cheques or future payments of a similar nature received from the borrower under a payday loan agreement to a payday loan made under another payday loan agreement. The section also prohibits a lender from using any information obtained from the borrower in connection with a particular loan for any purpose not connected with that loan.

SECTION 31 requires a licensee to disclose the balance on a device, such as a debit card, that the lender uses to deliver or provide access to all or part of the advance to the borrower in a form other than cash. And the section prohibits a licensee from shall charging the borrower an amount that is not reasonable to replace a device.

SECTION 32 prohibits a licensee from requesting the borrower under a payday loan agreement to repay or pay the advance or the cost of borrowing until the end of the term of the agreement.

SECTION 33 prohibits a lender from processing the same payment instrument more than once if this would result in repeat process charges being levied against the borrower.

SECTION 34 prohibits a licensee from collecting or attempting to collect an amount owing under a payday loan agreement from a person who is not the borrower. The section also prohibits a licensee from engaging in certain forms of conduct, such as calling the borrower late at night or on holidays, for collection purposes.

SECTION 35 prohibits a licensee from giving false information to any person in respect of a payday loan in default.

SECTION 36 prohibits a lender from entering into a payday loan agreement with a borrower if the term of the agreement ends before the day on which the borrower is next regularly due to receive income.

SECTION 37 sets out the fees that an applicant for a licence is required to pay.

SECTION 38 provides for the commencement of these regulations.

Certified a true copy,

Wendy I. MacDonald

Clerk Assistant of the Executive Council
