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Statutes of Newfoundland and Labrador 2016

CHAPTER 46

AN ACT TO AMEND THE CONSUMER PROTECTION AND BUSINESS PRACTICES ACT

(Assented to December 14, 2016)

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*Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session
convened, as follows:*

SNL2009 cC-31.1

1. Section 2 of the *Consumer Protection and Business Practices Act* is amended by adding immediately after paragraph (h) the following:

(h.1) "payday loan" has the meaning given to it in section 83.1;

2. Section 46 of the Act is amended by adding immediately after subsection (3) the following:

(4) For the purpose of credit agreements that are payday loans, Part VII.1 applies instead of this Part.

3. The Act is amended by adding immediately after section 83 the following:

PART VII.1 PAYDAY LOANS

Definitions

83.1 In this Part

- (a) "advance" has the same meaning as in Part VII;
- (b) "APR" has the same meaning as in Part VII;
- (c) "borrower" means an individual who has entered into or who is negotiating to enter into a payday loan agreement for primarily a personal, family or household purpose, where that individual, under that agreement, receives or is to receive a payday loan from a payday lender;
- (d) "cash card" means a card or other device issued by a payday lender to the borrower of a payday loan instead of advancing cash or transferring 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;
- (e) "credit card" has the same meaning as in Part VII;
- (f) "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 payday loan agreement;
- (g) "payday lender" means a person who offers, arranges or provides payday loans to or for consumers; and
- (h) "payday loan" means an advance of money with a principal of \$1,500 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 a guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card.

Application

83.2 (1) This Part applies

- (a) to every payday lender who offers, arranges or provides a payday loan to a borrower in the province, whether the payday lender operates from business premises, by telephone or on the internet; and

(b) to each payday loan, regardless of the number of payday lenders involved in the payday loan.

(2) This Part does not apply to a payday loan made before the coming into force of this Part, except to the extent that it relates to an extension or renewal of a payday loan made or granted after the coming into force of this Part.

Limits on total cost of borrowing

83.3 (1) The Lieutenant-Governor in Council may, by regulation, set the amount, or establish a rate, formula or method of determining the amount, respecting the maximum total cost of borrowing that may be charged by a payday lender.

(2) The Lieutenant-Governor in Council may, in addition to subsection (1) and by regulation, determine a charge, fee, penalty, rate or commission that may be charged by a payday lender.

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

Prohibited practices

83.4 A payday lender shall not engage in a prohibited practice as prescribed by the regulations.

Cooling off period

83.5 (1) A borrower under a payday loan agreement may, without a reason, cancel the agreement at a time before the end of

(a) the second 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) the next day that the payday lender is open for business following the second day described in paragraph (a), if the payday lender is not open for business on that second day.

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

(a) give written notice within the time period set out in subsection (1) to the payday lender; and

(b) return the full amount received by the borrower to the payday lender.

(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 83.6; 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 under this section, the payday lender shall give the borrower a receipt in the form approved by the minister acknowledging receipt of the loan cancellation.

(5) A payday lender shall not charge a fee for the cancellation of a payday loan.

Agreement and advance

83.6 (1) A payday lender shall ensure that the terms, information and statements contained in its standard loan agreement are written in a clear and comprehensible manner.

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

- (a) the payday lender's name and, where different, the name under which the payday lender carries on business;
 - (b) the payday lender's business address and, where different, the payday lender's mailing address;
 - (c) the payday lender's licence number, telephone number and where the payday 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 other advances shall be made to the borrower or to the order of the borrower;
 - (f) the principal of the payday loan;
 - (g) the 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) where a cash card issued to the borrower has an expiry date, the date of that expiration;
 - (k) the total cost of borrowing 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 other charges that apply, together with a statement of the amount of each of those 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 that the supply of goods or services is separate and optional from the payday loan;
 - (r) a statement of the borrower's rights of cancellation under section 83.5, setting out how those rights can be exercised and identifying the time by which the borrower can exercise them;
 - (s) a statement of the remedies available to the borrower under section 83.10;
 - (t) where a cash card is to be issued to the borrower, a statement identifying that third party service charges may apply for the use of the card;
 - (u) the agreement number of the payday loan; and
 - (v) another term, information or statement that may be prescribed by the regulations.
- (3) Before the borrower signs the loan agreement, the payday lender shall

- (a) review with the borrower the matters described in paragraphs (2)(k), (q) and (r); and
- (b) require that the borrower initial each of those matters in the agreement.

(4) A payday lender shall give a borrower a copy of the agreement at the time it is signed and dated by the borrower, together with a copy of the cancellation notice that may be used by the borrower for the purpose of section 83.5.

(5) 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 agreement.

(6) In the case of a payday loan obtained by means of the internet or by telephone, the payday lender is considered to have complied with subsection (5) where 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 agreement is entered into by both the borrower and the payday lender.

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

Receipt for payment

83.7 A payday lender shall give a receipt to a borrower in the form approved by the minister immediately upon receipt of payment.

Payout of balance on cash card

83.8 (1) Where the payday lender issues a cash card to the borrower in respect of a payday loan, 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 the amount prescribed by the regulations; or
- (b) the payday loan has been repaid by the borrower and the cash card has expired.

(2) Where 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.

(3) On return of a cash card under this section, the payday lender shall immediately give the borrower a receipt for the cash card in the form approved by the minister and the receipt shall specify the amount paid to the borrower.

(4) 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, where prescribed by and in accordance with the regulations.

(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.

Prepayment

83.9 A borrower may prepay a full or partial amount before it is due under the payday loan agreement, without incurring a prepayment charge or penalty.

Consequence of failure to comply

83.10 (1) Where a payday lender fails to comply with a requirement of section 83.3, 83.4, subsection 83.6(3), 83.6(4), 83.6(5), section 83.7, 83.8 or 83.9 or the regulations made under paragraphs

83.11(a), (b), (f), (g) or (i), the borrower is not liable to pay the payday lender an amount that exceeds the principal of the payday loan.

(2) The remedies under this section are in addition to another remedy that may be available to the borrower under the common law or under another Part.

Regulations

83.11 (1) The Lieutenant-Governor in Council may make regulations for the purpose of this Part

- (a) prescribing the maximum total cost of borrowing;
 - (b) specifying fees, penalties, rates, commissions or charges allowed to be charged by payday lenders for or in relation to a payday loan;
 - (c) prescribing a term, information or statement to be included in a payday loan agreement and, where applicable, to be initialled by a borrower;
 - (d) respecting payday loan agreements between borrowers and payday lenders that are not entered into in person;
 - (e) regulating or prohibiting the offering, arrangement or provision of payday loans by means described in paragraph (d);
 - (f) prohibiting certain practices with respect to payday loans or payday lenders;
 - (g) prescribing an amount of credit remaining on a cash card for the purpose of section 83.8;
 - (h) respecting the expiry of cash cards and setting minimum terms;
 - (i) prescribing the information to be required for signs, notices, representations and advertisements;
 - (j) defining a word for the purpose of this Part where that word is not defined in this Part; and
 - (k) generally, to give effect to the purpose of this Part.
- (2) Regulations made under this section may be made with retroactive effect.

4. Section 84 of the Act is amended by deleting the word "and" at the end of paragraph (a), by deleting the period at the end of paragraph (b) and substituting a semicolon, and by adding immediately after paragraph (b) the following:

- (c) "payday lender" means payday lender as defined in section 83.1; and
- (d) "payday loan business" means the activity of offering, arranging or providing payday loans by a payday lender.

5. (1) Section 85 of the Act is amended by adding immediately after subsection (2) the following:

(2.1) A person shall not carry on business as a payday lender unless he or she obtains a licence from the director.

(2) Subsection 85(3) of the Act is repealed and the following substituted:

(3) An application for a licence shall be in the form required by the minister and the applicant shall pay the fee set by the minister.

(3) Subsection 85(5) of the Act is repealed and the following substituted:

(5) The director may require a statement made in support of an application for a licence to be verified by an affidavit.

6. Section 86 of the Act is amended by adding immediately after subsection (2) the following:

(3) An applicant for a licence to carry on a payday loan business is entitled to be granted the licence unless, in the opinion of the director,

- (a) his or her financial responsibility or record of past conduct is such that it would not be in the public interest for the licence to be granted;
- (b) the applicant is an undischarged bankrupt;
- (c) where the applicant is a corporation, its financial responsibility or the record of past conduct of the corporation or its officers or directors is such that it would not be in the public interest for the licence to be granted; or
- (d) where the applicant is a partnership, its financial responsibility or the record of past conduct of the partnership or its members is such that it would not be in the public interest for the licence to be granted.

7. Subsection 88(1) of the Act is repealed and the following substituted:

Suspension and cancellation of a licence

88. (1) The director may suspend or cancel the licence of a direct seller, a credit reporting agency or a payday lender upon a ground on which he or she might have refused to grant the licence under section 86 or where he or she is satisfied that the licensee

- (a) has contravened this Part or the regulations or has failed to comply with the terms, conditions or restrictions to which the licence was subject;
- (b) has made a material misstatement in the application for a licence or in the information or material submitted to the registrar under subsection 85(4);
- (c) has been guilty of misrepresentation, fraud, deceit or dishonesty;
- (d) is not carrying on business in the province;
- (e) being a corporation, has been dissolved or has been struck off the register under the *Corporations Act*;
- (f) being a natural person, has died; or
- (g) has become bankrupt.

8. Section 89 of the Act is amended by adding immediately after subsection (3) the following:

(4) A payday lender licensed under this Act shall produce his or her licence for inspection when requested to do so by a person whom he or she has solicited as a payday lender or with whom there is an agreement to borrow.

9. Paragraphs 90(b) and (c) of the Act are repealed and the following substituted:

(b) a licence was issued to a direct seller, credit reporting agency or payday lender; or

(c) the licence of a direct seller, credit reporting agency or payday lender was suspended, cancelled or reinstated,

Commencement

10. This Act shall come into force on a day to be proclaimed by the Lieutenant-Governor in Council.

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