

Provincial Licensing Regime for Payday Loan Establishments –
Payday Loans Act, 2008 (as amended)

Key Provisions and Requirements

Requirement for Provincial License

- All payday loan lenders and brokers in Ontario are required to obtain a license under the *Payday Loans Act, 2008*
- No person or entity may act as a payday loans lender or broker unless a license has been obtained
- Payday loan lenders must only deal with brokers who are licensed
- Provincial Registrar may impose conditions on a license

Vetting Process for Licensees

The Provincial Registrar has broad authority to make inquiries of applicant, officers, directors, partners and interested parties of the applicant prior to issuing or renewing a license, including:

- Criminal Record Check for applicant as well as all directors, officers, and partners of the applicant
- Review of banking account information for each head and branch office of the applicant, and ensure that all amounts the licensee receives or disburses in connection with the payday loans are deposited into or disbursed from such accounts
- Right to review any information relevant to the license application
- Right to verify any information supplied by applicant in support of an application
- Obligation on applicant to inform Registrar of any change in information (e.g. name, address) or status (e.g. change in officers or directors) within 5 days
- Licensee must only carry on business under the name authorized in the provincial license

Regulation of Payday Loan Transactions:

- Maximum cost of borrowing is prescribed by Act and Regulation as \$15 for each \$100 advanced by the payday lender (since January 1, 2018)
- Contents of payday loan agreements prescribed by Act and Regulations, including:
 - The term of the agreement in days

- The cost of borrowing expressed as a total amount, as an annual percentage rate and as an amount per \$100 advanced under the agreement
- The due date for payment
- The default interest rate
- The methods the borrower can use to replay the loan
- Information on how to contact the Provincial Registrar and the website of the Ministry
- The payday lender is prohibited from asking for or accepting payment by automatic deduction from a paycheck (assignment of wages)
- All agreements for payday loans must be in writing and be provided to the borrower (customer)
- Licensee must keep all documents and records relating to payday loan activity
- Borrower can repay entire outstanding balance under a payday loan agreement or any part of the balance at any time without penalty
- No concurrent or replacement agreements permitted by payday lender/broker to same borrower
- Any ambiguities in a payday loan agreement shall be interpreted to the benefit of the borrower
- Payday lenders must provide display two posters in establishment: one that explains the cost of taking out a payday loan based on an amount borrowed (i.e. \$15 per \$100) and one that compares cost of loan to a credit card advance, and provide other educational materials

Extended payment plan

Since July 1, 2018, lenders must give a borrower the option of an extended payment plan if borrower has taken out three loans within a 63-day period.

If in an extended payment plan, the borrower can:

- make prepayments at any time without any additional fee or penalty and
- exit the extended payment plan at any time without any additional fee or penalty.

There is an option to pay back the loan in equal instalments over multiple pay periods. The amount of pay back per instalment will depend on how frequently borrower is paid.

If borrower is paid weekly, bi-weekly, semi-monthly or more frequently:

- instalments must be spread out over at least three pay periods and
- the maximum amount of each instalment is 35% of the combined total of the loan and cost of borrowing.

If borrower is paid monthly or less frequently than semi-monthly:

- instalments must be spread out over at least two pay periods and

- the maximum amount of each instalment is 50% of the combined total of the loan and cost of borrowing.

A borrower has the right to complain to the province if he/she feels that the payday loan establishment does not comply with the provisions of the Act.

Consumer Protection Provisions:

- If the terms of an agreement are not met, a lender is prohibited from:
 - contacting borrower more than 3 times a week (not including regular mail) or on holidays
 - contacting a spouse, family, household members, relatives, friends, neighbors, or acquaintances at any time
 - processing a post-dated cheque or pre-authorized debit more than once if it will result in the borrower's financial institution charging any fees, like overdraft or fees for insufficient funds and
 - using threatening or intimidating language or excessive or unreasonable pressure
- Licensee cannot make or facilitate any oral or written representation about a payday loan that does not comply with the Act
- Any advertisement, circular, pamphlet or published material of the licensee cannot contain any false, misleading or deceptive statements relating to a payday loan
- Licensee is prohibited from falsifying, or inducing or facilitating the falsification of, any information or document relating to payday loan or a payday loan agreement

Right of Inspection and Order by Registrar

- Registrar may enter and inspect business premises of licensee at any reasonable time to ensure compliance with Act, investigate complaints and to ensure licensee remains entitled to hold license
- Registrar may inspect any materials used in payday loan business, including payday loan agreements, pamphlets, brochures and advertisements
- Registrar may order licensee to amend, restrict, prohibit or cease using any of the materials
- Registrar investigates complaints

Refusal & Suspension of License

Registrar may refuse to issue or renew a license, as well as suspend or revoke a license, if Registrar is of opinion that:

- the applicant cannot carry on business lawfully, with integrity or honesty

- the applicant is not in a position to be financially responsible in the conduct of the business (or any other person having an interest in the business)
- the applicant, or any employee or agent of the applicant, makes a false statement or provides a false statement in the application for a license
- the applicant or interested party contravenes the Act or carries on activities that will contravene the Act
- the applicant breaches a condition of a license
- the applicant fails to comply with a request of the Registrar to provide information.

Offences under Act

- Offences created under Act for: furnishing false information, failing to comply with any order made under Act, contravening or failing to comply with any section of the Act or its Regulations, and attempting to commit any of these offences.
- Penalties for conviction of an offence under the Act include fines or up to \$50,000 or up to imprisonment if the offender is an individual, and fines of up to \$250,000 if the offender is a corporation or other entity.
- Administrative penalties also possible under Act.