

**Payday Lender Regulations**  
**Consultation Paper**

**Service Nova Scotia and Municipal Relations**  
Consumer and Business Policy Section

June 6, 2007



## Introduction

The Government of Nova Scotia is taking steps to improve protections for those who borrow from businesses that offer small sum short-term loans, generally known as payday lenders.

The Consumer Protection Act provides the legal framework for consumer lending in Nova Scotia for all lenders not regulated under the federal Bank Act. In November 2006, the Nova Scotia Legislature passed Bill 87, amendments to the Consumer Protection Act, that specifically address the activities of payday lenders. Before those amendments can come into force two steps are necessary. First, the regulations required by the amendments must be developed and approved by Executive Council. Second, the Nova Scotia Utility and Review Board (UARB) must hold hearings to enable it to set the maximum rates and fees that payday lenders may charge.

Passage of the federal Bill C-26 in April 2007 set the stage for Nova Scotia to put in place a regulatory regime for payday lenders. Section 347 of the Criminal Code of Canada establishes the criminal rate of interest as an effective annual rate of interest exceeding 60%. Payday lenders indicate it is not viable for them to offer payday loans with interest rates of 60% or less. Bill C-26 exempts payday lenders from the criminal rate of interest provision of Section 347 if a province has put in place legislative measures to protect recipients of payday loans and specified a limit on the total cost of such loans. Nova Scotia is one of several provinces taking the necessary steps to meet these requirements.

This consultation paper outlines proposed regulations that would complement the amendments made to the Consumer Protection Act in Bill 87. Together with the maximum allowable cost of borrowing that the UARB will determine, they will form the complete regulatory framework applying to payday lenders. The proposals have been listed under eight broad headings. The Department's objective with these proposals is to achieve a balance between promoting fair market practices by payday lenders and ensuring appropriate protection for those who obtain payday loans.

Responses to this consultation paper will be used to evaluate whether individual proposals outlined are needed and appropriate, and if there are alternative or other regulations that should be considered. Please feel free to share your viewpoints or perspectives. This paper may also be found at [www.gov.ns.ca/snsmr/popular](http://www.gov.ns.ca/snsmr/popular).

Comments should be provided in writing either electronically or by fax or mail by June 25, 2007 to:

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## 1. Licensing

The following provisions of the Consumer Protection Act, existing regulations and Bill 87 will apply to payday lenders. Each payday lender will be required to hold a permit issued by the Registrar of Credit, and any agent of a lender, or broker, is also required to obtain a permit. A lender must maintain a permanent place of business in Nova Scotia. The authority exists to require a lender to post a bond of \$25,000. Each payday loan location will be required to have its own permit. A payday lender's permit will be renewed annually, at the end of the month in which it was first issued. A payday lender's permit will not be transferable or assignable - a new owner of a payday lending business will be required to apply for a new permit.

To apply for a permit, a payday lender will submit a completed application form, pay the permit fee and provide samples of all of the lender's loan agreement and credit application forms.

Bill 87 defines a payday loan as:

“any advancement of money with a principal of \$1500 or less and a term of 62 days or less made in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card”.

The Registrar will be able to impose terms and conditions on a payday lender permit at any time, if the Registrar considers it in the public interest. The Registrar will be able to refuse to issue a permit to a payday lender if

- an applicant, director or officer, or partner has been convicted of an offence under the Consumer Protection Act or the Criminal Code or is an undischarged bankrupt;
- an applicant provides incomplete, false, misleading or inaccurate information;
- an applicant, director or officer, or partner has had a permit for lending money suspended, cancelled or not renewed in any jurisdiction; or
- the Registrar has reason to believe it is not in the public interest.

The Registrar will be able to refuse to renew a permit of a payday lender if

- any of the reasons that the Registrar may refuse to issue a permit exists;
- the lender has failed to provide information required or provides incomplete, false, misleading or inaccurate information;
- the lender fails to comply with the Act or regulations or a condition of the permit.

A detailed procedure to be followed when the Registrar decides not to issue or renew a permit or to suspend or cancel a permit is outlined in Bill 87

*Proposed Regulations for this section:*

- 1.1 The annual fee for a permit and renewal of a permit as a payday lender will be \$3000.00, a level which is intended to offset compliance costs and the cost of setting the maximum rate and fees associated with payday lender activity in the province by the UARB.*

- 1.2 *The fee applies to each individual location operated by a payday lender.*
- 1.3 *An applicant will be required to submit a completed sample loan agreement for a \$300 loan for 14 days to demonstrate that the cost of borrowing will not exceed the allowable maximum cost of borrowing.*
- 1.4 *A payday lender will be required to submit a separate application for each location for which it wishes to obtain a permit. Credit application and loan agreement forms do not need to be submitted for a new location if all of the forms that will be used in the new location have been approved for use at other locations of that payday lender.*
- 1.5 *The Registrar of Credit will have authority to impose administrative penalties of up to \$10,000 on payday lenders for non-compliance with the Act or regulations.*

## **2. Disclosures to the Borrower**

The following provisions of the Consumer Protection Act and Bill 87 will apply to payday lenders. A payday lender will be required to provide a loan agreement in writing and in plain language, to the borrower before making a loan which contains the following information:

- the total amount, in dollars and cents, being borrowed, and itemizing the amount actually received by the borrower and any official fees or premiums for insurance paid by the lender at the request of the borrower;
- the total cost of borrowing, in dollars and cents, and itemizing interest and each other charge that applies;
- the interest payable as a percentage rate;
- the cost of borrowing as a percentage of the total amount borrowed expressed at an annual rate - the APR;
- the total amount to be repaid;
- the allowable maximum rates, fees and other charges applying to payday loans, including any additional charges if a loan is not repaid by the due date, or is extended or renewed;
- information on the circumstances when a borrower has the right to cancel a loan;
- information on the borrower's rights if the lender charges amounts that it is not permitted to charge; and
- information on the borrower's rights on early repayment.

The borrower is to receive a copy of the loan agreement and a copy of a document that is signed by the borrower that shows that the borrower received the above information.

*Proposed Regulations for this section:*

2.1 *In addition to the information required by the Consumer Protection Act and Bill 87, the loan agreement will include the following information:*

- *the payday lender's name and, if applicable, the name of the agent representing the payday lender to the borrower;*
- *the payday lender's business address and mailing address, telephone number, fax number and email address, and, if applicable, the same information for the agent of the lender;*
- *the borrower's name and address;*
- *the date of the loan agreement and, if different, the date the loan was advanced;*
- *the term of the loan;*
- *the date on which payment is due and, if being repaid by more than one payment, the date and amount of each payment;*
- *if a cash card is issued to the borrower, the amount of credit available on the cash card;*
- *if a cash card is issued to a borrower, the terms and conditions of the cash card, including if it has an expiry date, the date of that expiry; and*
- *if a cash card is issued to a borrower, a statement indicating that third party service charges may apply for use of the card.*

2.2 *The payday lender will be required to give the borrower a copy of the loan agreement at the time it is signed by the borrower.*

2.3 *If an agent of a lender assists a borrower to obtain a payday loan and the payday lender is not in the business of dealing with borrowers directly, the agent of the lender is responsible for providing the loan agreement and the required disclosures to the borrower.*

2.4 *The payday lender will be required to provide a cancellation notice to the borrower at the time of the initial advance, which may be used by the borrower to provide written notice of cancellation of a payday loan to the payday lender.*

2.4 *The following definitions will be added:*

- *“cash card” means a card or other device that can be used to obtain cash or purchase goods or services, but does not include a credit card, and is issued by a payday lender to a borrower of a payday loan instead of advancing cash or transferring money to the borrower or to the order of the borrower.*
- *“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 the use of the cash card.*

### **3. Cancellation by the Borrower**

Bill 87 provides that a borrower will be able to cancel a payday loan any time prior to the end of the business day following the day on which the initial advance was made. A borrower will also be able to cancel a payday loan at any time if the payday lender did not advise the borrower of the above right to cancel or failed to provide the borrower with the required disclosures pertaining to the loan outlined in Section 2.

A borrower will cancel a loan by giving written notice to the lender and repaying the outstanding balance of the amount borrowed. Repayment will be accomplished by:

- repaying the loan by cash, certified cheque or money order;
- return of the payday lender’s unnegotiated cheque; or
- return of the cash card or other device that enabled the borrower to access funds under the loan to the extent of the cash or credit balance remaining on the card or device, plus any difference between the balance remaining and the amount borrowed.

The payday lender will be required to immediately give the borrower a receipt for what the borrower paid or returned on cancelling the loan. The payday lender will not be allowed to charge a fee for cancellation of a payday loan.

When a payday loan is cancelled in accordance with the cancellation provisions, the borrower will be responsible to repay only the principal of the loan. If the borrower purchased loan insurance paid by the lender on the borrower’s behalf, the borrower will be responsible for the pro-rated amount of the insurance premium.

*Proposed Regulation for this section:*

3.1 *When a payday loan is advanced by means of a cash card, the “next business day” is the day following the day when the borrower is able to use the cash card to obtain cash or purchase goods or services.*

## 4. Loan repayment

Bill 87 requires that a payday lender must issue a receipt to the borrower for any repayment of a payday loan.

When a borrower does not fully repay a loan by its due date, the borrower and the lender will be able to negotiate a renewal or extension of the loan. The lender will be able to charge only interest on an extension or renewal of a payday loan. A payday lender is not permitted to grant rollovers, that is enter into a new loan when an existing loan is not repaid by the due date.

Any collection procedures used by a payday lender must adhere to the *Consumer Creditors Conduct Act*.

Where a repayment of a loan is made before it is due, the borrower will be entitled to a reduction in the cost of borrowing.

*Proposed Regulations for this section:*

- 4.1 *The borrower will be entitled to prepay, at any time, any full or partial amount due under the loan agreement without penalty.*
- 4.2 *When a partial repayment is made, the payday lender is to apply payments first to any interest payable, then to any permissible charges or fees and then to the principal of the loan.*
- 4.3 *The receipt the payday lender will issue to the borrower on receiving a payment will show the amount of the payment, and if amounts remain outstanding, the amounts of the payment that have been applied to interest, to permissible charges or fees and to the principal of the loan, and the balance outstanding.*
- 4.4 *Copies of receipts issued by the payday lender to the borrower on repayment of a payday loan are to be retained by the payday lender for a minimum of 3 years from the date of issue.*
- 4.5 *If a loan was advanced by the payday lender issuing a cash card, the borrower is entitled to be paid in cash any amount remaining on the cash card when the payday loan has been repaid in full or the cash card has expired.*
- 4.6 *The balance remaining on a cash card, even if expired, can be applied towards repayment of a payday loan.*

## 5. Prohibited Practices

Bill 87 limits the activities of payday lenders as follows:

- A payday lender may not require security for a payday loan, a post-dated cheque for an amount greater than the amount to repay a payday loan on the due date, or that an undated cheque be provided by borrowers.
- A payday lender may not issue a new payday loan to a borrower who already has a loan with the lender.
- A payday lender may not discount the principal amount of a loan by withholding from the advance a portion of the cost of borrowing.
- A payday lender may not charge a fee or penalty for early repayment of a loan or a fee for cancellation of a loan.
- A payday lender may not grant rollovers.
- A payday lender may not charge any rate, fee or other charge in excess of the maximums determined by the Nova Scotia Utility and Review Board.
- A payday lender may not charge any amount in excess of that disclosed in writing to the borrower or any amount not disclosed in writing to the borrower.

*Proposed Regulations for this section:*

- 5.1 *For purposes of the first point above, “security” will not include post-dated cheques or pre-authorized debit authorizations provided by a borrower as repayment for a loan. “Security” will include, directly or indirectly, real or personal property, an interest in real or personal property, or a guarantee.*
- 5.2 *A payday lender will not be allowed to require a pre-authorized debit or future payment of a similar nature, of an amount greater than the amount to repay the payday loan on the due date.*
- 5.3 *A payday lender will not be allowed to require that more than one form of repayment be provided by the borrower.*
- 5.4 *A payday lender will be limited to one attempt to obtain repayment by means of a pre-authorized debit authorization provided by the borrower, except if the borrower authorizes an additional attempt after the initial attempt has been unsuccessful.*
- 5.5 *A payday lender will not be allowed to charge a cheque-cashing fee on a cheque provided by a borrower to repay a payday loan.*

- 5.6 *A payday lender will not be allowed to charge a fee, or assign a fee, in relation to a cash card issued to a borrower, including to issue the card, to load it and to execute any transaction. This excludes third-party service charges for use of the card.*
- 5.7 *A payday lender will not be permitted to request or accept a wage assignment to secure or facilitate repayment of a payday loan.*
- 5.8 *A payday lender will not be allowed to set the due date for a payday loan any earlier than the borrower's next payday.*
- 5.9 *A payday lender will not be able to make a payday loan contingent on the purchase of insurance or another product or service.*

## **6. Operational Requirements**

Bill 87 requires that a payday lender carry on business only in the name specified on its permit. A payday lender may offer, arrange or provide a payday loan only from a location for which it has a permit.

A payday lender is required to maintain records for inspection.

A payday lender will be required to display the rates and fees for payday loans at its location.

*Proposed Regulations for this section:*

- 6.1 *All responsibilities of a lender apply to an agent of lender if the lender is not dealing directly with borrowers.*
- 6.2 *The borrower is always to have the option to receiving his or her payday loan advance in cash.*
- 6.3 *Copies of loan agreements and of receipts when loans are repaid are to be retained for a minimum period of 3 years from the date the loan or receipt was issued.*
- 6.4 *These records are to be available for inspection on site or be available within 3 business days after a request by an inspector.*
- 6.5 *The record retention system is to be capable of providing an inspector with a listing of all loans provided within a given time period, evidence of all advances, charges and payments relative to a loan and files on all outstanding and paid-out loans.*
- 6.6 *The sign on which the payday lender displays its rates and fees is to be immediately visible to borrowers upon entering the payday lender's place of business, or as may be otherwise directed by the Registrar.*

6.7 *The sign is to be a minimum of 61 centimeters in width by 76 centimeters in length and have a 5 centimeter border. It must consist of a heading “Payday Loans Are High Cost Loans” in at least 72 font print; followed by a subheading in 54 font print “Example: \$300 loan for 14 days”; followed by the following lines in 54 font print “Principal Amount \$300.00”, “Total Cost of Borrowing” followed by the total cost of borrowing for \$300, “Total to Repay” followed by the total of \$300 and the total cost of borrowing for a \$300 loan, and “Annual Percentage Rate - APR” followed by the APR for this \$300 loan.*

## **7. Maximum Rates, Fees or Charges**

Bill 87 states that a payday lender may not charge any fee, charge or penalty that is not provided for in the Act or regulations.

The Nova Scotia Utility and Review Board (UARB) is to set the maximum cost of borrowing, or establish a rate, formula or tariff for determining the maximum cost of borrowing, that a payday lender may charge for a payday loan, or for an loan extension or renewal. The UARB is also to set the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged for any fee, charge or penalty or any component of the cost of borrowing.

A number of factors that the Board may consider in making its orders are set out in Bill 87.

The UARB is to review its orders with respect to fees at least once every 3 years, and make a new order to replace the existing order. The UARB may review an existing order at any time that it is satisfied a review is warranted.

The UARB is required to give public notice and hold public hearings when it is setting or reviewing cost of borrowing, rates and fees for payday loans.

*Proposed Regulations for this section:*

- 7.1 *In fixing or determining the maximum cost of borrowing or the maximum amount that may be charged, the UARB will consider rates and charges that relate to the basic transaction costs of a payday loan and that accrue in relation to the dollar value and the length of the term of the loan.*
- 7.2 *A payday loan is to be limited to a single all-inclusive administration fee amount or rate, and all ancillary fees are prohibited, including, but not limited to, broker or agent of lender fees, cheque cashing fees, and cash card/debit card issuing, loading and transaction fees.*
- 7.3 *In determining the maximum amount that may be charged, the UARB may consider what constitutes an appropriate return to the lender.*

## 8. Remedies

Bill 87 provides that a borrower is not liable to pay the lender any amount:

- in excess of the maximums set by the UARB,
- for a fee, charge or penalty not provided for in the Act or regulations,
- in excess of that disclosed in writing to the borrower,
- for cancellation of a payday loan, or
- not disclosed in writing to the borrower.

Where a borrower has paid any amount referred to above, the borrower will be entitled to a refund of all monies paid in excess of the amount borrowed. A loan agreement cannot override the borrower's right to be free of this liability and to claim a refund.

Where a borrower is entitled to a refund, the payday lender must provide it immediately upon demand by the borrower or by the Registrar.

*Proposed Regulation under this section:*

- 8.1 *A borrower is entitled to a refund of all monies paid in excess of the amount of the loan if the lender has charged an amount for early repayment of a payday loan.*
- 8.2 *With respect to the payday lender requirement to make a refund to a borrowers, "immediately" means at the time that the borrower makes an in person request at the place of business of the payday lender, or by payment dated not later than the next business day if the request is made other than in person by the borrower or by the Registrar.*

## Additional Information

The Nova Scotia *Consumer Protection Act* and Bill 87 may be found at [www.gov.ns.ca/legislature/legc/](http://www.gov.ns.ca/legislature/legc/)

The regulations to the *Consumer Protection Act* may be found at [www.gov.ns.ca/just/regulations/](http://www.gov.ns.ca/just/regulations/)