

# Consumer Protection Act

CHAPTER 92 OF THE REVISED STATUTES, 1989

*as amended by*

1994, c. 16; 1998, c. 8, ss. 22-25; 1999, c. 4, ss. 3-9;  
2001, c. 40; 2006, c. 25; 2007, c. 35; 2011, c. 55; 2012, c. 19;  
2014, c. 39, s. 3; 2014, c. 45, s. 1; 2017, c. 9, ss. 2-13



© 2018 Her Majesty the Queen in right of the Province of Nova Scotia  
Published by Authority of the Speaker of the House of Assembly  
Halifax

This page is intentionally blank.

CHAPTER 92 OF THE REVISED STATUTES, 1989  
 amended 1994, c. 16; 1998, c. 8, ss. 22-25; 1999, c. 4, ss. 3-9;  
 2001, c. 40; 2006, c. 25; 2007, c. 35; 2011, c. 55; 2012, c. 19;  
 2014, c. 39, s. 3; 2014, c. 45, s. 1; 2017, c. 9, ss. 2-13

**An Act to Provide for the  
 Fair Disclosure of the Cost of  
 Credit and for the Protection  
 of Buyers of Consumer Goods**

**Table of Contents**

(The table of contents is not part of the statute)

	Section
Short title.....	1
Interpretation.....	2
Registrar of Credit.....	3
Functions of Registrar.....	4
Public Inquiries Act.....	5
Powers.....	6
Staff.....	7
Professionals.....	8
Advisory councils.....	9
Discrimination prohibited.....	10
Permit.....	11
Duty to issue a permit.....	12
Terms and conditions and repayment of charges.....	12A
Further information and material.....	12B
Suspension or cancellation.....	13
Procedure for cancellation.....	14
Address for service.....	15
Misleading statements.....	16
Statement for borrower.....	17
Maximum rate.....	18
Interpretation of Sections 18A to 18U.....	18A
Application of Sections 18A to 18U.....	18B
Requirement for payday loan permit.....	18C
Application for permit.....	18D
Issue of permit.....	18E
Not transferable or assignable.....	18F
Refusal to issue permit.....	18G
Refusal of renewal, cancellation and suspension.....	18H
Requirements for Internet payday loan website.....	18HA
Consent and record for Internet payday loan.....	18HB
Timing of Internet payday loan.....	18HC
Manner of providing payday loan money.....	18HD
Provision of information by payday lender.....	18I
Restriction on charges.....	18J
Extension or renewal.....	18K
Collection.....	18L
Receipts.....	18M
Prohibitions.....	18N
Display of rates, fees and prescribed information.....	18O
Borrower not liable.....	18P
Cancellation by borrower.....	18Q
Manner of cancellation.....	18R
Retention of documents.....	18S
Nova Scotia Utility and Review Board.....	18T
Regulations.....	18U

Rights on early payment .....	19
Advertising requirements.....	20
Contracting out .....	21
Interpretation of Sections 21V to 21AF.....	21V
Application of Sections 21X to 21AF .....	21W
Disclosure of information respecting internet sales contract.....	21X
Express opportunity to accept or decline internet sales contract.....	21Y
Copy of internet sales contract .....	21Z
Cancellation of internet sales contract.....	21AA
Effect of cancellation under Section 21AA.....	21AB
Duty of supplier upon cancellation under Section 21AA.....	21AC
Application by supplier for relief from Section 21AA.....	21AD
Recovery of consideration where cancellation under Section 21AA.....	21AE
Reversal of credit card charge where cancellation under Section 21AA.....	21AF
Rights preserved .....	22
Unsolicited goods .....	23
Request for credit required .....	24
Negative-option strategy.....	24A
Rights and obligations of assignee .....	25
Interpretation of Sections 25A to 25J.....	25A
Application of Sections 25A to 25J.....	25B
Restriction on advance payment.....	25C
Required contents of contract.....	25D
Limitation on fees.....	25E
Requirement for instalment plan .....	25F
Rescission .....	25G
Time for payment of refund.....	25H
Non-application of renewal provision .....	25I
Obligation to refund.....	25J
Implied conditions or warranties .....	26
Sale not binding .....	27
Void terms .....	28
Express warranties .....	28A
Offence and penalty.....	29
Limitation period .....	30
Proof of statement.....	31
Compliance order.....	31A
Application to Supreme Court.....	31B
Publication of information.....	31C
Appeal.....	32
Regulations .....	33
Regulations .....	34

### Short title

1 This Act may be cited as the *Consumer Protection Act*. R.S., c. 92, s. 1.

### Interpretation

2 In this Act,

- (a) “borrower” means a person who receives credit;
- (b) “buyer” means a person who purchases goods or services on credit and includes his agent, but does not include a person of a class or classes to whom this Act is declared by the regulations not to apply;
- (c) “cost of borrowing” means
  - (i) when used in relation to variable credit, the charges that the borrower is required to pay monthly or periodically on the unpaid balance from time to time, and

(ii) when used in relation to a form of credit, other than variable credit, the amount by which the total sum that the borrower is required to pay if the payments required are made as they become due exceeds

(A) in the case of credit given by the advancement of money, the aggregate of the sum actually received in cash by the borrower and by any person on his behalf, the sum remaining unpaid under a previous extension of credit, in an amount determined under Section 19, that the borrower and lender agree is to be consolidated with the credit then being extended, official fees and premiums for insurance paid or payable by the lender at the request of the borrower, or

(B) in the case of a sale of goods or services, the aggregate of the cash price of the goods or services, the sum remaining unpaid under a previous extension of credit in an amount determined under Section 19, that the buyer and seller agree is to be consolidated with the credit then being extended, official fees and premiums for insurance paid or payable by the seller at the request of the buyer, less the sums, if any, credited as down payment or in respect of a trade-in or in respect of any other matter;

(d) “credit” means credit for which a borrower is required to pay and that is

(i) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into, or

(ii) given by the advancement of money,

but does not include credit extended

(iii) on the security of a mortgage of real property,

(iv) in respect of the sale of goods intended for resale, or

(v) for industrial or business purposes of the borrower;

(e) *repealed 1998, c. 8, s. 22.*

(f) “goods” includes tokens, coupons or other documents or things issued or sold by a seller to a buyer that are exchangeable or redeemable for goods or services;

(g) “insurance” means insurance on the life or health of a borrower or buyer, or on property charged to secure payment of the indebtedness of a borrower or buyer to a lender or seller;

(h) “lender” means a person who extends credit;

(i) “Minister” means the Minister of Service Nova Scotia;

(j) “official fees” means fees paid or payable to a public official in the Province for the filing or registration of an instrument relating to a credit transaction;

(k) “person” means an individual, an association of individuals, a partnership or a corporation and includes an agent of any of them;

(l) “Registrar” means the Registrar of Credit;

(m) “regulations” means regulations made under this Act;

(n) “seller” means a person who is in the business of selling goods or services to buyers and includes his agent, but does not include a person or class of persons to whom this Act is by the regulations declared not to apply;

(o) “trade-in” means consideration given by a buyer in a form other than money or an obligation to pay money;

(p) “variable credit” means credit made available under an agreement whereby the lender agrees to make credit available to be used from time to time, at the option of the borrower, and, without limiting the generality of the foregoing, includes credit arrangements commonly known as revolving credit accounts, budget accounts, cyclical accounts and other arrangements of a similar nature. R.S., c. 92, s. 2; 1998, c. 8, s. 22; 1999, c. 4, s. 3; 2017, c. 9, s. 2.

### **Registrar of Credit**

**3** (1) The Minister shall appoint a Registrar of Credit who has the functions and duties set out in this Act and the regulations and such other functions and duties pursuant to this Act and the regulations as the Minister may determine.

(2) The Minister may, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, authorize another person to act in the Registrar’s stead.

(3) The Minister may appoint one or more deputy registrars as required to assist the Registrar in the performance of the Registrar’s duties.

(4) A deputy registrar may perform any of the duties and exercise any of the powers of the Registrar as directed by the Registrar.

(5) A person appointed or authorized to act pursuant to this Section must be employed pursuant to the *Civil Service Act* and that Act applies to that person. 2014, c. 39, s. 3.

### **Functions of Registrar**

**4** It is the function of the Registrar and he has power to

(a) investigate complaints regarding credit granting and persons engaged in business as lenders;

(b) conduct studies, inquiries and surveys for the purpose of obtaining information as to who are lenders in the Province, concerning their methods and practices of carrying on business, and to keep himself informed of developments or changes in the business of credit granting;

(c) consult with and co-operate with lenders and other interested persons and organizations to assist in the attainment of the purposes of this Act;

(d) disseminate information respecting methods of obtaining or granting credit, the practices of lenders, the costs of borrowing, the facilities available for obtaining loans or credit, and such other information as he considers desirable for the purpose of creating an informed public;

(e) perform the duties and exercise the powers imposed or conferred upon him by this Act or the regulations;

(f) perform such other functions as are prescribed by the regulations or by the Governor in Council. R.S., c. 92, s. 4.

### **Public Inquiries Act**

**5** For the purpose of exercising his functions under this Act, the Registrar has all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*. R.S., c. 92, s. 5.

### **Powers**

**6** The Registrar or a person authorized by him for the purpose may enter the premises of a lender or any person who he has reasonable grounds to believe is carrying on the business of a lender and inspect the records and files of the lender or person and make copies of or take extracts from any books, records or documents on those files. R.S., c. 92, s. 6.

### **Staff**

**7** To assist the Registrar in performing his functions there shall be appointed in accordance with the *Civil Service Act* such auditors, accountants, inspectors, clerks and other persons as are necessary. R.S., c. 92, s. 7.

### **Professionals**

**8** With the approval of the Governor in Council the Registrar may engage solicitors, accountants, actuaries, and other professionally or technically qualified persons. R.S., c. 92, s. 8.

### **Advisory councils**

**9 (1)** The Governor in Council may appoint advisory councils to assist and advise the Registrar in the performance of his functions.

**(2)** Separate advisory councils may be appointed to assist and advise respecting transactions relating to different types of money lending and credit granting.

(3) A provincial advisory council may be appointed from among the members of separate advisory councils to assist in co-ordinating the recommendations of separate councils.

(4) Each advisory council shall consist of such number of persons as the Governor in Council determines. R.S., c. 92, s. 9.

#### **Discrimination prohibited**

**10 (1)** In this Section,

(a) “borrower” means a natural person who receives credit;

(b) “buyer” means a natural person who purchases goods or services on credit;

(c) “credit” means credit for which a borrower is required to pay and that is

(i) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into, or

(ii) given by advancement of money;

(d) “goods” includes tokens, coupons or other documents or things issued or sold by a seller to a buyer that are exchangeable or redeemable for goods or services;

(e) “lender” means a person who as a business or in the course of business extends credit and includes his agent;

(f) “seller” means a person who is in the business of selling goods or services to buyers and includes his agent.

(2) No lender or seller shall refuse to lend or sell to a borrower or buyer, or discriminate against a borrower or buyer, solely because the borrower or buyer is a woman.

(3) Subsection (2) applies whether the woman is married or not. R.S., c. 92, s. 10.

#### **Permit**

**11 (1)** No person shall carry on business as a lender unless that person holds a valid permit under this Act.

(2) *repealed 1999, c. 4, s. 4.*

(3) No person shall publish or cause to be published any statement or representation that he holds a permit under this Act. R.S., c. 92, s. 11; 1999, c. 4, s. 4.



**Duty to issue a permit**

**12 (1)** Upon receipt of an application in the prescribed form from an applicant who satisfies the requirements of the regulations the Registrar shall issue a permit.

**(2)** Unless previously terminated or cancelled, every permit issued pursuant to subsection (1) expires three years from the date of its issue.

**(3)** The Registrar shall not refuse to issue a permit to a lender or cancel the permit of a lender without giving the lender an opportunity to be heard. R.S., c. 92, s. 12; 1999, c. 4, s. 5.

**Terms and conditions and repayment of charges**

**12A** The Registrar may

(a) set terms and conditions for the issuance of a new permit, the maintaining of an existing permit, the re-instatement of a suspended permit or for an applicant who had their permit previously cancelled; and

(b) require the repayment by a lender of any charges made to which the lender was not entitled. 2006, c. 25, s. 1.

**Further information and material**

**12B** The Registrar may require at any time any further information or material to be submitted within a specified time by any applicant or any person issued a permit pursuant to this Act and may require, where the Registrar considers advisable, verification by affidavit or otherwise of any information or material then or previously submitted. 2017, c. 9, s. 3.

**Suspension or cancellation**

**13** The Registrar may suspend or cancel the permit of any person

(a) for the breach of a term or condition upon which the permit was granted;

(b) where he has reason to believe that the person has violated or failed to comply with any provision of this Act or the regulations or an order or direction given under this Act or the regulations; or

(c) where the Registrar considers it to be in the public interest to do so. R.S., c. 92, s. 13; 1999, c. 4, s. 6.

**Procedure for cancellation**

**14 (1)** Where the Registrar believes that a lender who holds a permit under this Act is not carrying on business in the Province, the Registrar may send to the lender a registered letter inquiring whether the lender is carrying on business in the Province and stating that if an answer to the letter is not received within one month from the date of the letter the lender's permit will be cancelled and notice of cancellation will be published in the Royal Gazette.

(2) If the Registrar either receives an answer from the lender to the effect that he is not carrying on business as a lender or does not within one month after sending the letter receive an answer to it the Registrar may cancel the permit of the lender and publish notice of the cancellation in the Royal Gazette.

(3) The Registrar may cancel the permit of a lender when he is satisfied that the lender has died.

(4) The Registrar may cancel the permit of any lender that is a company if he is satisfied that the company has been dissolved or has been struck off the register under the *Corporations Registration Act*.

(5) The Registrar may cancel the permit of any lender who has become bankrupt. R.S., c. 92, s. 14; 1999, c. 4, s. 7.

#### Address for service

15 (1) Every applicant for a permit shall state in the application an address for service in the Province and all notices under this Act or the regulations required or permitted to be given to him are sufficiently given or served for all purposes if delivered or sent by registered mail to the latest address for service so stated.

(2) Every lender who holds a permit under this Act shall within five days notify the Registrar in writing of

- (a) any change in his address for service; and
- (b) any change in the membership in the case of a partnership. R.S., c. 92, s. 15; 1999, c. 4, s. 8.

#### Misleading statements

16 Where any person who holds a permit under this Act is making false, misleading or deceptive statements relating to the extension of credit in any advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of such material. R.S., c. 92, s. 16; 2017, c. 9, s. 4.

#### Statement for borrower

17 (1) Except as provided in subsection (3), every lender shall furnish to the borrower before extending the credit a clear statement in writing showing

- (a) the sum expressed as one sum in dollars and cents, of
  - (i) in the case of credit given by the advancement of money, the sum actually received in cash by the borrower and by any person on his behalf, or
  - (ii) in the case of a sale of goods or services, the cash price of the goods or services;

(b) where the lender is a seller, the sums, if any, to be credited as a down payment or in respect of a trade-in or in respect of any other matter;

(c) where the lender is a seller, the sum that is the difference between the sum stated under subclause (ii) of clause (a) and the sums stated under clause (b);

(d) the sum remaining unpaid under a previous extension of credit, in an amount determined under Section 19, that the borrower and lender agree is to be consolidated with the extension of credit of which the statement is given;

(e) the sum of official fees and premiums for insurance paid or payable by the lender at the request of the borrower;

(f) the aggregate

(i) where the lender is a seller, of the sums stated under clauses (c), (d) and (e), or

(ii) where the lender is not a seller, of the sums stated under subclause (i) of clause (a) and under clauses (d) and (e);

(g) the cost of borrowing expressed as one sum in dollars and cents;

(h) the percentage that the cost of borrowing bears to the sum stated

(i) under subclause (ii) of clause (f) where the lender is not a seller, and

(ii) under subclause (i) of clause (f) where the lender is a seller,

expressed as an annual rate on the unpaid balance of the obligation from time to time, which percentage shall be calculated and expressed in the manner prescribed in the regulations; and

(i) the basis upon which additional charges are to be made in the event of default.

**(2)** In addition to the statement required by subsection (1), where a lender and borrower agree that the rate of interest is subject to variation, the lender shall within thirty days of any change in the rate of interest send to the borrower such statement in writing in such form and containing such information as is prescribed by the regulations.

**(3)** A lender extending variable credit shall

(a) before extending variable credit, furnish the borrower with a clear statement in writing setting forth the cost of borrowing

(i) as an annual percentage or a scale of annual percentages, calculated and expressed in the manner prescribed by the regulations, that the borrower is required to pay monthly or periodically on the unpaid balance, subject to a minimum dollars and cents charge, if any, and

(ii) expressed in dollars and cents in a schedule of amounts of outstanding balances and the corresponding charges for the cost of borrowing;

(b) not less frequently than every five weeks during the extension of credit, furnish the borrower with a clear statement in writing showing in respect of the period covered by the statement

(i) the outstanding balance in the account of the borrower at the beginning of the period,

(ii) the amount of each extension of credit to the borrower during the period and the date thereof,

(iii) the total sum received from or credited to the account of the borrower during the period,

(iv) the cost of borrowing, expressed as one sum in dollars and cents, charged during the period,

(v) the outstanding balance in the account of the borrower at the end of the period,

(vi) the statement referred to in clause (a).

(4) Where anything required to be disclosed pursuant to subsection (3) is varied, the lender shall at least thirty days before the variation is effective send to the borrower a notice of the variation.

(5) The statement required to be furnished under subsection (1) or clause (a) of subsection (3) may be contained in the principal document or instrument relating to the credit transaction or in a separate document.

(6) Notwithstanding any other provision of this Section, where credit is extended and no time or date for payment or repayment is specified at the time the credit is extended the cost of borrowing may be disclosed as a statement of the percentage rate for one year on the credit extended and as the amount in dollars and cents that would be payable by the person to whom the credit was extended if payment or repayment was required to be made one year after the credit was extended.

(7) and (8) *repealed 1998, c. 8, s. 23.*

R.S., c. 92, s. 17; 1998, c. 8, s. 23.

**Maximum rate**

**18 (1)** A borrower is not liable to pay a lender as the cost of borrowing any sum or at a rate that exceeds the sum or rate disclosed in a statement given pursuant to Section 17 by more than the tolerances, if any, permitted by the regulations.

**(2)** Nothing in this Act shall have the effect of depriving a lender of or interfering with the right of a lender to collect from a borrower

(a) the principal of a debt, loan or credit; or

(b) the cost of borrowing thereon at the lesser of the sum or rate shown in a statement required by Section 17. R.S., c. 92, s. 18.

**Interpretation of Sections 18A to 18U**

**18A** In this Section and Sections 18B to 18U,

(a) “financial services provider” means a bank or another organization that provides remote fund transfers, electronic fund transfers or any similar method of transferring money;

(aa) “Internet payday loan” means a payday loan under an agreement between a borrower and a lender that is formed by Internet communications or by a combination of Internet and fax communications;

~~(aa)~~(ab) “payday lender” means a person who offers, arranges or provides a payday loan;

(b) “payday loan” means any advancement of money with a principal of one thousand five hundred dollars or less and a term of sixty-two 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, pawnbrokering, a line of credit or a credit card;

(c) “rollover” means the extension or renewal of a loan that imposes additional fees or charges on the borrower, other than interest, or the advancement of a new payday loan to pay out an existing payday loan, or a transaction specified in the regulations. 2006, c. 25, s. 2; 2011, c. 55, s. 1; 2017, c. 9, s. 5.

**Application of Sections 18A to 18U**

**18B** Nothing in Sections 18A to 18U applies to a payday loan made before the coming into force of Sections 18A to 18U, except to the extent that it relates to an extension or renewal made or granted after the coming into force of Sections 18A to 18U. 2006, c. 25, s. 2.

**Requirement for payday loan permit**

**18C (1)** No person shall offer, arrange or provide a payday loan from a location except under the authority of a permit issued to the person for that location.

(1A) No person shall offer, arrange or provide an Internet payday loan from a website to a borrower in the Province except under the authority of a permit

- (a) issued to the person for a location; and
- (b) that specifies that the person may offer, arrange or provide Internet payday loans from that website.

(2) No payday lender shall offer, arrange or provide a payday loan under the business name or style that differs from the business name or style specified in the lender's permit. 2006, c. 25, s. 2; 2011, c. 55, s. 2.

#### **Application for permit**

**18D (1)** A person may apply, in the form approved by the Registrar, for

- (a) a permit authorizing the person to offer, arrange or provide payday loans; or
- (b) a renewal of a permit.

(1A) An application for a permit must specify

- (a) the location from which the applicant wishes to offer, arrange or provide payday loans; and
- (b) the website, if any, from which the applicant wishes to offer, arrange or provide Internet payday loans.

(2) A person who wishes to offer, arrange or provide payday loans at more than one location must apply for a separate permit for each location.

(3) Before a permit is issued or renewed by the Registrar, the applicant must pay the permit or renewal fee specified in the regulations.

(4) Where the effective period of the permit is less than one year, the permit fee referred to in subsection (3) must be pro-rated in relation to the effective period of the permit. 2006, c. 25, s. 2; 2011, c. 55, s. 3.

#### **Issue of permit**

**18E (1)** Upon receipt of an application in the prescribed form from an applicant who satisfies the requirements of this Act and the regulations and any terms or conditions stipulated by the Registrar, the Registrar shall issue a permit to the applicant.

(2) Unless previously terminated or cancelled, every permit issued pursuant to subsection (1) expires on July 31st in each year. 2006, c. 25, s. 2; 2011, c. 55, s. 4.

**Not transferable or assignable**

**18F (1)** A permit issued pursuant to Section 18E is not transferable or assignable.

**(2)** In the event of a change in ownership of a payday lender, the person acquiring ownership of the payday lender must apply for a new permit.

**(3)** The Registrar, where the Registrar considers it in the public interest to do so, may impose terms or conditions on a permit at the time of issuing or renewing the permit, or at any other time by written notice to the permit holder.  
2006, c. 25, s. 2.

**Refusal to issue permit**

**18G (1)** The Registrar may refuse to issue a permit to an applicant if

- (a) the applicant has been convicted of
  - (i) an offence under this Act, or
  - (ii) an offence under the *Criminal Code* (Canada) or any other Act that, in the opinion of the Registrar, involves a dishonest action or intent;
- (b) the applicant is an undischarged bankrupt;
- (c) the applicant provides incomplete, false, misleading or inaccurate information in support of the application;
- (d) a permit issued to the applicant
  - (i) under this Act, or
  - (ii) by an authority responsible for issuing permits with respect to the lending of money in any jurisdiction,is suspended or has been cancelled, or the applicant has applied for a renewal of such a permit and the renewal has been refused;
- (e) the applicant fails to meet any qualification or satisfy any requirement of Sections 18A to 18U or the regulations;
- (f) the Registrar has reason to believe that the applicant will not carry on business according to law and with integrity and honesty; or
- (g) in the Registrar's opinion, it is not in the public interest to issue a permit to the applicant.

**(1A)** The Registrar shall refuse to issue a permit to an applicant if the application fails to specify a location from which the applicant will offer, arrange or provide payday loans.

- (2) The Registrar may refuse to issue a permit to
- (a) a corporation, if a director or officer of the corporation could be refused a permit under subsection (1); or
  - (b) a partnership, if a member of the partnership could be refused a permit under subsection (1).

(3) The Registrar shall give written reasons for a decision to refuse to issue a permit. 2006, c. 25, s. 2; 2011, c. 55, s. 5.

**Refusal of renewal, cancellation and suspension**

**18H (1)** Subject to subsection (2), the Registrar may refuse to renew or may cancel or suspend a payday lender's permit

- (a) for any reason for which the Registrar may refuse to issue a permit under Section 18G;
- (b) if the lender fails to provide information required by the Registrar or the regulations, or provides incomplete, false, misleading or inaccurate information to the Registrar;
- (c) if the lender contravenes or fails to comply with this Act or the regulations; or
- (d) if the lender contravenes or fails to comply with a condition of the permit.

**(1A)** Subject to subsection (2), the Registrar shall refuse to renew or shall cancel or suspend a payday lender's permit if the payday lender

- (a) fails or ceases to offer, arrange or provide payday loans, other than Internet payday loans, from the location specified in the permit; and
- (b) offers, arranges or provides an Internet payday loan to a borrower in the Province.

**(2)** Before refusing to renew or cancelling or suspending a permit, the Registrar shall notify the payday lender, in writing, that

- (a) the Registrar intends to refuse to renew the permit or to cancel or suspend it, the effective date of the Registrar's decision and why; and
- (b) the lender may, within fourteen days after being served with the notice,
  - (i) make a written submission to the Registrar as to why the renewal should not be refused or the permit should not be cancelled or suspended, or
  - (ii) contact the Registrar to request a hearing before the Registrar.



(3) The Registrar may extend the fourteen-day period referred to in clause (b) of subsection (2).

(4) Where the payday lender does not make a written submission or arrange for and attend a hearing under clause (b) of subsection (2), the Registrar may take the action stated in the notice.

(5) After considering a written submission or holding a hearing, the Registrar may refuse to renew the permit or may cancel or suspend the permit.

(6) A decision to cancel or suspend a payday lender's permit made pursuant to subsection (5) takes effect when notice of the decision is served on the lender, or on the date specified in the decision, whichever is later.

(7) The Registrar shall give written reasons for a decision to refuse to renew or to cancel or suspend a permit. 2006, c. 25, s. 2; 2011, c. 55, s. 6.

#### **Requirements for Internet payday loan website**

**18HA (1)** No payday lender shall offer, arrange or provide an Internet payday loan to a prospective borrower in the Province unless the payday lender's website is designed and maintained in a manner that

(a) allows the prospective borrower to readily understand what action or actions will result in the prospective borrower's acceptance of the loan agreement;

(b) makes the agreement accessible to the prospective borrower in a manner that allows the prospective borrower to acknowledge and accept the terms and conditions of the loan agreement; and

(c) allows the prospective borrower to print the loan agreement.

(2) A payday lender shall ensure that the payday lender's website is designed and maintained in a manner that allows a borrower to, for the term of the borrower's Internet payday loan, print a copy of the loan agreement. 2011, c. 55, s. 7.

#### **Consent and record for Internet payday loan**

**18HB (1)** Before providing the money being advanced under an Internet payday loan, a payday lender shall

(a) ensure that the borrower has consented to entering into the loan agreement; and

(b) create a record evidencing the borrower's consent.

(2) A record created pursuant to clause (b) of subsection (1) is deemed to be part of the loan agreement for the purpose of this Act and must be retained for the period of time prescribed by the regulations. 2011, c. 55, s. 7.

**Timing of Internet payday loan**

**18HC** A payday lender shall instruct its financial services provider on the same day on which the payday lender enters into the loan agreement to transfer the money being advanced under an Internet payday loan to the borrower. 2017, c. 9, s. 6.

**Manner of providing payday loan money**

**18HD (1)** A payday lender shall

- (a) offer to provide the money being advanced to the borrower under a payday loan in cash; and
- (b) provide the money being advanced in cash if the borrower so elects.

**(2)** Subsection (1) does not apply in respect of money being advanced by a payday lender under an Internet payday loan. 2011, c. 55, s. 7.

**Provision of information by payday lender**

**18I** A payday lender shall provide, in writing and in plain language, the following information to a borrower:

- (a) the total amount borrowed expressed as one sum in dollars and cents, that is comprised of
  - (i) the sum actually received by the borrower, and
  - (ii) the sum of official fees and premiums for insurance paid by the borrower;
- (b) the cost of borrowing expressed in dollars and cents and itemized into interest and any other charges;
- (c) the interest payable as a percentage rate;
- (d) the cost of borrowing as a percentage of the total amount borrowed expressed at an annual rate; and
- (e) the total amount to be repaid;
- (f) the regulated maximum rates or fees for the cost of borrowing or any other charges applying to payday loans as determined by the Nova Scotia Utility and Review Board;
- (g) charges payable in the event the loan is not repaid by the due date and the allowable maximum charges as determined by the Nova Scotia Utility and Review Board;
- (h) how a loan may be cancelled;
- (i) the borrower's rights if the lender charges amounts prohibited under Section 18J;
- (j) the amount of fees and charges that can be applied to any extension or renewal as determined by the Nova Scotia Utility and Review Board;

- (k) a copy of the loan agreement;
- (l) a copy of a document signed by the borrower stating that the borrower has received the information set out in this Section;
- (la) any educational materials prepared or approved by the Registrar; and
- (m) such other information as prescribed in the regulations. 2006, c. 25, s. 2; 2017, c. 9, s. 7.

**Restriction on charges**

**18J** A payday lender shall not charge

- (a) any fee, rate or other charge in excess of the maximum fees, rates or charges determined by the Nova Scotia Utility and Review Board;
- (b) any fee, charge or penalty that is not provided for in this Act or the regulations;
- (c) any amount in excess of that disclosed in writing to the borrower;
- (ca) any fee or charge for providing in cash the money being advanced under a payday loan;
- (d) a fee for cancellation of a payday loan; and
- (e) any amount not disclosed in writing to the borrower. 2006, c. 25, s. 2; 2011, c. 55, s. 8.

**Extension or renewal**

**18K** Where a payday loan is not fully repaid on the due date set out in the payday loan, the borrower and the lender may negotiate an extension or renewal of the payday loan. 2006, c. 25, s. 2.

**Collection**

**18L** Any procedures used by a payday lender to collect monies due under a payday loan are subject to this Act and the *Consumer Creditors' Conduct Act*. 2006, c. 25, s. 2.

**Receipts**

**18M** A payday lender shall issue receipts for the repayment of a payday loan and must retain such receipts in the manner prescribed in the regulations. 2006, c. 25, s. 2.

**Prohibitions**

**18N** A payday lender shall not

- (a) require security for a payday loan;

- (b) require undated cheques or require post-dated cheques for any amount exceeding the amount to repay the payday loan by the due date including interest and fees;
- (c) issue a new payday loan to a borrower who already has a loan with the lender;
- (d) discount the principal amount of the loan by deducting or withholding from the initial advance an amount representing any portion of the cost of borrowing;
- (e) issue a loan in excess of a portion of the borrower's net pay as prescribed;
- (f) where a loan agreement makes provision for instalment payments, require an instalment payment to be in excess of a portion of the borrower's net pay as prescribed;
- (g) charge a penalty or fee for the early repayment of a loan; or
- (h) grant rollovers. 2006, c. 25, s. 2.

**Display of rates, fees and prescribed information**

**180 (1)** A payday lender shall display, in the manner prescribed by the regulations,

- (a) rates and fees for payday loans; and
- (b) any other information prescribed by the regulations,

at the location from which the payday lender offers, arranges or provides payday loans.

**(2)** A payday lender shall display, in the manner prescribed by the regulations,

- (a) rates and fees for Internet payday loans; and
- (b) any other information prescribed by the regulations,

on the website from which the payday lender offers, arranges or provides Internet payday loans.

**(3)** A payday lender shall display, in the manner and format required by the Registrar, any educational materials prepared or approved by the Registrar at the location from which the payday lender offers, arranges or provides payday loans.

**(4)** A payday lender shall display, in the manner and format required by the Registrar, any educational materials prepared or approved by the Registrar on the website from which the payday lender offers, arranges or provides Internet payday loans. 2011, c. 55, s. 9; 2017, c. 9, s. 8.

**Borrower not liable**

**18P (1)** The borrower is not liable to pay the payday lender any amount the payday lender is prohibited from charging under Section 18J.

**(2)** Where the borrower has paid an amount referred to in subsection (1), the borrower is entitled to a refund of all monies paid in excess of the total amount borrowed.

**(3)** In the event that the loan agreement requires the borrower to pay an amount referred to in subsection (1), the borrower is responsible to repay only the total amount borrowed.

**(4)** Where the borrower is entitled to a refund under subsection (2), the payday lender shall provide the refund immediately upon demand by the borrower or by the Registrar.

**(5)** Where a payday lender provides a payday loan to a borrower without a permit to do so, the borrower is not liable to pay any amount to the payday lender in excess of the principal amount of the loan. 2006, c. 25, s. 2; 2011, c. 55, s. 10.

**Cancellation by borrower**

**18Q (1)** A borrower may cancel a payday loan anytime prior to the end of the business day following the date of receipt of the initial advance or cash card or other device enabling the borrower to access the funds, or such longer period as prescribed in the regulations.

**(1A)** Notwithstanding subsection (1), a borrower may cancel an Internet payday loan within forty-eight hours following the receipt of the advance.

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

(a) did not advise the borrower of the borrower's right pursuant to subsection (1) or (1A), as the case may be; or

(b) failed to provide the borrower with the information required to be provided to the borrower under Section 18I. 2006, c. 25, s. 2; 2011, c. 55, s. 11.

**Manner of cancellation**

**18R (1)** A borrower shall cancel a payday loan by

(a) giving written notice of the cancellation to the payday lender; and

(b) repaying, by cash, certified cheque or money order or in another prescribed manner, the outstanding balance of the total amount borrowed.

(2) For the purpose of clause (b) of subsection (1),

(a) where the initial advance was made in the form of a cheque, a return of the unnegotiated cheque to the payday lender is to be considered a repayment of the initial advance; and

(b) where the initial advance was made in the form of a cash card or other device that enabled the borrower to access funds under the loan, returning that card or device to the payday lender is to be considered a repayment of the initial advance to the extent of the cash or credit balance remaining on the card or device.

(3) Upon the cancellation of a payday loan under this Section, the payday lender must immediately give the borrower a receipt for what the borrower paid or returned to the payday lender upon cancelling the loan.

(4) The cancellation of a payday loan under this Section extinguishes every liability and obligation of the borrower under, or related to, the payday loan agreement.

(5) Notwithstanding subsection (4), in the event that the borrower purchased loan insurance paid by the lender at the request of the borrower, the borrower is responsible for the pro-rated amount of the insurance premium. 2006, c. 25, s. 2.

#### **Retention of documents**

**18S** A payday lender shall retain the documents prescribed in the regulations for the period of time and in the manner and location prescribed in the regulations. 2006, c. 25, s. 2; 2011, c. 55, s. 12.

#### **Nova Scotia Utility and Review Board**

**18T (1)** In this Section, “Board” means the Nova Scotia Utility and Review Board.

(2) The Board shall, by order,

(a) fix the maximum cost of borrowing, or establish a rate, formula or tariff for determining the maximum cost of borrowing, that may be charged, required or accepted in respect of a payday loan;

(b) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of the extension or renewal of a payday loan; and

(c) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any fee, charge or penalty that is provided for in the regulations.

(3) The Board may, by order, fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any component of the cost of borrowing of a payday loan.

(4) When making an order under this Section, the Board may consider

(a) the operating expenses and revenue requirements of payday lenders in relation to their payday lending business;

(b) the terms and conditions of payday loans;

(c) the circumstances of, and credit options available to, payday loan borrowers generally, and the financial risks taken by payday lenders;

(d) the regulation of payday lenders and payday loans in other jurisdictions;

(e) any other factor that the Board considers relevant and in the public interest; and

(f) any data that the Board considers relevant.

(5) An order made under this Section must be one that the Board considers just and reasonable in the circumstances, having regard to the factors and data considered by the Board.

(6) The Board shall review its existing orders under this Section at least once every three years and, after the review, the Board shall make a new order that replaces the existing orders.

(7) Whenever the Board is satisfied that circumstances in the payday lending industry have changed substantially, or that new evidence has come to its attention that may affect an existing order made under subsection (2) or (3), the Board may review any existing order and, after the review, the Board shall make a new order that continues, modifies or replaces the order that was reviewed.

(8) Before making an order under this Section, the Board shall notify the Registrar and give public notice and hold a public hearing in respect of the subject matter of the order.

(9) As soon as practicable after the Board makes an order under this Section, the Registrar shall give written notice of the order to every payday lender who holds a permit or whose application for a permit is under consideration by the Registrar.

(10) The Board may make recommendations to the Minister on matters in respect of payday loans and payday lenders.

(11) The *Utility and Review Board Act* applies *mutatis mutandis* to a proceeding by the Board under this Section. 2006, c. 25, s. 2.

### Regulations

- 18U (1)** The Governor in Council may make regulations
- (a) respecting application procedures for a permit;
  - (b) respecting payday lender permit fees;
  - (c) respecting the authority of the Registrar under Sections 18A to 18U;
  - (d) respecting terms and conditions of a permit;
  - (e) respecting forms;
  - (f) respecting procedures for appeals;
  - (fa) requiring applicants and payday lenders to provide the information prescribed by the regulations to the Registrar, within the time and in the manner prescribed by the regulations;
  - (fb) prescribing information that applicants and payday lenders are required to provide to the Registrar;
  - (fc) prescribing the time and manner for providing to the Registrar the information prescribed pursuant to clause (fb);
  - (fd) respecting Internet payday loans, including regulations respecting standards and requirements for a website from which a payday lender offers, arranges or provides Internet payday loans;
  - (g) respecting the maximum portion of the borrower's net pay to be loaned by a payday lender;
  - (h) respecting the minimum term of a payday loan;
  - (i) respecting the maximum portion of the borrower's net pay allowed to be charged if the loan agreement makes provision for instalment payments;
  - (j) respecting the types of fees, charges, rates and penalties allowed to be charged with respect to a payday loan;
  - (k) respecting the display of fees, charges, rates, products offered and any other information prescribed by the regulations;
  - (ka) prescribing information that a payday lender must display
    - (i) at a location, or
    - (ii) on a website,
 from which the payday lender offers, arranges or provides payday loans or Internet payday loans, as the case may be;



- (l) prohibiting certain practices with respect to payday loans;
- (m) respecting information to be disclosed to borrowers;
- (n) respecting payday loan renewal and extension practices;
- (o) respecting the cancellation of a payday loan;
- (p) respecting records to be maintained;
- (pa) respecting the manner in which and the location where records are to be maintained;
- (q) respecting other types of payday loans;
- (qa) respecting advertising in relation to payday loans;
- (r) respecting emerging business practices;
- (s) defining any word or expression used but not defined in Sections 18A to 18U;
- (t) deemed necessary or advisable by the Governor in Council to carry out effectively the intent and purpose of Sections 18A to 18U.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 2006, c. 25, s. 2; 2011, c. 55, s. 13.

#### **Rights on early payment**

**19** Where a sum remaining to be paid under an agreement for credit is paid in full before the term of the agreement has expired

- (a) the borrower is entitled to a rebate in respect of the cost of borrowing; and
- (b) the lender is entitled to a part of the cost of borrowing,

in an amount determined in the manner prescribed by the regulations. R.S., c. 92, s. 19.

#### **Advertising requirements**

**20 (1)** No lender shall publish or cause to be published whether in print or by radio or television broadcast or otherwise, any representation of a charge for credit that does not disclose the full cost of borrowing, stated as an annual percentage rate, expressed in the manner required by Section 17.

(2) Unless permitted by the regulations, where a lender represents or causes to be represented in a printing, broadcast or other publication any terms of a credit transaction other than a charge for credit, the lender shall also include or cause to be included all other relevant terms of the credit transaction including

- (a) the sum to be actually received in cash by the borrower or the actual cash price of the goods;
- (b) the amount of the down payment, if any;
- (c) the amount of each instalment; and
- (d) the number of instalments required to repay the total indebtedness including the cost of borrowing.

**(3)** No lender shall represent his charge for credit or cause such charge to be represented unless the representation includes the full cost of borrowing and is expressed in the manner required by Section 17. R.S., c. 92, s. 20.

#### **Contracting out**

**21** This Act applies notwithstanding any agreement or waiver to the contrary. R.S., c. 92, s. 21.

**21A to 21U** *not proclaimed in force*

#### **Interpretation of Sections 21V to 21AF**

**21V** In Sections 21V to 21AF,

- (a) “consumer” means an individual who receives or has the right to receive goods or services from a supplier as a result of a purchase, lease or other arrangement;
- (b) “consumer transaction” means the supply of goods or services by a supplier to a consumer as a result of a purchase, lease or other arrangement;
- (c) “internet” means the decentralized global network connecting networks of computers and similar devices to each other for the electronic exchange of information using standardized communication protocols;
- (d) “internet sales contract” means a consumer transaction formed by text-based internet communications;
- (e) “services” means any services offered or provided primarily for personal, family or household purposes;
- (f) “supplier” means a person who, in the course of the person’s business, provides goods or services to consumers. 2001, c. 40, s. 1.

#### **Application of Sections 21X to 21AF**

**21W** Sections 21X to 21AF do not apply to

- (a) goods and services that are immediately downloaded or accessed using the internet; or
- (b) classes of goods and services that are excluded under the regulations. 2001, c. 40, s. 1.

**Disclosure of information respecting internet sales contract**

**21X** Before entering into an internet sales contract with a consumer, a supplier shall disclose the information prescribed by the regulations. 2001, c. 40, s. 1.

**Express opportunity to accept or decline internet sales contract**

**21Y** A supplier shall provide the consumer with an express opportunity to accept or decline the internet sales contract and to correct errors immediately before entering into it. 2001, c. 40, s. 1.

**Copy of internet sales contract**

**21Z (1)** A supplier shall provide a consumer who enters into an internet sales contract with a copy of the contract in writing or electronic form within fifteen days after the contract is entered into.

**(2)** A copy of the internet sales contract shall include the requirements prescribed by the regulations.

**(3)** For the purposes of subsection (1), a supplier is considered to have provided a consumer with a copy of the internet sales contract if the copy is sent or otherwise provided in accordance with the regulations. 2001, c. 40, s. 1.

**Cancellation of internet sales contract**

**21AA** A consumer may cancel an internet sales contract under the circumstances described in the regulations. 2001, c. 40, s. 1.

**Effect of cancellation under Section 21AA**

**21AB (1)** A cancellation of an internet sales contract under Section 21AA operates to cancel the contract as if the contract had never existed.

**(2)** A cancellation of an internet sales contract under Section 21AA also operates to cancel

- (a) any related consumer transaction;
- (b) any guarantee given in respect of consideration payable under the contract; and
- (c) any security given by a consumer or a guarantor in respect of consideration payable under the contract,

as if the contract had never existed.

**(3)** Where credit is extended or arranged by the supplier, the credit contract is conditional on the internet sales contract whether or not the credit contract is a part of or attached to the internet sales contract and, where the internet sales contract is cancelled, that cancellation has the effect of cancelling the credit contract as if the internet sales contract had never existed. 2001, c. 40, s. 1.

**Duty of supplier upon cancellation under Section 21AA**

**21AC (1)** Where an internet sales contract is cancelled under Section 21AA, a supplier shall, within fifteen days from the date of cancellation, refund to a consumer all consideration paid by the consumer under the contract and any related consumer transaction, whether paid to the supplier or another person.

**(2)** Where goods are delivered to a consumer under an internet sales contract that is cancelled under Section 21AA, the consumer shall, within fifteen days from the date of cancellation or delivery of the goods, whichever is later, return the goods to the supplier unused and in the same condition in which they were delivered.

**(3)** A consumer may return the goods under subsection (2) by any method that provides the consumer with confirmation of delivery to the supplier.

**(4)** The supplier shall accept a return of goods by a consumer under subsection (2).

**(5)** The supplier is responsible for the reasonable cost of returning goods under subsection (2).

**(6)** Goods that are returned by the consumer under subsection (2) otherwise than by personal delivery are deemed for the purposes of that subsection to have been returned when sent by the consumer to the supplier.

**(7)** Any breach of the consumer's obligations under this Section is actionable by the supplier as a breach of statutory duty. 2001, c. 40, s. 1.

**Application by supplier for relief from Section 21AA**

**21AD** A supplier may make an application to the Supreme Court claiming that it would be inequitable for an internet sales contract to be cancelled under Section 21AA and the Court may, upon the application, make any order it considers appropriate. 2001, c. 40, s. 1.

**Recovery of consideration where cancellation under Section 21AA**

**21AE** Where a consumer has cancelled an internet sales contract under Section 21AA and the supplier has not refunded all of the consideration within the fifteen-day period referred to in Section 21AC, the consumer may recover the consideration from the supplier as an action in debt. 2001, c. 40, s. 1.

**Reversal of credit card charge where cancellation under Section 21AA**

**21AF (1)** A consumer who has charged to a credit card account all or any part of the consideration payable under an internet sales contract or related consumer transaction may request the credit card issuer to cancel or reverse the credit card charge and any associated interest or other charges if the consumer has cancelled the contract under Section 21AA and the supplier has not refunded all of the consideration within the fifteen-day period referred to in Section 21AC.

- (2) A request under subsection (1) shall be in writing or electronic form and shall
- (a) contain the requirements prescribed by the regulations;
  - and
  - (b) be made within any time period prescribed by the regulations.
- (3) The credit card issuer may, upon receiving a request under subsection (1), require that the consumer verify the content of the request by affidavit or declaration.
- (4) The credit card issuer shall
- (a) acknowledge the consumer's request within thirty days of receiving it; and
  - (b) where the request satisfies subsections (2) and (3), cancel or reverse the credit card charge and any associated interest or other charges within two complete billing cycles of the credit card issuer or ninety days, whichever first occurs.
- (5) A request under subsection (1) may be given to the credit card issuer by any means, including, but not limited to, personal service, registered mail, courier, facsimile and electronic mail.
- (6) Where the request is given other than by personal service, the request is deemed to be given when sent. 2001, c. 40, s. 1.

### **Rights preserved**

22 The rights of a buyer or borrower under this Act are in addition to any rights of the buyer or borrower under any other Act or by the operation of law and nothing in this Act shall be construed to derogate from such rights. R.S., c. 92, s. 22.

### **Unsolicited goods**

- 23 (1) In this Section,
- (a) "credit" means the advancing of money, goods or services to or on behalf of another for repayment at a later time, whether or not there is a cost of borrowing, and includes variable credit;
  - (b) "unsolicited goods" means personal property furnished to a person who did not request it and a request shall not be inferred from inaction or the passing of time alone, but, for greater certainty, does not include services and also does not include
    - (i) personal property that the recipient knows or ought to know is intended for another person, or
    - (ii) personal property supplied under a contract in writing to which the recipient is a party that provides for the

periodic supply of personal property to the recipient without further solicitation.

(2) No action shall be brought by which to charge any person upon any arrangement for the extension of credit evidenced by a credit card unless the person to whom credit is to be extended requested or accepted the credit arrangement and card in writing.

(3) For the purpose of subsection (2), the obtaining of credit by the person named in the credit card shall be deemed to constitute written acceptance by him.

(4) No action shall be brought by which to charge any person for payment in respect of unsolicited goods notwithstanding their use, misuse, loss, damage or theft.

(5) Except as provided in this Section, the recipient of unsolicited goods or of a credit card that has not been requested or accepted in accordance with subsection (2) has no legal obligation in respect of their use or disposal.

(6) This Section applies in respect of credit cards and unsolicited goods received on or after the eighth day of April, 1971. R.S., c. 92, s. 23; 1994, c. 16, s. 1.

#### **Request for credit required**

24 (1) No lender shall extend credit by way of an advancement of money unless the person to whom the credit is extended has previously applied for or requested it.

(2) No action shall be brought against a person for repayment of credit extended contrary to subsection (1). R.S., c. 92, s. 24.

#### **Negative-option strategy**

24A (1) For the purpose of this Section, a seller uses a negative-option strategy in delivering a service where the seller delivers a service to a buyer after having, on or after April 26, 1994, first notified the buyer to the effect that

(a) the seller proposes to deliver the service; and

(b) the service will be delivered and the buyer will be billed for the service unless the buyer, on or before the time specified in the notice or during a particular time period, instructs the seller not to deliver the service,

and the buyer neither instructs the seller not to supply the services nor authorizes or requests the seller to deliver the services.

(2) No seller shall use a negative-option strategy in the delivery of a service.

(3) Where a negative-option strategy is used in the delivery of a service, no action lies for the payment of any fee or purchase price for the service. 1994, c. 16, s. 2.

#### **Rights and obligations of assignee**

**25** Notwithstanding any other enactment or law but subject to this Act, the assignee of any rights of a lender in an extension of credit or any transaction to which this Act applies has no greater rights than, and is subject to the same obligations, liabilities and duties as, the assignor, and this Act applies equally to such an assignee, but the liability of the assignee is limited to the total amount owing to the lender at the date of assignment under the agreement governing the extension of credit or transaction. R.S., c. 92, s. 25.

#### **Interpretation of Sections 25A to 25J**

**25A** In Sections 25A to 25J,

- (a) “customer” means a person who enters into, or is discussing with an operator the prospect of entering into, a contract;
- (b) “initiation fee” means a one-time fee in addition to the membership fee;
- (c) “membership fee” means the amount payable by a customer for the use of services;
- (d) “operator” means a person who provides or offers to provide services;
- (e) “payment” includes an initiation fee;
- (f) “services” means facilities provided for, or instruction on,
  - (i) health, fitness, modeling, tanning, diet or matters of a similar nature, or
  - (ii) sports, dance or similar activities. 1998, c. 8, s. 24.

#### **Application of Sections 25A to 25J**

**25B (1)** Sections 25A to 25J apply in respect of services or proposed services for which payment in advance is required.

(2) Sections 25A to 25J do not apply in respect of services that are provided

- (a) on a non-profit or co-operative basis;
- (b) by a private club primarily owned by its members;
- (c) incidental to the main business of the operator where no fee is charged for the services;
- (d) by an operator funded or run by a charitable or municipal organization or by the Province or any agency thereof;

(e) for an amount less than that prescribed by the regulations. 1998, c. 8, s. 24.

**Restriction on advance payment**

**25C (1)** No operator shall require or accept advance payment for services from a customer with whom the operator

(a) does not have a written contract that meets the conditions set out in Section 25D; or

(b) has a contract where all of the services contracted for by the customer are not available to the customer at the beginning of the term of the contract with the customer.

**(2)** The term of a contract begins when all of the services contracted for are first made available to the customer.

**(3)** No contract shall be made for a term longer than one year.

**(4)** All payments received in contravention of subsection (1) are repayable to the person making the payments on demand by that person. 1998, c. 8, s. 24.

**Required contents of contract**

**25D (1)** A contract shall set out

(a) the name and address of the operator and the customer;

(b) a description of the services contracted for by the customer that is sufficient to identify those services with certainty;

(c) the price of the services contracted for;

(d) the conditions upon which the contract may be renewed, cancelled or rescinded;

(e) where payment is to be by instalment, the number of instalments, the amount of each instalment and the total additional cost, if any, for payment by instalment; and

(f) where any part of the services are not available at the time the contract is signed, the date that the services will be made available and the name and address of the person holding the funds pending availability.

**(2)** A contract that provides for renewal shall provide that it is not renewable if the customer notifies the operator in writing, before the time for renewal, that the customer does not want to renew. 1998, c. 8, s. 24.

**Limitation on fees**

**25E (1)** No operator shall charge a customer more than one initiation fee.



(2) No operator shall charge an initiation fee that is greater than twice the membership fee. 1998, c. 8, s. 24.

#### **Requirement for instalment plan**

**25F (1)** Every operator shall make available to every customer at least one plan for instalment payments of membership and, where applicable, initiation fees whereby the customer may make equal monthly payments over the term of the contract.

(2) In a plan for payments, the total amount paid by instalments shall not exceed the membership or initiation fee, if applicable, by more than twenty-five per cent. 1998, c. 8, s. 24.

#### **Rescission**

**25G (1)** A customer may rescind a contract by delivering written notice of rescission to the operator within five days after the contract is signed or the services are available, whichever is the later.

(2) A notice of rescission sent to an operator by registered mail is deemed to be delivered on the day that it is mailed.

(3) A customer who rescinds a contract is not liable for payment for services received or used up to the rescission and is entitled to a refund of any payment pursuant to the contract. 1998, c. 8, s. 24.

#### **Time for payment of refund**

**25H** Every operator who owes a refund shall pay the refund within twenty days

(a) after receiving notice of rescission or cancellation, as the case may be; or

(b) where Section 25J applies, after the day specified in the contract or the expiration of the last permission, whichever is the later. 1998, c. 8, s. 24.

#### **Non-application of renewal provision**

**25I (1)** Where a contract provides for renewal and the operator does not deliver to the customer a notice reminding the customer of the provision required by subsection (2) of Section 25D, the provision for renewal does not apply.

(2) A notice pursuant to subsection (1) shall be delivered at least thirty days before, but not more than ninety days before, the end of the contract.

(3) A notice pursuant to subsection (1) sent by registered mail to the customer at the last known address of the customer on file with the operator is deemed to be delivered on the day that it is mailed. 1998, c. 8, s. 24; 2017, c. 9, s. 9.

**Obligation to refund**

**25J (1)** Where a facility is not available for use on the day specified in the contract, the operator shall refund all payments received from the customer unless the customer agrees, in writing, to permit the operator to retain the payment.

**(2)** No permission given pursuant to subsection (1) applies for longer than ninety days but a subsequent permission may be given on the expiration of a permission. 1998, c. 8, s. 24.

**25K to 25AO** *repealed 2014, c. 45, s. 1.*

**Implied conditions or warranties**

**26 (1)** In this Section and Section 27, “consumer sale” means a contract of sale of goods or services including an agreement of sale as well as a sale and a conditional sale of goods made in the ordinary course of business to a purchaser for his consumption or use but does not include a sale

- (a) to a purchaser for resale;
- (b) to a purchaser whose purchase is in the course of carrying on business;
- (c) to an association of individuals, a partnership or a corporation; or
- (d) by a trustee in bankruptcy, a receiver, a liquidator or a person acting under the order of a court.

**(2)** In this Section and Section 27, “purchaser” means a person who buys or agrees to buy goods or services.

**(3)** Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every consumer sale:

- (a) a condition that the seller has a right to sell the goods, and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;
- (b) a warranty that the purchaser shall have and enjoy quiet possession of the goods;
- (c) a warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made;
- (d) where there is a contract for the sale of goods by description, there is a condition that the goods shall correspond with the description; and if the sale be by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description;
- (e) where the purchaser, expressly or by implication, makes known to the seller the particular purpose for which the goods

are required, so as to show that the purchaser relies on the seller's skill or judgement and the goods are of a description which it is in the course of the seller's business to supply, whether he be the manufacturer or not, a condition that the goods shall be reasonably fit for such purpose; provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

(f) where goods are bought by description from a seller who deals in goods of that description, whether he be the manufacturer or not, a condition that the goods shall be of merchantable quality, provided that, if the purchaser has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;

(g) in the case of a contract for sale by sample

(i) a condition that the bulk shall correspond with the sample in quality,

(ii) a condition that the purchaser shall have a reasonable opportunity of comparing the bulk with the sample,

(iii) a condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample;

(h) a condition that the goods are of merchantable quality, except for such defects as are described;

(i) a condition that the goods, whether bought by description or otherwise, are new and unused unless otherwise described;

(j) a condition that the goods shall be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale.

(4) For the purposes of clause (h) of subsection (3), it is not necessary to specify every defect separately, if the general condition or quality of the goods is stated with reasonable accuracy.

(5) There shall be implied in every consumer sale of services a condition, on the part of the seller, that the services sold shall be performed in a skilful and workmanlike manner.

(6) This Section applies to contracts entered into on or after the fifteenth day of August, 1975. R.S., c. 92, s. 26.

#### **Sale not binding**

27 (1) A consumer sale is not binding upon the purchaser if with respect thereto the seller gives, or offers to give, a rebate or discount to the purchaser in consideration of his giving to the seller the names of prospective purchas-

ers, or otherwise aiding the seller in making a sale to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the purchaser agrees to buy.

(2) This Section applies to contracts entered into on or after the fifteenth day of August, 1975. R.S., c. 92, s. 27.

#### Void terms

**28** (1) Any written term or acknowledgment, whether part of a contract of sale or not, that purports to negative or vary any of the conditions or warranties set out in this Act or states that the provisions of this Act or the regulations do not apply or that a benefit or remedy under this Act or the regulations is not available, or that in any way limits or abrogates, or in effect limits, modifies, or abrogates, a benefit or remedy under this Act or the regulations, or that in any way limits, modifies or abrogates any liability of the seller including any limitation, modification or abrogation of damages for breach of any of the conditions or warranties set out in this Act or the regulations, is void.

(2) If a written term or agreement contrary to this Act or the regulations is a term of the contract, it shall be severable therefrom.

(3) A written term or acknowledgement contrary to this Act or the regulations shall not be evidence of circumstances showing an intent that any of the implied conditions and warranties are not to apply.

(4) Money paid under or by reason of a written term or acknowledgement contrary to this Act or the regulations is recoverable in a court of law.

(5) This Section applies to contracts entered into on or after the fifteenth day of August, 1975. R.S., c. 92, s. 28.

#### Express warranties

**28A** (1) For the purpose of this Section, a manufacturer, seller or lessor makes an express warranty respecting an automobile where the manufacturer, seller or lessor makes a statement respecting the automobile either

(a) as part of a written contract for the sale or lease of the automobile by the seller or lessor to a purchaser or lessee; or

(b) to the public or any part of the public, no matter in what manner the statement is made, including any advertisement.

(2) Where a manufacturer, seller or lessor makes an express warranty of the kind described in subclause (1)(b) respecting an automobile and subsequently sells or leases the automobile to a purchaser or lessee, the express warranty is deemed, for the purposes of this Section, to be part of the contract of sale or lease.

(3) Where an express warranty forms part of a contract of sale or lease of an automobile, each subsequent purchaser or lessee who acquires an owner-

ship or leasehold interest in the automobile has the same rights and remedies under the express warranty as if the subsequent purchaser or lessee were the original purchaser or lessee under the contract.

(4) No person shall charge or collect any fee for the transfer of a warranty by the operation of subsection (3). 1994, c. 16, s. 3.

#### Offence and penalty

29 (1) Every person who violates or fails to comply with any provision of this Act or the regulations or an order or direction given under this Act or the regulations and every director of a corporation who knowingly concurs in a violation or failure to comply with any provision of this Act or the regulations or an order or direction given under this Act or the regulations is guilty of an offence and liable on summary conviction to a penalty of not more than twenty-five thousand dollars or to imprisonment for a term of not more than one year, or both.

(2) Where a corporation is convicted of an offence under subsection (1) it is liable to a penalty of not more than three hundred thousand dollars. R.S., c. 92, s. 29; 2012, c. 19, s. 2; revision corrected.

#### Limitation period

30 Notwithstanding subsection 786(2) of the *Criminal Code* (Canada), an information for an offence under this Act may be laid at any time within three years from the time when the offence or act was committed. R.S., c. 92, s. 30.

#### Proof of statement

31 A statement as to

(a) whether a permit was issued or was not issued to a person under this Act;

(b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;

(c) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or

(d) any other matter pertaining to such issuance or non-issuance of a permit, filing or non-filing or to any such person, document or material,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. R.S., c. 92, s. 31; 2017, c. 9, s. 10.

#### Compliance order

31A (1) After giving a person the opportunity to be heard, the Registrar may issue a compliance order requiring the person to comply with this Act and the regulations if satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.

- (2) A compliance order must
- (a) name the person in respect of whom the order is issued;
  - (b) describe the person's act or practice that is contravening, is about to contravene or has contravened this Act or the regulations;
  - (c) identify the provision of this Act or the regulations that is being contravened, is about to be contravened or has been contravened; and
  - (d) be dated and signed by the Registrar.

(3) In a compliance order, the Registrar may order a person to stop engaging in or not to engage in a specified act or practice and to comply with this Act and the regulations.

(4) The Registrar shall serve a copy of the compliance order on the person named in the order. 2017, c. 9, s. 11.

#### **Application to Supreme Court**

**31B (1)** Where the Registrar is satisfied that a person in respect of whose conduct a compliance order has been issued is not complying with the order, the Registrar may apply to the Supreme Court of Nova Scotia for an order directing the person to comply with the compliance order.

(2) Upon hearing an application of the Registrar under subsection (1), the Supreme Court may make any order that the Court considers necessary, in addition to the order directing the person to comply with the compliance order. 2017, c. 9, s. 11.

#### **Publication of information**

**31C (1)** The Registrar may publish any of the following information, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*:

- (a) the name and business address of a permit holder;
- (b) any information appearing on a permit;
- (c) any information relating to the status of a permit issued under this Act, including the suspension or cancellation of a permit;
- (d) details of any compliance order issued under Section 31A;
- (e) details of any court order made under this Act;
- (f) details of any conviction for an offence under this Act;
- (g) any other information prescribed by the regulations.

(2) The Registrar may publish the information referred to in subsection (1) in whatever form and manner the Registrar considers appropriate. 2017, c. 9, s. 11.

### Appeal

**32** Any person aggrieved by a decision, order or direction of the Registrar may within thirty days after receiving notice of the decision, order or direction appeal therefrom to the Supreme Court of Nova Scotia and the judge on the hearing of the appeal may confirm, vary or set aside the decision, order or direction. R.S., c. 92, s. 32; 2017, c. 9, s. 12.

### Regulations

**33** The Governor in Council may make regulations

(a) providing for the issuance of permits to lenders or any class or classes of lenders and their agents, officers, servants or employees;

(b) prescribing the forms of application for a permit and the information to be supplied by applicants therefor;

(c) prescribing the terms and conditions of a permit or any type or class of permit;

(d) imposing restrictions, including the regulation or prohibition of expiry dates less than thirty-six months on goods, including gift certificates or gift cards, that are exchangeable or redeemable for goods or services;

(e) requiring sellers or any class of sellers to be bonded in such form and terms and with such collateral security as are prescribed and providing for the forfeiture of security and the disposition of the proceeds;

(f) respecting the suspension or cancellation of a permit;

(g) declaring that this Act does not apply to a buyer or seller or a class or classes of buyers or sellers, or to a borrower or lender or a class or classes of borrowers or lenders;

(h) providing for approval of forms of agreements, assignments and other instruments and documents to be used by lenders;

(i) requiring any class or classes of lenders to submit forms of credit agreements, instruments and other documents used by him or them to the Registrar for approval;

(j) requiring the use by lenders of credit agreements, instruments and other documents that are in a form approved by the Registrar and prohibiting the use by any class or classes of lenders of such agreements, instruments or documents that are not in a form approved by the Registrar;

(k) prescribing the manner in which the cost of borrowing stated as a percentage shall be calculated and expressed by any class or classes of lenders which may be different for different classes of lenders or for different types of businesses carried on by lenders;

- (l) prescribing the form of and information to be contained in a statement required by subsection (2) of Section 17;
- (m) prescribing the manner of determining the apportionment of the cost of borrowing for the purposes of Section 19;
- (n) prohibiting collection methods or practices, or prescribing a code of ethics for lenders;
- (o) regulating forms of advertising by lenders relating to the extension of credit;
- (p) prescribing the form and content of records relating to lending to be kept by lenders and the length of time for which they must be kept;
- (q) prescribing reports and returns to be made by lenders or any class or classes of lenders and requiring them to be made to the Registrar;
- (r) prescribing forms and providing for their use and requiring the information in any form to be verified by affidavit;
- (s) prescribing fees for a permit, searches, certificates and other matters or services rendered or supplied by the Registrar;
- (t) prescribing additional information that may be published by the Registrar under Section 31C. R.S., c. 92, s. 33; 1998, c. 8, s. 25; 1999, c. 4, s. 9; 2007, c. 35, s. 1; 2017, c. 9, s. 13.

### Regulations

- 34** (1) The Governor in Council may make regulations
- (a) respecting classes of goods and services to which Sections 21X to 21AF do not apply;
  - (b) prescribing information to be disclosed by a supplier before entering into an internet sales contract with a consumer;
  - (c) respecting the manner in which information may be disclosed to a consumer by a supplier before an internet sales contract is entered into;
  - (d) prescribing the requirements to be included in a copy of an internet sales contract;
  - (e) respecting the sending or provision of copies of internet sales contracts;
  - (f) respecting circumstances in which a consumer may cancel an internet sales contract;
  - (g) respecting the manner in which a consumer may notify a supplier of cancellation of an internet sales contract;
  - (h) respecting applications made pursuant to Section 21AD;
  - (i) prescribing requirements for a request by a consumer to a credit card issuer made under subsection (1) of Section 21AF;



(j) respecting time periods in which a request by a consumer to a credit card issuer may be made under subsection (1) of Section 21AF;

(k) defining any word or expression used but not defined in Sections 21V to 21AF;

(l) considered necessary or advisable to carry out effectively the intent and purpose of Sections 21V to 21AF.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 2001, c. 40, s. 2.

---