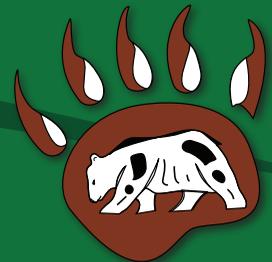


WHAT YOU NEED
TO KNOW ABOUT
**PAYDAY
LOANS**
IN
ALBERTA



WHAT IS A PAYDAY LOAN?

A payday loan is a short-term loan for \$1,500 or less granted by a lender other than the bank. A borrower is expected to pay back a payday loan when they receive their next paycheque.

In Alberta, the term of a payday loan cannot exceed 62 days and the maximum interest that can be charged is 23%, or \$23 per \$100 loaned.

To get a payday loan, a customer gives a post-dated cheque, a preauthorized debit from their bank account, or a related future payment, to the payday loan company in exchange for the loan.

A payday loan **cannot be made** through pawnbroking, a line of credit, or a credit card.

WHAT LEGISLATION APPLIES TO PAYDAY LOAN COMPANIES?

Payday loans are legal under the *Criminal Code of Canada*, but are subject to limits on the interest charged.

Provinces can enact laws regulating payday loan companies. In Canada, some provinces, including Alberta, have created these laws.

If there are no provincial laws, payday loan companies are subject to federal laws dealing with interest rates in Canada. Under federal law payday loan companies can only charge a **maximum of 60% interest per year on a loan**. If the interest on a payday loan is over 60% per year and there is no provincial legislation, the interest rate is criminal.

LEGISLATION IN ALBERTA

In Alberta, the *Fair Trading Act* and the *Payday Loans Regulation* govern how payday loan companies operate.

These laws apply to **ALL** payday loan companies in Alberta, whether in a physical location or online. These laws also protect customers from unfair trading practices related to a transaction and apply if:

- The customer lives, or business is located, in Alberta.
- The offer of acceptance is made in, or sent from, Alberta.
- The unfair business practice is made in, or located in, Alberta and involves a representative of the business or company.

Note: Agreements made prior to September 1, 2009 are not covered by the *Payday Loans Regulation*.

DO PAYDAY LOAN COMPANIES HAVE TO BE LICENSED IN ALBERTA?

Yes, **all payday loan companies** must have a Payday Loan license to operate in Alberta. During the licensing process, every payday loan company must post a security document when applying for a license in Alberta.

HOW CAN I CHECK TO SEE IF A PAYDAY LOAN COMPANY IS LICENSED?

To check if a payday loan company is licensed in Alberta, you can go online to Service Alberta and search for a licensed business at <http://www.servicealberta.ca/976.cfm>

You can also reach the Customer Contact Centre by phone at (780) 427-4088 in Edmonton, or toll free at 1 (877) 427-4088, to check if a payday loan company is licensed.

WHAT RIGHTS DO PAYDAY LOAN CUSTOMERS HAVE?

In Alberta, payday loan customers are protected by laws found in the *Payday Loans Regulation* and *Fair Trading Act*. These laws include the following protections:

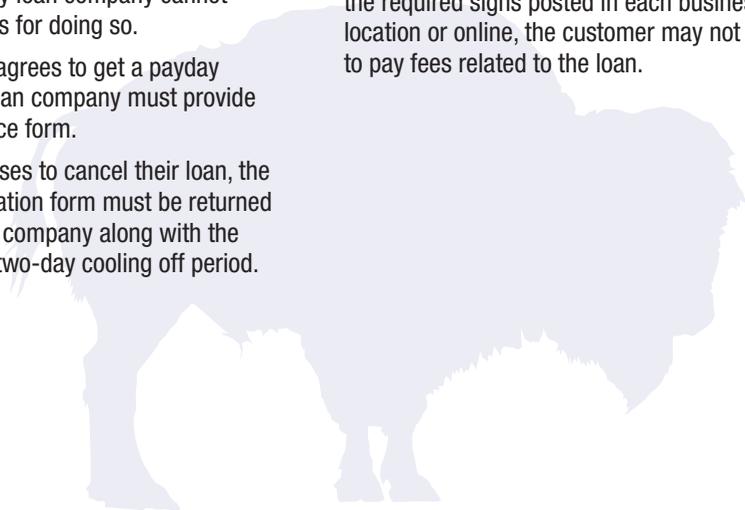
1. A TWO-DAY “COOLING OFF” PERIOD

- A payday loan customer has a two-day “cooling-off” period after signing a payday loan agreement.
- This means that, during this two-day period (two business days), customers can cancel their loan and return the money they borrowed with no extra fees.
- If for some reason the payday loan company is not open for business on the second day, a customer has until the next business day to cancel the loan.

A cancellation fee cannot be charged during this “cooling-off” period.

2. A payday loan customer can also repay the full amount of the loan at any time.
- If a customer chooses to repay the full amount, the payday loan company cannot charge penalty fees for doing so.
3. When a customer agrees to get a payday loan, the payday loan company must provide a cancellation notice form.
- If a customer chooses to cancel their loan, the completed cancellation form must be returned to the payday loan company along with the money during the two-day cooling off period.

- You can also cancel a loan by writing a letter to the payday loan company saying you want to cancel the agreement. You must deliver the signed letter and the money to the payday loan company during the two-day cooling off period.
4. When a payday loan company receives your notice of cancellation, they must give you a receipt.
 - When the payday loan company gives you a receipt, it means they accept the cancellation of your agreement.
 5. If a payday loan company tries to collect a debt from a customer in a way that does not obey the *Payday Loan Regulation*, the customer may not have to pay fees related to the loan.
 6. In Alberta, if a payday loan company charges interest higher than \$23 per \$100 (23%), the customer may not have to pay fees related to the loan.
 7. If a payday loan company does not have the required signs posted in each business location or online, the customer may not have to pay fees related to the loan.



WHAT PAYDAY LOAN COMPANIES CANNOT DO

Payday loan companies cannot:

1. Discount the principal amount of the loan.
2. Give rollover loans to customers.
3. Demand a loan to be due less than one full banking day after a payday or arrival of other income.
4. Charge any other fee that is not found in the loan agreement.
5. Make unauthorized withdrawals from your bank account.
6. Take a cheque from a customer that is not made out to them.
7. Take any information from you that would give them direct access to your bank account, unless it is for a pre-authorized payment for a specific payday loan.
8. Charge more than \$25 for a returned cheque fee.

Some unfair practices listed in the *Fair Trading Act* that might apply to payday loans include:

1. Using unreasonable pressure to encourage a customer to get a payday loan.

2. Taking advantage of a lack of understanding or knowledge a customer has about payday loans.
3. Charging a customer an exorbitant amount for the same goods or services found at a much lower price elsewhere.
4. Disguising additional interest fees, above and beyond the legal limit, as “other fees” such as insurance or NSF fees.
 - When payday loan companies try to hide these additional fees, they may be trying to get around the 60% maximum interest that can be charged on a loan set by the *Criminal Code of Canada*.
5. Charging a price more than 10% higher than the estimate without agreement from the customer.

Note: If you suspect any of the above is happening, contact the Service Alberta Customer Contact Centre at (780) 427-4088 in Edmonton, or toll free at 1 (877) 427-4088.

WHAT PAYDAY LOAN COMPANIES MUST DO

1. A payday loan agreement must be written in plain language.
2. A payday loan company must provide a customer with a signed copy of the agreement.
3. After a customer signs an agreement, a payday loan company must give the customer a copy of the cancellation notice.
4. They must display all signs in places where customers can see them as they enter the store and the following must be included on the sign (either in the physical location or online):
 - the words “Maximum charges permitted in Alberta for a payday loan: \$23 per \$100 lent”;
 - the words “We charge _____”, indicating the total charges for a payday loan;
 - the words “For a \$200 loan for 14 days: Total cost of borrowing = _____”, indicating their total charges for a \$200 loan for 14 days;
 - the words “Annual Percentage Rate = _____” indicating the annual percentage rate they charge for a \$200 loan for 14 days;
 - the words “This information meets the requirements of the *Payday Loans Regulation* under the Fair Trading Act”; and,
 - the payday lender’s license number.
5. As well, they must also display all information on their website immediately before the payday loan application.

PREPAID CASH CARDS

Some payday loan companies use prepaid cash cards so borrowers can access their funds.

Although a prepaid cash card may sound like a simple way to access your loan, beware. These cash cards often come with various additional fees, including a card loading fee, a monthly account fee, a cash advance fee, and a monthly card fee, to name a few. **These cash cards can be costly.**

Under the *Payday Loans Regulation* cash cards are regulated in Alberta. For the most part, these laws deal with paying out the remaining balance of the cash card to the borrower.

For example, a borrower issued a cash card instead of cash payment is entitled to receive a cash payment from the payday loan company amounting to the total balance left on the card when

- The balance remaining on the cash card is less than \$25.
- The payday loan has been repaid and the cash card has expired.

Note: If the borrower is entitled to be paid the remaining balance on the cash card (due to one of the above examples) and returns the cash card to the payday loan company, the balance must be paid to the borrower immediately.

WHAT HAPPENS IF I AM UNABLE TO PAY MY PAYDAY LOAN?

If you are unable to pay your payday loan according to the terms of the signed loan agreement, a few measures could be taken to repay the loan.

DEBT COLLECTION

Collection Agencies

Debt collection can happen if you do not pay your debts, including payday loans. Collection agencies are the most common tools for debt collection.

However, there are rules that must be followed for collection of debts. This includes when a payday loan company is collecting debts resulting from a payday loan agreement.

All collection of debts must obey the following rules:

- i. The payday loan company (or a collection agency they use) may contact you between 7 am and 10 pm Alberta time.
- ii. They may also contact your spouse or common-law partner, relative, neighbor, friend or acquaintance to confirm your residential address, telephone number, or employment number.
- iii. They may contact your employer to confirm your employment status, business title or address of business, or the date of next payday.
- iv. They can contact you at work to discuss repayment of the loan **unless you ask them not to.**
 - If you ask them not to call you at work, you must agree to have them contact you elsewhere to discuss the payday loan and abide by that arrangement.

When companies are collecting debts, they cannot:

- i. Make unauthorized withdrawals from your account.
- ii. Use threatening, profane, or intimidating language.
- iii. Discuss your debt with anyone but yourself, a guarantor of your debt, or someone you have chosen as your representative.
 - You **MUST** give consent to have them contact someone else regarding your debt.
- iv. Call you, or anyone else connected to you, so often that the number of calls is harassment.
- v. Threaten you or tell you they are pursuing legal action when they have no legal authority to do so.
- vi. Give you misleading or false information.
- vii. Agree to wage assignments with you or your employer. When you sign a wage assignment with a payday loan company, you consent to garnishment of wages. If you agreed to garnishment of wages, you would do this when you applied for the loan, not when they are collecting a debt.
- viii. Publicly declare, or threaten to publicly declare (via publishing it, etc.), your failure to pay your loan.

DEBT REPAYMENT

DEBT REPAYMENT AGENCIES

Debt repayment agencies are different than collection agencies.

Instead of collecting outstanding debts for another party like a collection agency, they charge a fee to help people arrange payments with creditors. They act on behalf of those owing money.

Additionally, while debt collection by a collection agency is involuntary, debt repayment agencies are a voluntary agreement between the agency and customer.

A repayment agreement is presented by the debt repayment agency to the creditors. Creditors have the option to accept or reject the repayment agreement.

If a creditor accepts the repayment arrangement, they may cancel it at any time if you do not follow the terms of the repayment agreement. After this, they can continue debt collection on your debt.

The debt repayment agency is responsible to tell you within 30 days if the company has chosen not to participate in or withdrawn from a debt repayment program.

As with collection agencies, there are some things a debt repayment agency can and cannot do.

What CAN/MUST a debt repayment agency do?

1. They CAN charge you a **one-time administration fee**. The admin fee cannot be more than the total of:
 - a. The average monthly payment to your creditor.
 - b. A charge of 15% of the gross amount of the payments received from you to give to your creditors.
2. **OR** they CAN, if a suitable and approved settlement occurs via their negotiation, charge a fee of no more than 10% of the settlement amount.
3. They MUST give you a copy of the signed contract before services are provided. If they do not give you this signed copy, they cannot charge any fees.

DEBT REPAYMENT & SMALL CLAIMS COURT

What does a debt repayment contract have to include?

1. It MUST be in writing, and signed and dated by you and the debt repayment agency.
2. It MUST include your name, address, and telephone number and the same for the debt repayment agency, including their fax or email contact information.
3. It MUST describe ALL services that will be provided.
4. It MUST itemize ALL fees.
5. It MUST list ALL creditors to be paid under the agreement.
6. It MUST include the total amount owed, the amount of the payments, the schedule of the payments, and the total amount of payments per creditor.

What a debt repayment contract CAN'T do

1. They CAN'T charge an NSF fee unless they have discussed it with the debtor prior to the fee being charged.
2. They CAN'T convince you to accept a sum of money as a final settlement that is less than the balance owing to a creditor without the creditor's consent.
3. They CAN'T provide any false or misleading information.
4. They CAN'T lend you money to pay debts.
5. They CAN'T offer to compensate you in any way for entering into a debt repayment agreement.
6. They CAN'T collect a fee for helping you get an extension from a creditor.

7. They CAN'T fail to give you a receipt for all cash transactions or payments made in person when you request it.
8. They CAN'T discuss the existence of your debt, or any details about it, with anyone else except you, a guarantor (someone who agrees to be responsible for another person's debt) someone else you designate, or the creditor.

SMALL CLAIMS COURT

If you have a dispute with a payday loan company, you may want to take it to **Civil Court, commonly called small claims court**. This court hears **all civil claims**.

Claims filed in small claims court must be for \$50,000 or less.

However, there are some restrictions. If you are unsure about whether you can file your claim in this court, contact the court to confirm.

Important information about small claims court

- a. It was created to help regular citizens settle their legal disputes without a lawyer. However, if you choose, you can hire a lawyer to help represent your problem to the judge and question the other party and witnesses.
- b. You must be 18 years or older to sue someone in this court. If you are not 18 years or older, you have to find someone who will accept all the responsibilities of the case, including the costs. This person is called a "next friend."
- c. When you sue, you bring your legal problem before a judge for a decision.

To learn more about the specifics of filing a civil action (or suing someone) in small claims court, go to <https://albertacourts.ca/provincial-court/civil-small-claims-court/civil-claim-process/the-basics>

BANKRUPTCY

When unable to keep up with financial commitments, some choose to declare bankruptcy. Bankruptcy is a legal process in Canada regulated by federal laws in the Bankruptcy and Insolvency Act.

However, although bankruptcy is an option, it should be your last resort.

If you decide to declare bankruptcy, it means that you will give everything you own to a bankruptcy trustee who will help get rid of your debt.

In order to file bankruptcy in Alberta, the following conditions must exist:

1. You aren't already in bankruptcy.
2. You owe more than \$1000.00 to your creditors.
3. You are insolvent. This means that either:
 - a. You are unable to meet regular payments when they are due; or
 - b. You would be unable to pay your debts if your assets were sold. This would not include assets that you are allowed to keep in a bankruptcy. These are called "exempt assets" and are listed under the *Civil Enforcement Act Regulations*.

Although bankruptcy can help get rid of most of your debt, the following debt cannot be removed by bankruptcy:

1. Secured debts such as a car loan or mortgage;
2. Child support, maintenance, or alimony;
3. Court fines or penalties;
4. Any debts acquired by fraud or fraudulent actions;
5. Student loans; and
6. Civil claims or judgments related to personal or sexual assault.

There is a cost to declaring bankruptcy and will depend on your monthly income, size of your family, and your assets. Payment terms are available to help pay for bankruptcy.

If you are declaring bankruptcy for the first time and cannot repay a portion of your debt (called *surplus income*), you will be automatically discharged nine months after the date of bankruptcy.

However, if you are able to repay a portion of your debts, you will be discharged 21 months after the date of bankruptcy. If you are required to make payments, the amount will be determined by what you earn.

In order to allow you to have a decent standard of living during a bankruptcy, the government allows you to keep a certain amount of your monthly net income. This amount depends on the number of people in the household.

After you file bankruptcy,

- Your creditors cannot continue to harass you for money.
- You can keep your car if it is not worth more than \$5000.
- Any wage garnishment or asset seizure should stop.
- All debt payments, other than your living expenses (including personal debts to family and friends) stop.

FINDING HELP FROM SERVICE ALBERTA

SERVICE ALBERTA

Service Alberta is an excellent source of information about payday loans, including how to file a complaint.

A person who is considering a payday loan can use the **Payday Loan Calculator** to determine the real and total cost of a loan. This allows customers to be fully informed about the total cost of a payday loan before they sign an agreement.

Customers can plug in all of their information into the online calculator, including the amount they are considering borrowing, the loan fee, and the number of days they have to pay back the loan, and it will tell them the **real and total cost of borrowing** a particular amount.

The link to the Service Alberta Payday Loan Calculator is: <http://www.servicealberta.gov.ab.ca/1608.cfm>



FILING A COMPLAINT WITH SERVICE ALBERTA

The **Consumer Services Division** of **Service Alberta** deals with consumer protection and payday loans are under their jurisdiction. Complaints are made under the *Fair Trading Act*.

If you have a complaint about an experience with a payday loan company, contact an Information Officer at the **Consumer Contact Centre**. The contact information is:

- Phone (Edmonton): (780) 427-4088
- Phone (outside Edmonton): 1 (877) 427-4088

The Service Alberta website is: <http://www.servicealberta.gov.ab.ca/562.cfm>

A handy tip sheet about how to file a consumer complaint can be found here: http://www.servicealberta.gov.ab.ca/pdf/tipsheets/Filing_a_complaint_with_CS.pdf

Unfortunately, all complaints cannot be investigated, but if you contact the Consumer Contact Centre, they will be able to tell you whether your complaint can be investigated or not.

If a complaint is not investigated, it will be kept on file in case future action is required and information about their laws and obligations might be sent to the business.

You will be contacted once your complaint has been reviewed or if more information is required. Review of the complaint may take from a couple of days to weeks.

If an investigation doesn't occur, you will be given information about what you can do next.

NOTE: IF A COMPLAINT IS INVESTIGATED, your personal information will be shared so that the business is aware of who is making the complaint and can respond if they so choose.

If there is information you **DO NOT WANT SHARED**, include information about this on the complaint form.

RULES ABOUT FILING COMPLAINTS

There are a few rules about filing complaints with Service Alberta:

- A complaint can only be about a personal incident you have experienced or the person filing a complaint must be a designated agent of the complainant;
- No general or anonymous complaints may be made;
- For the most part, only complaints between businesses and consumers and landlords and tenants can be investigated;
- Usually complaints between businesses are not investigated.

PROCESS OF FILING A COMPLAINT

1. You must file your complaint with Consumer Services **in writing**. You can complete and submit the **printable online form** at <http://www.servicealberta.ca/562.cfm>
2. If you have documents that support your application, send them with the application. Do not send original documents and do not alter or make notes on supporting documents. These supporting documents could be
 - i. Contract or rental agreements;
 - ii. Receipts or proof of payment;
 - iii. Cancellation or dispute letters;
 - iv. Emails or letters;
 - v. Statements of account; and
 - vi. Audio or video recordings.

3. Print and send completed form and documents to appropriate Service Alberta office. You can find the location and contact information of each office here: http://www.servicealberta.gov.ab.ca/pdf/tipsheets/Filing_a_complaint_with_CS.pdf

You can mail or fax the complaint form, or you can bring the form and documents in person to the appropriate Service Alberta office.

4. Always ensure that the form includes the following current information:
 - a. Address;
 - b. Daytime phone number(s); and
 - c. Email address.

Also ensure you have recorded the following details on your complaint form:

- a. Dates and times of incident(s);
- b. Addresses;
- c. Names of people involved in incident(s);
- d. Witnesses to incident(s); and
- e. Contact information for you and the business involved in incident(s).

WHO DO I CONTACT TO HELP ME GET OUT OF DEBT?

CREDIT COUNSELLING

Credit counselling agencies can help you organize your debt and make a plan to pay it.

No matter what sort of debt concerns you have, credit counselling is a helpful way of being supported on your journey toward becoming debt free.

One of the organizations that can help you solve debt is:

1. Credit Counselling Society

- This is a non-profit agency that helps consumers across Canada
 - Solve their debt
 - Manage money
 - Use credit well
- You will be given information to make informed decisions about your debt and finances.
- When you contact the agency, you will be connected with a Counselor who will help you review your budget, income, expenses, and debt repayments.
- Once the Counselor knows more about your situation, they will explain available options to help you pay your debt in a way that works for you.

- During the time spent with the Counselor, you will learn ways to organize and pay your debt, manage your money, stay out of debt, and save for the future.
- These appointments are free and confidential.
- They have extended business hours so their services are more accessible.

Contact Information:

Toll-free phone: 1 (888) 527-8999

Local Edmonton contact information:
Suite 201 – 10612 124 Street NW
Edmonton, AB T5N 1S4

Phone: (780) 701-0083

Local Calgary contact information:
Suite 210 – 1935 32 Avenue NE
Calgary, AB T2E 7C8

Phone: (403) 263-9905

OTHER HELPFUL TOOLS AND RESOURCES

MY MONEY COACH

The My Money Coach website was created by the Credit Counselling Society and is dedicated to giving people financial guidance. The link is: <http://www.mymoneycoach.ca/>.

The website is easy to navigate and has a vast amount of information and tools, including:

- Budgeting tools.
- Various online calculators, such as loan calculators, budget calculators, and savings calculators.
- Free online live webinars about a wide range of topics such as budgeting, relationships and money, teaching your kids about money, credit and debt, eating healthy while not overspending, and savings, to name a few.

ACKNOWLEDGEMENTS

Credit Counselling Society.
<http://www.nomoredebts.org/>

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BearPaw
Legal Education
& Resource Centre



Native Counselling
Services of Alberta