



Province of Alberta

## CONSUMER PROTECTION ACT

# HIGH-COST CREDIT REGULATION

### **Alberta Regulation 132/2018**

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### Extract

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**ALBERTA REGULATION 132/2018**

**Consumer Protection Act**

**HIGH-COST CREDIT REGULATION**

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**Definitions**

**1** In this Regulation,

(a) “Act” means the *Consumer Protection Act*;

- (b) “borrower” means the party to a high-cost credit agreement who receives or will receive high-cost credit from a high-cost credit business operator, and includes a lessee;
- (c) “fixed high-cost credit” means credit under a high-cost credit agreement that is not for open high-cost credit and that is not a high-cost lease;
- (d) “high-cost credit business operator” means a person who
  - (i) offers, arranges for or enters into a high-cost credit agreement as the party providing or offering to provide high-cost credit to the other party, and includes a lessor, and
  - (ii) is required to hold a high-cost credit business licence;
- (e) “open high-cost credit” means credit under a high-cost credit agreement that
  - (i) anticipates multiple advances, to be made when requested by the borrower in accordance with the agreement, and
  - (ii) does not establish the total amount to be advanced to the borrower under the agreement, although it may impose a credit limit;
- (f) “optional service” means a service that is offered to a borrower in connection with a high-cost credit agreement and that the borrower does not have to purchase in order to enter into the high-cost credit agreement.

### **Application**

**2(1)** Subject to subsection (2), this Regulation applies

- (a) to every high-cost credit business operator who offers, arranges for or enters into a high-cost credit agreement with a borrower in Alberta, regardless of whether the high-cost credit business operator operates from business premises or on the internet, and
- (b) to each high-cost credit agreement regardless of the number of high-cost credit business operators involved in the high-cost credit agreement.

**(2)** This Regulation does not apply to a high-cost credit agreement entered into before the coming into force of this Regulation, except

to the extent that it relates to an extension or renewal of a high-cost credit agreement made or granted after the coming into force of this Regulation.

#### **Calculation of rates**

**3** For the purpose of section 124.01(a) of the Act, the rate of a high-cost credit agreement is to be calculated as follows:

- (a) for open high-cost credit, in accordance with the industry standard for calculating annual interest rate;
- (b) for fixed high-cost credit, in accordance with section 24(3) and (4) of the *Cost of Credit Disclosure Regulation* (AR 198/99);
- (c) for a high-cost lease, in accordance with section 26 of the *Cost of Credit Disclosure Regulation* (AR 198/99).

#### **Licence**

**4** The class of licence to be known as the high-cost credit business licence is established.

#### **Multiple locations**

**5** If a high-cost credit business operator carries on the activities of the high-cost credit business at more than one location, the licence under section 4 must specify each location at which the high-cost credit business operator carries on the activities of the high-cost credit business.

#### **Licence to be displayed**

**6(1)** A high-cost credit business operator shall prominently display a copy of the high-cost credit business licence in each location for which it has been issued.

**(2)** If a high-cost credit business operator provides high-cost credit or carries on the activities of the high-cost credit business by means of the internet, the business operator shall prominently display a copy of the licence at or near the top of the introductory page of the website for Alberta borrowers.

#### **Term**

**7** The term of a high-cost credit business licence is one year.

**Fees**

**8(1)** The fee for a high-cost credit business licence is \$1000 per year.

**(2)** If a high-cost credit business operator carries on the activities of the high-cost credit business at more than one location, the fee for each additional location added to the licence is \$500 per year.

**Notification required**

**9** A high-cost credit business operator shall notify the Director in writing within 15 days of any change in the following:

- (a) the owner or owners, the partners or the directors, as applicable, of the high-cost credit business operator;
- (b) the addresses of the locations at which the high-cost credit business operator carries on the activities of the high-cost credit business.

**Security**

**10(1)** A high-cost credit business licence shall not be issued or renewed unless the high-cost credit business operator submits a security to the Director in a form and an amount approved by the Director.

**(2)** The Director may, if the Director considers it appropriate, increase the amount of the security that is to be provided by a high-cost credit business operator before the term of the high-cost credit business operator's licence expires.

**Representations**

**11(1)** A high-cost credit business operator shall not represent, expressly or by implication, that a high-cost credit business licence is an endorsement or approval of the high-cost credit business operator by the Government of Alberta.

**(2)** Subsection (1) does not preclude a high-cost credit business operator from representing that the high-cost credit business operator is licensed under this Regulation.

**General Licensing and Security Regulation**

**12** The *General Licensing and Security Regulation* (AR 187/99) applies to the high-cost credit business.

**Exemptions from licensing**

**13** The requirement to hold a high-cost credit business licence does not apply to the following:

- (a) a public utility, as defined in the *Public Utilities Act*, with respect to the sale of a service;
- (b) a life insurance company, with respect to a loan under a life insurance policy to the insured or the insured's assignee solely on the security of the cash surrender value of the policy;
- (c) a financial institution or other person, with respect to a loan under the *Student Loan Act*, the *Students Finance Act*, the *Student Financial Assistance Act*, the *Canada Student Financial Assistance Act (Canada)*, or the *Canada Student Loans Act (Canada)*;
- (d) a municipality or a Metis settlement, with respect to the payment of taxes under the *Municipal Government Act* or the *Metis Settlements Act*;
- (e) a financial institution regulated under the *Bank Act (Canada)*, a credit union, or ATB Financial, with respect to services provided by the financial institution, the credit union, or ATB Financial.

**High-cost credit agreement**

**14(1)** A high-cost credit business operator shall ensure the front page of a high-cost credit agreement contains a disclosure statement with the following information:

- (a) the name of the high-cost credit business operator;
- (b) the licence number of the high-cost credit business operator;
- (c) any other information required by the Director.

**(2)** The Director may require a high-cost credit business operator to disclose information that is specific to the type of high-cost credit the high-cost credit business operator provides.

**(3)** If a borrower purchases an optional service from a high-cost credit business operator, the high-cost credit business operator shall ensure the disclosure statement required under subsection (1) also contains

- (a) a description of the optional service,

- (b) a statement that the borrower is not required to purchase the optional service in order to enter into the high-cost credit agreement,
- (c) a statement that, if the optional service is of a continuing nature, the borrower has the right to cancel the optional service on 30 days' notice or any shorter period of notice that is provided for by the high-cost credit agreement,
- (d) a statement that, if the optional service is of a continuing nature and the borrower cancels the optional service in accordance with clause (c), the borrower is not liable and is entitled to a refund of any amount already paid for charges relating to any portion of the service that has not been provided at the time of cancellation, and
- (e) any other information required by the Director.

**Entering into agreement**

**15** Immediately before or at the time a borrower enters into a high-cost credit agreement, a high-cost credit business operator shall

- (a) bring to the attention of the borrower the information required under section 14, and
- (b) give the borrower a copy of the high-cost credit agreement.

**Form and content of agreement**

**16(1)** The Director may set all or part of the form and content of of high-cost credit agreements.

**(2)** The Director may require a high-cost credit business operator to use a high-cost credit agreement that is specific to the type of high-cost credit the high-cost credit business operator provides.

**(3)** A high-cost credit business operator shall use a high-cost credit agreement in the form and with the content required by the Director.

**Statement of account**

**17(1)** Subject to subsection (4), a high-cost credit business operator shall, on written request from the borrower, provide the borrower with a statement of account containing as much of the following information as is applicable:

- (a) the period covered by the statement;



- (b) the outstanding balance at the beginning of the period;
- (c) the outstanding balance at the time money was first advanced under the high-cost credit agreement;
- (d) the amount, description and posting date of each transaction or charge added to the outstanding balance during the period;
- (e) the amount and posting date of each payment or credit subtracted from the outstanding balance during the period;
- (f) the total of all amounts added to the outstanding balance during the period;
- (g) the total of all amounts subtracted from the outstanding balance during the period;
- (h) the outstanding balance at the end of the period;
- (i) the outstanding balance at the time the request for the statement of account is made;
- (j) the credit limit, if applicable.

**(2)** The Director may specify a time period within which a high-cost credit business operator shall provide a statement of account to a borrower.

**(3)** A high-cost credit business operator may provide a statement of account to a borrower in electronic form.

**(4)** This section does not apply if a borrower has access to an online account that provides the borrower with the information under subsection (1) on an ongoing basis.

#### **Part 9 of Act**

**18** Nothing in this Regulation affects a high-cost credit business operator's disclosure obligations under Part 9 of the Act.

#### **Confirmation of cancellation**

**19** If a borrower cancels an optional service of a continuing nature under section 67 of the Act, the high-cost credit business operator shall provide confirmation of the cancellation to the borrower in written or electronic form.

**Signs**

**20(1)** The Director may set the form and content of signs that must be displayed by high-cost credit business operators.

**(2)** A high-cost credit business operator shall prominently display a sign in the form and containing the content set by the Director at each location where the high-cost credit business operator carries on the activities of the high-cost credit business.

**Information requirements**

**21(1)** A high-cost credit business operator shall provide to the Director the following information:

- (a) the total value of all high-cost credit agreements the high-cost credit business operator has entered into in Alberta;
- (b) the number of high-cost credit agreements the high-cost credit business operator has entered into in Alberta;
- (c) the number of repeat high-cost credit agreements the high-cost credit business operator has entered into in Alberta;
- (d) the average size and term of the high-cost credit agreements the high-cost credit business operator has entered into in Alberta;
- (e) the total value of the high-cost credit agreements that have been defaulted by borrowers and that have been written off by the high-cost credit business operator in Alberta;
- (f) any other information required by the Director.

**(2)** The Director may specify a time period within which a high-cost credit business operator shall provide the information under subsection (1) to the Director.

**Duty to keep records**

**22(1)** A high-cost credit business operator shall retain the following documents and records in respect of each high-cost credit agreement, as applicable:

- (a) the high-cost credit agreement;
- (b) pre-authorized debit agreements;
- (c) instructions to credit reporting agencies;

- (d) documents and records respecting the assignment or sale of the high-cost credit agreement;
  - (e) any other documents and records in respect of the high-cost credit agreement.
- (2)** A high-cost credit business operator must retain the documents and records described in subsection (1)
- (a) for a period of 3 years after the date on which the high-cost credit agreement was fully repaid, or
  - (b) if the high-cost credit agreement is not fully repaid, after the later of
    - (i) the date of default, or
    - (ii) the date of last payment.

**Dishonoured payment by pre-authorized debit**

**23(1)** Subject to subsection (2), after an attempt by a high-cost credit business operator to process a payment under a high-cost credit agreement by a pre-authorized debit provided by a borrower is dishonoured, the high-cost credit business operator shall not make a further attempt to process the payment by the pre-authorized debit.

**(2)** Subsection (1) does not prohibit a further attempt to process the payment under the high-cost credit agreement by the pre-authorized debit if

- (a) the further attempt is the 2nd attempt, for which the attempted payment
    - (i) is in the same amount as the first attempt plus the permitted fee under subsection (3), and
    - (ii) is processed within 30 days after the high-cost credit business operator received notice that the first attempt to process the payment was dishonoured,
- or
- (b) the further attempt is in accordance with the express written consent provided by the borrower after the previous attempt was dishonoured, in respect of a specific payment amount, plus only the fee permitted under subsection (3), to be processed on a specific date.

(3) The Director may set the amount of a fee that a high-cost creditor business operator may charge for each dishonoured pre-authorized debit.

**Prohibited practices**

**24** A high-cost credit business operator shall not engage in any of the following practices:

- (a) attempting to process a payment under a high-cost credit agreement before the day on which it is due;
- (b) making withdrawals from a borrower's account without the express consent of the borrower;
- (c) charging any amount to a borrower in addition to the fees provided for in the high-cost credit agreement with that borrower in relation to the high-cost credit;
- (d) contacting any individual in person or by telephone for the purpose of collecting or attempting to collect an outstanding payment under a high-cost credit agreement except between 7 a.m. and 10 p.m. in Alberta;
- (e) directly or indirectly threatening or stating an intention to proceed with any action for which there is no lawful authority;
- (f) contacting an individual other than the borrower, an agent of the borrower or a guarantor of a high-cost credit agreement, except for contact in respect of
  - (i) obtaining a borrower's residential address, personal telephone number or employment telephone number, or
  - (ii) contacting a borrower's employer in respect of legal proceedings relating to the high-cost credit agreement,for the purposes of collecting or attempting to collect an outstanding payment under a high-cost credit agreement;
- (g) contacting or attempting to contact any individual in respect of an outstanding payment under a high-cost credit agreement by any means in such a manner as to constitute harassment, including but not limited to
  - (i) the use of threatening, profane, intimidating or coercive language,

- (ii) the use of undue, excessive or unreasonable pressure, or
- (iii) the use of telephone, e-mail, or other methods of contact, other than traditional mail, to call or send messages excessively;
- (h) giving any person, directly or indirectly, by implication or otherwise, any false or misleading information, including but not limited to references to the police, a law firm, prison, credit history, court proceedings or a lien or garnishment;
- (i) contacting a borrower at the borrower's place of employment for the purposes of collecting or attempting to collect an outstanding payment under a high-cost credit agreement;
- (j) contacting a borrower at the borrower's place of employment, if the borrower
  - (i) requests the high-cost credit business operator not to contact the borrower there,
  - (ii) makes reasonable arrangements to discuss the high-cost credit agreement with the high-cost credit business operator, and
  - (iii) discusses the high-cost credit agreement with the high-cost credit business operator in accordance with the arrangements;
- (k) communicating information about a high-cost credit agreement or the existence of a high-cost credit agreement to any person without the express consent of the borrower;
- (l) entering into or arranging wage assignments with a borrower or the employer of a borrower;
- (m) publishing or threatening to publish a notice of a borrower's failure to pay;
- (n) giving false, misleading or deceptive information in advertisements, solicitations or negotiations with respect to a high-cost credit agreement;
- (o) reporting a debt to a credit reporting agency if the borrower has notified the high-cost credit business operator that the debt is in dispute and that the debtor wishes the high-cost credit business operator to take the matter to court;

- (p) charging a fee to a borrower for a dishonoured pre-authorized debit that exceeds the amount set by the Director under section 23(3).

**Offences**

**25** A person who contravenes or fails to comply with any of the following provisions is guilty of an offence:

- (a) section 14(1) and (3);
- (b) section 23(1);
- (c) section 24.

**Coming into force**

**26** This Regulation comes into force on the coming into force of section 1(12) of *A Better Deal for Consumers and Businesses Act*.





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