

WESTERN AUSTRALIA.



ANNO TERTIO

GEORGII QUINTI REGIS,

XLVI.

\*\*\*\*\*

No. 65 of 1912.

AN ACT to amend the law with respect to persons carrying on business as Money-lenders.

[Assented to 30th December, 1912.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Money Lenders Act*, 1912, and shall come into operation on the first day of July, One thousand nine hundred and thirteen. Short title.

2. In this Act, unless the context otherwise requires,— Interpretation.  
“Interest” includes discount, premium, bonus, commission, deduction, fine, penalty, renewal, charge, fees, costs, charges and expenses, whether preliminary or otherwise, or any money or moneys worth or any other consideration whatever, and whether the same be charged, paid, given, or allowed directly or indirectly for or in connection with the loan itself or any application, valuation, or security therefor, but shall not include any commission paid by the borrower to any third person nor any costs or fees paid either by the lender or the borrower to any solicitor “Interest.”

or valuator nor any fees paid out of pocket by the lender where no solicitor acts for him, provided that the lender does not participate or have any interest in any such commission, costs, or fees.

“Loan.”

“Loan” includes advance, discount, money paid for or on account or behalf or at the request of any person, or the forbearance to require payment of money owing on any account whatsoever, and includes every contract (whatever its terms or form may be) which is in substance or effect a loan of money, and also a contract to secure the repayment of such loan, and the expressions “lend” and “lender” shall be construed accordingly.

Definition of  
“Money-lender.”

3. The expression “money-lender” in this Act shall include every person (whether an individual, a firm, a society, or a corporate body) whose business is that of money-lending, or who advertises or announces himself, or holds himself out in any way, as carrying on that business, but does not include—

- (a.) Any licensed pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers; or
- (b.) Any registered friendly society, or building society; or
- (c.) Any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or
- (d.) Any person or body corporate *bona fide* carrying on the business of banking, or insurance, or *bona fide* carrying on any business not having for its primary object the lending of money, in the course of which, and for the purposes whereof, he or it lends money;
- (e.) Any incorporated company performing and discharging the acts and duties of an executor, administrator, trustee, attorney, or agent under power and authority in that behalf conferred upon it by Act of Parliament.
- (f.) Any body corporate for the time being exempted from registration under this Act by proclamation of the Governor published in the *Government Gazette*.

Re-opening of transactions of money-lenders.

4. (1.) Where proceedings are taken in any Court by a money-lender for the recovery of any amount lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, and it appears to the Court that the interest charged in respect of the sum actually lent is excessive, or that the amount charged for expenses, inquiries,

finer, bonus, premiums, renewals, or any other charges are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a Court of Equity would give relief, the Court may reopen the transaction and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between the money-lender and the person sued, and relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest, and charges as the Court, having regard to the risk and all the circumstances, considers reasonable; and if any such excess has been paid or allowed in account by the debtor, may order the creditor to repay it, and may set aside either wholly or in part, or revise or alter, any security given or agreement made in respect of money lent by the money-lender; and, if the money-lender has parted with the security, may order him to indemnify the borrower or other person sued.

(2.) Any Court (or the judge, if any, of any Court) in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent; and the Court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived: Provided that a person shall not be entitled to apply to the Court under this subsection after twelve months from the time when the transaction in respect of or in connection with which such proceeding is taken was finally closed, but the legal personal representative of any deceased person who has entered into such contract may take such proceeding at any time within two years thereafter.

(3.) When it appears to the Court that any person other than the money-lender has shared in the profits of or has any beneficial interest, prospectively or otherwise, in the transaction which the Court holds to be harsh and unconscionable, the Court may cite such person as a party to the case, and may make such order in respect to such person as it deems fit.

(4.) On any application relating to the admission or amount of a proof by a money-lender in any bankruptcy proceedings, the

Court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money lent.

(5.) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender.

(6.) Nothing in the foregoing provisions of this section shall affect the rights of any *bona fide* assignee or holder for value without notice.

(7.) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

Registration of and  
restrictions on  
money-lenders.

5. (1.) A money-lender as defined by this Act—

- (a.) Shall register himself as a money-lender in accordance with regulations under this Act under his own or usual trade name (if any), and in no other name, and with the address, or all the addresses if more than one, at which he carries on his business of money-lender; and
- (b.) Shall carry on the money-lending business in his registered name, and in no other name and under no other description, and at his registered address or addresses and at no other address; and
- (c.) Shall not enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money, other than in his registered name; and
- (d.) Shall on reasonable request and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor.

(2.) If a money-lender fails to register himself as required by this Act or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable, on summary conviction, to a fine not exceeding one hundred pounds, and in the case of a second or subsequent conviction to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding one hundred pounds or to both. Provided that if the offender be a body corporate, that body corporate shall be liable on a second or subsequent conviction to a fine not exceeding five hundred pounds.

(3.) A prosecution for a breach of subsection one (a) of this section shall not be instituted except with the consent of the Attorney General.

(4.) No contract, or agreement or transaction entered into by a money-lender with any person or body corporate shall be void or voidable by reason only that the money-lender has, whether in connection with such contract or agreement or transaction or not, been at any time guilty of a contravention of any of the provisions of this section whether convicted thereof or not.

Conviction for offence not to make contract void or voidable.

6. (1.) The Governor may from time to time make regulations respecting the registration of money-lenders (including the prescribing of the conditions for registration and the grounds on which they may be removed from the register) whether individuals, firms, societies, or companies, the form of the register and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration not exceeding one pound for each registration or renewal, and respecting the inspection of the register and the fees payable therefor.

Regulations as to registration.

(2.) The registration shall cease to have effect at the expiration of three years from the date of the registration, but may be renewed from time to time, and if renewed shall have effect for three years from the date of the renewal.

Renewal of registration.

(3.) All such regulations shall be published in the *Government Gazette*, and when so published shall have the force of law, and shall be laid before both Houses of Parliament within fourteen days after publication if Parliament be then in session, and if not, then within fourteen days after the commencement of the next session.

Publication of regulations.

7. If any money-lender, or any manager, agent, or clerk of a money-lender, or if any person being a director, manager, or other officer of any corporation carrying on the business of a money-lender, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money, or to agree to the terms on which money is or is to be borrowed, he shall be guilty of a misdemeanour, and shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both.

Penalties for false statements and representations.

8. (1.) No person shall be registered as a money-lender under any name including the word "bank" or under any name implying that he carries on banking business.

Prohibition on carrying on business as a "bank."

(2.) If a money-lender in the course of carrying on the money-lending business issues or publishes or causes to be issued or published any circular, notice, advertisement, letter, account or

statement of any kind containing expressions which might reasonably be held to imply that he carries on banking business, he shall be liable on summary conviction to the like penalties as if he had failed to comply with section five of this Act.

When rate of interest not per annum more than ten per cent. not to be recoverable unless contract states the total amount of interest payable or the equivalent rate per annum.

9. (1.) Whenever any interest is by the terms of any written or printed contract (whether under seal or not) made payable at a rate or percentage per day, week, or month, or at any rate or percentage for any period less than a year, no interest exceeding the rate or percentage of twelve and one-half pounds per centum per annum shall be chargeable, payable, recoverable, or enforceable on any part of the principal money unless the contract contains an express statement of the total amount of interest paid or to be paid or of the yearly rate or percentage of interest to which such other rate or percentage is equivalent.

Recovery of sums paid otherwise.

(2.) If any sum is paid on account of any interest not chargeable, payable, recoverable, or enforceable by reason of the provisions of the last preceding subsection, such sum may be recovered back or deducted from any principal or interest payable under such contract, notwithstanding any contract to the contrary.

In certain cases duplicates of contract or memorandum of particulars to be supplied to borrower.

10. (1.) Where money is lent at a rate of interest exceeding twelve and one-half pounds per centum per annum every document executed by the borrower or a surety to evidence the contract of loan or suretyship shall be executed in duplicate, and one of such duplicates shall at the time of execution be delivered by the lender to the borrower or surety, or there shall be delivered to the borrower or surety a memorandum setting out particulars of all the essential parts of the transaction.

Non-compliance.

(2.) If a lender does not comply with the foregoing provision the contract if made for the payment of a higher rate of interest than twelve and one-half pounds per centum per annum, shall, to the extent of the excess, be absolutely null and void. Provided that nothing in this subsection contained shall prejudice or affect the right which any person would otherwise have as assignee or transferee of any contract if he proves that he became such assignee or transferee in good faith and for valuable consideration and without knowledge or notice of any contravention of the provisions of this section, but the lender shall indemnify the borrower or surety against the payment of any higher rate of interest than twelve and one-half per centum per annum in respect of the contract.

Non-application.

(3.) Nothing in this section shall apply to negotiable instruments.

Limit of charge for obtaining or guaranteeing loan.

11. (1.) For procuring, negotiating, or obtaining any loan or for guaranteeing or securing the repayment of any loan, it shall not be lawful for any person to charge, recover, or receive more

than five per centum on the amount of the principal sum actually lent, such percentage shall include all fees, costs, charges, and expenses of any kind whatsoever for or in connection with or preliminary to the procuring, negotiating, or obtaining the loan or the guaranteeing or securing the repayment thereof, but shall not include any costs or fees paid either by the lender or the borrower to any solicitor or valuator, nor any fees paid out of pocket by the lender where no solicitor acts for him; provided that the lender does not participate or have any interest in any such commission, costs, or fees.

(2.) It shall not be lawful for the lender or his partner, employer, employee, principal, or agent, or any person acting for or in collusion with the lender, to charge, recover, or receive any remuneration or reward whatsoever for or in connection with or preliminary to the procuring, negotiating, or obtaining any loan or the guaranteeing or securing the repayment thereof.

Lender or his agent not to charge for obtaining or guaranteeing loan.

(3.) If any money or money's worth be directly or indirectly paid or allowed to or received by any person in contravention of this section, the amount or the value thereof may, to the extent of such contravention and notwithstanding any contract to the contrary, be recovered by the borrower from such person, or if such person is a partner, employer, employee, principal, or agent of the lender, or is in any way acting for or in collusion with him, then either from such person or from the lender.

Recovery back on contravention.

12. (1.) All loans purporting to be loans of money shall be made in current money, bank notes, or cheques on bankers, and shall be made in full without any deduction for interest or otherwise, except such deductions for fees, costs, charges, and expenses as may lawfully be charged pursuant to the provisions hereinbefore in this Act contained, and no land, goods, or articles of any kind whatever or things in action shall be given or supplied in or by way of barter or otherwise for or as part of any such loan.

How loan to be made.

(2.) Every contract made or transaction entered into or performed in breach of or with intent to evade or avoid this section shall to the extent of such breach, evasion, or avoidance be and be deemed to be utterly null and void.

Contracts contravening section void to extent of contravention.

(3.) This section shall not apply to deductions for the current rate of discount on bills of exchange or promissory notes discounted and having when discounted an unexpired currency of not more than twelve months.

Non-application of section.

13. (1.) No assignment to a money-lender, whether absolute or by way of security or otherwise, howsoever made after the commencement of this Act by any person (hereinafter called the grantor) of or in respect of all or any part of his right, title, or interest, whether actual or expectant, in possession, remainder, reversion, or contingent, or of any nature whatsoever, in or under

Certain assignments to be in writing and executed before certain persons.

any will, codicil, or deed or in, under, or to the estate of any deceased person, whether the decease of such last-mentioned person be before or after the making of such assignment or before or after the commencement of this Act, shall be of any force or validity at law or in equity unless the assignment is in writing and executed by the grantor in the presence of a police or resident magistrate, or clerk of petty sessions, or solicitor instructed and employed independently of the money-lender and certified by the police or resident magistrate, or clerk of petty sessions, or solicitor as hereinafter provided.

Explanation to grantor.

(2.) The police or resident magistrate, or clerk of petty sessions, or solicitor shall read over and explain or cause to be read over and explained in his presence to the grantor the said assignment, and shall examine the grantor touching his knowledge of the assignment, and if he thinks fit may so examine him separately and apart from any other person, and if he is satisfied that the grantor understands the true purport and effect thereof and freely and voluntarily executes the same, he shall certify in writing upon the assignment that such assignment has been so read over and explained, and that he has examined the grantor and is satisfied as hereinbefore required, and that the grantor has executed the assignment in his presence.

Definition of "assignment."

(3.) In this section the word "assignment" means any assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer, or declaration of trust, and any contract, agreement, or arrangement for assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer, or declaration of trust, and any power of attorney, appointment of agency, license, or power to receive or other authority of a like nature.

Definition of "Deed."

(4.) In this section the word "deed" means any instrument (other than a will or codicil) whether under seal or not whereby any property is settled, appointed, given, or declared to be held in trust or is agreed to be settled, appointed, given, or held in trust.

Non-application of section.

(5.) This section shall not apply to any assignment made only for the purpose of vesting property in the person entitled thereto under or by virtue of the provisions of a will, codicil, or deed, or as a person entitled thereto as part of the estate of a deceased person, or to any assignment made by any person to whom such property as aforesaid has been actually conveyed, assigned, or transferred.