

WESTERN AUSTRALIA.

MONEY LENDERS

No. 65 of 1912.

(Affected by Act No. 113 of 1965, s. 8.)

[As amended by Acts:

No. 19 of 1913 assented to 30th December, 1913;
No. 31 of 1937 assented to 18th January, 1938;
No. 23 of 1941 assented to 8th December, 1941;
No. 54 of 1948¹ assented to 21st January, 1949;
No. 80 of 1959 assented to 14th December, 1959;
No. 86 of 1962 assented to 11th December, 1962;
No. 111 of 1970² assented to 8th December, 1970;
No. 53 of 1974³ assented to 26th November, 1974,

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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

[Assented to 30th December, 1912.]

BE it enacted—

1. This Act may be cited as the *Money Lenders Act, 1912-1974*, and shall come into operation on the first day of July, one thousand nine hundred and thirteen.

Short title.
Amended by No.
53 of 1974, s. 1.

¹Came into operation on 1st July, 1949 (see 54 of 1948, s. 8 (1).)

²Deemed to have come into operation on the 1st January, 1970; see 111 of 1970, s. 2.

³Came into operation on the 6th December, 1974; see Gazette 6/12/74, p. 5204.

Note.—In this reprint, references in the marginal and footnotes to the 1937 reprint are references to the reprint of the Money Lenders Act, 1912-1937, contained in the appendix to the 1937 sessional volume of Acts.

Interpretation.
Amended by No.
111 of 1970, s. 3.

2. In this Act, unless the context otherwise requires—

“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 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 nor any sum lawfully agreed to be paid on account of duties or fees payable under any Act.

“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.”
Amended by No.
19 of 1913, s. 2;
No. 113 of 1965,
ss. 5 and 8; No.
53 of 1974, s. 3.

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, or who lends money at a rate of interest exceeding such rate per centum per

annum as may pursuant to the provisions' of this Act be from time to time prescribed for the purposes of this section, 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 at a rate of interest not exceeding such rate per centum per annum as may pursuant to the provisions of this Act be from time to time prescribed for the purposes of this section;
- (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*.

3A. (1) Concerning any loan whether made before or after the date of the commencement of the Money Lenders Act Amendment Act, 1962, to any incorporated company or body corporate it shall be lawful for any such incorporated company or body corporate at the time of the making of the loan or

Contracting ou
Added by No. 1
of 1962, s. 2.

¹ Prescribed as 15%, see Reg. 25 in G.G. 6/12/74, p. 5217.

at any time thereafter in writing to acknowledge or to agree in writing with any money lender that the provisions of this Act (other than this section) shall not apply to or in respect of any such loan and any contracts and securities in relation thereto, and upon the execution by any such incorporated company or body corporate of any such acknowledgment or agreement the provisions of this Act (other than this section) shall not apply and shall be deemed never to have applied to or in respect of the loan transaction specified in such acknowledgment or agreement.

(2) Notwithstanding the provisions of subsection (1) of this section a money lender, to whom section eleven A applies, shall not, in relation to any loan or transaction in respect of which an acknowledgment or agreement pursuant to subsection (1) of this section shall have been executed, receive interest in excess of the maximum rate per centum per annum permitted from time to time under section eleven A.

(3) Nothing in this section shall affect the operation of this Act in its application to a guarantee or any other collateral security given by a natural person in respect of a loan made to an incorporated company or a body corporate.

Reopening of
transactions of
money-lenders.
Amended by No.
31 of 1937, s. 2.

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, fines, bonus, premiums, renewals, or any other charges are excessive, or 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, reopen 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 is empowered under this section to reopen, 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.

No money lender to carry on business, etc., unless registered. Amended by No. 31 of 1937, s. 3; No. 80 of 1959, s. 2; No. 113 of 1965, s. 8.

5. (1) No person shall carry on the business of a money lender or do anything which constitutes him a money lender for the purpose of section three of this Act unless he is granted registration under this Act and is the holder of a current license issued to him thereunder.

Money lender to be registered in his own name or trade name.

(2) No money lender shall be registered, except under his own or usual trade name (if any), and with the address or all the addresses, if more than one, at which he carries on his business of money lending.

Registration of and restrictions on money lenders.

(3) A money lender as defined by this Act—

- (a) 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
- (b) 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.

(4) (a) If any person commits a breach of any of the provisions of this section or shall continue to carry on business during any period when his registration is suspended or cancelled under this Act, he shall be liable, on summary conviction, to a fine not less than one hundred dollars, nor exceeding two hundred dollars, 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 less than one hundred dollars nor exceeding two hundred dollars 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 less than two hundred dollars nor exceeding one thousand dollars.

(b) Any minimum fine that may be imposed under the provisions of this section is irreducible in mitigation, notwithstanding the provisions of section one hundred and sixty-six of the Justices Act, 1902.

(5) A prosecution for a breach of subsection (2) of this section shall not be instituted except with the consent of the Attorney General.

(6) 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.

Offence not to make contract void or voidable.

6. (1) The registration of every money lender shall expire on the thirtieth day of June next following the date when such registration is effected. The provisions of this subsection shall apply to the registration of every money lender registered under the Money Lenders Act, 1912, whose registration is current at the commencement of the Money Lenders Act Amendment Act, 1937, and to every registration granted after the commencement of the last-mentioned Act.

Duration of registration, method of applying.
Substituted by No. 31 of 1937, s. 4.
Amended by No. 54 of 1948, s. 8; No. 113 of 1966, s. 8.
Compare N.Z. 21 of 1933, ss. 2, 3 and 4.

Application to be made to magistrate.

(2) Application for registration shall be made in the prescribed manner to any stipendiary magistrate sitting in petty sessions at the court of petty sessions held nearest to the place of business of the applicant or nearest to the principal place of business of the applicant, where the applicant has more than one place of business.

Fee on application.

(3) Every application shall be lodged with the clerk of the court of petty sessions where the application is to be heard, and shall be accompanied by a fee of twenty dollars or such other sum as may be prescribed by regulation under this Act in respect of each place of business for which the money lender desires to be registered. If the application is refused the fee or fees shall be refunded.

Payment of fee does not authorise money lender to carry on business when license suspended or cancelled.

(4) The payment of such fee and the granting of registration shall not authorise the person affected to carry on business or to do any act which would otherwise necessitate his registration under this Act at any time when his registration under this Act is suspended or cancelled or otherwise not in force.

Certificate of registration.

(5) On the granting of registration a license shall be issued in the prescribed form to the money lender and shall, subject to this Act, remain in force during the period of registration. Where the registration is in respect of any place or places of business other than the principal place of business of the money lender, a certified copy or copies of the license shall also be issued to him, and one of such certified copies shall be kept and exhibited by him at such first-mentioned place or places.

Clerk of petty sessions to keep register of money lenders.

(6) The clerk of the court of petty sessions at which registration is granted shall keep a register in the prescribed form, and enter therein the names and such particulars as may be prescribed concerning money lenders to whom registration is from time to time granted at such court.

Regulations.

(7) The Governor may from time to time make regulations not inconsistent with this Act concerning the manner of applying for registration and renewal of registration and the court fees to be taken and the license fees to be paid in respect of application for registration or renewal; the form of register of money lenders to be kept by clerks of

¹ Prescribed as \$50, see Reg. 3(2) in G.G. 20/2/76, p. 459.

petty sessions; the compilation and keeping of a general register of money lenders, and the returns to be made by clerks of petty sessions in respect of registrations for the purpose of compiling the general register.

(8) On payment of a fee of ten cents any person may search the register of money lenders kept by a clerk of petty sessions or any general register compiled under the regulations.

Register may be searched.

(9) Subject to this Act every registration and license may from time to time be renewed, and if renewed shall have effect until the close of the thirtieth day of June next following the date when it is renewed, and, save as provided in the next succeeding subsection, shall then cease to have effect: provided that, where the application for the renewal of the registration of a money lender is made before such registration ceases to have effect, such registration and license shall where necessary continue in force until the application for renewal is disposed of, unless the magistrate otherwise directs.

Renewal of registration.

(10) The magistrate shall direct such registration not to be made or renewed if—

Magistrate not to grant registration unless satisfied as to character of applicant, etc.

- (a) evidence to the satisfaction of the magistrate has not been produced of the good character of the applicant, and, in the case of a firm, of every partner, and in the case of a society or corporate body, of the persons responsible for the management thereof;
- (b) evidence to the satisfaction of the magistrate has been produced that the applicant or any person proposed to be made responsible for the management of his business as a money lender is not a fit and proper person to be registered;
- (c) the applicant and any person responsible or proposed to be made responsible for the management of his business as a money lender is then disqualified from being registered or has within any period of twelve months been convicted on two several occasions for offences against this Act;

- (d) the applicant has not complied with the provisions of any regulations relating to registration or has not paid the appropriate license fee or license fees under this section.

No right of appeal from magistrate's decision.

- (11) No appeal shall lie to any court against a decision of a magistrate under this section.

Penalties for false statements and representations. Amended by No. 113 of 1965, s. 8.

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 one thousand dollars, or to both.

Prohibition on carrying on business as a "bank".

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.

(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.

9. (1) Where a money lender agrees to lend money under a contract that includes a provision for the repayment of the money, the payment of interest, or for the giving of security in respect of the money or all or any of those provisions, the money lender shall, before the money or any portion of it is lent, deliver to the borrower—

Money lender to supply note or memorandum and copy of security to borrower.
Substituted by No. 31 of 1937, s. 5.
Amended by No. 80 of 1959, s. 3.

- (a) a note or memorandum which complies with subsection (2) of this section, signed by or on behalf of the money lender and the borrower; and
- (b) a true copy of the document of security, if any, securing the amount of the loan.

(1a) (a) Where the contract provides for payment of interest on the whole or portion of the loan at a rate in excess of the maximum rate as determined from time to time by section eleven A of this Act or by regulation or for an amount that represents interest at a rate in excess of that maximum rate, whether or not in relation to the contract the money lender complies with subsection (1) of this section the contract shall be deemed to provide, instead of the rate provided for or represented in the contract, for payment of interest at that maximum rate and the contract and any document of security, if any, in respect of the loan shall be read and construed accordingly.

(b) The operation of the provisions of paragraph (a) of this subsection does not prejudice or affect the operation of the provisions of section four or nineteen of this Act, or any conviction or penalty which a money lender has suffered or incurred or is liable to suffer or incur under the provisions of section eleven A or twenty-one of this Act for failing to comply with the provisions of subsection (1) of this section.

(2) (a) The note or memorandum referred to in subsection (1) of this section shall show—

- (i) the date on which the loan is to be made;
- (ii) the amount of the principal of the loan;

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- (iii) subject to paragraph (b) of this subsection either the interest to be charged on the loan expressed in terms of a rate per centum per annum or the rate per centum per annum represented by the interest charged as calculated in accordance with the provisions of the Schedule to this Act;
- (iv) the manner in which and the time when the principal of the loan and interest thereon are to be repaid and paid respectively; and
- (v) the nature of the security, if any, to be given for or in respect of the loan.

(b) If the money is to be lent for a term of less than twelve months, and the total amount charged by way of interest is shown in the note or memorandum, the money lender is not required to show therein the interest to be charged in terms of a rate per centum per annum.

(3) Where the money lender has delivered to the borrower the note or memorandum and true copy of the document of security, if any, as required by this section, he shall obtain a receipt signed by the borrower, acknowledging the receipt by him of the note or memorandum and true copy of the document of security.

(4) The provisions of this section shall apply *mutatis mutandis* to a contract of suretyship.

Saving rights of
bona fide
transferees.

(5) Nothing in this section 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 notice or knowledge of any contravention of the provisions of this section, but the lender shall indemnify the borrower or surety against any liability under or in respect of such contract for interest in excess of the maximum rate.

10. Any contract made after the commencement of the Money Lenders Act Amendment Act, 1941, for the loan of money by a money lender shall be illegal, in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract.

Prohibition of compound interest.
Substituted by No. 31 of 1937, s. 5.
Amended by No. 23 of 1941, s. 2.
Compare 17 and 18 Geo. V., c. 21, s. 7 (Imp.); N.Z. 1933, No. 21, s. 9.

11. Where by a contract for the loan of money by a money lender the interest charged on the loan is not expressed in terms of a rate any amount paid or payable to the money lender under the contract shall be apportioned to principal and interest in the proportion that the principal bears to the total amount of the interest, and the rate per centum per annum represented by the interest charged as calculated in accordance with the provisions of the Schedule to this Act shall be deemed to be the rate of interest charged on the loan.

Apportionment between principal and interest in certain cases of moneys payable to money lender.
Added by No. 31 of 1937, s. 5 as s. 10A.
Renumbered s. 11 in 1937 reprint.
Amended by No. 23 of 1941, s. 3.
Compare 17 & 18 Geo. V., c. 21, s. 15 (2), Imp.; N.Z. 1933, No. 21, s. 10.

11A. (1) Notwithstanding anything in this or in any Act or law to the contrary, from and after the date of the commencement of the Money Lenders Act Amendment Act, 1941, no money lender shall in respect of any loan or transaction made or entered into after such date, lend or agree to lend to any person any moneys at a rate of interest exceeding such maximum rate per centum per annum (as charged and calculated in accordance with the provisions of section eleven B of this Act) as may pursuant to the provisions of this Act be from time to time prescribed for the purposes of this section, and as shall be the prescribed maximum rate of interest for those purposes at the date of the loan concerned.

Prescribed maximum rate of interest.
Added by No. 23 of 1941, s. 4.
Amended by No. 80 of 1959, s. 4; No. 113 of 1965, s. 8; No. 53 of 1974, s. 4.

(2) Any money lender offending against the provisions of this section shall be liable for every loan in respect of which such offence may have occurred to a penalty not exceeding two hundred dollars or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

¹ Prescribed as 20%, see Reg. 26 in G.G. 6/12/74, p. 5217.

Calculation of interest on loan for purpose of s. 11A.
 Added by No. 23 of 1941, s. 4.

11B. For the purposes of the last preceding section the money lender shall calculate and charge the interest on the loan to the borrower on the monthly balance on the loan after crediting the borrower with any instalment or instalments made during the month, from which instalment or instalments so made during the month the interest payable for such month and as calculated monthly has been deducted.

Money lender must supply account and copies of documents relating to loan.
 Added by No. 31 of 1937, s. 5, as s. 10B.
 Renumbered s. 12 in 1937 reprint.
 Amended by No. 113 of 1965, s. 8.
 Compare 17 & 18 Geo. V., c. 21, s. 8. (Imp.); N.Z. 1933 No. 21, s. 11.

12. (1) In respect of any contract for the repayment of money lent by a money lender whether made before or after the commencement of the Money Lenders Act Amendment Act, 1937, the money lender shall on any reasonable demand in writing being made by the borrower or by any surety to the contract at any time during the continuance of the contract and on tender by the borrower or surety of ten cents for expenses, supply to the borrower or surety, or if the borrower or surety so requires to any person specified in that behalf in the demand, a statement signed by the money lender or his agent showing—

- (a) the date on which the loan was made, the amount of the principal of the loan, and the rate per centum per annum of interest charged, or where the loan is for a term of less than twelve months, the total amount charged by way of interest; and
- (b) the amount of any payment already received by the money lender in respect of the loan and the date on which it was made; and
- (c) the amount of every sum due to the money lender but unpaid and the date upon which it became due, and the amount of interest accrued due and unpaid in respect of every such sum; and
- (d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due; and
- (e) particulars of all amounts by way of expenses, inquiries, and other matters charged in connection with the loan.

(2) A money lender shall on reasonable demand in writing by the borrower or any surety to the contract, and on tender of a reasonable sum for expenses, supply to the borrower or to the surety for the borrower, as the case may be, a copy of every document relating to a loan made by him to the borrower or any security therefor, or, if the borrower or surety so requires, to any person specified in that behalf in the demand.

(3) If a money lender to whom a demand has been made under the provisions of this section fails to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of default.

13. Notwithstanding any contract or agreement to the contrary, where any loan is repaid before the date stipulated in the contract or agreement relating to the loan then—

Where loan repaid before due date, rebate of interest to be made.
Added by No. 31 of 1937, s. 5, as s. 10C.
Renumbered s. 13 in 1937 reprint.

- (a) where interest is payable under the terms of the loan at an expressed rate any interest which but for such repayment would otherwise have been chargeable for the balance of the period of the loan shall not be chargeable;
- (b) where the interest payable is not expressed in terms of a rate, the money lender shall allow a rebate of such part of the loan or instalments of the loan so repaid before due date as represents interest included therein calculated in accordance with section eleven,

and it shall be unlawful for any money lender to ask, demand, or receive any such interest declared not to be chargeable or to be rebated under this section.

Unregistered bills of sale to money lender absolutely void. Added by No. 31 of 1937, s. 5, as s. 10D. Renumbered s. 14 in 1937 reprint.

14. (1) Notwithstanding anything contained in the Bills of Sale Act, 1899, and its amendments, any contract or transaction entered into for the purpose of securing payment of any loan to a money lender and which would be voidable under the provisions of those Acts, unless duly registered as a bill of sale by way of security, shall be absolutely void unless duly registered after due notice as prescribed by the said Acts.

(2) Without in any way limiting the general effect of the preceding subsection, no money lender shall as security or part of the security for any loan made by the money lender enter into or purport as the owner of any chattels to enter into any hiring agreement or hire purchase agreement with the borrower in respect of the chattels, unless the same is duly registered as a bill of sale by way of security after due notice as prescribed by the said Acts.

Where loan made no fee for investigation to be charged. Added by No. 31 of 1937 s. 5, as s. 10E. Renumbered s. 15 in 1937 reprint. Amended by No. 113 of 1965, s. 8.

15. It shall be unlawful for a money lender to make any charge in connection with the valuation of any security proposed to be given to him for a loan or in connection with inquiries incidental to the investigation of any application to him for a loan, except in cases where the loan is not proceeded with after valuation or inquiry has been made, in which event the money lender shall be entitled to make a charge not exceeding one dollar for valuing the security and investigating the application.

Limit of charge for obtaining or guaranteeing loan. No. 65 of 1912, s. 11. Renumbered s. 16 in 1937 reprint.

16. (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.

17. (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. No. 65 of 1912, s. 12. Renumbered s. 17 in 1937 reprint.

(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.

Non-application
of section.

(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.

Certain
assignments to
be in writing and
executed before
certain persons.
No. 65 of 1912, s.
13.
Renumbered s.
18 in 1937
reprint.

18. (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 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 stipendiary magistrate, or clerk of petty sessions, or solicitor instructed and employed independently of the money lender and certified by the stipendiary magistrate, or clerk of petty sessions, or solicitor as hereinafter provided.

Explanation to
grantor.

(2) The stipendiary 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.

(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.

Definition of "deed".

(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.

Non-application of section.

19. (1) Where any person registered as a money lender under this Act is convicted of any offence under this Act the court—

Suspension or cancellation of registration of money lender.

Added as s. 14 by No. 31 of 1937, s. 6.

Renumbered s. 19 in 1937 reprint.

Amended by No. 113 of 1965, s. 8.

Compare 17 & 18 Geo. V., c. 21, s. 3 (Imp.); N.Z. 1933, No. 21, s. 5.

(a) may order that such registration and the money lender's license shall either be suspended for such time as the court thinks fit or shall be cancelled, and may also, if the court thinks fit, declare any such person or any person responsible for the management of the money lending business carried on by the person convicted to be disqualified from being registered under this Act for such time as the court thinks fit; and

(b) shall cause particulars of the conviction and of any order made by the court under this subsection to be indorsed on the money lender's license and on every certified copy thereof, and shall cause copies of those particulars to be sent to the clerk of the petty sessional court at which the

money lender was registered, and the clerk shall on receipt of such particulars note the same in the register kept by him under this Act.

(2) Any license or certified copy thereof required by a court for indorsement in accordance with the foregoing provisions of this section shall be produced in such manner and within such time as may be directed by the court by the person by whom it is held, and any person who makes default in producing any license or certified copy so required shall in respect of each offence be liable on summary conviction to a fine of ten dollars for each day during which the default continues.

Restriction on money lending advertisements. Added as s. 16 by No. 31 of 1937, s. 6. Renumbered s. 20 in 1937 reprint. Amended by No. 113 of 1965, s. 8. Compare 17 & 18 Geo. V., c. 21, s. 5 (Imp.); N.Z. 1933, No. 21, s. 7.

20. (1) No person shall knowingly send or deliver or cause to be sent or delivered to any person, except in response to his written request, any circular or any other document advertising the name, address, or telephone number of a money lender, or containing an invitation—

- (a) to borrow from a money lender; or
- (b) to enter into any transaction involving the borrowing of money from a money lender; or
- (c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a money lender.

(2) Save as hereinafter provided no person shall publish or cause to be published in any newspaper or other printed paper issued periodically for public circulation, or by means of any poster or placard, or by means of radio broadcasting, any advertisement or announcement advertising or announcing any such particulars or containing any such invitation as aforesaid.

(3) Nothing in the foregoing provisions of this section shall prohibit the publication by or on behalf of any money lender of any advertisement or

other periodical publication as aforesaid, or the exhibition of a poster or placard at any registered address of the money lender containing only the following particulars or any of them, namely—

- (a) his registered name and his registered address or registered addresses, and the telegraphic address or addresses and telephone number or numbers thereof;
- (b) a statement that he lends money with or without security, a statement as to the class or classes of security he will accept and particulars of the highest and lowest sums that he is prepared to lend;
- (c) a statement of the date on which the business carried on by him was first established.

(4) No money lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money, or to enter into any transaction involving the borrowing of money from a money lender, and no person shall act as such agent or canvasser, or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a money lender any person desiring to borrow money.

(5) Where any document issued or published by or on behalf of a money lender purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall either express the interest proposed to be charged in terms of a rate per centum per annum or show the rate per centum per annum represented by the interest proposed to be charged as calculated in accordance with the provisions of the Schedule to this Act.

(6) Any person acting in contravention of any of the provisions of this section commits an offence and is liable on summary conviction to imprisonment for a period of three months or a fine of two hundred dollars or both.

(7) Where it is shown that a money lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall be illegal and void unless the money lender proves that the contravention occurred without his consent or connivance.

20A. *[Added by No. 80 of 1959, s. 5*

Repealed by No. 53 of 1974, s. 5.]

General penalty for breach of the Act.

Added as s. 16 by No. 31 of 1937, s. 6.

Renumbered s. 21 in 1937 reprint.

Amended by No. 80 of 1959, s. 6; No. 113 of 1965, s. 8.

21. Every money lender who fails to comply with any of the provisions of this Act, or commits a breach of any of the provisions of this Act for which no penalty is specifically provided, shall be guilty of an offence and shall be liable to a penalty not exceeding five hundred dollars.

Regulations. Added by No. 53 of 1974, s. 6.

22. The Governor may make regulations prescribing the respective rates or maximum rates, as the case may be, of interest for the purposes of respective sections of this Act.

Ss. 9 (2), 11, 20.

THE SCHEDULE.

Calculation of Interest where the Interest charged on a Loan is not expressed in terms of a Rate.

Added by No. 31 of 1937, s. 6. Compare 17 & 18 Geo. V., c. 21; N.Z., 1933, No. 21.

1. The several sums deemed to be payable in respect of principal and the several sums deemed to be payable in respect of interest shall be first ascertained in accordance with section eleven of the Act.

2. The following formula will give the rate of interest where principal and interest are repayable by monthly instalments:—

$$\frac{\text{Total Interest}}{\text{aggregate principal.}} \times 100\%$$

12

In the above formula:

“total interest” = the difference between the principal sum advanced and the total sum repayable under the contract.

“aggregate principal” = the total sum obtained by multiplying each of the several sums outstanding from time to time on account of principal as ascertained in accordance with section eleven of the Act by the number of months it is outstanding under the contract and adding the several sums so produced.

3. Where a loan is repayable by weekly instalments, or it is more convenient to work by reference to weeks instead of months, then the above formula will be adjusted by altering the term “months” in the definition of “aggregate principal” to “weeks” and the divisor “12” to “52.”

Where it is more convenient to work in days instead of months, then the definition of “aggregate principal” shall be altered by substituting the word “days” for the word “months” and the divisor “365” for the divisor “12.”