

[CONFIDENTIAL]
(Rough Draft for Consideration Only.)

No. , 1933.

A B I L L

To provide for the licensing of money-lenders; to amend the law relating to money-lenders in certain respects; to amend the Money-lenders and Infants Loans Act, 1905, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Money-lenders Short title. and Infants Loans (Amendment) Act, 1933."

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Commencement.

(3) The Money-lenders and Infants Loans Act, 1905, as amended by this Act, may be cited as the Money-lenders and Infants Loans Act, 1905-1933.

Citation.

2. The Money-lenders and Infants Loans Act, 1905, is amended—

Amendment of Act No. 24, 1905.

(a) (i) by omitting from paragraph three of subsection one of section one the words "and that in either of such last two cases the transaction is harsh and unconscionable in its nature" and by inserting in lieu thereof the words:—

Sec. 1. (Re-opening transactions.)

"or

(4) that the transaction is harsh and unconscionable in its nature;"

(ii) by omitting from subsection two of the same section the words "at the instance" and by inserting in lieu thereof the words "upon the application";

(iii) by omitting from the same subsection the words "application under this Act by the borrower or surety or other person liable" and by inserting in lieu thereof the words "such application";

(iv) by inserting next after the same subsection the following new subsection:—

(2A) While any application under subsection two of this section is pending, no proceedings by the money-lender for recovery of the money lent or for the enforcement of any agreement or security relative to the transaction shall be instituted or continued save with the leave of the court.

(v) by inserting at the end of subsection six of the same section the following new paragraph:—

A court of petty sessions shall have jurisdiction under this section to entertain any application under this section in respect

respect of a transaction in which the amount originally lent did not exceed two hundred pounds.

(vi) by inserting next after subsection seven of the same section the following new subsection :—

(8) Without limiting the generality of the powers conferred by subsection seven of this section the following provisions shall have effect :—

(a) In the exercise of the powers conferred by subsection one or subsection two of this section the court may by order readjust the amount of instalments, and may by the same or a subsequent order postpone the payment of all or any instalments in such manner and for such time as the court thinks just, having regard to the rights and interests of the parties, and to all the circumstances of the case.

In any such order the court may direct interest upon any postponed instalment to be paid at the rate specified in the security given or agreement made in respect of the money lent, or at such reasonable rate as it may fix.

(b) The court may direct that a memorandum in the prescribed form of any order made under this section be endorsed on any security or written agreement relative to the transaction.

Notice of any such direction shall be served by the applicant on any party to the security or written agreement, not represented at the hearing.

Every party to the security or written agreement shall produce any counter part thereof in his possession or control to the clerk of petty sessions not later

later than fourteen days after the giving of such direction or the receipt of such notice, as the case may be, for the purpose of having the memorandum endorsed thereon.

Any order made under this section may be registered in the same register as the security or written agreement.

(b) by omitting section two and by inserting in lieu thereof the following section :— ^{Substituted s. 2.}

2. (1) Every money-lender whether carrying on business alone or as a partner in a firm, shall obtain annually in respect of every address at which he carries on business as such, a license under this Act. ^{Money-lender to take out license.}

(2) After the expiration of one month from the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1933, any person who carries on the business of a money-lender shall, unless he is the holder of a license under this Act, be guilty of an offence against this Act.

(3) After the expiration of one month from the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1933, any money-lender who— ^{Offences.}

- (a) carries on business as such at any address other than that specified in his license ; or
- (b) carries on business as such in any name other than that specified in his license ; or
- (c) being a company, carries on business as such under the management or control of any person other than the person whose name is specified in its license ; or
- (d) holds an interest, otherwise than as a shareholder in or a debenture holder or creditor of a company, in any business of

of money-lending other than that in respect of which he holds a license under this Act ; or

(e) enters into any agreement in relation to or takes any security for money advanced in the course of his business as such, in any name other than that specified in his license ; or

(f) being a company enters into any such agreement or takes any such security which does not state the name of the person under whose management or control such company is carrying on business as such,

shall be guilty of an offence against this Act.

(4) The person having the actual management or control of the business of any company convicted of an offence against paragraph (c) or paragraph (f) of subsection three of this section shall be guilty of an offence against this Act.

(c) by omitting section three and by inserting in lieu thereof the following sections :— Substituted s. 3 and new ss. 3A-3D.

3. (1) Any person desirous of obtaining a license to carry on the business of a money-lender or a renewal of any such license shall make application in or to the effect of the prescribed form. License.

Where the applicant is a company it shall specify in the application the name of the person who is to manage or control such business on behalf of the company.

(2) The application shall be lodged with the clerk of the court of petty sessions nearest to the place at which the applicant intends to carry on such business.

(3) The court may grant a license or renewal if satisfied that the applicant is of good character and a fit and proper person to be licensed or where the applicant is a company that the person specified as the person

person who is to manage or control the business of the applicant company is of good character and a fit and proper person to be engaged in such management or control.

(4) All applications for licenses or for renewal, removal, transfer, alteration, or cancellation of licenses shall be heard and determined in open court, and shall be judicial and not ministerial proceedings.

(5) A license or renewal of license shall be in or to the effect of the prescribed form, and where issued to a company shall authorise such company to carry on the business of a money-lender under the management or control of the person whose name is specified therein.

(6) Where the court grants an application for a license or renewal of a license the clerk of the court shall, on payment to him of the sum of ten pounds, issue the license.

(7) A license shall take effect from the date of issue, and, unless cancelled in pursuance of this Act, shall remain in force for a period of twelve months.

A license may be renewed, and on each renewal, and unless sooner cancelled, shall take effect for a further period of twelve months commencing upon the day following the day upon which the license or the last renewal, as the case may be, expired.

3A. Every clerk of petty sessions shall keep the prescribed record of all licenses and renewals of license granted by the court of petty sessions of which he is clerk and issued in pursuance of such grant.

Record of licenses to be kept.
cf. Act No. 66, 1902, s. 8.

3B. No money-lender holding a license shall by virtue of one license keep more than one office or other place for the conduct of his business as a money-lender, but for each such office or place which any person keeps for the purposes aforesaid a separate and distinct license shall be obtained.

Separate license to be taken out for each office.
cf. *Ibid.* s. 9.

3c. (1) The court may upon the application of a money-lender— Transfer or alteration of licenses.

- (a) transfer his license to another person;
- (b) alter his license in respect of the premises specified therein;
- (c) where the money-lender is a company, authorise the substitution of the name of another person for the name of the person specified in the license under whose management or control the company is authorised to carry on business.

(2) The court may, upon the application of the personal representative of a deceased money-lender, transfer the license of such money-lender to such personal representative or to some other person.

(3) Application in or to the effect of the prescribed form shall be lodged with the clerk of the court of petty sessions nearest to the place at which the business is being carried on, or where the application is to alter the license in respect of premises, with the clerk of the court of petty sessions nearest to the place at which the premises sought to be substituted are situated.

(4) Particulars of any such transfer or alteration of a license shall be endorsed on the license and entered in the prescribed record of licenses.

(5) The license shall be produced to the court by the holder thereof at such time as the court directs for the purpose of such endorsement, and shall be delivered to the applicant by the clerk of petty sessions upon payment of the sum of five pounds.

(6) In the case of an alteration of the license in respect of premises, the clerk of the court of petty sessions granting the application shall cause notice in the prescribed form to be given to any other court of petty sessions which granted the license. 3d.

3D. (1) The license of a money-lender may on the prescribed application be cancelled by the court if— Cancellation of license.

- (a) such license has been issued erroneously or granted in consequence of any false or fraudulent document, statement, or representation; or
- (b) the holder thereof is convicted of an offence against this Act; or
- (c) the court is of opinion that by reason of the manner in which the holder thereof conducts his business as such, or that by reason of any other fact or circumstance, such holder is not a fit and proper person to hold the license; or
- (d) the court is of opinion that by reason of the manner in which a person specified in the license of a company as the person to manage or control the business of the company conducts such business or that by reason of any other fact or circumstance such person is not a fit and proper person to manage or control the business of the company.

(2) Where any license has been cancelled the holder thereof shall produce it to the court for cancellation at such time as the court directs.

(3) Particulars of every cancellation of license shall be entered in the prescribed record of licenses.

- (d) (i) by inserting in section four after the words "business of a money-lender" the words "or any person having the management or control of the business of any such company"; Sec. 4. (Penalties for false statements and representations.)
- (ii) by omitting from the same section all words after the words "guilty of" and by inserting in lieu thereof the words "an offence against this Act and shall upon summary

- summary conviction be liable to imprisonment for a term not exceeding *six* months or to a penalty not exceeding *one hundred pounds*”;
- (e) (i) by omitting from subsection one of section five the word “anyone” and by inserting in lieu thereof the words “any person”; Sec. 5. (Penalty for sending circulars to infants inviting to borrow money.)
- (ii) by omitting from the same subsection all words after the words “guilty of” and by inserting in lieu thereof the words “an offence against this Act”;
- (f) (i) by omitting from section six the word “anyone” and by inserting in lieu thereof the words “any person”; Sec. 6. (Soliciting infants to make affidavits in connection with loan.)
- (ii) by omitting from the same section all words after the words “he shall be” and by inserting in lieu thereof the words “guilty of an offence against this Act and upon summary conviction shall be liable to imprisonment for a term not exceeding *six* months or to a penalty not exceeding *one hundred pounds*”;
- (g) (i) by omitting from paragraph (b) of section eight the words and figures “of 1873 or 1899, or any society registered or having rules certified under either of these Acts” and by inserting in lieu thereof the figures and words “1912, as amended by subsequent Acts, or the Co-operation Act, 1923–1932;” Sec. 8. (Definitions.)
- (ii) by inserting at the end of the same section the following new subsection:—
- (2) In this Act, unless the context or subject-matter otherwise indicates or requires,—
- “Court” includes a court of petty sessions, but only where such court is holden before a stipendiary magistrate or a police magistrate.
- “Prescribed” means prescribed by this Act or by regulations made thereunder.

(h)

(h) by inserting next after the same section the following new sections :— New ss. 8A-8F.

8A. (1) No debt in respect of money lent by a money-lender, whether before or after the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1933, and no right of action arising out of any agreement or security relating to any such money shall after the said commencement be assignable to a money-lender. Assignment of debts and securities.

(2) Any instrument purporting to effect an assignment to a money-lender of any agreement or security taken in respect of any such money shall be void.

(3) This section shall not extend to—

- (a) an assignment made consequent upon a transfer of a license to carry on the business of a money-lender ; or
- (b) an assignment by operation of law or in consequence of the death of a money-lender.

8B. (1) A money-lender shall not, without leave of the court— No sale of personal property except with leave of court.

- (a) exercise any power of sale under any security over personal property ; or
- (b) seize or otherwise deprive the borrower of the possession of any personal property.

(2) Application for leave of the court may be made on summons, which shall be served on all persons affected by the application at least seven clear days before the day appointed for the hearing of the application.

(3) In dealing with any application for leave under this section the court may, subject to this section—

- (a) grant the application on such terms and conditions (if any) as the court thinks fit ; or
- (b) refuse the application :

Provided

Provided that the court shall not grant any such application unless satisfied that having regard to all relevant circumstances, including the conduct of the money-lender, the borrower, and any surety or other person liable, it would be unjust and inequitable not to do so.

(4) Without limiting the generality of the power conferred by subsection three of this section the court may impose any or all of the following conditions :—

- (a) that an account in the prescribed form of the proceeds of sale be furnished to the court at such times as the court shall direct ;
- (b) that the sale be conducted by a licensed auctioneer approved by the court ;
- (c) that the sale shall be held at such time and place and after such notice as the court may direct.

(5) The court shall determine the amount which may be charged against the borrower in respect of expenses of removing the personal property to the place at which it is to be sold.

(6) Any person who acts in contravention of any order made under this section shall be guilty of an offence against this Act.

(7) Where the court pursuant to this section grants leave to sell, or to take possession of any personal property, the provisions of section nine of the Moratorium Act, 1932, shall not apply in respect of the sale or taking of possession so authorised.

8c. (1) Any sale of personal property pursuant to leave granted by the court shall be by public auction, and shall be conducted by a licensed auctioneer. Sales of personal property.

(2) The commission payable to the auctioneer shall in no case exceed the rate of five pounds per centum of the amount realised at the sale.

(3)

(3) The borrower may by writing direct the order in which the articles constituting such property shall be offered for sale.

(4) The auctioneer shall offer such property for sale in accordance with the directions of the borrower.

(5) When an amount is realised sufficient to cover the sum due and any expenses legally chargeable against the borrower, no further sales shall be effected, and any articles not sold shall be returned by the money-lender to the borrower.

Delivery of such articles shall be effected at the place at which the auction is held.

(6) Within twenty-four hours after completion of the sale the auctioneer shall deliver to the borrower a full and true account in writing of the sale, in such form as may be prescribed, certified by the auctioneer; and shall pay to the borrower any amount shown by such account to have been realised in excess of the sum due and any expenses legally chargeable against the borrower.

8D. A licensed auctioneer shall not conduct any sale of personal property pursuant to leave granted by the court if— Interested persons not to conduct auction.

(a) he holds any interest in the business of the money-lender in respect of whose debt the sale was approved; or

(b) such money-lender holds any interest in the business of the auctioneer.

8E. Unless authorised by the court in any order made pursuant to section 8B a money-lender or person acting or purporting to act on behalf of a money-lender shall not— Limitation of power to seize.

(a) break open or forcibly enter any premises for the purpose of seizing or depriving a borrower of the possession of any personal property; or

(b) enter any premises for any such purpose during the absence of the borrower, or between the hours of sunset and sunrise.

8F.

8F. (1) No agreement for the repayment by a borrower of money lent after the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1933, to him or to any agent on his behalf by a money-lender upon the security of personal property or for the payment by him of interest on money so lent, and no security given by the borrower or any such agent as aforesaid in respect of any such agreement shall be enforceable unless a contract in or to the effect of the prescribed form is made and signed personally by the borrower; and no such agreement or security shall be enforceable unless it is proved that the contract aforesaid was signed by the borrower before the agreement was made or the security given, as the case may be.

Contracts for loans.

(2) Every such contract shall provide for repayment of the amount of the loan and any interest thereon within a specified period, which shall be either three, six, or twelve months from the date upon which the loan is made; and for repayment of such amount and interest either in one sum at the expiration of the period specified, or by equal weekly or monthly instalments over such period.

It shall be a term of every such contract that the borrower may at any time repay the balance of the amount owing which shall be the total of the instalments then unpaid.

(3) Every such contract shall contain all the terms of the agreement between the money-lender and the borrower, and in particular shall show—

- (a) the date on which the loan is made;
- (b) the amount of the principal of the loan;
- (c) the amount deducted for expenses;
- (d) the amount charged as interest;
- (e) the amount of each instalment payable;
- (f) the property over which security is given;

(g)

(g) the nature of any security to be given over such property.

(4) Every such contract shall—

(a) be prepared in triplicate, and one counterpart thereof shall immediately after execution be delivered free of charge to the borrower ;

(b) be deemed to be a bill of sale within the meaning of the Bills of Sale Act, 1898, as amended by subsequent Acts.

(5) No such contract shall, either expressly or impliedly, provide for the giving of security over any property not specified in the contract, or over any property acquired or to be acquired by the borrower after the date of such contract.

Any provision in the contract purporting to give security over any such property or in any security given in respect of the contract purporting to charge such property shall be void.

(6) A money-lender shall, upon application by the borrower and upon payment of the sum of two shillings, furnish the borrower with a copy of the contract.

8g. (1) No money-lender who advances money on the security of any personal property and takes any security for the repayment of such money shall take or receive any promissory note, post-dated cheque, bond, or warrant as collateral security. Collateral security not to be taken.

(2) Any money-lender who takes or receives any such promissory note, post-dated cheque, bond, or warrant in contravention of the provisions of this section shall be guilty of an offence against this Act.

(3) Any promissory note, post-dated cheque, bond, or warrant taken or received in contravention

contravention of the provisions of this section shall be deemed to have been given without consideration.

8H. (1) A money-lender shall issue a receipt for every amount of money or instalment paid to him by the borrower in respect of a loan, and such receipt shall show, in addition to the amount then received, the total amount already paid, and the balance remaining owing.

Particulars to be shown in receipts for instalments.

(2) This section shall apply to payments made after the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1933, in respect of money advanced on loan before as well as in respect of money so advanced after such commencement.

8I. (1) A money-lender may charge a sum of not more than one pound to cover the costs, charges, or expenses in or in regard to the arrangement of a loan, inspection of the property proposed to be given as security, and the preparation, execution, and registration of the contract.

Charge for expenses, &c.

(2) If any amount greater than the sum of one pound is charged for such purposes, or is deducted from the amount of the loan, the excess shall be recoverable by the borrower as a debt, or may be set off against the amount of the loan, and such amount shall be reduced accordingly.

8J. No proceedings shall lie for the recovery by a money-lender of any money lent by him upon any contract made pursuant to the provisions of this Act, nor upon any security given in respect of any such contract, unless the proceedings are commenced before the expiration of six months from the date of repayment specified in the contract.

Limitation of actions.

8K. (1) In any proceedings under this Act against any person for a contravention of any provision of this Act or the regulations made thereunder,

Evidence. cf. Act No. 7, 1926, s. 29.

thereunder, a certificate in the prescribed form under the hand of a clerk of petty sessions may be received in evidence to prove—

- (a) that, at the date of such certificate,—
 - (i) the person named therein was the holder of a license authorising him to carry on business as a money-lender; or
 - (ii) the person named therein was the person having management or control of the business whose name was specified in the license authorising the company named in such certificate to carry on business as a money-lender;

(b) the particulars contained in any license. Judicial notice shall be taken of the signature of the clerk of petty sessions in any such certificate.

- (2) Wherever by this Act—
 - (a) carrying on or conducting the business of a money-lender; or
 - (b) holding any interest in any such business; or
 - (c) entering into any agreement or taking any security,

Burden of proof of compliance with Act on accused.

otherwise than in accordance with the provisions of this Act, is made or expressed to be an offence against this Act, the proof of compliance with such provisions shall lie upon the accused.

8L. (1) A person who contravenes or fails to comply with any of the provisions of this Act shall be guilty of an offence against this Act. Penalties.

(2) Any person guilty of an offence against this Act shall, unless the penalty or punishment is otherwise in this Act specifically provided, be liable upon conviction to a penalty not exceeding *one hundred* pounds.

(3) Where by this Act provision is made for the imposition of any penalty or punishment upon a money-lender, any person acting as manager

manager or in control of the business of a money-lender on behalf of a company shall be liable for such penalty or punishment in like manner as if he were a money-lender.

(4) Summary proceedings for the imposition of any penalty or punishment for an offence against this Act may be taken in a court of petty sessions holden before a stipendiary or police magistrate.

8M. (1) In any proceedings under this Act the court shall have power to award costs to either party.

Costs of proceedings.

(2) Any such order for costs shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act.

The order for costs may for such purpose be entered in the records of the court exercising jurisdiction under the said Act named in the order or, if no such court is so named, in the records of any court exercising such jurisdiction within the district in which the order was made.

The entry shall be made in accordance with regulations made under this Act.

8N. The provisions of section 56A of the Public Service Act, 1902, as amended by subsequent Acts, shall not apply to a judgment given after the commencement of the Money-lenders and Infants Loans (Amendment) Act, 1933, for the payment of any sum of money to a money-lender in respect of money advanced by him on loan, either with or without security, under the provisions of this Act.

Sec. 56A of Act No. 31, 1902, not to apply to certain judgments.

8o. Any borrower from a money-lender who—

Penalties.

- (a) removes any personal property over which he has given security to, or which he has charged with the repayment of

of money lent to him by a money-lender in the course of his business as such, or any part of such property from the premises in which such property is kept without previously giving the money-lender notice of his intention to remove the same, and of the premises to which such property is to be removed ;
or

- (b) sells, pledges, or otherwise disposes of, or destroys any such personal property, or any part thereof, with intent to defraud such money-lender,

shall be guilty of an offence against this Act.

Sp. (1) The Governor may make regulations ^{Regulations.} not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out the provisions of this Act.

(2) The regulations shall—

- (a) be published in the Gazette ;
- (b) take effect from the date of such publication or from a later date to be specified in the regulations ; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

- 3.** The Conveyancing Act, 1919-1932, is amended—
- (a) by omitting from subsection one of section one hundred and sixty-six the words “section two of the Money-lenders and Infants Loans Act, 1905,” and by inserting in lieu thereof the words “the Money-lenders and Infants Loans Act, 1905-1933”;
 - (b) by omitting from subsection two of the same section the words “the register established under the Money-lenders and Infants Loans Act, 1905,” and by inserting in lieu thereof the words “any prescribed record of licenses kept pursuant to the Money-lenders and Infants Loans Act, 1905-1933”;
 - (c) by omitting from subsection three of the same section the words “section two of the Money-lenders and Infants Loans Act, 1905,” and by inserting in lieu thereof the words “the Money-lenders and Infants Loans Act, 1905-1933.”

Amendment
of Act No. 6,
1919, s. 166.
(Consequen-
tial.)

