

Queensland



ANNO UNDECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 11 of 1962

**An Act to Amend "The Money Lenders Acts, 1916 to 1959,"
in certain particulars**

[ASSENTED TO 26TH NOVEMBER, 1962]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. (1) **Short title.** This Act may be cited as "*The Money Lenders Acts Amendment Act of 1962.*"

(2) **Principal Act.** "*The Money Lenders Acts, 1916 to 1959,*" are in this Act referred to as the Principal Act.

(3) **Collective title.** The Principal Act and this Act may be collectively cited as "*The Money Lenders Acts, 1916 to 1962.*"

2. **New section 4C.** The Principal Act is amended by inserting after section 4B, the following section:—

“[4C.] Certain illegal or unenforceable money-lending transactions to be legal and enforceable. (1) The provisions of this section shall apply to any loan and any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender whether made before or after the commencement of “*The Money Lenders Acts Amendment Act of 1962,*” but do not apply to any such loan or transaction in respect of which proceedings in any court for the enforcement thereof have been taken or commenced before such commencement, nor to any contract of guarantee given in respect of a loan or transaction to which the provisions of this section do not apply.

(2) In any proceedings relating to any loan or transaction to which this section applies taken in any court wherein it is established that the money-lender has in relation to that loan or transaction neglected or failed whether before or after the commencement of “*The Money Lenders Acts Amendment Act of 1962,*” to comply with or observe or perform any of the requirements and provisions of this Act, the court notwithstanding anything in this Act save subsection (6) of this section, if satisfied that the money-lender was in the circumstances at the time of the making of the loan or entering into the transaction or the taking or giving of the security or guarantee in respect of the loan or transaction and, where the neglect or failure arose at any other time, in the circumstances at that other time acting honestly and ought fairly to be excused, may in giving judgment or making any decree or order pertaining to such proceedings impose such conditions and give such directions as it may consider just and equitable.

(3) Without limiting the generality of its powers under subsection (2) of this section but subject to subsection (6) of this section, the court shall have power to—

- (a) exercise in relation to any loan or transaction to which this section applies the like powers as it may exercise under subsection (1) of section four of this Act in relation to loans to which that section applies;
- (b) confirm or declare to be valid and enforceable in whole or in part as from the date specified in the judgment, decree or order any contract for repayment of money lent or any security given in respect of any such contract or guarantee given with respect thereto and vary, alter or amend any covenant, condition or agreement contained in such contract, security or guarantee;
- (c) relieve the borrower or guarantor from or impose on the borrower or guarantor the obligation to repay the whole or part of the amount of the principal of the loan with interest at the rate specified in the judgment, decree or order or without interest and make such orders relating to the other obligations of the guarantor as the court deems fit;

- (d) postpone for such period as it thinks fit the time for the repayment of such loan and the time before which such security or guarantee shall not be enforced and order any such repayment to be made with interest at the rate specified in the judgment, decree or order or without interest by such instalments, at such intervals or in such amounts as the court may direct;
- (e) make any further order incidental or ancillary to any judgment, decree or order of the court, or any conditions or directions it may impose or give in relation thereto.

(4) In any proceedings referred to in subsection (2) of this section, the court may order that any guarantor or other person liable be joined as a party to such proceedings in such manner and upon such terms as the court shall direct.

(5) Any court in which proceedings might be taken for the recovery of money lent shall have and may, on the application of the money-lender exercise the like powers as may be exercised in any proceedings referred to in subsection (2) of this section, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any such application, notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived.

(6) **Money-lending transactions by money-lenders not carrying on business as such.** Notwithstanding anything in this Act, any neglect or failure whether before or after the commencement of "*The Money Lenders Acts Amendment Act of 1962*," to comply with or observe or perform any of the requirements and provisions of this Act by a money-lender who is not a person whose business is that of money-lending or who does not advertise or announce himself or hold himself out in any way as carrying on that business, does not operate to avoid the obligation on the borrower or a guarantor of the loan or transaction to repay to the lender or any assignee of the lender who is not a person whose business is that of money-lending, or who does not advertise or announce himself or hold himself out in any way as carrying on that business, the amount of the principal of the loan.

Save in so far as is necessary to give effect to this subsection, nothing in this subsection affects the operation of subsections (2) to (5) (both inclusive) of this section."

3. Amendment of s. 13. Section thirteen of the Principal Act is amended by omitting from subsection (1) the words "at the time of execution be delivered by the lender to the borrower or surety" and inserting in their stead the words "within twenty-one days after the execution of the document be delivered by the lender to the borrower or surety or sent by the lender through the post by registered letter or certified mail addressed to the borrower or surety".

4. Amendment of s. 18. Section eighteen of the Principal Act is amended by inserting in subsection (1) in the last paragraph thereof (being the paragraph commencing with the words "Such regulations may also"),—

(a) after the words "books of account", the words "or statements";
and

(b) after the words "the payments made", the words "or to be made".