

New Zealand.

ANALYSIS.

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1901, No. 28.

Title. AN ACT to amend the Law with respect to Persons carrying on Business as Money-lenders. [29th October, 1901.]

Preamble. WHEREAS certain persons trading as, and known by the name of, money-lenders inflict by harsh and unconscionable bargains great injury upon those who borrow money from them; and it is expedient that such money-lenders and their methods of carrying on such business of money-lending should be subject to control:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) The Short Title of this Act is "The Money-lenders Act, 1901."

(2.) This Act shall come into operation on the first day of January, one thousand nine hundred and two.

2. In this Act "money-lender" includes 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—

(1.) Any duly licensed pawnbroker in respect of business carried on by him in accordance with the provisions of "The Pawnbrokers Act, 1868"; or

(2.) Any society registered under "The Building Societies Act, 1880"; or

(3.) Any society registered under "The Friendly Societies Act, 1882"; or

(4.) Any person *bona fide* carrying on the business of banking or insurance or any business in the course of which and for the purposes whereof he lends money at a rate of

interest (including any payment or deduction by way of premium, fine, or foregift) not exceeding ten per centum per annum.

3. (1.) Where proceedings are taken in any Court by a money-lender for the recovery of money lent after the passing of this Act, or the enforcement of any agreement or security made or taken after the passing of this Act, in respect of money lent either before or after the passing 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 amounts 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.

(2.) The Court 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.

(3.) 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 unless application is made within one year of the transaction being closed.

(4.) Where it appears to the Court that any person other than the money-lender has shared in the profits of, or has any beneficiary 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 may deem fit.

(5.) 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 where proceedings are taken for the recovery of money lent.

Reopening of transactions of money-lenders.

(6.) 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.

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

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

(9.) For the purposes of this section (but for no other purpose) the expression "money-lender" includes any person who lends money for interest at a rate, including any payments or deductions by way of premium, fine, or foregift, exceeding ten per centum per annum.

**Registration of
and restrictions on
money-lenders.**

4. (1.) A money-lender as defined by section two of this Act—

(a.) Shall register himself as a money-lender in accordance with regulations under this Act, under his own or usual trade name, 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, otherwise 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.

Penalty.

(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 penalty 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 penalty not exceeding one hundred pounds, or to both: Provided that if the offender is a body corporate that body corporate shall be liable on a second or subsequent conviction to a penalty not exceeding five hundred pounds.

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

**Regulations as to
registration.**

5. (1.) The Governor may from time to time make regulations respecting the registration of money-lenders, whether individuals, firms, societies, or corporate bodies, 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.

(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.

6. If any money-lender, or any manager, agent, or clerk of a money-lender, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of facts, 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 liable on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a penalty not exceeding five hundred pounds, or to both.

Penalties for false
statements and
representations.

7. Section forty-four of "The Mercantile Law Act, 1880," is Repeal.
hereby repealed.

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