

New Zealand.**MONEY-LENDERS.****1908, No. 121.**

AN ACT to consolidate certain Enactments of the General Assembly relating to Persons carrying on Business as Money-lenders.

BE IT 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, 1908.” Short Title

(2.) This Act is a consolidation of the enactments mentioned in the Schedule hereto, and with respect to those enactments the following provisions shall apply:— Enactments consolidated

(a.) All regulations, Orders in Council, orders, registers, registrations, records, instruments, and generally all acts of authority which originated under any of the said enactments, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated. Savings.

(b.) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

2. In this Act, if not inconsistent with the context, “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— Interpretation  
1901, No. 28, sec. 2

(a.) A duly licensed pawnbroker in respect of business carried on by him in accordance with the provisions of “The Pawnbrokers Act, 1908”; or

- (b.) A society registered under "The Building Societies Act, 1908"; or
- (c.) A society registered under "The Friendly Societies Act, 1908"; or
- (d.) 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.

Reopening of  
transactions of  
money-lenders.  
1901, No. 28, sec. 3

3. (1.) Where proceedings are taken in any Court by a money-lender for the recovery of money lent after the first day of January, one thousand nine hundred and two (the date of the coming into operation of "The Money-lenders Act, 1901"), or the enforcement of any agreement or security made or taken after that date in respect of money lent either before or after that date, 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 may 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 deems 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.

(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.

4. (1.) A money-lender as defined by section two hereof shall—

Registration of  
and restrictions on  
money-lenders.  
1901, No. 28, sec. 4

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

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.

Regulations as to  
registration.  
Ibid, sec. 5

(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.

Penalties for false  
statements and  
representations.  
1901, No. 28, sec. 6

6. Every money-lender, or manager, agent, or clerk of a money-lender, who, 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 is liable on indictment to imprisonment with or without hard labour for a period not exceeding two years, or to a fine not exceeding five hundred pounds, or to both.

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### SCHEDULE.

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#### ENACTMENTS CONSOLIDATED.

1901, No. 28.—“The Money-lenders Act, 1901.”