

Andhra Pradesh Pawn Brokers Act, 2002

6 of 2002

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An Act to consolidated the laws relating to Pawn Broking in the State of Andhra Pradesh and for matters connected therewith or incidental thereto. Whereas, it is expedient to provide for the regulation and control of the business of Pawn Broking in the State of Andhra Pradesh. Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Fifty -third Year of the Republic of India as follows

1. Short title, extent and Commencement :-

(1) This Act may be called the Andhra Pradesh Pawn Brokers Act, 2002.

(2) It extends to the whole of the State of Andhra Pradesh.

(3) It shall come into force on such date and in such areas as the Government may by notification, appoint and they may appoint different dates for different areas.

2. Definitions :-

In this Act, unless the context otherwise requires,--

(1) "Appellate authority" means any officer or authority appointed by the Government to exercise the powers of an appellate authority under this Act;

(2) "Company" means a body corporate and includes a firm, association of persons or body of individuals whether incorporated or not.

(3) "Co-operative Society" means a society registered or deemed to have been registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) or the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 (Act 30 of 1995).

(4) "Government" means the State Government of Andhra Pradesh.

(5) "Interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a Pawn broker for or on account of costs, charges or expenses, but save as aforesaid, includes any amount by whatsoever name called, in excess of the principal, paid or payable to a Pawn broker in consideration of or otherwise in respect of a loan.

(6) "Licence" means a Pawn broker's licence granted under Section 4.

(7) "Licensing Authority" means an officer or authority appointed by the Government to perform the functions of a licensing authority under this Act.

(9) "Members of weaker sections" means any individual whose total income from all sources put together does not exceed rupees eleven thousand per annum.

(10) "Notification" means a notification published in the Andhra Pradesh Gazette, and the word "notified" shall be construed accordingly.

(12) "Pawner" means a person delivering an article for pawn to a Pawn broker.

(13) "Pledge" means an article pawned with a Pawn broker.

(14) "Prescribed" means prescribed by rules made under this Act.

(15) "Principal" in relation to a loan means the amount actually lent to the pawner, and

(16) "Year" means the financial year.

3. Pawnbroker to obtain licence :-

(2) Where a Pawnbroker has more than one shop or place of business, whether in the same town or village or in different towns or villages, he shall obtain a separate licence in respect of each such shop or place of business.

4. Granting and refusal of licence :-

(1) Every application for a Pawnbroker's licence shall be in writing and shall be made to the licensing authority in such manner and accompanied by such licence fee as may be prescribed.

(2) Every licence shall be granted in such form and subject to such conditions as may be prescribed.

(4) Every order of the Licensing Authority under sub-section (3) shall be communicated to the applicant in such manner as may be prescribed.

(5) The Licensing Authority may, if it is satisfied that an applicant coming under the purview of the proviso to sub-section (1) of Section 3 could not apply for a licence under this Act, within the period referred to therein for reasons beyond his control, condone the delay upto a maximum period of ninety days subject to payment of a penalty equal to the prescribed licence fee.

(6) Every licence granted under this Act shall, subject to the provisions of sub-section (8), be for a period of three years.

(7) A licence granted under sub-section (2) may be renewed on an application which shall be made at least two months before the expiry of the period of licence and the provisions of sub-sections (1) to (6) shall apply in relation to the renewal of licence as they apply in relation to the grant of a licence.

(8) If orders refusing to renew a licence are not communicated to a Pawnbroker by the Licensing Authority before the expiry of his current licence, the Pawn Broker shall, notwithstanding such expiry be deemed to have, valid licence till the orders are received by him on his application for renewal.

(9) Nothing in this section shall be deemed to disentitle a Pawnbroker whose licence has expired or has not been renewed from taking steps to recover any loan advanced during the period when the licence was in force.

5. Pawn brokers to exhibit their names :-

Every Pawnbroker shall always exhibit over this shop or place of business his name with the word "Pawnbroker" and its equivalent in the regional language.

6. Change of place of business by pawnbroker :-

No Pawn Broker shall change his place of business without previous notice to the Licensing Authority and without having the address of the new place of business duly endorsed on his licence.

7. Interest chargeable by pawnbroker :-

(1) No Pawn Broker shall charge interest on any loan at a rate exceeding by more than two per cent the rate charged by commercial banks on similar loans granted by them.

(2) No Pawnbrokers shall demand or take any gifts, articles, commission, charges or amounts under any name whatsoever from the pawner while advancing a loan in terms of this Act, other than the interest.

(3) The total interest payable on a loan shall not exceed the quantum of the principal.

8. Pawn ticket to be given to pawner :-

Every Pawn Broker shall on taking a pledge in pawn, give to the pawner, a pawn-ticket in the prescribed form, and shall not take a pledge in pawn unless the pawner takes the pawn- ticket.

9. Pawner entitled to redeem pledge :-

(1) Subject to the provisions of this Act, every Pawnbroker shall on payment of the principal and interest, deliver the pledge to the pawner.

(2) Except as otherwise expressly provided in this Act, a Pawn Broker shall not be bound to deliver back a pledge unless the pawn-ticket, is delivered to him.

10. Protection of pawners not having pawn tickets :-

(2) A pawner making a declaration under sub-section (1), knowing the same to be false in any material particular, shall be punished with imprisonment for a term which may extend to one year or with fine which may extent to rupees five thousand or with both.

(3) A person falsely identifying the pawner under sub-section (1) knowing that he is not the real pawner making such declaration shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to rupees five thousand or with both.

11. Pawnbroker to keep books, give receipts, etc :-

(2) All records or entries made in the books, accounts and documents referred to in sub-section (1) shall be either in English or in such language of the locality as may be prescribed; and all such books, accounts and documents and all pledges taken by the Pawnbroker shall be open to inspection by the Licensing Authority

or an Inspector appointed under Section 16 or any Police Officer not below the rank of Sub-Inspector or by any Revenue Officer not below the rank of a Mandal Revenue Officer.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in clause (a) of sub-section (1), certified in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account.

(4) A pawner to whom a statement of account has been furnished under clause (d) of sub-section (1) and who fails to object to the correctness of the account shall not, by such failure alone, be deemed to have admitted the correctness of such account.

(5) In the pawn-ticket furnished to the pawner under Section 8, in the receipt given under clause (c) of sub-section (1) and in the statement of account furnished under clause (d) of that sub-section, the figures shall be entered only in Arabic numerals.

(6) If any Pawnbroker fails to give to the pawner or his agent a receipt under clause (c) or a statement under clause (d) of sub-section (1) he shall be liable to a fine not exceeding rupees five thousand.

12. Redemption of pledge :-

Every pledge shall be redeemable within two years from the day of pawning, exclusive of that day.

Explanation :-Where the contract between the parties provides a longer period for redemption than two years, the provisions of this section shall be read and construed as if the references to such longer period had been substituted for the references to the period of two years therein.

13. Sale of pledge and inspection of sale books :-

(1) A pledge may be disposed of by the Pawnbroker by public auction and not otherwise, and the sale shall be conducted in such manner as may be prescribed.

(2) A Pawnbroker shall not bid for and purchase at a sale by public auction conducted under sub-section (1), a pledge pawned with him.

(3) Where in a public auction, the pledge has been sold for more

than the amount of the loan and interest thereon and charges due at the time of sale, the Pawnbroker shall pay to the pawner or his agent, the surplus amount within one month from the date of sale after deducting there from the necessary costs and charges of the sale and the pawner or his agent may inspect the entry relating to the sale either in the Pawnbroker's book or in such catalogue of the auction, as may be prescribed, at any time within one month from such payment.

(4) Where the surplus amount is not paid to the pawner within one month of the sale under sub-section (3), the same shall be deposited with the licensing authority, within seven days thereafter.

14. Liability of pawn broker in case of fire :-

(2) A Pawnbroker shall be entitled to insure to the extent of valued so estimated.

15. Compensation for depreciation of pledge :-

If a person entitled to redeem a pledge shows to the satisfaction of a civil Court having jurisdiction to entertain a suit for such redemption that the pledge has become or has been rendered of less value than it was at the time of pawning thereof by or through the default, neglect or wilful misbehaviour of the Pawnbroker, the Court may if it thinks fit, award reasonable compensation to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the Pawn Broker, or shall be paid by the Pawn Broker (as the case requires) in such manner as the Court directs.

16. Appointed of Inspectors and their powers :-

(1) The Government or any authority or officer empowered by them in this behalf may, by notification, appoint one or more persons possessing such qualifications as may be prescribed to be the Inspectors for the purpose of this Act and specify in such notification the local limits of their jurisdiction.

(2) Every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

17. Powers to order production of accounts and powers of entry and inspection :-

(2) Any Inspector or Licensing Authority may, at any reasonable time, with or without the assistance of Police Officers or other officers enter any place of business or office of the Pawnbroker and inspect any cash, accounts, registers, records, safes, vaults or other documents in such premises.

(4) All searches under this section shall, so far as may be, made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The officer making the inspection or search may seize such accounts, registers, records or other documents as he considers necessary and on such seizure shall grant the Pawn Broker a receipt of the things so seized.

(6) The accounts, registers, records or other documents seized under sub-section

(5) shall not be retained by the officer, seizing them, beyond a period of thirty days from the date of the seizure except with the permission of the next higher authority, unless they are required for any prosecution under this Act.

18. Power to summon witnesses and cause production of documents :-

(2) The officers who impounds the documents, accounts or registers of the Pawnbroker shall grant a receipt of the things so impounded to the person concerned.

19. Assistance of Police Officers :-

Any officer authorised to inspect or search under Section 17 may seek the assistance of the officer in charge of the Police Station having jurisdiction over the area to be inspected or searched and thereupon, such officer of the Police Station shall render all assistance necessary to the officer for the conduct of such inspection or search.

20. Power to cancel licence, etc. :-

(2) Before cancelling a licence under sub-section (1), the Licensing Authority shall give the licensee a notice in writing stating the grounds on which it is proposed to take action and requiring him to show-cause against the proposed action within such time as may be specified in the notice.

(3) Every order of the Licensing Authority under this section shall be communicated to the licensee in such manner as may be prescribed.

21. Publication of order of cancellation :-

Every order of cancellation of a licence under this Act, shall be notified in the District Gazette and also affixed on the notice board of the office of the Licensing Authority.

22. No refund of licence fee :-

A person whose licence is cancelled under Section 20 shall not be entitled to the refund of any fee paid in respect of such licence or for any compensation for such cancellation.

23. Appeals :-

(1) Any person aggrieved by an order of the Licensing Authority under sub-section (3) of Section 4 or sub-section (1) of Section 20, may within thirty days from the date of communication of such order, appeal in such manner as may be prescribed to the appellate authority having jurisdiction over the area.

(2) The appellate authority may admit an appeal preferred after the period of thirty days aforesaid, if it is satisfied that the appellant had sufficient cause for not preferring an appeal within the said period.

(3) The appellate authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as it deem fit.

(4) Every order passed by the appellate authority shall be communicated to the appellant and to the Licensing Authority in such manner as may be prescribed.

24. Pawnbroker advancing smaller amount or receiving higher interest than that specified in the accounts to be punishable :-

(1) Any Pawnbroker, who actually advances an amount less than that shown in pawn-ticket or in his accounts or registers or who takes or receives interest or any other charge at a rate higher than that shown in the pawn-ticket or in his accounts or registers or allowed under this Act, shall be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may extend to rupees fifty

thousand.

(2) If a Pawn Broker is convicted of offence under sub-section (1) after having been previously convicted of such offence, the Court convicting him may order his licence as a Pawnbroker to be cancelled.

25. Certain other acts of pawn-brokers to be punishable :-

A Pawnbroker who,--

(1) takes an article in pawn from any person appearing to be under the age of eighteen years, or to be intoxicated or of unsound mind shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.

26. Certain acts of pawners and others and others to be punishable :-

Any person who,-

(a) offers to a Pawnbroker an article by way of pawn, being unable or refusing to give a satisfactory account of the means by which he became possessed of the article; or

(b) wilfully gives false information to a Pawnbroker as to whether an article offered by him in pawn to the Pawnbroker in his own property or not, or as to his name and address or as to the name and address of the owner of the article; or

(c) not being entitled to redeem, and not having any colour of title bylaw to redeem, a pledge, attempts or endeavours to redeem the same, shall be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may extend to rupees fifty thousand.

27. Duties of the pawnbroker :-

(1) In every case falling under Section 26, and also in any case where, on an article being offered in pawn, for sale, or otherwise, to a Pawnbroker, the reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the Pawnbroker shall, in the absence of reasonable excuse, inquire into the name and address of the person concerned, and seize and detain such person and the article, if any, and forthwith communicate to the nearness Police Station the facts of the case and shall deliver the person and the article, if any, seized to the police.

28. General Penalty for contravention of Act, etc :-

(1) Whoever contravenes any of the provisions of this Act or of any rule made or of any terms and conditions of a licence granted thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may extend to rupees fifty thousand.

(2) Any Court convicting a Pawnbroker of a contravention of the provisions of clause (c) or clause (d) of sub-section (1) of Section 11, may direct him to furnish a receipt or statement of account in accordance with the provisions of that clause, and if the Pawnbroker fails to comply with the direction, the Court may order his licence as a Pawnbroker to be canceled.

29. Penalty for carrying on business without licence or in violation of the conditions of the licences :-

Whoever carries on the business of Pawnbroking without a licence or in violation of the conditions of the licence or otherwise than in conformity with the terms and conditions of the licence shall be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may extend to rupees fifty thousand.

30. Liability of the pawnbroker for the acts committed by his agents or employees :-

Where any agent or employee of the Pawnbroker contravenes any of the provisions of this Act or of any rule made thereunder or of the terms and conditions of a licence granted or deemed to be granted whether with or without the knowledge of the Pawnbroker, the Pawnbroker shall without prejudice to the liability of the agent or the employee, be liable for the penalty provided under this Act, as if the Pawnbroker himself has committed such contravention.

31. Transfer of licence to heirs :-

(1) Where a licensee under this Act, dies, any person claiming to be his legal representative may apply to the Licensing Authority for transferring in his name, the licence standing in the name of the deceased.

(2) Every such application shall be in such form and shall contain such particulars as may be prescribed.

(3) The Licensing Authority may, if he is satisfied that the applicant is in fact the legal representative of the deceased and that he is otherwise eligible for a licence under this Act, transfer the licence in the name of the applicant after obtaining from the applicant a declaration in the prescribed form.

(4) Any licence transferred under sub-section (3) shall be deemed to have been granted to the applicant himself and shall be valid for the period for which it would have been valid if the licence had not been transferred and the provisions of this Act shall apply accordingly.

32. Contracts not be void on account of offences but interest and costs not to be allowed in certain cases :-

Where a Pawnbroker is guilty of an offence other than an offence of carrying in business of Pawnbroking without a licence punishable under this Act, any contract made by him, in relation to his business of Pawnbroking, shall not be void by reason only of that offence, nor shall he be by reason only of that offence, lose his lien on or right to the pledge or to the loan and the interest and other charges, if any, payable in respect thereof :

33. Power of revision by the Government :-

(1) The Government may either suo-motu or on application, call for and examine the record of any order passed by an Inspector, Licensing Authority or Appellate Authority to satisfy themselves as to the legality, regularity or correctness of such order and in any case it appears to them, that such order should be modified, annulled or reversed or remitted for reconsideration, they may pass orders accordingly : Provided that no order under this section adversely affecting a person shall be passed unless that person has had an opportunity of being heard.

(2) No licensee shall make an application under sub-section (1) unless he has paid the penalty against which such revision is sought.

(3) No licensee shall make an application under sub-section (1) unless he has exhausted the appellate remedy available under this Act.

(4) No application seeking a revision of an appellate order under this section shall be made after expiry of a period of ninety days from the date of such order.

(5) No order of suo-motu revision shall be made by the Government under this section after the expiry of three years from the date of the order which is sought to be revised.

34. Bar of certain proceedings :-

(1) No suit, prosecution or other proceedings shall lie against any officer or employee of the Government or any act done or purporting to be done under this Act, without the previous sanction of the Government.

(2) No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is, in good faith, done or intended to be done under this Act or the rules made thereunder.

35. Power to make rules :-

(1) The Government may, by notification, make rules for carrying out the purposes of this Act.

(3) Every rule made under this Act, shall immediately after it is made, be laid before the Legislative Assembly of the State, if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days, which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

36. Act not to effect or alter the law relating to relief of agricultural and other indebtedness. Repeal and savings :-

The provisions of this Act, shall be in addition to and not, save as otherwise expressly provided in this Act, in derogation of any other law for the time being in force, in the State, relating to the relief of indebtedness including indebtedness amongst agriculturists, members of weaker sections and members of Scheduled Castes and Scheduled Tribes.

37. . :-

The following enactments are hereby repealed, namely, --

(i) The Andhra Pradesh (Andhra Area) Pawnbrokers Act, 1943;