

Kerala Money Lenders (Amendment) Act, 1963**33 of 1963**

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Kerala Money Lenders (Amendment) Act, 1963**33 of 1963**

An Act to amend the Kerala Money Lenders Act, 1958 WHEREAS, it is deemed expedient to amend the Kerala Money Lenders Act, 1958 (Act 35 of 1958), for the purposes hereinafter appearing; BE it enacted in the Fourteenth Year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Kerala Money Lenders (Amendment) Act, 1963.

(2) It shall come into force at once.

2. Amendment Of Section 2 :-

In section 2 of the Kerala Money Lenders Act, 1958 (Act 35 of 1958), hereinafter referred to as the principal Act,-

(i) clause (1) shall be renumbered as clause (1A), and before clause (1A) as so renumbered the following clause shall be inserted, namely:-

"(1) "appellate authority" means any officer or authority appointed by the Government to exercise the powers of an appellate authority

under this Act;";

(ii) in clause (1A), the words, brackets, letter and figures "and any subsidiary bank within the meaning of clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act 1959" shall be added at the end;

(iii) after clause (4), the following clause shall be inserted, namely:-

"(4A) "licensing authority" means an officer or authority appointed by the Government to perform the functions of a licensing authority under this Act;";

(iv) for sub-clause (vii) of clause (5), the following sub-clause shall be substituted, namely:-

"(vii) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (Central Act 26 of 1881), other than on the basis of a promissory note for an amount not exceeding three thousand rupees;";

(v) for clause (7), the following clause shall be substituted namely:-

"(7) "money lender" means a person whose main or subsidiary occupation is the business of advancing and realising loans and includes a pawnbroker, but shall exclude a bank or a co-operative society or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (Central Act 31 of 1956).

Explanation I.- Where a person, who carries on in the State of Kerala, the business of advancing and realising loans is resident outside the State, the agent of such person resident in the State shall be deemed to be the money lender in respect of that business for the purpose of this Act.

Explanation II.- For the purposes of this clause, clause (7A), proviso to sub-section (1) of section 3, clause (a) of sub-section (3) of section 10, section 16A, and section 17, the word "person" shall include "a firm or a joint family;";

(vi) after clause (7), the following clauses shall be inserted, namely:-

"(7A) "pawnbroker" means a person who carries on the business of taking goods and chattels in pawn for a loan.

Explanation.- Every person who keeps a shop for the purchase or sale of goods or chattels and who purchases goods or chattels and pays or advances thereon any sum of money, with or under any agreement or understanding expressed or implied that the goods or chattels may be afterwards repurchased on any terms is a

pawnbroker within the meaning of this clause;

(7B) "pawner" means a person delivering an article for pawn to a pawnbroker;

(7C) "pledge" means an article pawned with a pawnbroker;"; and

(vii) in clause (9), the words "or the pawner" shall be added at the end.

3. Amendment Of Section 4 :-

In section 4 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:-

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

4. Substitution Of New Section For Section 6 :-

For section 6 of the principal Act, the following section shall be substituted, namely:-

"6. Money-lenders to exhibit their names over shops.- Every money lender other than a pawnbroker shall always keep exhibited over his shop or place of business his name with the word "money lender" and its equivalent in the regional language and every pawnbroker shall always keep exhibited over his shop or place of business his name with the word "pawnbroker" and its equivalent in the regional language."

5. Section 5 :-

6. Amendment Of Section 9 :-

In section 9 of the principal Act

(1) in sub-section (1), for the opening words "Every money-lender shall", the words "Every money-lender other than a pawnbroker shall" shall be substituted;

(2) in sub-section (6), after the words "If any money-lender", the words "other than a pawn-broker" shall be inserted.

7. Insertion Of New Sections 9A To 9H :-

After section 9 of the principal Act, the following sections shall be inserted, namely:-

"9A. Pawn-ticket to be given to the pawner.- Every pawnbroker 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 B . Person producing pawn-ticket presumed to be entitled to redeem the pledge.- (1) The holder for the time being of a pawn-ticket shall be presumed to be the person entitled to redeem the pledge, and subject to the provisions of this Act, every pawnbroker shall, on payment of the principal and interest, deliver the pledge to the person producing the pawn-ticket, and he is hereby indemnified for so doing.

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

9C. Protection of owners and of pawners not having pawn-tickets.-

(1) The following provisions shall have effect for the protection of owners of articles pawned, and of pawners not having their pawn-tickets to produce:-

(a) Any person claiming to be the owner of a pledge but not having the pawn-ticket, or any person claiming to be entitled to hold a pawn- ticket, but alleging that the same has been lost, mislaid, destroyed or stolen or fraudulently obtained from him, may apply to the pawn- broker for a printed form of declaration (which shall be in the prescribed form), which the pawnbroker shall deliver to him:

Provided that an application shall not be made under this clause where the loan exceeds two hundred and fifty rupees unless the applicant has caused a public notice of his claim, containing such particulars as may be prescribed, to be published in the prescribed manner for not less than the prescribed number of days before the date of the application.

(b) If the applicant delivers back to the pawnbroker the declaration duly made before the Magistrate or Judge by the applicant and by a person identifying him, the applicant shall have, as between himself and the pawnbroker, all the rights and remedies as if he had produced the pawn-ticket:

Provided that such a declaration shall not be effectual for that purpose-

(i) in cases where the loan exceeds two hundred and fifty rupees, unless the applicant executes a bond with two sureties, to the satisfaction of the pawnbroker or of such authority or person as may be prescribed in this behalf, agreeing to indemnify the pawnbroker in respect of any liability which may be incurred by him by reason of delivering the pledge or otherwise acting in conformity

with the declaration; and

(ii) in all cases, unless the declaration is duly made and delivered back to the pawnbroker within such period after the delivery of the form to the applicant, as may be prescribed.

(c) The pawnbroker is hereby indemnified for not delivering the pledge to any person until expiration of the period aforesaid.

(d) The pawnbroker is hereby further indemnified for delivering the pledge or otherwise acting in conformity with the declaration, unless he has had notice within the meaning of the Transfer of Property Act, 1882, that the declaration was fraudulent or was false in any material particular.

(2) Any person making a declaration under sub-section (1), either as an applicant, or as identifying an applicant, knowing the same to be false in any material particular, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both.

9D. Pawnbrokers to keep books, give receipts, etc.- (1) Every pawnbroker shall -

(a) regularly record and maintain or cause to be recorded and maintained in a pledge book in the prescribed form, an account showing for each pawner separately-

(i) the date of the loan, the amount of the principal of the loan and the rate of interest charged on the loan per cent per annum, per rupee per mensem and per rupee per annum;

(ii) the amount of every payment received by the pawnbroker in respect of the loan, and the date of such payment;

(iii) a full and detailed description of the article or of each of the articles taken in pawn;

(iv) the time agreed upon for the redemption of the pawn; and

(v) the name and address of the pawner, and where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof;

(b) keep and use in his business the following documents and books(which shall be in the prescribed form) and enter therein from time to time, as occasion requires, in a fair and legible manner such particulars and in accordance with such directions as may be prescribed:-

(i) pawn-ticket;

(ii) sale book of pledges;

(iii) declaration where pledge is claimed by owner;

(iv) declaration of pawn-ticket lost; and

(v) receipt on redemption of pledge;

(c) give to the pawner or his agent a receipt for every sum paid by him, duly signed and, if necessary, stamped at the time of such payment;

(d) on requisition in writing made by the pawner, furnish to the pawner or, if he so requires, to any person mentioned by him in that behalf in his requisition, a statement of account signed by himself or his agent, showing the particulars referred to in clause (a) and also the amount which remains outstanding on account of the principal and of interest, and charge such same as the Government may prescribe as fee therefore; and

(e) submit to the Inspector concerned such returns relating to the loans advanced by him, in such form and at such times as may be prescribed.

(2) All records or entries made in the books, accounts and documents referred to in sub-section (1) shall be in such language or languages as maybe prescribed in respect of any area; and all such books, accounts and documents and all pledges taken by the pawnbroker shall be open to inspection at any time by the licensing authority or by the Inspectors appointed under section 10 or by any officer authorized in this behalf by the Government.

(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, in the receipt given under clause (c) of sub-section (1) and in the statement of accounts 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) of sub-section (1), he shall be liable to a fine not exceeding two hundred and fifty rupees.

9E. Redemption of pledge.- (1) Every pledge shall be redeemable within one year from the day of pawning, exclusive of that day; and there shall be added to that year of redemption seven days of grace within which every pledge (if not redeemed within the period of redemption) shall continue to be redeemable.

(2) A pledge shall further continue to be redeemable until it is

disposed of as provided in this Act, although the period of redemption and days of grace have expired.

Explanation.- Where the contract between the parties provided a longer period for redemption than one year, the provisions of sub-sections (1) and (2) of this section and sub-section (1) of section 9F shall be read and construed as if reference to such longer period had been substituted for the references to the period of one year therein.

9F. Sale of pledge and inspection of sale book.- (1) A pledge may be disposed of by the pawnbroker, after the expiry of one year and the days of grace provided in sub-section (1) of section 9E by sale by auction and not otherwise, and the sale shall be conducted in accordance with such rules as may be prescribed.

(2) A pawnbroker may bid for and purchase at a sale by public auction conducted under sub-section (1), a pledge pawned with him; and on such purchase, he shall become the absolute owner of the pledge.

(3) At any time within three years after the public auction, the holder of the pawn-ticket 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.

(4) (a) Where on such inspection or otherwise the pledge appears to have been sold for more than the amount of the loan and the interest and charges due at the time of the sale, the pawnbroker shall pay to the holder of the pawn-ticket, on demand made within three years after the sale, the surplus after deducting therefrom the necessary costs and charges of the sale.

(b) If on such demand it appears that the sale of the pledge has resulted in a surplus but that within twelve months before or after such sale, the sale of another pledge or pledges of the same person has resulted in a deficit, the pawnbroker may set off the deficit, against the surplus and shall be liable to pay only the balance, if any, after such set off.

9G. Liability of pawnbroker in case of theft or fire.- Where a pledge is lost by theft or destroyed or damaged by or in consequence of fire, the pawnbroker shall nevertheless be liable on application made within the period during which the pledge would have been redeemable, to pay the value of the pledge, after deducting the amount of the principal and interest.

Explanation.- For the purposes of this sub-section, the value of the pledge shall be its estimated value, if any, entered in the pledge book at the time of the pawn together with interest on the amount

of the principal and shall in no case be less than the aggregate of the amount of the principal and interest and twenty-five per cent on the amount of the principal.

9H. Compensation for depreciation of pledge.- If a person entitled and offering to redeem a pledge show 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 willful 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 pawnbroker, or shall be paid by the pawnbroker, as the case requires, in such manner as the Court directs".

8. Amendment Of Section 14 :-

For sub-section (3) of section 14 of the principal Act, the following sub-section shall be substituted, namely:-

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

9. Insertion Of New Section 16A :-

After section 16 of the principal Act, the following section shall be inserted, namely:-

"16A. 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 14 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 the 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 may 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".

10. Insertion Of New Sections 18A And 18B :-

After section 18 of the principal Act, the following sections shall be inserted, namely:-

"18A. Certain acts of pawnbrokers 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

(2) purchases or takes in pawn or exchanges a pawn-ticket issued by another pawnbroker; or

(3) employs any person under the age of eighteen years to take pledges in pawn; or

(4) under any pretence purchases, except at a public auction, any pledge while in pawn with him; or

(5) suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it; or

(6) makes any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof, for the purchase, sale, or disposition thereof within the time of redemption; or

(7) sells or otherwise disposes of any pledge pawned with him except at such time and in such manner as is authorized by or under this Act,

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

18B. Certain acts of pawners 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 is 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 by law to redeem a pledge, attempts or endeavours to redeem the same, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

(2) In every case falling under sub-section (1) and also in any case where, on an article being offered in pawn, for sale or otherwise, to a pawnbroker he 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 nearest police station the facts of the case and shall deliver the person and the article, if any, seized to the police.

(3) A list of properties believed to have been stolen may be delivered by the police to any pawnbroker licensed under this Act and thereupon it shall be the duty of such pawnbroker-

(a) if any article answering the description of any of the properties set forth in any such list is offered to him in pawn, for sale, or otherwise, to proceed in accordance with the provisions of sub-section (2); and

(b) If any such article is already in his possession, forthwith to communicate to the nearest police station the facts of the case (including full particulars as to the name and address of the person concerned in the delivery of the article to the pawnbroker) and also, if so required by the police, to deliver the article to them".

11. Amendment Of Section 20 :-

In section 20 of the principal Act, for the words "lose his right", the words "lose his lien on or right to the pledge or" shall be substituted.

12. Insertion Of New Section 22 :-

After section 21 of the principal Act, the following section shall be inserted, namely:

"22. Repeal. The Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943) as in force in the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), is hereby repealed.".