

Kerala Money-Lenders Act, 1958

35 of 1958

CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. Money-Lender To Obtain Licence
4. Grant And Refusal Of Licenses
5. Change Of Place Of Business By Money-Lender
6. Money-Lenders To Exhibit Their Names Over Shops
7. Interest And Charges Allowed To Money-Lenders
8. Power To Deposit In Court Money Due On Loan
9. Money-Lender To Keep Books, Give Receipts Etc
- 9A. Pawn Ticket To Be Given To The Pawner
- 9 B . Person Producing Pawn-Ticket Presumed To Be Entitled To Redeem The Pledge
- 9C. Protection Of Owners And Of Pawnors Not Having Pawn-Tickets
- 9D. Pawnbrokers To Keep Books, Give Receipts, Etc
- 9E. Redemption Of Pledge
- 9F. Sale Of Pledge And Inspection Of Sale Book
- 9G. Liability Of Pawnbroker In Case Of Theft Or Fire
- 9H. Compensation For Depreciation Of Pledge
- 9I. Audit Of Accounts Of Money-Lender
10. Appointment Of Inspectors And Their Powers
- 10A. Power To Order Production Of Accounts And Powers Of Entry And Inspection
- 10 B . Power To Summon Witnesses And Cause Production Of Documents
- 10C. Assistance Of Police Officers
11. Money-Lender Advancing Smaller Amount Or Securing Higher Interest Than That Specified In The Accounts, Etc., To Be Punishable
- 11A. Power To Demand Additional Security
12. Cognizance Of Offences
13. Penalty For Molestation Of Debtor
14. Power To Cancel Licence, Etc
15. Publication Of Order Of Cancellation
16. No Refund Of Licence Fee When Licence Cancelled
- 16A. Forfeiture Of Security
- 16B. Appeals
- 16C. Fees For Filling Interlocutory Applications
- 17 . Penalty For Carrying On Business Without Licence Or In Violation Of The Conditions Of Licence

- 18. Penalties
- 18A. Certain Acts Of Pawnbrokers To Be Punishable
- 18B. Certain Acts Of Pawners To Be Punishable
- 18C. Imposition Of Penalty By Officers And Authorities
- 18D. Penalty For Collection Of Interest In Excess Of The Rate Prescribed Under Section 7
- 18E. Composition Of Offences
- 18F. Payment And Recovery Of Penalty
- 18G. Liabilities Of The Money-Lender For Acts Committed By His Agents Or Employees
- 18H. Security From The Employees
- 19. Transfer Of Licence To Heir
- 20. Contracts Not To Be Void On Account Of Offence
- 20A. Power Of Revision By The Government
- 20AA. Persons Entitled To Appear Before Authorities
- 20B. Court Not To Set Aside Or Modify Orders
- 20C. Bar Of Certain Proceedings
- 21. Power To Make Rules
- 22. Repeal

Kerala Money-Lenders Act, 1958

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An ACT to provide for the regulation and control of the business of money-lenders in the State of Kerala WHEREAS, it is expedient to provide for the regulation and control of the business of money-lenders in the State of Kerala; BE it enacted in the Ninth Year of the Republic of India as follows:-

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Kerala Money-lenders Act, 1958.
- (2) It extends to the whole of the State of Kerala.
- (3) It shall come into force in any area on such date as the Government may specify by notification, the date being not earlier than one month from the date of the notification and the Government may cancel or modify such notification.

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;"];

["(1A)"]. ["bank"] means-

- (i) a banking company to which the Banking Regulation Act, 1949

(Central Act 10 of 1949), applies;

(ii) The State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955);

(iii) a subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959);

(iv) the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (Central Act 18 of 1964);

(v) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970);

(vi) a Regional Rural Bank established under the Regional Rural Banks Act, 1976 (Central Act 21 of 1976);

(vii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (Central Act 40 of 1980);

(viii) the Export Import Bank of India established under the Export Import bank of India Act, 1981 (Central Act 28 of 1981);

(ix) the National Bank for Agriculture and Rural Development established under the National Bank for Agriculture and Rural Development Act, 1981 (Central Act 61 of 1981);

(x) the Industrial Reconstruction Bank of India established under the Industrial Reconstruction Bank of India Act, 1984 (Central Act 62 of 1984);";]

["(1B) "Commissioner" means the Commissioner of Commercial Taxes appointed under the provisions of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963)";]

(2) "co-operative society" means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 [(Madras Act VI of 1932) or the Travancore-Cochin Co-operative Societies Act, 1951 (Act X of 1952)];

(3) "Interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum charged by a lender in accordance with the provisions of this Act or any other law for the time being in force, for or on account of costs, charges or expenses;

(4) "licence" means a money-lender's licence granted under this Act;

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

under this Act;"];

(5) "loan" means an advance whether of money or in kind at interest, and includes any transaction which the Court finds in substance to Amount to such an advance but does not include-

(i) a deposit of money or other property in a Government Post Office Savings Bank or in a bank, or in a company as defined in the Companies Act, 1956 (Central Act I of 1956), or with a co-operative society;

(ii) an advance made to any loan floated by the Government of India or the Government of any State;

(iii) an advance made by a bank or a Co-operative society or an advance made from a provident fund to which the Provident Funds Act, 1925 (Central Act XIX of 1925) applies;

(iv) an advance made by the Government or by any person authorized by the Government to make advances in their behalf, or by any local authority;

(v) an advance made by any authority specified by the Government by notification in the Gazette;

["(vi) an advance made by a trader bona fide carrying on any business, other than money lending, if such loan is advanced in the regular course of such business;"]

(vii) xxx]

(viii) an advance made to its members by any Nidhi or Permanent Fund. ["established by or under an Act of Parliament or the Legislature of a State and sponsored by the Central Government or the State Government or their agency, or by any nationalised Bank"]

(ix) an advance made under any chit fund scheme or kuri or chitty;

(6) a person shall be deemed to "molest" another person if he-

(a) obstructs, or uses violence to, or intimidates, such other person, or

(b) interferes with any property owned or used by him or deprives him of, or hinders him in the use of any such property, or

(c) does any act calculated to annoy or intimidate the members of the family or such other person;

[(7).["money-lender" means a person whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits in the course of such business and includes any person appointed by him to be in charge of a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of business and a pawn broker, but does not include-"

- (a) a bank or a co-operative society; or
- (b) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (Central Act 31 of 1956); or
- ["(bb) the industrial Credit and Investment Corporation of India Limited incorporated under the Indian Companies Act, 1913 (7 of 1913);"];
- (c) the industrial Finance Corporation established under section 3 of the Industrial Finance Corporation Act, 1948 (Central Act 15 of 1948)
- [(d) xxx]
- (e) the State Financial Corporation established under section 3 of the State Financial Corporation Act, 1951 (Central Act 63 of 1951); or
- (f) any institution established by or under an Act of Parliament or the Legislature of a State, which grants any loan or advance in pursuance of the provisions of that Act, or
- (g) any institution in the public sector, whether incorporated or not exempted by the Government by notification.

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 purposes of this Act.

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

["(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

(8) "prescribed" means prescribed by rules made under this Act;

(9) "principal" in relation to a loan means the amount actually lent to the debtor. ["or the pawner"];

["(9A) "trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and includes-

- (a) a wholesale or retail merchant;
- (b) a commission agent;
- (c) a broker; and
- (d) a manufacturer;"]

(10) "year" means the financial year.

3. Money-Lender To Obtain Licence :-

(1) From the date on which the provisions of this Act are brought into force in any area, no person, firm or joint family .["or unincorporated association of individuals shall commence or"] carry on or continue business as a money-lender at any place in such area without a licence obtained under this Act or in contravention of the terms thereof:

Provided that nothing in this section shall be deemed to prohibit a person who has applied for a licence to carry on or to continue business as a money-lender pending orders on his application.

(2) Where a money-lender 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 shop or place of business.

(3) (a) where a money-lender is a registered firm the licence shall be obtained in the firm's name.

(b) Where a money-lender is an undivided joint family, the licence shall be obtained in the name of the manager or the karanavan or the yajaman, as the case may be, described as such in the licence.

(c) Where a money-lender is any other association of individuals, not required to be registered under the Indian Companies Act, 1956 (Central Act I of 1956), a separate licence shall be obtained by each such individual in his name describing himself as a member of the association:

4. Grant And Refusal Of Licenses :-

(1) Every application for a money-lender's licence shall be in writing and shall be made to the licensing authority and in the manner prescribed under this Act:

Provided that a person under the age of eighteen years or a lunatic as defined in section 3 (5) of the Indian Lunacy Act, 1912 (Central Act IV of 1912) shall be eligible to apply for a licence only through

a guardian:

Provided further that if any person acting as a guardian on behalf of a minor or a lunatic applies for, and obtains, a licence under this Act, such guardian shall be subject to all the provisions of this Act as if the licence has been granted to himself.

"(2) Every licence shall be granted in such form as may be prescribed and shall be subject to the following conditions and to such other conditions as may be prescribed, namely:-

(i) payment of a licence fee of. ["five thousand rupees"] ;

(ii) payment of security as provided in sub-section (2A).

["(iii) that deposits shall be accepted only in accordance with the provisions of the Reserve Bank of India Act, 1934 (Central Act 2 of 1934), and at such rates of interest not exceeding the rates fixed by the Reserve bank of India under the Non-banking Financial Companies (Reserve Bank) Directions, 1977."]

(2A) Every licensee specified in column (1) of the Table below shall, within such time and in such manner as may be prescribed, deposit in the Government Treasury in respect of each licence held by him, the amount specified in the corresponding entry in column (2) of the said Table, by way of security for the due observance of the conditions of the licence.

["Explanation.- For the removal of doubts, it is hereby declared that a money-lender whose principal place of business is situate outside the State of Kerala and who has within the State of Kerala a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of business shall be liable to deposit the security under this sub-section in respect of such branch or each of the branches or liaison office or any other office, as the case may be.

TABLE

	(1)	(2)
1.	A licensee who lends less than one lakh rupees in an year	Five thousand rupees
2.	A licensee who lends one lakh rupees or above but less than five lakh rupees in an year	Ten thousand rupees
3.	A licensee who lends five lakh rupees or above but less than ten lakh rupees in an year	Fifty thousand rupees
4.	A licensee who lends ten lakh rupees or above, but less than twenty-five lakh rupees in an year	One lakh rupees
5.	A licensee who lends twenty-five lakh rupees or above, but less than fifty lakh rupees in an year	One lakh and fifty thousand rupees
6.	A licensee who lends fifty lakh rupees or above, in	Two lakh rupees"].

["(2B) For the purposes of sub-section (2A), the amount lent by a licensee for the year for which the security is to be paid shall be deemed to be-

(a) the maximum aggregate loan amount outstanding on any day during the previous year; or

(b) the amount invested by the licensee including all deposits received by him during the previous year, if the maximum aggregate loan amount outstanding is not ascertainable from his accounts;"].

(3) The licensing authority may by order in writing refuse to grant a licence if such authority is satisfied-

(a) that the applicant has not complied with the provisions of this Act or the rules made thereunder in respect of an application for the grant of a licence; or

(b) that the applicant has made willful default in complying with or knowingly acted in contravention of any requirement of this Act; or

(c) that the applicant has-

(i) knowingly participated in or connived at any fraud or dis-honesty in the conduct of or in connection with the business of money-lending; or

(ii) been found guilty of an offence under Chapter XVII or Chapter XVIII of the Indian Penal Code (Central Act XLV of 1860); or

(iii) been found guilty of an offence under section 11 or section 13[xxx]

(d) that the application is made within six months of the cancellation of the licence

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

["(4A) The licensing authority may, if it is satisfied that an applicant could not apply for a licence under this Act, for reasons beyond his control within the period referred to in sub-section (1) of section 3, grant a licence with retrospective effect on realizing a penalty not exceeding the prescribed licence fee".]

(5) Every licence granted under this Act shall, subject to the provisions of sub-section (7), expire on the last day of the year in which it was granted.

(6) A licence granted under sub-section (2) may be renewed from year to year and the provisions of sub-sections (1) to (5) shall apply in relation to the renewal of a licence as they apply in relation to the grant of a licence.

(7) If orders refusing to renew a licence are not communicated to a money-lender by the licensing authority before the expiry of his current licence, the money-lender shall, notwithstanding such expiry, be deemed to have a valid licence till orders are received by him on his application for renewal.

(8) Nothing in this section shall be deemed to disentitle a money-lender, 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. Change Of Place Of Business By Money-Lender :-

No money-lender 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.

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 or business his name with the word "pawnbroker" and its equivalent regional language."]

7. Interest And Charges Allowed To Money-Lenders :-

["(1) No money-lender shall charge interest on any loan at a rate exceeding two per cent above the maximum rate of interest charged by commercial banks on loans granted by them:

Provided that a money-lender shall be entitled to charge a minimum of one rupee as interest on any transaction."]

["Provided further that the Government may specify, by notification, the rate of interest under sub-section (1) from time to time.";]

(2) A money-lender may demand and take from the debtor such charges and in such cases, as may be prescribed.

(3) A money-lender shall not demand or take from the debtor any interest, in excess of that payable under sub-section (1)

["(4) No money-lender shall give any presents, gifts, commission or any amount other than the interest provided in sub-section (2) of section 4 to any depositor in connection with the deposits received by such money-lender or receive any presents, gifts, commission or any amount other than the interest and other charges specified in this section from any person to whom money is advanced."]

8. Power To Deposit In Court Money Due On Loan :-

(1) Where a money-lender refuses to accept the whole or any portion of the money or other property due in respect of his loan, the debtor may deposit the said money or property into the Court having jurisdiction to entertain a suit for recovery of such loan and apply to the Court record full or part satisfaction of the loan, as the case may be.

(2) Where any such application is made, the Court shall, after due inquiry, pass orders recording full or part-satisfaction of the loan as the case may be.

(3) The procedure laid down in the Code of Civil Procedure 1908 (Central Act V of 1908), for the trial of suits shall, as far as may be, apply to applications under this section.

(4) An appeal shall lie from an order passed by a Court under sub-section (2) within thirty days excluding the time for obtaining a certified copy of the order as if such an order relates to the execution, discharge or satisfaction of a decree within the meaning of section 47 of the Code of Civil Procedure, 1908 (Central Act V of 1908)

9. Money-Lender To Keep Books, Give Receipts Etc :-

- (1). ["Every money-lender other than a pawn-broker shall"]
- (a) regularly record and maintain or cause to be recorded and maintained, an account showing for each debt separately
 - (i) the date of the loan, the amount of the principal of the loan and the rate of interest charged on the loan; and
 - (ii) the amount of every payment received by the money-lender in respect of the loan, and the date of such payment.
 - (b) give to the debtor or his agent a receipt for every amount paid by him, duly signed and, if necessary, stamped at the time of such payment.
 - (c) on requisition in writing made by the debtor furnish to him, 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 may charge such fee therefor as the Government may prescribe and;
 - (d) 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 may be prescribed in respect of any area.
- (3) A debtor to whom a statement of account has been furnished under clause (c) 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.
- (4) In the receipt to be given under clause (b) of sub-section (1) or in the statement of account to be furnished under clause (c) of that sub-section the figures shall be entered only in Arabic numerals.
- (5) In any suit or proceeding relating to a loan if the court finds that a money-lender has not maintained an account as required by clause (a) of sub-section (1), he shall not be allowed his costs.
- (6) If any money-lender. ["other than a pawnbroker"] fails to give to the debtor or his agent a receipt as required by clause (b) of sub-section (1) or to furnish on a requisition made under clause (c) of that sub-section a statement of account as required therein within one month after such requisition has been made, he shall not be entitled to any interest for the period of his default, and shall be liable to a fine not exceeding two hundred and fifty rupees.
- (7) Notwithstanding any agreement between the parties or any law

for the time being in force, when a statement is furnished to a debtor under this section on any day during a month, the interest due shall be calculated as payable for the entire month irrespective of the fact that such statement is furnished on any such day.

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.

9B. 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 sum as the Government may, prescribe as fee therefor; and

(e) submit to the Inspector concerned such returns relating to the deposits accepted and 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 may be 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 authorised 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 provides a longer period for redemption than one year, the provisions of subsections (1) and (2) of this section and sub-section (1) of section 9F shall be read and construed as if references 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 :-

(1)"] 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.

["(2) Every pawn broker shall, on taking a pledge in pawn, insure the pledge with him with any company or corporation which is authorised by law for such insurance, for an amount not less than the market value of such pledge."]

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 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 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".

9I. Audit Of Accounts Of Money-Lender :-

(1) The accounts of every money-lender shall be audited at least once in every year by a person who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (Central Act 38 of 1949), and the audit report shall be submitted to such officer or authority and before such date as may be specified by the Government in this behalf.

(2) If the audit report under sub-section (1) discloses any irregularity or any contravention or non-compliance of the provisions of this Act or the rules made thereunder or of any of the conditions of the licence, the officer or authority to whom such audit report is submitted may, without prejudice to any other action that may be taken under any other provision of this Act, by order in writing direct the money lender to take such action as may be specified in the order within the time mentioned therein to remedy the irregularity or to take such steps necessary to comply with the provisions of this Act or the rules made thereunder or of the conditions of the licence."

10. Appointment Of Inspectors And Their Powers :-

(1) The Government or any authority or officer empowered by them may, by notification in the Gazette, appoint one or more persons possessing such qualifications as may be prescribed to be Inspectors for the purposes 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 (Central Act XLV of 1860)

10A. Power To Order Production Of Accounts And Powers Of Entry And Inspection :-

(1) Any Inspector, Licensing Authority or Appellate Authority may, for the purpose of this Act, by notice, require any money-lender,

(a) to produce or cause to be produced before him any accounts, registers, records or other documents; or

(b) to furnish or cause to be furnished any other information relating to his business and such money-lender shall comply with such requisition.

(2) Any Inspector or Licensing Authority may, at any reasonable time with or without the assistance of Police officers or other officers.

(a) enter any place of business or office of the money-lender; and

(b) inspect any cash, accounts, registers, records, safes, vaults, pledges or other documents in such premises.

(3) If any officer referred to in this section has reason to believe that the money-lender has violated any of the provisions of this Act or the rules made thereunder, he may, for reasons to be recorded in writing, enter and search the place of business of the money-lender or any other place which includes any godown, buildings, vessel, vehicle, box or receptacle where the money-lender keeps or is reasonably believed to be keeping any accounts, registers, other records, documents or pledges relating to his business:

Provided that no residential building or premises shall be entered or searched unless such officer is specifically authorised in writing by the member, Board of Revenue in charge of taxes to search that residential building or 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 money-lender a receipt of the things 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.

(7) The power conferred by sub-sections (3) and (5) shall include,

(a) the power to break-open any box or receptacle, safes, vaults or the door of any premises in which any accounts, registers, records or pledges of the money-lender are kept or reasonably suspected to be kept;

(b) the power to seal any box, receptacle, room or building where any accounts, registers or other documents are kept or reasonably believed to be kept, and if the owner or any other person in occupation leaves the premises or refuses to open the box, receptacle room or building or is not available, then to break open such box, receptacle, room or building on authorization in writing by the officer referred to in sub-section (3) of this section;

(c) the power to search any person who has got out of or is about to get into or is in any place referred to in clause (a) or clause (b) of sub-section (2) of this section if the officer has reason to suspect that such person has secreted about his person

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(d) 0.

(e) .

(f) any accounts, registers, records or other documents.

10B. Power To Summon Witnesses And Cause Production Of Documents :-

(1) An Inspector, Licensing Authority or Appellate Authority shall for the purposes of this Act, have all the powers conferred on a Civil Court by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of any documents;

(c) impounding of any documents, accounts or other records produced for reasons to be recorded in writing; and

(d) any other matter which may be prescribed.

(2) The officer who impounds the documents, accounts or registers of the money-

lender shall grant a receipt of the things so impounded to the person who produced the same.

10C. Assistance Of Police Officers :-

Any officer authorised to inspect or search under section 10A 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."]

11. Money-Lender Advancing Smaller Amount Or Securing Higher Interest Than That Specified In The Accounts, Etc., To Be Punishable :-

(1) Any money-lender whether licensed or not

(a) who actually advances an amount less than the amount shown in his accounts or registers or other documents relating to the loan, or

(b) who takes or receives interest or any other charge at a rate higher than the rate shown in the accounts, registers or documents aforesaid or allowed under this Act shall be punished with imprisonment which may extended to six months or with fine which may extend to one thousand rupees or with both.

(2) If a money-lender is convicted of an offence under sub-section (1) the Court convicting him may cancel his licence as a money-lender.

11A. Power To Demand Additional Security :-

11A. Power to demand additional security.

(1) Notwithstanding anything contained in section 4, the Licensing Authority may demand from the money-lender additional security at any time, if in the opinion of such authority there is excess of liabilities over the assets of the money-lender at that time:

Provided that, while determining the excess of liabilities over assets, the security furnished by the money-lender under sub-section (2A) of section 4 of this Act shall be treated as assets of the money-lender:

Provided further that in respect of the loans advanced by the money-lender against security in any form, the Licensing Authority shall have power to revalue or determine the adequacy of the security or securities or revalue any assets for the purpose of determination of excess of liabilities over the assets.

(2) The additional security to be furnished by the money-lender under sub-section (1) shall be equal to the mount of such excess of liabilities over the assets.

(3)The additional security referred to in this section shall be furnished in any of the following forms:

(a) by deposit in the Government Treasury; or

(b) by deposit with such authority, of Government securities including National Savings Certificates; or

(c) by deposit in Post Offices Savings Bank or Scheduled Bank or a Co-operative Bank and pledging of the pass book thereof, with such authority; or

- (d) by guarantee from a bank approved in this behalf by such authority agreeing to pay to the State Government on demand, the amount, of such additional security; or
- (e) by surety bonds from sureties acceptable to such authority, for the amount of such additional security.
- (4) The additional security furnished by the money-lender shall be retained till, in the opinion of the Licensing Authority, there exists excess of liabilities over the assets of the money-lender.
- (5) The additional security retained under sub-section (4) shall be utilized for the payment of the liabilities of the money-lender in connection with his business as money-lender, at the time of the winding up of the business or cancellation of the license, as the case may be.
- (6) Any money-lender from whom additional security is demanded under this section and who carries on business without furnishing such security within thirty days of such demand, shall be punishable with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both".

12. Cognizance Of Offences :-

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), every offence punishable under section 13, section 17, section 18A. or section 18B shall be cognizable.
- (2) No court inferior to that of a Judicial Magistrate of the First Class shall try any offence punishable under this Act.".]

13. Penalty For Molestation Of Debtor :-

Whoever molests or abets the molestation of any debtor for the recovery of any loan shall be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

14. Power To Cancel Licence, Etc :-

- (1) The licensing authority may, at any time, during the term of any licence, cancel it by an order in writing-
- (a) if the licensee carries on the business in contravention of any of the provisions of the Act or the rules made thereunder or of the conditions of the licence, or
- (b) if any reason for which the licensing authority could have refused to grant the licence to the money-lender under sub-section (3) of section 4, is brought to the notice of that authority after the grant of the licence, or
- (c) if the licensee is convicted for an offence under section 9 or section 11 or section 13 or
- ["(cc) if the licensee carries on business without furnishing the security or additional security as provided in this Act; or".]

(d) if the licensee maintains false accounts.

(2) Before canceling 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 it 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."]

15. Publication Of Order Of Cancellation :-

Every order of cancellation of a licence under this Act shall be noticed in the Gazette and also on the notice board of the office of the licensing authority.

16. No Refund Of Licence Fee When Licence Cancelled :-

A person whose licence is cancelled under section 14 shall not be entitled to the refund of any fee paid in respect of such licence ["or for any compensation for such cancellation"]

16A. Forfeiture Of Security :-

(1) The licensing authority may, at any time, by order in writing, forfeit to the Government the whole or any portion of the security furnished under sub-section (2A) of section 4,

(a) if the licensee carries on the business of money lending in contravention of any of the provisions of this Act or the rules made thereunder or the conditions of the licence; or

(b) If the licensee is convicted of an offence under section 11 or section 13; or

(c) if the licensee maintains false accounts.

(2) Before forfeiting to the Government the whole or any portion of the security 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 it 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.".]

16B. 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 or sub-section (1) of section 16A or by an order of the Inspector or the Licensing Authority under section 11A or section 18C or section 18D 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."

["(1A) Every appeal under sub-section (1) shall be accompanied by a fee of [three hundred rupees.";]

(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".]

16C. Fees For Filling Interlocutory Applications :-

Every interlocutory application prescribed by the Government and filed before the authorities under this Act specified below, other than those filed by officers empowered by Government, shall be accompanied by the following fees, namely:

(a) before any Appellate Authority one hundred and fifty rupees;

(b) before any Revisional Authority One hundred and fifty rupees.";]

17. Penalty For Carrying On Business Without Licence Or In Violation Of The Conditions Of Licence :-

Whoever carries on the business of money lending 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, in the absence of special reasons to be recorded in the judgement of the court, shall not be less than three months but which may extend to three years and with fine which may extend to fifty thousand rupees.".]

18. Penalties :-

(1) Whoever contravene any of the provisions of this Act or of any rule made thereunder or of any terms or conditions of a licence granted or deemed to be granted thereunder or makes a claim or a statement which is false or which he does not believe to be true shall, if no other penalty is elsewhere provided for in this Act for such contravention, be punished with fine which may extend to one thousand rupees.

Explanation. The cancellation of a licence under section 14 shall not be deemed to be a penalty for the purposes of this sub-section.

(2) Where a contravention of any of the provisions of this Act or of any rule made thereunder of which a person is convicted consists of an omission to do a thing, the Magistrate may when convicting the offender direct him to do the thing before an appointed day and may on the failure of the offender to do the thing before the said day, pass an order, whether the offender appears in court, or not on that day, canceling his licence.

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
- ["(6A) takes from the pawner any power of attorney or any other document with blank entries; or"]
- (7) sells or otherwise disposes of any pledge pawned with him except at such time and in such manner as is authorised 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) willfully 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 a 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".

18C. Imposition Of Penalty By Officers And Authorities :-

- (1) If the Inspector or the Licensing authority is satisfied that any person,

- (a) being a person liable to take himself a licence under this Act, carries on the business of money-lending without taking such licence; or
- (b) has failed to keep true and complete accounts of the business; or
- (c) has failed to submit any return or statement as required by the provisions of this Act or the rules made thereunder; or
- (d) has submitted an untrue or incorrect return or statement; or
- (e) has acted in contravention of any of the provisions of this Act or the rules made thereunder, for the contravention of which, no express provision for payment of penalty or for punishment is made by this Act:

Such Inspector or Authority may direct that such person shall pay, by way of penalty an amount not exceeding [twenty-five thousand rupees].

Explanation. The burden of proving that any person is not liable to the penalty under this section shall be on such person.

(2) No order under sub-section (1) shall be passed unless the person on whom the penalty proposed to be imposed is given an opportunity of being heard in the matter.

18D. Penalty For Collection Of Interest In Excess Of The Rate Prescribed Under Section 7 :-

(1) If the Inspector or the Licensing Authority is satisfied that any money-lender has received interest in excess of the rate of interest specified in section 7 or any other charge in excess of the rate fixed by the rules made under this Act, ["he may order forfeiture of the amount collected in excess and"] direct that such money-lender shall pay by way of penalty and amount not exceeding thrice the amount of interest or other charges so received:

Provided that in the case of interest or other charge collected at excess rate, . ["no penalty shall be imposed or forfeiture ordered";] under this section, if the Inspector or the Licensing authority is satisfied that the sum so collected has been refunded to the person from whom it was collected.

["(1A) The excess amount forfeited under sub-section (1) shall be refunded to the debtor in such manner may be prescribed.";]

(2) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

18E. Composition Of Offences :-

The Inspector or the Licensing Authority or other officer or authority authorised by the Government in this behalf, may accept from the person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence,

- (a) a sum of money equal to the maximum amount prescribed a fine under this Act, if the offence is committed for the first time; and
- (b) in other cases, thrice such amount of fine prescribed under the respective sections.

18F. Payment And Recovery Of Penalty :-

(1) The amount of penalty demanded under this Act shall be paid in such manner and within such time as may be specified in the notice of demand;

(2) If any default is made in payment according to the notice of demand, the amount outstanding on the date of service of such notice shall be first charge on the properties of the person or persons liable to pay the amount and shall be recoverable as arrears of land revenue.

18G. Liabilities Of The Money-Lender For Acts Committed By

His Agents Or Employees :-

Where any agent or employee of the money-lender 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 money-lender, the money-lender shall without prejudice to the liability of the agent or the employee be liable for the penalty provided under this Act as if the money-lender himself has committed such contravention.

18H. Security From The Employees :-

18H. .

If any money-lender is desirous of obtaining security from any person employed by him, during the period of his employment in connection with the business of money-lending such security shall be taken only in any of the following form, namely :

- (a) deposit of the amount in any treasury, nationalised bank, post office or co-operative bank; or
- (b) Government securities or National Savings Certificates, or
- (c) mortgage of immovable property; or
- (d) personal sureties:

Provided that if any security has already been received by the money lender from any of his employees in any form other than those enumerated above, such security shall be converted into any of the forms under items (a) to (d), within three months from the date of commencement the Kerala Money-Lenders (Amendment) Ordinance, 1987."]

19. Transfer Of Licence To Heir :-

(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 to 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.

20. Contracts Not To Be Void On Account Of Offence :-

Where a money-lender is guilty of an offence punishable under this

Act any contract made by him in relation to his business of money-lending shall not be void by reason only of that offence nor shall he, 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.

20A. Power Of Revision By The Government :-

(1) The ["Commissioner"] may suo motu or otherwise, call for and examine any order passed by an Inspector, Licensing Authority or the Appellate Authority and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act, may pass such order thereon ["as the Commissioner thinks fit":]

Provided that no order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

The ["Commissioner"] shall not pass any order under sub-section (1) if

- (a) the time for appeal against the order has not expired; or
- (b) the order has been made the subject of an appeal to the Appellate Authority; or
- (c) more than one year has expired after the passing of the order referred to therein.

["(1A) Every application for revision under sub-section (1) shall be in the prescribed form and shall be accompanied by a fee of

["seven hundred rupees"] which shall, in no case, be refunded.".]

20AA. Persons Entitled To Appear Before Authorities :-

(1) Any person entitled or required to appear before any authority in connection with any proceedings under this Act, may be represented before such authority,

(a) by his relative or a person employed by him, if such relative or person is duly authorised by him in writing in this behalf; or

(b) by a legal practitioner; or

(c) by a chartered accountant duly authorised by him in writing in this behalf; or

(d) by a sales tax practitioner duly authorised by him in writing in this behalf.

(2) The authorization referred to in sub-section (1) shall be in such form and accompanied by such fee as may be prescribed.".]

20B. Court Not To Set Aside Or Modify Orders :-

No suit or other proceedings shall, except as expressly provided under this Act be instituted in any court to set aside or modify any order made under this Act or the rules made thereunder.

20C. Bar Of Certain Proceedings :-

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

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceedings, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

21. Power To Make Rules :-

- (1) The Government may make rules to carry out all or any of the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for
- (a) all matters expressly required or allowed by this Act to be prescribed;
 - (b) the form and the particulars to be contained in an application for a licence under this Act;
 - (c) the terms and conditions subject to which a licence may be granted;
 - (d) the form in which books, accounts and documents specified in this Act shall be recorded, maintained, kept or used;
 - (e) the procedure which should be followed and the powers which may be exercised by the authorities exercising functions, holding inquiries and hearing appeals under this Act.
- (3) All rules made under this Act shall, as soon as possible after they are made be placed before the Legislative Assembly and shall be subjects to such modifications by way of amendments or repeal as the Assembly may make within fourteen days on which the Assembly actually sits either in the same session or in more than one session.

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.".]

["Provided that any licence issued before the 1st day of March, 1964, under the Madras Pawn Brokers Act, 1943 (Madras Act, XXIII of 1943), shall be deemed to be a licence validly issued under the provisions of this Act."]