

Himachal Pradesh Registration Of Money Lenders' Act, 1976

(Act No. 19 Of 1976)

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For Statement of Object and Reasons, see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 17th March 1976, p. 908.

Received the assent of the Governor on the 30th April, 1976 and was published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated the 4th May, 1976, pp. 1204-1209.

An act to register money-lenders and to regulate their business in Himachal Pradesh.

Himachal Pradesh Registration Of Money Lenders' Act, 1976

(Act No. 19 Of 1976)

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-seventh Year of the Republic of India as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Himachal Pradesh Registration of Money-lenders' Act, 1976.

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

(3) It shall come into force at once.

1. Definitions.-

In this Act, unless the context otherwise requires,-

(1) "bank" means a banking company as defined in section 5 of the Banking Regulation Act, 1919 (10 of 1949), and includes the Reserve Bank of India, the State Bank of India and its subsidiary banks, any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and any other banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949);

(2) "Collector" means a Collector of the district or such other officer not below the rank of an Assistant Collector first grade as may be specially empowered by the State Government to discharge the functions of a Collector for the purposes of this Act;

(3) "Commissioner" means the Commissioner appointed by the State Government for the purposes of this Act;

(4) "company" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956);

(5) "Co-operative society" means a society registered or deemed to be registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969);

(6) "court" includes a court acting in the exercise of its insolvency jurisdiction;

(7) "interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specially by way of interest or otherwise;

(8) "loan" means an advance whether secured or unsecured of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but shall not include-

(a) an advance in kind made by a landlord to his tenant for the purposes of husbandry :

Provided that the market value of the return does not exceed the market value of the advance as estimated at the time of advance;

(b) a deposit of money or other property in a Post Office Savings Bank, or any other Bank, or with a company, or with a co-operative society, or with any employer, as security from his employees;

(c) a loan to or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860 (21 of 1860), or under any other enactment;

(d) a loan advanced by or to the Central Government or any State Government or by or to any local body or panchayat under the authority of the Central

Government or any State Government;

(e) a loan advanced by a bank, a co-operative society or a company, whose accounts are subject to audit by a certified auditor under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force;

(f) a loan advanced by a trader to a trader, in the regular course of business, in accordance with trade usage;

(g) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (26 of 1881), other than a promissory note;

(9) "money-lender" means a person, or a firm, carrying on the business or advancing loans and includes the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise, of such person or firm, provided that nothing in this definition shall apply to-

(a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased money-lender together with all his rights and liabilities of such person-

(i) winds up the estate of such money-lender;

(ii) realises outstanding loans;

(iii) does not renew any existing loan, or advance any fresh loan;

(b) a bona fide assignment by a money-lender of a single loan to anyone other than the wife or husband of such assignor, as the case may be, or any person, who is descended from a common grand-father of the assignor;

(10) "notification" means a notification published under proper authority in the Rajpatra, Himachal Pradesh;

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

(12) "State Government" means the Government of Himachal Pradesh;

(13) "trader" means a person who, in the regular course of business, buys and sells goods or other property, whether moveable, or immoveable and shall include-

(a) a wholesale or retail merchant,

(b) a commission agent,

(c) a broker,

(d) a manufacturer,

(e) a contractor, and

(f) a factory owner,

but shall not include a person who sells only his own agricultural produce or cattle; or buys agricultural produce or cattle for his own use.

2. Suits and applications by money-lenders barred, unless money-lender is

registered and licensed.-

Notwithstanding anything contained in any other enactment for the time being in force a suit by a money-lender for the recovery of a loan, or an application by money-lender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the money-lender, at the time of the institution of the suit or presentation of the application for execution or at the time of decreeing the suit or deciding the application for execution,-

(a) is registered; and

(i) holds a valid licence, in such form and in such manner as may be prescribed; or

(ii) holds a certificate from a Commissioner granted under section 10, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or

(b) if he is not already a registered and licensed money-lender, satisfies the court that he has applied to the Collector to be registered and licensed and that such application is pending:

Provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of licence pending before the Collector is finally disposed of.

3. Registration of money-lenders.-

Every money-lender may apply for registration of his name at the office of the Collector and his name shall be registered on furnishing such particulars as may be prescribed and on payment of a fee of Rs. 10.

4. Licensing of money-lenders.-

Every money-lender may apply to the Collector for a licence which shall be granted for such period, in such form and on such conditions, and on payment of such fee, as may be prescribed.

Explanation.- When an application for the renewal of a licence has been received from a licensed money-lender before the expiry of his licence, the existing licence shall be deemed to continue in force until orders on the application have been issued.

5. Cancellation of licence.-

A licence may be cancelled by the Collector and shall be renewed for such period as may be specified by him, if after the commencement of this Act, a money-lender commits an act or is guilty of an omission with reference to which he-

(i) has been found guilty by a court in recording in any document the sum advanced to be in excess of that actually advanced.

(ii) has been found guilty of non-compliance with the provisions relating to the maintenance of accounts under the Himachal Pradesh Debt Reduction Act, 1953 (10 of 1953);

(iii) has/had his suit dismissed with a finding that he has made dishonestly or

fraudulently a material alteration in any document relating to a loan;

(iv) has/had his suit dismissed with a finding that it is fraudulent;

(v) has been found by a court to have charged higher rates of interest than those prescribed under the Himachal Pradesh Debt Reduction Act, 1953 (10 of 1953) in more than one suit;

(vi) has been found guilty by a court of forgery or cheating in respect of a money transaction.

Provided that the Collector shall not cancel a licence until the prescribed period of appeal, or review, as the case may be, has expired; or in the case of appeal or review the appeal or review has been finally decided.

6. When Collector may act.-

(1) The Collector may, either of his own motion or on the application of any person interested, take proceedings for the cancellation of a money-lender's licence:

Provided that no such licence shall be cancelled unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

(2) The Collector may during the period of limitation for an appeal, either of his own motion or on the application of a party interested, review his own order, provided no appeal is pending with the Commissioner.

7. Effect of cancellation of licence.-

The name of a money-lender whose licence has been cancelled under section 6, shall be struck off the register maintained at the office of the Collector for the registration of money-lenders:

Provided that a licence shall not be deemed to be cancelled nor the name of the money-lender deemed to be struck off the register during the period an appeal, or an application for review, or an application under section 10 is pending.

8. Further registration and licensing of money-lender after expiry of period for which licence was cancelled.-

A money-lender may, after the termination of the period for which his licence has been cancelled, apply for registration and for the grant of a licence, to the Collector who shall, on his furnishing such particulars as may be prescribed, register his name on payment of a fee of Rs. 10/-; and shall grant him a licence for such period, in such form and subject to such conditions and on payment of such fees, as may be prescribed. .

9. Appeals, reviews and certificates.-

(1) An appeal shall lie to the Commissioner against the order of the Collector under section 6 cancelling a licence provided that the appeal is instituted within 30 days from the order appealed against, not including the period requisite for obtaining copies of such order.

(2) If the money-lender or the appellant is not present at the time of announcement of the original or the appellate order; the order shall be

communicated to him in such manner as may be prescribed.

(3) The Commissioner may, in dismissing an appeal, grant to the moneylender a certificate specifying the loans in respect of which a suit may be instituted by him or the decrees in respect of which an application for execution may be presented.

(4) A money-lender without appealing against an order of the Collector under section 6, may within 30 days from the Collector's order cancelling his licence, apply to the Commissioner for a certificate of the nature specified in sub-section (3).

(5) The commissioner may, either on his own motion, or on the application of a party interested, review his own order at any time within 30 days from the communication of his appellate order to the money-lender concerned.

10. Exemption.-

The State Government may, by notification, exempt any person or class of persons from the operation of this Act or from any of the provisions thereof.

11. Rule making power.-

(1) The State Government may, subject to the condition of previous publication, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the place where a money-lender shall apply for registration for obtaining a licence, the district or districts in which a money-lender who operates in more than one district shall be required to register, and the area in which a licence shall be valid;

(b) the scale of fees payable for the issue or renewal of a licence of a money lender;

(c) the form of a licence, and the conditions under which a licence shall be issued;

(d) the particulars which a money-lender shall supply at the time of being registered; and

(e) any other matter required to be prescribed by this Act.

(3) Every rule made under this section shall be laid, as soon as may be after is made, before the State Legislature while it is in session for a total period of ten days which may be comprised in one session or two successive sessions, and if, before the expiry of the session in which it is so laid or the session, immediately following, the Legislature requires any modification in the rule or desires that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, 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.

12. Repeal and savings.-

(1) The Punjab Registration of Money Lenders' Act, 1938, ((3 of 1938), as in force

in the areas added to Himachal Pradesh under section 5 of the Punjab Reorganisation Act, 1966, (31 of 1966) is thereby repealed.

(2) Notwithstanding such repeal anything done or any action taken, rule made or notification issued under the Act hereby repealed and in force immediately before the commencement of this Act shall be deemed to have been taken, made or issued under this Act and shall, in so far as it is not inconsistent with the provisions of this Act, continue in force and accordingly any appointment made, licence granted or direction issued under the Act hereby repealed and in force immediately before such commencement shall continue in force until and unless it is superseded by any appointment made, licence granted or direction issued under this Act.