

Tamil Nadu Debtors' Protection Act, 1934

TAMILNADU

India

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Act 7 of 1935

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Tamil Nadu Debtors' Protection Act, 1934(Tamil Nadu Act 7 of 1935)Statement of Objects and Reasons. - The reason for the enactment of this new provision (section 6-A) has been explained as follows:"The Madras Debtors' Protection Bill, XXI of 1932, as amended by the Select Committee contained a clause providing for the maximum rate of interest payable on secured and unsecured loans coming within its scope, viz., loans for less than Rs. 500. During the second reading of the Bill, the Government moved an amendment to omit the clause on the ground that the Government of India were considering the question of dealing with the subject by central legislation. The amendment was carried by the Council and the clause was omitted. Subsequently the Government of India intimated to the Madras Government that they did not propose to undertake Central legislation on the subject in view of the diversity of the conditions prevailing in the province and that the Provincial Government might, if they considered it necessary, initiate legislation dealing with the subject. The decision of the Government of India was mentioned at the third reading of the Bill and a statement was made on behalf of the Government that a separate amending Bill would be introduced in regard to rates of interest after consulting the High Court and the Board of Revenue.This Bill, which is modelled on the lines of section 3 of the Bengal Money-Lenders' Act; 1933 (Bengal Act VII of 1933), section 8 of the Assam Money-Lenders' Act (Assam Act IV of 1934) and section 3 of the Usurious Loans (Central Provinces Amendment) Act, 1934 (Central Provinces Act XI of 1934), is introduced in pursuance of the undertaking mentioned above. New section 6-A provides that the Court should, until the contrary is proved, presume that the interest is excessive and that they should give relief under the Usurious Loans Act, 1918 (X of 1918), where the rate of interest exceeds 12 per cent per annum simple interest in the case of a secured loan (now fixed at 9 per cent.) and 18 per cent per annum simple interest (now fixed at 13 per cent.) in the case of an unsecured loan, The new provision has been made specifically applicable to cases where compound interest is charged, it has also been made clear that the new section does not in any way affect the jurisdiction now vested in Courts under sections 3 and 4 of the Usurious Loans Act, 1918, to reopen transactions which are substantially unfair even in cases where the rate or interest charged is less than 9 per cent, simple interest or 15 per cent, simple interest as the case may be. The Act will have no retrospective operation and will apply to loans advanced after it becomes law."Published in Part IV of the Fort St. George, dated 3rd August 1935 pages 2 and 3. For Statement of Objects and

Reasons, see Fort St. George Gazette, Part IV, dated the 30th August 1932, pages 127-128; for proceedings in Council, see Proceedings of the Madras Legislative Council, Volume LXII, dated the 3rd August 1932, pages 209-210; for Report of the Select Committee see Fort St. George Gazette, Part IV, dated the 16th January 1934, pages 122-127; for proceedings in Council. see Proceedings of the Madras Legislative Council, Volume LXXII, dated the 1st August 1934, pages 45-93 and dated the 3rd August 1934, pages 235-263 and Volume LXXIII, dated the 24th October 1934, pages 276-289. Received the assent of the Governor on the 16th January 1935 and that of the Governor-General on 16th March 1935; the assent of the Governor-General was first published in the Fort St. George Gazette of the 26th March, 1935. An Act for the protection of certain classes of debtors in the [State of Tamil Nadu] [Substituted for the expression 'Presidency of Madras' by the Tamil Nadu Adaptation of Laws Order, 1970, which was deemed to have come into force on the 14th January, 1969.]. Whereas it is expedient to make provision, for the protection of certain classes of debtors in the [State of Tamil Nadu] [Substituted for the expression 'Presidency of Madras' by the Tamil Nadu Adaptation of Laws Order, 1970, which was deemed to have come into force on the 14th January, 1969.], and for that purpose to regulate the keeping of accounts by certain classes of creditors; And Whereas the previous sanction of the Governor-General has been obtained to the passing of this Act. It is hereby enacted as follows:-

1. Short title, extent and commencement.

(1) This Act may be called the [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Debtors' Protection Act, 1934. (2) It extends to the whole of the [State of Tamil Nadu] [The words 'Provincial Government' were substituted for the words 'Local Government' by the Adaptation Order of 1937 and the word 'State' was substituted for 'Provincial' by the Adaptation Order of 1950.]. (3) It shall come into force on such date as the [State Government] [The words 'Provincial Government' were substituted for the words 'Local Government' by the Adaptation Order of 1937 and the word 'State' was substituted for 'Provincial' by the Adaptation Order of 1950.] may, by notification in the [Official Gazette] [Substituted for the words 'Fort St. George Gazette', by the Adaptation Order of 1937.], appoint. This Act came into force on the 15th January, 1936. This Act was extended to the merged State of Pudukkottai by section 3 of, and the First Schedule to, the Tamil Nadu Merged States (Laws) Act, 1949 (Tamil Nadu Act XXXV of 1949). This Act was extended to the Kanyakumari district and the Shencottah taluk of the Tirunelveli district by section 3 of, and the First Schedule to, the Tamil Nadu (Transferred Territory) Extension of Laws Act, 1960 (Tamil Nadu Act 23 of 1960), which came into force on the 1st April 1961, repealing the corresponding law in force' in that territory.

2. Definitions.

- In this Act, unless there is anything repugnant in the subject or context,-(1) "bank" means a company carrying on the business of banking and-(a) registered under any of the enactments relating to companies for the time being in force [in [India] [Inserted by the Adaptation (Amendment) Order of 1950] or] in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, [xxx] [The words 'or in British India, or

in any State in India' were omitted by the Adaptation (Amendment) Order of 1950] or(b)incorporated by an Act of Parliament [of the United Kingdom] [Inserted by Adaptation (Amendment) Order of 1950] or by Royal Charter or Letters Patent or by any [Central Act] [Substituted for the words 'Act of the Indian Legislature' by Adaptation (Amendment) Order of 1950.];(2)"Company" means a company-(a)registered under any of the enactments relating to companies for the. time being in force [in [India] [Inserted by the Adaptation (Amendment) Order of 1950] or] in the United Kingdom or in any of the British Dominions, or any of the Colonies or Dependencies of the United Kingdom, [xxx] [The words 'or in British India, or in any State in India' were omitted by the Adaptation (Amendment) Order of 1950.] or(b)incorporated by an Act of Parliament [of the United Kingdom] [Inserted by Adaptation (Amendment) Order of 1950.] or by Royal Charter or Letters Patent or by any [Central Act] [Substituted for the words 'Act of the Indian Legislature's by Adaptation (Amendment) Order of 1950];(3)"Co-operative society" means a society registered or deemed to be registered under the Now see the [Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932)] [Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961)];(4)"Court" includes a Court acting in the exercise of insolvency jurisdiction;(5)"Creditor" means a person, [including a pawnbroker] [Under section 23(2)(i) of the Tamil Nadu Pawnbrokers Act, 1943 (Tamil Nadu Act XVIII of 1943) in any area to which the provisions of that Act have been applied by a notification, this clause shall, after thee expiry of three months from the date of such application and so long as such notification remains in force have effect subject to the modification that the words 'including a pawnbroker' shall be omitted] who in the regular course of business advances a loan and includes the representative and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan;(6)"Interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a creditor for or an account of cost, charges, or expenses, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a creditor in consideration of or otherwise in respect of a loan;(7)"Loan" means an advance of money or in kind at interest, being for a sum, or being of a value, of less than five hundred rupees at a time in any one transaction, 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, in a company or with a co-operative society;(ii)an advance made by a bank, a company or a co-operative society;(iii)an advance made by Government or by any person authorised by Government to make advances in their behalf, or by any local authority;(iv)an advance made by any person bona fide carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business;(v)an advance made by a landlord to his tenant, by a lessor to his lessee, by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture;(vi)an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (Central Act XXVI of 1881), other than a promissory note;(8)["Pawnbroker" means a person who carries on the business of taking goods and chattels in pawn for a loan; [Under section 23(2)(ii) of the Tamil Nadu Pawnbroker Act 1943 (Tamil Nadu Act XVIII of 1943), in any area to which the provision of that Act have been applied by a notification, this section shall, after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the modification that clause (8) and (9) shall be omitted and clauses (10) and (11) renumbered as clauses (8) and (9)](9)"Fawner" means a person delivering an article for pawn to a pawnbroker;](10)[[Under section 23(2)(ii) of the Tamil Nadu

Pawnbroker Act 1943 (Tamil Nadu Act XVIII of 1943), in any area to which the provision of that Act have been applied by a notification, this section shall, after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the modification that clause (8) and (9) shall be omitted and clauses (10) and (11) renumbered as clauses (8) and (9)] "Prescribed" means prescribed by rules made under this Act; and 3(11)] [Under section 23(2)(ii) of the Tamil Nadu Pawnbroker Act 1943 (Tamil Nadu Act XVIII of 1943), in any area to which the provision of that Act have been applied by a notification, this section shall, after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the modification that clause (8) and (9) shall be omitted and clauses (10) and (11) renumbered as clauses (8) and (9)] "Principal" means in relation to a loan the amount actually lent to the debtor.

3. Duty of creditor to maintain accounts and to give receipts.

(1)Every creditor shall-(a)regularly record and maintain or cause to be recorded and maintained, an account showing for each debtor separately-(i)the date of the loan, the amount of the principal of the loan, and the rate per cent per annum of interest charged on the loan; and(ii)the amount of every payment received by the creditor in respect of the loan, and the date of such payment;(b)give to the debtor or his agent, a receipt for every sum paid by him, duly signed and if necessary, stamped at the time of such payment; and(c)on requisition in writing made by the debtor, furnish to the debtor 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 State Government may prescribe as fee therefor.(2)Notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 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.(3)A person 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. [Additional account to be maintained by pawnbroker. [Under section 23(2)(iii) of the Tamil Nadu Pawnbrokers Act, 1943 (Tamil Nadu Act XXIII of 1943), in any area to which the provision of that Act have been applied by a notification, the provision of this Act shall, after the expiry of three months from the date of such application and so long as such notification remains in force have effect subject to the modification that section 4 shall be omitted.]

(1)Every pawnbroker shall regularly record and maintain an account in which, in addition to the particulars referred to in clause (a) of sub-section (1) of section 3, he shall record or cause to be recorded-(a)a full and detailed description of the article or of each of the articles taken in pawn;(b)the time agreed upon for the redemption of the pawn; and(c)the name 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.(2)A copy of the entries in such account shall be delivered by the pawnbroker to the pawner at the time of the pawn on tender of such sum as the State Government may prescribe as the charge therefor.]

5. Figures in accounts and receipts to be in Arabic Numerals.

- In the receipt to be given under clause (b) of sub-section (1) of section 3, in the statement of account to be furnished under clause (c) of that sub-section, [and in the copy of the entries to be delivered under sub-section(2) of section 4] [Under section 23(2)(iv) of the Tamil Nadu Pawnbrokers Act, 1943 (Tamil Nadu XXIII of 1943), in any area to which the provisions of that Act have been applied by a notification the provision of this Act shall after the expiry of three months from the date of such application and so long as such notification remains in force have effect subject to the modification that in section 5 after the word and figure 'section 3' the word 'and' shall be inserted and the words, bracket and figures 'and in the copy of the entries to be delivered in sub-section (2) of section 4' shall be omitted] the figures shall be entered only in Arabic numerals.

6. Penalty for non-compliance with sections 3 and 4.

(1)In any suit or proceeding relating to a loan, if the Court finds that a creditor has not maintained an account as required by clause (a) of sub-section (1) of section 3, [or by sub-section (1) of section 4] [Under section 23(2)(iv) of the Tamil Nadu Pawnbrokers Act, 1943 (Tamil Nadu XXIII of 1943), in any area to which the provisions of that Act have been applied by a notification the provision of this Act shall after the expiry of three months from the date of such application and so long as such notification remains in force have effect subject to the modification that in section 5 after the word and figure 'section 3' the word 'and' shall be inserted and the words, bracket and figures 'and in the copy of the entries to be delivered in sub-section (2) of section 4' shall be omitted] he shall not be allowed his costs.(2)If a creditor fails to give to the debtor or his agent a receipt as required by clause (b) of sub-section (1) of section 3 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 [or if a pawnbroker fails to deliver to the pawner, a copy of the entries as required by sub-section (2) of section 4] [Under section 23(2) of the Tamil Nadu Pawnbroker Act, 1943 (Tamil Nadu Act XXIII of 1943), in any area to which the provision of that Act have been applied by a notification, the provision of this Act shall, after the expiry of three months from the date of such application and so long as such notification remains in force shall have effect subject to the modification that in sub-section (1) of section 6 the words, brackets and figures 'or by sub-section (1) of section 4' shall be omitted and section 23(2)(vi) provides that in the circumstance stated above section 6 shall have effect subject to the modification that in sub-section(2), the words brackets and figures 'or if a pawnbroker fails to deliver to the pawner a copy of the entries as required by sub-section (2) of section 4' shall be omitted] he shall not be entitled to any interest for the period of the default.

6A. [Presumption in the case of certain loans. [Section 6A was inserted by section 2 of the Madras Debtors Protection (Amendment) Act, 1935 (Madras Act IV of 1936)]

(1) If in any suit or proceeding relating to a loan advanced after the commencement of the Madras Debtors' Protection (Amendment) Act, 1935 (Madras Act IV of 1936), it is found that the interest charged exceeds in the case of a secured loan, nine per cent per annum simple interest and in the case of an unsecured loan, fifteen per cent per annum simple interest, the Court shall, until the contrary is proved, presume for the purposes of sections 3 and 4 of the Usurious Loans Act, 1918 (Central Act X of 1918) that the interest charged is excessive and that the transaction was, as between the parties thereto, substantially unfair. Explanation. - In the case of any loan so advanced, if compound interest is charged and the amount claimed by the creditor by way of such interest until the date of the institution of the suit or proceeding for the recovery of the loan exceeds the amount of simple interest calculated at the rate of nine per cent per annum or fifteen per cent per annum, as the case may be, the Court shall draw the presumption referred to in this sub-section until the contrary is proved. (2) The provisions contained in sub-section (1) shall be without prejudice to the powers of the Court under sections 3 and 4 of the Usurious Loans Act, 1918 (Central Act X of 1918), in cases where the Court has reason to believe that the interest charged, though not exceeding nine per cent, per annum simple interest or fifteen per cent, per annum simple interest, as the case maybe, is excessive and that the transaction was, as between the parties thereto, substantially unfair.]

7. Savings.

- Nothing contained in this Act shall apply to any loan advanced before the commencement of this Act.

8. Rules.

(1) The [State Government] [The words 'Provincial Government' were substituted for the words 'Local Government' by the Adaptation Order of 1937 and the word 'State' was substituted for 'Provincial' by the Adaptation order of 1950] may make rules not inconsistent with this Act for the purpose of carrying out all or any of its purposes. (2) In particular and without prejudice to the generality of the foregoing power the [State Government] [The words 'Provincial Government' were substituted for the words 'Local Government' by the Adaptation Order of 1937 and the word 'State' was substituted for 'Provincial' by the Adaptation order of 1950] may make rules prescribing-(a) the sum which may be charged as fee for a statement of account, furnished under clause (c) of sub-section (1) of section 32, (b) the manner in which a copy of the account shall be certified for the purpose of sub-section (2) of section 3, and (c) [the sum which may be charged for a copy of the entries in a pawnbroker's account, to be delivered by the pawnbroker to the pawner under sub-section (2) of section 4.] [Under section 23(2)(vii) of the Tamil Nadu Pawnbrokers Act, 1943 (Tamil Nadu Act XXIII of 1943), in any area to which the provisions of that Act have been applied by a notification, the provisions of section 8 shall, after the expiry of three months from the date of

such application and so long as such notification remains in force, have effect subject to the modification that in sub-section (2), the word 'and' shall be inserted at the end of clause (a) and omitted from the end of clause (b) and clause (c) shall be omitted.]

9.

[xxx] [Under section 23(2) aforesaid in the above circumstances the provisions of this Act shall have effect subject to the modification that the following section be added after section 8, namely:- 9. Nothing contained in this Act shall be deemed to apply to pawnbrokers, that is to say, to persons who carry on the business of taking goods and chattels in pawn for a loan.]