

Assam Money Lenders Act, 1934

ASSAM

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Act 4 of 1934

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Assam Money Lenders Act, 1934(Assam Act No. 4 of 1934)Last Updated 5th February, 2020[Dated 27.06.1934]An Act to provide for more effectual control of money-lending in Assam.Whereas it is expedient to make better provision for the control of money-lending and to give additional powers to Courts to deal with money-lenders in Assam.And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act 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 Assam Money-Lenders Act, 1934.(2)It extends to the whole of Assam including the territories mentioned in section 14 of the Assam General Clauses Act, 1915.(3)It shall come into force on such date as the local Government may by notification direct.

2. Definitions.

- In this Act, unless there is anything repugnant in the subject or context, -(1)["Money lender" means a person who in the regular course of business, advance a loan as defined in this Act and shall include, subject to the provisions of section 6, the legal representatives and the successors in interest whether by inheritance, assignment or otherwise of the person who advanced the loan the money-lending shall be construed accordingly ;] [Substituted by Assam Act No. 18 of 1969, dated 27.8.1969.](2)"Interest" means rate of interest and include the return to be made over and above what was actually lent whether the name is charged or sought to be recovered specifically by way of interest or otherwise ;(3)"Loan" means an advance (whether of money or in kind) at interest made by a money-lender and shall include any bond bearing interest executed in respect of past liabilities and any transaction which in substance in a loan ;Explanation. - A bond bearing interest executed in respect of goods taken on credit constitutes a loan. and(4)"Prescribed" means prescribed by rules made under this Act.(5)['Registrar' means any officer appointed by the State Government to perform the duties under this Act.] [Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.]

3. Penalty for stating larger amount in the bond than actually lent.

- If the loan actually made be less than the sum entered in the bond or hand note, the money-lender shall be guilty of a contravention of the provisions of this Act and shall, on conviction, be punishable with fine not exceeding two hundred rupees.

4. Prohibition of compound interest and provisions as to defaulting.

- Any contract made after the commencement of this Act for the loan of money by a money-lender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract :Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract, whether in respect of principal or interest, or both, the money lender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

5. Prohibition of charge for expenses on loans by money-lenders.

- Any agreement between a money-lender and a borrower or intending borrower for the payment by the borrower or intending borrower to the money-lender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal, and if any sum is paid to a money-lender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly. Exception. - This will not debar money-lenders from recovering reasonable costs of inspection of Revenue or Registration records including examination of titles and also costs of inspection of property, in cases where the contract includes a stipulation that property is given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement there of.

6. [Maintenance of accounts by Money Lender and supply of statements these of to borrower. [Substituted by Assam Act No. 18 of 1969, dated 27.8.1969.]

(1) Every Money Lender shall -(a) Regularly maintain an account for each borrower separately of all transactions with dates and places of such transactions in respect of any loan advanced to that borrower ;(b) Furnish such borrower every year with a legible statement of accounts in the prescribed manner signed by the money-lender or his authorised agent of any balance of amounts shall include all transactions in respect of the loan entered into during the year to which the statement relates.(2) The account required under clause (a) of sub-section (1) shall be so maintained

that items due by way of interest shall be shown as separate and distinct from the principal sum and separate totals of principal and interest shall be shown. The money-lender shall not include the interest or any portion of it in the principal sum, and the principal and interest shall be separately shown in the opening balance of each new annual account :Provided that -(i)If the loan has, since it was originally advanced, passed by inheritance or assignment to a widow or minor, such widow or minor shall not be bound to maintain and furnish the account under sub-section (1) for a period of two years from the date of such passing ;(ii)Nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the account under sub-section (1) in the case of a loan wherein the title to recover is sub-judice between two or more persons claiming as money-lenders adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.]

6A. [Receipt for repayment of loan. [Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.]

- Every money-lender, who received repayment from his borrower on account of any loan advanced to him or payment of any interest thereon shall forthwith give a receipt therefor.]

7. Obligation of money lender to supply information as to state of loan and copies of documents relating thereto.

(1)In respect of every contract for the repayment of a loan made by a money-lender, whether made before or after the commencement of this Act, the money-lender shall on demand in writing being made by the borrower at the time of executing the contract or at any time during the continuance of the contract, supply to the borrower, or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the money-lender or his agent showing-(a)the date on which the loan was made, the amount of the principal of the loan, and the rate per cent. per annum of interest charged ; and(b)the amount of any payment already received by the money-lender in respect of the loan and the date on which it was made : and(c)the amount of every sum due to the money-lender, but unpaid, and the date upon which it became due and the amount of interest accrued due and unpaid in respect of every such sum ; and(d)The amount of every sum not yet due which remains outstanding and the date upon which it will become due :Provided that when a demand under this sub-section has once been complied with, a second demand any not be made in respect of the same loan within six months.(2)A money-lender shall on demand in writing by the borrower, and on tender of the prescribed sum for expenses, supply a copy of any security therefore, to the borrower, or if the borrower so requires to any person specified in that behalf in the demand.(3)If a money-lender to whom a demand has been made under this section fail without reasonable excuse to comply therewith within one month after the demand has been made, he shall not so long as the default continues be entitled to sue for or recover any sum due under the contract on account either of principal or interest and interest shall not be chargeable in respect of the period of the default.

7A. [Register of Money lenders. [Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.]

(1)Every Registrar shall maintain a register of money-lenders in such form as may be prescribed.(2)Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872.]

7B. [Registration of Money lenders and registration certificates. [Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.]

- Every person who carries on or intends to carry on the business of money-lending shall get himself registered by an application made to the Registrar in prescribed form and with prescribed fees and, on such registration, the Registrar shall grant a registration certificate to him in such form as may be prescribed.]

7C. [Bar to carry on business without registration certificate. [Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.]

(1)No person shall carry on the business of money-lending unless he holds a valid registration certificate in this behalf.(2)Whoever contravenes the provisions of sub-section (1) shall be punishable for the first offence with simple imprisonment which may extend to three months or with fines which may extend to Rs. 500 or with both, and for a second or subsequent offence, with imprisonment of either descriptions which may extend to six months or with fines which may extend to rupees one thousand or with both.]

7D. [Suit not to proceed without registration certificate, etc. [Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.]

- No suit for the recovery of a loan advanced by a money-lender shall proceed in a civil court until the court is satisfied that he holds a valid registration certificate or that he is not required to have a registration certificate by reason of the fact that he does not carry on the business of money-lending.]

8. Presumption in the case of certain loans.

- Where in any suit in respect of any loan made or any security taken for a loan made by a money-lender after the commencement of the Usurious Loans Act, 1918 (Act 10 of 1918), it is found that the interest charged exceeds the rate of 12½ per cent. per annum in the case of a secured loan or 18¾ per cent. per annum in the case of an unsecured loan, the Court shall, until the contrary is proved, presume for the purposes of section 3 of the Usurious Loans Act, 1918 (Act 10 of 1918), that the interest charged is excessive and that the transaction was as between the parties thereto, substantially unfair, but this provision shall be without prejudice to the powers of the Court under

the said section where the Court is satisfied that the interest charged though not exceeding 12½ per cent. per annum or 18¾ per cent. per annum, as the case may be, is excessive.

9. Bar to recovery of interest exceeding the principal.

- No Courts shall, in respect of any loan made before or after the commencement of this Act, decree on account of arrears of interest a sum greater than the principal of the loan.

10. Deposit in Court of money due to money-lender.

(1)Where a borrower has sent to a money-lender by postal money-order or by registered post with acknowledgement due any sum of money due from him to the money-lender in respect of a loan and the money-lender has refused to accept the same, the borrower may apply in the prescribed manner to the lower Civil Court having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the money-lender, and the Court shall thereupon keep the sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.(2)If the money-lender accepts money sent in the manner specified in sub-section (1) by a borrower or withdraws money deposited under the said sub-section, he shall not be bound by any statement made by the borrower in remitting or depositing the money.

11. Restrictions on money-lending advertisements.

(1)No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name or address of a money-lender, or containing an invitation-(a)to borrow money from a money-lender ; or(b)to enter into any transaction involving the borrowing of money from a money-lender ; or(c)to apply to any place with a view to obtaining information or advice as to borrowing any money from a money lender.(2)No money-lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a money-lender, and no person shall act as such agent or canvasser or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or under-taking to introduce to a money-lender any person desiring to borrow money.(3)Any person acting in contravention of any of the provisions of this section shall in respect of each offence be liable, on conviction to imprisonment for a term not exceeding three months or a fine not exceeding three hundred rupees or both.(4)Where it is shown that a money-lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall be illegal, unless the money-lender proves that the contravention occurred without his consent or connivance.

12. [General provisions regarding penalties. [Substituted by Assam Act No. 18 of 1969, dated 27.8.1969.]

(1)Whoever fails to comply with or acts in contravention of any provision of this Act, shall, if no specific penalty has been provided for in this Act, be punishable -(a)For the first offence with simple imprisonment which may extend to two months or with fine which may extend to rupees five hundred or with both, and(b)For the second or subsequent offence with imprisonment of either description which may extend to six months or with fine which may extend to rupees one thousand or with both.]

12A. [Court competent to try offences under this Act and take cognizance of offence. [Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.]

(1)No Court other than a Court of a Magistrate of the first class shall take cognizance of, or try an offence under this Act.(2)No Court shall take cognizance of any offence under this Act except on a complaint in writing made by an aggrieved person or an officer not below the rank of a Sub-Inspector of Police or by the Registrar or any other Officer specially or generally authorised on this behalf by the State Government.]

13. Appeal.

- Any order of conviction passed under this Act shall be appealable to the Court to which appeal ordinarily lies under the Code of Criminal Procedure, 1898, irrespective of the amount of fine to which an accused may be sentenced.

13A. [[Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.]

Notwithstanding anything contained in this Act the provisions of section 3, 4, 8, 9 and 10 of the Act shall apply also to a person or body of persons who advances a loan but who is not a money lender as defined in sub-section (1) of section 2 of this Act.]

14. Power of local Government to make rules.

(1)The Local Government may make rules for carrying out the purpose 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 :-(i)[The form and manner in which the money-lenders shall keep account and furnish the same in the borrower under sub-section (1) of section 6; [Substituted by Assam Act No. 18 of 1969, dated 27.8.1969.](ii)The form of maintaining register, fixation and realisation of registration fees, issue of registration certificate as provided in section 7A and 7B;](iii)the manner in which an application for a deposit is to be made under sub-section (1) of section 10, and a notice of the deposit is to be sent to the money-lender under the said sub-section ; and(iv)the enforcement of orders made under sub-section (1) of section 12.(v)[Any other matter which is required to be or may be prescribed.] [Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.](3)The power to make rules under this Act shall be subject to the condition of previous publication.(4)[Every rule made under this section shall be laid, as soon as may be, after it is made, before the Assam Legislative Assembly while it is in session for a total period of fourteen 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 Assam Legislative Assembly agree in making any modification in the rule of the Assam Legislative Assembly agree 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 the rule.] [Inserted by Assam Act No. 18 of 1969, dated 27.8.1969.]