

Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F

ANDHRA PRADESH

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Act 5 of 1349

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Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F(Act No. 5 of 1349)Last Updated 18th January, 2020Preamble. - Whereas it is expedient to regulate the transactions of money lending and to make better provisions for its control; It is hereby enacted as follows:

1. Short title, extent and commencement.

(1)This Act may be called the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349F. and shall into force in the whole of the Telangana area of the State of Andhra Pradesh from the date of its publication in the Official Gazette, and from the said date the Agricultural Debtors Relief and Prevention of Usury Regulation, 1341 F, and the Money Lenders Regulation, 1347 Fasli shall be repealed.(2)The form prepared, money lender s name registered, licence issued or anything done under the Money Lenders Regulation, 1347 F. till the commencement of this Act, shall be deemed to have been prepared, issued, registered and done under this Act; and this Act shall apply to them in the same manner as if they had been prepared, issued, registered, and done under this Act.

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 registered under the Companies Act, 1956 (Central Act 1 of 1956).(2)company means a company registered under the Companies Act, 1956 (Central Act 1 of 1956).(3)co-operative society means a society registered under the Hyderabad Co operative Credit Societies Act, No. 11 of 1323 F2.(4)loan means a loan secured or unsecured, advanced on interest in cash or in kind, and shall include every transaction which is in substance a loan, but shall not include the following:(a)a deposit of money or other property in a Post Office or in a bank or in a company or with a co operative society;(b)a loan to or by and deposit with, any society or association registered under any law;(c)a loan advanced by Government or by any local authority authorised by

Government;(d)a loan advanced by a bank, a co operative society or a company;(e)a sum of money advanced on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (Central Act 26 of 1881) other than a promissory note;(f)a loan advanced to an agricultural labourer by his employer;(g)a loan advanced by one trader to another trader in the ordinary course of business, in accordance with practice in trade;(h)a sum of money payable to a trader by a person other than a cultivator or a labourer for articles sold on which interest is charged by reason of non payment on due date;(6)interest includes the return to be made expressly or impliedly in excess of the actual amount of loan advanced;(7)Money lender means a person including a pawn broker, who, within the meaning of this Act, only advances loan in the ordinary course of his business or does so along with other business, and shall also include the legal representative of such person and the person claiming to be his representative on the ground of succession or assignment or otherwise;(8)pawn broker means a person who in the ordinary course of his business advances loan and takes goods in pawn as security for payment of such loan;(9)trader means a person who in the ordinary course of his business buys and sells goods and property and shall also include the following persons: a wholesale dealer and retailer, a commission agent. a broker, a controller of factory, a contractor, a factory owner, but shall not include a person who sells only his non agricultural produce or cattle or buys agricultural produce or cattle for his own use;(10)cultivator shall mean a person who is a member of the agricultural class within the meaning of the Prevention of Agricultural Land Alienation Act No. III of 1349 F1 and whose main source of livelihood is agriculture;(11)labourer shall mean a person who earns his livelihood merely by physical labour and who receives wages in cash or in kind not exceeding one rupee per day or thirty rupees per month.(12)prescribed shall mean prescribed by rules made under this Act;(13)stranger means a person who is not a citizen of India within the meaning of the Citizenship Act, 1955 (Central Act 57 of 1955).

2A. Non mulki money lenders barred from carrying on business of money lending.

(1)No money lender who is a stranger shall carry on the business of money lending from 18th Khurdad 1355 F.(2)All licences granted under this Act to the money lenders referred to in sub section (1) shall be deemed to have been cancelled from 18th Khurdad 1355 F., and all transactions of money lending carried on by such persons as money lenders shall cease from the said date. Such money lender shall not be entitled to refund of licence fee or to compensation on account of cancellation of licences.(3)The money lenders referred to in sub section (1) who had obtained licences of money lending under this Act prior to the 18th day of Khurdad 1355 F. may under the provisions of this Act, recover through a competent court the loans advanced before the said date.(4)Any money lender referred to in sub section (1) who carries on the business of money lending in contravention of the provisions of the said sub section, or recovers his dues otherwise than in accordance with the provisions of sub section (3) shall, on conviction before the Collector, be punished with imprisonment for a term which may extend to one year, or with fine or with both. An appeal from the order of the Collector shall lie to the Sessions Judge.(5)An offence under this section shall be cognizable and bailable and the Court trying the offence shall, unless it is proved to the contrary, presume that the accused is a stranger and that he was carrying on the business of money lending in contravention of the provisions of this section.

3. Money lenders to get their names registered.

(1) Every officer who has been authorised by Government under this Act shall maintain a register of money lenders in such form and with such particulars as may be prescribed. Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872. (2) Every money lender, in order to get his name registered, shall present an application in writing in the prescribed form to the competent officer and the said officer shall on such application being presented, register the applicants name and grant a licence in the prescribed form and written prescribed period: Provided that the licensing authority may, if he has reason to believe that a money lender is of undesirable conduct refuse to grant or to renew a licence and shall record the reasons therefor. Where the licensing authority is a Tahsildar an appeal from his order shall lie to the Collector and to the Board of Revenue where the licensing authority is a Collector. The decision of the appellate authority shall be final. (3) Every person making an application under sub section (2) shall pay such licence fee not exceeding twenty five rupees, as has been fixed for the district concerned. (4) A licence issued under sub section (2) shall be valid for one year from the date of issue. (5) (a) No money lender shall carry on in any district the business of money lending without obtaining a licence provided for in sub section (2). (b) If any person contravenes the provisions of clause (a), he shall be punished with rigorous imprisonment for a term which may extend to six months or with fine or with both. The fine imposed shall, in case of default, be recoverable as arrears of land revenue. The Collector shall have power to award punishment under this clause. An appeal against his order shall lie to the Sessions Judge. (c) An offence under this sub section shall be cognizable and bailable. (6) [Omitted.]

4. Power to cancel or suspend license.

(1) Where it is found in respect of a money lender that after the commencement of this Act (a) he has been found guilty by a Civil Court of contravening the provisions of Sections 5, 6 or 8 in more than two suits, or (b) the suit instituted by him has been dismissed in whole or in part on the ground that an entry relating to loan has been made by him in any document showing the amount of loan to be in excess of that actually advanced including the necessary expenses incurred, or (c) that suit instituted by him was dismissed on the ground that it was based on fraud, or (d) he has been found guilty in a money transaction by a Court, of forgery, cheating or coercion within the meaning of Section 15 of the Indian Contract Act 1872 (Central Act 9 of 1872); or he or his agent has been found guilty of contravening the provisions of Section 13. The Collector may cancel the licence or suspend it for any term, or prohibit the renewal thereof for a period not exceeding two years; Provided that the Collector shall not pass such order until the expiry of the period for appeal or revision or review and in case an appeal or revision or review has been disposed of. (2) (a) The Collector may take action under sub section (1) either of his own motion or on the application of an interested party: Provided that no licence shall be cancelled or suspended nor renewal thereof shall be prohibited without giving the money lender an opportunity to defend. (b) The Collector may, during the period for an appeal either of his own motion or on the application of an interested party review his own order, provided an appeal therefrom is not pending before the Board of Revenue. An appeal from an order or the Collector shall lie to the Board of Revenue whose decision shall be final.

5. Money lenders to maintain accounts and to furnish statements thereof to debtors.

(1) A money lender shall (a) maintain a regular account of loan for each debtor separately; (b) deliver to the debtor every year the prescribed statement of account signed by him or his agent specifying the amount of loan that may be outstanding against such debtor on the prescribed date. Such statement of account shall contain all transactions of loan entered into during that year. The said statement shall be in the language of the village office of the district for which the money lender has obtained a licence. (2) The account mentioned in clause (a) of sub section (1) shall be so maintained that items of principal and interest may be separately and clearly ascertained and the balance of principal and interest shall be shown separately. The money lender shall not be authorised to include the interest or any portion of interest in the principal. The opening balance of principal and interest shall be separately shown: Provided that if after a loan was originally advanced by a money lender, a widow or minor becomes entitled to such loan, such widow or minor shall not be required to maintain the account and furnish the statement of account under sub section (1) for a period of one year from the date on which such right accrued. (3) The licensing authority or any person authorised by him may inspect the books of account of a money lender for the purpose of satisfying himself that the provisions of this section are being complied with.

6. Additional accounts to be maintained by pawn brokers.

(1) In addition to the duties mentioned in Section 5, every pawn broker shall maintain a regular account showing the following particulars: (a) details of each of the articles taken in pawn by which in can be defined. (b) the time agreed upon between the parties for the redemption of pawn, and (c) the name and address of the pawner. (2) The pawn broker shall at the time of transaction deliver to the pawner a statement of the aforesaid entries under his or his authorised agent's signature, the said statement shall be in the language mentioned in clause (b) of sub section (1) of Section 5. (3) The licensing authority or any person authorised by him may inspect the books of account of a pawn broker for the purpose of satisfying himself that the provisions of this section are being complied with.

7. Debtors not bound to admit correctness of accounts.

- A debtor to whom a statement of account has been furnished under clause (b) of sub section (1) of Section 5, shall not be bound to admit or deny the correctness of such account, and from his mere silence it shall not be presumed that he has admitted the correctness of the account.

8. Receipt for payment of loan.

- Every money lender shall, without delay, pass a receipt for the payment made by a debtor and if payment is made by challan an endorsement shall be made thereon acknowledging receipt thereof.

9. Procedure of Court in suits for recovery of loans.

- Notwithstanding anything contained in any law for the time being force, in every suit relating to a loan:(1)the Court shall frame and decide the issues whether the money lender is a money lender as defined in sub section (7) of Section 2, and whether he has complied with the provisions of Section 3 and of clauses (a) and (b) of sub section (1) of Section 5 and sub sections (1) and (2) of Section 6.(2)if it is proved that the plaintiff is a money lender as defined in sub section (7) of Section 2, but does not hold a licence granted under Section3, the Court shall dismiss his suit;(2A)if it is proved that the money lender has not complied with the provisions of clause (a) of sub section (1) of Section 5, or of sub section (1) of Section 6, or of section 8 and the plaintiff s claim is established in whole or in part, the Court may, in the circumstances of the case, disallow the whole or any portion of the interest due and may disallow the costs wholly or in part;(3)if it is proved that the money lender has not furnished the debtor with a statement of account in accordance with the provisions of clause (b) of sub section (1) of Section 5 or of sub section (2) of Section 6, the Court shall, in computing the amount of interest exclude the interest in respect of every period for which the money lender has not furnished the debtor with the statement of account:Provided that if the money lender has, after the prescribed time, furnished the statement of account and the Court is satisfied that there was sufficient cause for not furnishing the statement earlier, the Court may, in spite of such default, include such period or periods for computing the interest.Explanation. - If a money lender has maintained his account and delivered the statement of account in the prescribed form and manner, it shall, in spite of any error or omission, be presumed that he has complied with the provisions of clauses (a) and (b) of sub section (1) of Section 5 and of sub sections (1) and (2) of Section 6, if the Court is of opinion that such error or omission is accidental or immaterial and that the accounts are maintained in good faith.

10. Computation of interest.

(1)The Government may, from time to time, by notification in the Andhra Pradesh Gazette, fix the maximum rate of interest for any local area of class of business of money lending in respect of secured loans and unsecured loans.(1A)No money lender shall levy charges other than compound interest and expenses mentioned in sub section (3) of this section incurred by him in respect of loans.(1B)Whoever, being a money lender, demands or charges or receives from a debtor interest at a rate exceeding the maximum rate fixed by the Government under sub section (1), shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.(2)The parties may include a stipulation in the agreement that if the sum payable as interest is not paid on the date fixed, under the agreement the money lender may charge simple interest on such sum by way of damages from the date of default until it is paid, at a rate not exceeding half the rate of interest payable on the principal and the interest so charged shall not, for the purposes of this Act, be deemed to be part of the interest charged in respect of the loan.(3)When property is given by way of security or mortgage nothing in this section shall prevent a money lender from recovering the expenses incurred for investigating title to the property,the costs of stamp and expenses for registration of document and other expenses incurred which may be reasonable in the opinion of the Court, if the parties have agreed in writing to the levy and payment of such expenses, otherwise only expenses leviable under the

Transfer of Property Act No. 1 of 1336 F. or any other law for the time being in force, shall be allowed. Explanation. - In cases where the transaction of loan is in kind or loan is in cash and its repayment in kind, or loan in kind and repayment in cash, the amount of principal and interest shall be determined according to the local market price of the commodity at the time of taking and repayment of loan.

11. Power of Court to limit interest due in certain cases.

(1) The provisions of this Act shall not apply to a loan advanced before the commencement of this Act: Provided that no Court shall be competent to pass a decree for a sum exceeding the principal on account of any outstanding interest in respect of a loan advanced to cultivator or labourer before the commencement of this Act. (2) In an inquiry under sub section (1) into the loan advanced to a cultivator or a labourer, the outstanding interest shall be computed in the following manner: (a) the account for the twelve years preceding the commencement of this Act shall be so examined that on the first day of the twelve years period and if the loan had commenced within twelve years, on the date on which the transaction commenced the amount outstanding against the debtor shall be entered against the debtors name as principal: (b) separate accounts, of the principal and interest shall be maintained; (c) in the account of principal there shall be debited to the debtor s name all such amounts as may, from time to time, have been actually received by the debtor from the money lender and if any goods are sold as part of the transaction, its price shall be included therein; (d) in the account of principal there shall not be debited to the debtor s name any outstanding interest which has been converted into principal by any agreement, settlement, or contract in the course of the transaction; (e) in the account of interest upto the date on which this Act comes into force, simple interest on the balance of principal shall be calculated at the rate agreed between the parties, provided that it does not exceed nine per cent per annum in the case of secured loan and twelve per cent per annum in the case of unsecured loan, and, from the date on which this Act comes into force upto 18th Khurdad 1355 F, the rate of interest shall not exceed nine per cent per annum and twelve per cent per annum respectively. From 18th Khurdad 1355 F., the rate of interest shall not exceed six per cent per annum and nine per cent per annum respectively; (f) all payments made in cash or kind by the debtor to the money lender or on his account, and all benefit of services or other advantages of every description, received by the money lender in the course of the transaction the value of which shall, if necessary, be determined by the court in its discretion or with the aid of arbitrators appointed by it, shall be credited first in the account of interest; and the balance if any, after payment of the interest due shall be credited to the account of the principal; (g) The principal and interest shall be calculated up to the date of institution of the suit, and the balance, (if any) of the suit, outstanding against the debtor on the said date. If the amount of interest exceeds the principal, the amount of interest in excess of the principal shall not be allowed.

12. Order for payment of decretal amount by installments.

(1) The court may, in respect of a decree without installments passed after the commencement of this Act at any time on the application of a judgment debtor, after notice to the decree holder, direct that the amount of the said decree shall be paid in such number of instalments and subject to such conditions and on such dates as may, in its opinion, be proper having regard to the circumstance of

the judgment debtor and the amount of the decree.(2)In case the judgment debtor is a cultivator or a labourer, the power mentioned in sub section (1) may also be exercised in respect of a decree passed before the commandment of this Act; Provided that such power shall not be exercised more than once in respect of the same decree.

13. Punishment for molestation of debtor.

(1)A moneylender or his agent who molests or abets the molestation of a debtor for the recovery of debt shall be punished with rigorous imprisonment for term which may extend to two years or with fine or with both.Explanation. - For the purposes of this section a money lender or his agent shall be deemed to molest a debtor when he commits the following acts with intent to prevent the debtor from doing any act which he has a right to do or force him to do any act which he has a right not to do:(a)obstructs the debtor or uses violence against or intimidates him, or(b)follows the debtor wherever he goes or interferes with any property owned or used by him or deprives him of, or hinders him in the use thereof, or(c)loiters or does any similar act at or near a house or place where the debtors resides, works, or carries on any business or is present there by accident;Provided that if a money lender or his agent happens to be at or near such house or place merely for the purpose of obtaining or communicating any information or to make a demand for a loan due, he shall not be deemed to have molested the debtor.(2)An offence under this section shall be cognizable and bailable.

14. Exemption from arrest.

- Notwithstanding anything contained in the Code of Civil Procedure, 1908 a labourer or a cultivator who is a pattadar, shikmidar, Asami Shikmi or holder of land with a revenue of fifty rupees or less, shall not be arrested to be detained in civil Jail.

15. Power to make rules.

(1)Government may make rules for carrying out the purposes of this Act.(2)All rules made under this Act shall come into force from the date of publication in the Official Gazette.

16. Power to Exempt.

- The Government may, by notification published in the Andhra Pradesh Gazette and for reasons to be recorded therein, exempt any person or class of persons or any financial or banking institution or agency or any class of financial or banking institutions or agencies from all or any of the provisions of this Act or the rules made thereunder, subject to such conditions as the Government may deem fit to impose; and they may, likewise, vary or cancel such exemption.