

THE OFFICIAL GAZETTE — 7TH AUGUST, 1971
LEGAL SUPPLEMENT — C

PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.

6th August, 1971.

The following Bill which will be introduced in the National Assembly is published for general information.

F. A. NARAIN,
Clerk of the National Assembly.



GUYANA

BILL No. 19 of 1971.

LIVESTOCK (LOANS FOR DEVELOPMENT) BILL, 1971.

Arrangement of Sections.

Section

1. Short title.
2. Interpretation.
3. Lenders.
4. Creation of charges.
5. Application of loan.
6. Sale of livestock by farmer.
7. Prohibition of fraudulent offer as security.
8. Right of entry upon, and inspection of, property.
9. Fees and other charges.

10. Offences.
11. Regulations.
12. Amendment of the Cattle Stealing Prevention Ordinance.

FIRST SCHEDULE

SECOND SCHEDULE

A BILL

Intituled

AN ACT to make provision for facilitating the raising of loans by persons engaged in the rearing of livestock and for matters connected therewith.

A.D. 1971. Enacted by the Parliament of Guyana:—

Short title. 1. This Act may be cited as the Livestock (Loans for Development) Act, 1971.

Interpretation. 2. In this Act, unless the context otherwise requires—
 “charge” means an instrument executed in accordance with section 4;
 “farmer” means any person who, as the owner or lessee of land uses it for the rearing of, and trading in, livestock for profit.

Lenders. 3.(1) The following persons shall be lenders for the purpose of advancing moneys to farmers in accordance with this Act—

(a) any body corporate licensed or otherwise authorised by law to carry on banking business in Guyana;

(b) any other person approved by the Minister.

(2) The Minister may, if he thinks fit, revoke any approval given under paragraph (b) of subsection (1) but without prejudice to any charge affected prior to the revocation.

Creation of charges. 4.(1) It shall be lawful for a farmer to create in favour of a lender by an instrument in writing a charge on the interest of the farmer in the land of which the farmer is the owner or lessee (together with the crops (if any) growing thereon), livestock, machinery and other movable property belonging to the farmer as security for the repayment by the farmer to the lender of any loan together with interest thereon and any costs, expenses and other sums incurred in the protection of such security or in relation thereto.

(2) A charge may be either a fixed charge, or a floating charge, or both a fixed and a floating charge.

(3) The property affected by a fixed charge shall be such immovable property (together with the crops, if any, growing thereon), livestock and other movable property belonging to the farmer at the date of the charge as may be specified in the charge, including in the case of agricultural plant, any plant which may whilst the charge is in force be substituted for the plant specified in the charge.

(4) The property affected by a floating charge shall be the livestock (including any progeny thereof which may be born after the date of the charge) and other movable property from time to time belonging to the farmer, or such part thereof as is mentioned in the charge.

(5) The principal sum secured by a charge may be either a specified amount, or a fluctuating amount advanced on current account not exceeding at any one time such amount (if any) as may be specified in the charge, and in the latter case the charge shall not be deemed to be redeemed by reason only of the current account having ceased to be in debit.

(6) A charge under this Act shall be prepared by the lenders; the person to whom the loan is made shall pay the legal charges in connection therewith and shall also pay all necessary disbursements.

(7) The provisions contained in Part I of the first schedule shall apply to every charge. First
Schedule.

5.(1) No loan made by a lender under this Act shall be applied otherwise than for such purposes as shall be mentioned in the charge. Application
of loan.

(2) Where a lender has made a loan in accordance with this Act, the lender may—

(a) from time to time, make or cause to be made such examination as may be necessary to ensure that the money is being applied to the purposes for which it was advanced;

(b) require financial statements in such detail as it may determine to be submitted by the farmer quarterly or at shorter intervals at the discretion of the lender and the farmer shall comply with such request.

(3) The lender may authorise in writing any person to make such examination, and the farmer in receipt of the loan shall produce to such person all the books, documents and other matters and things necessary for the purposes of the examination.

(4) If any loan made by a lender under this Act or any part thereof—

(a) has been misapplied; or

(b) appears to the lender upon any examination made under this section not to have been applied for the purposes for which it was made,

the lender may, by notice addressed to the farmer request that—

- (i) the loan or any part thereof together with any interest due thereon or part thereof on the date of the notice be repaid on a date to be specified in the notice; or
- (ii) the loan be applied to the purposes for which it was made,

and in default, the lender may enforce repayment of the loan and any security given for the purpose of the loan may thereupon be realised.

Sale of
livestock
by farmer.

6.(1) A farmer may, subject to such conditions as may be imposed by the charge, from time to time as he thinks fit, sell in the ordinary course of his business any of the livestock mentioned in the charge or for the time being subject thereto, but shall within three months of such sale either apply the proceeds of the sale or any part thereof to the purchase of livestock in substitution for the livestock so sold, for the purpose of increasing the value of his livestock to an amount not less than that stated in the charge or pay the proceeds of the sale to his credit with the lender.

(2) The farmer shall forthwith give notice in writing to the lender of the sale of any livestock.

Prohibition
of fraudulent
offer as
security.

7. No person shall offer to a lender as security for a loan to be made under this Act any property which is not the property of that person or which is already the subject of another lien and every person shall on application for a loan disclose to the lender the existence of any lien on the property offered to be subject to the charge.

Right of
entry upon,
and inspection
of,
property.

8.(1) A lender may, from time to time, at his discretion, at all reasonable times enter upon any land owned or leased by a farmer for the breeding of livestock and inspect any property which is subject to a charge created pursuant to this Act.

(2) If a lender has reasonable grounds for believing that a farmer is neglecting to rear his livestock in accordance with such rules as are generally recognised to be necessary for good husbandry the lender may, with the consent of the Chief Agricultural Officer, enter upon the land on which the livestock is reared and take possession of the land and breed the livestock and sell it and apply the proceeds of sale of the livestock (after deducting the cost of upkeep of the land, and of breeding and selling the livestock) towards the reduction or discharge of the moneys advanced under this Act.

(3) Any farmer or other person obstructing in any way a lender in exercising the powers conferred on the lender by this section shall be liable on summary conviction to a fine of two hundred and fifty dollars and to imprisonment for six months.

9. The fees to be taken by the Registrar of Deeds for filing a charge in accordance with this Act and for issuing a copy of the charge shall be those specified in the second schedule and notwithstanding anything in any other enactment, the stamp duty payable with respect to such charge shall be that set out in the said schedule.

Fees and other charges. Second Schedule.

10. Any person who—

Offences.

- (a) obtains a loan from a lender under this Act by means of false representation;
- (b) wilfully applies any loan made to that person by a lender under this Act otherwise than for the purpose for which the loan was made;
- (c) having obtained a loan from a lender in accordance with this Act, wilfully destroys any security given in relation to any such loan;
- (d) makes a false certificate for the purpose of filing the charge with the Registrar of Deeds;
- (e) sells any property subject to a charge otherwise than as provided by this Act;
- (f) applies the proceeds of the sale of any property subject to a charge otherwise than as provided by this Act, the charge, or any agreement relating to the loan secured by the charge;
- (g) contravenes the provisions of paragraph (b) of subsection (2) of section 5, or of subsection (3) of that section, or of section 7,

shall, on summary conviction thereof, be liable to a fine of one thousand dollars and to imprisonment for twelve months.

11. The Minister may make regulations for the better carrying out of the provisions of this Act.

Regulations.

12. The Cattle Stealing Prevention Ordinance is hereby amended in the following respects—

Amendment of the Cattle Stealing Prevention Ordinance. Cap. 81.

- (a) by the substitution of the words "one hundred" for the word "twenty-five" in sections 4 (5), 5, and 8;
- (b) by the substitution of the words "one hundred" for the word "twenty-four" in section 6;
- (c) by the substitution of the word "six" for the word "twelve" in section 8;
- (d) by the substitution of the words "two hundred and fifty dollars or to imprisonment for three months" for the words "twenty-five dollars or to imprisonment for any term not exceeding two months" in section 9 (3);

- (e) by the substitution of the words “seven hundred and fifty dollars or to imprisonment for twelve months” for the words “twenty-five dollars” in sections 11 (1) and 14 (2);
- (f) by the insertion of the following section immediately after section 14—

“Offence to be in possession of meat or hide for which reasonable account cannot be given.

14A. Every butcher who has in his possession the meat or hide of any cattle for which he cannot give a reasonable account (the proof whereof shall lie on him) or who sells or otherwise disposes of or offers for sale or gift or exchange the meat or hide of any cattle for which he cannot give a reasonable account (the proof whereof shall lie on him) shall be liable to a fine of one thousand dollars and to imprisonment for two years.”

- (g) by the substitution of the words “seven hundred and fifty dollars or to imprisonment for twelve months” for the words “twenty-five dollars or to imprisonment for any term not exceeding two months” in sections 17, 18 and 20(3).

Section 4

FIRST SCHEDULE

PART I

(PROVISIONS WHICH APPLY TO EVERY CHARGE CREATED UNDER SECTION 4)

1. A fixed charge shall, so long as it continues in force, confer the following rights and impose the following obligations on the lender that is to say,

- (a) a right at all reasonable times to enter upon the land of the farmer and take possession of the property subject to the charge upon the happening of any of the following events, that is to say—
- (i) if the farmer shall fail to pay the lender any money which shall for the time being be owing under the charge within four days after the same or any instalment thereof shall become due; or
 - (ii) if the farmer shall fail to discharge any of the obligations imposed upon him by any provision of this schedule; or
 - (iii) if the farmer shall become insolvent or make any arrangement or composition with his creditors; or
 - (iv) if any distress or execution be issued or levied against or upon any of the property of the farmer; or

- (v) the death of the individual farmer, its dissolution if it is a partnership, or its winding up if it is a corporate body; or
- (vi) if the farmer does any act prohibited by this Act;
- (b) where possession of any property has been so taken, a right, after an interval of five clear days or such less time as may be allowed by the charge to sell the property either at auction or, if the charge so provides, by private treaty, and either for a lump sum payment or any payment by instalments;
- (c) an obligation, in the event of such power of sale being exercised, to apply the proceeds of sale in or towards the discharge of the moneys and liabilities secured by the charge, and the cost of seizure and sale, and to pay the surplus (if any) of the proceeds to the farmer.

2. A charge shall, so long as it continues in force, impose on the farmer the following obligations, that is to say:

- (a) to insure and keep insured so long as the charge continues in force, the property subject to the charge for a sum of money not less than the value of the said property and to assign the policy of insurance to the lender;
- (b) to keep in good and substantial repair and condition the buildings, erections, plant, machinery and other property and equipment subject to the charge;
- (c) not to sell or again encumber or charge any property subject to the charge, so long as the charge continues save as is provided by section 6;
- (d) to pay punctually as the same shall become due and payable any land rent, rate or tax payable by him in respect of the land (if any) mentioned in the charge and upon demand in writing by the lender to produce his last receipts for such rent, rate or tax;

not to have execution issued against the goods of the farmer under any judgement at law;

- (f) save as is provided by section 6 or without the prior consent in writing of the lender, not to remove, dismantle or substantially alter any buildings, erections, plant, machinery, equipment or other property subject to the charge.

3. The livestock mentioned in a charge shall be described or referred to therein by some brand or brands, earmark or earmarks, mark or marks upon them or shall be so described or referred to by sex, age, name, colour or other mode of description as to be reasonably capable of

identification, and the land or premises on which such stock are or are intended to be despastured or kept shall be described or mentioned in such charge.

4. Subject to compliance with the obligations so imposed or arising under the provisions of section 6, a fixed charge shall not prevent the farmer selling any of the property subject to the charge, and neither the purchaser, nor in the case of a sale by auction, the auctioneer, shall be concerned to see that such obligations have been complied with notwithstanding that he may be aware of the existence of the charge.

5. Where any proceeds of sale which in pursuance of such obligation as aforesaid ought to be paid to the lender are paid to some other person, nothing in this Act shall confer on the lender a right to recover such proceeds from that other person unless the lender proves that such other person knew that the proceeds were paid to him in breach of such obligation as aforesaid, but such other person shall not be deemed to have such knowledge by reason only that he has notice of the charge.

6.(1) A charge creating a floating charge shall have the like effect as if the charge had been created by a duly registered debenture issued by a company:

Provided that—

- (a) the charge shall become a fixed charge upon the property comprised in the charge as existing at the date of its becoming a fixed charge on notice in writing to that effect being given by the lender to the farmer on the happening of any of the events specified in paragraph 1(a) of this schedule;
- (b) the farmer, whilst the charge remains a floating charge, shall be subject to the like obligation as in the case of a fixed charge to pay over to the lender the amount received by him by way of proceeds of sale and the provisions of section 6 shall apply accordingly:

Provided that it shall not be necessary for a farmer to comply with such obligation if and so far as the amount so received is expended by him in the purchase of farming stock which on purchase becomes subject to the charge.

7. A charge created under this Act shall not be liable to be defeated by any sale (otherwise than as permitted by section 6 of the Act or the charge) of, or by a subsequent charge of any nature created upon, the property specified in the instrument creating it and, upon the farmer committing an act of insolvency, the lender shall be at liberty to take possession of the property subject to the charge and sell the same in accordance with subparagraph (b) of paragraph 1 of this Part.

8. A charge shall have effect notwithstanding anything contained in the Bills of Sale Ordinance, and such charge shall not be deemed to be a bill of sale within the meaning of that Ordinance.

9. So long as a charge continues in force the property subject to the charge shall not be property divisible amongst the farmer's creditors in case of the insolvency of the farmer as being at the commencement of the insolvency in the possession, order or disposition of the insolvent in his trade or business by the consent and permission of the lender except that any surplus after the proceeds of sale of such property have been applied in or towards the discharge of the moneys and liabilities secured by the charge shall be payable by the lender to the farmer's assignee in insolvency.

10. Every charge shall be signed by the lender and attested by two witnesses, if the farmer can read and write the English language, and in the case of a farmer who cannot read and write the English language, the instrument shall be made affixing the farmer's mark thereto in the presence of two witnesses or a magistrate, a justice of the peace or a police officer who shall attest the same after reading over and explaining the contents thereof to the farmer.

11. The terms and conditions of any charge may be varied by the recording of a memorandum of variation executed by the parties thereto but no such variation shall effect the rights of the holder of any mortgage or other lien made prior to such variation unless the holder has consented thereto in writing on the memorandum.

12. The charge which shall be in Form 1 set out in Part 2 of the first schedule shall be signed also by a person duly authorised by the lender and shall be presented in duplicate to the Registrar of Deeds by the lender together with such number of copies of a notice as in Form 2 of the first schedule as the Registrar may require for filing.

13. The charge shall be accepted and filed by the Registrar of Deeds upon a certificate thereon by one of the witnesses to the signature of the farmer, or by the person or one of the persons in whose presence the farmer made his mark, to the effect that he knows the farmer and that the instrument was read over and explained by him to the farmer who appeared perfectly to understand the same and signed it or made his mark thereto.

14. The Registrar shall—

(a) endorse on the charge the time and date of its receipt;

(b) annotate the notice on the document of title to the land, if any, mentioned in the charge or in the case of State or Government lands, forward a copy thereof to the Commissioner of Lands and Mines, or in the case of registered land file a copy thereof in the land registry;

(c) thereupon publish the notice in the *Gazette*.

15.(1) The Registrar shall on the expiration of fourteen days after the date of publication of the notice—

- (a) record the charge by entering particulars thereof in a Loan Book kept for the purposes of this Act;
- (b) register the charge on the document of title to the land, if any, described in the charge and in the case of State or Government lands send a copy of the charge to the Commissioner of Lands and Mines, and in the case of registered land file a copy of the charge in the land registry; and
- (c) if the farmer is a joint stock company, file a copy of the charge in the office of the Registrar of Companies or if a co-operative society send such copy to the Commissioner for Co-operative Development.

(2) The Registrar of Deeds shall endorse on one part of the charge a certificate under his hand in Form 3 set out in Part 2 of the first schedule and such certificate shall be conclusive evidence that the requirements of the Act have been fulfilled. The part so endorsed shall be delivered by the Registrar to the lender.

(3) Publication in the *Gazette* of the notice or in the case of registered land the filing of a copy thereof in the land registry shall be deemed to constitute actual notice to all persons of the charge mentioned in the notice.

(4) The charge shall on being recorded in accordance with subparagraph (1) take effect as from the date on which publication or the filing is effected pursuant to subparagraph (3) and—

(a) have the like effect in relation to the farmer's interest in the immovable property and any other property or interest therein comprised as if it were a mortgage passed under the Deeds Registry Ordinance or in the case of registered land as if it were a mortgage created in accordance with the provisions of the Land Registry Ordinance, 1959;

(b) have the like effect in relation to any crop severed from the land and any machinery and other movable property therein mentioned as if it were a mortgage bill of sale thereof granted by the farmer to the lender.

16. A copy of the foregoing provisions of this schedule shall be printed on every charge.

Cap. 32

No. 18 of
1959.

PART 2

FORM 1

S. 4 & paragraph 12.

THE LIVESTOCK (LOANS FOR DEVELOPMENT)

ACT, 1971.

CHARGE

I/We

of hereby

declare that I/We am a/are Farmer (s) within the meaning of the above-mentioned Act and I/We hereby charge in favour

of

(herein referred

to as "the lender") my/our interest in the land (including any growing crops) and the livestock, machinery and other movable property specified in the schedule hereto, together with such other movable property from time to time belonging to me/us, by way of a fixed charge on my/our interest in the land and/or a floating charge on the said livestock (including any progeny thereof), machinery and other movable property as security for repayment to the lender of the principal monies not exceeding at any one time the sum of \$ to be advanced to me/us from time to time by the lender (on loan or current account) on the recording of this charge by the Registrar together with interest thereon payable at the rate and in the manner hereinafter provided and together also with any costs, expenses or other sums incurred in the protection of such security or in relation thereto.

2. The principal monies secured by the charge and the interest thereon shall be repayable as follows:

(Here insert terms and conditions of repayment of principal monies and interest).

3. And it is agreed that upon payment of the principal monies hereby secured and all sums owing to the lender (s), the said lender (s) will, at my/our cost and my/our request, execute a discharge to me/us of this security.

(Here state any special terms and conditions and modifications of the terms and conditions permitted by the Act).

SCHEDULE

DESCRIPTION OF PROPERTY SUBJECT TO CHARGE

Land (if any)

(here fill in description)

LIVESTOCK

(Here give a description of the livestock charged, describing them by brand or earmark or by sex, name, colour or other mode of description, so as to be reasonably capable of identification and the usual place of pasturage).

OTHER MOVABLE PROPERTY

IN WITNESS WHEREOF the parties have signed this instrument at.....in the County of..... in Guyana in the presence of the following witnesses:

..... Farmer

Witnesses to the signature or mark of farmer: Lender.

FORM 2

THE LIVESTOCK (LOANS FOR DEVELOPMENT) ACT, 1971.

NOTICE

Notice is hereby given that the undermentioned farmer (s) has (have) lodged a charge in respect of the undermentioned immovable property, livestock, machinery and other property and that I intend to record the charge in respect thereof on the expiration of fourteen days after the publication of this notice in accordance with the provisions of the abovementioned Act.

Dated this day of, 19 ..

Registrar of Deeds.

Name (s) and Address (es) of Farmer (s)
Nature of Crop and short description of land, livestock, machinery and other movable property.
Short description of Document of Title to the land.

FORM 3

THE LIVESTOCK (LOANS FOR DEVELOPMENT) ACT, 1971.

CERTIFICATE OF REGISTRATION.

I _____ Registrar of

Deeds hereby certify that the Charge on the front hereof was this day recorded and that the provisions of the Livestock (Loans for Development) Act, 1971, in so far as they relate to the publication and recording of the charge have been complied with.

Section 9

SECOND SCHEDULE

(FEES AND STAMP DUTY PAYABLE ON INSTRUMENT).

- | | | |
|---|-------|--------|
| 1. Filing every instrument of charge with the Registrar | | |
| of Deeds | | \$1.00 |
| 2. Issuing certified copy of every instrument of | | |
| charge | | \$.12 |
| 3. Stamp duty on every instrument securing repayment of | | |
| a loan | | \$.25 |

EXPLANATORY MEMORANDUM

This Bill seeks to make provision for facilitating the raising of loans by persons engaged in the rearing of livestock upon the security of their title to land, livestock and crops. The Bill is intended to assist in the successful implementation of the Government's plan for livestock development.

Clause 3 of the Bill prescribes commercial banks operating in Guyana as lenders for the purposes of the legislation and authorises the Minister of Agriculture to approve any other person as a lender for the purpose of making loans to farmers in accordance with provisions of the Bill.

Clause 4 makes provision for the creation by a farmer of a charge in favour of a lender by instrument in writing. The charge must be registered with the Registrar of Deeds.

Clause 5 seeks to prohibit the receipt of a loan from applying it otherwise than for the purposes for which it has been obtained. Provision is also made allowing for examinations to be made by a lender for the purpose of ensuring the proper application of monies lent, and for remedial action to be taken by a lender where as a result of the examination it appears that a loan has not been applied for the purposes for which it was made.

Clause 6 permits a farmer to sell in certain circumstances livestock subject to a charge.

Clause 7 seeks to prohibit a borrower from offering to a lender as security for a loan property which is not the property of the borrower or which is already the subject of another lien.

Clause 8 seeks to confer on a lender a right of entry on the borrower's land for the purpose of securing the interests of the lender.

Clause 10 seeks to prescribe the penalties for contravention of the provisions of the Bill.

Clause 12 seeks to amend the Cattle Stealing Prevention Ordinance (Chapter 81) to increase the penalties prescribed by that Ordinance.

P. A. REID,
Deputy Prime Minister and
Minister of Agriculture.

(Bill No. 19/1971)
(AGR: 407/267/4)