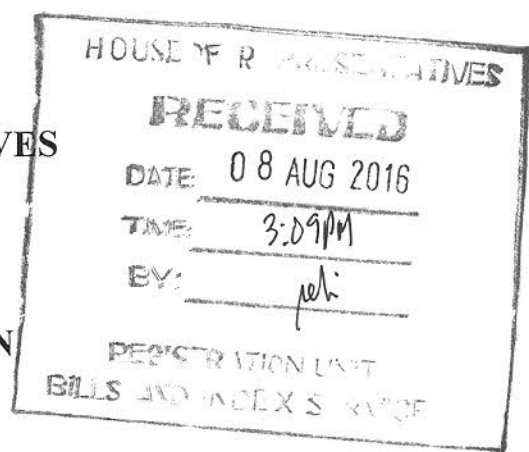Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

17ᵀᴴ CONGRESS
FIRST REGULAR SESSION

HOUSE BILL NO. _2646_

Introduced by *Representative* **WES GATCHALIAN**

EXPLANATORY NOTE

The rise of digital technology saw the emergence of mobile networks and the rapid advancement in computer technologies. Obviously, the advancement leads us to where we are today and as Bill Gates said, *"it's the center of attention for businesses, governments and individuals around the world. It has spawned entirely new industries, transformed existing ones, and become a global cultural phenomenon"*.

The internet has brought with it many forms of businesses and new forms of marketing such as the e-commerce and the online shopping.

In the Philippines, the online shopping is on its road to big leap. Research company Nielsen estimated that as of now, we have at least 33.6 million internet users and the number is still growing.
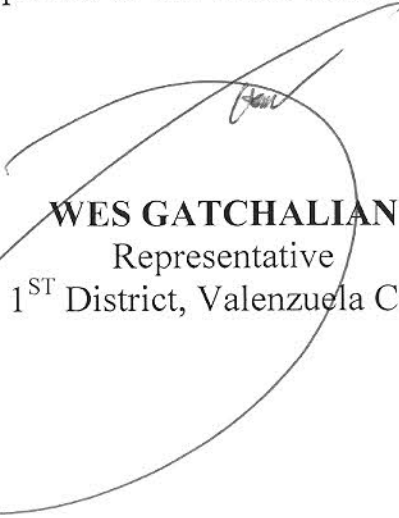
Our online shopping portal is also on the rise and it won't take a long time, many will be discovering the convenience of online shopping similar to first world countries wherein it is already a million dollar industry. Imagine shopping in the comfort of your home, free from the metropolitan traffic, dangers of handling cash, where the product will be delivered right at your doorstep and enjoying convenient shopping 24 hours / 7 days a week.

No doubt, there are notable success stories on online commerce, but despite this hype, it has also its share of weaknesses and limitations and it is for this reason that this bill attempts to fill in the gap to protect the rights of the consumers and merchants which in effect strengthen the online commerce. In a country where online commerce is still in an infant stage and country vulnerable to monetary scams, it is utmost importance to lay down the rules and regulations of the online industry as early as now for the sake of future internet users.

This bill seeks to address concerns on state regulations on the industry, payment options and secrecy of data obtained from the consumers, more transparency from traders and seeks to eliminate hidden transaction costs, delivery problems, cancellation of order, refund against cancellation and payment issues to mention a few.

The bill is certainly not a perfect one, other areas and concerns might not have been addressed but we cannot afford not to bring order to our lives and this bill is an effort to craft a law that will foster a smooth functioning social order on online commerce and trading.

Hence, the urgent approval of this bill is earnestly sought.

WES GATCHALIAN
Representative
1ST District, Valenzuela City

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

17TH **CONGRESS**
FIRST REGULAR SESSION

HOUSE BILL NO. 2646

Introduced by **Representative WES GATCHALIAN**

AN ACT
PROVIDING CONSUMERS AND MERCHANTS
PROTECTION ON ONLINE COMMERCE AND
PROVIDING PENALTIES FOR VIOLATION
THEREOF.

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

Section 1. Short Title - This act shall be known as "Consumers and Merchants Online Protection Act of the Philippines."

Section 2. Declaration of Policy - It is the policy of the State to protect the interests of the consumers, promote his general welfare and to establish standards of conduct for business and industry for online shopping.

Towards this end, the State shall implement measures to achieve the following objectives:

a. to develop and provide safety and quality standards for consumer products, against unreasonable risks or injury associated with consumer goods;

b. protection against deceptive, unfair and unconscionable sales acts and practices;

c. provision of adequate rights and means of redress.

Section 3. Definition - For purposes of this Act, the term:

a. *Consumer* – refers to any natural or juridical person who is a purchaser, recipient or prospective purchaser of consumer products, goods and services on online portals or internet.

b. *Service Provider* - refers to natural or juridical person whose business is facilitating sales of products, goods or services through their online portals or internet.

c. *third party seller.*- refers to a natural or juridical person that--

aa) sells, manufacture goods, or offers for sale, any good or service on the Internet;

bb) solicits the purchase of such goods or services on the Internet through a service provider after the consumer has initiated a transaction with the service provider; and is not-- (1) the service provider (2) a subsidiary or corporate affiliate of the service provider; or (3) a successor of an entity described in clause (aa) or (bb).

c. *Negative Option Marketing* – refers to a commercial transaction where a seller and service provider interprets a consumer's failure to take an affirmative action, either to reject an offer or to cancel an agreement as affirmative assent to be charged.

Section 4. Application/Renewal of license of Service Provider - An applicant for a license to operate as a service provider with the Department of Trade and Industry must possess the following:
   a. Must be a Filipino citizen, if single proprietorship. In case of partnership or a corporation, at least seventy-five percent (75%) of the authorized capital stock must be owned and controlled by Filipino citizens;
   b. The owner, partners or the officers of the corporation must be of good moral character and not otherwise disqualified by law;

Section 5. Service Provider requirements from the Third Party Seller - The service provider shall require the third party seller to submit a duly accomplished application form with the following requirements:
   a. the identity of the third party seller and the geographical address of the place of business to which the consumer may address any complaints;
   b. a description of the goods or services being offered;
   c. the price of the goods or services including all taxes;
   d. Undertaking by the third party seller that he is the owner of the goods to be sold or owner of the service company or is authorized by the real owner accompanied by a proof of ownership.

Section 6. Action on the Application - Upon receipt of the application, the service provider or his duly authorized representative shall evaluate the documents submitted by the third party seller and shall act accordingly whether to post the goods or services for online commerce.

Section 7. Information requirements for online contracts - Before the consumer is bound by an online selling contract, or any corresponding offer, the service provider shall provide the consumer with the following information in a clear and comprehensible manner:

a. description of the goods or services being offered;
b. the goods or products conform to product standards;
c. the identity of the third party seller, service provider, the geographical address of the place of business to which the consumer may address any complaints;
d. the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated
e. where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable.
f. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;
g. the arrangements for payment, delivery or performance;
h. the existence of a right of cancellation
i. the period for which the offer or the price remains valid;
j. where appropriate, the minimum duration of the contract, in case of contracts for the supply of goods or services to be performed permanently or recurrently;
k. inform the consumer and subject to the latter's approval if he proposes, in the event of the goods or services ordered by the consumer being unavailable, to provide substitute goods or services (as the case may be) of equivalent quality and price;
l. inform the consumer that the cost of returning any such substitute goods to the supplier in the event of cancellation by the consumer would be met by the supplier;
m. information about any after-sales services and guarantees.

Section 8. Online selling contract – The service provider shall provide the consumer with a copy of a signed contract or the confirmation of the contract through an electronic document as provided under the Electronic Commerce Act or on any durable medium within reasonable time.

Section 9. Payments –The service provider shall seek the express consent of the consumer and comply with Sections 7 and 8 of this act before it charge or attempt to charge any consumer's credit card, debit card, bank account, or other financial account for any good or service sold in a transaction effected online or internet.

Section 10. Requirements for online sale payments - It shall be unlawful for any third party seller and the service provider to charge or attempt to charge any consumer's credit card, debit card, bank account, or other financial account for any good or service sold in a transaction effected on the Internet, unless:

a. the third party seller and the service provider has clearly and conspicuously disclosed to the consumer all material terms of the transaction provided in Sections 7 and 8 of this act.

b. the third party seller and the service provider has received the express informed consent for the charge from the consumer whose credit card, debit card, bank account, or other financial account will be charged by--

    (1) obtaining from the consumer--
        (i) the full account number of the account to be charged;
        (ii) the consumer's name and address and a means to contact the consumer;
        (iii) card security code
        (iv) expiry date of the card

    (2) requiring the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box that indicates the consumer's consent to be charged the amount disclosed.

Section 12. Right to cancel payment - The consumer shall be entitled to cancel a payment:

a. where fraudulent methods has been made of his payment card in connection with a contract to which this act applies by another person not acting, or to be treated as acting, as his agent;

b. where the consumer exercised the right to cancellation and payment was made.

Section 11. Prohibition on Data-Pass Used To Facilitate Certain Deceptive Internet Sales Transactions - It shall be unlawful for a service provider and third party seller to use, disclose a credit card, debit card, bank account, or other financial account number, or to disclose other billing information that is used to charge a customer for use in any other Internet-based sale of any goods or services.

Section 12. Prohibition on Negative Option Marketing - It shall be unlawful for any service provider or third party seller to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature unless the service provider or third party seller-

a. provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information;

b. obtains a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and

c. provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

Section 13. Issuance of Receipts – Within reasonable time, the service provider and the third party seller are required to issue official receipts through an electronic document under the Electronic Commerce Act or any durable medium for sale of goods, services rendered and commissions in accordance with the National Internal Revenue Code.

Section 14. Liability- The liability of the service provider and the third party seller for any and all claims under this act shall be joint and several.

Section 15. Delivery- Unless the parties have agreed otherwise the delivery of the goods or services sold under this act shall be by transferring the physical possession or control of the goods or fulfilment of the services to the consumer within 30 days from the conclusion of the contract.

Where the service provider and the third party seller failed to deliver at the time agreed upon, the consumer has the option to give an additional period of time appropriate to the circumstances or to cancel the selling or service contract in which case the consumer shall be reimbursed of all sums paid under the contract.

Section 16. Right to Cancellation – The consumer shall have a period of five (5) days to cancel from the conclusion of the contract without giving any reason by any means of digital or electronic communication.

Section 17. Carriers liability- the third party seller and the service provider shall be liable for damage, delay or loss in connection with the carriage of goods.

Section 18. Applicable Law. – The provisions of the Civil Code and other related laws on Sales, Conditions and Warranties shall be applicable.

Section 19. Relation of the Act to Other Rights. – The provisions of this Act shall apply notwithstanding any agreement to the contrary but shall not restrict, limit or derogate from any other rights or remedies of a consumer under the Consumers Act and other related laws.

Section 20. Penalties.
a. Any person who shall violate any provision of this act shall upon conviction, be subject to a fine of double the amount involved in the transaction but in no case less than Twenty Thousand pesos (P20,000.00) or imprisonment of not less than six (6) months but not more than two (2) years, or both upon the discretion of the court. If the offender is an alien, he shall be deported after service of sentence and payment of fine without further deportation proceedings.

b. In case the offender is a naturalized citizen, he shall, in addition to the penalty prescribed herein, suffer the penalty of cancellation of his

naturalization certificate and its registration in the civil register and immediate deportation after service of sentence and payment of fine.

c. Any director, officer or agent of a corporation who shall authorize, order or perform any of the acts or practices constituting in whole or in part a violation of this act, and who has knowledge or notice of noncompliance received by the corporation from the concerned department, shall be subject to penalties to which that corporation may be subject.

In case the violation is committed by, or in the interest of a foreign juridical person duly licensed to engage in business in the Philippines, such license to engage in business in the Philippines shall immediately be revoked.

Section 21. Construction – The best interest of the consumer shall be considered in the interpretation and implementation of the provisions of this Act, including its implementing rules and regulations.

Section 22. Implementing Agency – The Department of Trade and Industry shall enforce the provisions of this act.

Section 23. Implementing Rules and regulations – The Department of Trade and Industry shall promulgate rules and regulations to implement the provisions of this act.

Section 24. Separability Clause. – If for any reason any article or provision of this Act or any portion thereof or the application of such article, provision or portion thereof to any person, group or circumstance is declared invalid or unconstitutional, the remainder of this Act shall not be affected by such decision.

Section 25. Effectivity. – This Act shall take effect thirty (30) days from the date of its publication in any newspaper of general circulation.

Approved,