

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session
6416
HOUSE BILL NO.



Introduced by **HON. LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.**

EXPLANATORY NOTE

Article XVI Section 9 of the Constitution of the Republic of the Philippines states that, "The State shall protect consumers from trade malpractices ..." Article 2 of Republic Act No. 7394 or the "Consumer Act of the Philippines" further specifies that State measures shall be implemented to achieve, "protection against deceptive, unfair and unconscionable sales acts can practices", "provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer" and the "provision of adequate rights and means of redress" among others.

In February 2011, the Group of Twenty (G20) called upon the Organization for Economic Cooperation and Development (OECD), the Financial Stability Board (FSB) and other relevant international organizations to develop common principles on consumer protection in the field of financial services. Foremost of these principles is that financial consumer protection should be an integral part of the legal, regulatory and supervisory framework.

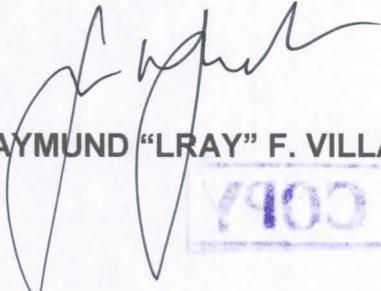
Consumer confidence and trust in the financial system promotes stability, growth, efficiency and innovation. With the rapid development of complex financial products coupled with the used of advanced technologies, however, consumer fraud, abuse and misconduct have increased. The rising incidence of fraud and abuse not only hinders national economic progress but also causes grave damages to financial consumers.

This bill establishes a comprehensive consumer protection framework which covers a complex range of financial products and services, and delivery channels. The bill intends to address gaps in the provision of financial services, especially in digital financial services. The bill aims to further protect consumers as they proceed in their transactions with financial entities.

This bill also provides appropriate mechanisms for consumer welfare protection under the conditions of transparency, fair and sound market conduct and just, reasonable, and effective handling of financial consumer disputes.

By consolidating principles of financial inclusion, good governance and effective supervision for financial service providers, this bill provides more comprehensive consumer protection in the modern world.

In view of the foregoing, the approval of this bill is earnestly sought.



LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.



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AN ACT
PROVIDING FOR THE PROTECTION OF FINANCIAL CONSUMERS AND FOR
OTHER PURPOSES

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

SECTION 1. Short Title. – This act shall be known as the “*Financial Consumer Protection Act of 2020*”.

SECTION 2. Declaration of Policy. – It is the policy of the State to ensure that appropriate mechanisms are in place to protect the interest of Financial Consumers under the conditions of transparency, fair and sound market conduct, and fair, reasonable and effective handling of Financial Consumer disputes, which are aligned with global best practices. These mechanisms reinforce their confidence in the financial market and foster the stability of the Philippine financial system. Towards this end, the State shall implement measures to protect the following rights of financial consumers:

- a. Right to equitable and fair treatment;
- b. Right to disclosure and transparency of Financial Products and Services;
- c. Right to protection of consumer assets and against fraud and misuse;
- d. Right to data privacy and protection;
- e. Right to complaints handling and redress.

SECTION 3. *Definition of Terms.* – As used in this Act, the following terms shall mean or be understood as follows:

- a. **“Financial Consumer”** – a person or entity who is a purchaser, lessee, recipient or prospective purchaser, lessor or recipient of Financial Products or Services. It shall also refer to any natural person or micro, small or medium-sized enterprise that had or has current or prospective financial transaction with financial entities pertaining to Financial Products or Services.
- b. **“Financial Consumer Complaint”** – an expression of dissatisfaction filed by a Financial Consumer against a Financial Service Provider relative to a financial product or service in which a response or resolution is expected.
- c. **“Financial Products or Services”** – financial products or services which are developed or marketed by a Financial Service Provider which may include, but are not limited to savings, credit, insurance, investments, payments, remittances and other similar products and services. This also includes digital financial services which pertain to the broad range of financial services accessed and delivered through digital channels.
- d. **“Financial Regulators”** – The implementing government agencies of this Act, namely the *Bangko Sentral ng Pilipinas* (BSP), Securities and Exchange Commission (SEC), Insurance Commission (IC) and the Cooperative Development Authority (CDA).
- e. **“Financial Service Provider”** – a person, natural or juridical which provides financial products or services and are being supervised or regulated by any of the Financial Regulators enumerated in this Act. This term shall include Investment Advisers as defined under Section 7 of this Act.
- f. **“Marketing”** – The act of communicating, offering, promoting, advertising or delivering of Financial Products and Services by Financial Service Providers.
- g. **“Micro, Small or Medium-sized Enterprise (MSME)”** – any business activity or enterprise engaged in industry, agri-business and/or services whether single proprietorship, cooperative, partnership or corporation as defined under R.A. No. 9501, as amended or the Magna Carta for Micro, Small or Medium-sized Enterprise. Such definition shall be subject to review and adjustment by the Magna Carta for Micro, Small or Medium-sized Enterprise (MSEMED) Council.

SECTION 4. Scope and Coverage – This Act applies to all Financial Products and Services offered or marketed by any Financial Service Provider.

SECTION 5. Financial Regulators – The BSP, SEC and IC shall enforce the provisions of this Act on all Financial Service Providers they supervise or regulate by virtue of their respective charters, special laws and amendments thereto. The CDA shall be considered an implementing government agency of this Act only with respect to cooperatives offering financial services such as, but not limited to, savings and credit, except insurance cooperatives which shall be under the jurisdiction of the IC for purposes of this Act.

SECTION 6. Powers of the Financial Regulators – Financial Regulators shall have the following powers:

- a. **Rulemaking** – Financial Regulators shall have the authority to formulate their own standard and rules for the application of the provisions of this Act to the specific Financial Products or Services within their jurisdiction guided by internationally accepted standards and best practices. Financial Regulators may also determine reasonableness of charges or fees which a Financial Service Provider may demand, collect or receive for any service or product offered to consumers, except interest rates which shall be governed by the Usury Law. Likewise, they may issue their respective rules of procedure concerning administrative actions arising from the implementation of this Act.

- b. **Surveillance and Examination** – Financial Regulators may conduct off-site surveillance and on-site examination on their respective supervised Financial Service Providers to ascertain that the provisions of this Act are complied with. The examination for Financial Consumer protection compliance may be conducted separately from examination of prudential regulations compliance. The provisions on the conduct of examination and surveillance provided in the respective charters of Financial Regulators, and pertinent special laws shall be made applicable in the examination and surveillance under this Act.

The department heads and the examiners of the Financial Regulators shall be authorized to administer oaths to any director, officer, or employee of the supervised Financial Service Providers subject to their examination, and to compel the presentation of all books, documents, papers, or records necessary in their judgement to ascertain the facts relative to the compliance of Financial Service Providers to this Act.

The supervised Financial Service Provider shall afford to its respective Financial Regulator full opportunity to examine its records and review its systems and procedures at any time during business hours when requested to do so by the Financial Regulator.

- c. ***Market Monitoring*** – Financial Regulators shall have the authority to require their respective supervised Financial Service Providers and their third party agents/service providers to submit reports or documents, as needed, and to access relevant data about financial products, services and markets from other government agencies in connection with market monitoring.
- d. ***Enforcement*** – the Financial Regulators shall have the authority to impose enforcement actions on their respective supervised Financial Service Providers for non-compliance with this Act. Such enforcement actions may include, but are not limited to, the following:
 - 1. Restriction on the ability of the supervised Financial Service Provider to continue to collect fees or charges in cases of excessive fees or charges imposed by the Financial Service Provider, except interest rates which shall be governed by the Usury Law;
 - 2. Disqualification and/or suspension of directors, officers or employees of the supervised Financial Service Provider responsible for violations of the provisions of this Act, its implementing regulations, or orders of the Financial Service Providers;

3. Imposition of fines, suspension, or penalties of any non-compliance with or breach of this Act, its implementing regulations, or orders of the Financial Service Providers;
4. Issuance of a cease and desist order to the Financial Service Provider without the necessity of a prior hearing if in the Financial Regulator's judgement, the act or practice, unless restrained, amounts to fraud or a violation of the provisions of this Act and its implementing regulations or may unjustly cause grave or irreparable injury to prejudice to Financial Consumers.

The Financial Service Provider shall be afforded an opportunity to defend its act or practice in a summary hearing before the Financial Regulator or its designated body, upon request made by the Financial Service Provider within five (5) calendar days from its receipt of the order. If no such hearing is requested within said period, the order shall be final. If a hearing is requested by the Financial Service Provider, the proceedings shall be conducted summarily without adhering to the technical rules of evidence, and all issues shall be determined primarily on the basis of records, after which the Financial Regulator may either reconsider or make final its order;

5. Suspension of operation of any supervised Financial Service Provider in relation to a particular Financial Product or Service when in the Financial Regulator's judgement based on findings, the Financial Service Provider is operating in violation of the provisions of this Act and its implementing regulations.
- e. ***Adjudication*** – Financial Regulators shall have the authority to adjudicate all actions arising from or in connection with financial transactions that are purely civil in nature and the claim or relief prayed for by the Financial Consumer is solely for payment or reimbursement of sum of money not exceeding the amount of One Hundred Thousand Pesos (P100,000.00) or as may be prescribed by the Financial Regulators. The decision of the Financial Regulators in the adjudication shall be final and executory, and may not be

restrained or set aside by the court except on petition for certiorari on the ground of lack or excess of jurisdiction of the Financial Regulators. The petition for certiorari may only be filed within ten (10) days from receipt by the aggrieved party of the decision. The adjudicatory power shall be exercised by the Head of the concerned Financial Regulator or a duly authorized office or body, *Provided*, that in the case of BSP, the decision of the authorized officer or body is not appealable to the Monetary Board.

Financial Regulators may order the payment or reimbursement of money which is subject of the action filed before them. The Financial Regulators, in the exercise of their adjudicatory powers, shall have the power to issue *subpoena duces tecum* and summon witnesses to appear in its proceedings and in appropriate cases, order the examination, search and seizure of all documents, and books of accounts of any entity or person under the investigation as may be necessary for the proper disposition of the cases before them. Further, Financial Regulators shall have the authority to punish for contempt, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court.

- f. **Other Powers** – Financial Regulators may exercise such other powers as may be provided by their enabling laws or charters as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Financial Regulators to achieve the objectives and purposes of these laws.

SECTION 7. *Investment Adviser* – Investment Advisers shall be subject to the rules and regulation to be issued by the SEC.

Investment Adviser shall mean any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of investment products or as to the advisability of investing in, purchasing, or selling investment products, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning investment products; but does not include the following:

- a. Trust Department / Unit of Banks;
- b. Lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession;
- c. Any investment banker or broker dealer whose performance of such services is solely incidental to the conduct of his business as such investment banker or broker dealer and who receives no special compensation therefor;
- d. The publisher of any bona fide newspaper, news, magazine or business or financial publication of general and regular circulation;
- e. Such other personas as the SEC may designate by rules and regulations or order.

SECTION 8. Duties and responsibilities of Financial Service Providers

- a. *Board and Senior Management Oversight* – The Board of Directors (BOD) and Senior Management of Financial Service Providers shall oversee the implementation of the Compliance Management System (CMS) of Financial Service Providers that effectively ensures conformity with this Act and shall provide the means by which Financial Service Providers shall identify, measure, monitor and control consumer protection risks inherent in its operations.
- b. *Appropriate product design and delivery* – Financial Service Providers shall continuously evaluate their Financial Products and Services to ensure that they are appropriately targeted to the needs, understanding and capacity of both their markets and their clients. This shall include, among others, the following:
 1. *Affordability and suitability assessments* – Financial Service Providers should have written procedures for determining whether a particular Financial Consumer product or service is suitable and affordable for a client. This shall include determination of whether the amount and terms of the offered financial product or service allow a client, in terms of the individual ability, to meet the obligations with a low probability of a serious hardship and reasonable prospect that the Financial Product or Service will provide value to its client. For the purpose of extending credit, this assessment will include measures to prevent over-indebtedness.

2. *Cooling-off period* – Financial Service Providers are expected to adopt a clear cooling-off policy, as may be prescribed by law or by rules and regulations issued by the relevant Financial Regulator upon its determination that a cooling-off period is necessary for a particular product subject of regulation by such Financial Regulator. Such policy should, among others, provide a client with a cooling-off period that will allow a client to consider the costs and risks of a Financial Product or Service, free from the pressure of the sales team of the Financial Service Provider. The length of the cooling-off period should be individually determined by Financial Service Providers based on reasonable expectation of the time required for a client to fully evaluate all the terms and risks of the Financial Products or Service and contact concerned parties who may be affected by its terms and conditions, unless a minimum or fixed period is required by the Financial Regulator for compliance by the Financial Service Provider or to be incorporated in the terms of the Financial Product or Service. Short period transaction of or contracts may be allowed to have no cooling-off period which shall be provided in the regulation by the Financial Regulators.

During the cooling-off period, the Financial Consumer may cancel or return the contract without penalty; however, nothing herein prevents the Financial Service Providers from recovering the processing fees incurred. The Financial Service Providers are prohibited from engaging in practices that unreasonably burden the Financial Consumer in the exercise of the right of cancellation during the cooling-off period. If the financial product is a contract of insurance, the right of return cannot be exercised after the Financial Consumer has made a claim under the contract of insurance.

c. *Transparency, disclosure and responsible pricing* – Financial Service Providers must ensure they adopt disclosure principles in their communications with Financial Consumers that will include the use of clear and concise language understood by the target clients. This must also include updated and accurate disclosure of information such as, pricing or any cost associated with the product or service that should be made in a consistent manner to facilitate

comparison between similar Financial Products and Services across the industry.

Sufficient product disclosure must be provided before the contracting of the product or service to give the client enough basis and time for review. Any change in the terms of conditions of a product or service shall be provided to the client.

In their advertising materials, Financial Service Providers shall disclose the contact information of their consumer assistance unit providing consumer assistance and handling Financial Consumer Complaints. Financial Service Providers shall also disclose that they are regulated and the advertising materials must identify the relevant Financial Regulator.

Financial Service Providers are legally responsible for all statements made in the marketing and sales materials that they produce related to their products. Disclosure of information on Financial Products or Services shall be made available to the public by the Financial Service Provider through printed materials, mass media, websites or digital platforms.

Responsible pricing – in addition to the requirements of R.A. No. 3765 or The Truth In Lending Act, Financial Service Providers are required to document the reasons for setting the price of each financial product or service. Where the pricing procedures of a Financial Service Provider are inadequate or unreasonably high, the concerned Financial Regulator shall impose appropriate corrective actions.

- d. *Fair and respectful treatment of clients* – Financial Service Providers shall have the right to select their clients, *Provided*, that the selection and treatment of their clients shall not involve discrimination on the basis of a person's race, ethnicity, origin, gender, disability, sexual orientation, religious affiliation or political affiliation, *Provider further*, that Financial Service Providers are not precluded from instituting the necessary risk mitigating measures.

e. *Privacy and protection of client* – each Financial Service Provider must respect the privacy and protect the data of their clients. Consistent with the provisions of the Data Privacy Act, the Financial Regulators shall issue regulations governing the disclosure of client data to a third party.

Clients have the right to review their client data to ensure that inaccurate or deficient data is corrected or amended.

f. *Financial consumer protection assistance mechanism* – Each Financial Service Provider must establish a single consumer assistance unit to render free assistance to Financial Consumers on financial transaction concerns. This shall include handling of complaints, inquiries and requests.

Financial Consumers who are unsatisfied with the Financial Service Provider's handling of their complaints, inquiries and requests, may elevate their concerns to the Financial Regulator that supervises the Financial Service Provider concerned.

SECTION 9. *Bundling of Products* – When a borrower is obliged by the Financial Service Provider to purchase any product, including an insurance policy, as a pre-condition for receiving a loan from the Financial Service Provider, the borrower should be free to choose the provider of the product and this information should be known to the borrower.

SECTION 10. *Training* – Staff of Financial Service Providers who deal directly with Financial Consumers must receive adequate training, suitable for the complexity of the products or services they sell. Financial Service Providers must be qualified as appropriate for the complexity of the financial product or service they sell.

SECTION 11. *No waiver of rights* – No provision of a contract for a Financial Product or Service shall be lawful or enforceable if such provision waives or otherwise deprives a client of a legal right to sue the Financial Service Provider, receive information, have their complaints addressed and resolved, have their non-public data

protected or cancel the use of the Financial Product or Service without an unreasonable penalty.

SECTION 12. *Non-exemption from compliance* - Notwithstanding any prior stipulation in a contract, financial entities shall not be exempted from compliance with the provisions of this Act, or deprive Financial Consumers of their rights under this act.

SECTION 13. *Liability of a Financial Service Provider on the acts or omissions of its authorized representatives* - The Financial Service Provider shall be responsible for the acts or omissions of its directors, officers, employees or agents, in marketing and transacting with Financial Consumers of its Financial Products and Services.

SECTION 14. *Prescription* – All actions or claims accruing under the provisions of this Act and the rules and regulations issued pursuant thereto shall prescribe within five (5) years from the time the Financial Consumer transaction was consummated, or within five (5) years from the discovery of deceit or non-disclosure of material facts. For insurance contracts, the prescriptive period for the commencement of action provided under the Insurance Code shall apply.

SECTION 15 *Penalty for Violation of this Act* – Whenever a Financial Service Provider willfully violates any provision of this Act or any related rules, regulations, orders or instructions, issued by the Financial Regulators, the person or persons responsible for such violation shall be punished by imprisonment of not less than one (1) year but not more than five (5) years, or by a fine of not less than Fifty thousand (P50,000.00) pesos but not more than Two Million Pesos (P2,000,000.00), or both, at the discretion of the court. In addition, in case profit is gained or loss is avoided as a result of the violation, a fine of no more than three (3) times the profit gained or loss avoided may also be imposed.

SECTION 16. *Administrative Sanctions* - The provisions on administrative sanctions of the respective charters of the Financial Regulators shall be made applicable to any Financial Service Provider, its directors, officers,, employees or agents without prejudice to the enforcement actions provided under Section 6 (D) of

this Act and the criminal sanctions provided under Section 15 of this Act, for any willful violation of this Act or any related rules, regulations, orders or instructions of the Financial Regulators, Provided , That in addition to the administrative sanctions that may be imposed, the authority of the Financial Service Provider to operate in relation to a particular Financial Products or Services may be suspended or cancelled by the Financial Regulator.

SECTION 17. *Repealing Clause.* – All laws, executive orders, rules, and regulations or parts thereof which are inconsistent with his Act are hereby repealed or amended accordingly. Articles 131 to 147 of Title IV of Republic Act No. 7394 are hereby repealed.

SECTION 18. *Transitory provision* – The Financial Regulators shall prepare the necessary rules and regulations to implement the provisions of this Act within one (1) year from its effectivity.

SECTION 19. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspaper of general circulation.

Approved.