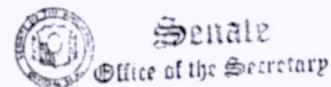


EIGHTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session



20 FEB 19 P4:24

SENATE
S.B. No. 1366

RECEIVED BY J

Introduced by SEN. WIN GATCHALIAN

**AN ACT
REGULATING THE DEBT COLLECTION PRACTICES OF
DEBT COLLECTORS TO PROTECT BORROWERS FROM ABUSES,
HARASSMENT, UNFAIR TREATMENT AND MISREPRESENTATIONS**

EXPLANATORY NOTE

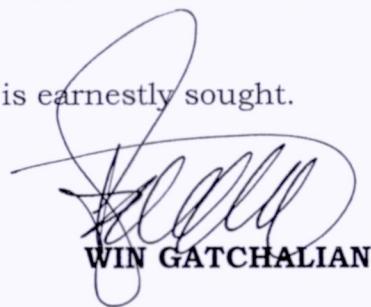
With the steady growth of the Philippine economy, the increase in the purchasing power of middle-class Filipinos, and the emerging reliance on technology and the internet, complaints on widespread use of abusive, deceptive and unfair debt collection practices by many creditors and debt collectors have proliferated.

A number of unscrupulous collection agencies and debt collectors have taken advantage of borrowers by using false or misleading advertisements to lure them to borrow at unreasonable interest rates, by continuously harassing them and their phonebook contacts, or by using offensive or threatening tactics in order to collect the debts owed to their clients. Such abusive debt collection practices have contributed to a number of unwarranted personal bankruptcies, marital problems, loss of employment, depression, stress and invasions of individual privacy.

This notwithstanding, there is a dearth of laws that would put an end to these practices, redress injuries, or adequately protect borrowers from unfair and abusive debt collection practices.

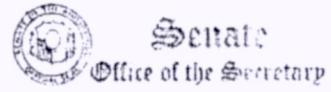
Accordingly, this measure aims to eliminate, if not minimize, unfair and abusive debt collection practices conducted by debt collectors against consumer-borrowers by providing allowable means to acquire location information of the borrower and enumerating prohibited acts. It likewise places the debt collector and the consumer-borrower in the same level playing field as the measure provides adequate legal remedies to borrowers who are victims of these wayward practices.

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



WIN GATCHALIAN

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

1 Section 1. *Short Title.* – This Act shall be known as the “Fair Debt
2 Collection Practices Act”.

3

4 Sec. 2. *Declaration of Policy.* – It is hereby declared a State policy to
5 prohibit and eliminate the use of abusive, deceptive and unfair debt collection
6 practices by debt collectors, to ensure that those debt collectors who refrain
7 from using abusive debt collection practices are not competitively
8 disadvantaged, and ultimately, to protect borrowers against abuse and
9 harassment in the collection of their debts.

10

11 Sec. 3. *Definition of Terms.* – For the purposes of this Act, the term:
12 (a) *Debt Collector* means any person who uses any instrumentality or
13 any business the principal purpose of which is the collection of any debts, or

1 who regularly collects or attempts to collect, directly or indirectly, debts owed
2 or due or asserted to be owed or due another. It includes any creditor who, in
3 the process of collecting his own debts, uses any name other than his own,
4 would indicate that a third person is collecting or attempting to collect such
5 debt. It is likewise interchangeable with a debt collection agency or a third-
6 party service provider engaged by a creditor for the purpose of collecting debts
7 owed by another.

8 The definition does not include:

9 (i) A person who is collecting or attempting to collect a debt of which
10 the he or she is the original creditor or owner;

11 (ii) A business that acquires a debt or debts through the seizure of
12 accounts receivable under a security agreement;

13 (iii) A corporation that purchases a debt or debts through acquiring
14 or merging with a business in a transaction that includes the transfer of
15 accounts receivables;

16 (iv) A person to whom the contract that gave rise to the debt was
17 assigned for the purpose of financing the transaction;

18 (v) An officer or employee of the creditor who in the name of the
19 creditor, collects the debt for the creditor;

20 (vi) Any person or entity who acts a debt collector for another person
21 or entity who are related by common ownership or affiliated by corporate
22 control, if the person or entity collects the debt for persons or entities whom
23 it is related or affiliated to and its principal business is not the collection of
24 debts;

25 (vii) Any officer or employee of government, national or local, to the
26 extent that collecting or attempting to collect any debt is in the performance
27 of his official duties;

28 (viii) Any person while serving or attempting to serve legal process on
29 any other person in connection with the judicial enforcement of any debt; and

30 (ix) Any attorney-at-law collecting a debt as attorney on behalf of and
31 in the name of a client.

1 (b) *Contact* means communications by telephone, mobile phone,
2 facsimile, e-mail, automated call system, text messaging, or any other modes,
3 or in person, including messages left for a debtor with another person or by
4 voicemail or on an answering machine, or any other form of communication
5 not specifically excluded, but does not include communications that the
6 debtor has expressly consented to or solicits in advance.

7 (c) *Creditor* means a person to whom a debtor owes a debt or who has
8 extended credit to a debtor, including, but not limited to, credit in the form of
9 a sale on credit, a loan of money or the provision of goods and services. It
10 includes a financing company and a lending company.

11 (d) *Debt* means a monetary obligation enforceable at law owed by a
12 debtor, including, but not limited to, a purchase on credit, accounts
13 receivable, a loan of money or the provision of goods or services.

14 (e) *Debtor* means an individual who has an obligation for a debt,
15 including, but not limited to, the owner of a sole proprietorship, a member of
16 a partnership or an individual who has provided a personal guarantee.

17 (f) *Express Consent* means consent in a verifiable form, including, but
18 not limited to, writing and audio recordings.

19 (g) *Representative* means a person, other than the debtor or creditor,
20 that is duly authorized by the debtor or creditor to contact or be contacted
21 and communicate with about the debt.

22
23 Sec. 4. *Acquisition of Location Information.* – Any debt collector
24 communicating with any person other than the borrower for the purpose of
25 acquiring location information about the borrower shall:

26 (1) Identify himself, state that he is confirming or correcting location
27 information concerning the borrower, and only if expressly requested, identify
28 his employer;

29 (2) Not state that such borrower owes any debt;

30 (3) Not communicate with any such person more than once unless
31 requested to do so by such person or unless such debt collector reasonably

1 believes that the earlier response of such person is erroneous or incomplete
2 and that such person now has a correct or complete location information;

3 (4) Not communicate by post card;

4 (5) Not use any language or symbol on any envelope or in the contents
5 of any communication that indicates that the debt collector is in the debt
6 collection business or that the communication relates to the collection of debt;

7 (6) After the debt collector knows the borrower is represented by an
8 attorney with regard to the subject debt and has knowledge or, can readily
9 ascertain, such attorney's name and address, not communicate with any
10 person other than the attorney, unless the attorney fails to respond within a
11 reasonable period of time to the communication from the debt collector.

12

13 Sec. 5. *Allowable Debt Collection Practices.* – Financing companies,
14 lending companies, credit card companies, creditors, debt collectors and third
15 party service providers engaged by creditors (collectively known as 'Debt
16 Collector') may resort to all reasonable and legally permissible means to
17 collect amounts due them under the loan agreement, provided that in the
18 exercise of their rights and performance of their duties, they must observe
19 good faith and reasonable conduct, and refrain from engaging in abusive,
20 unfair, and untoward acts enumerated in this Act.

21

22 Sec. 6. *Prohibition Against Harassment or Abuse.* – A debt collector shall
23 not engage in any conduct the natural consequence of which is to harass,
24 oppress, or abuse any debtor in connection with the collection of a debt.
25 Without limiting the general application of the foregoing and without prejudice
26 to the application of the pertinent provisions of the Revised Penal Code and
27 other laws, the following conduct shall be considered a violation of this
28 section:

29 (a) The use or threat of use of violence or other criminal means to harm
30 the physical person, reputation, or property of the debtor or his/her family;

1 (b) The use of obscene or profane language or language the natural
2 consequence of which is to abuse or shame the debtor or his/her family
3 and/or which amount to a criminal act or offense under applicable laws;

4 (c) The disclosure or publication or posting of the names and other
5 personal information of the borrowers who allegedly refuse to pay debts,
6 except as may be allowed in Section 10 of this Act;

7 (d) The advertisement for sale of any debt to coerce payment of the debt;

8 (e) Causing a telephone or mobile phone to ring or engaging any person
9 in telephone or mobile phone conversation repeatedly or continuously with
10 intent to annoy, abuse or harass any person at the called number; and

11 (f) except as provided in this Act, the placement of telephone or mobile
12 phone calls without meaningful disclosure of the caller's identity.

13

14 *Sec. 7. False or Misleading Representations.* – A debt collector shall not
15 use any false, deceptive, or misleading representation or means in connection
16 with the collection of any debt. Without limiting the general application of the
17 foregoing and without prejudice to the application of pertinent provisions of
18 the Revised Penal Code and other laws, the following conduct is a violation of
19 this section:

20 (1) The unauthorized use of any badge, uniform, or facsimile thereof;

21 (2) The false representation of the following:

22 (a) The character, amount or legal status of any debt; or

23 (b) Any services rendered or compensation which may be lawfully
24 received by any debt collector for the collection of the debt;

25 (3) The false representation or implication that any individual is an
26 attorney or that any communication is from any attorney;

27 (4) The representation or implication that non-payment of any debt will
28 result in arrest or imprisonment of any person or the seizure,
29 garnishment, attachment or sale of any property or wages of any
30 person unless such action is unlawful and the debt collector or
31 creditor intends to take such action;

- 1 (5) The use of threat to take any action that cannot be legally taken;
- 2 (6) The false representation or implication that a sale, referral or other
- 3 transfer of any interest in a debt shall cause the borrower to:
- 4 (a) Lose any claim or defense to payment of the debt; or
- 5 (b) Become subject to any practice prohibited by this Act;
- 6 (7) The false representation or implication that the borrower committed
- 7 any crime or other conduct in order to disgrace the borrower;
- 8 (8) Communication or threatening to communicate to any person credit
- 9 information which is known or which should be known to be false,
- 10 including the failure to communicate that a disputed debt is
- 11 disputed;
- 12 (9) The use or distribution of any written communication which
- 13 stimulates or is falsely represented to be a document authorized,
- 14 issued or approved by any court, official, or agency of the
- 15 government, national or local, or which creates a false impression as
- 16 to its source, authorization or approval
- 17 (10) The use of any false representation or deceptive means to collect
- 18 or attempt to collect any debt or to obtain information concerning a
- 19 borrower;
- 20 (11) Except as otherwise provided for communication, to acquire
- 21 location information under Section 4 of this Act, the failure to
- 22 disclose clearly in all communications made to collect a debt or to
- 23 obtain information about a borrower, that the debt collector is
- 24 attempting to collect a debt and that any information obtained will
- 25 be used for that purpose;
- 26 (12) The false representation or implication that accounts have been
- 27 turned over to innocent purchasers for value;
- 28 (13) The use of any business, company, or organization name other
- 29 than that true name of the debt collector's business, company, or
- 30 organization; and

- (14) Give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including, but not limited to, references to the police, a law firm, prison, credit history, court proceedings or a lien or garnishment.

Sec. 8. Unfair Collection Practices. – A debt collector shall not use unfair unconscionable means to collect or attempt to collect any debt. The following conduct shall be considered a violation of this Section:

- (1) The collection of any amount (including any interest, fee, charge or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;
 - (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten (10) nor less than three (3) business days prior to such deposit;
 - (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;
 - (4) Depositing or threatening to deposit any postdated check or other postdated instrument prior to the date on such check or instrument;
 - (5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees;
 - (6) Taking or threatening to take any non-judicial action to effect dispossession or disablement of property if –
 - (a) There is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (b) There is no present right to take possession of the property; or

1 (c) The property is exempt by law from such dispossession or
2 disablement.

3 (7) Using any language or symbol, other than the debt collector's
4 address, on any envelope when communicating with a borrower by
5 use of the mails or by telegram, except that a debt collector may use
6 his name if such name does not indicate that he is in debt collection
7 business.

8

9 Sec. 9. *Other Prohibited Acts and Practices.* – No debt collector shall
10 commit any of the following prohibited acts and practices:

11 (a) Collect or attempt to collect money for a creditor except on the belief
12 in good faith that the money is due and owing by the person to the creditor;

13 (b) Fail to provide a contact number for the debtor to call when the debt
14 collector uses an automated call system to contact the debtor;

15 (c) Collect or attempt to collect a debt without providing the real name
16 of the agent or representative of the debt collector, the contact number, the
17 registered name and address of the debt collector;

18 (d) Make any arrangement with a debtor to accept a sum of money that
19 is less than the amount of the balance due and owing to a creditor as final
20 settlement without the prior express consent of the creditor;

21 (e) Fail to provide a written report on the status of the account of any
22 person with whom the debt collector transacts with;

23 (f) Make any personal call or telephone call for the purpose of collecting
24 or attempting to collect a debt on any day except between 8 a.m. to 9 p.m.;

25 (g) Directly or indirectly threaten or state an intention to proceed with
26 any action for which the debt collector does not have the prior express consent
27 of the creditor or for which there is no lawful authority;

28 (h) Continue to collect or attempt to collect money from, or continue to
29 communicate with:

1 (i) A person who has informed the debt collector that he or she is
2 not the debtor, unless the debt collector first takes all reasonable
3 precautions to ensure that the person is in fact the debtor, or

4 (ii) The debtor, when he or she has informed the debt collector by
5 any verifiable means, including, but not limited to, personal service,
6 certified mail, courier, facsimile, or e-mail, or by any other method, that
7 the debt is in dispute and that the debtor wishes the creditor to take
8 the matter to court;

9 (i) Contact a debtor's spouse, relative, neighbor, friend or acquaintance
10 unless the contact is limited to the purpose of obtaining the debtor's
11 residential address, personal telephone number or employment telephone
12 number;

13 (j) Contact the debtor's employer for any purpose other than to confirm
14 the debtor's employment status, business title and the address of the
15 business, in preparation for legal proceedings;

16 (k) Contact the debtor when he or she has notified the debt collector in
17 writing to communicate only with the debtor's representative, providing
18 therein the current address and telephone number of the same for the
19 purpose of:

20 (i) Making reasonable arrangements to discuss the debt with the
21 debt collector, and

22 (ii) Discussing the debt with the debt collector in accordance with
23 the arrangements;

24 (l) Contact a debtor at his or her place of employment where the
25 debtor has previously requested that the debt collector not to contact the
26 debtor there; *Provided* that the debtor makes reasonable arrangements to
27 discuss the debt with the debt collector, and discusses the debt with the debt
28 collector in accordance with the arrangements;

29 (m) Communicate information about the debt or the existence of the
30 debt with any person other than the debtor, a guarantor of the debt, the

1 debtor's representative or the creditor of the debt, unless the debtor has
2 expressly consented to the same;

3 (n) Charge any fee to a debtor beyond the debt that is due and owing
4 from the debtor to the creditor;

5 (o) Refuse to provide sufficient information on request of the debtor to
6 ensure that the debtor is aware of the identity of the original and current
7 creditor of the debt and the details of the debt;

8 (p) Enter into or arrange wage or salary assignments with a debtor or
9 the employer of a debtor;

10 (q) Exceed 3 unsolicited contacts on behalf of the same creditor with a
11 debtor in any period of 7 consecutive days, not including contacts with a third
12 party to locate a debtor, mistaken contact with a third party, or contacts by
13 traditional mail; or

14 (r) Cancel or alter a payment agreement with a debtor if the debtor has
15 complied with the terms of the agreement and the debtor's financial
16 circumstances have not changed materially, unless the debtor has
17 misrepresented the debtor's financial circumstances.

18

19 Sec. 10. *Prohibited Agreements.* – Any agreement entered into by the
20 debtor and the debt collector shall be deemed void if that agreement:

21 (a) Misrepresents the rights and powers of a person collecting or
22 attempting to collect a debt;

23 (b) Misrepresents the obligations or legal liabilities of a debtor; or

24 (c) Is misleading as to its true nature and purpose.

25

26 Sec. 11. *Confidentiality of Information.* – Creditors shall keep strictly
27 confidential the data on the borrower, except under the following
28 circumstances:

29 (a) Disclosure of information with the written consent of the borrower;

- 1 (b) Release, submission or exchange of customer information with other
2 financial institutions, credit information bureaus, lenders, their
3 subsidiaries and affiliates;
4 (c) Upon orders of a court of competent jurisdiction or any government
5 office or agency authorized by law;
6 (d) Disclosure by creditors to debt collectors, counsels and other agents
7 to enforce their rights against the borrower; and
8 (e) Disclosure to third parties, such as insurance companies, solely for
9 the purpose of insuring the creditor from borrower default or other
10 credit loss, and the borrower from fraud or unauthorized charges.

11
12 Sec. 12. *Issuance of Receipts.* – Every debt collector must acknowledge
13 the receipt of all cash transactions, payments made in person, or payments
14 made at the debtor's request that the debt collector collects or receives from
15 a debtor for distribution to the debtor's creditors by means of receipts that
16 must contain the following;

- 17 (a) The date the amount is collected or received;
18 (b) The name of the debtor;
19 (c) The name of the person for whom the debt collector acts on his
20 behalf; and
21 (d) The amount received from the debtor.

22
23 Sec. 13. *Settlement Agreement.* – If a debt collector reaches a settlement
24 agreement with a debtor, the debt collector must, when the amount set out in
25 the settlement agreement has been paid in full, provide to the debtor a receipt
26 containing;

- 27 (a) The amount paid;
28 (b) The name of the creditor or creditors; and
29 (c) A statement that the amount received is in final settlement of the
30 debt or debts owing.

1 Sec. 14. *Request for Accounting.* – A debt collector must provide the
2 debtor on request, with a complete accounting of all the details of the debt
3 and, if such an accounting is not in the possession of the debt collector, the
4 agency must request that the creditor provide it. If, within 30 days after
5 receiving a request for an accounting of a debt collector, the creditor has not
6 provided a complete accounting of the debt, the debt collector must:

- 7 (a) Inform the debtor in writing that it cannot provide the accounting
8 and the reasons for it, and
9 (b) Cease all collection activity for that account and not resume
10 collection activity until the accounting is provided.

11 A debtor may request a complete accounting only once every six (6)
12 months, unless the debt collector fails to provide the complete accounting as
13 requested.

14

15 Sec. 15. *Administrative Penalties.* – The Securities and Exchange
16 Commission and the Bangko Sentral ng Pilipinas shall issue their respective
17 rules and regulations for the implementation of the provisions of this Act and
18 for the imposition of reasonable administrative penalties on different
19 violations thereof.

20

21 Sec. 16. *Civil Liability.* –

22 (a) *Amount of Damages.* – Any debt collector who violates any of the
23 provisions in this Act with respect to any person shall be liable to such person
24 in an amount equal to the sum of:

25 (i) Any actual damage sustained by such person as a result of the
26 violation;

27 (ii) In the case of any action by an individual, such additional
28 damages as the court may allow, but not exceeding Thirty Thousand
29 Pesos (P30,000.00); or

30 (iii) In the case of a class action, such amount for each named
31 plaintiff as could be recovered under paragraph (a), and such amount

1 as the Court may allow for all other class members, without regard to a
2 minimum individual recovery, not to exceed the lesser of Sixty
3 Thousand Pesos (P60,000.00) or one (1) percent of the net worth of the
4 debt collector.

5 (b) *Factors to be Considered by the Court.* – In determining the amount
6 of liability in any action under paragraph (a) of this section, the court shall
7 consider, among other relevant factors:

8 (i) In any individual action under paragraph (a) (ii) of this section,
9 the frequency and persistence of non-compliance by the debt collector,
10 the nature of such non-compliance, and the extent to which such non-
11 compliance was intentional, or

12 (ii) In any class action under paragraph (a) (iii) of this section, the
13 frequency and persistence of non-compliance by the debt collector, the
14 nature of such non-compliance, the resources of the debt collector, the
15 number of persons adversely affected, and the extent to which the debt
16 collector's non-compliance was intentional.

17 (c) *Intent.* – A collector may not be held liable in any action brought
18 under this section if the debt collector shows by a preponderance of evidence
19 that the violation was not intentional and resulted from a bona fide error in
20 good faith.

21 (d) *Jurisdiction.* – An action to enforce any liability created by this Act
22 may be brought in any appropriate court using as jurisdictional basis the
23 amount of debt involved.

24
25 Sec. 17. *Separability Clause.* – If any provision of this Act is declared
26 invalid or unconstitutional, the provisions not affected thereby shall remain
27 in full force and effect.

28
29 Sec. 18. *Repealing Clause.* – All laws, presidential decrees, executive
30 orders, presidential proclamations, rules and regulations or parts thereof

1 contrary to or inconsistent with this Act are hereby repealed or modified
2 accordingly.

3

4 Sec. 19. *Effectivity.* – This Act shall take effect fifteen (15) days after its
5 publication in the Official Gazette or at least two (2) national papers of general
6 circulation.

7

8 Approved,