

THIRTEENTH CONGRESS OF THE REPUBLIC)  
OF THE PHILIPPINES )  
First Regular Session )

SENATE  
OFFICE OF THE SECRETARY

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SENATE  
S.B. No. 1448

RECEIVED BY: \_\_\_\_\_

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Introduced by Senator Miriam Defensor Santiago

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**EXPLANATORY NOTE**

There is abundant evidence of the widespread use of abusive, deceptive, and unfair debt collection practices by many creditors and debt collectors. Abusive debt collection practices have contributed to a number of unwarranted personal bankruptcies, to marital instability, to loss of jobs, and to invasions of individual privacy. Existing laws for redressing these injuries are inadequate to protect borrowers. Only article 287 of the Revised Penal Code is the law which affords protection to debtor, albeit indirectly.

The purpose of this bill is to eliminate abusive debt collection practices by creditors and debt collectors for the following reasons.

First, means, other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts;

Second, to ensure that those creditors and debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged; and

Third, to provide an adequate legal remedy to consumers against abusive debt collection practices.

  
MIRIAM DEFENSOR SANTIAGO

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**FAIR DEBT COLLECTION PRACTICES ACT**

*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 "Fair Debt Collection Practices Act."

Section 2. *Declaration of Policy.* - It is hereby declared a State policy to eliminate abusive debt collection practices and to protect consumers in general against debt collection abuses.

Section 3. *Definition of Terms.* - As used in this Act --

a) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

b) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt. The term includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

c) The term "creditor" means any person who offers or extends credit creating a debt to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

d) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or

services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

e) The term "debt collector" means any person who is engaged in business the principal purpose of which is the collection of any debt, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due him or to another. The term includes any creditor who collects his own debts. The term does not include---

- i. any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
- ii. any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
- iii. any officer or employee of government, national or local, to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
- iv. any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- v. Any attorney-at-law collecting a debt as attorney on behalf of and in the name of a client; and
- vi. Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (a) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (b) concerns a debt which was originated by such person; (c) concerns a debt which was not in default at the time it was obtained by such person; or (d) concerns a debt obtained by such person as a secured party in commercial credit transaction involving the creditor.

f. The term location information means a consumer's place of abode and his telephone number, if any, at such place, or his place of employment.

Section 4. *Acquisition of Location Information.*- Any debt collector communicating with any person other than the consumer for the purpose of acquiring information about the consumer shall:

(1) identify himself, state that he is conforming or correcting location information concerning the consumer, and, if expressly requested, identify his employer;

(2) not state such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not use any language or symbol on any language or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of debt; and

(5) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communicate from the debt collector.

Section 5. *Communication in Collection with Debt Collection.*

(a) Communication with consumer generally – Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

(1) At any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock a.m. and before 9 o'clock p.m., local time at the consumer's location, on any day of the week including Saturdays and Sundays and even holidays;

(2) If the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) At the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties – except as provided in section 4 of this Act, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate post judgment judicial remedy, a debt collector may not communicate, in communication with the collection of any debt, with the collection of any debt, with any person other than the consumer or his attorney.

(c) Ceasing communication – If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except ---

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke the a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

Section 6. *Harassment or Abuse.* - A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing and without prejudice to the application of pertinent provisions of the Revised Penal Code and other laws, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any reason.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts.

(4) The advertisement for sale of any debt to coerce payment of the debt.

Section 7. *False or misleading representations.* - A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing and without prejudice to the application of pertinent provisions of the Revised Penal Code and other laws, the following conduct is a violation of this section:

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

(2) The false representation of ---

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

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

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

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

(5) The threat to take any action that cannot be legally taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(a) lose any claim or defense to payment of the debt; or

(b) become subject to any practice prohibited by this Act.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communication or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of government, national or local, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) Except as otherwise provided for communications, to acquire location information under section 4 of this Act, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

Section 8. *Unfair Practices.* - A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing and without prejudice to the provisions of the New Civil Code, Revised Penal Code, and other laws, the following conduct is 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 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 intention to take possession of the property; or

(c) the property is exempt by law from such dispossession or disablement.

(7) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram,



except that a debt collector may use his name if such name does not indicate that he is in the debt collection business.

Section 9. (a) *Validation of Debts; Notice of Debt; Contents.* - Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing ---

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after the receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts. If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) Admission of liability. The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

Section 10. *Multiple Debts.* - If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

Section 11. *Legal Actions by Debt Collectors.* - Any debt collector who brings any legal action on a debt against any consumer shall ---

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in the place where the property or any part thereof lies; or

(2) in the case of an action not described in paragraph (1), bring such action only

(a) in the place of the execution of the contract sued upon; or

(b) in which such consumer resides at the commencement of the action.

Section 12. *Furnishing Certain Deceptive Form.* - (a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under Section 13 of this Act for failure to comply with a provision of this Act.

Section 13. *Civil liability.* - (a) Amount of damages. - Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this Act with respect to any person is liable to such person in an amount equal to the sum of --

(1) Any actual damage sustained by such person as a result of such failure;

(2) (A) In the case of any action by an individual, such additional damages as the court may allow, but not exceeding P 20,000.00; or

(B) In the case of a class action, (i) such amount for each named plaintiff as could be recovered under sub paragraph (A), and such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of P50,000.00 or 1 per centum of the net worth of the debt collector; and

(b) Factors considered by the court. - In determining the amount of liability in any action under sub-section (a) of this section, the court shall consider, among other relevant factors ---

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of non-compliance by the debt collector, the nature of such non-compliance, and the extent to which such non-compliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of non-compliance by the debt collector, the nature of such non-compliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's non-compliance was intentional.

(c) Intent. A debt collector may not be held liable in any action brought under this section if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

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

Section 14. *Separability Clause.* - If any provision or part thereof, is held invalid or unconstitutional, the reminder of the law of the provision not otherwise affected shall remain valid and subsisting.

Section 15. *Repealing Clause.* Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

Section 16. *Effectivity Clause.* This Act shall take effect fifteen (15) days after its publication in at least two (2) newspaper of general circulation.

Approved.

FN: 296