

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

04 JUL 28 P2:45

SENATE

RECEIVED BY: _____

S.B. No. 1540

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The activities of the country's lending institutions are regulated by the General Banking Law, the Central Banking Act, pertinent provisions of the New Civil Code, and such special laws as the Truth in Lending Act. In all these laws, nowhere is it provided that financial institutions and other firms engaged in the extension of credit must make credit available with fairness, impartiality, and without discrimination on the basis of sex, marital status, race creed, religion, or age.

This bill seeks to fill the gap in existing laws by requiring the country's financial institutions and other firms engaged in the extension of credit to make equally available to all credit worthy customers without regard to sex, marital status, national origin, religion, or age. A regime of equality credit extension will enhance economic stability. It will also foster friendly competition among the various financial institutions and other firms engaged in the extension of credit.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

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EQUAL CREDIT OPPORTUNITY ACT

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 the “Equal Credit Opportunity Act.”

SECTION 2. *Declaration of Policy.* – It is hereby declared a state policy to enhance economic stability and foster competition among the country’s financial institutions by requiring these and other firms engaged in the extension of credit to make credit equally available to all credit-worthy customers with fairness, impartiality, and without discrimination.

SECTION 3. *Definition of Terms.* – As used in this Act –

(1) “Adverse Action” means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

(2) “Applicant” means any person who applies to a creditor directly for an extension, renewal or continuation of credit, or applies for a credit indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(3) “Board” refers to the Central Monetary Board;

(4) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment or to purchase property or services and defer payment therefore.

(5) "Creditor" means any person who regularly extends, renews, or continues credit, any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(6) "Person" means a natural person, a corporation, a government or governmental subdivision or agency, trust, estate partnership, cooperative or association.

SECTION 4. *Activities Constituting Discrimination.* — It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) Because all or part of the applicant's income derives from dole-outs or any public assistance program; or

(3) Because the applicant has in good faith exercised any right under this Act.

SECTION 5. *Activities Not Constituting Discrimination.* — It shall not constitute discrimination for purposes of this Act for a creditor—

(1) To make an inquiry as to marital status if such inquiry is for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property; or assigning earnings;

(2) To request the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property; or assigning earnings. *Provided*, however, that this subsection shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of credit-worthiness of any applicant.

(3) To make an inquiry of the applicant's age or of whether the applicant's income derives from dole-outs or any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Board.

(4) To use any empirically derived credit system which considers age if such a system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

(5) To make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

SECTION 6. *Additional Activities Not Constituting Discrimination.* — It is not a violation of this Act for a creditor to refuse to extend credit offered pursuant to—

(1) Any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) Any credit assistance program administered by a profit organization for its members or an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by profit-making organization to meet special social needs which meets standard prescribed in regulations by the Board if such refusal is required by or made pursuant to such program.

SECTION 7. *Reason for Adverse Action; Procedure Applicable.*

(1) Within thirty (30) days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) Providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(B) Giving written notification of adverse action which discloses

i. The applicant's rights to a statement of reasons within thirty (30) days after receipt by the creditor of a request made within sixty (60) days after such notification, and

ii. The identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this Section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make specific extension of credit directly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraph (B), (C) or (D) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than one hundred and fifty (150) applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

SECTION 8. Promulgation of Regulation by Board; Establishment of Consumer Advisory Council by Board; Duties, Membership, etc., of Council. -

(1) The Board shall prescribe regulations to carry out the purposes of this Act. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this Act, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this Act any class of transactions not primarily for personal, family, or household purposes, if the Board makes an

express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this Act.

(2) The Board shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of government, national, or local, or any government-owned or controlled corporation, shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but no exceeding THREE HUNDRED PESOS (P300.00) per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

SECTION 9. *Administrative Enforcement.* - Compliance with the requirements imposed under this Act shall be enforced by:

(1) The Board, with respect to banks, including government banking institutions, savings and loan associations, and other financial institutions or firms engaged in the extension of credit.

(2) The Land Bank of the Philippines, with respect to agricultural credit union cooperatives;

(3) The Securities and Exchange Commission, with respect to brokers and dealers.

The Board shall, however, exercise overall authority in the enforcement of the requirements imposed under this Act.

SECTION 10. *Rules and Regulations by Enforcing Agencies.* - The authority of the Board to issue regulations does not impair the authority of the other agencies designated in Section 9 to make rules respecting their own procedures in enforcing compliance with the requirements imposed under this Act.

SECTION 11. *Civil Liability.* -

(1) *Individual or Class Action for Actual Damages* - Any creditor who fails to comply with any requirement imposed under this Act shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in individual capacity or as a member of a class.

(2) *Recovery of Punitive Damages in Individual and Class Actions for Actual Damages; Exemptions; Maximum Amount of Punitive Damages in Individual Actions; Limitation on Total Recovery in Class Actions; Factors Determining Amount of Award* -

(i) Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this Act shall be liable to the aggrieved applicant for punitive damages in an amount not greater than TEN THOUSAND PESOS (P10, 000.00), in addition to any actual damages provided in subsection (a) of this Section, except that in the case of a class action the total recovery under this subsection shall not exceed the amount of ONE HUNDRED THOUSAND PESOS (P100, 000.00) or one per centum (1%) of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(3) *Recovery of Costs and Attorney's Fees* - In the case of any successful action under subsection (a) or (b) of this Section, the costs of suit, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

SECTION 12. *Jurisdiction of Courts; Time for Maintenance of Action; Exceptions.* - Any action under this Act may be brought in the appropriate court using as jurisdictional basis the amount in controversy. No such action shall be brought later than two years from the date of the occurrence of the violations, except that —

(1) Whenever any agency having responsibility for administrative enforcement under Section 9 commences an enforcement proceeding within two (2) years from the date of the occurrence of the violation, or

(2) Whenever the Solicitor General commences a civil action under this section within two (2) years from the date of the occurrence of the violation.

Any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this Section not later than one (1) year after the commencement of that proceeding or action.

SECTION 13. *Request by Responsible Enforcement Agency to Solicitor General for Civil Action -*

(1) The agencies having responsibility for administrative enforcement under Section 9, if unable to obtain compliance with the requirements imposed under this Act, are authorized to refer the matter to the Solicitor General with a recommendation that an appropriate civil action be instituted

(2) When a matter is referred to the Attorney General pursuant to subsection (a) of this Section, or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this Act, the Solicitor General may bring a civil action in a court of competent jurisdiction, including injunctive relief.

SECTION 14. *Discovery of Creditor's Granting Standards.* – Nothing in this Act shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court in which an action or proceeding is brought.

SECTION 15. *Annual Reports to Congress; Contents* – Each year, the Board shall report to the Congress concerning the administration of its functions under this Act, including such recommendations as it may deem necessary or appropriate. In addition, the report of the Board shall include its assessment of the extent to which compliance with the requirements of this Act

is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative responsibilities under Section 9 of this Act.

SECTION 16. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with, the provision of this Act is hereby repealed, modified or amended accordingly.

SECTION 17. *Separability Clause.* – If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 18. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.

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