

NINETEENTH CONGRESS OF THE]
REPUBLIC OF THE PHILIPPINES]
First Regular Session]

'22 JUL 25 A11 :34

SENATE

RECEIVED BY: 

S.B. No. 813

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.

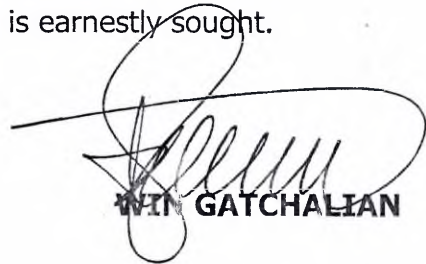
A number of unscrupulous collection agencies and debt collectors have taken advantage of borrowers by using false or misleading advertisements to lure them to borrow at unreasonable interest rates, by continuously harassing them and their phonebook contacts, or by using offensive or threatening tactics 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.

With the recent passage of Republic Act No. 11765, otherwise as the "Financial Products and Services Consumer Protection Act", financial regulators are mandated to provide consumer redress or complaints handling mechanisms while financial service

providers are now obligated to establish a financial consumer protection assistance mechanism. Notwithstanding its prohibition against employing abusive collection or debt recovery practices, a more concrete framework is needed to 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.



W. GATCHALIAN



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**AN ACT
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HARASSMENT, UNFAIR TREATMENT AND MISREPRESENTATIONS**

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 Collection
2 Practices Act".

3

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

9

10 SEC. 3. *Definition of Terms.* - For the purposes of this Act, the term:

11 (a) *Debt Collector* means any person who uses any instrumentality or any
12 business, the principal purpose of which is the collection of any debts, or who
13 regularly collects or attempts to collect, directly or indirectly, debts owed or due or
14 asserted to be owed or due another. It includes any creditor who, in the process of
15 collecting his own debts, uses any name other than his own, would indicate that a

1 third person is collecting or attempting to collect such debt. It is likewise
2 interchangeable with a debt collection agency or a third-party service provider
3 engaged by a creditor for the purpose of collecting debts owed by another. The
4 definition does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16
17 SEC. 4. *Acquisition of Location Information.* - Any debt collector communicating
18 with any person other than the borrower for the purpose of acquiring location
19 information about the borrower shall:

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

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

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

27 (4) Not communicate by post card;

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

31 (6) After the debt collector knows the borrower is represented by an attorney
32 with regard to the subject debt and has knowledge or, can readily ascertain, such

1 attorney's name and address, not communicate with any person other than the
2 attorney, unless the attorney fails to respond within a reasonable period of time to
3 the communication from the debt collector.
4

5 *SEC. 5. Allowable Debt Collection Practices.* - Financing companies, lending
6 companies, credit card companies, creditors, debt collectors and third party service
7 providers engaged by creditors (collectively known as 'Debt Collector') may resort to
8 all reasonable and legally permissible means to collect amounts due them under the
9 loan agreement, provided that in the exercise of their rights and performance of their
10 duties, they must observe good faith and reasonable conduct, and refrain from
11 engaging in abusive, unfair, and untoward acts enumerated in this Act.
12

13 *SEC. 6. Prohibition Against Harassment or Abuse.* - A debt collector shall not
14 engage in any conduct the natural consequence of which is to harass, oppress, or
15 abuse any debtor in connection with the collection of a debt. Without limiting the
16 general application of the foregoing and without prejudice to the application of the
17 pertinent provisions of the Revised Penal Code and other laws, the following conduct
18 shall be considered a violation of this section:

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

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

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

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

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

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

1 SEC. 7. *False or Misleading Representations.* — A debt collector shall not
2 use any false, deceptive, or misleading representation or means in connection with
3 the collection of any debt. Without limiting the general application of the foregoing
4 and without prejudice to the application of pertinent provisions of the Revised Penal
5 Code and other laws, the following conduct is a violation of this section:

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

7 (2) The false representation of the following:

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

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

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

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

17 (5) The use of threat to take any action that cannot be legally taken;

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

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

21 (b) Become subject to any practice prohibited by this Act;

22 (7) The false representation or implication that the borrower committed any
23 crime or other conduct in order to disgrace the borrower;

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

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

31 (10) The use of any false representation or deceptive means to collect or
32 attempt to collect any debt or to obtain information concerning a borrower;

1 (11) Except as otherwise provided for communication, to acquire location
2 information under Section 4 of this Act, the failure to disclose clearly in all
3 communications made to collect a debt or to obtain information about a borrower,
4 that the debt collector is attempting to collect a debt and that any information
5 obtained will be used for that purpose;

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

8 (13) The use of any business, company, or organization name other than that
9 true name of the debt collector's business, company, or organization; and

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

13
14 *SEC. 8. Unfair Collection Practices.* — A debt collector shall not use unfair or
15 unconscionable means to collect or attempt to collect any debt. The following conduct
16 shall be considered a violation of this Section:

17 (1) The collection of any amount (including any interest, fee, charge or expense
18 incidental to the principal obligation) unless such amount is expressly authorized by
19 the agreement creating the debt or permitted by law;

20 (2) The acceptance by a debt collector from any person of a check or other
21 payment instrument postdated by more than five (5) days unless such person is
22 notified in writing of the debt collector's intent to deposit such check or instrument
23 not more than ten (10) nor less than three (3) business days prior to such deposit;

24 (3) The solicitation by a debt collector of any postdated check or other postdated
25 payment instrument for the purpose of threatening or instituting criminal prosecution;

26 (4) Depositing or threatening to deposit any postdated check or other postdated
27 instrument prior to the date on such check or instrument;

28 (5) Causing charges to be made to any person for communications by
29 concealment of the true purpose of the communication. Such charges include, but
30 are not limited to, collect telephone calls and telegram fees;

31 (6) Taking or threatening to take any non-judicial action to effect dispossession
32 or disablement of property if —

1 (a) There is no present right to possession of the property claimed as
2 collateral through an enforceable security interest;

3 (b) There is no present right to take possession of the property; or

4 (c) The property is exempt by law from such dispossession or
5 disablement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (i) Making reasonable arrangements to discuss the debt with the debt
18 collector, and

19 (ii) Discussing the debt with the debt collector in accordance with the
20 arrangements;

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

26 (m) Communicate information about the debt or the existence of the debt with
27 any person other than the debtor, a guarantor of the debt, the debtor's representative
28 or the creditor of the debt, unless the debtor has expressly consented to the same;

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

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

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

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

9 (r) Cancel or alter a payment agreement with a debtor if the debtor has
10 complied with the terms of the agreement and the debtor's financial circumstances
11 have not changed materially, unless the debtor has misrepresented the debtor's
12 financial circumstances.

13
14 Sec. 10. *Prohibited Agreements.* — Any agreement entered into by the debtor
15 and the debt collector shall be deemed void if that agreement:

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

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

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

20
21 Sec. 11. *Confidentiality of Information.* — Creditors shall keep strictly
22 confidential the data on the borrower, except under the following circumstances:

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

24 (b) Release, submission or exchange of customer information with other
25 financial institutions, credit information bureaus, lenders, their subsidiaries and
26 affiliates;

27 (c) Upon orders of a court of competent jurisdiction or any government office
28 or agency authorized by law;

29 (d) Disclosure by creditors to debt collectors, counsels and other agents to
30 enforce their rights against the borrower; and

1 (e) Disclosure to third parties, such as insurance companies, solely for the
2 purpose of insuring the creditor from borrower default or other credit loss, and the
3 borrower from fraud or unauthorized charges.
4

5 *Sec. 12. Issuance of Receipts.* — Every debt collector must acknowledge the
6 receipt of all cash transactions, payments made in person, or payments made at the
7 debtor's request that the debt collector collects or receives from a debtor for
8 distribution to the debtor's creditors by means of receipts that must contain the
9 following;

10 (a) The date the amount is collected or received;

11 (b) The name of the debtor;

12 (c) The name of the person for whom the debt collector acts on his behalf; and

13 (d) The amount received from the debtor.
14

15 *Sec. 13. Settlement Agreement.* — If a debt collector reaches a settlement
16 agreement with a debtor, the debt collector must, when the amount set out in the
17 settlement agreement has been paid in full, provide to the debtor a receipt containing;

18 (a) The amount paid;

19 (b) The name of the creditor or creditors; and

20 (c) A statement that the amount received is in final settlement of the debt or
21 debts owing.
22

23 *Sec. 14. Request for Accounting.* - A debt collector must provide the debtor on
24 request, with a complete accounting of all the details of the debt and, if such an
25 accounting is not in the possession of the debt collector, the agency must request
26 that the creditor provide it. If, within thirty (30) days after receiving a request for an
27 accounting of a debt collector, the creditor has not provided a complete accounting
28 of the debt, the debt collector must:

29 (a) Inform the debtor in writing that it cannot provide the accounting and the
30 reasons for it, and

31 (b) Cease all collection activity for that account and not resume collection
32 activity until the accounting is provided.

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

3
4 *Sec. 15. Administrative Penalties.* - The Securities and Exchange Commission
5 and the Bangko Sentral ng Pilipinas shall issue their respective rules and regulations
6 for the implementation of the provisions of this Act and for the imposition of
7 reasonable administrative penalties on different violations thereof

8
9 *Sec. 16. Civil Liability.* —

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

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

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

18 (iii) In the case of a class action, such amount for each named plaintiff
19 as could be recovered under paragraph (a), and such amount as the Court
20 may allow for all other class members, without regard to a minimum individual
21 recovery, not to exceed the lesser of Sixty Thousand Pesos (P60,00000) or one
22 (1) percent of the net worth of the debt collector.

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

26 (i) In any individual action under paragraph (a) (ii) of this section, the
27 frequency and persistence of non-compliance by the debt collector, the nature
28 of such non-compliance, and the extent to which such noncompliance was
29 intentional, or

30 (ii) In any class action under paragraph (a) (iii) of this section, the
31 frequency and persistence of non-compliance by the debt collector, the nature
32 of such non-compliance, the resources of the debt collector, the number of

1 persons adversely affected, and the extent to which the debt collector's non-
2 compliance was intentional.

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

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

9
10 Sec. 17. *Separability Clause.* - If any provision of this Act is declared invalid or
11 unconstitutional, the provisions not affected thereby shall remain in full force and
12 effect.

13
14 Sec. 18. *Repealing Clause.* — All laws, presidential decrees, executive orders,
15 presidential proclamations, rules and regulations or parts thereof contrary to or
16 inconsistent with this Act are hereby repealed or modified accordingly.

17
18 Sec. 19. *Effectivity.* — This Act shall take effect fifteen (15) days after its
19 publication in the Official Gazette or at least two (2) national papers of general
20 circulation.

Approved,