

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



Senate  
Office of the Secretary

'13 SEP 10 P3:12

SENATE  
S. No. 1620

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Introduced by Senator Miriam Defensor Santiago

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#### EXPLANATORY NOTE

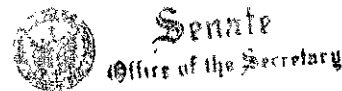
There is abundant evidence of the widespread use of abusive, deceptive, and unfair debt collection practices by many creditors and debt collectors. Abusive debt collection practices have contributed to a number of unwarranted personal bankruptcies, to marital instability, to loss of jobs, and to invasions of individual privacy. Existing laws are inadequate to protect borrowers. In fact, the borrowers' only recourse is Article 287 of the Penal Code.

The purpose of this bill is to eliminate abusive debt collection practices by creditors and debt collectors through the following actions: first, by promoting means, other than misrepresentation or other abusive debt collection practices that are available for the effective collection of debts; second, by ensuring that creditors and debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged; and third, by providing adequate legal remedy to consumers against abusive debt collection practices.\*

*mir*  
*Miriam Defensor Santiago*  
MIRIAM DEFENSOR SANTIAGO

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\* This bill was originally filed during the Thirteenth Congress, First Regular Session.



13 SEP 10 P3:13

SENATE  
S. No. 1620

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Introduced by Senator Miriam Defensor Santiago

1 AN ACT  
2 PROVIDING FOR FAIR DEBT COLLECTION PRACTICES AND REQUIRING DEBT  
3 COLLECTORS TO OBSERVE SUCH PRACTICES

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

4 SECTION 1. *Short Title.* - This Act shall be known as the "Fair Debt Collection Practices  
5 Act."

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

9 SECTION 3. *Definition of Terms.* -For the purpose of this Act, the term:

10 (A) "Communication" means the conveying of information regarding a debt directly  
11 or indirectly to any person through any medium;

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

15 (C) "Creditor" means any person who offers or extends credit creating a debt to  
16 whom a debt is owed, but such term does not include any person to the extent that he receives an  
17 assignment or transfer of a debt in default solely for the purpose of facilitating collection of such  
18 debt for another;

19 (D) "Debt" means any obligation or alleged obligation of a consumer to pay money  
20 arising out of a transaction in which the money, property, insurance, or services which are the

1 subject of the transaction are primarily for personal, family, or household purposes, whether or  
2 not such obligation has been reduced to judgment;

3 (E) "Debt collector" means any person who is engaged in business the principal  
4 purpose of which is the collection of any debt, or who regularly collects or attempts to collect,  
5 directly or indirectly, debts owed or due or asserted to be owed or due him or to another,  
6 including any creditor who collects his own debts.

7 The term does not include -

- 8 (1) Any officer or employee of a creditor while, in the name of the creditor,  
9 collecting debts for such creditor;
- 10 (2) Any person while acting as a debt collector for another person, both of  
11 whom are related by common ownership or affiliated by corporate control,  
12 if the person acting as a debt collector does so only for persons to whom it  
13 is so related or affiliated and if the principal business of such person is not  
14 the collection of debts;
- 15 (3) Any officer or employee of government, national or local, to the extent  
16 that collecting or attempting to collect any debt is in the performance of  
17 his official duties;
- 18 (4) Any person while serving or attempting to serve legal process on any other  
19 person in connection with the judicial enforcement of any debt;
- 20 (5) Any attorney-at-law collecting a debt as attorney on behalf of and in the  
21 name of a client; and
- 22 (6) Any person collecting or attempting to collect any debt owed or due or  
23 asserted to be owed or due another to the extent such activity -
  - 24 (a) Is incidental to a bona fide fiduciary obligation or a bona fide  
25 escrow arrangement;
  - 26 (b) Concerns a debt which was originated by such person;
  - 27 (c) Concerns a debt which was not in default at the time it was  
28 obtained by such person;

1 (d) Concerns a debt obtained by such person as a secured party in  
2 commercial credit transaction involving the creditor. The term  
3 location information means a consumer's place of abode and his  
4 telephone number, if any, at such place, or his place of  
5 employment.

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

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

11 (B) Not state such consumer owes any debt;

12 (C) Not communicate with any such person more than once unless requested to do so  
13 by such person or unless the debt collector reasonably believes that the earlier response of such  
14 person is erroneous or incomplete and that such person now has correct or complete location  
15 information.

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

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

23 SECTION 5. *Communication in Collection with Debt Collection.* -

24 (A) *Communication with Consumer.* - Without the prior consent of the consumer  
25 given directly to the debt collector or the express permission of a court of competent jurisdiction,

1 a debt collector may not communicate with a consumer in connection with the collection of any  
2 debt -

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

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

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

18 (B) *Communication with Third Parties.* - Except as provided in section 4 of this Act,  
19 without the prior consent of the consumer given directly to the debt collector, or the express  
20 permission of a court of competent jurisdiction, or as reasonably necessary to effectuate post  
21 judgment judicial remedy, a debt collector may not communicate, in communication with the  
22 collection of any debt, with the collection of any debt, with any person other than the consumer  
23 or his attorney.

24 (C) *Ceasing Communication.* - If a consumer notifies a debt collector in writing that  
25 the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further  
26 communication with the consumer, the debt collector shall not communicate further with the  
27 consumer with respect to such debt, except --

- 1 (1) To advise the consumer that the debt collectors further efforts are being  
2 terminated;
- 3 (2) To notify the consumer that the debt collector or creditor may invoke  
4 specified remedies which are ordinarily invoked by such debt collector or  
5 creditor; or
- 6 (3) Where applicable, to notify the consumer that the debt collector or creditor  
7 intends to invoke a specified remedy. If such notice from the consumer is  
8 made by mail, notification shall be complete upon receipt.

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

- 14 (A) The use or threat of use of violence or other criminal means to harm the physical  
15 person, reputation, or property of any reason;
- 16 (B) The use of obscene or profane language or language the natural consequence of  
17 which is to abuse the hearer or reader;
- 18 (C) The publication of a list of consumers who allegedly refuse to pay debts; or
- 19 (D) The advertisement for sale of any debt to coerce payment of the debt.

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

- 25 (A) The unauthorized use of any badge, uniform, or facsimile thereof.
- 26 (B) The false representation of -

- 1           (1)    The character, amount, or legal status of any debt; or
- 2           (2)    Any services rendered or compensation which may be lawfully received
- 3                    by any debt collector for the collection of the debt.
- 4           (C)    The false representation or implication that any individual is an attorney or that
- 5 any communication is from an attorney.
- 6           (D)    The representation or implication that non-payment of any debt will result in
- 7 arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any
- 8 property or wages of any person unless such action is unlawful and the debt collector or creditor
- 9 intends to take such action.
- 10          (E)    The threat to take any action that cannot be legally taken.
- 11          (F)    The false representation or implication that a sale, referral, or other transfer of any
- 12 interest in a debt shall cause the consumer to:
- 13                (1)    Lose any claim or defense to payment of the debt; or
- 14                (2)    Become subject to any practice prohibited by this Act.
- 15          (G)    The false representation or implication that the consumer committed any crime or
- 16 other conduct in order to disgrace the consumer.
- 17          (H)    Communication or threatening to communicate to any person credit information
- 18 which is known or which should be known to be false, including the failure to communicate that
- 19 a disputed debt is disputed,
- 20          (I)    The use or distribution of any written communication which simulates or is
- 21 falsely represented to be a document authorized, issued, or approved by any court, official, or
- 22 agency of government, national or local, or which creates a false impression as to its source,
- 23 authorization, or approval.
- 24          (J)    The use of any false representation or deceptive means to collect or attempt to
- 25 collect any debt or to obtain information concerning a consumer.
- 26          (K)    Except as otherwise provided for communications, to acquire location information
- 27 under section 4 of this Act, the failure to disclose clearly in all communications made to collect a

1 debt or to obtain information about a consumer, that the debt collector is attempting to collect a  
2 debt and that any information obtained will be used for that purpose.

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

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

7 SECTION 8. *Unfair Practices.* - A debt collector may not use unfair or unconscionable  
8 means to collect or attempt to collect any debt. Without limiting the general application of the  
9 foregoing and without prejudice to the provisions of the Civil Code, Penal Code, and other laws,  
10 the following conduct is a violation of this section:

11 (A) The collection of any amount, including any interest, fee, charge, or expense  
12 incidental to the principal obligation, unless such amount is expressly authorized by the  
13 agreement creating the debt or permitted by law;

14 (B) The acceptance by a debt collector from any person of a check or other payment  
15 instrument postdated by more than five days unless such person is notified in writing of the debt  
16 collector's intent to deposit such check or instrument not more than ten nor less than three  
17 business days prior to such deposit;

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

20 (D) Depositing or threatening to deposit any postdated check or other postdated  
21 instrument prior to the date on such check or instrument;

22 (E) Causing charges to be made to any person for communications by concealment of  
23 the true purpose of the communication, including, but not limited to, collect telephone calls and  
24 telegram fees;

25 (F) Taking or threatening to take any non-judicial action to effect dispossession or  
26 disablement of property if -



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

3           (2)    There is no present intention to take possession of the property; or

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

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

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

13           (A)    The amount of the debt;

14           (B)    The name of the creditor to whom the debt is owed;

15           (C)    A statement that unless the consumer, within thirty days after the receipt of the  
16 notice; disputes the validity of the debt, or any portion thereof, the debt will be assumed to be  
17 valid by the debt collector

18           (D)    A statement that if the consumer notifies the debt collector in writing within the  
19 thirty-day period that the debt, or any portion thereof, is disputed the debt collector will obtain  
20 verification of the debt or a copy of a judgment against the consumer and a copy of such  
21 verification or judgment will be mailed to the consumer by the debt collector; and

22           (E)    A statement that, upon the consumer's written request within the thirty-day  
23 period, the debt collector will provide the consumer with the name and address of the original  
24 creditor, if different from the current creditor. If the consumer notifies the debt collector in  
25 writing, within the thirty (30) day period described above, that the debt or any portion thereof is  
26 disputed, or that the consumer requests the name and address of the original creditor, the debt  
27 collector shall cease collection of the debt, or any disputed portion thereof, until the debt

1 collector obtains verification of the debt or a copy of a judgment, or the name and address of the  
2 original creditor, is mailed to the consumer by the debt collector.

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

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

9 SECTION 11. *Venue of Legal Actions by Debt Collectors.* - Any debt collector who  
10 brings any legal action on a debt against any consumer shall --

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

14 (B) In the case of an action not described in paragraph (A), bring such action only in  
15 the place of the execution of the contract sued upon; or in which such consumer resides at the  
16 commencement of the action.

17 SECTION 12. *Furnishing Deceptive Forms.* - It is unlawful to design, compile, and  
18 furnish any form knowing that such form would be used to create the false belief in a consumer  
19 that a person other than the creditor of such consumer is participating in the collection of or in an  
20 attempt to collect such consumer allegedly owes such creditor, when in fact such person is not so  
21 participating.

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

1 SECTION 13. *Civil Liability.* .-

2 (A) *Amount of Damages.* - Except as otherwise provided by this section, any debt  
3 collector who fails to comply with any provision of this Act with respect to any person is liable  
4 to such person in an amount equal to the sum of -

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

6 (2) In the case of any action by an individual, such additional damages as the  
7 court may allow, but not exceeding Twenty Thousand Pesos (P20,000.00);

8 or

9 (3) In the case of a class action, such amount for each named plaintiff as could  
10 be recovered under paragraph (A), and such amount as the court may  
11 allow for all other class members, without regard to a minimum individual  
12 recovery, not to exceed the lesser of Fifty Thousand Pesos (P50,000.00) or  
13 one (1) per centum of the net worth of the debt collector; and

14 (B) *Factors Considered by the Court.* - In determining the amount of liability in any  
15 action under paragraph (A) of this section, the court shall consider, among other relevant factors:

16 (1) In any individual action under paragraph (A)(2) of this section, the  
17 frequency and persistence of non-compliance by the debt collector, the  
18 nature of such noncompliance, and the extent to which such non-  
19 compliance was intentional; or

20 (2) In any class action under paragraph (A)(2) of this section, the frequency  
21 and persistence of non-compliance by the debt collector, the nature of such  
22 non-compliance, the resources of the debt collector, the number of persons  
23 adversely affected, and the extent to which the debt collector's non-  
24 compliance was intentional.

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

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

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

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

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

Approved,

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