

SENATE

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Senate Bill No. 534

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Introduced by Senator Juan Miguel F. Zubiri

**AN ACT
PROVIDING FOR THE PROTECTION OF FINANCIAL CONSUMERS AND FOR
OTHER PURPOSES**

EXPLANATORY NOTE


This technologically driven globalized age has drastically altered our methods of consumption, making it possible for anyone to purchase products with a single click. These days, it seems, to exist is to consume—and to consume at an instant. Mobile applications have increasingly become part and parcel of everyone's daily lives, as they provide practical intermediary services for food, transport, rental, and shopping needs, among others. Even underage persons with no stream of income can make extravagant online purchases through easily accessible applications that promise staggered payment schemes.

Indeed, many companies have taken advantage of this lightly regulated global market, and have preyed on vulnerable individuals to lure them into debt-making traps. Honest people save up their hard-earned money, only to get duped by dishonest financial investment entities in the end.

To protect the interest of these consumers, it is time now to strengthen the State's regulatory powers in the financial service arena. To this end, the bill seeks to invest rulemaking, surveillance and inspection, market monitoring, and enforcement powers to the nation's financial regulators, namely the Bangko Sentral ng Pilipinas, the Securities and Exchange Commission, and the Insurance Commission. The Cooperative Development Authority shall be granted such powers as well, in order to oversee the financial services of the cooperative sector.

With a body of financial regulators wielding strengthened and expanded regulatory powers as they uphold fair market practices, consumers are certain to enjoy financially safe and non-exploitative transactions, as is their right.

In view of the foregoing, approval of this bill is urgently sought.



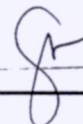
JUAN MIGUEL F. ZUBIRI

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**AN ACT
PROVIDING FOR THE PROTECTION OF FINANCIAL CONSUMERS AND FOR
OTHER PURPOSES**

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

1 **SECTION 1. Short Title.** This Act shall be known as "*Financial Consumer*
2 *Protection Act*".

3 **SEC. 2. Declaration of Policy.** – It is the policy of the state to ensure that
4 appropriate mechanisms are in place to protect the interest of financial consumers under
5 the conditions of transparency, fair and sound market conduct, and fair, reasonable, and
6 effective handling of financial consumer disputes, which are aligned with global best
7 practices. These mechanisms reinforce their confidence in the financial market and foster
8 the stability of the Philippine financial system.

9 **SEC. 3. Definition of terms.** – As used in this Act, the following terms shall
10 mean:

- 11 a) "*Consumer*" refers to a person who is a purchaser, lessee, recipient or
12 prospective purchaser, lessor or recipient of consumer products and services.
13 A "*Financial Consumer*" on the other hand, refers to a natural person or micro,
14 small or medium-sized enterprise that had or has current or prospective
15 financial transaction with financial entities pertaining to financial products and
16 services.
- 17 b) "*Financial Consumer Complaint*" refers to an expression of dissatisfaction filed
18 by a financial consumer against a financial person relative to a financial product
19 or service in which a response or resolution is expected.
- 20 c) "*Financial Education*" refers to the process by which financial consumers
21 improve their understanding of financial products, concepts and risks, and
22 develop the skills and confidence to become more aware of financial risks and
23 opportunities to make informed choices and to take other effective actions to

1 improve their financial well-being. This goes beyond the financial information
2 and advice given in a contractual relationship between the financial person and
3 the consumers.

- 4 d) "*Financial Provider*" refers to an entity that provides financial products which
5 are being supervised or regulated by any of the implementing government
6 agencies enumerated in this Act.
- 7 e) "*Financial Literacy*" refers to a combination of financial awareness, knowledge,
8 skills, attitude and behaviors necessary to make sound financial decisions and
9 ultimately achieve financial well-being.
- 10 f) "*Financial Person*" refers to a person, natural or juridical, supervised or
11 regulated by any of the implementing government agencies enumerated in this
12 Act. This term shall include financial advisers as defined under Section 7 of this
13 Act.
- 14 g) "*Financial Products or Services*" refer to financial products or services which
15 are developed or marketed by a financial person which may include, but are
16 not limited to savings, credit, insurance, investments, payments, remittances
17 and other similar products and services.
- 18 h) "*Financial Regulators*" refer to the implementing government agencies of this
19 Act, namely, the Bangko Sentral ng Pilipinas (BSP), Securities and Exchange
20 Commission (SEC), Insurance Commission (IC), and the Cooperative
21 Development Authority (CDA).
- 22 i) "*Marketing*" refers to the act of communicating, offering, promoting,
23 advertising or delivering of financial products and services by financial entities.
- 24 j) "*Micro, Small or Medium-sized Enterprise (MSME)*" refers to any business
25 activity or enterprise engaged in industry, agri-business and/or services
26 whether single proprietorship, cooperative, partnership or corporation as
27 defined under R.A. No. 9501, as amended, or the Magna Carta for Micro, Small,
28 or Medium-sized Enterprises. Such definition shall be subject to review and
29 adjustment by the Magna Carta for Micro, Small or Medium-sized Enterprise
30 (MSMED) Council.

31 **SEC. 4. *Scope and Coverage.*** – This Act applies to all financial products and
32 services offered or marketed by any financial person.

33 **SEC. 5. *Financial Regulators*** – The BSP, SEC, and IC shall enforce the
34 provisions of this Act on all financial entities they supervise or regulate by virtue of their
35 respective charters, special laws and amendments thereto. The CDA shall be considered
36 an implementing government agency of this Act only with respect to cooperatives offering

1 financial services such as but not limited to savings and credit except insurance
2 cooperatives which shall be under the jurisdiction of the Insurance Commission for
3 purposes of this Act.

4 **SEC. 6. Powers of the Financial Regulators.** – Financial regulators shall have
5 the following powers:

6 A. *Rulemaking* – The implementing government agencies shall have the authority
7 to formulate their own specific standards and rule for the application of the
8 provisions of this Act to the specific financial products within their jurisdiction.
9 Likewise, they may issue their respective rules of procedure concerning
10 administrative actions arising from the implementation of this Act.

11 B. *Surveillance and Inspection* – The implementing government agencies may
12 conduct off-site surveillance and on-site examination on their respective
13 supervised financial entities to ascertain that the provision of this Act are
14 complied with. The examination for financial consumer protection compliance
15 could be conducted separately from examination of prudential regulations
16 compliance.

17 C. *Market Monitoring* – The implementing government agencies may require
18 reports or documents, as needed, from their respective supervised financial
19 entities and their third party agents/service providers. The implementing
20 government agencies can also access relevant data about financial products,
21 services and markets from other government agencies in connection with
22 market monitoring.

23 D. *Enforcement* – The implementing government agencies shall have the authority
24 to impose enforcement actions on their respective supervised financial entities
25 for non-compliance with this Act. Such enforcement actions may include but
26 are not limited to the following:

27 a. Restriction on the ability of the supervised financial person to continue
28 to collect fees or charges in case of excessive fees or charges imposed
29 by the financial person;

30 b. Disqualification of directors, officers, or employees of the supervised
31 financial person responsible for violations of the provisions of this title
32 and its Implementing Rules and Regulations (IRR);

33 c. Imposition of fines or penalties for any non-compliance with or breach
34 of this Act and its IRR;

35 d. Issuance of a cease and desist order without the necessity of a prior
36 hearing if in the implementing government agency's judgement, the act

1 or practice, unless restrained, may cause grave or irreparable injury or
2 prejudice to the consumer or may amount to fraud or violation of the
3 provisions of this Act and its IRR; and

- 4 e. Suspension of operation of any supervised financial person in relation to
5 a particular consumer financial product or service when in the Financial
6 Regulator's judgement based on findings, such person is operating in
7 violation of the provisions of this Act and its IRR.

8 The Financial Regulators may exercise such other powers as may be
9 provided by law as well as those which may be implied from, or which are
10 necessary or incidental to the carrying out of, the express power granted the
11 Financial Regulators to achieve the objectives and purposes of this Act.

12 **SEC. 7. *Investment Adviser*** – Investment Advisers shall be subject to the
13 rules and regulations to be issued by the SEC.

14 Investment Adviser shall mean any person who, for compensation, engages in
15 the business of advising others, either directly or through publications or writings, as
16 to the value of investment products or as to the advisability of investing in, purchasing,
17 or selling investment products, or who, for compensation and as part of a regular
18 business, issues or promulgates analyses or reports concerning investment products;
19 but does not include the following:

- 20 A. Trust Department/Unit of Banks;
21 B. Lawyer, accountant, engineer, or teacher whose performance of such
22 services is solely incidental to the practice of this profession;
23 C. Any investment banker or broker dealer whose performance of such
24 services is solely incidental to the conduct of his business as such
25 investment banker or broker dealer and who receives no special
26 compensation therefor;
27 D. The publisher of any bona fide newspaper, news magazine or business or
28 financial publication of general and regular circulation; and
29 E. Such other persons as the SEC may designate by rules and regulations or
30 order.

31 **SEC. 8. *Duties and responsibilities of Financial Persons.*** -

- 32 A. *Board and Senior Management Oversight* – The Board of Directors (BOD)
33 and Senior Management of every financial person shall oversee the
34 implementation of the Compliance Management System (CMS) of the
35 person that effectively ensure conformity with this Act and shall provide the

1 means by which a financial person shall identify, measure, monitor, and
2 control consumer protection risks inherent to its operations.

3 B. *Appropriate product design and delivery* – The financial person shall
4 continuously evaluate their financial products and services to ensure that
5 they are appropriately targeted to the needs, understanding and capacity
6 of both their markets and their clients. This shall include, among others, the
7 following:

8 a. *Affordability and suitability assessments* – The financial person
9 should have written procedures for determining whether a particular
10 financial consumer product or service is suitable and affordable for a
11 client. This shall include determination of whether the amount and
12 terms of the offered financial product or service allow the client, in
13 terms of the individual ability, to meet the obligations with a low
14 probability of serious hardship and reasonable prospect that the
15 financial product or service will provide value to its client. For the
16 purpose of extending credit, this assessment will include measures
17 to prevent over-indebtedness.

18 b. *Cooling-off period* – A financial person is expected to adopt a clear
19 cooling-off policy, as may be prescribed by law or by rules and
20 regulations issued by the relevant financial regulator upon its
21 determination that a cooling-off period is necessary for a particular
22 product subject of regulation by such financial regulator. Such
23 policies should, among others, provide a client with a cooling-off
24 period that will allow a client to consider the costs and risks of a
25 financial product or service, free from the pressure of the sales team
26 of the financial person. The length of the cooling-off period should
27 be individually determine by a financial person based on reasonable
28 expectation of the time require for a client to fully evaluate all the
29 terms and risks of the financial product or service and contact others
30 such as but not limited to family members or business partners, who
31 may be affected by its terms and conditions, unless a minimum or
32 fixed period is required by the financial regulators for compliance by
33 the financial provider or incorporation in its contract. Short period
34 transaction or contracts may be allowed to have no cooling-off period
35 which shall be provided in the regulation by the financial regulators.
36 During the cooling-off period, the financial consumer may cancel or

1 return the contract without penalty; however, nothing herein
2 prevents the financial provider from recovering the processing fees
3 incurred. The financial providers are prohibited from engaging in
4 practices that unreasonably burden the financial consumer in the
5 exercise of the right of cancellation during the cooling-off period. If
6 the financial product is a contract of insurance, the right of return
7 cannot be exercised after the financial consumer has made a claim
8 under the contract of insurance.

9 c. *Prepayment of loans and other credit accommodations* – A borrower
10 may, at any time prior to the agreed maturity date prepay, in whole
11 or in part, provided that any cost or fees charged to the borrower for
12 such pre-payment shall be disclosed as required under the
13 succeeding provision of this Section on transparency, disclosure, and
14 responsible pricing.

15 C. *Transparency, disclosure, and responsible pricing* – Financial persons must
16 ensure that they adopt disclosure principles in their communications with
17 financial consumers that will include the use of clear and concise language
18 understood by the target clients. This must also include updated and
19 accurate product or service that should be made in a consistent manner to
20 facilitate comparison between similar financial products and services across
21 the industry.

22 Sufficient product disclosure must be provided before contracting the
23 product or service to give the client enough basis and time for review. Any
24 change in the terms of conditions of a product or service shall be provided
25 to the client.

26 In their advertising, Financial Providers shall disclose that they are
27 regulated and the advertising materials must identify the relevant Financial
28 Regulator.

29 Financial Providers are legally responsible for all statements made in
30 the marketing and sales materials that they produce related to their
31 products.

32 *Responsible pricing* – In addition to the requirements of R.A. No.
33 3765 or The Truth in Lending Act, a financial person is required to document
34 the reasons for setting the price of each financial product or service. Where
35 the pricing procedures of a financial person are inadequate or unreasonably

1 high, the concerned implementing government agency shall impose
2 appropriate corrective actions.

3 D. *Fair and respectful treatment of clients* – Client selection and treatment
4 shall not involve discrimination on the basis of personal characteristics or
5 personal affiliations: *Provided*, That financial entities are not precluded from
6 instituting the necessary risk mitigating measures.

7 Personal characteristics refer to race, ethnicity, origin, gender,
8 disability, and sexual orientation. Personal affiliation denotes religious
9 affiliation or political affiliation.

10 E. *Financial consumer protection assistance mechanism* – Each financial
11 person must establish a single consumer assistance handling unit to render
12 free assistance to financial consumers on financial transactions concerns.
13 This shall include handling of complaints, inquiries and requests. Financial
14 consumers who are unsatisfied with the financial person’s handling of their
15 complaints, inquiries and requests, may elevate their concerns to the
16 financial regulators that supervises the financial person concerned.

17 **SEC. 9. Bundling of Products.** – When a borrower is obliged by the financial
18 provider to purchase any product, including an insurance policy, as a pre-condition
19 for receiving a loan from the financial provider, the borrower should be free to
20 choose the provider of the product and this information should be known to the
21 borrower.

22 **SEC. 10. Training.** – Staff of financial providers who deal directly with
23 consumers must receive adequate training, suitable for the complexity of the
24 products or services they sell. Financial intermediaries are qualified as appropriate
25 for the complexity of the financial product or service they sell.

26 **SEC. 11. Alternative dispute resolution.** – The redress mechanism before
27 the financial regulator shall be mediatory in nature. If the financial consumer is
28 unsatisfied with the result of the mediation conducted by the financial regulator,
29 the financial consumer may bring the matter before an accredited external
30 arbitrator of the financial regulator concerned, if any, prior to the filing of the
31 appropriate action in court or tribunal.

32 **SEC. 12. No waiver of rights.** – No provision of a contract for a consumer
33 financial product or service shall be lawful or enforceable if such provision waives
34 or otherwise deprives a client of a legal right to sue the financial service provider,
35 receive information, have their complaints addressed and resolved, have their non-

1 public client data protected or cancel the use of the consumer financial product or
2 service without an unreasonable penalty.

3 **SEC. 13. *Non-exemption from compliance.*** – Notwithstanding any prior
4 stipulation in a contract, financial entities shall not be exempted from compliance
5 with the provisions of this Act, or deprive financial consumers under this Act.

6 **SEC. 14. *Liability of a financial person on the acts or omissions of its***
7 ***authorized representatives.*** – The financial person shall be responsible for the
8 acts or omissions of its directors, officers, employees or agents, in marketing and
9 transacting with financial consumers of its financial products and services,
10 provided that the said acts or omissions are not beyond the authority granted by
11 the financial person. The said directors, officers, employees or agents shall be
12 solely responsible for acts or omission beyond the authority granted by the
13 financial person.

14 **SEC. 15. *Prescription.*** – All actions or claims accruing under the provisions
15 of this title and the rules and regulations pursuant thereto shall prescribe within
16 five (5) years from the time the financial consumer transaction was consummated,
17 or within five (5) years from the discovery of the deceit or non-disclosure of
18 material facts. For insurance contracts, the prescriptive period for the
19 commencement of action provided under the Insurance Code shall apply.

20 **SEC. 16. *Penalty for Violation of this Act.*** – Whenever a financial person
21 willfully violates any provision of this Act or any related rules, regulations, orders
22 or instructions, issued by the Financial Regulators, the person or persons
23 responsible for such violation shall be punished by imprisonment of not less than
24 one (1) year but not more than five (5) years, or by a fine of not less than fifty
25 thousand (PHP 50,000.00) pesos but not more than five hundred thousand pesos
26 (PHP 500,000.00), or both, at the discretion of the court. In addition, said violator
27 shall be subject to disgorgement of the amount obtained from the financial
28 consumers and investors plus interest.

29 A foreign national who violates any provision of this Act shall be deported
30 without further proceedings after service of sentence and/or payment of fine.

31 **SEC. 17. *Administrative Sanctions.*** – The provisions of the administrative
32 sanctions of the respective characters of the Financial Regulators shall be made
33 applicable to any financial person, its directors, officers, employees, or agents
34 without prejudice to the enforcement actions provided under Section 6 (D) of this
35 Act and the criminal sanctions provided under Section 16 hereof, for any willful
36 violation of this Act or any related rules, regulations, orders or instructions of the

1 Financial Regulators: *Provided*, That in addition to the administrative sanctions
2 that may be imposed, the authority of the financial person to operate may be
3 suspended or cancelled by the Financial Regulator which primarily regulates such
4 financial person.

5 **SEC. 18. *Transitory Provisions*** – The Financial Regulators shall prepare the
6 necessary rules and regulations to implement the provisions of this Act within one
7 (1) year from its effectivity.

8 **SEC. 19. *Separability Clause***. – If any part or provision of this Act be
9 declared unconstitutional or invalid, the other provisions which are not affected
10 shall continue to be in full force and effect.

11 **SEC. 20. *Repealing Clause***. – All laws, executive orders, rules, and
12 regulations or parts thereof which are inconsistent with this Act are hereby
13 repealed or amended accordingly. Articles 13 to 147 of Title IV of Republic Act No.
14 7394 or the Consumer Act of the Philippines are hereby repealed.

15 **SEC. 21. *Effectivity Clause*** . – This Act shall take effect fifteen (15) days
16 after its publication in the Official Gazette or in at least two (2) national newspapers
17 of general circulation.

Approved,