

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

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SENATE
S. No. 1905

RECEIVED BY 

Introduced by Senator Miriam Defensor Santiago

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 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.¹


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MIRIAM DEFENSOR SANTIAGO

¹ This bill was originally filed during the Thirteenth Congress, First Regular Session.

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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 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 or
11 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 whom a
16 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 purpose of
4 which is the collection of any debt, or who regularly collects or attempts to collect, directly or
5 indirectly, debts owed or due or asserted to be owed or due him or to another, including any
6 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 whom
11 are related by common ownership or affiliated by corporate control, if the person acting
12 as a debt collector does so only for persons to whom it is so related or affiliated and if the
13 principal business of such person is not the collection of debts;

14 (3) Any officer or employee of government, national or local, to the extent that
15 collecting or attempting to collect any debt is in the performance of his official duties;

16 (4) Any person while serving or attempting to serve legal process on any other
17 person in connection with the judicial enforcement of any debt;

18 (5) Any attorney-at-law collecting a debt as attorney on behalf of and in the name
19 of a client; and

20 (6) Any person collecting or attempting to collect any debt owed or due or
21 asserted to be owed or due another to the extent such activity -

22 (a) Is incidental to a bona fide fiduciary obligation or a bona fide escrow
23 arrangement;

24 (b) Concerns a debt which was originated by such person;

25 (c) Concerns a debt which was not in default at the time it was obtained by
26 such person;

27 (d) Concerns a debt obtained by such person as a secured party in
28 commercial credit transaction involving the creditor. The term location

1 information means a consumer's place of abode and his telephone number, if any,
2 at such place, or his place of employment.

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

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

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

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

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

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

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

21 (A) *Communication with Consumer.* - Without the prior consent of the consumer given
22 directly to the debt collector or the express permission of a court of competent jurisdiction, a
23 debt collector may not communicate with a consumer in connection with the collection of any
24 debt -

25 (1) At any unusual time or place or a time or place known or which should be
26 known to be inconvenient to the consumer. In the absence of knowledge of circumstances

1 to the contrary, a debt collector shall assume that the convenient time for communicating
2 with a consumer is after 8 o'clock a.m. and before 9 o'clock pm., local time at the
3 consumer's location, on any day of the week including Saturdays and Sundays and even
4 holidays;

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

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

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

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

23 (1) To advise the consumer that the debt collectors further efforts are being
24 terminated;

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

1 (3) Where applicable, to notify the consumer that the debt collector or creditor
2 intends to invoke the a specified remedy

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

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

10 (A) The use or threat of use of violence or other criminal means to harm the physical
11 person, reputation, or property of any reason;

12 (B) The use of obscene or profane language or language the natural consequence of
13 which is to abuse the hearer or reader;

14 (C) The publication of a list of consumers who allegedly refuse to pay debts; or

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

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

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

22 (B) The false representation of -

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

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

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

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

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

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

10 (1) Lose any claim or defense to payment of the debt; or

11 (2) Become subject to any practice prohibited by this Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (A) The amount of the debt;

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

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

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

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

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

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

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

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

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

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

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

20 SECTION 13. *Civil Liability.* -

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

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

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

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

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

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

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

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

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

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

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

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

Approved,