

REPUBLIC OF THE PHILIPPINES
HOUSE OF REPRESENTATIVES
QUEZON CITY

FIFTEENTH CONGRESS
FIRST REGULAR SESSION

H.B. NO 3673

Introduced by **HON. AL FRANCIS C. BICHARA**

EXPLANATORY NOTE

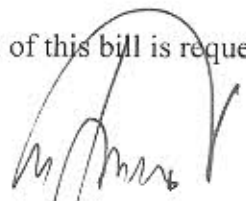
During this time of global financial recession, there is an impending need to protect the interest not only of banks but other financial institutions in the country in order to ensure the long-term financial stability of our economy. Undeniably, the power to collect loans and/or credits when due strengthens the ability of banks and financial creditors to sustain themselves. Some of the major contributing factors in the collapse of Lehman Brothers and other established institutions in Wall Street are the lax standards of lenders in approving mortgages and other easy credit innovations, which led to its eventual failure to collect loans upon maturity.

In the Philippines, loans, most especially those involving large amounts of money, are usually secured by real estate mortgages. Unfortunately, the power of banks to collect and foreclose said real estate mortgages upon default of the debtor are usually hampered by the injunctive power of the courts, which are sometimes used by cunning debtors unjustifiably.

It is important to remember however, that, public auction sales arising from extra-judicial foreclosure of real estate mortgages generally enjoys the presumption of regularity. More importantly, even the Supreme Court has already adopted measures to temper the injunctive powers of courts in relation to extra-judicial foreclosure proceedings, in order to fully protect the interest of innocent lenders and/or creditors.

This bill seeks to prohibit courts from issuing restraining orders or preliminary injunctions in cases involving public auction sales arising from the foreclosure of Real Estate Mortgages in the Philippines, provided all the requisites provided for under Act No. 3135 are complied with, in order to protect the interest of banks and other financial institutions against scheming and unscrupulous debtors who abuse court procedures to evade their valid financial obligations.

In view of the foregoing considerations, approval of this bill is requested.



AL FRANCIS C. BICHARA
2nd District, Albay

H.B. NO. **3673**

Introduced by HON. AL FRANCIS C. BICHARA

**AN ACT PROHIBITING COURTS FROM ISSUING RESTRAINING ORDERS
OR PRELIMINARY INJUNCTIONS IN CASES INVOLVING PUBLIC
AUCTION SALES ARISING FROM EXTRA-JUDICIAL FORECLOSURE OF
REAL ESTATE MORTGAGES IN THE PHILIPPINES, AND FOR OTHER
PURPOSES**

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

Section 1. No court in the Philippines shall have the jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute or controversy involving public auction sales arising from foreclosure of real estate mortgages, including the prohibition of any person or persons, entity or governmental official from proceeding with, or continuing the execution or implementation of public auction sales arising from the extra-judicial foreclosure of real estate mortgages, provided that the following basic essential requisites are duly complied with, to wit: The *Notice of Sale* has been posted for not less than twenty (20) days in at least three (3) public places of the municipality or city where the property is situated, and if such property is worth more than P400.00, that such notice has been published once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the municipality and/or city.

Section 2. Notwithstanding the absence of the basic essential requisites as provided for in the preceding section, no restraining order, preliminary injunction, or preliminary mandatory injunction shall issue when the mortgagor has clearly established that the loan secured by the real estate mortgage is due and demandable and that the mortgagee is delinquent in his payments and/or has failed to make payments.

Section 3. No restraining order, preliminary injunction, or preliminary mandatory injunction shall issue based solely on the following allegations of the mortgagee:

- a) That the loan secured by the real estate mortgage has been paid, or is not delinquent;
- b) That the interest in the loan secured by the real estate mortgage is unconscionable.

Section 4. Public auction sales arising from the extra-judicial foreclosure of real estate mortgages shall at all times be presumed regular and all public officers acting pursuant thereto shall be presumed to have performed their duties in a regular manner.

Section 5. *Repealing Clause.*—All laws, decrees, executive orders, rules and regulations and other issuances or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly.

Section 6. *Effectivity.*—This Act shall take effect upon its approval.

Approved.