

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
1st Regular Session

House Bill No. **6681**



Introduced by Representatives PAOLO Z. DUTERTE, ERIC G. YAP,
EDVIC G. YAP, and JEFFREY SORIANO

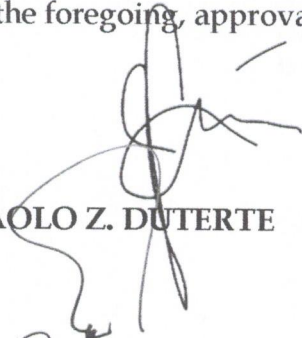
EXPLANATORY NOTE

Online lending collections, particularly online lending sharks, have become rampant following the crackdown of unregistered lending agencies, unfair debt collection practices, and cyber harassment. Concerns on the violation of the debtors' rights to privacy and unfair debt collection become pertinent as the Department of Justice highlights the following acts to be in contrary of the said rights, namely: (a) accessing the debtors' phone book/contacts' list for purposes of sending them messages in the event of untimely and/or non-payment; (b) posting the debtors' personal and sensitive personal information online for purposes of shaming them; (c) threatening debtors with death and physical injuries if they fail to settle their account balances; and (d) using profane language through text message directly sent to the debtors and to the debtors' references for purposes of shaming them. Most importantly, these lending agencies also charge very high interest rates that are unreasonable to the creditors.

Granted that these acts are violative of the Cybercrime Prevention Act of 2012, the Data Privacy Act of 2012, the Securities and Exchange Commission (SEC) Memorandum Circular No. 18, series of 2019, and other salient provisions in the Revised Penal Code in relation to the said Cybercrime Act, the State is mandated to legislate on measures that will allow the stringent implementation of these penal laws.

In this regard, this proposed bill aims to prohibit and eliminate the use of abusive, deceptive and unfair debt collection practices by debt collectors and to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, thereby protecting borrowers against abuse and harassment in the collection of their debts.

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



PAOLO Z. DUTERTE



EDVIC G. YAP



ERIC G. YAP



JEFFREY SORIANO

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
1st Regular Session

House Bill No. **6681**

Introduced by Representatives PAOLO Z. DUTERTE, ERIC G. YAP,
EDVIC G. YAP, and JEFFREY SORIANO

AN ACT
REGULATING THE DEBT COLLECTION PRACTICES OF DEBT COLLECTORS
TO PROTECT BORROWERS FROM ABUSES, HARASSMENT, UNFAIR
TREATMENT AND MISREPRESENTATIONS

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

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

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

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

- a. *Debt Collector* means any person who uses any instrumentality or any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. It includes any creditor who, in the process of collecting his own debts, uses any name other than his own, would indicate that a third person is collecting or attempting to collect such debt. It is likewise interchangeable with a debt collection agency or a third-party service provider engaged by a creditor for the purpose of collecting debts owed by another.

The definition does not include:

1. A person who is collecting or attempting to collect a debt of which the he or she is the original creditor or owner;

2. A business that acquires a debt or debts through the seizure of accounts receivable under a security agreement;
 3. A corporation that purchases a debt or debts through acquiring or merging with a business in a transaction that includes the transfer of accounts receivables;
 4. A person to whom the contract that gave rise to the debt was assigned for the purpose of financing the transaction;
 5. An officer or employee of the creditor who in the name of the creditor, collects the debt for the creditor;
 6. Any person or entity who acts as a debt collector for another person or entity who are related by common ownership or affiliated by corporate control, if the person or entity collects the debt for persons or entities whom it is related or affiliated to and its principal business is not the collection of debts;
 7. Any officer or employee of government, national or local, to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
 8. Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt; and
 9. Any attorney-at-law collecting a debt as attorney on behalf of and in the name of a client.
- b. *Contact* means communications by telephone, mobile phone, facsimile, e-mail, automated call system, text messaging, or any other modes, or in person, including messages left for a debtor with another person or by voicemail or on an answering machine, or any other form of communication not specifically excluded, but does not include communications that the debtor has expressly consented to or solicits in advance.
 - c. *Creditor* means a person to whom a debtor owes a debt or who has extended credit to a debtor, including, but not limited to, credit in the form of a sale on credit, a loan of money or the provision of goods and services. It includes a financing company, a lending company, and online financing or lending applications.
 - d. *Debt* means a monetary obligation enforceable at law owed by a debtor, including, but not limited to, a purchase on credit, accounts receivable, a loan of money or the provision of goods or services.

- e. *Debtor* means an individual who has an obligation for a debt, including, but not limited to, the owner of a sole proprietorship, a member of a partnership or an individual who has provided a personal guarantee.
- f. *Express Consent* means consent in a verifiable form, including, but not limited to, writing and audio recordings.
- g. *Representative* means a person, other than the debtor or creditor, that is duly authorized by the debtor or creditor to contact or be contacted and communicate with about the debt.

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

- a. Identify himself, state that he is confirming or correcting location information concerning the borrower, and only if expressly requested, identify his employer;
- b. Not state that such borrower owes any debt;
- c. Not communicate with any such person more than once unless requested to do so by such person or unless such debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has a correct or complete location information;
- d. Not communicate by post card;
- e. Not use any language or symbol on any envelope or in the contents of any communication that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of debt;
- f. After the debt collector knows the borrower is represented by an attorney with regard to the subject debt and has knowledge or, can readily ascertain, such attorney's name and address, not communicate with any person other than the attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

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

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

- a. The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of the debtor or his /her family;
- b. The use of obscene or profane language or language the natural consequence of which is to abuse or shame the debtor or his/her family and/or which amount to a criminal act or offense under applicable laws;
- c. The disclosure or publication or posting of the names and other personal information of the borrowers who allegedly refuse to pay debts, except as may be allowed in Section 10 of this Act;
- d. The advertisement for sale of any debt to coerce payment of the debt;
- e. Causing a telephone or mobile phone to ring or engaging any person in telephone or mobile phone conversation or communication repeatedly or continuously with intent to annoy, abuse, humiliate, or harass any person at the called or messaged number; and
- f. except as provided in this Act, the placement of telephone or mobile phone calls or messages without meaningful disclosure of the caller's identity.
- g. Other similar or analogous acts contrary to customary or accepted commercial financing or lending practices.

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

- a. The unauthorized use of any badge, uniform, or facsimile thereof;
- b. The false representation of the following:
 - 1. The character, amount or legal status of any debt; or
 - 2. Any services rendered or compensation which may be lawfully received by any debt collector for the collection of the debt;
- c. The false representation or implication that any individual is an attorney or that any communication is from any attorney;

- d. The representation or implication that non-payment of any debt will result in arrest or imprisonment of any person or the seizure, garnishment, attachment or sale of any property or wages of any person unless such action is unlawful and the debt collector or creditor intends to take such action;
- e. The use of threat to take any action that cannot be legally taken;
- f. The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the borrower to:
 - 1. Lose any claim or defense to payment of the debt; or
 - 2. Become subject to any practice prohibited by this Act;
- g. The false representation or implication that the borrower committed any crime or other conduct in order to disgrace the borrower;
- h. Communication or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;
- i. The use or distribution of any written communication which stimulates or is falsely represented to be a document authorized, issued or approved by any court, official, or agency of the government, national or local, or which creates a false impression as to its source, authorization or approval;
- j. The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a borrower;
- k. Except as otherwise provided for communication, to acquire location information under Section 4 of this Act, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a borrower, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;
- l. The false representation or implication that accounts have been turned over to innocent purchasers for value;
- m. The use of any business, company, or organization name other than that true name of the debt collector's business, company, or organization; and
- n. Give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including, but not limited to, references to the police, a law firm, prison, credit history, court proceedings or a lien or garnishment.
- o. Other similar or analogous acts contrary to customary or accepted commercial financing or lending practices.

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

- a. The collection of any amount (including any interest, fee, charge or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt permitted by law;
- b. The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten (10) nor less than three (3) business days prior to such deposit;
- c. The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;
- d. Depositing or threatening to deposit any postdated check or other postdated instrument prior to the date on such check or instrument;
- e. Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees;
- f. Taking or threatening to take any non-judicial action to effect dispossession or disablement of property if -
 - 1. There is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - 2. There is no present right to take possession of the property; or
 - 3. The property is exempt by law from such dispossession or disablement.
- g. Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a borrower by use of the mails or by telegram, except that a debt collector may use his name if such name does not indicate that he is in the debt collection business.
- h. Other similar or analogous acts contrary to customary or accepted commercial financing or lending practices.

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

- a. Collect or attempt to collect money for a creditor except on the belief in good faith that the money is due and owing by the person to the creditor;
- b. Fail to provide a contact number for the debtor to call when the debt collector uses an automated call system to contact the debtor;
- c. Collect or attempt to collect a debt without providing the real name of the agent or representative of the debt collector, the contact number, the registered name and address of the debt collector;
- d. Make any arrangement with a debtor to accept a sum of money that is less than the amount of the balance due and owing to a creditor as final settlement without the prior express consent of the creditor;
- e. Fail to provide a written report on the status of the account of any person with whom the debt collector transacts with;
- f. Make any personal call or telephone call for the purpose of collecting or attempting to collect a debt on any day except between 8 a.m. to 9 p.m.;
- g. Directly or indirectly threaten or state an intention to proceed with any action for which the debt collector does not have the prior express consent of the creditor or for which there is no lawful authority;
- h. Continue to collect or attempt to collect money from, or continue to communicate with:
 - 1. A person who has informed the debt collector that he or she is not the debtor, unless the debt collector first takes all reasonable precautions to ensure that the person is in fact the debtor, or
 - 2. The debtor, when he or she has informed the debt collector by any verifiable means, including, but not limited to, personal service, certified mail, courier, facsimile, or e-mail, or by any other method, that the debt is in dispute and that the debtor wishes the creditor to take the matter to court;
- i. Contact a debtor's spouse, relative, neighbor, friend or acquaintance unless the contact is limited to the purpose of obtaining the debtor's residential address, personal telephone number or employment telephone number;
- j. Contact the debtor's employer for any purpose other than to confirm the debtor's employment status, business title and the address of the business, in preparation for legal proceedings;
- k. Contact the debtor when he or she has notified the debt collector in writing to communicate only with the debtor's representative, providing therein the current address and telephone number of the same for the purpose of:

1. Making reasonable arrangements to discuss the debt with the debt collector, and
 2. Discussing the debt with the debt collector in accordance with the arrangements;
- l. Contact a debtor at his or her place of employment where the debtor has previously requested that the debt collector not to contact the debtor there; *Provided* that the debtor makes reasonable arrangements to discuss the debt with the debt collector, and discusses the debt with the debt collector in accordance with the arrangements;
 - m. Communicate information about the debt or the existence of the debt with any person other than the debtor, a guarantor of the debt, the debtor's representative or the creditor of the debt, unless the debtor has expressly consented to the same;
 - n. Charge any fee to a debtor beyond the debt that is due and owing from the debtor to the creditor;
 - o. Refuse to provide sufficient information on request of the debtor to ensure that the debtor is aware of the identity of the original and current creditor of the debt and the details of the debt;
 - p. Enter into or arrange wage or salary assignments with a debtor or the employer of a debtor;
 - q. Exceed 3 unsolicited contacts on behalf of the same creditor with a debtor in any period of 7 consecutive days, not including contacts with a third party to locate a debtor, mistaken contact with a third party, or contacts by traditional mail; or
 - r. Cancel or alter a payment agreement with a debtor if the debtor has complied with the terms of the agreement and the debtor's financial circumstances have not changed materially, unless the debtor has misrepresented the debtor's financial circumstances.
 - s. Other similar or analogous acts contrary to customary or accepted commercial financing or lending practices.

SEC. 10. *Prohibited Agreements.* - Any agreement entered into by the debtor and the debt collector shall be deemed void if that agreement:

- a. Misrepresents the rights and powers of a person collecting or attempting to collect a debt;
- b. Misrepresents the obligations or legal liabilities of a debtor; or

- c. Is misleading as to its true nature and purpose.

SEC. 11. Confidentiality of Information. - Creditors shall keep strictly confidential the data on the borrower, except under the following circumstances:

- a. Disclosure of information with the express written consent of the borrower, provided that consented disclosure of information shall not include acts prohibited under this Act;
- b. Release, submission or exchange of customer information with other financial institutions, credit information bureaus, lenders, their subsidiaries and affiliates;
- c. Upon orders of a court of competent jurisdiction or any government office or agency authorized by law;
- d. Disclosure by creditors to debt collectors, counsels and other agents to enforce their rights against the borrower; and
- e. Disclosure to third parties, such as insurance companies, solely for the purpose of insuring the creditor from borrower default or other credit loss, and the borrower from fraud or unauthorized charges.

SEC. 12. Issuance of Receipts. - Every debt collector must acknowledge the receipt of all cash transactions, payments made in person, or payments made at the debtor's request that the debt collector collects or receives from a debtor for distribution to the debtor's creditors by means of receipts that must contain the following:

- a. The date the amount is collected or received;
- b. The name of the debtor;
- c. The name of the person for whom the debt collector acts on his behalf; and
- d. The amount received from the debtor.

SEC. 13. Settlement Agreement. - If a debt collector reaches a settlement agreement with a debtor, the debt collector must, when the amount set out in the settlement agreement has been paid in full, provide to the debtor a receipt containing;

- a. The amount paid;
- b. The name of the creditor or creditors; and
- c. A statement that the amount received is in final settlement of the debt or debts owing.

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

- a. Inform the debtor in writing that it cannot provide the accounting and the reasons for it, and
- b. Cease all collection activity for that account and not resume collection activity until the accounting is provided.

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

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

SEC. 16. *Civil Liability.* -

- a. *Amount of Damages.* - Any debt collector who violates any of the provisions in this Act with respect to any person shall be liable to such person in an amount equal to the sum of:
 1. Any actual damage sustained by such person as a result of the violation;
 2. In the case of any action by an individual, such additional damages as the court may allow, but not exceeding Fifty Thousand Pesos (P50,000.00); or
 3. In the case of a class action, such amount for each named plaintiff as could be recovered under paragraph (a), and such amount as the Court may allow for all other class members, without regard to a minimum individual recovery, not to exceed One Hundred Thousand Pesos (P100,000.00) or one (1) percent of the net worth of the debt collector, whichever is lesser.
- b. *Factors to be Considered by the Court.* - In determining the amount of liability in any action under paragraph (a) of this section, the court shall consider, among other relevant factors:
 1. In any individual action under paragraph (a) (ii) of this section, the frequency and persistence of non-compliance by the debt collector, the

nature of such non-compliance, and the extent to which such noncompliance was intentional, or

2. In any class action under paragraph (a) (iii) of this section, the frequency and persistence of non-compliance by the debt collector, the nature of such non-compliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's non-compliance was intentional.
- c. *Intent.* - A collector may not be held liable in any action brought under this section if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error in good faith.
- d. *Jurisdiction.* - An action to enforce any liability created by this Act may be brought in any appropriate court using as jurisdictional basis the amount of debt involved.

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

SEC. 18. *Repealing Clause.* - All laws, presidential decrees, executive orders, presidential proclamations, rules and regulations or parts thereof contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

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

Approved,