

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

Seventeenth Congress
Third Regular Session

HOUSE BILL No. 8301



Introduced by Representative Henry C. Ong

EXPLANATORY NOTE

The advent of the global financial crisis brought to fore the importance of an effective consumer protection in the financial services as consumers were ultimately exposed to the risks brought about by the failure of financial institutions. In addition, the evolution of the financial landscape where there is an increasing number of complex financial products and services coupled with the rapid technological change highlight the need for financial consumer protection.

As more complex financial products are offered and easily accessed through financial technology, financial consumers face the risk of being the victims of fraud and abuse. Time and again, we hear stories of consumers putting their life long savings in investment scams or suffering from or facing collection cases due to over indebtedness. These are just some of the travails experienced by financial consumers.

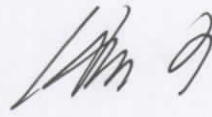
Thus, recognizing the role of regulators in ensuring that the rights of each and every consumer are protected, this bill provides, among others, financial regulators such as the Bangko Sentral ng Pilipinas, Insurance Commission and the Securities and Exchange Commission, rulemaking, surveillance and inspection, market monitoring, and enforcement powers relative to consumer protection.


In the international arena, the G20¹, in February 2011, called on the Organization for Economic Cooperation and Development (OECD), the Financial Stability Board (FSB) and other relevant international

¹ The Group of Twenty, or G20, is the central forum for international cooperation on financial and economic issues. It is composed of the EU and 19 countries, namely Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom (UK) and the United States of America (USA).

organizations to develop common principles on consumer protection in the field of financial services. Foremost of these principles is that financial consumer protection should be an integral part of the legal, regulatory and supervisory framework.

It is in this light that this bill is being introduced in order to have in place a comprehensive financial consumer protection regime wherein financial inclusion, financial education, good governance and effective supervision all come into play given that consumer protection is a shared responsibility among the regulators, consumers and other stakeholders.



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**AN ACT PROVIDING FOR THE PROTECTION OF
FINANCIAL CONSUMERS**

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 “Financial Consumer Protection Act of 2018”.

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

Section 3. Definition of terms - As used in this Act, the following terms shall mean:

- a) **“Consumer”** - a person who is a purchaser, lessee, recipient or prospective purchaser, lessor or recipient of consumer products and services. A **“Financial Consumer”** on the other hand, is a natural person or micro, small or medium-sized enterprise that had or has current or prospective financial transaction with financial entities pertaining to financial products and services.
- b) **“Financial Consumer Complaint”** - an expression of dissatisfaction filed by a financial consumer against a financial person relative to a financial product or service in which a response or resolution is expected.
- c) **“Financial Education”** - The process by which financial consumers improve their understanding of financial products, concepts and risks, and develop the skills and confidence to become more aware of financial

risks and opportunities to make informed choices and to take other effective actions to improve their financial well-being. This goes beyond the financial information and advice given in a contractual relationship between the financial person and the consumers.

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

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

Section 5. Financial Regulators – The BSP, SEC and IC shall enforce the provisions of this Act on all financial entities they supervise or regulate by virtue of their respective charters, special laws and amendments thereto. The CDA shall be considered an implementing government agency of this Act only with respect to cooperatives offering financial services such as but not limited to savings and credit except insurance cooperatives which shall be under the jurisdiction of the Insurance Commission for purposes of this Act.

Section 6. Powers of the Financial Regulators. – Financial Regulators shall have the following powers:

- A. **Rulemaking** – the implementing government agencies shall have the authority to formulate their own standard and rules for the application of the provisions of this Act to the specific financial products within their jurisdiction. Likewise, they may issue their respective rules of procedure concerning administrative actions arising from the implementation of this Act.
- B. **Surveillance and inspection** – the implementing government agencies may conduct off-site surveillance and on-site examination on their respective supervised financial entities to ascertain that the provisions of this act are complied with. The examination for financial consumer protection compliance could be conducted separately from examination of prudential regulations compliance.
- C. **Market monitoring** – the implementing government agencies may require reports or documents, as needed, from their respective supervised financial entities and their third party agents/service providers. The implementing government agencies can also access relevant data about financial products, services and markets from other government agencies in connection with market monitoring.
- D. **Enforcement** – the implementing government agencies shall have the authority to impose enforcement actions on their respective supervised financial entities for non-compliance with this act. Such enforcement actions may include but are not limited to the following:
 - a. Restriction on the ability of the supervised financial person to continue to collect fees or charges in cases of excessive fees or charges imposed by the financial person;
 - b. Disqualification of directors, officers or employees of the supervised financial person responsible for violations of the provisions of this title and its Implementing Rules and Regulations (IRR);
 - c. Imposition of fines or penalties for any non-compliance with or breach of this Act and its IRR;
 - d. Issuance of a cease and desist order without the necessity of a prior hearing if in the implementing government agency's judgment the act or practice, unless restrained may cause grave or irreparable injury or prejudice to the consumer or may amount to fraud or violation the provisions of this title and its IRR;
 - e. Suspension of operation of any supervised financial person in relation to a particular consumer financial product or service when in the Financial Regulator's judgment based on findings,

such person is operating in violation of the provisions of this Act and its IRR.

The Financial Regulators may exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Financial Regulators to achieve the objectives and purposes of these laws.

Section 7. Investment Adviser – Investment Advisers shall be subject to the rules and regulation to be issued by the Securities and Exchange Commission.

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

- a) Trust Department/Unit of Banks;
- b) Lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession;
- c) Any investment banker or broker dealer whose performance of such services is solely incidental to the conduct of his business as such investment banker or broker dealer and who receives no special compensation therefor;
- d) The publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation;
- e) Such other persons as the Securities and Exchange Commission may designate by rules and regulations or order.

Section 8. Duties and responsibilities of Financial Persons –

A. *Board and Senior Management Oversight* – The Board of Directors (BOD) and Senior Management of every financial person shall oversee the implementation of the Compliance Management System (CMS) of the person that effectively ensures conformity with this Act and shall provide the means by which a financial person shall identify, measure, monitor and control consumer protection risks inherent in its operations.

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

- a. *Affordability and suitability assessments* – the financial person should have written procedures for determining

whether a particular financial consumer product or service is suitable and affordable for a client. This shall include determination of whether the amount and terms of the offered financial product or service allow a client, in terms of the individual ability, to meet the obligations with a low probability of a serious hardship and reasonable prospect that the financial product or service will provide value to its client. For the purpose of extending credit, this assessment will include measures to prevent over-indebtedness.

- b. *Cooling-off period* –a financial person is expected to adopt a clear cooling-off policy, as may be prescribed by law or by rules and regulations issued by the relevant financial regulator upon its determination that a cooling-off period is necessary for a particular product subject of regulation by such financial regulator. Such policy should, among others, provide a client with a cooling-off period that will allow a client to consider the costs and risks of a financial product or service, free from the pressure of the sales team of the financial person. The length of the cooling-off period should be individually determined by a financial person based on reasonable expectation of the time required for a client to fully evaluate all the terms and risks of the financial product or service and contact others¹ who may be affected by its terms and conditions, unless a minimum or fixed period is required by the financial regulator for compliance by the financial provider or incorporation in its contract. Short period transaction or contracts may be allowed to have no cooling-off period which shall be provided in the regulation by the financial regulators.

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

- c. *Prepayment of loans and other credit accommodations* –a borrower may, at any time prior to the agreed maturity date prepay, in whole or in part, Provided that any cost or fees charged to the borrower for such pre-payment shall be

¹ Family members or business partners

disclosed as required under the succeeding provision of this Section on transparency, disclosure and responsible pricing.

- C. *Transparency, disclosure and responsible pricing* - financial persons must ensure that they adopt disclosure principles in their communications with financial consumers that will include the use of clear and concise language understood by the target clients. This must also include updated and accurate disclosure of information such as, pricing or any cost associated with the product or service that should be made in a consistent manner to facilitate comparison between similar financial products and services across the industry.

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

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

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

Responsible pricing – in addition to the requirements of R.A. No. 3765 or The Truth In Lending Act, a financial person is required to document the reasons for setting the price of each financial product or service. Where the pricing procedures of a financial person are inadequate or unreasonably high, the concerned implementing government agency shall impose appropriate corrective actions.

- D. *Fair and respectful treatment of clients* - client selection and treatment shall not involve discrimination on the basis of personal characteristics or personal affiliations; *provided*, that financial entities are not precluded from instituting the necessary risk mitigating measures.

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

- E. *Privacy and protection of client data* – each financial person must respect the privacy and protect the data of their clients. Consistent with the provisions of the Data Privacy Act, the financial regulators shall issue regulations for the disclosure of client data to a third party.

Clients have the right to review their client data to ensure that inaccurate or deficient data is corrected or amended.

- F. *Financial consumer protection assistance mechanism* – Each financial person must establish a single consumer assistance handling unit to render

free assistance to financial consumers on financial transactions concerns. This shall include handling of complaints, inquiries and requests.

Financial consumers who are unsatisfied with the financial person's handling of their complaints, inquiries and requests, may elevate their concerns to the financial regulator that supervises the financial person concerned.

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

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

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

Section 12. No waiver of rights – No provision of a contract for a consumer financial product or service shall be lawful or enforceable if such provision waives or otherwise deprives a client of a legal right to sue the financial service provider, receive information, have their complaints addressed and resolved, have their non-public client data protected or cancel the use of the consumer financial product or service without an unreasonable penalty.

Section 13. Non-exemption from compliance – Notwithstanding any prior stipulation in a contract, financial entities shall not be exempted from compliance with the provisions of this Act, or deprive financial consumers of their rights under this act.

Section 14. Liability of a financial person on the acts or omissions of its authorized representatives – The financial person shall be responsible for the acts or omissions of its directors, officers, employees or agents, in marketing and transacting with financial consumers of its financial products and services, provided that the said acts or omissions are not beyond the authority granted by the financial person. The said directors, officers, employees or agents shall be solely responsible for acts or omissions beyond the authority granted by the financial person.

Section 15. Prescription – All actions or claims accruing under the provisions of this title and the rules and regulations pursuant thereto shall prescribe within five (5) years from the time the financial consumer transaction was consummated, or

within five (5) years from the discovery of deceit or non-disclosure of material facts. For insurance contracts, the prescriptive period for the commencement of action provided under the insurance code shall apply.

Section 16. Penalty for Violation of this Act – Whenever a financial person willfully violates any provision of this Act or any related rules, regulations, orders or instructions, issued by the Financial Regulators, the person or persons responsible for such violation shall be punished by imprisonment of not less than one (1) year but not more than five (5) years, or by a fine of not less than fifty thousand (P50,000.00) pesos but not more than one five hundred thousand pesos (P500,000), or both, at the discretion of the court. In addition, said violator shall be subject to disgorgement of the amount obtained from the financial consumers/investors plus interest.

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

Section 17. Administrative Sanctions – The provisions on administrative sanctions of the respective charters of the Financial Regulators shall be made applicable to any financial person or financial person, its directors, officers, employees or agents without prejudice to the enforcement actions provided under Section 6 (D) of this Act and the criminal sanctions provided under Section 16 of this Act, for any willful violation of this Act or any related rules, regulations, orders or instructions of the Financial Regulators, *Provided*, That in addition to the administrative sanctions that may be imposed, the authority of the financial person to operate may be suspended or cancelled by the Financial Regulator which primarily regulates such financial person.

Section 18. Repealing clause – All laws, executive orders, rules and regulations or parts thereof which are inconsistent with this Act are hereby repealed or amended accordingly. Articles 131 to 147 of Title IV of Republic Act No. 7394 are hereby repealed.

Section 19. Transitory provision – The Financial Regulators shall prepare the necessary rules and regulations to implement the provisions of this Act within one (1) year from its effectivity.

Section 20. Effectivity clause – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved.