



Republic of the Philippines  
**HOUSE OF REPRESENTATIVES**  
Quezon City

**EIGHTEENTH CONGRESS**  
First Regular Session  
**4984**  
**HOUSE BILL No. \_\_\_\_\_**

Introduced by  
BAYAN MUNA Representatives CARLOS ISAGANI T. ZARATE,  
FERDINAND R. GAITE and EUFEMIA C. CULLAMAT

**AN ACT**

PROMOTING THE DEVELOPMENT AND USE OF FREE/OPEN SOURCE  
SOFTWARE (FOSS) IN THE PHILIPPINES, AMENDING RA 8293 OTHERWISE  
KNOWN AS THE “INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES”,  
PROVIDING PENALTIES THEREOF, AND FOR OTHER PURPOSES

## **EXPLANATORY NOTE**

The era of **Free/Open Source Software (FOSS)** has come.

Once considered the realm of geeks, computer experts and cyberspace activists, FOSS is now steadily gaining ground among a broad range of information and communications technology (ICT) consumers – from home users and barangays, schools to large corporate enterprises and government agencies – who are looking for alternatives to the expensive, overbearing and restrictive products of proprietary software monopolies like Microsoft, Unix and Adobe, among others.

Unlike proprietary software, FOSS is **cheap or affordable** (in fact, most FOSS are distributed *gratis* or free to the public by their own developers and can be freely distributed), **flexible and development-friendly** (FOSS source codes are accessible to consumers who may study, modify and customize the software), **interoperable** (FOSS adheres to open standards and are meant to work across various platforms and protocols), and **safe** (the opening of the source codes and the use of open standards have allowed hundreds of thousands of users around the globe to serve as a virtual research and development team, providing patches and solutions to bugs and glitches in real time over the internet).

Today, most widely-used proprietary software have equivalent FOSS which is cheaper, safer and more robust. This is why the use of FOSS is steadily gaining ground in many countries in Europe, North America, Latin America and Asia.

**FOSS give software users freedom** – the freedom to run the program in any way one wishes, to study and modify its source codes, to make copies and distribute them as one wishes, and to redistribute the said program.

An apparent benefit of FOSS is its low cost. Giant chip maker Intel reportedly saved \$200 million for switching their servers from proprietary UNIX software to open GNU/Linux software, while Amazon reported a US\$17 million savings for migrating from Microsoft to

1 GNU/Linux.

2  
3 Many organizations and several studies have shown that using FOSS in lieu of proprietary  
4 software results in significant savings of anywhere from 15% to 35% over a span of three years  
5 not only due to lower licensing costs but lower personnel and hardware costs.

6  
7 A study produced by the International Open Source Network (IOSN) and United Nations  
8 Development Program - Asia-Pacific Development Information Programme have identified the  
9 following strategic benefits of FOSS: (1) Developing local capacity industry; (2) reducing  
10 imports/conserving foreign exchange; (3) Enhancing national security; (4) Reducing copyright  
11 infringements; (5) Enabling localization.

12  
13 The study also identified economic benefits as: (1) Increasing competition; (2) Reducing total  
14 cost of ownership; (3) Enhancing security; (4) Achieving vendor independence.

15  
16 Add to this the social benefit of increasing access to information, promoting citizens' knowledge  
17 about software and software techniques, encouraging cooperation among the citizenry, and  
18 providing the public with democratic control over the software that it uses.

19  
20 In fact, the viability and advantages of FOSS has not been lost on us Filipinos. The Advanced  
21 Science and Technology Institute of the Department of Science and Technology (ASTI-DOST)  
22 has developed the Bayanihan Linux, a complete desktop solution for office and school use based  
23 on GNU/Linux, and Bayanihan Linux Server, an easy-to-use GNU/Linux server for  
24 government agencies, schools and SMEs. These Bayanihan Linux programs can do everything  
25 that proprietary operating systems can do, except drain one's pockets, mainly because they are  
26 distributed by their developers for free.

27  
28 Exist, a 100%-owned Filipino open-source software company, was named one of CIO Review's  
29 Most Promising Banking Technology Solution Providers in 2015 and has been selected by  
30 APAC CIO Outlook as one of the 25 Most Promising IT Services Providers in 2015. In 2016,  
31 Exist was shortlisted as a finalist under the Most Innovative Company of the Year category at  
32 the 10th International ICT Awards Philippines. This is proof that given the opportunity and  
33 proper support, Filipino companies can be a major supplier in the growing global FOSS market.

34  
35 The Philippines is still spending a big portion of our national budget in buying Microsoft  
36 licenses. The government has created a body called MITHI or the Medium-Term Information  
37 and Communications Technology Harmonization Initiative, which harmonizes and ensures  
38 interoperability among ICT-related resources, programs, and projects across the government.  
39 MITHI covers all ICT-related resources, programs, and projects of NGAs, GOCCs, and SUCs.  
40 However, it is still highly reliant on proprietary software, particularly Microsoft. The  
41 Procurement Service – PhilGEPS, in partnership with Microsoft Philippines, First Datacorp  
42 (FDC), and Wordtext Systems, Inc. (WSI), offered a “discount” on Microsoft Licenses under the  
43 MITHI program specifically on the Office Standard Licenses and Office 365 Pro Plus. However,  
44 the price of Microsoft software is still steep, ranging from ₱3,100-₱14,010 per computer per  
45 year.

46  
47 This bill, first filed by Bayan Muna Rep. Teodoro Casiño in 2006 in the 13<sup>th</sup> Congress, mandates  
48 the use of FOSS, open standards and open formats in all government agencies, and, also  
49 encourages the use and development of FOSS in the private and public sectors, as this will  
50 greatly benefit the Philippines by: (1) Promoting the people's right to access public informations;  
51 (2) Lowering the overall cost of ICT in the public and private sectors by reducing the country's

1 dependence on proprietary software and computer applications; (3) Making ICT more accessible  
2 to a greater number of users; (4) Unlocking the potential and encouraging the development of a  
3 self-reliant, genuinely Filipino IT industry; and, (5) Providing greater security for highly sensitive  
4 government and private information systems.

5  
6 It has then been refiled in the 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> Congresses by Bayan Muna Partylist  
7 Representatives Satur Ocampo, Neri Colmenares, and, Carlos Isagani Zarate.

8  
9 In view of the foregoing, passage of the bill is earnestly sought.  
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11  
12 *Approved,*  
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20 REP. CARLOS ISAGANI T. ZARATE  
21 *tito z. niet*  
22 *Bayan Muna Partylist*  
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27 REP. FERDINAND R. GAITE  
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29 *Bayan Muna Partylist*  
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40 REP. EUFEMIA C. CULLAMAT  
41 *Eufem*  
42 *Bayan Muna Partylist*  
43

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**HOUSE BILL No.**

Introduced by

BAYAN MUNA Party-list Representatives CARLOS ISAGANI T. ZARATE,  
FERDINAND R. GAITE and EUFEMIA C. CULLAMAT

**TITLE**

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

## AN ACT

PROMOTING THE DEVELOPMENT AND USE OF FREE/OPEN SOURCE SOFTWARE (FOSS) IN THE PHILIPPINES, AMENDING RA 8293 OTHERWISE KNOWN AS THE "INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES", PROVIDING PENALTIES THEREOF, AND FOR OTHER PURPOSES

*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 “*Free/Open Source Software (FOSS) Act*”

**SEC. 2. Declaration of Policy.** – In accordance with Section 24 of Article II of the Constitution which declares that: “The State recognizes the vital role of communication and information in nation building”, and *recognizing* the wide discrepancy between the technologies of developing countries and advanced countries; *realizing* the economic limitations in the information and communication technology (ICT) of developing countries, especially on the viability of purchasing and implementing expensive software solutions; *aware* of the relatively slow diffusion of technology between the developed and developing countries; it is hereby declared the policy of the State to:

1. Ensure the self-reliance of the State in technology and technology capabilities, in accordance with Article XIV, Sec. 10 of the Constitution, by ensuring that the State has access to the source codes of its computers' software;
  2. Strengthen the public's access to information and government data, in accordance with Article III, Section 7 of the Constitution, by mandating the use of open standards and formats in government, hence ensuring the interoperability of data and government communications;

- 1
- 2     3. Promote the preferential use of domestic material and Filipino labor in information
- 3         communications technology, in accordance with Article XII, Sec. 12 of the
- 4         Constitution;
- 5
- 6     4. Adopt mechanisms to ensure fiscal discipline in the purchase of software without
- 7         compromising the State's security and the stability and robustness of the country's
- 8         ICT infrastructure, and;
- 9
- 10    5. Develop Filipino professionals and scientists in the field of software technology and
- 11         ICT by promoting the use and purchase of free/open source software, in accordance
- 12         with Article XII, Sec. 14 of the Constitution.

13  
14   **SEC. 3. Definition of Terms.** – For purposes of this Act, the following terms and  
15   phrases are so defined:

- 16     a. **Source code** – The set of human readable instructions and statements written by
- 17         the programmer using a particular programming language, including the modules,
- 18         components of the executable program, and any interface definition files and
- 19         scripts used to compile and install a program.
- 20
- 21     b. **Interoperability** – The ability of information systems to operate in conjunction
- 22         with each other encompassing protocols, hardware software, application, and
- 23         data compatibility layers. In particular, it is the ability of different types of
- 24         computers, networks, operating systems, and applications to work together
- 25         effectively, without prior communication, in order to exchange information in a
- 26         useful and meaningful manner.
- 27
- 28     c. **Open standards** – Those standards, protocols, specifications, and any other data
- 29         formats made available to the general public and are developed, approved and
- 30         maintained via a public, collaborative, transparent and consensus-driven process.
- 31         In addition, open standards must meet all of the following criteria:
- 32
- 33     2. The adoption and development of the standard includes the consideration of and
- 34         response to inputs by interested parties, and occurs on the basis of an open decision-
- 35         making procedure available to all;
- 36
- 37     3. The standard has been published and the published document is available freely. It must
- 38         be permissible for all to copy, distribute and use it without any fee;
- 39
- 40     4. The standard is affirmed by an international standards development organization (SDO)
- 41         or, in the absence of such affirmation, at least by a government-commissioned SDO;
- 42
- 43     5. The standard is vendor neutral and allows for sufficient development of a variety of
- 44         competing interoperable products or services, and;
- 45
- 46     6. There are no constraints on the re-use of the standard.
- 47
- 48     a. **Open Format** – A published specification for storing digital data that is based
- 49         on and employs open standards, and which are implementable by both
- 50

1 proprietary and free-open source software.  
2

3       b. **Free-Open Source Software (FOSS)** – Any software computer program that  
4       meets all of the following criteria:

- 5       7. The source code of the software, including the source code for such other parts and  
6       components needed to compile and install the software shall be readily available and  
7       accessible;
- 8       8. The license to use the program does not restrict nor require fees such as royalties from  
9       anyone to redistribute, in any way, the program as part of an aggregate software  
10      distribution or solution containing other programs from several other sources;
- 11      9. The license must allow modifications and derived works which, as specified in Paragraph  
12      4.2 of this Section, must allow for redistribution without additional charges;
- 13      10. The license to use must not discriminate against persons nor a specific group of persons;
- 14      11. The license of the program shall not be restricted to it being part of a particular software  
15      distribution, hence, individual components of an aggregate solution can be modified and  
16      redistributed in accordance to Paragraphs 4.2 and 4.3 of this section;
- 17      12. A software license must not restrict other software from being used as part or in  
18      cooperation with the FOSS. Hence, the license of the open source software can be used  
19      in conjunction with proprietary software, and;
- 20      13. The license must be technology neutral. No foreseeable/deliberate restrictions should be  
21      placed regarding the use of the software in any platform, or for any purpose.

22       a. **FOSS License** – any license and/or end-user agreement that ensures free access  
23       and redistribution of free/open source software, the licenses of which are  
24       generally approved by an internationally recognized FOSS advocate body.

25       b. **Total Cost of Ownership (TCO)** – covers all the costs involved in a technology  
26       or business solution, including the initial investment cost and maintenance,  
27       support, replacement, training and upgrade costs.

28       c. **Government** – includes the three separate branches of government and all  
29       departments, bureaus, offices and agencies operating under each separate branch  
30       of government, including schools and government-owned and controlled  
31       corporations.

32       **SECTION 4. Legal Recognition of FOSS.** – The government shall recognize the  
33       validity and legitimacy of FOSS and FOSS licenses, subject to the provisions of existing laws,  
34       rules and regulations.

35       **SECTION 5. Government Rules and Policies on the Use and Adoption of Open**

1      ***Standards and FOSS in Government.***

- 2
- 3      1. ***Use of Open Standards*** – The government shall use only ICT goods and services  
4      that comply with open standards except under extraordinary circumstances as  
5      defined in Section 5.5 of this Act;
- 6
- 7      2. ***Use of Open Formats*** – All government communication and data intended for  
8      public consumption shall be encoded in open standard data format;
- 9
- 10     3. ***Use of FOSS*** – The government shall apply only FOSS or FOSS solutions in all ICT  
11    projects and activities except under extraordinary circumstances as defined in Section  
12    5.5 of this Act;
- 13
- 14     4. ***Use of RAND License for Open Standards*** – Open standards licensed under  
15    ‘Reasonable and Non-Discriminatory’ (RAND) terms, and hence are not free but  
16    are available for a reasonable fee shall be used only under extraordinary  
17    circumstances as defined in Section 5.5 of this Act;
- 18
- 19     5. ***Extraordinary Circumstances*** – The Department of Information and  
20    Communications Technology (DICT), through the Office of FOSS Migration  
21    created under Section 15 shall determine, through public hearing, whether there  
22    exists extraordinary circumstances that will exempt a government agency or project  
23    from Sections 5.1 to 5.4 of this Act.
- 24

25    Extraordinary circumstances exist when:

- 26
- 27     a. There is no reasonably available ICT goods or services supporting open  
28        standards and/or FOSS in the field, area or activity that the government  
29        intends to engage in, or;
- 30     b. A particular government agency or office has an existing, widely-used and  
31        widely implemented proprietary ICT system and there are no reasonably  
32        available technology using open standards and/or FOSS that can be used  
33        with the said proprietary system.
- 34
- 35     6. ***Limitations on the Use of Proprietary Standards and Software in Government***  
36    – Should there exist extraordinary circumstances as enumerated in Section 5.5 of this  
37    Act, the government may use proprietary standards and software subject to the  
38    following conditions:
- 39
- 40     a. The state shall procure, purchase or acquire only ICT goods and services that  
41        are interoperable and scalable with open standards;
- 42
- 43     b. The state shall procure, purchase or acquire available software that offers  
44        license most similar to FOSS as defined in Section 3 of this Act, and;
- 45
- 46     c. Open standards and FOSS will be selected and given preference when  
47        existing systems are to be retired or need major enhancements.

48

49    ***SEC. 6. Adoption of FOSS Policy in Government Research and Development.*** –

50    All software developed by government must be FOSS and open standards compliant except in  
51    exigent circumstances where national security may be in peril, or in such other case where the

1 right to freedom to public information is reasonably controlled as provided for by law. In case of  
2 exigent circumstances, government shall release under a FOSS license for public consumption  
3 said software, system and ICT goods and services when it is to be retired or replaced.  
4

5       **SEC. 7. Provision Against Single Vendor Lock-in and Dependence.** Under no  
6 circumstances shall the government acquire ICT goods and services that are restricted for use in  
7 a single vendor environment only. All prospective ICT investments of the government shall  
8 comply with open standards. Existing ICT systems will be reviewed for open standards  
9 compatibility and will be enhanced to achieve open standards compatibility when appropriate.  
10

11       **SEC. 8. Preference in Procurement of ICT Services and Goods.** – In case there is  
12 more than one company that offers FOSS and open standard compliant solutions to the  
13 government with almost equal total cost of ownership, preference shall be given to the Filipino-  
14 owned ICT company.  
15

16       **SEC. 9. Promotion of FOSS and Open Standards in Educational Institutions.**  
17

- 18       1. The government, through the Department of Information and Communications  
19 Technology (DICT), Commission on Higher Education (CHED), Department of  
20 Education (DepEd), the National Computer Center (NCC), the Department of  
21 Science and Technology (DOST) and other appropriate agencies shall promote  
22 FOSS by providing laboratories, organizing competitions, and encouraging research,  
23 thesis and dissertations on FOSS development and the development of open  
24 standards;  
25
- 26       2. Within eight (8) months after this Act takes effect, DICT, DepEd, DOST, CHED  
27 and the Technical Education and Skills Development Authority (TESDA) shall  
28 spearhead the formulation and implementation of a curriculum for training students  
29 and teachers on the use and development of FOSS in all levels of education. They  
30 will also formulate in cooperation with the CICT and other appropriate agencies, a  
31 basic government retraining and certification program for existing IT professionals to  
32 test their proficiencies and skills in implementing FOSS solutions.  
33
- 34       3. Higher educational institutions that offer professional certification programs on the  
35 use and implementation of proprietary software and solutions will be encouraged to  
36 offer similar certification programs for FOSS and open standard solutions.  
37

38       **SEC. 10. Promotion of FOSS and Open Standards in the Private Sector.** – The  
39 government shall provide various types of non-fiscal incentives and support to private sector  
40 entities involved in the use, promotion and development of FOSS and open standards.  
41

42       **SEC. 11. Amending Section 22 of RA 8293, otherwise known as the “Intellectual  
43 Property Code of the Philippines”.**  
44

45       Sec. 22 of RA 8293 otherwise known as the Intellectual Property Code of the  
46 Philippines is hereby amended to read as follows:  
47

48                    ---XXX---

49       **Section 22. Non-Patentable Inventions.** The following shall be excluded from patent  
50

1 protection:

- 2
- 3     22.1. Discoveries, scientific theories and mathematical methods;
- 4
- 5     22.2. Schemes, rules and methods of performing mental acts, playing games or doing
- 6         business, and programs for computers;
- 7
- 8     22.3. Methods for the treatment of the human or animal body by surgery or therapy and
- 9         diagnostic methods practiced on the human or animal body. This provision shall
- 10         not apply to products and composition for use in any of these methods;
- 11
- 12     22.4. Plant varieties or animal breeds or essentially biological process for the production
- 13         of plants or animals. This provision shall not apply to micro-organisms and non-
- 14         biological and microbiological processes.
- 15

16         Provisions under this subsection shall not preclude Congress to consider the

17         enactment of a law providing *sui generis* protection of plant varieties and animal

18         breeds and a system of community intellectual rights protection:

19

- 20     22.5. Aesthetic creations; [and]
- 21

22     22.6. COMPUTER PROGRAMS, TECHNIQUES AND METHODS IN

23         COMPUTING AND ARRANGING DATA FOR USE IN DIGITAL

24         FORMAT, INCLUDING ALGORITHMS;

25

26     22.7. PROTOCOLS, SPECIFICATIONS, METHODS OF ARRANGING DATA

27         THAT ARE KNOWN TO FORM PART OF OPEN STANDARDS OR ARE

28         INTEGRAL TO IMPLEMENTATION OF OPEN STANDARDS, AND;

29

- 30     22.8. Anything which is contrary to public order or morality.
- 31

32         **SEC. 12. *Penalties.*** – Any act or omission on the part of any public official(s) and/or

33         individuals , juridical or otherwise , acting in conspiracy with public officials violating provisions

34         of this Act shall be penalized in accordance with pertinent provision(s) of RA 3019, otherwise

35         known as the “*Anti-Graft and Corrupt Practices Act as Amended*”, “The Civil Service Law as

36         Amended” or both whichever is applicable.

37

38         **SEC. 13. *Implementation.*** – The Department on Information and Communications

39         Technology (DICT) shall be the main government agency tasked to oversee the implementation

40         of this Act. Within six (6) months after this Act takes effect, the DICT shall:

41

- 42         1. Submit to the Office of the President and to Congress an audit of all existing
- 43             government ICT systems, and its recommendations as to system migration and
- 44             changes needed to fulfill the objectives of this Act;
- 45
- 46         2. Come up with implementing rules and regulations for this Act which shall include as
- 47             minimum the following:
- 48
- 49             a. Within three years, 90% of government IT professionals, and 65% of the
- 50                 country's IT professionals must be proficient in the implementation of FOSS
- 51                 systems, and;

- 1
- 2       b. Within five years, 75% of all existing government systems shall be open
- 3            standards compliant, and all government communication and research data
- 4            intended for public consumption and access shall be in open standard data
- 5            format;
- 6
- 7       c. Within five years, 75% of all existing government systems shall employ
- 8            FOSS. To be qualified as compliant to this Act, one machine is counted as
- 9            employing FOSS when at the minimum, its operating system, and the
- 10           computing programs used to fulfill the purpose of the machine (e.g., office
- 11           suite programs for machines intended for office use, or counting programs
- 12           for counting machines) are FOSS.
- 13
- 14       d. The effective advocacy, training and development of a FOSS community in
- 15           the country that will help in the development of FOSS programs and in the
- 16           advocacy of FOSS.

17

18       **SEC. 14. Amending R.A. 10844, Promulgating Additional Policy to the DICT.** –

19       To successfully implement provisions of this Act, the mandate of DICT shall now include the

20       following:

- 21
- 22       1. Catalogue, compile and publish all existing international open standards applicable to
- 23           the Philippines;
- 24
- 25       2. Pending applicable international open standards for the Philippines, the DICT shall
- 26           spearhead the development of open standards for the country in the process ensuring
- 27           the participation of Philippine ICT professional organizations, non-government
- 28           organizations and other stakeholders in the creation of such;
- 29
- 30       3. Ensure the compliance of all government agencies to this Act, and;
- 31
- 32       4. Encourage private entities to adopt systems and solutions compliant with open
- 33           standards.

34

35       **SEC. 15. Creating the Office on FOSS Migration.** – There shall be created an office

36       on FOSS migration to be headed by a known FOSS advocate with at least ten years of

37           experience in the field of ICT and FOSS. Such office shall be an attached agency of the DICT

38           with its head receiving compensation, benefits, privileges and other emoluments equivalent to

39           other attached agencies to the DICT.

40

41       The new office thus created shall have the following mandate, duties, powers and

42           responsibilities:

- 43
- 44       1. Ensure the efficient, prompt and successful migration of all government ICT goods
- 45           and services to FOSS as mandated in this Act and its IRR;
- 46
- 47       2. Determine, upon request of a government agency, if there exists extraordinary
- 48           circumstances enumerated in Section 5.5 of this Act that will exempt a particular
- 49           project or ICT implementation from Sections 5.1 to 5.4 of this Act;

3. Review and ensure the compliance of all government agencies to pertinent provisions of this Act;
4. Train and develop human capital for FOSS in the Philippines;
5. Coordinate with the DOST, National Computer Center (NCC) and other government agencies, State Universities and Colleges, for modification, customization and development of FOSS for government use;
6. Aid in the prosecution of public officials and individuals, juridical or otherwise, acting in conspiracy with government officials in refusing to implement provisions of this Act;
7. Create its own sub-offices, hire staff including programmers for modification, improvement and development of existing FOSS, and seek the services of consultants to aid in its mandate and successful implementation of this Act, and;
8. Disburse funds thereof for its operations.

**SEC. 16. *Appropriations*.** – The sum of twenty million pesos (P20,000,000.00) shall be allocated for the DICT for the implementation of its new additional mandate, and another fifty million pesos (P50,000,000.00) for the creation and operations of the Office of FOSS Migration for the first year this bill is enacted into law. Appropriations for the implementation of this Act for the succeeding years shall be included in the *General Appropriations Act*.

**SEC. 17. *Repealing Clause*** – Section 22 of RA 8293 otherwise known as the “Intellectual Property Code of the Philippines” is hereby amended in accordance to Section 11 of this Act.

All other laws, presidential decrees, executive orders, and rules and regulations, or parts thereof inconsistent with the provisions of this Act are hereby repealed, modified or amended accordingly.

**SEC. 18. *Separability Clause*** – If any section or provision of this Act is held unconstitutional or invalid, the validity of other sections herein shall not be affected thereby.

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