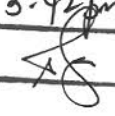


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **917**

HOUSE OF REPRESENTATIVES	
RECEIVED	
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Introduced by Representative H. Harry L. Roque, Jr.

"AN ACT STRENGTHENING THE INTER-AGENCY COMMITTEE-TOBACCO (IAC-TOBACCO) TO ENSURE COMPLIANCE WITH ARTICLE 5.3 OF THE WORLD HEALTH ORGANIZATION FRAME WORK CONVENTION ON TOBACCO CONTROL (WHO FCTC) THEREBY AMENDING FOR THIS PURPOSE SECTIONS 2, 4, 29, 31, 32, 36 AND 39 OF REPUBLIC ACT 9211, OTHERWISE KNOWN AS THE TOBACCO REGULATION ACT OF 2003"

EXPLANATORY NOTE

The Philippines has a solemn obligation to protect and promote the right to health, which is intimately linked with the self-preservation and self-perpetuation of the Filipino people. Article II, Section 15 of the 1987 Philippine Constitution mandates that the State "shall protect and promote the right to health of the people and instill health consciousness among them."

In the Philippines, at least eighty seven thousand six hundred (87,600) Filipinos die every year from tobacco-related diseases, or approximately two hundred forty (240) deaths every day.¹ In 2009, the Philippines was revealed to have one of the highest smoking populations in the world, ranking 9th for males and 16th for females.² These figures underscore the urgent need to adopt and implement more effective measures to curb tobacco consumption.

As a State Party to the *World Health Organization Framework Convention on Tobacco Control* ("WHO FCTC"), the world's first public health treaty which aims to address the global tobacco epidemic and to provide protection to the world's population against the health hazards tobacco use and tobacco smoke, the Philippines has an international obligation to uphold the principles contained therein.

¹ Department of Health National Tobacco Control Coordinating Office, data available at <<http://www.beat-tobacco.ph/national-tobacco-control-strategy/introduction/>> Last accessed on 14 January 2014; see also Quimbo SLA, Casoria AA, Miguel-Baquilod M, Medalla FM, Xu X, Chaloupka FJ. (2012), *The Economics of Tobacco and Tobacco Taxation in the Philippines*, Paris: International Union Against Tuberculosis and Lung Disease.

² American Cancer Society (2009); *The Tobacco Atlas*, 3rd ed., 23-25.

Protection against tobacco industry interference³ is an indispensable requirement to the realization of all provisions of the WHO FCTC. This is premised on the principle that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.⁴ Recognizing the need to counter the tobacco industry's efforts to undermine tobacco control⁵ and to inform the public of the tobacco industry's efforts to undermine tobacco control measures,⁶ Article 5.3 of the FCTC states that "[i]n setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law." Article 5.3 is grounded in extensive evidence showing that the tobacco industry has been subverting tobacco control measures on a global scale.⁷ The tobacco industry has vast accesses to resources and employs sophisticated techniques to impede tobacco control measures.⁸

Republic Act No. 9211 or the *Tobacco Regulation Act of 2003* ("RA 9211"), the first comprehensive law on tobacco control in the Philippines, became effective in 2003, two years before the FCTC came into force. The main policy areas of RA 9211 are: (a) smoke-free environment, (b) sale to minors, (c) health warnings, and (d) advertising, promotions, and sponsorships. RA 9211 created the Inter-Agency Committee-Tobacco ("IAC-T") to implement the provisions of the Act. Significantly, Section 29 (g) of RA 9211 provides that a "representative from the Tobacco Industry to be nominated by the legitimate and recognized associations of the industry" be among the members of the IAC-T. The representation of tobacco industry interests in a regulatory body mandated to implement, enforce, and monitor the implementation of a tobacco control measure contravenes Article 5.3 of the WHO FCTC. Notably, RA 9211 does not contain any provision prohibiting and/or preventing tobacco industry interference with public health policies, nor does it contain any safeguards for its member agencies and organizations to be protected from tobacco industry tactics. Hence, RA 9211, which specifically created the IAC-T to implement the provisions of the law, must be urgently amended.

There is a gap in the implementation of the Philippines' obligation to implement Article 5.3 of the WHO FCTC as a result of the composition of the IAC-T under RA 9211. Considering the vast range of forms that tobacco industry interference may take, it is necessary to alter the composition of the IAC-T under RA 9211 to eliminate the main venue by which the tobacco industry is able to exert its commercial and vested interests through its participation in the government's administration and implementation of tobacco control measures.

³"Tobacco industry interference" refers to the broad array of tactics utilized by the tobacco industry to interfere with or influence public health measures related to tobacco control in order to promote its interests.

⁴Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control ("FCTC Guidelines"), Conference of the Parties, Decision WHO FCTC/COP2(14), available at <http://www.who.int/WHO_FCTC/guidelines/adopted/guidel_2011/en/>.

⁵ WHO FCTC, Preamble.

⁶ World Health Assembly ("WHA") Resolution WHA54.18, citing the findings of the Committee of Experts on Tobacco Industry Documents; WHO, TOBACCO COMPANY STRATEGIES TO UNDERMINE TOBACCO CONTROL ACTIVITIES AT THE WHO (July 2000).

⁷ WHA54.18.

⁸ Briefing Paper: Implementing Article 5.3, from the Second Session of the Conference of the Parties to the WHO FCTC, available at <http://www.WHO_FCTC.org/images/stories/2007/fca-2007-cop-article5-3-cop2-briefing-en.pdf>, last accessed 10 August 2014.

As a State Party to the FCTC, the Philippines is internationally bound to comply with its treaty obligations in good faith and to show political commitment not to undermine the objectives set out in the FCTC.⁹Hence, the immediate approval of this Bill requiring the removal of the tobacco industry in the IACT is earnestly sought.

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



REP. H. HARRY L. ROQUE, JR.

⁹*Secretary of Justice vs. Hon. Ralph C. Lantion*, supra; Vienna Convention on the Law of Treaties, Section 26

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4
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9 HOUSE BILL NO. _____

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11
12 Introduced by Representative H. Harry L. Roque, Jr. KABAYAN Partylist
13

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16 AN ACT
17 STRENGTHENING THE INTER-AGENCY COMMITTEE-TOBACCO (IAC-
18 TOBACCO) TO ENSURE COMPLIANCE WITH ARTICLE 5.3 OF THE WORLD
19 HEALTH ORGANIZATION FRAME WORK CONVENTION ON TOBACCO
20 CONTROL (WHO FCTC) THEREBY AMENDING FOR THIS PURPOSE
21 SECTIONS 2, 4, 29, 31, 32, 36 AND 39 OF REPUBLIC ACT 9211, OTHERWISE
22 KNOWN AS THE TOBACCO REGULATION ACT OF 2003

23
24 *Be it enacted by the Senate and House of Representatives of the Philippines in Congress*
25 *assembled:*

26
27 SEC. 1. Section 2 of Republic Act 9211, otherwise known as the Tobacco Regulation
28 Act of 2003, is hereby amended to read as follows:

29
30 SECTION 2. Policy.—It is the policy of the State to protect the
31 populace from hazardous products and promote the right to health
32 and instill health consciousness among them. For these purposes,
33 the government shall institute a policy whereby the use, sale and
34 advertisements of tobacco products shall be regulated in order to
35 promote a healthful environment and protect the citizens from the
36 hazards of tobacco smoke.

37
38 SEC. 2. Section 4 of the same Act is hereby amended by inserting new paragraphs to
39 read as follows and the same are hereby renumbered accordingly:

40
41 "Section 4. Definition of Terms - As used in this Act:

42
43 x x x

44
45 (V) "TOBACCO INDUSTRY" - REFERS TO ORGANIZATIONS,
46 ENTITIES, ASSOCIATIONS, AND INDIVIDUALS THAT WORK
47 FOR AND IN BEHALF OF THE TOBACCO INDUSTRY, SUCH AS
48 BUT NOT LIMITED TO TOBACCO MANUFACTURERS,
49 WHOLESALE DISTRIBUTORS, IMPORTERS OF TOBACCO
50 PRODUCTS, TOBACCO RETAILERS, FRONT GROUPS AND/OR

1 ORGANIZATIONS, INCLUDING BUT NOT LIMITED TO
2 LAWYERS, SCIENTISTS AND LOBBYISTS WHO WORK TO
3 FURTHER THE INTERESTS OF THE TOBACCO INDUSTRY; AND
4

5 (W) "UNECESSARY INTERACTIONS" - REFERS TO ALL
6 INTERACTIONS WITH THE TOBACCO INDUSTRY THAT IS
7 NOT STRICTLY NECESSARY FOR THE LATTER'S EFFECTIVE
8 REGULATION, SUPERVISION AND CONTROL."
9

10 SEC. 3. Section 29 of the same Act is hereby further amended to delete sub-
11 paragraph h. to read as follows:
12

13 SECTION 29. Implementing Agency. - An Inter-Agency
14 Committee-Tobacco CONTROL (IAC-Tobacco CONTROL), which
15 shall have the exclusive power and function to administer and
16 implement the provisions of this Act, is hereby created. The IAC-
17 Tobacco CONTROL shall be chaired by the Secretary of the
18 DEPARTMENT OF HEALTH (DOH) with the Secretary of the
19 DEPARTMENT OF EDUCATION (DEPED) as Vice Chairperson. The
20 IAC-Tobacco CONTROL shall have the following as members:
21

- 22 a. Secretary of the Department of Agriculture (DA);
- 23
- 24 b. Secretary of the Department of Justice (DOJ);
- 25
- 26 c. Secretary of the Department of Finance (DOF);
- 27
- 28 d. Secretary of the Department of Environment and Natural
29 Resources (DENR);
- 30
- 31 e. Secretary of the Department of Science and Technology (DOST);
- 32
- 33 f. Secretary of the DEPARTMENT OF TRADE AND INDUSTRY
34 (DTI); AND;
- 35
- 36 g. ONE (1) representative EACH from AT LEAST THREE (3)
37 nongovernment organizations (NGOS) involved in public health
38 promotion, WITHOUT ECONOMIC AND/OR FIDUCIARY TIES
39 TO THE TOBACCO INDUSTRY, OR DO NOT KNOWINGLY
40 REPRESENT OR RECEIVE PAYMENT FROM ANY TOBACCO
41 PRODUCT MANUFACTURER OR WHOLESALER, OR ANY
42 PARENT, AFFILIATE OR SUBSIDIARY OF A TOBACCO
43 PRODUCT MANUFACTURER OR WHOLESALER, OR ANY
44 PERSON, INTEREST GROUP, ADVOCACY ORGANIZATION,
45 LAW FIRM, ADVERTISING AGENCY, OR OTHER BUSINESS
46 OR ORGANIZATION THAT REPRESENTS THE INTERESTS OF
47 THE TOBACCO INDUSTRY, nominated by DOH in consultation
48 with the concerned NGOs."
49

50 THE DEPARTMENT SECRETARIES SHALL DESIGNATE THEIR
51 RESPECTIVE AUTHORIZED PERMANENT REPRESENTATIVE TO

1 THE IAC-TOBACCO CONTROL; PROVIDED, SAID PERMANENT
2 REPRESENTATIVE SHALL HAVE A RANK NOT LOWER THAN
3 ASSISTANT SECRETARY.
4

5 THE DEPARTMENT SECRETARIES SHALL DESIGNATE THEIR
6 RESPECTIVE AUTHORIZED PERMANENT REPRESENTATIVE TO
7 THE IAC-TOBACCO CONTROL; PROVIDED, SAID PERMANENT
8 REPRESENTATIVE SHALL HAVE A RANK NOT LOWER THAN
9 ASSISTANT SECRETARY.
10

11 IN ORDER TO FACILITATE COORDINATION AMONG MEMBERS
12 OF THE IAC-TOBACCO CONTROL, THE DEPARTMENT OF
13 HEALTH AS THE LEAD AGENCY SHALL PROVIDE THE
14 SECRETARIAT. THE SECRETARIAT SHALL ACT AS THE
15 COORDINATING BODY OF THE IAC-TOBACCO CONTROL AND
16 SHALL PROVIDE THE FOLLOWING FUNCTIONS SUCH AS, BUT
17 NOT LIMITED TO, SETTING OF MEETINGS, MANAGING OF
18 IMPORTANT LOGISTICS AND CIRCULATION OF INFORMATION
19 AND DOCUMENTS AMONG MEMBERS.
20

21 SEC. 4. A new provision is hereby inserted to be denominated as Section 29-A to
22 read as follows:
23

24 SECTION 29-A. PROTECTION OF THE IAC-T FROM TOBACCO
25 INDUSTRY INTERFERENCE. -ALL MEMBERS OF THE IAC-T ARE
26 PROHIBITED FROM INTERACTING WITH THE TOBACCO
27 INDUSTRY, EXCEPT WHEN STRICTLY NECESSARY FOR ITS
28 EFFECTIVE REGULATION, SUPERVISION AND CONTROL. ANY
29 NECESSARY INTERACTION MUST BE CONDUCTED PUBLICLY
30 AND TRANSPARENTLY, AND EFFORTS MUST BE TAKEN TO
31 PREVENT OR CORRECT ANY PERCEPTION OF PARTNERSHIP
32 WITH THE TOBACCO INDUSTRY.
33

34 ALL MEMBERS OF THE IAC-T ARE STRICTLY PROHIBITED FROM
35 ACCORDING PREFERENTIAL TREATMENT TO THE TOBACCO
36 INDUSTRY; SOLICITING OR ACCEPTING ANY GIFT, GRATUITY,
37 FAVOR, ENTERTAINMENT OR ANYTHING OF MONETARY
38 VALUE FROM THE TOBACCO INDUSTRY; FAILING TO
39 DISCLOSE, RETAINING, AND/OR ACQUIRING ANY FINANCIAL
40 OR MATERIAL INTEREST IN, OR OTHER POTENTIAL SOURCE OF
41 CONFLICT OF INTEREST WITH THE TOBACCO INDUSTRY; AND
42 ACCEPTING ANALOGOUS FAVORS FROM THE TOBACCO
43 INDUSTRY.
44

45 SEC. 5. Section 31 of the same Act is hereby further amended to read as follows:
46

47 SECTION 31. Compliance Monitoring. -Not later than one (1) year
48 after the date of the effectivity of this Act, and annually thereafter, the
49 IAC-Tobacco CONTROL shall submit to the President of the
50 Philippines and to both Houses of Congress a Compliance Monitoring
51 Report on the compliance of the manufacturers on all applicable laws

1 and ordinances with respect to the manufacture and distribution of
2 tobacco products.

3
4 The report shall contain pertinent information on the methods, goals
5 and implementation program of said manufacturers with respect to
6 the requirements of this Act.

7
8 A SEPARATE REPORT SHALL BE SUBMITTED BY THE MEMBERS
9 OF THE IAC-TOBACCO CONTROL ENUMERATING THE
10 MEASURES ESTABLISHED TO LIMIT INTERACTIONS WITH THE
11 TOBACCO INDUSTRY AND ENSURE THE TRANSPARENCY OF
12 THOSE INTERACTIONS THAT OCCUR, AS WELL AS POLICIES
13 IMPLEMENTED TO PROTECT THEIR AGENCIES FROM
14 TOBACCO INDUSTRY INTERFERENCE.

15
16 SEC. 6. Section 32 of the same Act is hereby further amended by inserting a new
17 paragraph to read as follows:

18
19 "SECTION 32. Penalties. — The following penalties shall apply:

20
21 XXX

22
23 D. VIOLATION OF SECTIONS 29-A. - IF THE OFFENDER IS A
24 PUBLIC OFFICIAL, HE SHALL BE SUBJECT TO ADMINISTRATIVE
25 DISCIPLINARY ACTION PURSUANT TO RULE XIV (DISCIPLINE)
26 OF THE OMNIBUS RULES IMPLEMENTING BOOK V OF EO 292,
27 AS MAY BE AMENDED, MODIFIED, CHANGED, ADDED TO,
28 DELETED FROM, OR SUPERSEDED BY THE ENACTMENT OF
29 ANY NEW LAW, WITHOUT PREJUDICE TO THE CRIMINAL
30 AND/OR CIVIL ACTIONS UNDER EXISTING LAWS, RULES, AND
31 REGULATIONS.

32
33 SEC. 7. A new provision is hereby inserted to be denominated as Section 36-A to
34 read as follows:

35
36 SECTION 36-A. CITIZEN SUITS. - FOR PURPOSES OF ENFORCING
37 THE PROVISIONS OF THIS ACT OR ITS IMPLEMENTING RULES
38 AND REGULATIONS, ANY CITIZEN MAY FILE AN
39 APPROPRIATE CIVIL, CRIMINAL OR ADMINISTRATIVE ACTION
40 IN THE PROPER COURTS OR ADMINISTRATIVE BODY AGAINST
41 ANY PUBLIC OFFICER WHO WILLFULLY OR GROSSLY
42 NEGLECTS THE PERFORMANCE OF AN ACT SPECIFICALLY
43 ENJOINED AS A DUTY BY THIS ACT, ITS IMPLEMENTING RULES
44 AND REGULATIONS, INCLUDING THE TEMPLATE,
45 GUIDELINES, OR OTHER REGULATIONS; OR ABUSES HIS
46 AUTHORITY IN THE PERFORMANCE OF HIS DUTY; OR, IN ANY
47 MANNER, IMPROPERLY PERFORMS HIS DUTIES UNDER THIS
48 ACT OR ITS IMPLEMENTING RULES AND REGULATIONS.

49
50 THE ADMINISTRATIVE, CIVIL AND CRIMINAL ACTIONS
51 ALLOWED UNDER THIS SECTION SHALL BE CUMULATIVE

1 AND CUMULATIVE AND SHALL NOT PRECLUDE ANY OTHER
2 PERSON FROM FILING A SIMILAR ACTION.
3

4 THE COURT SHALL EXEMPT SUCH ACTION FROM THE
5 PAYMENT OF FILING FEES AND STATEMENTS LIKEWISE,
6 UPON PRIMA FACIE SHOWING OF THE NON-ENFORCEMENT
7 OR VIOLATION COMPLAINED OF, EXEMPT THE PLAINTIFF
8 FROM THE FILING OF AN INJUNCTION BOND FOR THE
9 ISSUANCE OF PRELIMINARY INJUNCTION. IN THE EVENT
10 THAT THE CITIZEN SHOULD PREVAIL, THE COURT SHALL
11 AWARD REASONABLE ATTORNEY'S FEES, MORAL DAMAGES
12 AND LITIGATION COSTS AS APPROPRIATE.
13

14 **SEC. 8. Repealing Clause.** - All laws, decrees, presidential proclamations, executive
15 orders, rules and regulations or parts thereof inconsistent herewith, are hereby
16 repealed or modified accordingly.
17

18 **SEC. 9. Separability Clause.** - If any provision of this Act is held invalid or declared
19 unconstitutional, the other provisions which are not affected thereby shall remain
20 valid and subsisting.
21

22 **SEC. 10. Effectivity.** - This Act shall take effect fifteen (15) days after its complete
23 publication in the Official Gazette or in two (2) newspapers of general circulation,
24 whichever comes first.
25

