

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

17th CONGRESS
First Regular Session

HOUSE BILL NO. 3293

HOUSE OF REPRESENTATIVES

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REGISTRATION UNIT
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Introduced by **REP. EVELINA G. ESCUDERO**

EXPLANATORY NOTE

"Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

To strengthen accountability and reduce corruption in the public and private sectors, this bill seeks to provide protection, security and benefits to whistleblowers.

In this bill, a whistleblower is defined as any person who has personal knowledge or access to any data, information, fact or event constituting improper conduct; Provided that such person must not have any direct participation in such improper conduct, or in cases where such person participated in any improper conduct, such person is not the most guilty and shall therefore qualify as a state witness against the persons subject of such disclosure.

It is the intention of this bill to encourage citizens to stand up and report alleged violations of law, improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer or employee, and private entity.

Hence, the immediate approval of this bill is urgently sought.



EVELINA G. ESCUDERO

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HOUSE BILL NO. 3293

Introduced by **REP. EVELINA G. ESCUDERO**

AN ACT
PROVIDING FOR PROTECTION, SECURITY AND BENEFITS OF WHISTLEBLOWERS

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

SECTION 1. Short Title. - This Act shall be known as the “Whistleblower Protection Act.”

SEC. 2. Declaration of Policy. – Public Office is a public trust. It is the policy of the State to promote and ensure full accountability in the conduct of its officers and employees, and exact full retribution from those who shall engage in improper conduct. Toward this end, the State shall:

- (A) Maintain honest and high standards of integrity in the public service;
- (B) Safeguard the national interest through the prosecution of corrupt and erring public officials and employees; and
- (C) Encourage and facilitate the disclosure of corrupt conduct and practices in the public service by providing benefits provided in existing laws.

SEC. 3. Definitions. -As used in this Act:

(A) “Employer” shall mean any individual, partnership, association, corporation or entity, including the government, or any person or group of persons who shall directly or indirectly for or on behalf of said individual, partnership, association, corporation or entity, employ an employee as defined in this Act.

(B) “Employee” shall mean any person who is made to work by, or who renders service for, an employer. The term shall include public officers and employees as defined in this Act as well as any person considered an “employee” under the Labor Code.

(C) “Public officer/employee” shall refer to any person holding any office or performing any function or duty in the Government of the Republic of the Philippines by virtue of an appointment, election or contract.

(D) "Government" shall include the National Government, and any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations and their subsidiaries, and Local Government Units.

(E) "Retaliatory action" shall refer to any negative or obstructive response, reaction or reprisal to a disclosure made under this Act aimed at, pertaining to, or against a whistleblower or any of the members of his/her family and relatives up to the fourth civil degree of consanguinity or affinity. Said actions shall include criminal, civil or administrative proceedings commenced or pursued against said whistleblower or any of the members of his/her family or relatives up to the fourth civil degree of consanguinity or affinity as well as any retaliatory action in the workplace.

(F) "Retaliatory action in the workplace" shall mean any discriminatory conduct or policies which affect promotion or job assignment including undue negative performance appraisal, close monitoring by supervisors, unwarranted criticisms or avoidance by co-employees, blacklisting from other job opportunities or prejudicial transfers by reason of a disclosure made under this Act.

(G) "Acts constituting improper conduct" shall mean any act or omission of a public officer or employee solely, or in cooperation, conspiracy with, or with the assistance of, private persons which is covered by or constitute a violation of:

(1) Presidential Decree No. 46 otherwise known as "Making it punishable for Public Officials and Employees to receive, and for Private persons to give, gifts on any occasion, including Christmas;"

(2) Republic Act No. 3019 otherwise known as "Anti-Graft and Corrupt Practices Act;"

(3) Republic Act No. 6713 otherwise known as "An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees;"

(4) Republic Act No. 7080 otherwise known as the "Anti-Plunder Law;"

(5) Title VII of Book Two of the Revised Penal Code on Crimes Committed by Public Officers; and

(6) All other laws which penalize or sanction any act or omission of a public officer or employee.

(H) "Whistleblower" shall refer to any person who has personal knowledge or access to any data, information, fact or event constituting improper conduct; Provided that such person must not have any direct participation in such improper conduct, or in cases where such person participated in any improper conduct, such person is not the most guilty and shall therefore qualify as a state witness against the persons subject of such disclosure.

(I) "Qualified Whistleblower" shall mean a whistleblower qualified and admitted into the Whistleblower's Program of the Implementing Agency in accordance with this Act and its implementing rules and regulations.

(j) "Implementing Agencies or Agency" shall collectively or individually refer to the Department of Justice (DOJ), the Office of the Ombudsman, the Commission on Human Rights (CHR), and the Public Attorney's Office (PAO).

(k) “Whistleblower Council” shall refer to the Council created and defined under Section 31 of this Act.

SEC. 4. Coverage. –Notwithstanding the provisions of law on prescription of crimes, this Act shall cover all acts constituting improper conduct irrespective of the time of commission.

SEC. 5. Admission/Qualification to the Program. – Whistleblowers, whether from the public or private sector, shall be entitled to the benefits under this Act, provided, that all the following requisites concur:

- (a) The disclosure is voluntary, in writing and under oath;
- (b) The disclosure relates to acts constituting improper conduct;
- (c) The information to be disclosed is admissible in evidence;
- (d) The whistleblower appears to be not the most guilty; and
- (e) The whistleblower is not a beneficiary of the Act or acts of improper conduct in the amount of more than one million pesos or any kind of consideration of the same value.

It is only upon concurrence of the above requisites can a whistleblower be qualified and thus admitted into the program as provided for in this Act.

SEC. 6. Necessity of Testimony. – The testimony of a qualified whistleblower in court shall not be necessary for the entitlement or enjoyment of the benefits of this Act. In the event that the said whistleblower’s testimony is required as found by the Implementing Agency to be necessary and indispensable for a successful prosecution of a case, he/she shall be entitled to the additional benefits and protection under R.A. No. 6981 otherwise known as the Witness Protection Program, funding for which shall be sourced from the budget as provided under Section 32 hereof.

SEC. 7. Credibility of a Whistleblower. - In all cases, the fact of the entitlement of the qualified whistleblower to the protection and benefits provided in this Act shall not be admissible in evidence to diminish or affect his credibility.

SEC. 8. Perpetuation of Testimony. – Once admitted into the program, a whistleblower may perpetuate his/her testimony pursuant to Rule 134 of the Revised Rules of Court.

SEC. 9. Memorandum of Agreement with the Person to be Protected. – Before a person is provided protection and benefits as a whistleblower for the State, he/she shall first execute a *Memorandum of Agreement* with the Implementing Agency which shall set forth his/her responsibilities as follows:

- (A) To provide information to and testify before all branches or agencies of government in an appropriate proceeding on facts constituting improper conduct;
- (B) To avoid commission of crime;
- (C) To take all necessary precautions to preclude detection by others of the facts concerning the protection provided him/her under this Act;
- (D) To cooperate with all reasonable requests of officers and employees of the government who are providing him/her protection under this Act; and

- (E) To regularly inform the Implementing Agency's program official concerned of his/her current activities and address.

SEC. 10. Breach of the Memorandum of Agreement. – Substantial breach of the *Memorandum of Agreement*, provided for in Section 9 hereof, shall be sufficient ground for the termination of the protection and benefits provided under this Act; *Provided*, however, that before terminating the same, the Implementing Agency shall send notice to the qualified whistleblower concerned, stating therein the reason for such termination; *Provided, Finally, That* substantial breach of the memorandum of agreement shall be punishable by imprisonment of not less than six (6) months but not more than one (1) year independent and separate from any other criminal liability that may be incurred by reason of such breach.

SEC. 11. Confidentiality. – Except insofar as allowed by this Act, during and after the disclosure, and throughout and after any proceedings taken thereafter, a qualified whistleblower is entitled to absolute confidentiality as to:

- (A) His/her identity;
- (B) The subject matter of his/her disclosure; and
- (C) The person to whom such disclosure has been made.

There shall be no such confidentiality in his/her identity if a whistleblower makes a public disclosure of acts constituting improper conduct unless, notwithstanding such public disclosure, he/she has taken means obviously intended to preserve his/her anonymity.

SEC. 12. Confidential Information. – No person to whom a disclosure has been made or referred to shall divulge any information that may identify or tend to identify a whistleblower or reveal the subject matter of such disclosure, except only as to the following circumstances:

- (A) The whistleblower consents in writing prior to such a disclosure of;
- (B) The disclosure is indispensable and essential as determined by the Implementing Agency, taking into consideration the necessary proceedings to be had after said disclosure; or
- (C) The disclosure or referral is made pursuant to an obligation under this Act. The prohibition on disclosure under this Section shall apply to any person who has become privy to any confidential information, whether officially or otherwise.

SEC. 13. Violation of Confidentiality.– Any person who shall violate the protection of confidentiality of a protected disclosure under Sections 11 and 12 of this Act, shall suffer the penalty of not more than one (1) year but not less than six (6) months with the accessory penalty of temporary absolute disqualification for public office, in case of a public officer or employee, and shall be civilly liable to the whistleblower in such amount of damages as may be awarded and deemed reasonable by the court.

The proceedings herein shall be independent of any action that an aggrieved whistleblower may take before the Civil Service Commission or the Department of Labor and Employment for unfair or discriminatory practices, back wages, or other labor dispute, or before other quasi-judicial agencies that may or may not have arisen from a disclosure, or a believed or suspected disclosure.

SEC. 14. *No Breach of Duty of Confidentiality.* – A whistleblower who has made a disclosure under this Act on whom a provision of law, regulation, issuance, practice or other convention, imposes upon him/her the duty to maintain confidentiality with respect to any information disclosed is considered not to have committed a breach thereof.

SEC. 15. *Defense of Privileged Communication.* – A whistleblower who has made a disclosure under this Act shall have in any other inquiry or proceeding the defense of absolute privileged communication with respect to the subject matter of his/her disclosure or information given to the proper authorities

SEC. 16. *False and Misleading Disclosures.*– Any person who deliberately and voluntarily gives false or misleading information in connection with acts or omissions constituting improper conduct shall be guilty of an offense punishable by imprisonment of not more than two (2) years and perpetual absolute disqualification from holding public office, in case of a public officer or employee, without prejudice to other liabilities under existing laws.

SEC. 17. *Protection against Disciplinary Action or Reprisals.* – A whistleblower who has made or is believed or suspected to have made a disclosure under this Act is not liable to disciplinary action for making said disclosure.

Prohibited acts under this section include retaliatory action in a workplace or prejudicial conduct towards a whistleblower, such as: discriminatory actions behind policies and procedures, reprimand, punitive transfers, unwarranted referral to a psychiatrist or counselor, and undue poor performance reviews. Other prejudicial conducts include obstruction of an investigation, withdrawal of essential resources, undue reports and the attachment of unfair personnel file notes.

To this end, any employer who has discouraged and imposed sanctions or reprisals based on workplace interactions, which shall include workplace ostracism, questions and attacks on motives, accusations of disloyalty and dysfunction, public humiliation, and the denial of work or promotion, or who encourages, causes or does retaliatory action or reprisal against a whistleblower, or anyone believed or suspected to be one shall be liable for an offense defined under this Act.

Any employee who refuses to follow orders of employers that would ~~cause them to~~ violate any provision of this Act shall likewise be protected from reprisals and retaliatory action in the workplace.

For purposes of this protection, an applicant for employment shall be deemed an employee and entitled to such protection.

Provided however, that an employer of a whistleblower shall be notified through a certification issued by the Implementing Agency within a period of thirty (30) days, from the date when the whistleblower last reported for work, stating that the employee has been qualified as a whistleblower under the provisions of this Act and its implementing rules and regulations. Provided further that an employer shall have the option to remove said whistleblower from employment after securing a clearance from the Civil Service Commission and the Department of Labor and Employment, whichever the case may be, in case of a prolonged absence due to transfer or permanent relocation under this Act or R.A. No. 6981.

SEC. 18. *Protection against other Actions.* – A whistleblower who has made a disclosure under this Act shall not be subject to any liability whether administrative, civil, criminal for making such a disclosure. No action, claim or demand may be taken against a whistleblower for making such disclosure, nor any evidence presented shall be used against him/her in court; *Provided*, that the whistleblower is qualified under Section 5 of this Act.

This protection shall however not apply to a qualified whistleblower who shall commit any false or misleading disclosure or commit substantial breach of the memorandum of agreement.

SEC.19. *Discriminatory Hiring.*– Any individual, firm, corporation, office or employer who shall deny a qualified applicant of employment, or who shall reject his/her application for employment solely on the ground that the applicant is or will be a whistleblower, shall be guilty of an offense punishable by not more than six (6) months imprisonment with the accessory penalty of suspension of the right to hold public office, in case of a public officer or employee, and shall be civilly liable to indemnify the whistleblower for damages as may be awarded by the court.

SEC. 20. *Retaliatory Action in the Workplace.* – Any person who shall commit any retaliatory act in a workplace as defined under this Act, against an employee who is a whistleblower, or believed or suspected to be one, shall be guilty of an offense and shall suffer the penalty of not more than six (6) months imprisonment with the accessory penalty of suspension of the right to hold public office, in case of a public officer or employee, and shall be civilly liable to indemnify a whistleblower in case damages are incurred and as may be awarded by the court.

Toward this end, the aggrieved whistleblower shall be entitled to the provisional remedy of injunction against any retaliatory action in the workplace, prejudicial conduct or discriminatory treatment by reason of the said whistleblower's intended or actual disclosure.

The proceedings herein shall be independent of any action that an aggrieved person may take before the Civil Service Commission or the Department of Labor and Employment for unfair discriminatory practices, back wages, or other labor dispute, or before other quasi-judicial agencies that may or may not have arisen from a disclosure, or a believed or suspected disclosure.

SEC. 21. *Penalty for Retaliatory Acts against a Whistleblower.* – Any person who commits any of the retaliatory acts as defined in this Act against a whistleblower and/or hinders, delays, prevents or dissuades a whistleblower from:

- (A) Attending, assisting or testifying before any investigating agency or quasi-judicial body or judicial;
- (B) Reporting to a law enforcement officer or judge the commission or possible commission of an offense or a violation of conditions of probation, parole, or release pending judicial proceedings;
- (C) Seeking the arrest of another person in connection with the offense;
- (D) Causing a criminal prosecution, or a proceeding for the revocation of a parole or probation; or
- (E) Performing and enjoying the rights and benefits under this Act or attempts to do so

shall be fined not more than One Hundred Thousand Pesos (Php 100,000.00) or suffer imprisonment of or not less than six (6) months but not more than six (6) years or both at the discretion of a court and shall also suffer the penalty of perpetual disqualification from holding public office in case of a public officer or employee.

SEC. 22. *Benefits and Security and Protection of a Qualified Whistleblower.* – A qualified whistleblower shall be entitled to an allowance equivalent to his /her daily basic financial requirement, provided he/she requests for said allowance and the Implementing Agency determines and approves the reasonableness of such request.

A qualified whistleblower shall likewise be entitled to housing and personal security regardless of whether the disclosure is made in confidence or in public.

Accordingly, the Implementing Agency is hereby authorized to allocate funds as provided for in Section 32 hereof for the full satisfaction of the benefits and security and protection of a qualified whistleblower.

This section is without prejudice to any benefits a qualified whistleblower may be entitled to under R.A. No. ~~6894~~ **6981** provided that the necessary amount shall be sourced from the budget as provided for in Section 32 hereof and that no duplication of benefit shall ensue.

SEC. 23. *Financial Rewards for Whistleblower.* – A qualified whistleblower shall be entitled to a corresponding monetary reward on a contingency basis, equivalent to at least ten percentum of the amount which may be recovered or the amount of One Million Pesos (Php 1,000,000.00), whichever is lower, as a result of his/her disclosure.

SEC. 24. *Abstract.* – All government agencies, offices, bureaus and local government units, including government owned or controlled corporations, whether or not with original charters, shall conspicuously display an abstract of this Act and the rights and protections of whistleblowers, including the obligations of employers under this Act. Such abstract shall be provided in the implementing rules and regulations.

All government agencies, offices, bureaus and local government units, including government owned and controlled corporations, whether or not with original charters, shall likewise put in place internal procedures for dealing with whistleblowers consistent with the provisions of this Act and its implementing rules and regulations. Said internal procedure shall be widely disseminated to all employees.

All other employers, specifically those in the private sector, shall also conspicuously display notices of their employees' protections and their obligations under this Act and its implementing rules and regulations.

SEC. 25. *Failure of an Employer to Post Abstract-* The failure to post an Abstract or internal procedures as required under Section 5 of this Act shall constitute an offense and shall be penalized with a fine in the amount of One Hundred Thousand Pesos (Php 100,000.00) for the first offense. Said amount shall be doubled for every succeeding offense/s.

SEC. 26. *Failure to Act or Report to the Implementing Agency.* - Any person under obligation to report a disclosure under this Act to the Implementing Agency, who fails to do so within the period of two (2) months, or who fails to act thereon or cause an investigation thereof, shall be guilty of an offense and shall suffer the penalty of not more than one (1) month imprisonment, and/or a fine amounting to not more than Fifty Thousand Pesos (Php 50,000.00) without prejudice to any other liability that may be imposed upon such person under existing laws.

SEC. 27. *Confidentiality of the Proceedings.* – All proceedings involving application and/or enjoyment of the benefits under this Act, including any action taken thereon, shall be confidential in nature. No information or documents given or submitted in support thereof shall be released except upon written order of the Implementing Agency, and provided such disclosure shall not endanger the life of a qualified whistleblower.

SEC. 28. *Powers and Functions of the Implementing Agencies or Agency.* - In addition to their respective powers and functions under existing laws, the Implementing Agencies shall:

- (a) Supervise, monitor and coordinate all efforts relative to the implementation and enforcement of the provisions of this Act;
- (b) Investigate all disclosures made under this Act, prosecute or recommend prosecution of the same when warranted;
- (c) Evaluate the qualification of whistleblowers for coverage within this Act, and whichever the case may be, make the appropriate decision on their entitlement to the benefits and security and protection extended herein;
- (d) Undertake, in coordination and cooperation with the private and public sectors, an information campaign to educate the public on the provisions and benefits of this Act;
- (e) Develop plans and implement programs to further encourage whistleblowers on acts constituting improper conduct with a view to effective deterrence and/or prosecution;
- (f) Control and administer, through coordination and consistent with the provisions and purpose of this Act, the protection and benefits of whistleblowers and the funds necessary to carry out the provisions of this Act;
- (g) Call upon, or deputize any department, bureau, office or any other government agency or public official to assist in the effective implementation and enforcement of this Act; and
- (h) Grant immunity in accordance with the provisions of this Act and its implementing rules and regulation.

SEC. 29. *Implementing Agency, Option of Whistleblower.* – A whistleblower shall have the right to choose which Implementing Agency he/she intends to be admitted and qualified as a whistleblower. As such, the Implementing Agency so chosen shall have the primary jurisdiction and authority to exercise the powers and functions provided for under Section 28 of this Act.

SEC. 30. *Congressional Whistleblower Program.* – The Senate and the House of Representatives may have their own Whistleblower's Program for resource persons or whistleblowers appearing before them or their respective committees.

The resource person or whistleblower, with his/her express consent, may be admitted into the program upon the recommendation of the legislative committee where his/her testimony is needed when in its judgment there is pressing necessity therefor: *Provided*, That such recommendation is approved by the President of the Senate or the Speaker of the House, whichever the case may be.

The Senate or the House of Representative, whichever the case may be, shall have primary jurisdiction in the administration and implementation of the program independent from any other agency of government when the investigation or the safety of the resource person or whistleblower shall be prejudiced.

SEC. 31. *Implementing Rules and Regulations.* – There is hereby created a Whistleblower Council which shall be composed of the Implementing Agencies and headed by the Office of the Solicitor General.

The Council shall be primarily and solely responsible for the drafting and promulgation of the necessary Implementing Rules and Regulations (IRR) for the effective implementation of this Act. The Council's submission to Congress of the approved IRR and the causing of its publication in at least two (2) newspapers of general circulation shall render the council *functus officio*.

SEC. 32. *Funding.* –The amount One Hundred Million Pesos (Php 100,000,000.00) is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise allocated to carry into effect the purpose of this Act.

Other funding schemes or sources that may be authorized under existing laws shall be allowed in furtherance hereof.

The funds appropriated under this section shall be allocated amongst the implementing agencies based on actual requirements and as may be provided for under the implementing rules and regulations; *Provided*, however, that the initial amount shall be first released to the Department of Justice.

SEC.33. *Separability Clause.* - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provisions not otherwise affected thereby shall remain valid and subsisting.

SEC. 34. *Repealing Clause.* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with, the provisions of this Act is hereby repealed, modified, or amended accordingly.

SEC. 35. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or at least two (2) newspapers of general circulation.

Approved,