

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 47

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Introduced by Rep. **LAWRENCE LEMUEL H. FORTUN**

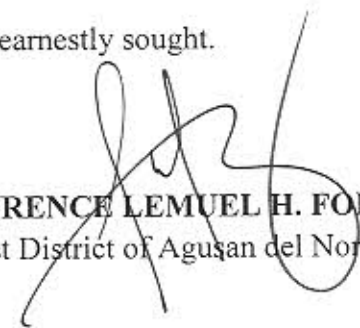
EXPLANATORY NOTE

This bill seeks to purge the government of corruption by establishing a framework for whistleblowers and their families. Transparency International has ranked the Philippines as 95th out of the 186 countries in the Corruption Perceptions Index for 2015. Corruption is omnipresent and has resulted in adversely affecting the development of our country. The establishment of a whistleblower program is a step towards a successful investigation and prosecution against corruption in the government.

The dearth of a mechanism that provides for rewards, protection and security to whistleblowers has made them vulnerable to security risks and possible retaliation. This has encouraged corrupt government officials and employees to continue with their illegal activities without fear that the same will be revealed or that they will be successfully prosecuted. Hence, an institutional mechanism that is set up to protect a whistleblower from security risks and reprisal will encourage a whistleblower to be open and admit to the nefarious activities that is within his/her knowledge.

This bill has provided for a reward system to benefit the whistleblowers, protection against liabilities, security, protection of records against inappropriate disclosures, and assurance against discrimination or retaliatory actions in the workplace.

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


LAWRENCE LEMUEL H. FORTUN
1st District of Agusan del Norte

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Introduced by Rep. LAWRENCE LEMUEL H. FORTUN

AN ACT
PROVIDING FOR THE PROTECTION OF WHISTLEBLOWERS ENSURING THEIR
SECURITY AND PROVIDING BENEFITS FOR THEIR WELFARE

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

1 **SECTION 1.** Short Title.- This Act shall be known as the "Whistleblower Protection Act of
2 2016."

3
4 **SEC. 2. Declaration of Policy.** - Public Office is a public trust. It is the policy of the State to
5 promote and ensure full accountability in the conduct of its officers and employees, and exact full
6 retribution from those who shall engage in improper conduct. Toward this end, the State shall:

- 7
8 (A) Maintain honesty and high standards of integrity in the public service;
9
10 (B) Safeguard the national interest through the prosecution of corrupt and erring public officials
11 and employees and repress certain acts of public officers and private persons alike which
12 constitute graft or corrupt practices;
13
14 (C) Encourage and give protection to individuals disclosing matters relating to corruption and
15 other omissions of public officers and employees inimical to the government.
16

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

- 18
19 A. "Employer" shall mean any individual, partnership, association, corporation or entity,
20 including the government, or any person or group of persons who shall directly or
21 indirectly for or on behalf of said individual, partnership, association, corporation or
22 entity, employ an employee as defined in this Act.
23
24 B. "Employee" shall mean any person who is made to work by, or who renders service for,
25 an employer. The term shall include public officers and employees as defined in this Act
26 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 and such person may or may not have any participation in the conduct ;

(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 (P AO).

(K) "Whistleblower Council" shall refer to the council defined under Section 31 of this Act.

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

87
88 **SEC. 5. Admission/Qualification for the Program.**- Whistleblowers, whether from the public
89 or private sector, shall be entitled to the benefits under this Act; *Provided*, that all the following
90 requisites concur:

- 91
92 A. The disclosure is voluntary, in writing and under oath;
93 B. The disclosure relates to acts constituting improper conduct; and
94 C. The information to be disclosed is admissible in evidence.

95
96 **SEC.6. Necessity of Testimony.**- The testimony of a qualified whistle blower in court shall not
97 be necessary for the entitlement or enjoyment of the benefits of this Act. In the event that the said
98 whistleblower's testimony is required as found by the Implementing Agency to be necessary and
99 indispensable for a successful prosecution of a case, he/she shall be entitled to the additional benefits
100 and protection provided under R.A. No. 6891 otherwise known as the Witness Protection Program,
101 funding for which shall be sourced from the budget as provided under Section 32 hereof.

102
103 **SEC. 7. Credibility of a Whistleblower.**- In all cases, the fact of the entitlement of the
104 qualified whistleblower to the protection and benefits provided in this Act shall not be admissible in
105 evidence to diminish or affect his credibility.

106
107 **SEC. 8. Perpetuation of Testimony.**- Once admitted into the program, a whistleblower may
108 perpetuate his/her testimony pursuant to Rule 134 of the Revised Rules of Court.

109
110 **SEC. 9. Memorandum of Agreement with the Person to be Protected.**- Before a person is
111 provided protection and benefits as a whistleblower for the State, he/she shall first execute a
112 Memorandum of Agreement with the Implementing Agency which shall set forth his/her
113 responsibilities as follows:

- 114
115 A. To provide information to and testify before all branches or agencies of government in an
116 appropriate proceeding on facts constituting improper conduct;
117
118 B. To avoid commission of crime;
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120 C. To take all necessary precautions to preclude detection by others of the facts concerning the
121 protection provided him/her under this Act;
122
123 D. To cooperate with all reasonable requests of officers and employees of the government who
124 are providing him/her protection under this Act; and
125
126 E. To regularly inform the Implementing Agency's program official concerned of his/her
127 current activities and address.

128
129 **SEC. 10. Breach of the Memorandum of Agreement.**- breach of the Memorandum of
130 Agreement, provided in Section 9 hereof shall, be sufficient ground for the termination of the
131 protection and benefits provided under this Act; *Provided, however*, that before terminating the same,
132 the Implementing Agency shall send notice to the qualified whistle blower concerned, stating therein
133 the reason for such termination.

134
135 **SEC. 11. Confidentiality.**- Except insofar as allowed by this Act, during and after the
136 disclosure, and throughout and after any proceedings taken thereafter, a whistleblower is entitled to
137 absolute confidentiality as to:

- 138
139 A. His/her identity;
140 B. The subject matter of his/her disclosure; and
141 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;
- 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 upon 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 the proper authorities.

SEC 16. False and Misleading Disclosures.- Any person who deliberately and voluntarily giving 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 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 and Prohibited Acts.- A whistleblower who has made or is believed or suspected to have made a disclosure under this Act shall not be 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 could 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. 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 or a prolonged absence due to transfer or permanent relocation under this Act or RA. No. 6891.

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 be used against him/her in court.

This protection shall also operate as an immunity in favor of a whistleblower against any action or proceeding taken against him/her by reason of his/her disclosure

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 whistle blower'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 and/or judicial or quasi-judicial body;
- B. Reporting to a law enforcement or judge the commission or possible 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

- 259 E. Performing and enjoying the rights and benefits under this Act, or attempts to do so shall be
260 fined not more than One Hundred Thousand Pesos (Php 100,000.00) or suffer imprisonment of
261 or not less than six (6) months but not more than six (6) years or both at the discretion of a court
262 and shall also suffer the penalty of perpetual disqualification from holding public office in case
263 of a public officer or employee.
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265

266 **SEC. 22. Benefits and Security and Protection of a Qualified Whistleblower.-** A qualified
267 whistleblower shall be entitled to an allowance equivalent to his/her daily basic financial requirements
268 considering his personal circumstances, provided he/she requests for said allowance and the
269 Implementing Agency determines and approves the reasonableness of such request. A qualified whistle
270 blower shall likewise be entitled to housing and personal security regardless of whether the disclosure
271 is made in confidence or in public. Accordingly, the implementing Agency is hereby authorized to
272 allocate funds and resources as provided for in Section 32 hereof for the full satisfaction of the benefits
273 and security and protection of a qualified Whistle blower,
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275 This section is without prejudice to any benefits a qualified whistleblower may be entitled to
276 under R.A. No. 6891 provided that the necessary amount shall be sourced from the budget as provided
277 for in Section 32 hereof and that no duplication of benefit shall ensue.
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279 **SEC. 23. Financial Rewards for Whistleblower.-** A qualified whistleblower shall be entitled
280 to a monetary reward on a contingency basis, equivalent to at least ten percentum (10%) of the amount
281 which may be recovered as a result of his disclosure or the amount of One Million Pesos (Php
282 1,000,000.00), whichever is lower.
283

284 **SEC. 24. Abstract.-** All government agencies, offices, bureaus and local government units,
285 including government owned or controlled corporations, whether or not with original charters, shall
286 conspicuously display an abstract of this Act and the rights and protections of whistleblowers,
287 including the obligations of employers under this Act. Such abstract shall be provided in the
288 implementing rules and regulations.
289

290 All government agencies, offices, bureaus and local government units, including government
291 owned and controlled corporations, whether or not with original charters, shall likewise put in place
292 internal procedures for dealing with whistleblowers consistent with the provisions of this Act and its
293 implementing rules and regulations. Said internal procedure shall be widely disseminated to all
294 employees. All other employers, specifically those in the private sector, shall also conspicuously
295 display notices of their employees' protections and their obligations under this Act and its
296 implementing rules and regulations.
297

298 **SEC. 25. Failure of an Employer to Post Abstract.-** The failure to post an Abstract or to
299 adopt internal procedures as required under Section 5 of this Act shall constitute an offense and shall be
300 penalized with a fine in the amount of One Hundred Thousand Pesos (Php100,000) for the first offense.
301 Said amount shall be doubled for every succeeding offense/s.
302

303 **SEC. 26. Failure to Act or Report to the Implementing Agency.-** Any person under
304 obligation to report a disclosure under this Act to the Implementing Agency but who fails to do so
305 within the period of two (2) months, or who fails to act thereon or cause an investigation thereof, shall
306 be guilty of an offense and shall suffer the penalty of not more than six (6) months imprisonment, and
307 or a fine amounting to not more than Three Hundred Thousand Pesos (Php300,000.00) without
308 prejudice to any other liability that may be imposed upon such person under existing laws.
309

310 **SEC. 27. Confidentiality of the Proceedings.-** All proceedings involving application and/or
311 enjoyment of the benefits under this Act, including any action taken thereon, shall be confidential in
312 nature. No information or documents given or submitted in support thereof shall be released except
313 upon written order of the Implementing Agency, and provided such disclosure shall not endanger the
314 life of a qualified whistle blower.
315

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 under this Act, and whenever appropriate, 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 with a view for effective deterrence and/or prosecution of improper conduct as well as acts amounting to graft and corrupt practices;
- 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 indicate his preference as to the Implementing Agency he/she intends to be admitted and/or qualified in as a whistleblower. 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 and/or whistleblowers appearing before them or their respective committees. The resource person and/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, as 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 (Php100,000,000.00) 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

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

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SEC. 34. Repealing Clause.- Any law, presidential decree or issuance, executive order, 20
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,