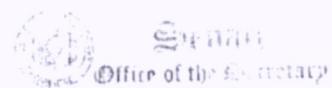


EIGHTEENTH CONGRESS OF THE REPUBLIC }
OF THE PHILIPPINES }
First Regular Session }



19 JUL -8 P2:01

SENATE
S.B. No. 248

RECEIVED BY

Introduced by SENATOR LACSON

AN ACT
PROVIDING FOR PROTECTION, SECURITY AND
BENEFITS OF WHISTLEBLOWERS AND FOR OTHER
PURPOSES.

EXPLANATORY NOTE

There is no doubt that corruption remains to be a major hindrance in the development and progress of our nation. The integrity and trustworthiness of our government will continue to be questioned until this perennial problem is finally resolved.

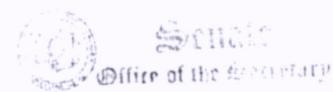
The difficulty in combating corruption lies in its very nature of being committed behind closed doors and well beyond the purview of the public eye. This is where the importance of obtaining credible witnesses with reliable information regarding the corrupt practices of government officials or employees comes into place.

This proposed legislation seeks to encourage whistleblowers to come out in the open and put an end to the corrupt practices of some government officials or employees. At the same time, it aims to strengthen the present machinery in ensuring the full protection and security of these brave witnesses against any form of retaliation or ostracism, and establish a rewards-and-benefits system in order to ensure the livelihood and welfare of these whistleblowers. In order, however, to protect the public, a rigid procedure will also be enforced in order to prevent any abuses of this bill as well as to prevent false testimonies that will only wreak more havoc into our society.

In view of the above premises, the immediate approval of this bill is urgently sought.


PANFILO M. LACSON
Senator

EIGHTEENTH CONGRESS OF THE REPUBLIC }
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SENATE
S.B. No. 248

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Introduced by SENATOR LACSON

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A handwritten signature in black ink.

AN ACT
PROVIDING FOR PROTECTION, SECURITY AND BENEFITS OF
WHISTLEBLOWERS AND FOR OTHER PURPOSES.

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

1 **Section 1. Name of the Act.** – This Act shall be known as the “*Whistleblower Act*
2 *of 2019*”.

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

- 8
9 (a) Maintain honest and high standards of integrity in the public service;
10 (b) Safeguard the national interest through the prosecution of corrupt and
11 erring public officials and employees; and
12 (c) Encourage and facilitate the disclosure of corrupt conduct and practices in
13 the public service by providing benefits and protection to whistleblowers.

14
15 Nothing in this Act shall diminish or restrict the entitlement, receipt or enjoyment
16 by a whistleblower or an informant of more or higher benefits provided in existing laws.

17
18 **Section 3. Definition of Terms.** – As used in this Act, the following terms shall
19 mean:
20

- 21 (a) “*Acts constituting graft and corruption*” shall mean any conduct, act or
22 omission of public officers and employees solely, or in cooperation or
conspiracy with private persons which are covered by, or constitute as

1 violations of:

- 2 1.) Republic Act No. 3019;
3 2.) Republic Act No. 6713;
4 3.) Republic Act No. 7080;
5 4.) Presidential Decree No. 46;
6 5.) Titles II and VII of Book Two of the Revised Penal Code.

7

8 (b) "**Employee**" shall mean any person who is made to suffer work by, or who
9 renders service for, an employer. The term shall include public officers and
10 employees as defined in this Act as well as any person considered an
11 "employee" under the Labor Code.

12

13 (c) "**Employer**" shall mean any individual, partnership, association,
14 corporation or entity, including the government, or any person or group of
15 persons who shall directly or indirectly for or on behalf of said individual,
16 partnership, association, corporation or entity, employs an employee as
17 defined in this Act.

18

19 (d) "**Government**" includes the National Government, and any of its
20 subdivisions, agencies or instrumentalities, including government-owned
21 and controlled corporations and their subsidiaries, including the different
22 Local Government Units.

23

24 (e) "**Whistleblower**" shall refer to an informant or any person who has
25 privileged or personal knowledge or access to data, events or information
26 and who shall deliberately disclose any individual, collective or organized
27 conduct of any public officer/s and employees constituting graft and
28 corruption as defined under this Act.

29

30 (f) "**Public officer**" shall refer to any person holding any public office in the
31 Government of the Republic of the Philippines by virtue of an appointment,
32 election or contract.

33

34 (g) "**Retaliatory action**" shall refer to any negative or obstructive responses,
35 reactions or reprisals to the disclosure made under this Act aimed at,

pertaining to, or against a whistleblower or an informant or any of the members of his/her family and relatives up to the fourth civil degree of consanguinity or affinity. Said action shall include criminal, civil or administrative proceedings commenced or pursued against said whistleblower or any of the members of his family or relatives up to the second degree of consanguinity or affinity as well as retaliatory action in the workplace.

- (h) ***“Retaliatory action in workplace”*** shall refer to any discriminatory conduct or policies which affect the 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 the disclosure made under this Act.
- (i) ***“Qualified Whistleblower”*** shall mean an informant or any person qualified and admitted into the Whistleblower’s Program of either the Office of the Ombudsman or Senate/House of Representatives in accordance with this Act and its Implementing rules and regulations.

Section 4. Coverage. – Conduct constituting graft and corruption, whether commenced or consummated before the effectivity of this Act, shall mean any conduct, acts or omissions of public officers and employees solely, or in cooperation or conspiracy with private persons, which are covered by, or amount to violations 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.) Titles II and VII of Book Two of the Revised Penal Code on “Crimes Against the Fundamental Laws of the State and Crimes Committed by

1 Public Officers".
2

3 **Section 5. Admission to the Program.** – Whistleblowers or Informants whether
4 from the public or private sector, shall be entitled to the benefits under this Act, provided,
5 that all the following requisites concur:

- 6
- 7 (a) The disclosure is voluntary, in writing and under oath;
8 (b) The disclosure relates to conduct constituting graft and corruption under
9 this Act;
10 (c) The disclosure is not yet subject of a complaint filed with the Office of the
11 Ombudsman or investigated by any other investigating agency, unless in
12 the opinion of the Ombudsman, such disclosure is necessary for an
13 effective and successful investigation or prosecution, or essential for the
14 acquisition of material evidence not yet in its possession;
15 (d) The information given by the whistleblower can be corroborated; and
16 (e) The information disclosed leads to a successful gathering of evidence
17 and/or conduct of investigation sufficient to sustain a finding of probable
18 cause for the filing of a criminal complaint or information before a court of
19 competent jurisdiction.

20

21 **Section 6. Necessity of Testimony.** - The testimony of a whistleblower in court
22 shall not be necessary for the entitlement or enjoyment of the benefits of this Act. In the
23 event that the whistleblower's testimony is required as found by the Office of the
24 Ombudsman to be necessary and indispensable for the successful prosecution of a case,
25 he shall be entitled to the additional benefits and protection under Republic Act No. 6981
26 otherwise known as the Witness Protection Program.

27

28 **Section 7. Memorandum of Agreement with the Person to be Protected.** –
29 Before a person is provided protection as a whistleblower or informant for the State, he
30 shall first execute a *Memorandum of Agreement* which shall set forth his/her
31 responsibilities including the following:

- 32
- 33 (a) To provide information to and testify before all appropriate law enforcement
34 officials concerning any appropriate proceeding in connection with or arising
35 from the activities involved in the offense subject matter thereof;

- 1 (b) To avoid the commission of a crime;
- 2 (c) To take all necessary precautions to avoid detection by others of the facts
- 3 concerning the protection provided him under this Act;
- 4 (d) To cooperate with respect to all reasonable requests of officers and employees
- 5 of the government who are providing him/her protection under this Act; and
- 6 (e) To regularly inform the appropriate program official of his current activities
- 7 and address.

8

9 **Section 8. *Breach of the Memorandum of Agreement.*** – Substantial breach of

10 the *Memorandum of Agreement* shall be a ground for the termination of the protection

11 provided under this Act; *Provided*, however, that before terminating the same, the

12 Ombudsman shall send notice to a whistleblower concerned, stating therein the reason for

13 such termination. Reasonable time shall be afforded the informant to take the appropriate

14 and necessary measures for his/her protection and security in view thereof.

15

16 **Section 9. *Protection against other Actions.*** – A whistleblower or any person

17 who has made a disclosure under this Act shall not be subject to any liability, whether

18 administrative, civil, criminal or other proceedings for making such a disclosure or acts in

19 relation thereto. No action, claim or demand may be taken against a whistleblower for

20 making such disclosure nor shall any evidence presented be used against him in court and

21 other administrative or quasi-judicial agency/body.

22

23 This protection shall also operate as immunity in favor of a whistleblower or

24 informant against any action or proceeding taken against him/her by any person subject

25 of the disclosure, by reason thereof and acts in relation to the subject of disclosure.

26

27 **Section 10. *Defense of Privileged Communication.*** – A whistleblower or any

28 person who has made a disclosure under this Act shall have, as defense in any other

29 inquiry or proceeding, the absolute privilege with respect to the subject matter of his/her

30 disclosure or information given to the proper authorities.

31

32 **Section 11. *Confidentiality.*** – Except insofar as allowed by this Act, during and

33 after the disclosure, and throughout and after any proceeding taken thereafter, a

34 whistleblower or an informant is entitled to absolute confidentiality as to:

- 1 (a) His identity;
2 (b) The subject matter of his disclosure; and
3 (c) The person to whom such disclosure was made.

4

5 There shall be no such confidentiality in his/her identity if a whistleblower or an
6 informant makes a public disclosure of a conduct constituting graft and corruption as
7 defined in this Act unless, notwithstanding such public disclosure, he has taken means
8 and measures obviously intended to preserve his anonymity.

9

10 **Section 12. No Breach of Duty of Confidentiality.** – An informant who has made
11 a disclosure under this Act on whom a provision of law, regulation, issuance, practice or
12 other convention, imposes upon him/her a duty to maintain confidentiality with respect to
13 any information disclosed, is considered not to have committed a breach thereof.

14

15 **Section 13. Confidential Information.** – No person to whom a disclosure has been
16 made or referred shall disclose any information that may identify or tend to identify a
17 whistleblower or informant or reveal the subject matter of such disclosure, except only as
18 to the following circumstances:

- 19
- 20 (a) The whistleblower consents in writing prior to the disclosure of an
21 information;
22 (b) The disclosure is indispensable and essential as determined by the Office of
23 the Ombudsman, having regard to the necessary proceedings to be taken
24 after the disclosure; or
25 (c) The disclosure or referral is made pursuant to an obligation under this Act.

26

27 The prohibition on disclosure under this Section shall apply to any person who has
28 become privy to any confidential information, whether officially or by other means.

29

30 **Section 14. Protection against Disciplinary Action or Reprisals.** – A
31 whistleblower or a person who has made or is believed or suspected to have made a
32 disclosure under this Act is not liable to disciplinary action for making said disclosure.

33

34 Prohibited acts under this section include retaliatory action in the workplace or
35 prejudicial conduct towards the whistleblower, such as: discriminatory actions behind

1 policies and procedures, reprimand, punitive transfers, unwarranted referral to a
2 psychiatrist or counselor, and undue poor performance reviews. Other prejudicial
3 conducts include obstruction of an investigation, withdrawal of essential resources, undue
4 reports and the attachment of unfair personnel file notes.

5

6 To this end, any employer who shall discourage and impose sanctions on reprisals
7 based on workplaces interaction, which shall include workplace ostracism, questions and
8 attacks on motives, accusations of disloyalty and dysfunction, public humiliation, and the
9 denial of work or promotion, or who encourages, causes or does retaliatory action or
10 reprisal against an informant or anyone believed or suspected to be one shall be liable for
11 an offense defined under this Act.

12

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

16

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

19

20 Provided however, that an employer of a whistleblower shall be notified through a
21 certification issued by the Office of the Ombudsman, within a period of thirty (30) days,
22 from the date when the informant last reported for work. Provided further that an
23 employer shall have the option to remove such whistleblower from employment after
24 securing a clearance from the Office of the Ombudsman and the Department of Labor
25 and Employment in case of a prolonged absence due to transfer or permanent relocation
26 under this Act or R.A. 6891.

27

28 **Section 15. Security and Protection of a Whistleblower.** – When determined to be
29 necessary and appropriate by the Office of the Ombudsman, a whistleblower, even if the
30 disclosure is made in confidence, shall be entitled to personal security. Should, at
31 anytime, the identity of the informant be revealed, or his anonymity compromised, the
32 whistleblower shall, in addition to the other benefits under this Act, and when warranted,
33 be entitled to the benefits of R. A. No. 6981.

34

35 **Section 16. Confidentiality of the Proceedings.** – All proceedings involving

1 application and/or enjoyment of the benefits under this Act, under the Office of the
2 Ombudsman, including any action taken thereon, shall be confidential in nature. No
3 information or documents given or submitted in support thereof shall be released except
4 upon written order of the Office of the Ombudsman, and provided such disclosure shall
5 not endanger the life of a qualified whistleblower.

6

7 **Section 17. Financial Rewards for Informants.** – The whistleblower shall be
8 entitled to a corresponding monetary reward in accordance with the provisions of this Act
9 and the implementing Rules and Regulations.

10

11 The informant shall receive an amount in accordance with the following schedule:

12

| SALARY GRADE OF MOST SENIOR RESPONDENT | FINANCIAL REWARD OF QUALIFIED WHISTLEBLOWER |
|---|--|
| 33 | 5,000,000 |
| 32 | 4,000,000 |
| 31 | 3,000,000 |
| 30 | 2,500,000 |
| 29 | 2,000,000 |
| 28 | 1,500,000 |
| 27 | 1,000,000 |
| 26 | 900,000 |
| 24-25 | 800,000 |
| 22-23 | 700,000 |
| 20-21 | 600,000 |
| 18-19 | 500,000 |
| 16-17 | 400,000 |
| 14-15 | 300,000 |
| 12-13 | 200,000 |
| 10-11 | 100,000 |
| 5-9 | 75,000 |
| 1-4 | 50,000 |

13

14 Upon being qualified as a whistleblower and admitted to the program by the
15 Office of the Ombudsman, fifty percent (50%) of the reward shall be given to the

1 qualified whistleblower. The remaining fifty percent (50%) shall be given prior to the
2 filing of a case in a proper court.

3

4 For cases susceptible to pecuniary estimation, such as plunder, forfeiture of ill-
5 gotten wealth, bribery, malversation and damage or injury to government, the
6 whistleblower shall be entitled to an additional reward of ten percent (10%) of the
7 amount recovered by final judgment.

8

9 During the pendency of the case, however, a whistleblower shall be advanced the
10 amount equivalent to not less than twenty five percent (25%) of the additional reward of
11 the total award due consistent with the nature of the case and the amount involved and
12 deemed recoverable. This shall be given in accordance with the Rules and Regulations
13 implementing this Act.

14

15 **Section 18. *Abstract.*** – All government agencies, offices, bureaus and local
16 government units, including government-owned or controlled corporations, whether or
17 not with original charters and the different local government units, shall conspicuously
18 display an abstract of this Act and the rights and protections of whistleblowers, including
19 the obligations of employers under this Act. Such abstract shall be provided in the Rules
20 and Regulations.

21

22 These entities are likewise required to put in place internal procedures for dealing
23 with whistleblowers, consistent with the provisions of this Act and the Rules and
24 Regulations. Said internal procedure shall be widely disseminated to all the employees.

25

26 **Section 19. *Credibility of an Informant.*** – In all cases, the fact of the entitlement
27 of the qualified whistleblower or informant to the protection and benefits provided in this
28 Act shall not be admissible in evidence to diminish or affect his credibility.

29

30 **Section 20. *Penalty for Retaliatory Acts Against a Whistleblower.*** – Any person
31 who commits any of the retaliatory acts as defined in this Act against a qualified
32 whistleblower or informant and/or hinders, delays, prevents or dissuades said
33 whistleblower from:

34

35 (a) Attending, assisting or testifying before any investigating agency or quasi-

- 1 judicial body or judicial;
- 2 (b) Reporting to a law enforcement officer or judge the commission or possible
- 3 commission of an offense, or a violation of conditions of probation, parole, or
- 4 release pending judicial proceedings;
- 5 (c) Seeking the arrest of another person in connection with the offense;
- 6 (d) Causing a criminal prosecution, or a proceeding for the revocation of a parole
- 7 or probation;
- 8 (e) Performing and enjoying the rights and benefits under this Act or attempt to do
- 9 so.

10

11 Shall be fined not more than One Hundred Thousand Pesos (Php 100,000.00) or

12 suffer imprisonment of not less than six (6) months but not more than six (6) years or

13 both at the discretion of a court, and shall also suffer the penalty of perpetual

14 disqualification from holding public office in case of a public officer or employee.

15

16 **Section 21. Violation of Confidentiality.** – Any person who violates the protection

17 of confidentiality of a protected disclosure under Sections 10, 11, 12 and 15 of this Act,

18 shall suffer the penalty of not more than six (6) years but not less than six (6) months

19 with an accessory penalty of temporary absolute disqualification for public office in case

20 of a public officer or employee, and shall be civilly liable to indemnify the informant in

21 such amount of damages as may be awarded and deemed reasonable by a competent

22 court.

23

24 **Section 22. Retaliatory Action in the Workplace.** – Any person who shall commit

25 any retaliatory act in a workplace as defined in this Act, against an employee who is a

26 whistleblower or an informant or believed or suspected to be one, shall be guilty of an

27 offense and shall suffer the penalty of not more than six (6) months imprisonment with

28 the accessory penalty of suspension of the right to hold office in case of a public officer

29 or employee, and shall be civilly liable to indemnify a whistleblower of damages as may

30 be awarded by a competent court.

31

32 Toward this end, the aggrieved whistleblower shall be entitled to the provisional

33 remedy of injunction against any retaliatory action in the workplace, prejudicial conduct

34 or discriminatory treatment by reason of the whistleblower's disclosure.

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

6

7 **Section 23. Discriminatory Hiring.** – Any person, firm, corporation, office or
8 employer who shall deny a qualified applicant for employment, or who shall reject his
9 application for employment due to knowledge, belief or suspicion that the applicant is a
10 whistleblower or informant for the State, shall be guilty of an offense and shall suffer the
11 penalty of not more than six (6) months imprisonment with the accessory penalty of
12 suspension of the right to hold public office in case of a public officer or employee, and
13 shall be civilly liable to indemnify the informant of damages as may be awarded by a
14 competent court.

15

16 **Section 24. Failure of an Employer to Post Abstract.** – The failure to post an
17 *Abstract* required under Section 17 of this Act shall constitute an offense and shall be
18 penalized with a fine in the amount of One Hundred Thousand Pesos (P100,000.00) for
19 the first offense. The amount shall be doubled for every succeeding offense, and shall
20 suffer an imprisonment of not more than six (6) months at the discretion of the court with
21 the accessory penalty of suspension of the right to hold public office in case of a public
22 officer or employee. For this purpose, the president, manager, or head of office, bureau
23 or agency shall be held responsible.

24

25 **Section 25. Failure to Act or Report to the Office of the Ombudsman.** – Any
26 person under obligation to report a disclosure under this Act to the Office of the
27 Ombudsman, who fails to do so within the period of two (2) months, or who fails to act
28 thereon or cause an investigation thereof, shall be guilty of an offense and shall suffer the
29 penalty of not more than one (1) month imprisonment, and/or a fine amounting to not
30 more than Fifty Thousand Pesos (Php 50,000.00).

31

32 **Section 26. False and Misleading Disclosures.** – Any person who deliberately
33 and voluntarily gives false or misleading information in connection with conduct
34 constituting graft and corruption under this Act shall, in addition to penalties under other
35 laws, be guilty of an offense and shall suffer the penalty of imprisonment of not more

1 than twelve (12) years and shall also suffer the penalty of perpetual absolute
2 disqualification from holding public office in case of public officer or employee, in
3 addition to other criminal and civil liability he may incur under existing laws.

4

5 **Section 27. Powers and Functions of the Ombudsman.** – In addition to its
6 powers and functions under existing laws, the Office of the Ombudsman shall have the
7 following powers and functions:

- 8
- 9 (a) Supervise, monitor and coordinate all efforts relative to the implementation
10 and enforcement of the provisions of this Act;
- 11 (b) Investigate all disclosures made under this Act and prosecute the same when
12 warranted;
- 13 (c) Evaluate the qualification of whistleblowers or informants for coverage within
14 this Act, and make the appropriate decision on their entitlement to the benefits
15 extended herein;
- 16 (d) Undertake, in coordination and cooperation with the private and public sectors,
17 an information campaign to educate the public on the provisions and benefits
18 of this Act;
- 19 (e) Develop plans and implement programs to further encourage whistleblowers
20 or informants on graft and corrupt activities with a view to effective deterrence
21 and/or prosecution;
- 22 (f) Control and administer, consistent with the provisions and purpose of this Act,
23 the protection and benefits of whistleblowers in connection with the cases
24 within the coverage of Section 4 of this Act;
- 25 (g) Call upon, or deputize any department, bureau, office or any other government
26 agency or public official to assist in the effective implementation and
27 enforcement of this Act;
- 28 (h) Grant immunity in accordance with the provisions of this Act and its
29 implementing rules and regulation.

30

31 **Section 28. Legislative Whistleblower Program** – In order to encourage
32 witnesses of acts constituting graft and corruption to testify before any legislative
33 investigations in aid of legislation, the Senate and/or the House of Representatives may
34 establish a joint or separate program for the benefit and protection of a whistleblower.
35 Consistent with the provisions of this Act, the Senate and the House of Representatives

1 shall promulgate the necessary rules and regulations for the proper implementation of the
2 program; *Provided, That*, the whistleblower or informant may only be admitted to the
3 program upon the recommendation of the Committee where his/her testimony is needed
4 and upon approval of the Senate President or the Speaker of the House of
5 Representatives, as the case may be; *Provided, Further, That*, the admission in the
6 legislative whistleblower program shall not be a bar for admission to the program for
7 whistleblowers of the Office of the Ombudsman with the same rights and privileges
8 including the right to the monetary reward provided for therein; *Provided, Finally, That*,
9 the grant of monetary reward by either the Congress or the Ombudsman will prevent the
10 whistleblower from recovering the said monetary reward twice.

11

12 **Section 29. Implementing Rules and Regulations.** – The Office of the
13 Ombudsman shall promulgate such Rules and Regulations as maybe necessary to
14 implement the intent and purposes of this Act. Said Rules and Regulations shall be
15 published in two (2) newspapers of general circulation.

16

17 **Section 30. Funding.** – The amount of One Hundred Million Pesos
18 (Php100,000,000.00) is hereby authorized to be appropriated out of any funds in the
19 National Treasury not otherwise appropriated to carry into effect the purpose of this

20 Other funding schemes or sources, subject to the limitation, shall be allowed in
21 furtherance hereof.

22

23 **Section 31. Repealing Clause.** – All laws, decrees, executive issuances, rules and
24 regulations inconsistent with this Act are hereby repealed or modified accordingly.

25

26 **Section 32. Separability Clause.** – The declaration of unconstitutionality or
27 invalidity of any provision of this Act shall not affect the other provision hereof.

28

29 **Section 33. Effectivity Date.** – This Act shall take effect after fifteen (15) days
30 following its publication in two (2) newspapers of general circulation.

31

32 *Approved,*