

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

'04 JUN 30 10:02

SENATE

S. No. C79

RECEIVED BY: Dalu

INTRODUCED BY HON. MANUEL B. VILLAR, JR.

EXPLANATORY NOTE


The unabated rise in organized and syndicated crimes has greatly hampered the development efforts of the government. What is disheartening is the involvement of law enforcement officers and government officials in organized crimes. As a result, this new breed of criminals gave birth to a new upper class: the criminal aristocracy. Thus, the State gives priority in enacting and enforcing new and stronger measures against organized criminality to enhance the peace and order condition of the country.

This proposed measure seeks to end the reign of crime lords -- kidnapping, car theft, drugs and organized gambling -- who have been laundering the proceeds of these crimes into legitimate business. "Racketeering activity," is defined, among others, as the attempt or act involving kidnapping, murder, homicide, illegal possession of firearm; robbery, bribery and other anti-graft and corrupt practices, gambling and betting, malversation of funds or property; engaging in monetary transactions improperly derived from unlawful activities specified in the bill and blackmail.

This bill penalizes new crimes, namely: direct or indirect participation in an enterprise conducting a pattern of racketeering activity; using or investing any money or property derived from a pattern of racketeering activity; acquiring or maintaining through a racketeering activity any interest or control of any business or enterprise and conspiring to perform any of the aforementioned acts.

Anyone who violates the law faces the stiff penalty of imprisonment of ten years or twelve years. If the violation is based on a racketeering activity for which the maximum penalty shall be life imprisonment or death, the penalty shall be life imprisonment or death and a fine ranging from one hundred thousand pesos (P 100,000.00) to one million pesos (P 1,000,000.00). As an additional deterrent, the violators likewise forfeit any interest, security, claim, or property acquired in violation of the law.

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


MANUEL B. VILLAR, JR.
Senator

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**AN ACT IMPOSING HEAVY PENALTIES ON RACKETEERS AND ORGANIZED
SYNDICATES IN THE PHILIPPINES**

Be it enacted by the Senate conjoined with the House of Representatives of the Philippines in Congress assembled.

SECTION 1. Title of the Act. This Act shall be known as the "Anti-Racketeering and Organized Syndicates Act of 2004."

Sec. 2. Declaration of Policy. The unabated rise in organized and syndicated crimes and the increasing involvement of law enforcement officers and government officials in organized crime have seriously undermined the pursuit of the State to achieve the economic, social and political goals and vision of Philippines 2000. It is hereby declared as the policy of the State to give priority in enacting and enforcing new and stronger measures against organized criminality in order to enhance the peace and order condition of the country.

Sec. 3. Liberal Construction. The provision of this Act shall be liberally construed to effectuate the policy declared under Sec. 2.

Sec. 4. Definitions. As used in this Act,

1. "Person" means any individual; association, partnership, corporation, entity or any group of individuals, associations, corporations or entities.

2. "Enterprise" includes any individual or association, partnership, corporation or other legal entity or any union or group of individuals associated in fact whether for legitimate or illegitimate purposes.

3. "Racketeering activity" means any attempt or act involving kidnapping; murder; homicide; mutilation; serious physical injuries; threat; coercion; arson; destruction; robbery; thief; illegal possession of firearm; ammunition; or explosives; bribery; and other anti-graft and corrupt practices; gambling and betting; cock-fighting; transmission of gambling information; carnapping; fencing; gun running; illegal logging; white slavery; prostitution; illegal recruitment; smuggling; trafficking in contraband cigarettes; untaxed or fake liquor; piracy; illegal fishing; importation; manufacture, sale, administration, delivery, distribution, and transportation of prohibited drugs; maintenance of a drug den; squatting; swindling; film piracy; counterfeiting; violation of intellectual property rights; monopolies and combinations in restraint of trade; interference with commerce; falsification of land titles; securities fraud; mail fraud; wire fraud; any offense involving fraud; bank frauds; fraudulent insolvency; dealing in obscene matters; sexual exploitation of children as defined under existing criminal statutes; economic exploitation of children; child trafficking; economic exploitation of the disabled and the mendicants; violations of RA 4200 (relating to wire tapping); violation of PD No. 133 (relating to theft of materials or spare parts); malversation of funds or property; restriction on payment and loans to labor organizations; embezzlement of union funds; embezzlement from pension and welfare funds; extortionate credit transactions; embezzlement of union funds; incriminating machinations; obstruction of criminal investigation; obstruction of criminal justice;

tampering with a witness, victim or information; obstruction of national law or local ordinance enforcement; failure of a police officer to enforce a law or ordinance which is his duty to enforce; laundering of monetary instrument; any act that is indictable under any currency or regulations or engaging in monetary transactions improperly derived from specified unlawful activity; blackmail; and illegal organizations such as organized crime families, as well as legitimate organizations which are engaged in any act of racketeering or the activities of which illegally affect domestic or foreign commerce or the honest and efficient management of the Government or the rendering of service to the public;

4. "Pattern" of racketeering activity requires at least two predicate acts of racketeering activity, one of which occurred after the effective date of this act and the other occurring either within ten years before the one occurring after the effectivity of the act or within ten years after the one occurring after the effectivity of this Act.

Sec. 5. Prohibited Activities.

1. It shall be unlawful for any person to participate, either directly or indirectly, with or in an enterprise conducting a pattern of racketeering activity.

2. It shall be unlawful for any person who has received any money or property derived directly or indirectly, from a pattern of racketeering activity, to use or invest directly or indirectly, any part of such money or property in any interest in or the establishment or operation of any business whether legitimate or illegitimate.

3. It shall be unlawful for any person through a pattern of racketeering activity to acquire or maintain directly or indirectly any interest in control of any business, enterprise, whether legitimate or illegitimate by force.

4. It shall be unlawful for any person to conspire to violate any of the provisions of subsections (1), (2) and (3).

Sec. 6. Criminal Penalties.

a. Imprisonment or fine or both. Whoever violates any provision of section 5 shall be imprisoned for a period from ten years to twenty years and if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment or death, the penalty shall be life imprisonment or death, and a fine from P100,000.00 to P1,000,000.00;

b. Consolidation of cases. The trial for criminal liability for each predicate act of a racketeering activity shall be consolidated with the court hearing the RICO case even if committed in different jurisdictions;

c. Forfeiture. In addition to imprisonment and fine, the violator shall forfeit to the Philippine government:

1. Any interest the person has acquired or maintained in violation of Section 5.

2. Any

a. Interest in;

b. Security of;

c. Claim against; or

d. Property or contractual right of any kind affording a source of influence over;

Any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 5; and

3. Any property constituting, or derived from any proceeds which the person obtained directly or indirectly from racketeering activities in violation of Section 5.

d. Vesting of right in property. All rights, titles and interest in property described in preceding paragraph vests in the Philippine government upon the commission of the act giving rise to forfeiture under this section.

e. Jurisdiction. Any of the Regional Trial Courts of the place where any element of any of the racketeering activity constituting the pattern of racketeering activity has been committed shall have jurisdiction over the prosecution under this act and applications for forfeiture including petitions for temporary restraining order or injunction under the next succeeding section without regard to the location of any property to forfeiture or where the person resides or where the enterprise is located.

1) Temporary Restraining Order. A temporary restraining order effective for twenty days may be issued upon application by the Philippine Government without notice or opportunity for a hearing before, during or after the filing of the information directing the defendant or any person acting on his behalf to desist from disposing and to preserve the availability of property for forfeiture, if the Philippine government demonstrate that there is probable cause to believe that the property would be subject to forfeiture and that the provision of notice will jeopardize the availability of the property for forfeiture.

2) Preliminary Injunction. Within twenty days after the issuance of a temporary restraining order, the court shall conduct a hearing with notice to all parties concerned. A writ of preliminary injunction shall be issued if the court determines that:

a. There is substantial-probability that the Philippine government will prevail on the issue of forfeiture and failure to issue the writ will result in the property being destroyed, removed, disposed or otherwise made unavailable for forfeiture; and

b. The need to preserve the availability of the property through the writ outweighs the hardship on any party against whom it is directed.

3) Evidence Required. The Court may receive and consider, at the hearing of the writ of preliminary injunction, evidence and information that would be inadmissible under the rules of evidence. In the hearing for the prosecution of violations in this act the sole testimony of a participant or conspirator, if credible, can be the basis for conviction of the other defendants.

f. Judgment of forfeiture. Upon conviction of a person under this section, the court shall enter Judgment of Forfeiture of the property to the Philippine government and shall authorize the Secretary of Justice to seize all property ordered forfeited.

g. Disposition of forfeited property.

a) Following the service of the property, the Secretary of Justice shall direct the disposition of the Property by sale or any other commercially feasible means. Any property right or interest not exercisable by or transferable for value to the Philippine government shall expire and shall not revert to the defendant, nor shall the defendant or any person acting on his behalf be eligible to purchase forfeited property at any sale held by the Philippine government.

b) The proceeds of any sale or other disposition of property shall, be deposited in the National Treasury under a special account and shall not be used until-the defendant's appeal, if any, has finally been decided. If the defendant's conviction is reversed the amount shall be returned to the defendant.

h. Restitution of property to victims. The court entering the, judgment of correction and forfeiture, upon finality of the decision, shall hear petitions of property or compensation. The court may order portions of the proceeds of the sale of the forfeited property deposited with the National Treasury to be paid to the victims.

I. Rights of Third Parties. 1) No party claiming an interest in property subject to forfeiture may -

a) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property; or

b) Commence an action at law or equity nor may any court issue a restraining order or injunction against the Philippine Government concerning the validity of his alleged interest in the property subject to forfeiture.

2) However, any person, other than the defendant asserting a legal interest in property ordered forfeited may, within thirty days from publication by the Secretary of Justice, of the judgment of forfeiture in two national papers of general circulation in the Philippines, petition the court for a hearing to adjudicate the validity of his interest in the property. If, after the hearing the court determines that the petitioner has established by preponderance of evidence that –

a) the petitioner has legal right, or interest in the property; or b) the petitioner is a bonafide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was acquired through a racketeering act or otherwise subject to forfeiture the court shall amend the order of forfeiture in accordance with its determination.

j. Substitution of other properties. If any of the properties described in Section 6 (c) as a result of any act or omission of the defendant

(1) Cannot be located upon the exercise of due diligence;

(2) Has been transferred or sold to, or deposited with, a third party;

(3) Has been placed beyond the jurisdiction of the courts;

(4) Has been substantially diminished in value; or

(5) Has been commingled with other property which cannot be divided without difficulty; the court shall order the forfeiture of any other property of the defendant up to the value of any property described in Section 6 (c)

Sec. 7. Civil Remedies.

a. Who can bring civil suit -

1. The Philippine government. a) Any of the Regional Trial Courts of the place where any element of any racketeering activity constituting a pattern of racketeering has been committed shall have jurisdiction to prevent or restrain violations of Section 5 irrespective of where the person resides or is found where the enterprise or property is located by issuing appropriate orders, including but not limited to:

(1) Ordering any person to divest himself of any interest, direct or indirect in any enterprise;

(2) Imposing reasonable restrictions on the future activities or investments of any person including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; or

(3) Ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

b) The Secretary of Justice may institute proceedings under this section.

c) A final judgment rendered in favor of the Philippine government in any criminal proceeding shall stop the defendant from denying the essential allegation of the criminal offense in any subsequent civil proceedings brought by the Philippine government.

2. By private plaintiffs. Any person injured in his person, business or property by reason of violation of section 5 or his heirs, may sue therefor in the appropriate Regional Trial Court mentioned in the preceding paragraph and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fees.

b. Expedited Action. In any civil action instituted under this section, the Regional Trial Court shall expeditiously hear the case by giving it preference over all other civil cases.

c. Civil Investigate Demand.

1. Wherever the Secretary of Justice has reason to believe that any person or enterprise may be in possession or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a criminal or civil proceeding, thereon, issue in writing and caused to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

2. The Secretary of Justice shall designate a racketeering investigator to serve as racketeer document custodian.

c. Any person who has duly been served by the civil investigative demand shall make available for inspection and copying or reproduction to the custodian designated therein at any place agreed upon shall certify under oath that the copies are true reproduction of the original, which certified copies shall be admissible in court as originals.

d. While in the possession of the, custodian, no material so reproduced shall be available for examination, without the consent of the person who produced such material by any individual other than the Secretary of Justice.

e. Whenever any person fails to comply with any civil investigate demand, the Secretary of Justice may file in the appropriate Regional Trial Court having jurisdiction a petition for an order of such court for the enforcement of the civil investigate demand; if the persons disobeys the order of the court, he shall be liable for contempt of court.

Sec.8. Statute of Limitations. One of the predicate acts of racketeering must have been committed within ten years of the date of the information; otherwise violations of this act shall be deemed to have prescribed.

Sec. 9. Repealing Clause. All laws, presidential decrees, rules and regulations or parts thereof inconsistent with this act are deemed amended, repealed or modified accordingly.

Sec. 10. Effectivity. This act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

APPROVED.