

9 AUG 26 P 5:40

SENATE

COMMITTEE REPORT NO. 565

Submitted by the Committee on Trade and Commerce joint with the Committees on Science and Technology; and Finance on AUG 26 2009.

Re: Senate Bill No. 3416, prepared by the Committees

Recommending its approval in substitution of Senate Bill Nos. 1721 and 2595, taking into consideration H.B. No. 5208

Sponsors: Senators Roxas and Angara

Mr. President:

The joint Committees on Trade and Commerce; Science and Technology and on Finance to which were referred Senate Bill No. 1721, introduced by Senator Angara, entitled:

“AN ACT
PROVIDING THE FRAMEWORK AND SUPPORT SYSTEM FOR THE OWNERSHIP, MANAGEMENT, USE, AND COMMERCIALIZATION OF INTELLECTUAL PROPERTY GENERATED FROM RESEARCH AND DEVELOPMENT FUNDED BY GOVERNMENT”,

Senate Bill No. 2595, introduced by Senator Legarda, entitled:

“AN ACT
PROVIDING THE FRAMEWORK AND SUPPORT SYSTEM FOR THE OWNERSHIP, MANAGEMENT, USE, AND COMMERCIALIZATION OF INTELLECTUAL PROPERTY GENERATED FROM R & D FUNDED BY GOVERNMENT”,

taking into consideration House Bill No. 5208, introduced by Representatives Abaya, Piamonte, Castelo-Daza, Chavez, *et.al.*, entitled:

“AN ACT
PROMOTING THE TRANSFER OF TECHNOLOGIES AND KNOWLEDGE FROM RESEARCH AND DEVELOPMENT (R&D) FUNDED BY GOVERNMENT”

have considered the same and have the honor to report them back to the Senate with the recommendation that the attached bill, S.B. No. 3416, prepared by the Committees, entitled:

"AN ACT
PROVIDING THE FRAMEWORK AND SUPPORT SYSTEM FOR THE
OWNERSHIP, MANAGEMENT, USE, AND COMMERCIALIZATION OF
INTELLECTUAL PROPERTY GENERATED FROM RESEARCH AND
DEVELOPMENT FUNDED BY GOVERNMENT AND FOR OTHER
PURPOSES"

be approved in substitution of S. B. Nos. 1721 and 2595, taking into consideration House Bill No. 5208 with Senators Angara, Legarda and Roxas as authors thereof.

Respectfully submitted:



EDGARDO J. ANGARA

Chairman

Committee on Science and Technology

Committee on Finance



MAR ROXAS

Chairman

Committee on Trade & Commerce

Member, Committee on Finance

Vice-Chairpersons:



LOREN B. LEGARDA

Committee on Science and Technology

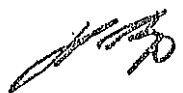
Member, Committee on Finance



MIRIAM DEFENSOR-SANTIAGO

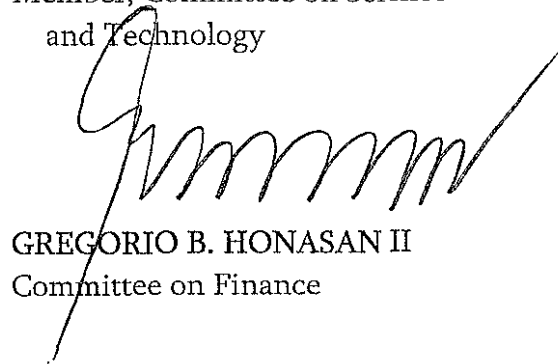
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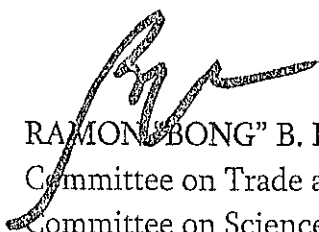
Members:



FRANCIS "CHIZ" G. ESCUDERO
Committee on Trade and Commerce



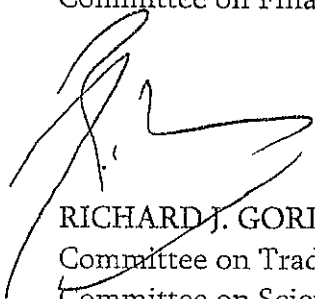
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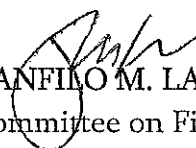
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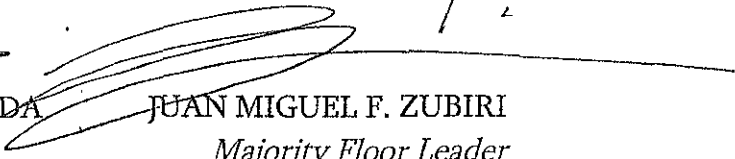
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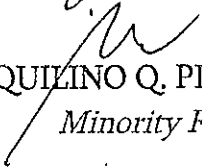


JINGGOY EJERCITO ESTRADA
President Pro-Tempore



JUAN MIGUEL F. ZUBIRI
Majority Floor Leader

Way ahead:



AQUILINO Q. PIMENTEL, JR.
Minority Floor Leader

HON. JUAN PONCE ENRILE
Senate President
Senate of the Philippines
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FOURTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

OFFICE OF THE CLERK

9 AUG 26 P 6:40

SENATE

S. B. NO. **3416**

RECEIVED BY



(In substitution of Senate Bill Nos. 1721 and 2595, taking into consideration
House Bill No. 5208)

Prepared by the Joint Committees on Trade and Commerce, Science and
Technology and Finance with Senators Angara, Legarda and Roxas
as authors thereof.

AN ACT

PROVIDING THE FRAMEWORK AND SUPPORT SYSTEM FOR THE
OWNERSHIP, MANAGEMENT, USE, AND COMMERCIALIZATION OF
INTELLECTUAL PROPERTY GENERATED FROM RESEARCH AND
DEVELOPMENT FUNDED BY GOVERNMENT AND FOR OTHER PURPOSES.

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

ARTICLE I

TITLE, DECLARATION OF POLICY AND OBJECTIVE, SCOPE

AND OTHER GENERAL PROVISIONS

SECTION 1. *Short Title.* - This Act shall be known as the "*Philippine
Technology Transfer Act of 2009.*"

SEC. 2. *Declaration of Policies and Principles.* The State fully recognizes
that science, technology and innovation are essential for national development
and progress. It shall, therefore, give priority to research and development,
invention, innovation and their utilization. It shall also encourage the widest and
most systematic participation of all stakeholders in policy-making related to
science and technology, and in the generation, transfer and utilization of
intellectual property, especially for the benefit of the general public.

1 The State shall facilitate the transfer and promote the utilization of
2 intellectual property for the national benefit and shall call upon all research and
3 development institutes and/or institutions (RDIs) that perform government-
4 funded research and development (R&D) to take on technology transfer as their
5 strategic mission and to effectively translate results of government-funded R&D
6 into useful products and services that will redound to the benefit of Filipinos,
7 notwithstanding the income generated from intellectual property rights (IPRs)
8 and technology transfer activities.

9 The State acknowledges that the successful transfer of government-funded
10 R&D results depend on the proper management of intellectual property,
11 development of capacity by RDIs to become self-sustaining and competitive, and
12 on enhancing interaction and cooperation with the private sector, particularly
13 small and medium enterprises through collaborative and contract research based
14 on equitable, fair access, and mutual benefit for all involved partners.

15 The State shall establish the means to ensure greater public access to
16 technologies and knowledge generated from government-funded R&D while
17 enabling, where appropriate, the management and protection of related
18 intellectual property.

19 **SEC. 3. *Objective.*** This Act aims to promote and facilitate the transfer,
20 dissemination, and effective use, management, and commercialization of
21 intellectual property, technology and knowledge resulting from research and
22 development funded by the government for the benefit of national economy and
23 taxpayers.

24 **SEC. 4. *Definition of Terms.*** For purposes of this Act,

- 1 a. *“Intellectual Property (IP)”* is the term used to describe intangible assets
2 resulting from the creative work of an individual or organization. IP also
3 refers to creations of the mind, such as inventions, literary and artistic
4 works, and symbols, names, images, and designs used in commerce;
- 5 b. *“Intellectual Property Rights (IPRs)”* refer to those rights recognized and
6 protected in Republic Act No. 8293, otherwise known as the ‘*Intellectual*
7 *Property Code of the Philippines;*’
- 8 c. *“Potential IPRs”* refer to intellectual property, or the products of creation
9 and research that form the subject matter of IPRs, but which are not yet
10 protected by the statutory grant of IP rights;
- 11 d. *“Protection of IPs”* refers to the statutory grant of rights upon which the
12 basis of enforcing the right rests, such as issuance of patents; registration of
13 utility models, industrial designs, and trademarks or availment of
14 protection of undisclosed information and other rights as may be provided
15 by law. “Protected IPs”, therefore may refer to issued or pending patents;
16 registered utility models, industrial designs, and trademarks;
- 17 e. *“IP Code”* refers to Republic Act No. 8293, otherwise known as the
18 ‘*Intellectual Property Code of the Philippines;*’
- 19 f. *“Intellectual Property Rights Management”* refers to the principles,
20 mechanisms and processes involved in the identification, assessment,
21 protection, utilization and enjoyment of intellectual property rights;
- 22 g. *“Government Funding Agency (GFA)”* refers to any government agency or
23 instrumentality, or government owned and/or controlled corporation that
24 provides research grants and other technical and material support, from

1 government appropriations and resources and those sourced from
2 government-managed Official Development Assistance (ODA) funds;

3 h. *“Parent Agency”* refers to the Department or agency, which exercises the
4 power of control or supervision over the GFAs, RDIs or RDI acting as the
5 GFA itself. In general, where multiple GFAs are involved, the department
6 or agency, which has the largest financial contribution, shall be deemed as
7 the parent agency, except as may otherwise be specifically provided by this
8 Act;

9 i. *“Research and Development Institute or Institution (RDI)”* refers to a
10 public or private organization, association, partnership, joint venture,
11 higher education institution or corporation that performs R&D activities
12 and is duly registered and/or licensed to do business in the Philippines, or
13 otherwise with legal personality in the Philippines. In the case of private
14 RDIs, they shall be owned solely by the citizens of the Philippines or
15 corporations or associations at least sixty per centum of the capital of which
16 is owned by such citizens. This does not include RDIs covered by
17 international bilateral or multilateral agreements;

18 j. *“Research Funding Agreement”* refers to a contract entered into by and
19 among the GFA and other funding agencies and the RDI. It governs
20 ownership of IP, duties and responsibilities of GFAs and RDIs, technology
21 disclosure, exclusivity of the license, use for commercialization,
22 establishment of spin-off firms, technologies for research use, and sharing
23 of income and benefits from technology commercialization;

- 1 k. *“Research Agreement”* refers to a contract entered into by RDIs and
2 researchers, including the agreements between the RDI and collaborating
3 RDIs;
- 4 l. *“Researcher”* refers to a natural person who is engaged by the RDI by
5 employment or other contract, to conduct research with or for the RDI;
- 6 m. *“Spin-off firm or company”* refers to a juridical entity that is an
7 independent business technology taker with a separate legal personality
8 from the GFA, RDI and researcher created through the initiative of the
9 researcher-employee who generated the technology;
- 10 n. *“Technology”* refers to knowledge and know-how, skills, products,
11 processes, and/or practices;
- 12 o. *“Technology transfer”* refers to the process by which one party
13 systematically transfers to another party the knowledge for the
14 manufacture of a product, the application of a process, or rendering of a
15 service, which may involve the transfer, assignment or licensing of IPRs;
- 16 p. *“Commercialization”* refers to the process of deriving income or profit from
17 a technology, such as the creation of a spin-off company, or through
18 licensing, or the sale of the technology and/or IPRs;
- 19 q. *“Revenue”* refers to all monetary and non-monetary benefits derived as a
20 result of the development, production, transfer, use and/or
21 commercialization of IPRs, including income from assignments, and
22 royalties from licenses;
- 23 r. *“Research and Development (R&D)”* refers to creative work undertaken on
24 a systematic basis in order to increase the stock of knowledge, including

1 knowledge of man, culture and society, and to use this stock of knowledge
2 to devise new applications.

3 **SEC. 5. Coverage.**

- 4 a. All R&D activities carried out on behalf and for the interest of the
5 Philippine Government by RDIs receiving grants directly from GFAs;
6 b. All intellectual property rights derived from R&D activities funded by
7 government;
8 c. All government agencies that fund R&D activities as well as provide
9 financial, technical or material support to such R&D activities; and
10 d. All institutions that implement government funded R&D.

11 **ARTICLE II**

12 **INTELLECTUAL PROPERTY OWNERSHIP**

13 **SEC. 6. Ownership of Intellectual Property and Intellectual Property**

14 *Rights.* The ownership of IPs and IPRs shall be governed by the following:

- 15 a. In recognition of the fact that RDIs are in a better position to identify the
16 potential for economic utilization of IPs and IPRs subject to their
17 possession of the right skills and management capability, the ownership of
18 IP and IPRs derived and generated from research funded by GFA, whether
19 such funding is in whole or in part, shall, in general, be vested in the RDI
20 that actually performed the research, except in any of the following
21 circumstances:

- 22 1. When the RDI has entered into a public, written agreement sharing,
23 limiting, waiving or assigning its ownership of the IPs or IPRs
24 generated from its research in favor of the GFA; *Provided*, the same
25 may only be voluntary executed by the RDI to protect public

1 interest, and in particular involves national security, nutrition,
2 health, or the development of other vital sectors;

3 2. In case of failure of the RDI to disclose potential IPRs to the GFA,
4 whereupon the GFA shall assume the rights to the potential IPR;

5 3. In case of failure of the RDI to initiate the protection of potential
6 IPRs within a reasonable time from confidential disclosure to the
7 GFA, which shall in no case exceed three (3) months from public
8 disclosure, whereupon the GFA shall assume the rights to the
9 potential IPR; and

10 4. In case the RDI ceases to become a Filipino corporation as defined
11 in Article I, Section 4 (i) of this Act.

12 b. In case of collaborative research where two or more RDIs conducted the
13 research funded by the GFA, the RDIs shall own the IPRs jointly or as
14 otherwise stipulated in the research agreement between them; *Provided*,
15 That any research agreement between RDIs and other funding entities shall
16 be made with the full knowledge of the GFA; *Provided, further*, That the
17 agreement shall strictly be in accordance with the provisions of this Act.

18 c. Nothing in this Article shall modify, amend, derogate or prejudice IPs that
19 will be owned by employees of the RDIs under the IP Code and other
20 existing laws.

21 ARTICLE III

22 RIGHTS AND RESPONSIBILITIES OF THE

23 GOVERNMENT FUNDING AGENCIES AND

24 RESEARCH AND DEVELOPMENT INSTITUTES OR INSTITUTIONS

1 SEC. 7. *Rights and Responsibilities of a Government Funding Agency.*

2 Under this Act the GFA shall:

- 3 a. Protect government interest in the IP and IPRs generated from the R&D
4 that it funded through suitable provisions in the research funding
5 agreement. The GFA is authorized to withhold from public disclosure, for a
6 reasonable time, any information relating to potential IPR of the RDI, to
7 allow the RDI to pursue full protection of such IPR;
- 8 b. Monitor efforts and effectiveness of the RDI in securing IP protection and
9 pursuing IP commercialization, as well as provide alternative solutions and
10 assistance in case of shortfall in RDI's performance in protecting, utilizing
11 and commercializing the IP;
- 12 c. Ensure adequate freedom to use the IP for further research to expand the
13 knowledge frontier and requirements for publication of information as
14 appropriate in accordance with government policy or academic policy, or
15 institutional mandate of the RDI; and
- 16 d. Allow sharing of revenues from IP commercialization in a way that is not
17 onerous to commercialization; *Provided*, That when the GFA assumes
18 commercialization of the IPs, it shall, subject to existing laws requiring
19 transparency and accountability, the Commission on Audit (COA) Rules
20 and Regulations and as required under Article IX, Section 20, be allowed to
21 directly negotiate agreements for the commercialization of IPs; *Provided*,
22 *further*, That it shall obtain a written recommendation from the Secretary
23 of the Department of Science and Technology (DOST) and secure a fairness
24 opinion report from an independent third party body composed of experts
25 from the public and private sectors as may be determined by the DOST.

1 The fairness opinion report shall contain a statement expressing the
2 opinion of the body as to the fairness to the GFA of the proposed
3 transaction, particularly its financial terms. The report shall include, but
4 not be limited to, a review and analysis of the proposed transaction,
5 financial statements, industry information, economic conditions and
6 assumptions used therein and a comparison of similar transactions;
7 *Provided, however,* That it shall not be precluded from resorting to other
8 modes of commercialization as allowed by all applicable laws.

9 **SEC. 8. *Rights and Responsibilities of the RDIs.*** The following are the rights
10 and responsibilities of the RDIs that availed of research funds from GFAs:

- 11 a. Identify, protect, and manage the IPs generated from R&D funded by GFA
12 and pursue commercial exploitation diligently as a required performance
13 stipulated in the research funding agreement and as allowed by this Act
14 and other applicable laws.

15 In case of commercialization by public RDIs, it shall, subject to
16 existing laws requiring transparency and accountability, the Commission
17 on Audit (COA) Rules and Regulations and as required under Article IX,
18 Section 20 of this Act, be allowed to directly negotiate agreements for the
19 commercialization of IPs; *Provided,* That it shall obtain a written
20 recommendation from the Secretary of Department of Science and
21 Technology (DOST) and secure a fairness opinion report from an
22 independent third party body composed of experts from the public and
23 private sectors as may be determined by the DOST.

24 The fairness opinion report shall contain a statement expressing the
25 opinion of the body as to the fairness to the RDI of the proposed

1 transaction, particularly its financial terms. The report shall include, but
2 must not be limited to, the provisions in Section 7(e), Paragraph 2;
3 *Provided, however,* That it shall not be precluded from resorting to other
4 modes of commercialization as allowed by all applicable laws.

5 The responsibility of the RDI to protect any potential IPRs shall also
6 apply in the event that the RDI elects to recover ownership of the potential
7 IPRs that have been vested in the GFA under Section 7 of this Act;

- 8 b. Provide a means for addressing any shortfall of its performance in utilizing
9 *and commercializing the IP;*
- 10 c. Notify the GFA within a reasonable time of all IPR applications, licenses
11 and assignments made. All applications for IP protection shall disclose any
12 biodiversity and genetic resource, traditional knowledge, and indigenous
13 knowledge, systems and practices as these terms are defined in Republic
14 Act No. 8371 or *Indigenous Peoples Rights Act* and Republic Act No. 9147
15 or *The Wildlife Act;*
- 16 d. Report annually to the GFA on the progress of IP *and/or* IPR
17 commercialization efforts and of all agreements entered and licenses
18 granted;
- 19 e. Keep account of revenues and payments to the GFA if required in the
20 research funding agreement;
- 21 f. Ensure that they have access to the skills and management capability to
22 effectively perform their responsibilities of owning, managing, and
23 exploiting the IP *or IPRs*. Smaller RDIs that may need external advice are
24 encouraged to pool and share resources;

- 1 g. Accord their staff with incentives consistent with existing laws to sustain
2 efforts in identifying valuable IP and in pursuing IP commercialization;
- 3 h. Be authorized, within a reasonable time, to keep confidential from the
4 public any document or information relating to potential IPRs that are not
5 yet fully protected by law;
- 6 i. Make a confidential disclosure to the GFA, within a reasonable time, of any
7 potential IPRs with possibilities for commercialization and/or technology
8 transfer. In case of failure to disclose any such potential IPRs, Section 6 of
9 this Act shall apply;
- 10 j. Inform the GFA of any agreement pertaining to the research funded by the
11 GFA and entered into by the RDI with any other entity or person. Failure
12 to comply with the duty to inform shall render the agreement invalid as
13 against the GFA, but in no case shall it prejudice any right of the GFA as
14 provided in this Act; and
- 15 k. When necessary, create and establish spin-off companies to pursue
16 commercialization subject to their respective mandates as allowed by law.

17 ARTICLE IV

18 MANAGEMENT OF IPs FROM R&D PERFORMED BY 19 GOVERNMENT RDIs THROUGH THEIR OWN BUDGET

20 SEC. 9. *Responsibilities of RDIs Performing R&D with their Own Budget.*

21 All government RDIs performing R&D through an annual budget provided by the
22 government shall submit intellectual property management reports annually to
23 the national government agencies where they are attached. The report shall
24 contain plans for securing protection on IPs with commercial promise, the
25 technology transfer approaches to be pursued, and the progress of ongoing

1 commercialization of technologies derived from R&D funded from their own
2 budget.

3 SEC. 10. *Responsibilities of the Concerned National Government*
4 *Agencies.* Concerned Government *and/or* Parent Agencies shall monitor efforts
5 and effectiveness of their RDIs in securing IP protection and pursuing IP
6 commercialization, based on the annual IP management reports submitted by the
7 RDIs.

8 ARTICLE V

9 REVENUE SHARING

10 SEC. 11. *Revenue Sharing.* All revenues from the commercialization of IPs
11 and IPRs from R&D funded by GFA(s) shall accrue to the RDI, unless there is a
12 revenue sharing provision in the research funding agreement; *Provided,* That in
13 no case will the total share of the GFA(s) be greater than the share of the RDI;
14 *Provided, further,* That in case of joint funding, where research is funded by a
15 GFA in part, and by other entity or entities in part, the RDI may enter into
16 contractual agreements with the other entity or entities providing funding.

17 Sharing of revenues between RDI and researcher shall be governed by an
18 employer-employee contract or other related agreements, without prejudice to the
19 rights of researchers granted under Republic Act No. 8439 or the "*Magna Carta for*
20 *Scientists, Engineers, Researchers, and other S&T Personnel in Government*".

21 ARTICLE VI

22 COMMERCIALIZATION BY THE RESEARCHER AND

23 ESTABLISHMENT OF SPIN-OFF FIRMS

24 SEC. 12. *Commercialization by Researchers.* In meritorious cases and to
25 help ensure successful commercialization, an RDI shall allow its researcher-

1 employee to commercialize or pursue commercialization of the IP and/or IPRs
2 generated from R&D funded by GFA by creating, owning, controlling, or
3 managing a company or spin-off firm undertaking commercialization, or accepting
4 employment as an officer, employee, or consultant in a spin-off firm undertaking
5 such commercialization; *Provided*, That the concerned researcher- employee takes
6 a leave of absence, whenever applicable, for a period of one year and renewable
7 for another year, for a total period not exceeding two years, from the time the
8 researcher signifies in writing that he/she desires to create or participate in a spin-
9 off company; *Provided, however*, That the researcher-employee may still be
10 allowed access to the RDIs' laboratory facilities, subject to reasonable fees and
11 regulations which the RDIs may impose.

12 The leave of absence shall be included in computing the length of service
13 for retirement but not for the commutation of leave credits earned in the public
14 RDI. The researcher shall not earn leave credits in the public RDI during such
15 period of leave of absence. Such leave of absence shall not likewise affect the
16 researcher-employee's security of tenure or result in the loss of one's seniority
17 rights.

18 *Sec. 13. Detail or Secondment to the Private Sector.* In case where the
19 researcher of a public RDI would be employed by an existing company, which will
20 pursue the commercialization, the applicable provisions of Republic Act No. 8439
21 or the "*Magna Carta for Scientists, Engineers, Researchers and other Science and*
22 *Technology Personnel in Government*" shall prevail.

23 *Sec. 14. Management of Conflict of Interest.* The RDIs shall properly
24 manage any possible conflict of interest by adopting appropriate guidelines for its

1 researcher-employee. The guidelines for handling of such conflicts shall include,
2 but are not limited, to the following:

- 3 a. RDIs shall ensure that its researchers are made fully accountable for their
4 research and that commercial objectives do not divert them from carrying
5 out the RDI's core research program;
- 6 b. Heads of RDI should ensure that where researchers have any direct or
7 indirect financial interest in a spin-off company; they shall not act on
8 behalf of the RDI in transactions with that company;
- 9 c. Where researchers of RDI are nominated as non-executive directors to the
10 Board of a spin-off company or existing company in which the same RDI
11 holds an equity stake, they should have a clear duty to ensure that the
12 RDI's interests are not compromised by their role; and
- 13 d. RDIs should take steps to ensure that collaborative undertaking with a
14 spin-off or existing company is governed by a formal written public
15 agreement.

16 ARTICLE VII

17 USE BY GOVERNMENT, COMPULSORY LICENSING

18 AND ASSUMPTION OF POTENTIAL IPRs

19 SEC. 15. *Use by Government or third person authorized by government*
20 *and/or Compulsory Licensing.* This Act shall adopt the grounds, terms and
21 conditions for the use by government or third person authorized by government,
22 and/or compulsory licensing as stated in the IP Code of all IPRs generated under
23 this Act.

24 SEC. 16. *Assumption of Ownership of Potential IPRs.* The GFA and/or the
25 Parent Agency may assume ownership of any potential IPRs in cases of national

1 emergency or other circumstances of extreme urgency, or where the public
2 interest requires, and in particular concerns for national security, nutrition,
3 health, or the development of other vital sectors of the national economy, as
4 determined by the head of the Parent Agency. Such determination shall be made
5 within thirty (30) days after the receipt of the recommendation of the head of the
6 GFA. Such recommendation shall be made within thirty (30) days upon the
7 discovery of the potential IPR by the GFA or the disclosure of the same by the
8 RDI pursuant to Section 8 (c) of this Act, or upon written notice or petition by
9 other government agencies, or other interested persons. In cases where the Parent
10 Agency itself is acting as the GFA, the head of the Parent Agency may make such
11 determination *motu proprio*, or upon written notice or petition by other
12 government agencies or other interested parties. The right to the potential IPR
13 shall be assumed by the GFA upon written order, declaration or determination by
14 the Department Secretary or Head of the Parent Agency. The department or the
15 agency that has functional jurisdiction over the technology or IPRs shall be
16 deemed as the Parent Agency.

17 The determination by the Secretary or the head of the Parent Agency of cases
18 falling under the first paragraph of the right to the potential IPR to be vested to
19 the GFA and/or Parent Agency shall be subject to the following conditions:

- 20 i. The determination must be accompanied by an analysis and justification of
21 such reason(s);
- 22 ii. The RDI may file with the Secretary or Head of the Parent Agency an
23 opposition to such determination within fifteen (15) calendar days from
24 notice or publication of the written determination;

1 iii. The assumption of the rights to the potential IPR by the GFA shall carry
2 with it the obligation to equitably share with the RDI or other funding
3 agencies any profits generated from the IPR; and

4 iv. The rights to the potential IPR shall revert to the RDI upon the cessation of
5 the existence of the cases under this Section as determined by the Secretary
6 or Head of the Parent Agency *motu proprio* or by petition of the RDI.

7 SEC. 17. Except where otherwise provided by the IP Code, in all cases arising
8 from the implementation of this Article, no court, except the Supreme Court of
9 the Philippines, shall issue any temporary restraining order or preliminary
10 injunction or such other provisional remedies that will prevent its immediate
11 execution.

12 ARTICLE VIII

13 USE OF INCOME AND ESTABLISHMENT AND MAINTENANCE OF 14 REVOLVING FUND FOR R&D AND TECHNOLOGY TRANSFER

15 SEC. 18. *Use of Income and Revolving Fund.* Public RDIs undertaking
16 technology transfer shall be vested with the authority to use its share of the
17 revenues derived from commercialization of IP generated from R&D funded by
18 GFAs. All income generated from commercialization of IPs and/or IPRs from R&D
19 funded by public funds shall be constituted as a revolving fund for use of the RDI
20 undertaking technology transfer, deposited in an authorized government
21 depository bank subject to accounting and auditing rules and regulations;
22 *Provided,* That said income shall be used to defray intellectual property
23 management costs and expenses and to fund research and development, science
24 and technology capability building, and technology transfer activities, including

1 operation of technology licensing offices; *Provided, further,* That no amount of
2 said income shall be used for payment of salaries and other allowances.

3 In case the income after payment of all costs and expenses for IPR
4 management, including the payment of royalties to other parties, shall exceed ten
5 percent 10% of the annual budget of the RDI, a minimum of seventy percent
6 (70%) of the excess income shall be remitted to the Bureau of Treasury; *Provided,*
7 That this shall apply only if the GFA has solely funded the research; *Provided,*
8 *finally,* That this paragraph shall not apply to State Universities and Colleges and
9 Government Owned and Controlled Corporations, which enjoy fiscal autonomy
10 under their respective charters or other applicable laws.

11 ARTICLE IX

12 INSTITUTIONAL MECHANISM

13 SEC. 19. *Establishment of Technology Information Access Facility and*
14 *Public Access Policy.* The Department of Science and Technology (DOST) shall
15 establish a system for the cost-effective sharing of and access to technologies and
16 knowledge generated from government-funded R&D by developing appropriate
17 policies and procedures on public access which shall be made known to the public.
18 These policies and procedures shall be aimed at promoting the advancement of
19 R&D, boosting its quality and enabling cross-disciplinary collaboration, and
20 thereby, increasing the returns from public investment in R&D and contribute to
21 the betterment of society. The DOST shall call for a regular national conference of
22 all GFAs and RDIs in order to: (a) promote multi-disciplinary, joint, and cross
23 collaboration in research and development; (b) coordinate and rationalize the
24 research and development agenda; and (c) harmonize all research and
25 development agenda and priorities.

1 SEC. 20. *Development of Internal IP Policies and Establishment of*
2 *Technology Licensing Offices (TLOs) and/or Technology Business Development*
3 *Offices.* - All RDIs are encouraged to establish their own TLOs in whatever form
4 and to adopt their own policies on IPR management and technology transfer, in
5 accordance with this Act and other existing laws and in support of the policies of
6 the Intellectual Property Office Philippines and the national policy and the
7 mandate of their Parent Agency.

8 SEC. 21. *Capacity-Building and Guidelines on IP Commercialization.* The
9 Department of Science and Technology (DOST), Department of Trade and
10 Industry (DTI) and Intellectual Property Office (IPO), in consultation with GFAs
11 such as Commission on Higher Education (CHED), Department of Agriculture
12 (DA), Department of Health (DOH), Department of Energy (DOE), Department of
13 Environment and Natural Resources (DENR), and Department of National Defense
14 (DND), shall undertake activities geared towards building the capacity of GFAs
15 and RDIs in commercializing IPs. The DOST as chair and convenor, together with
16 DTI and IPO shall jointly issue the necessary guidelines on IP valuation,
17 commercialization, and information sharing, which may include, but not be
18 limited to, the following considerations: public benefit and national interest,
19 market size, cost and income. These guidelines shall be issued within one hundred
20 twenty (120) days from the date of effectivity of this Act.

21 ARTICLE X

22 DISPUTE RESOLUTION

23 SEC. 22. The administrative procedure for resolving any disputes on the
24 determination for government ownership shall be provided by the Implementing
25 Rules and Regulations of this Act.

1 ARTICLE XI

2 MISCELLANEOUS, TRANSITORY, AND FINAL PROVISIONS

3 SEC. 23. *Administrative, Criminal or Civil Liability.* The failure of the
4 GFA or RDI to fulfill its responsibilities under this Act, or the violation of any
5 provision by any person, natural or juridical, shall subject the person involved to
6 appropriate administrative, criminal, or civil liability, under applicable laws.

7 SEC. 24. *Congressional Oversight Committee.* For the effective
8 implementation of this Act, there shall be a Congressional Oversight Committee,
9 herein after referred to as the Technology Transfer Oversight Committee, to be
10 composed of five (5) members from the Senate, which shall include the
11 Chairpersons of the Senate Committees on Science and Technology, and Trade and
12 Commerce, and five (5) members from the House of Representatives, which shall
13 include the Chairpersons of the House Committees on Science and Technology
14 and Trade and Commerce. The Technology Transfer Oversight Committee shall be
15 jointly chaired by the chairpersons of the Senate and House of Representatives
16 Committees on Science and Technology. The Vice-Chair of the Oversight
17 Committee shall be jointly held by the Chairpersons of the Senate Committee on
18 Trade and Commerce and the House of Representatives Committee on Trade and
19 Industry.

20 SEC. 25. *Funding.* The activities and operational expenses related to the
21 implementation of this Act shall be funded from the budget appropriations and
22 other incomes of GFAs and public RDIs. The Heads of the GFAs and public RDIs
23 shall include in the agency's program the implementation of this Act.

24 The COA shall exercise its auditing authority over the funds of the GFAs
25 and public RDIs in order to ensure transparency and accountability.

1 SEC. 26. *Implementing Rules and Regulations.* Except where otherwise
2 indicated, the DOST and the IPO, with the participation of GFAs, RDIs, and other
3 stakeholders, shall formulate the Implementing Rules and Regulations for the
4 effective implementation of this Act. The DOST Secretary shall chair the drafting
5 committee. The Implementing Rules and Regulations shall be issued within one
6 hundred twenty (120) days after the effectivity of this Act. Copies of the IRR shall
7 be submitted to the Committees on Science and Technology of both Houses of
8 Congress within thirty (30) days after its promulgation, as well as to other
9 appropriate agencies as may be required by law.

10 Nothing in the Implementing Rules and Regulations shall derogate
11 ownership of any copyright as conferred by the IP Code or other applicable laws.
12 The IPO shall issue the necessary rules and regulations governing the ownership
13 of copyrights as conferred by the IP Code or other applicable laws; *Provided*, That
14 such Implementing Rules and Regulations are consistent with the objectives of
15 this Act. The IPO shall also issue the Implementing Rules and Regulations to
16 implement the disclosure requirements stated in Section 8.

17 SEC. 27. *Applicability to Intellectual Property Created Under Existing*
18 *Laws.* The provisions of this Act shall likewise apply to intellectual property
19 created under existing laws, including, among others, Republic Act No. 9168 or
20 the '*Philippine Plant Variety Protection Act of 2002.*'

21 SEC. 28. *Repealing Clause.* All laws, presidential decrees, executive orders,
22 presidential proclamations, rules and regulations, or part thereof which may be
23 contrary to or inconsistent with this Act are hereby repealed or modified
24 accordingly.

1 SEC. 29. *Separability Clause.* If any provision of this Act is declared
2 unconstitutional, the same shall not affect the validity and effectivity of the other
3 provisions hereof.

4 SEC. 30. *Effectivity.* This Act shall take effect fifteen (15) days after its
5 complete publication in two (2) newspapers of general circulation.

Approved,