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SENATE

S. No. 67

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BY: *Jan*

Introduced by **Senator Gregorio B. Honasan II**

EXPLANATORY NOTE

Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002, declares that "it is the policy of the State to safeguard the integrity of its territory and the well-being of its citizenry, particularly the youth, from the harmful effects of dangerous drugs on their physical and mental well-being, and to defend the same against acts or omissions detrimental to their development and preservation. In view of the foregoing, the State needs to enhance further the efficacy of the law against dangerous drugs, it being one of today's more serious social ills."

According to the Dangerous Drugs Board, an estimated 1.7 million Filipinos are hooked on drugs, representing a 200,000 increase from the number of drug users 2 years ago. The United Nations Office of Drugs and Crime reported that in 2011, the Philippines had the highest abuse rate for methamphetamine hydrochloride or shabu in East Asia. Although the local manufacture of methamphetamine hydrochloride has reportedly gone down following successful raids on shabu laboratories, enforcement agencies have noted a trend of African shabu being smuggled into the country for the local drug trade and transshipment to other countries.

The government has embarked on an unrelenting campaign against the trafficking and use of dangerous drugs yet their distribution and use appear to be as persistent as the efforts to check them. It will take more than the present methods to address the drug trade which has assumed global proportions and now poses a threat to national security. We need to upgrade our countermeasures against this global menace.

In the case of Colombia and Mexico, drug cartels maintain organizational structures that insulate their leaders and financiers. Many of the principals openly lead deceptively normal, legitimate lives and even donate to charity while keeping their underworld activities hidden under a securely layered organizational and corporate structure. The narcotics trade cannot be stopped by cutting off the tentacles while leaving the head intact. Retailers may be rounded up and drug couriers prosecuted but they are expandable. Meanwhile, dangerous drugs continue to flourish despite continuing arrests and stiff penalties. It is a lucrative industry that rakes in money for untouchable drug lords, even as it exploits poor victims.

In the Philippines, drug syndicates operate with much less finesse but there are indications that they are learning fast. Marijuana plantations are burned, shabu

laboratories raided, not to mention couriers, street pushers and users arrested, but in many cases the drug lords are never identified or get off scot-free. There is big money in the industry and temptations abound in a world of bribes and payoffs.

The illegal drugs trade like terrorism cannot be treated with kid gloves. This is an industry that has made a few people rich by preying on society especially the youth, our children. It has destroyed the future of promising young men and women, destroyed families and inflicted the most brutal and horrific crimes on society.

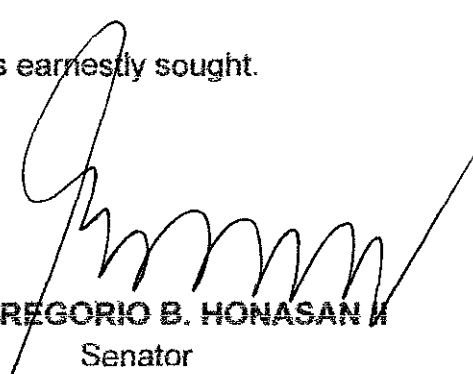
Rounding up street pushers and users of prohibited drugs and raiding pot sessions are just part of the effort. In fact, these operations have often been the source of corruption, with compromise fines and bribes encouraging drug abuse instead of checking it.

The Philippine government must bring the war against illegal drugs to the ring leaders. Even as we cut off the tentacles of the drug menace, we need to draw up measures to strike at the head. As proven by the experience of other countries, this goes beyond identifying the drug lords. The defense of those involved in the illegal trade is known to have fallen in the courtroom in the face of legally-acquired incriminatory wiretapped recordings of conversations spelling out their transactions.

In the United States, wiretapping has been used to solve major crimes such as homicide, illegal gambling, terrorism and drug trafficking. Data from the courts in the United States for the past 15 years show that nine out of every 10 wiretapping orders issued by the U.S. courts involved narcotics. Wiretaps help establish the flow of drugs and how they are managed from the source to the market. The heads of syndicates and financiers are not exposed during criminal activity. It is not easy to prove their participation in the trade, but recorded conversations can establish their involvement. Intensive wiretapping at the higher levels of a syndicate involves time and resources. But disrupting operations and decapitating syndicates are more cost effective than focusing on the retail trade.

Our people, our families and children have long suffered from this scourge. Countless times its heartless proponents have corrupted our humanity, all because of their callousness and greed. It is time to take the war to them.

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



GREGORIO B. HONASAN II
Senator

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



Senate
Office of the Secretary

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SENATE

S. No. 67

RECORDED BY: *ja*

Introduced by **Senator Gregorio B. Honasan II**

AN ACT
AUTHORIZING THE WIRETAPPING, INTERCEPTION, SURVEILLANCE AND
RECORDING OF COMMUNICATIONS OF PUSHERS, MANUFACTURERS,
CULTIVATORS, IMPORTERS AND FINANCIERS OF DANGEROUS DRUGS,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9165 AND FOR OTHER
PURPOSES

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

SECTION 1. Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is hereby amended by inserting Sections 26-A to 26-K, as follows:

"SEC. 26 - A. WIRETAPPING, INTERCEPTION, SURVEILLANCE AND RECORDING OF COMMUNICATIONS. – THE PROVISIONS OF REPUBLIC ACT NO. 4200 (ANTI-WIRE TAPPING LAW) TO THE CONTRARY NOTWITHSTANDING, THE PDEA DIRECTOR GENERAL, THE CHIEF OF THE PNP, OR THE NBI DIRECTOR MAY AUTHORIZE TEAMS OF THE PDEA, PNP OR NBI OPERATIVES RESPECTIVELY, COMPOSED OF A LEADER AND MEMBERS FOR EACH TEAM, TO SUBMIT *EX-PARTE* APPLICATIONS FOR THE ISSUANCE OF WRITTEN ORDERS FROM SPECIAL DIVISIONS OF THE COURT OF APPEALS, TO WIRETAP, INTERCEPT, LISTEN TO, SURVEIL AND RECORD, WITH THE USE OF ANY MODE, FORM, KIND OR TYPE OF ELECTRONIC OR OTHER EQUIPMENT OR DEVICE OR WITH THE USE OF

ANY OTHER SUITABLE WAYS AND MEANS FOR THAT PURPOSE, COMMUNICATIONS, MESSAGES, CONVERSATIONS, DISCUSSIONS, OR SPOKEN OR WRITTEN WORDS OF ANY PERSON, AGAINST WHOM THE EXISTENCE OF PROBABLE CAUSE IS ESTABLISHED TO HAVE VIOLATED SEC. 4, SEC. 5, SEC. 8, OR SEC. 16 OF THIS ACT.

SEC. 26 - B. *ISSUANCE OF JUDICIAL ORDER.* – THE WRITTEN ORDER OF THE AUTHORIZING DIVISION OF THE COURT OF APPEALS TO WIRETAP, INTERCEPT, LISTEN TO, SURVEIL AND RECORD COMMUNICATIONS, MESSAGES, CONVERSATIONS, DISCUSSIONS, OR SPOKEN OR WRITTEN WORDS OF ANY PERSON AGAINST WHOM THE EXISTENCE OF PROBABLE CAUSE IS ESTABLISHED TO HAVE VIOLATED SEC. 4, SEC. 5, SEC. 8, OR SEC. 16 OF THIS ACT SHALL ONLY BE ISSUED AND GRANTED UPON *EX-PARTE* EXAMINATION UNDER OATH OR AFFIRMATION OF THE APPLICANT AND THE WITNESSES HE/SHE MAY PRODUCE TO ESTABLISH: (A) THAT THERE IS PROBABLE CAUSE TO BELIEVE BASED ON PERSONAL KNOWLEDGE OF FACTS OR CIRCUMSTANCES THAT ANY OF THE SAID CRIMES UNDER SEC. 4, SEC. 5, SEC. 8, OR SEC. 16 OF THIS ACT HAS BEEN COMMITTED, OR IS BEING COMMITTED, OR IS ABOUT TO BE COMMITTED; (B) THAT THERE IS PROBABLE CAUSE TO BELIEVE BASED ON PERSONAL KNOWLEDGE OF FACTS OR CIRCUMSTANCES THAT EVIDENCE WHICH IS ESSENTIAL TO THE CONVICTION OF THE PERSON AGAINST WHOM THE EXISTENCE OF PROBABLE CAUSE IS ESTABLISHED TO HAVE VIOLATED SEC. 4, SEC. 5, SEC. 8, OR SEC. 16 OF THIS ACT WILL BE OBTAINED, OR THAT EVIDENCE WHICH IS ESSENTIAL TO THE SOLUTION OR PREVENTION OF ANY SUCH CRIMES WILL BE OBTAINED; AND, (C) THAT THERE ARE NO OTHER EFFECTIVE MEANS READILY AVAILABLE FOR ACQUIRING SUCH EVIDENCE.

SEC. 26 - C. *EFFECTIVE PERIOD OF JUDICIAL AUTHORIZATION.* -

ANY ORDER GRANTED BY THE AUTHORIZING DIVISION OF THE COURT OF APPEALS SHALL ONLY BE EFFECTIVE FOR THE LENGTH OF TIME SPECIFIED IN THE WRITTEN ORDER OF THE AUTHORIZING DIVISION OF THE COURT OF APPEALS, WHICH SHALL NOT EXCEED A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF RECEIPT OF THE WRITTEN ORDER OF THE AUTHORIZING DIVISION OF THE COURT OF APPEALS BY THE APPLICANT PDEA, PNP OR NBI OFFICIAL OR AGENT.

THE AUTHORIZING DIVISION OF THE COURT OF APPEALS MAY EXTEND OR RENEW THE SAID AUTHORIZATION FOR ANOTHER NON-EXTENDIBLE PERIOD, WHICH SHALL NOT EXCEED THIRTY (30) DAYS FROM THE EXPIRATION OF THE ORIGINAL PERIOD: *PROVIDED*, THAT THE AUTHORIZING DIVISION OF THE COURT OF APPEALS IS SATISFIED THAT SUCH EXTENSION OR RENEWAL IS IN THE PUBLIC INTEREST: *PROVIDED, FURTHER*, THAT THE *EX-PARTE* APPLICATION FOR EXTENSION OR RENEWAL, WHICH MUST BE FILED BY THE ORIGINAL APPLICANT, HAS BEEN DULY AUTHORIZED IN WRITING BY THE PDEA DIRECTOR GENERAL, THE CHIEF OF THE PNP, OR THE NBI DIRECTOR, AS THE CASE MAY BE.

IN CASE OF DEATH, PHYSICAL DISABILITY, RESIGNATION OR CESSATION FROM OFFICE OF THE ORIGINAL APPLICANT TO FILE THE APPLICATION FOR EXTENSION OR RENEWAL, THE ONE NEXT-IN-RANK TO THE ORIGINAL APPLICANT AMONG THE MEMBERS OF THE TEAM NAMED IN THE ORIGINAL WRITTEN ORDER OF THE AUTHORIZING DIVISION OF THE COURT OF APPEALS SHALL FILE THE APPLICATION FOR EXTENSION OR RENEWAL.

SEC. 26 - D. *CLASSIFICATION AND CONTENTS OF THE ORDER OF THE COURT OF APPEALS.* – THE WRITTEN ORDER GRANTED BY THE AUTHORIZING DIVISION OF THE COURT OF APPEALS AS WELL AS ITS ORDER, IF ANY, TO EXTEND OR RENEW THE SAME, THE ORIGINAL APPLICATION OF THE APPLICANT, INCLUDING HIS/HER APPLICATION TO EXTEND OR RENEW, IF ANY, AND THE WRITTEN AUTHORIZATIONS OF THE PDEA DIRECTOR GENERAL, THE CHIEF OF THE PNP, OR THE NBI DIRECTOR SHALL BE DEEMED AND ARE HEREBY DECLARED AS CLASSIFIED INFORMATION. THE WRITTEN ORDER OF THE AUTHORIZING DIVISION OF THE COURT OF APPEALS SHALL SPECIFY THE FOLLOWING: (A) THE IDENTITY, SUCH AS NAME AND ADDRESS, IF KNOWN, OF THE PERSON WHOSE COMMUNICATIONS, MESSAGES, CONVERSATIONS, DISCUSSIONS, OR SPOKEN OR WRITTEN WORDS ARE TO BE WIRETAPPED, INTERCEPTED, LISTENED TO, SURVEILLED, AND RECORDED IN THE CASE OF RADIO, ELECTRONIC, OR TELEPHONIC (WHETHER WIRELESS OR OTHERWISE) COMMUNICATIONS, MESSAGES, CONVERSATIONS, DISCUSSIONS, OR SPOKEN OR WRITTEN WORDS, THE ELECTRONIC TRANSMISSION SYSTEMS AND/OR THE TELEPHONE NUMBERS, IF KNOWN, TO BE WIRETAPPED, INTERCEPTED, LISTENED TO, RECORDED, SURVEILLED OR TRACKED AND THEIR LOCATIONS; (B) THE IDENTITIES (NAME AND UNIT) OF THE PDEA, PNP OR NBI TEAM LEADER, INCLUDING THE INDIVIDUAL IDENTITY (NAMES AND UNIT) OF THE MEMBERS OF HIS/HER TEAM, JUDICIALLY AUTHORIZED TO WIRETAP, INTERCEPT, LISTEN TO, SURVEIL AND RECORD THE COMMUNICATIONS, MESSAGES, CONVERSATIONS, DISCUSSIONS, OR SPOKEN OR WRITTEN WORDS; (C) THE OFFENSE OR OFFENSES

COMMITTED, OR BEING COMMITTED, OR SOUGHT TO BE PREVENTED;
AND, (D) THE LENGTH OF TIME WITHIN WHICH THE AUTHORIZATION
SHALL BE USED OR CARRIED OUT.

IN NO CASE SHALL THE IDENTITY OF THE ABOVEMENTIONED
PDEA, PNP OR NBI TEAM LEADER, INCLUDING THE INDIVIDUAL
IDENTITIES OF THE MEMBERS OF HIS/HER TEAM BE DISCLOSED
UNLESS AUTHORIZED BY WRITTEN ORDER OF THE AUTHORIZING
DIVISION OF THE COURT OF APPEALS, WHICH WRITTEN ORDER SHALL
BE GRANTED ONLY FOR PURPOSES OF INVESTIGATING OR
PROSECUTING ANY VIOLATION OF ARTICLE 226 OR ARTICLE 229 OF
THE REVISED PENAL CODE AS PROVIDED IN SECTION 26-E OF THIS ACT
OR REPUBLIC ACT NO. 4200, AFTER A DETERMINATION THAT THE
PUBLIC INTEREST IN THE DISCLOSURE OF THE INFORMATION
OUTWEIGHS THE PUBLIC INTEREST IN KEEPING THE INFORMATION
SECRET OR CONFIDENTIAL.

SEC. 26 - E. *CUSTODY OF INTERCEPTED AND RECORDED
COMMUNICATIONS.* - ALL TAPES, DISCS, RECORDINGS, NOTES,
MEMORANDA, SUMMARIES, EXCERPTS AND ALL COPIES THEREOF MADE
PURSUANT TO THE ORDER OF THE AUTHORIZING DIVISION OF THE
COURT OF APPEALS, SHALL, WITHIN FORTY-EIGHT (48) HOURS AFTER
THE EXPIRATION OF THE PERIOD FIXED IN THE WRITTEN ORDER OF
THE AUTHORIZING DIVISION OF THE COURT OF APPEALS OR WITHIN
FORTY-EIGHT (48) HOURS AFTER THE EXPIRATION OF ANY EXTENSION
OR RENEWAL GRANTED BY THE AUTHORIZING DIVISION OF THE COURT
OF APPEALS, BE DEPOSITED WITH THE AUTHORIZING DIVISION OF THE
COURT OF APPEALS IN A SEALED ENVELOPE OR SEALED PACKAGE, AS

THE CASE MAY BE, AND SHALL BE ACCOMPANIED BY A JOINT AFFIDAVIT OF THE APPLICANT PDEA, PNP OR NBI OFFICIAL AND THE MEMBERS OF HIS/HER TEAM.

IN CASE OF DEATH, PHYSICAL DISABILITY, RESIGNATION OR CESSATION FROM OFFICE OF THE APPLICANT TO EXECUTE THE REQUIRED AFFIDAVIT, THE ONE NEXT-IN-RANK TO THE APPLICANT AMONG THE MEMBERS OF THE TEAM NAMED IN THE WRITTEN ORDER OF THE AUTHORIZING DIVISION OF THE COURT OF APPEALS SHALL EXECUTE WITH THE MEMBERS OF THE TEAM THE REQUIRED JOINT AFFIDAVIT.

ANY PUBLIC OFFICER WHO, WITHOUT AUTHORITY, REMOVES, CONCEALS, OR DESTROYS ANY OF THE ABOVE-MENTIONED TAPE, DISC, RECORDING, NOTE, MEMORANDUM, SUMMARY, OR EXCERPTS AND ANY COPY THEREOF SHALL BE LIABLE UNDER ARTICLE 226 OF THE REVISED PENAL CODE.

ANY PUBLIC OFFICER WHO, WITHOUT AUTHORITY, REVEALS ANY OF THE ABOVE-MENTIONED MATERIALS OR ANY INFORMATION THEREON SHALL BE LIABLE UNDER ARTICLE 229 OF THE REVISED PENAL CODE.

SEC. 26 - F. *CONTENTS OF JOINT AFFIDAVIT.* - THE JOINT AFFIDAVIT OF THE PDEA, PNP, OR NBI TEAM LEADER AND THE INDIVIDUAL MEMBERS OF HIS/HER TEAM SHALL IDENTIFY THE FOLLOWING: (A) ALL TAPES, DISCS, RECORDINGS, NOTES, MEMORANDA, SUMMARIES, EXCERPTS AND ALL COPIES MADE IN CONNECTION THEREWITH; (B) THE DATES AND TIMES COVERED BY EACH OF SUCH MATERIALS; (C) THE NUMBER OF TAPES, DISCS,

RECORDINGS, NOTES, MEMORANDA, SUMMARIES, EXCERPTS AND ALL COPIES MADE IN CONNECTION THEREWITH THAT HAVE BEEN INCLUDED IN THE DEPOSIT; AND (D) THE DATE OF THE ORIGINAL WRITTEN AUTHORIZATION GRANTED BY THE PDEA DIRECTOR GENERAL, THE CHIEF OF THE PNP, OR THE NBI DIRECTOR TO THE APPLICANT TO FILE THE *EX-PARTE* APPLICATION AS WELL AS THE DATE OF ANY EXTENSION OR RENEWAL OF THE ORIGINAL WRITTEN AUTHORITY GRANTED BY THE AUTHORIZING DIVISION OF THE COURT OF APPEALS.

THE JOINT AFFIDAVIT SHALL ALSO CERTIFY UNDER OATH THAT NO DUPLICATES OR COPIES OF THE WHOLE OR ANY PART OF ANY OF SUCH TAPES, DISCS, AND RECORDINGS, AND THAT NO DUPLICATES OR COPIES OF THE WHOLE OR ANY PART OF ANY OF SUCH NOTES, MEMORANDA, SUMMARIES, AND EXCERPTS, HAVE BEEN MADE, OR, IF MADE, THAT ALL SUCH DUPLICATES AND COPIES ARE INCLUDED IN THE SEALED ENVELOPE OR SEALED PACKAGE, AS THE CASE MAY BE, DEPOSITED WITH THE AUTHORIZING DIVISION OF THE COURT OF APPEALS.

SEC. 26 - G. *DISPOSITION OF DEPOSITED MATERIAL.* -- THE SEALED ENVELOPE OR SEALED PACKAGE AND THE CONTENTS THEREOF, WHICH ARE DEPOSITED WITH THE AUTHORIZING DIVISION OF THE COURT OF APPEALS, SHALL BE DEEMED AND ARE HEREBY DECLARED CLASSIFIED INFORMATION, AND THE SEALED ENVELOPE OR SEALED PACKAGE SHALL NOT BE OPENED AND ITS CONTENTS (INCLUDING THE TAPES, DISCS, AND RECORDINGS AND ALL THE EXCERPTS AND SUMMARIES THEREOF AND THE NOTES AND MEMORANDA MADE IN

CONNECTION THEREWITH) SHALL NOT BE DIVULGED, REVEALED, READ, REPLAYED, OR USED AS EVIDENCE UNLESS AUTHORIZED BY WRITTEN ORDER OF THE AUTHORIZING DIVISION OF THE COURT OF APPEALS, WHICH WRITTEN ORDER SHALL BE GRANTED ONLY UPON A WRITTEN APPLICATION OF THE SECRETARY OF THE DEPARTMENT OF JUSTICE OR THE PDEA DIRECTOR GENERAL, THE CHIEF OF THE PNP, OR THE NBI DIRECTOR FILED BEFORE THE AUTHORIZING DIVISION OF THE COURT OF APPEALS.

THE DISCLOSURE, REVELATION, OR UTILIZATION OF THE DEPOSITED MATERIAL SHALL ALWAYS BE UNDER THE CONTROL AND SUPERVISION OF THE AUTHORIZING DIVISION OF THE COURT OF APPEALS. THE DEPOSITED MATERIAL OR PARTS THEREOF WHICH ARE NOT UTILIZED IN THE PROSECUTION FOR VIOLATION OF SEC. 4, SEC. 5, SEC. 8, OR SEC. 16 OF THIS ACT SHALL BE REDEPOSITED WITH THE AUTHORIZING DIVISION OF THE COURT OF APPEALS.

SEC. 26-H. *DESTRUCTION OF DEPOSITED MATERIAL.* – AFTER THE LAPSE OF TEN (10) YEARS FROM THE TERMINATION OF THE PERIOD AUTHORIZING THE WIRETAPPING, INTERCEPTION, SURVEILLANCE AND RECORDING OF COMMUNICATIONS, MESSAGES, CONVERSATIONS, DISCUSSIONS, OR SPOKEN OR WRITTEN WORDS, THE AUTHORIZING DIVISION OF THE COURT OF APPEALS SHALL ORDER THE DESTRUCTION OF THE DEPOSITED MATERIAL UNLESS IT IS BEING UTILIZED IN AN ONGOING INVESTIGATION OR PROSECUTION, IN WHICH CASE, IT SHALL BE DESTROYED AFTER THE TERMINATION OF THE INVESTIGATION OR PROSECUTION OF THE CASE.

SEC. 26-I. *COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT.* – THE AUTHORIZING DIVISION OF THE COURT OF APPEALS MAY ORDER ANY TELECOMMUNICATIONS OR INTERNET SERVICE PROVIDER TO ASSIST AND COOPERATE WITH THE LAW ENFORCEMENT OFFICERS IN IMPLEMENTING THE ORDER OF THE AUTHORIZING DIVISION OF THE COURT OF APPEALS. THE TELECOMMUNICATIONS OR INTERNET SERVICE PROVIDER SHALL TAKE MEASURES TO ENSURE THAT THE PERSON WHOSE COMMUNICATIONS, MESSAGES, CONVERSATIONS, DISCUSSIONS, OR SPOKEN OR WRITTEN WORDS ARE BEING WIRETAPPED, INTERCEPTED, LISTENED TO, SURVEILLED, AND RECORDED SHALL NEITHER DETECT NOR BE NOTIFIED OF SUCH FACT.

SEC. 26 - J. *EVIDENTIARY VALUE OF DEPOSITED MATERIALS.* – EVIDENCE OBTAINED PURSUANT TO SECTIONS 26-A TO 26-I OF THIS ACT SHALL NOT BE USED IN THE PROSECUTION OF ANY OTHER OFFENSE OR FELONY OTHER THAN TO PROSECUTE VIOLATIONS OF SEC. 4, SEC. 5, SEC. 8, OR SEC. 16 OF THIS ACT.

SEC. 26 - K. *DESIGNATION OF SPECIAL DIVISIONS OF THE COURT OF APPEALS.* – THE DANGEROUS DRUGS BOARD SHALL REQUEST THE SUPREME COURT TO DESIGNATE AT LEAST ONE SPECIAL DIVISION OF THE COURT OF APPEALS EACH FOR LUZON, VISAYAS, AND MINDANAO TO IMPLEMENT SECTIONS 26-A TO 26-J OF THIS ACT.”

SEC. 2. *Separability Clause.* – If for any reason any part or provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall remain and continue to be in full force and effect.

SEC. 3. *Repealing Clause.* – All laws, decrees, executive orders, rules or regulations or parts thereof, inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SEC. 4. *Effectivity.* – This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,