

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



Senate
Office of the Secretary

'13 JUL -8 AB:15

S E N A T E

S.B. No. **514**

RECEIVED BY: *ju*

Introduced by Senator LOREN LEGARDA

EXPLANATORY NOTE

The right to information is a constitutionally protected right under Article III, Section 7 of the Constitution, which provides:

"The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to limitations as may be provided by law."

Despite this Constitutional guarantee and its affirmation in a number of Supreme Court decisions, we are aware of the wanton violation by many government agencies of the right of Filipinos to access information of public interest and concern.

A key problem is lack of legislation. While the Supreme Court has upheld the enforceability of the constitutional right to information, its effective implementation has for the past two decades suffered from the lack of the necessary substantive and procedural details that only Congress can provide. As the Supreme Court lamented in *Chavez v. NHA* (G.R. No. 164527; August 15, 2007):

"It is unfortunate, however, that after almost twenty (20) years from birth of the 1987 Constitution, there is still no enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions. Hopefully, the desired enabling law will finally see the light of day when Congress decides to approve the proposed "Freedom of Access to Information Act."

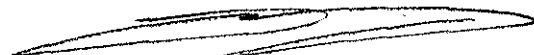
This bill fulfills the long overdue legislative obligation of Congress by putting in place the following major features:

- An expansive scope in terms of government agencies as well as information covered. A narrow list of exceptions circumscribed by clearly stated public harm that we wish to avoid in withholding certain information;

- An opportunity and the right for citizens to counterbalance and override a recognized exception when there is greater public interest in information disclosure.
- A clear, uniform and speedy procedure for access to information;
- A provision implementing automatic disclosure of transactions of public concern as required by Section 28, Article II of the constitution;
- A system of accessible and speedy remedies for a citizen whose access to information has been denied;
- The institution of mechanisms to promote a culture of openness within government; and
- The introduction of clear administrative, criminal and civil liability for the violation of the right to information.

Freedom of information is an essential prerequisite for a modern democracy. It is a key foundation to the effective exercise of cognate rights such as the freedoms of speech, of the press, and of expression, as well as the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making. Transparency in the public sector enables our people to engage in meaningful participation, promotes accountability, and mitigates corruption, which has long been a major obstacle to our country's development.

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



LOREN LEGARDA
Senator



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SENATE
S.B. No. 514

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Introduced by Senator LOREN LEGARDA

AN ACT
IMPLEMENTING THE RIGHT OF THE PEOPLE TO INFORMATION ON
MATTERS OF PUBLIC CONCERN GUARANTEED UNDER SECTION SEVEN,
ARTICLE THREE OF THE 1987 CONSTITUTION AND THE STATE POLICY OF
FULL PUBLIC DISCLOSURE OF ALL ITS TRANSACTIONS INVOLVING
PUBLIC INTEREST UNDER SECTION TWENTY EIGHT, ARTICLE TWO OF
THE 1987 CONSTITUTION, AND FOR OTHER PURPOSES

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

1 **SECTION 1. Title.** - This Act shall be known as the "Freedom of Information
2 Act of 2013."
3

4 **SEC. 2. Declarations of Policy.** - The State recognizes the right of the people
5 to information on matters of public concern, and adopts and implements a policy of
6 full public disclosure of all its transactions involving public interest, subject to the
7 procedures and limitations provided by this Act. This right is indispensable to the
8 exercise of the right of the people and their organizations to effective and reasonable
9 participation at all levels of social, political and economic decision-making.
10

11 **SEC. 3. Coverage.** - This Act shall cover all government agencies as defined
12 under Section 4 of this Act.
13

14 **SEC. 4. Definition of Terms.** - As used in this Act:
15

- 16 a. "Information" shall mean any knowledge, record, document, paper, report,
17 letters, contract, minutes and transcripts of official meetings, maps, books,
18 photographs, data, research material, film, sound and video recordings,
19 magnetic or other tapes, electronic data, computer stored data, or any other
20 like or similar data or material recorded, stored or archived in whatever form

1 or format, which are made, received or kept in or under the control and
2 custody of my government agency pursuant to law, executive order, rules
3 and regulations, ordinance or in connection with the performance or
4 transaction of official business by any government agency.

5
6 b. "Government agency" shall include the executive, legislative and judicial
7 branches as well as the constitutional bodies of the Republic of the
8 Philippines including, hut not limited to, the national government and all its
9 agencies, departments, bureaus, offices and instrumentalities, constitutional
10 commissions and constitutionally mandated bodies, local governments and
11 all their agencies, regulatory agencies, chartered institutions, government-
12 owned or controlled corporations, including wholly-owned or controlled
13 subsidiaries, government financial institutions, state universities and colleges,
14 the Armed Forces of the Philippines, the Philippine National Police, all offices
15 in the Congress or the Philippines including the offices of Senators and
16 Representatives, the Supreme Court and all lower courts established by law.

17
18 c. "Official records" shall refer to information produced or received by a public
19 officer or employee, or by a government agency in an official capacity or
20 pursuant to a public function or duty, and is not meant to he a stage or status
21 of the information.

22
23 d. "Public records" shall include information required by law, executive orders,
24 rules, or regulations to be entered, kept and made publicly available by a
25 government agency.

26
27 **SEC. 5. *Presumption.*** - There shall be a legal presumption in favor of access to
28 information. Accordingly, government agencies shall have the burden of proof of
29 showing by clear and convincing evidence that the information requested is
30 exempted from disclosure by this Act.

31
32 **SEC. 6. *Access to Information.*** - Government agencies shall make available to
33 the public for scrutiny, copying and reproduction in the manner provided by this
34 Act, all information pertaining to official acts, transactions or decisions, as well as
35 government research data used as basis for policy development, regardless of their
36 physical form or format in which they are contained and by whom they were made.

1 **SEC. 7. Exceptions.** - Subject to the qualifications set forth in Section 8 of this
2 Act, access to information may be denied when:

- 3
- 4 a. The revelation of the information requested will create a clear and present
5 danger of war, invasion or any external threat to the State as determined by
6 the Office of the President and/or the Secretary of the Department of
7 National Defense;
- 8
- 9 b. The information requested pertains to the foreign affairs of the Republic of
10 the Philippines, when its revelation would unduly weaken the negotiating
11 position of the government in an ongoing bilateral or multilateral negotiation
12 or seriously jeopardize the diplomatic relations of the Philippines with one or
13 more states with which it intends to keep friendly relations;
- 14
- 15 c. The information requested pertains to internal and external defense and law
16 enforcement, when the revelation thereof would render a legitimate military
17 operation ineffective, unduly compromise the prevention, detection or
18 suppression of a criminal activity, or endanger the life or physical safety of
19 confidential or protected sources or witnesses, law enforcement and military
20 personnel or their immediate families. Information relating to the details of
21 the administration, budget and expenditure, and management of the defense
22 and law enforcement agencies shall always be accessible to the public;
- 23
- 24 d. The information requested pertains to the personal information of a natural
25 person other than the requesting party, and its disclosure would constitute a
26 clearly unwarranted invasion of his or her personal privacy, unless it forms
27 part of a public record, or the person is or was an official of a government
28 agency and the information requested relates to his or her public function, or
29 the person has consented to the disclosure of the requested information;
- 30
- 31 e. The information requested pertains to trade, industrial, financial or
32 commercial secrets of a natural or juridical person other than the requesting
33 party, obtained in confidence by, and/or filed with a government agency,
34 whenever the revelation thereof would seriously prejudice the interests of
35 such natural or juridical person in trade, industrial, financial or commercial

1 competition, unless such natural or juridical person has consented to the
2 disclosure of the requested information;

3
4 f. The information requested is privileged from production in legal proceedings
5 by law or by the Rules or Court, unless the person entitled to the privilege has
6 waived it;

7
8 g. The information requested is exempted by law, in addition to those provided
9 in this Section;

10
11 h. The information requested is obtained by any committee of either House of
12 Congress in executive session, whenever such information falls under any of
13 the foregoing exceptions; and

14
15 i. The information requested consists of drafts of decisions by any executive,
16 administrative, judicial or quasi-judicial body in the exercise of their
17 adjudicatory functions whenever the revelation thereof would reasonably
18 tend to impair the impartiality of verdicts, or otherwise obstruct the
19 administration of justice.

20
21 **SEC. 8. *Qualifications.*** - Even if the information requested falls under the
22 exceptions set forth in the preceding section, access to information shall not be
23 denied if:

24
25 a. The information requested may be reasonably severed from the body of the
26 information, which would be subject to the exceptions;

27
28 b. The public interest in the disclosure outweighs the harm to the interest
29 sought to be protected by the exceptions; or

30
31 c. The requesting party is either House of Congress, or any of its Committees,
32 unless the disclosure will constitute a violation of the Constitution.

33
34 **SEC. 9. *Procedure of Access.*** - (a) Any person who wishes to obtain
35 information shall submit a request to the government agency concerned personally,
36 by mail, or through electronic means. The request shall state the name and preferred

1 contact information of the requesting party, and reasonably describe the information
2 required, the reason for the request of the information and the preferred means by
3 which the government agency shall communicate such requested information to the
4 requesting party: *Provided*, that the stated reason, or the failure to state the reason for
5 the request of the information, shall not be used as a ground to deny the request or
6 to refuse the acceptance of the request, unless such reason is contrary to law. If the
7 request is submitted personally, the requesting party shall show his current
8 identification card issued by any government agency, or government or private
9 employer or school, or a community tax certificate. If the request is submitted by
10 mail or through electronic means, the requesting party may submit a photostatic or
11 electronically scanned copy of the identification, or other convenient means as
12 determined by the agency.

13

14 (b) The request shall be stamped by the government agency, indicating
15 the date and time of receipt and the name, rank, title and position of the receiving
16 public officer or employee with the corresponding signature, and a copy thereof
17 furnished to the requesting party. In case the request is submitted by electronic
18 means, the government agency shall provide for an equivalent means by which the
19 requirements of this paragraph shall be met.

20

21 (c) The request may indicate the following preferred means of
22 communication:

23 1) A true copy of the information requested in permanent or other
24 form;

25 2) An opportunity to inspect the requested information, using
26 equipment normally available to the government agency when necessary;

27 3) An opportunity to copy the requested information using personal
28 equipment;

29 4) A written transcript of the information requested contained in an
30 audio or visual form;

31 5) A transcript of the content of the information requested, in print,
32 sound or visual form, where such transcript is capable of being produced
33 using equipment normally available to the government agency;

34 6) A transcript of the requested information from shorthand or
35 codified form; or

36 7) Other reasonable means or format.

1
2 (d) A government agency may communicate the information requested in
3 a form other than the preferred means whenever such preferred means would
4 unreasonably interfere with the effective operation of the agency, or be detrimental
5 to the preservation of the record.

6
7 (e) The government agency shall comply with such request within seven
8 (7) calendar days from the receipt thereof.

9
10 (f) The time limits prescribed in this Section for the production of the
11 requested information may be extended whenever there is a need for any of the
12 following:

13 1) To search for and collect the requested information from field
14 facilities or other establishments that are separate from the office processing
15 the request;

16 2) To search for, collect and appropriately examine a voluminous
17 amount of separate and distinct information, which are demanded in a single
18 request;

19 3) Consultation, which shall be conducted in all practicable speed,
20 with another government agency or among two (2) or more components of
21 the government agency having substantial interest in the determination of the
22 request; and

23 4) To consider fortuitous events or other events due to *force majeure* or
24 other analogous cases.

25
26 (g) The government agency shall, in writing or through electronic means,
27 notify the person making the request of the extension, setting forth the reasons for
28 such extension and the date when the information requested shall be made
29 available: *Provided*, that no such notice shall specify a date that would result in an
30 extension of more than fifteen (15) calendar days from the original deadline.

31
32 **SEC. 10. Access Fees.** - Government agencies may charge a reasonable fee to
33 reimburse the actual cost of reproduction, copying or transcription and the
34 communication of the information requested.

1 **SEC. 11. *Notice of Denial.*** - If the government agency decides to deny the
2 request, in whole or in part, it shall, within seven (7) calendar days from the receipt
3 of the request, notify the person making the request of such denial in writing or
4 through electronic means. The notice shall clearly indicate the name, rank, title or
5 position of the person making the denial, and the grounds for the denial. In case the
6 denial is by reason of a claimed exception, the denial shall also state clearly the
7 legitimate aim or interest sought to be protected in the confidentiality, and the facts
8 and circumstances invoked showing the substantial harm to, or frustration of, the
9 legitimate aim or interest that will result in the disclosure of the information
10 requested. Failure to notify the person making the request of the denial, or of the
11 extension, shall be deemed a denial of the request for access to information.

12
13 **SEC. 12. *Implementation Requirements.*** -- (a) For the effective
14 implementation of this Act, every government agency shall prepare a Freedom of
15 Information Manual, which shall include the following information:

- 16
17 (1) The location and contact information of the head, regional, provincial
18 and field offices, and other established places where the public can
19 obtain information or submit requests;
- 20 (2) The types of information it generates, produces, holds and/or
21 publishes;
- 22 (3) A description of its record-keeping system;
- 23 (4) The person or office responsible for receiving requests for information;
- 24 (5) The procedure for the filing of requests personally, by mail, or through
25 the identified electronic means;
- 26 (6) The standard forms for the submission of request and for the proper
27 acknowledgement of the request;
- 28 (7) The process for the disposition of the request, including the routing of
29 the request to the person or office with the duty to act on the request,
30 the decision-making, and the grant or denial of access and its
31 implementation;
- 32 (8) The procedure for the administrative appeal of any denial for access to
33 information;
- 34 (9) The schedule of fees;
- 35 (10) The process and procedure for the mandatory disclosure of
36 information under Section 14 of this Act;

1 (11) Should the agency lack the capacity to comply with Section 14 (a) of
2 this Act, a brief description of its plan to facilitate compliance within
3 three (3) years from the approval of this Act; and

4 (12) Such other information, taking into consideration the unique
5 characteristics of an agency, that will help facilitate the effective
6 implementation of this Act.

7
8 (b) The foregoing information shall also be posted in its website and
9 bulletin boards, and shall be regularly updated;

10
11 (c) In no case shall the absence of the aforementioned guidelines be a
12 reason for the denial of any request for information made in accordance with this
13 Act.

14
15 **SEC. 13. Remedies in Cases of Denial.** - (a) In all government agencies other
16 than the judicial branch -

17
18 (1) Every denial of any request for access to information may be appealed
19 to the person or office next higher in authority, following the
20 procedure mentioned in Section 12 (8) of this Act: *Provided*, that the
21 appeal must be filed within fifteen (15) calendar days from the notice
22 of denial and must be, decided within fifteen (15) calendar days from
23 filing. Failure of the government agency to decide within the
24 aforestated period shall constitute a denial of the appeal; and

25
26 (2) Instead of appealing or after the denial of the appeal, the person
27 denied access to information may file a verified complaint with the
28 Office of the Ombudsman, praying that the government agency
29 concerned be directed to immediately afford access to the information
30 being requested. Such complaint shall be resolved by the Office of the
31 Ombudsman within sixty (60) calendar days from filing, or earlier
32 when time is of the essence taking into account such factors as the
33 nature of the information requested, context of the request, public
34 interest and danger that the information requested will become moot.
35 The Office of the Ombudsman shall promulgate its special rules of
36 procedure for the immediate disposition of complaints filed pursuant

1 to this Section. Unless restrained or enjoined, the decisions of the
2 Office of the Ombudsman shall be immediately executory, without
3 prejudice to review in accordance with the Rules of Court.
4

5 (3) Instead of filing a complaint with the Office of the Ombudsman,
6 whenever a request for information is denied originally or on
7 administrative appeal, the requesting party may file a verified petition
8 for mandamus in the proper court, alleging the facts with certainty and
9 praying that judgment be rendered ordering the respondent,
10 immediately or at some other time to be specified by the court, to
11 disclose the information requested and to pay the damages sustained
12 by the requesting party by reason of the denial. The procedure for such
13 petition shall be summary in nature.
14

15 (b) In the Judicial Branch - The Supreme Court shall promulgate the
16 remedies that would govern offices under its jurisdiction.
17

18 (c) The remedies under this section are without prejudice to any other
19 administrative, civil or criminal action that may arise from the same act.
20

21 (d) The remedies available under this Act shall be exempt from the rules
22 on non- exhaustion of administrative remedies and the application of the provisions
23 of Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution
24 Act of 2004.1
25

26 (e) In case the requesting party has limited or no financial capacity, the
27 Public Attorney's Office shall be mandated to provide legal assistance to the
28 requesting party in availing of the remedies provided under this Act.
29

30 **SEC. 14. Mandatory Disclosure of Transactions Involving Public Interest. ---**

31 (a) Subject to Sections 7 and 8 of this Act, all government agencies shall upload on
32 their websites, which shall be regularly updated every fifteen (15) days, all the steps,
33 negotiations and key government positions pertaining to definite propositions of the
34 government, as well as the contents of the contract, agreement or treaty in the
35 following transactions involving public interest:
36

- 1 (1) Compromise agreements entered into by a government agency with any
2 person or entity involving any waiver or its rights or claims;
3
- 4 (2) Private sector participation agreements or contracts in infrastructure
5 and development projects under Republic Act No. 6957, as amended
6 by Republic Act No. 7718, authorizing the financing, construction,
7 operation and maintenance of infrastructure projects;
8
- 9 (3) Procurement contracts entered into by a government agency;
10
- 11 (4) Construction or concession agreements or contracts entered into by a
12 government agency with any domestic or foreign person or entity;
13
- 14 (5) Loans, grants, development assistance, technical assistance and
15 programs entered into by a government agency with official bilateral
16 or multilateral agencies, as well as with private aid agencies or
17 institutions;
18
- 19 (6) Loans from domestic and foreign financial institutions;
20
- 21 (7) Guarantees given by any government agency to government-owned or
22 controlled corporations and to private corporations, persons or
23 entities;
24
- 25 (8) Public funding extended to any private entity;
26
- 27 (9) Bilateral or multilateral agreements and treaties in defense, trade,
28 economic partnership, investments, cooperation and similar binding
29 commitments; or
30
- 31 (10) Licenses, permits or agreements given by any government agency to
32 any person or entity for the extraction and/or utilization of natural
33 resources.
34

35 A summary list of the foregoing information uploaded in the website shall be
36 posted in the bulletin boards of the concerned government agency.

1 (b) The information uploaded in the website under letter (a) of this Section
2 may be withdrawn after a period of three years from the time of uploading: *Provided*;
3 that an abstract of the information withdrawn shall remain uploaded in the website,
4 containing a brief description of the transaction and an enumeration of the
5 information withdrawn, and indicating the dates of posting and withdrawal.

6
7 (c) Should an agency lack the capacity to comply with letter (a) of this
8 Section, the agency shall initiate a capacity-building program, or coordinate with
9 another appropriate agency, to facilitate substantive compliance not later than three
10 (3) years upon approval of this Act.

11
12 **SEC. 15. *Promotion of Openness in Government.*** - (a) Duty to Publish
13 Information - Government agencies shall regularly publish, print and disseminate at
14 no cost to the public and in an accessible form, in conjunction with R.A. 9485, or the
15 Anti-Red Tape Act of 2007, and through their website, timely, true, accurate and
16 updated key information including, but not limited to:

- 17
18 (1) A description of its mandate, structure, powers, functions, duties and
19 decision-making processes;
20 (2) A description of the frontline services it delivers and the procedure
21 and length of time by which they may be availed of;
22 (3) The names of its key officials, their powers, functions and
23 responsibilities, and their profiles and curriculum vitae;
24 (4) Work programs, development plans, investment plans, projects,
25 performance targets and accomplishments, and budgets, revenue
26 allotments and expenditures;
27 (5) Important rules and regulations, orders or decisions: *Provided*, that
28 they be published within fifteen (15) calendar days from promulgation;
29 (6) Current and important database and statistics that it generates;
30 (7) Bidding processes and requirements; and
31 (8) Mechanisms or procedures by which the public may participate in or
32 otherwise influence the formulation of policy or the exercise of its
33 powers.

34
35 (b) Keeping of Records - Government agencies shall maintain and preserve
36 their records in a manner that facilitates easy identification, retrieval and

1 communication to the public. They shall establish Management Information Systems
2 (MIS) to strengthen their capability to store, manage and retrieve records, and to
3 facilitate access to public records. The following shall not be destroyed:

- 4
- 5 (1) Records pertaining to loans obtained or guaranteed by the
6 government;
 - 7 (2) Records of government contracts;
 - 8 (3) The declaration under oath of the assets, liabilities and net worth of
9 public officers and employees, as required by law;
 - 10 (4) Records of official investigations on graft and corrupt practices of
11 public officers; and
 - 12 (5) Other records where there is a significant public interest in their
13 preservation or where there is likely to be such interest in the future.

14

15 (c) **Accessibility of Language and Form** - Every government agency shall
16 endeavor to translate key information into major Filipino languages and present
17 them in popular form and means.

18

19 (d) **Improving Capability** - Every government agency shall ensure the
20 provision of adequate training for its officials to improve awareness of the right to
21 information and the provisions of this Act, and to keep updated of best practices in
22 relation to information disclosure, records maintenance and archiving.

23

24 **SEC. 16. Criminal Liability and Administrative Liability.** - The penalty of
25 imprisonment of not less than one (1) month but not more than six (6) months shall
26 be imposed upon:

- 27
- 28 (a) Any public officer or employee receiving the request under Section 9
29 of this Act who shall fail to promptly forward the request to the public
30 officer within the same office or agency responsible for officially acting
31 on the request when such is the direct cause of the failure to disclose
32 the information requested within the periods required by this Act;
 - 33
 - 34 (b) Any public officer or employee responsible for officially acting on the
35 request, who shall:

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- (1) Fail, to act on the request within the periods required by this Act;
- (2) Knowingly deny the existence of existing requested information;
- (3) Destroy information being requested for the purpose of frustrating the requesting party's access thereto;
- (4) Claim an exception under Section 8 of this Act, or under the Constitution, when the claim is manifestly devoid of actual basis; or
- (5) Refuse to comply with the decision of his immediate supervisor, the Ombudsman or the court ordering the release of the information requested that is not restrained or enjoined by a court;

(c) The head of office of the government agency directly and principally responsible for the negotiation and perfection of any of the transactions enumerated in Section 13 (a) of this Act, who shall knowingly refuse, to direct the mandatory posting or uploading of such transaction despite the agency capacity to implement such directive. The same penalty shall be imposed upon the public officer or employee who, despite a directive from the head of office, shall fail, to post or upload any of the transactions enumerated in Section 14 of this Act;

(d) Any public officer or employee who shall destroy, or cause to destroy, records of information covered by Section 15 (b) of this Act;

(e) Any public officer who formulates policies, rules and regulations manifestly contrary to the provisions of this Act, and which policies, rules and regulations are the direct cause of the denial of a request for information; or

(f) Any public or private individual who knowingly induced or caused the commission of the foregoing acts under this section.

1 The foregoing shall be without prejudice to any administrative liability of the
2 offender under existing laws and regulations.

3
4 **SEC. 17. *Act Not a Bar to Claim of Right to Information under the***
5 ***Constitution.*** - No provision of this Act shall be interpreted as a bar to any claim of
6 denial of the right to information under Article III, Section 7 of the 1987 Constitution.

7
8 **SEC. 18. *Separability Clause.*** - If, for any reason, any section or provision of
9 this Act is held unconstitutional or invalid, no other section or provision shall be
10 affected.

11
12 **SEC. 19. *Repealing Clause.*** - All laws, decrees, executive orders, rules and
13 regulations, issuances or any part thereof inconsistent with the provisions of this
14 Act, including Memorandum Circular No. 78 dated 14 August 1964 (Promulgating
15 Rules Governing Security of Classified Matter in Government Offices), as amended,
16 and Section 3, Rule IV of the Rules Implementing Republic Act No. 6713 (Code of
17 Conduct and Ethical Standards for Public Officials and Employees), are deemed
18 repealed.

19
20 **SEC. 20. *Effectivity.*** - This Act shall take effect fifteen (15) days after its
21 publication in at least two (2) national newspapers of general circulation.

22
23 Approved,
24