

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



Senate
Office of the Secretary

'13 SEP 17 P3:50

SENATE
S. No. 1695

RECEIVED BY: *ji*

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The development of proprietary economic information is an integral part of a nation's commerce. Its development, protection and lawful exchange are essential to the competitiveness of critical segments of Philippine business and industry.

The theft, misappropriation and wrongful use of Philippine proprietary economic information by foreign governments and their agents or instrumentalities can cost our economy millions of pesos each year. Existing laws do not give adequate protection to proprietary economic information.

This bill seeks to prevent economic espionage. It also seeks to advance the development and lawful use of Philippine proprietary economic information by protecting such information from theft, wrongful destruction or alteration, misappropriation and conversion by foreign governments and their agents or instrumentalities.*

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

* This bill was originally filed during the Thirteenth Congress, First Regular Session.

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1 AN ACT
2 DEFINING THE CRIME OF ECONOMIC ESPIONAGE AND PROVIDING PENALTIES
3 THEREFOR

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

4 SECTION 1. *Short Title.* - This Act may be cited as the "Economic Espionage and
5 Protection of Proprietary Information Act."

6 SECTION 2. *Statement of Policy.* - It is hereby declared the policy of the State to prevent
7 economic espionage and further the development and lawful use of Philippine proprietary
8 economic information.

9
10 SECTION 3. *Definition of Terms.* -As used in this Act, the term:

11 (A) "Foreign corporation, institution, or instrumentality" means any corporation,
12 agency, component, institution, association, instrumentality, or legal, commercial, or business
13 entity that is substantially owned, controlled, sponsored, commanded, managed, patronized,
14 dominated, or chartered by a foreign government or subdivision of a foreign government;

15 (B) "Foreign agent" means any officer, employee, proxy, servant, delegate, or
16 representative of a foreign nation or government;

17 (C) "Person" means a natural person, corporation, agency, association, institution, or
18 any other legal, commercial, or business entity;

19 (D) "Proprietary economic information" means all forms and types of financial,
20 business, scientific, technical, economic, or engineering information including, but not limited to

1 data, plans, tools, mechanisms, compounds, formulas, designs, prototype, processes, procedures,
2 programs, codes or commercial strategies, whether tangible or intangible and whether stored,
3 compiled, or memorialized physically, electronically, graphically, photographically, or in writing
4 provided that the following concur:

- 5 (1) The owner thereof has taken reasonable measure to keep such information
6 confidential;
- 7 (2) The information is not available generally to, or accessible by, the public;
8 and
- 9 (3) The information is not a matter of public concern.

10 (E) "Owner" means my Filipino person or any Philippine Government compound,
11 department, or agency in which, rightful legal, beneficial, or equitable title to, or license in,
12 proprietary economic information is reposes;

13 (F) "Filipino person" means -

- 14 (1) In the case of a natural person, a Philippine citizen or a permanent resident
15 alien; and
- 16 (2) In the case of artificial person, a Philippine Government or by Filipino
17 citizens or permanent resident aliens, or incorporated under Philippine
18 laws.

19 (G) "Economic Espionage" is committed by any person who:

- 20 (1) Steals, wrongfully appropriates, takes, carries away, or conceals, or by
21 fraud, artifice, or deception obtains proprietary economic information;
- 22 (2) Wrongfully copies, duplicates, sketches, draws, photographs, downloads,
23 uploads, alters, destroys, photocopies, replicates, transmits, delivers,
24 sends, mails, communicates, or conveys proprietary economic
25 information;
- 26 (3) Being entrusted with, or having lawful possession or control of, or access
27 to, proprietary economic information, wrongfully copies, duplicates,
28 sketches, draws, photographs, downloads, uploads, alters, destroys,

1 photocopies, replicates, transmits, delivers, sends, mails, communicates, or
2 conveys the same;

3 (4) Receives, buys, or possesses proprietary economic information, knowing
4 the same to have been stolen or wrongfully appropriated, obtained, or
5 converted;

6 (5) Attempts to commit any offense described in the preceding
7 subparagraphs (1), (2), (3) or (4);

8 (6) Wrongfully solicits another to commit any offense described in preceding
9 subparagraphs (1), (2), (3) or (4); or

10 (7) Conspires with one or more other persons to commit any offense
11 described in preceding paragraphs (1), (2), (3) or (4), and one or more of
12 such persons do any act to effect the object of the conspiracy, shall, except
13 as provided in the next subsection (B), be fined not more than 50% of the
14 economic value of such proprietary information or imprisoned for a period
15 ranging from 15 or 25 years, or both.

16 SECTION 4. *Prohibited Acts; Penalties.* - Any natural or juridical person who commits
17 economic espionage as defined in the preceding Section, whether or not in the aid of foreign
18 nations, governments, corporations, institutions, or instrumentalities, shall be fined an amount
19 equivalent to the economic value of such proprietary information. The person mentioned in the
20 preceding paragraph is presumed to have acted with intent to injure any owner and benefit any
21 foreign nation, government, corporation, institution, instrumentality, unless proven otherwise. If
22 the offender is a corporation, any officer, director, or manager, or other person occupying a
23 position of authority and responsibility for the acquisition, use or management of proprietary
24 economic information for any corporation or other business or commercial entity who knowingly
25 permitted or failed to prevent the commission of any of the acts which constitute economic
26 espionage.

1 SECTION 5. *Forfeiture.* - Notwithstanding any provision of law to the contrary, any
2 person convicted of violation of this Act shall forfeit to the Philippine Government any property
3 constituting, or derived from any proceeds the person obtained, directly or indirectly, from the
4 commission of such violations; and any of the person's properly used, or intended to be used, in
5 any manner or part, to commit, or to facilitate the commission of a violation of this Act. The
6 court, in imposing penalty on the offender for a violation of this Act, shall order that the property
7 described in paragraph (A) of this Section be forfeited in favor of the Philippine Government.

8 SECTION 6. *Extra-Territoriality.* - Notwithstanding any provision of law to the contrary,
9 this Act applies to conduct occurring outside the territorial jurisdiction of the Philippines if -

- 10 (A) The offender is a Filipino citizen or permanent resident of the Philippines;
- 11 (B) The victim of the offense is an "owner", as defined in Section 3 of this Act, and
12 the offense was intended to have, or had, an effect in the Philippines; or
- 13 (C) The offender foreign corporation is conducting business in the Philippines
14 through agents or subsidiaries and has caused damage to the "owner" in the conduct of its
15 business abroad

16 SECTION 7. *Construction with Other Laws.* - This Act shall not be construed to preempt
17 or displace any other existing legal remedies, whether civil or criminal, for the misappropriation
18 or proprietary economic information.

19 SECTION 8. *Preservation of Confidentiality.* - In any prosecution under this Act, the
20 court shall preserve the confidentiality of alleged proprietary economic information by any
21 reasonable and lawful means including, but not limited to -

- 22 (A) The granting or protective orders in connection with discovery proceedings; and
- 23 (B) The holding of in-camera hearing, sealing relevant portions OC the record, and
24 the ordering of any person involved in the proceedings not to disclose the alleged proprietary

1 economic information which is the subject of the offense may request the prosecution to seek
2 such protective action.

3 SECTION 9. *Non-Applicability of Lawfully Authorized Law Enforcement or Intelligence*
4 *Activities.* - Any act in which information is seized, taken, transported, transmitted, or transferred
5 pursuant to or in furtherance of any lawfully authorized investigative, protective, or intelligence
6 activity of a law enforcement agency of the Philippines or any of its political subdivisions, shall
7 not be deemed a violation of this Act.

8 SECTION 10. *Separability Clause.* - If any provision or part thereof is held invalid or
9 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
10 valid and subsisting.

11 SECTION 11. *Repealing Clause.* - Presidential Decree No. 1602 is hereby amended. Any
12 law, presidential decree or issuance, executive order, letter of instruction, administrative order,
13 rule, or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed,
14 modified, or amended accordingly.

15 SECTION 12. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its
16 publication in at least two (2) newspapers of general circulation.

Approved,