

'13 DEC -9 P4 :42

SENATE
S. B. No. **2000**

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Introduced by Senator Maria Lourdes Nancy S. Binay

EXPLANATORY NOTE

As a way of facilitating technology transfer in the Philippines, the Intellectual Property Code (“IP Code”) provides mechanisms to encourage the transfer and dissemination of technology, prevent or control practices and conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition and trade. For this purpose, Section 85 of the Intellectual Property Code requires that all technology transfer arrangements shall comply with the provisions of the Code.

In furtherance of the above objective, Section 87 prohibits the inclusion of certain types of provisions deemed prima facie to have an adverse effect on competition and trade. In addition, Section 88 also provides for mandatory provisions that should be included in voluntary license contracts.

To enforce the above provisions, Section 92 provided the legal consequence of non-compliance with Sections 87-88, as follows:

“Section 92. Non-Registration with the Documentation, Information and Technology Transfer Bureau. - Technology transfer arrangements that conform with the provisions of Sections 86 and 87 need not be registered with the Documentation, Information and Technology Transfer Bureau. Non-conformance with any of the provisions of Sections 87 and 88, however, shall automatically render the technology transfer arrangement unenforceable, unless said technology transfer arrangement is approved and registered with the Documentation, Information and Technology Transfer Bureau under the provisions of Section 91 on exceptional cases.”

The term “unenforceable” appears to be legally incorrect and inconsistent with the principle that acts contrary to law are void. It entertains the possibility that if the parties violate Section 87-88, they are given the opportunity to ratify the contract declared by operation of law to be illegal. The possibility of ratification renders nugatory, if not severely weakens, efforts of the Intellectual Property Office to ensure compliance with Section 87-88.

In view of the foregoing, the passage of this Bill is earnestly requested.



MARIA LOURDES NANCY S. BINAY
Senator

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Introduced by Senator Maria Lourdes S. Binay

1 AN ACT CLARIFYING THE LEGAL EFFECT OF VIOLATING THE PROHIBITED ACTS
2 AND MANDATORY PROVISIONS FOR TECHNOLOGY TRANSFER AGREEMENTS,
3 AMENDING FOR THE SAID PURPOSE SECTION 92 OF REPUBLIC ACT 8293 OR THE
4 INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES
5

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

8 **SECTION 1.** Section 92 of Republic Act 8293 is hereby amended to read as follows:
9

10 **Section 92.** *Non-Registration with the Documentation, Information and*
11 *Technology Transfer Bureau.* - Technology transfer arrangements that conform
12 with the provisions of Sections 86 and 87 need not be registered with the
13 Documentation, Information and Technology Transfer Bureau.
14

15 Non-conformance with any of the provisions of Sections 87 and 88, however,
16 shall automatically render the technology transfer arrangement VOID AB
17 INITIO, ~~unenforceable, unless said technology transfer arrangement is approved~~
18 ~~and registered with the Documentation, Information and Technology Transfer~~
19 ~~Bureau under the provisions of Section 91 on exceptional cases.~~
20 TECHNOLOGY TRANSFER ARRANGEMENT UNDER THE PROVISIONS
21 OF SECTION 91 ON EXCEPTIONAL CASES ARE NOT COVERED BY
22 THIS PARAGRAPH.
23

24 **SECTION 2.** *Separability Clause.* Should any part or provision of this Act be declared
25 unconstitutional or invalid, other parts or provisions hereof not otherwise affected thereby
26 shall remain in full force and effect.
27

28 **SECTION 3.** *Effectivity.* This Act shall take effect fifteen (15) days after its publication in at
29 least two (2) newspapers of general circulation.
30

31 Approved,