

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



Senate
Office of the Secretary

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SENATE
S. No. 2340

BY *[Signature]*

Introduced by Senator Miriam Defensor Santiago

AN ACT
PENALIZING RACKETEERS AND CRIMINAL ENTERPRISES, PROHIBITING
SUCH CRIMINAL ENTERPRISES AND RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS FROM INFILTRATING, CONTROLLING OR
OTHERWISE INFLUENCING PHILIPPINE COMMERCE

EXPLANATORY NOTE

The Constitution, Article 11, Section 5 provides:

The maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Our country has gained notoriety as the regional headquarters of the criminal underworld in Asia due to the increasing incidence of syndicated and organized crimes. This situation is further exacerbated by the fact that organized crimes are now infiltrating legitimate businesses to expand their empire and strengthen their operations.

As it is the policy of the State to eradicate all forms of criminal enterprises, and their corrupting influence and control over legitimate entities engaged in lawful commerce, the government must expend efforts in adopting and implementing stronger measures aimed at neutralizing the economic base of criminal enterprises.

Hence, this bill seeks to prevent organized crime from infiltrating businesses, and other economic entities by prohibiting syndicated gambling, racketeering and

similar and halting pattern of infiltration of businesses by organized crimes through penalties and forfeiture of the proceeds of these racketeering activities.¹

act *Miriam Defensor Santiago*
MIRIAM DEFENSOR SANTIAGO

¹ This bill was originally filed during the Fourteenth Congress, First Regular session.

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SENATE
S. No. **2340**

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

1 AN ACT
2 PENALIZING RACKETEERS AND CRIMINAL ENTERPRISES, PROHIBITING
3 SUCH CRIMINAL ENTERPRISES AND RACKETEER INFLUENCED AND
4 CORRUPT ORGANIZATIONS FROM INFILTRATING, CONTROLLING OR
5 OTHERWISE INFLUENCING PHILIPPINE COMMERCE
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8 SECTION 1. *Short Title.* - This Act shall be known as the "Anti-Racketeer
9 Influenced and Corrupt Organizations Act."

10 SECTION 2. *Declaration of Policy.* - It is hereby declared the policy of the
11 State to eradicate any and all forms of criminal enterprises, and its corrupting
12 influence and control over legitimate entities engaged in lawful commerce, as well as
13 prioritizing the enactment of laws with stronger measures aimed at neutralizing the
14 economic base of criminal enterprises.

15 SECTION 3. *Definition of Terms.* -As used in this Act, the following terms
16 shall mean:

17 (A) "Person" means any individual, association, partnership, corporation,
18 entity or any group of individuals, associations, corporations or entities, capable of
19 holding a legal interest in property.

20 (B) "Enterprise" includes any individual, association, partnership, corporation
21 or other legal entity or any union or group of individuals associated in fact although
22 not a legal entity.

1 (C) "Racketeering Activity" means any act involving kidnapping; murder,
2 mutilation; homicide; serious physical injuries; arson; robbery; theft; illegal
3 possession of firearm, ammunition or explosives; bribery and other graft and corrupt
4 practices; illegal gambling; carnapping; fencing; gunrunning; illegal logging; white
5 slavery or prostitution; illegal recruitment; smuggling; piracy; illegal fishing; illegal
6 importation; manufacture or sale of dangerous drugs and illegal maintenance of a
7 drug den; swindling (estafa); counterfeiting; monopolies; and combinations in
8 restraint of trade; falsification of land titles; securities fraud; bank frauds; dealing in
9 obscene matters and sexual and economic exploitation of the disabled and
10 mendicants as defined under existing criminal statutes.

11 (D) "Pattern of Racketeering Activity" requires at least two (2) acts of
12 racketeering activity one of which occurred after the effectivity date of this Act, and
13 the other occurring within ten (10) years (excluding any period of imprisonment)
14 after the commission of a prior act of racketeering activity.

15 (E) "Racketeer Investigator" means any attorney or investigator or Secretary
16 of Justice and charged with the duty of enforcing or carrying this Act into effect.

17 (F) "Department" refers to the Department of Justice.

18 (G) "Secretary" refers to the Secretary of Justice.

19 SECTION 4. *Prohibited Activities.* –

20 (A) It shall be unlawful for any person who has received any income or
21 benefit, either directly or indirectly, from a pattern of racketeering activity, to use or
22 invest, directly indirectly, any part of such income or benefit, or the proceeds of such
23 income or benefit, in acquisition of any interest in, or the establishment or operation
24 of, any enterprise which is engaged in, or the activities of which affect commerce.

1 (B) It shall be unlawful for any person through a pattern of racketeering
2 activity to acquire or maintain, directly or indirectly, any interest in or control of any
3 enterprise which is engaged in, or the activities of which affect commerce.

4 (C) It shall be unlawful for any person employed by or associated with any
5 enterprise engaged in, or the activities of which affect commerce, to conduct or
6 participate, directly or indirectly, in the control of such enterprise's affairs through a
7 pattern of racketeering activity.

8 SECTION 5. *Criminal Penalties.* –

9 (A) Imprisonment or fine or both – Any person found guilty or convicted by
10 final judgment of violating any of the prohibited activities enumerated in Section 4
11 above, shall be punished by imprisonment of not less than ten (10) years nor more
12 than twenty (20) years, and if the violation is based on a racketeering activity for
13 which the maximum penalty includes life imprisonment or death, the death penalty
14 for violating any provision of Section 4 above, shall likewise be life imprisonment or
15 death, and a fine ranging from One Hundred Thousand pesos (P100,000.00) up to
16 One Million pesos (P1,000,000.00);

17 (B) Forfeiture - In addition to imprisonment and fine, the defendant shall
18 forfeit to the Government:

19 (1) any interest the defendant has acquired or maintained in violation of
20 Section 4;

21 (2) any interest in, security of, claim against, or property or contractual
22 right of any kind affording a source of influence over any enterprise which the
23 defendant has established, operated, controlled, conducted, or participated in
24 the conduct of, in violation of Section 4: and

1 (3) any property constituting or derived from any proceeds which the
2 defendant obtained, directly or indirectly, from racketeering activities in
3 violation of Section 4.

4 If any of the properties described in Section 5(B), as a result or omission of
5 the defendant, cannot be located even with the exercise of due diligence; or has been
6 transferred or sold to, or deposited with a third party; or has been placed beyond the
7 jurisdiction of the courts; or has been substantially diminished in value; or has been
8 commingled with other property which cannot be divided without difficulty, the court
9 shall order the forfeiture of any other property of the defendant up to the value of any
10 property described in Section 5(B).

11 SECTION 6. *Jurisdiction.* - The Regional Trial Court exercising jurisdiction
12 over the place where any one of the elements constituting an act of racketeering
13 activity is committed, resulting in a pattern of racketeering activity, shall exercise
14 exclusive original jurisdiction over criminal prosecutions for violation of any
15 provisions of this Act, as well as over applications for the issuance and grant of
16 applicable provisional remedies under the Rules of Court filed in relation to said
17 criminal prosecutions, which provisional remedy may include attachment, and/or
18 injunctions with prayer for the issuance of a temporary restraining order, as well as
19 the forfeiture of property provided for under this Act, regardless of the place or
20 location of any property object of the provisional remedy sought or subject of
21 forfeiture, the residence of the defendants, or the location of the enterprise of the
22 defendant.

23 SECTION 7. *Temporary Restraining Order (TRO).* - For purposes of securing
24 a temporary restraining order from the court, there must be clear and convincing
25 evidence that the properties of the defendant which are sought to be restrained, where
26 involved in a violation of this Act, that such properties would be subject to forfeiture

1 under provisions of this Act and that the government have reasonable grounds to
2 believe that defendant was likely to conceal or otherwise make the properties
3 inaccessible to the Government prior to conclusion of trial.

4 A temporary restraining order effective for a period of thirty (30) days may be
5 issued, with or without notice and hearing, depending on the exigencies of each case,
6 on or after the filing of a sworn complaint with the Office of the Secretary of the
7 Department of Justice, but before the filing of the information with the court. The
8 TRO may direct the defendant, or any person acting on his behalf, to cease and desist
9 from alienating, disposing, selling, assigning, conveying, transferring, or otherwise
10 concealing any interest or right of the defendant over his property. The applicant for
11 a TRO, without notice to the adverse party, must establish that there is probable
12 cause to engender a well-founded belief that the property of the defendant would be
13 subject to forfeiture under the provisions of this Act, and the notice to the adverse
14 party will jeopardize the availability of the property for forfeiture.

15 SECTION 8. *Preliminary Injunction.* - Prior to the lapse of the effectivity of a
16 temporary restraining order, the court shall immediately conduct a hearing with
17 notice to all parties concerned, to determine if there is sufficient and valid grounds
18 for the issuance of a writ of preliminary injunction in favor of the Government, and
19 preponderance of evidence to support the finding that:

20 (A) The Government will prevail on the issue of forfeiture of properties of the
21 defendant;

22 (B) Failure to issue the writ will grossly prejudice public interest, or cause
23 grave and irreparable damage to the interests of the Government by undermining the
24 efforts to ensure that the property will not be concealed, place in hiding, destroyed,
25 disposed or otherwise made unavailable for forfeiture; and

1 (C) The need to preserve the availability of the property through the writ
2 outweighs the hardship on the adverse party against whom it is directed.

3 SECTION 9. *Judgment of Forfeiture.* - Upon conviction and a declaration of
4 guilt of the defendant by final judgment for violation of this Act, the Court shall enter
5 a judgment for violation of this Act, and the Court shall enter a judgment of forfeiture
6 of the property in favor of the Government, appointing the Secretary as receiver or
7 conservator of all property ordered forfeited, and who shall act subject to the court's
8 control and supervision.

9 SECTION 10. *Disposition of Forfeited Property.* - Following the seizure of
10 the property and upon compliance with paragraph (3), Section 5 of this Act, the
11 Secretary shall direct the disposition of the property by auction sale. Any property
12 right or interest is exercisable by or transferable for value to the government shall
13 expire and shall not revert to the defendant, nor shall the defendant or any person
14 acting in his behalf be eligible to purchase said forfeited property.

15 SECTION 11. *Restitution of Property to Victims.* - The court hearing the case
16 shall likewise hear petition of racketeering activity for restitution of property or
17 compensation.

18 SELECTION 12. *Prohibition Against Intervention and Injunction.* - (A) No
19 party claiming an interest in property subject to forfeiture may commence an action
20 nor intervene in a trial or appeal of a criminal case involving the forfeiture of such
21 property.

22 (B) No restraining order or injunction may issue against the Government
23 concerning the validity of its interest in the property subject to forfeiture.

24
25 SECTION 13. *Rights of Third Parties.* - Any person, other than the defendant
26 asserting a legal interest in property ordered forfeited may, within thirty (30) days

1 from publication by the Secretary of the judgment of forfeiture in two (2) national
2 newspaper of general circulation in the Philippines, petition the court for a hearing to
3 adjudicate the validity of his alleged interest in the property. While the petition is
4 pending resolution, the Secretary of Justice shall not sell or otherwise dispose of the
5 property forfeited. If after hearing, the court determines that the petitioner has
6 established by preponderance of evidence that -

7 (A) the petitioner has a legal right, or interest in the property; or

8 (B) the petitioner is a bona fide purchaser for value of the right, title or interest
9 in the property and was at the time of purchase reasonably without cause to believe
10 that the property was acquired through a racketeering act or otherwise subject to
11 forfeiture in accordance with such determination.

12 SECTION 14. *Civil Remedies.* -

13 (A) Where to file - Any of the Regional Trial Courts of the place where any
14 element of any racketeering activity constituting a pattern of racketeering activity has
15 been committed, shall have jurisdiction to prevent or restrain violations of Section 5
16 irrespective of where the defendant resides or is found, or where the enterprise or
17 property is located, by issuing appropriate orders, including but not limited to:

18 (1) ordering any person to divest himself of any interest, direct or
19 indirect, in any enterprise;

20 (2) imposing reasonable restrictions on the future activities or
21 investments of any person including but not limited to, prohibiting any person
22 from engaging in the same type of endeavor as the enterprise engaged in; or

23 (3) ordering dissolution or reorganization of any enterprise, provision
24 for the rights of innocent persons.

25 (B) Who can file -

1 (1) The Secretary of Justice, or his duly authorized representative, may
2 institute proceedings under this Section in behalf of the Government; or

3 (2) Any person injured in his person, business or property by reason of
4 violation of Section 4 or his heirs, may sue therefore in the appropriate
5 Regional Trial Court mentioned in the preceding paragraph and shall recover
6 threefold the damages he sustains and the cost of the suit, including a
7 reasonable attorney's fees.

8 SECTION 15. *Hearing Preference.* - Notwithstanding any law civil action
9 instituted under this Section, the Regional Trial Court shall expeditiously hear the
10 case by giving it preference over all other civil cases. Trial once commenced, shall
11 continue from day to day, as far as practicable until terminated.

12 SECTION 16. *Subpoena Powers.* -

13 (A) Wherever the Secretary has reason to believe that any person or enterprise
14 may be in possession or control of any documentary materials relevant to a
15 racketeering investigation, he may, prior to the institution of a criminal or civil
16 proceeding thereon, shall in writing cause to be served upon such person or enterprise
17 a *subpoena duces tecum* requiring such person to produce such material for
18 examination.

19 (B) The Secretary shall designate a racketeering investigator to serve as
20 racketeer document custodian.

21 (C) Any person or enterprise who has duly been served the subpoena, shall
22 make available for inspection and copying or reproduction to the custodian
23 designated therein at any place designated in the subpoena, or as agreed upon, and
24 shall certify under oath that the copies shall be admissible in court as originals.

1 (D) While in the possession of the custodian, no material so reproduced shall
2 be available for examination, without the consent of the person who produced such
3 material, by any individual other than the Secretary.

4 (E) Whenever any person or enterprise fails to comply with any subpoena, the
5 Secretary of Justice may file in the appropriate Regional Trial Court having
6 jurisdiction, a petition for an order of such court for the enforcement of the subpoena;
7 Provided, that if the person disobeys the order of the court, he shall liable for
8 contempt of court.

9 SECTION 17. *Rules and Procedures.* - The Secretary of Justice shall adopt
10 rules and procedures:

11 (A) To govern its proceedings;

12 (B) To provide for the security of records, documents, information, and other
13 materials its custody and of its proceedings;

14 (C) To prevent unauthorized disclosure of information and materials disclosed
15 to it in the course of its inquiry;

16 (D) To provide the right counsel to all witnesses pursuant to subpoena; and

17 (E) To accord the full protection of all rights guaranteed by the Constitution.

18 SECTION 18. *Statute of Limitations.* - One of the predicate acts of
19 racketeering must have been committed within ten (10) years of the date of the
20 information otherwise violations this Act shall be deemed to have prescribed.

21 SECTION 19. *Separability Clause.* - If any provision or part hereof is held
22 invalid or unconstitutional, the remainder of the law or the provision not otherwise
23 affected shall remain valid and subsisting.

24 SECTION 20. *Repealing Clause.* - Any law, presidential decree or issuance,
25 executive order, letter of instruction, administrative order, rule or regulation contrary

1 to, or inconsistent with, the provision of this Act is hereby repealed, modified or
2 amended accordingly.

3 SECTION 21. *Effectivity Clause.* - This Act shall take effect fifteen days (15)
4 days after its publication in at least two (2) newspapers of general circulation.

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6 Approved.

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