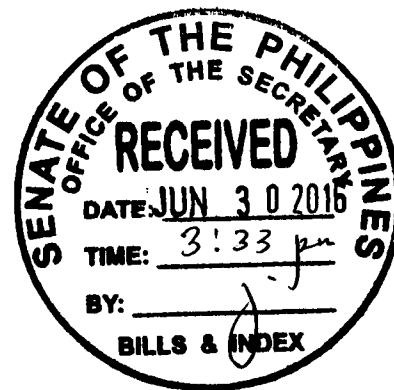


SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE

S. B. No. 88

Introduced by Senator FRANCIS G. ESCUDERO

AN ACT
PROVIDING FOR PROTECTION, SECURITY AND BENEFITS OF
WHISTLEBLOWERS

EXPLANATORY NOTE

Section 27, Article II of the 1987 Constitution provides that as a State Policy, "The State shall maintain honesty and integrity in public service and take positive and effective measure against graft and corruption."

Furthermore, Section 1, Article XI of the 1987 Constitution provides that, "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

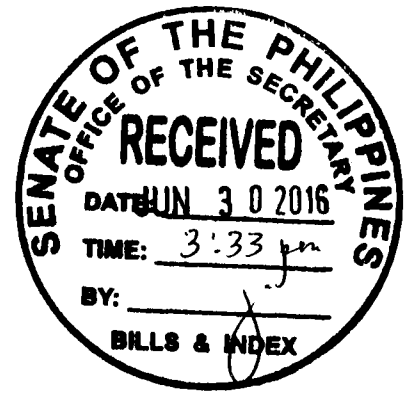
It is the intent of this bill to encourage citizens to stand up and report alleged violations of law, improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer or employee, and private entity. Furthermore by protecting citizens who disclose wrongdoing from retaliatory acts, we hereby strengthen accountability and reduce corruption in the public and private sectors.

Hence, in the best interest of the Republic, the immediate approval of this bill is urgently sought.

A handwritten signature in black ink, appearing to be "Francis G. Escudero".

FRANCIS G. ESCUDERO

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



SENATE

S. B. No. 88

Introduced by Senator FRANCIS G. ESCUDERO

AN ACT
PROVIDING FOR PROTECTION, SECURITY AND BENEFITS OF
WHISTLEBLOWERS

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

1 **SECTION 1.** *Short Title.* - This Act shall be known as the "Whistleblower
2 Protection Act."

3 **SEC. 2.** *Declaration of Policy.* - Public Office is a public trust. It is the policy of the
4 State to promote and ensure full accountability in the conduct of its officers and
5 employees, and exact full retribution from those who shall engage in improper conduct.
6 Toward this end, the State shall:

7 (A) Maintain honest and high standards of integrity in the public service;

8 (B) Safeguard the national interest through the prosecution of corrupt and erring
9 public officials and employees; and

10 (C) Encourage and facilitate the disclosure of corrupt conduct and practices in
11 the public service by providing benefits provided in existing laws.

12 **SEC. 3.** *Definitions.* -As used in this Act:

13 (A) "Employer" shall mean any individual, partnership, association, corporation
14 or entity, including the government, or any person or group of persons who shall
15 directly or indirectly for or on behalf of said individual, partnership, association,
16 corporation or entity, employ an employee as defined in this Act.

17 (B) "Employee" shall mean any person who is made to work by, or who renders
18 service for, an employer. The term shall include public officers and employees as
19 defined in this Act as well as any person considered an "employee" under the Labor
20 Code.

21 (C) "Public officer/employee" shall refer to any person holding any office or
22 performing any function or duty in the Government of the Republic of the Philippines
23 by virtue of an appointment, election or contract.

1 (D) "Government" shall include the National Government, and any of its
2 subdivisions, agencies or instrumentalities, including government-owned and
3 controlled corporations and their subsidiaries, and Local Government Units.

4 (E) "Retaliatory action" shall refer to any negative or obstructive response,
5 reaction or reprisal to a disclosure made under this Act aimed at, pertaining to, or
6 against a whistleblower or any of the members of his/her family and relatives up to the
7 fourth civil degree of consanguinity or affinity. Said actions shall include criminal, civil
8 or administrative proceedings commenced or pursued against said whistleblower or
9 any of the members of his/her family or relatives up to the fourth civil degree of
10 consanguinity or affinity as well as any retaliatory action in the workplace.

11 (F) "Retaliatory action in the workplace" shall mean any discriminatory conduct
12 or policies which affect promotion or job assignment including undue negative
13 performance appraisal, close monitoring by supervisors, unwarranted criticisms or
14 avoidance by co-employees, blacklisting from other job opportunities or prejudicial
15 transfers by reason of a disclosure made under this Act.

16
17 (G) "Acts constituting improper conduct" shall mean any act or omission of a
18 public officer or employee solely, or in cooperation, conspiracy with, or with the
19 assistance of, private persons which is covered by or constitute a violation of:

20
21 (1) Presidential Decree No. 46 otherwise known as "Making it punishable
22 for Public Officials and Employees to receive, and for Private persons to give, gifts on
23 any occasion, including Christmas;"

24
25 (2) Republic Act No. 3019 otherwise known as "Anti-Graft and Corrupt
26 Practices Act;"

27
28 (3) Republic Act No. 6713 otherwise known as "An Act Establishing a
29 Code of Conduct and Ethical Standards for Public Officials and Employees;"

30
31 (4) Republic Act No. 7080 otherwise known as the "Anti-Plunder Law;"

32
33 (5) Title VII of Book Two of the Revised Penal Code on Crimes Committed
34 by Public Officers; and

35
36 (6) All other laws which penalize or sanction any act or omission of a
37 public officer or employee.

38
39 (H) "Whistleblower" shall refer to any person who has personal knowledge or
40 access to any data, information, fact or event constituting improper conduct; Provided
41 that such person must not have any direct participation in such improper conduct, or in
42 cases where such person participated in any improper conduct, such person is not the
43 most guilty and shall therefore qualify as a state witness against the persons subject of
44 such disclosure.

45
46 (I) "Qualified Whistleblower" shall mean a whistleblower qualified and admitted
47 into the Whistleblower's Program of the Implementing Agency in accordance with this
48 Act and its implementing rules and regulations.

1 (j) "Implementing Agencies or Agency" shall collectively or individually refer to
2 the Department of Justice (DOJ), the Office of the Ombudsman, the Commission on
3 Human Rights (CHR), and the Public Attorney's Office (PAO).
4

5 (k) "Whistleblower Council" shall refer to the Council created and defined under
6 Section 31 of this Act.
7

8 **SEC. 4. Coverage.** -Notwithstanding the provisions of law on prescription of
9 crimes, this Act shall cover all acts constituting improper conduct irrespective of the
10 time of commission.
11

12 **SEC. 5. Admission/Qualification to the Program.** - Whistleblowers, whether from
13 the public or private sector, shall be entitled to the benefits under this Act, provided,
14 that all the following requisites concur:
15

- 16 (a) The disclosure is voluntary, in writing and under oath;
- 17 (b) The disclosure relates to acts constituting improper conduct;
- 18 (c) The information to be disclosed is admissible in evidence;
- 19 (d) The whistleblower appears to be not the most guilty; and
- 20 (e) The whistleblower is not a beneficiary of the Act or acts of improper conduct
21 in the amount of more than one million pesos or any kind of consideration of
22 the same value.
23

24 It is only upon concurrence of the above requisites can a whistleblower be
25 qualified and thus admitted into the program as provided for in this Act.
26

27 **SEC.6. Necessity of Testimony.** - The testimony of a qualified whistleblower in
28 court shall not be necessary for the entitlement or enjoyment of the benefits of this Act.
29 In the event that the said whistleblower's testimony is required as found by the
30 Implementing Agency to be necessary and indispensable for a successful prosecution
31 of a case, he/she shall be entitled to the additional benefits and protection under R.A.
32 No. 6981 otherwise known as the Witness Protection Program, funding for which shall
33 be sourced from the budget as provided under Section 32 hereof.

34 **SEC. 7. Credibility of a Whistleblower.** - In all cases, the fact of the entitlement of the
35 qualified whistleblower to the protection and benefits provided in this Act shall not be
36 admissible in evidence to diminish or affect his credibility.

37 **SEC. 8. Perpetuation of Testimony.** - Once admitted into the program, a
38 whistleblower may perpetuate his/her testimony pursuant to Rule 134 of the Revised
39 Rules of Court.

40 **SEC. 9. Memorandum of Agreement with the Person to be Protected.** - Before a person
41 is provided protection and benefits as a whistleblower for the State, he/she shall first
42 execute a *Memorandum of Agreement* with the Implementing Agency which shall set
43 forth his/her responsibilities as follows:

- 44 (A) To provide information to and testify before all branches or agencies of
45 government in an appropriate proceeding on facts constituting improper
46 conduct;
- 47 (B) To avoid commission of crime;

1 (C) To take all necessary precautions to preclude detection by others of the
2 facts concerning the protection provided him/her under this Act;

3 (D) To cooperate with all reasonable requests of officers and employees of the
4 government who are providing him/her protection under this Act; and

5 (E) To regularly inform the Implementing Agency's program official
6 concerned of his/her current activities and address.

7 **SEC. 10. Breach of the Memorandum of Agreement.** - Substantial breach of the
8 *Memorandum of Agreement*, provided for in Section 9 hereof, shall be sufficient ground
9 for the termination of the protection and benefits provided under this Act; *Provided*,
10 however, that before terminating the same, the Implementing Agency shall send notice
11 to the qualified whistleblower concerned, stating therein the reason for such
12 termination; *Provided, Finally, That* substantial breach of the memorandum of agreement
13 shall be punishable by imprisonment of not less than six (6) months but not more than
14 one (1) year independent and separate from any other criminal liability that may be
15 incurred by reason of such breach.
16

17 **SEC. 11. Confidentiality.** - Except insofar as allowed by this Act, during and after
18 the disclosure, and throughout and after any proceedings taken thereafter, a qualified
19 whistleblower is entitled to absolute confidentiality as to:

20 (A) His/her identity;

21 (B) The subject matter of his/her disclosure; and

22 (C) The person to whom such disclosure has been made.

23 There shall be no such confidentiality in his/her identity if a whistleblower
24 makes a public disclosure of acts constituting improper conduct unless,
25 notwithstanding such public disclosure, he/she has taken means obviously intended to
26 preserve his/her anonymity.

27 **SEC. 12. Confidential Information.** - No person to whom a disclosure has been
28 made or referred to shall divulge any information that may identify or tend to identify a
29 whistleblower or reveal the subject matter of such disclosure, except only as to the
30 following circumstances:

31 (A) The whistleblower consents in writing prior to such a disclosure of;

32 (B) The disclosure is indispensable and essential as determined by the
33 Implementing Agency, taking into consideration the necessary proceedings
34 to be had after said disclosure; or

35 (C) The disclosure or referral is made pursuant to an obligation under this Act.
36 The prohibition on disclosure under this Section shall apply to any person
37 who has become privy to any confidential information, whether officially
38 or otherwise.

39 **SEC. 13. Violation of Confidentiality.**- Any person who shall violate the protection
40 of confidentiality of a protected disclosure under Sections 11 and 12 of this Act, shall
41 suffer the penalty of not more than one (1) year but not less than six (6) months with the
42 accessory penalty of temporary absolute disqualification for public office, in case of a

1 public officer or employee, and shall be civilly liable to the whistleblower in such
2 amount of damages as may be awarded and deemed reasonable by the court.

3 The proceedings herein shall be independent of any action that an aggrieved
4 whistleblower may take before the Civil Service Commission or the Department of
5 Labor and Employment for unfair or discriminatory practices, back wages, or other
6 labor dispute, or before other quasi-judicial agencies that may or may not have arisen
7 from a disclosure, or a believed or suspected disclosure.

8 **SEC. 14. *No Breach of Duty of Confidentiality.*** - A whistleblower who has made a
9 disclosure under this Act on whom a provision of law, regulation, issuance, practice or
10 other convention, imposes upon him/her the duty to maintain confidentiality with
11 respect to any information disclosed is considered not to have committed a breach
12 thereof.

13 **SEC. 15. *Defense of Privileged Communication.*** - A whistleblower who has made a
14 disclosure under this Act shall have in any other inquiry or proceeding the defense of
15 absolute privileged communication with respect to the subject matter of his/her
16 disclosure or information given to the proper authorities

17 **SEC. 16. *False and Misleading Disclosures.***- Any person who deliberately and
18 voluntarily gives false or misleading information in connection with acts or omissions
19 constituting improper conduct shall be guilty of an offense punishable by imprisonment
20 of not more than two (2) years and perpetual absolute disqualification from holding
21 public office, in case of a public officer or employee, without prejudice to other
22 liabilities under existing laws.

23 **SEC. 17. *Protection against Disciplinary Action or Reprisals.*** - A whistleblower who
24 has made or is believed or suspected to have made a disclosure under this Act is not
25 liable to disciplinary action for making said disclosure.

26 Prohibited acts under this section include retaliatory action in a workplace or
27 prejudicial conduct towards a whistleblower, such as: discriminatory actions behind
28 policies and procedures, reprimand, punitive transfers, unwarranted referral to a
29 psychiatrist or counselor, and undue poor performance reviews. Other prejudicial
30 conducts include obstruction of an investigation, withdrawal of essential resources,
31 undue reports and the attachment of unfair personnel file notes.

32 To this end, any employer who has discouraged and imposed sanctions or
33 reprisals based on workplace interactions, which shall include workplace ostracism,
34 questions and attacks on motives, accusations of disloyalty and dysfunction, public
35 humiliation, and the denial of work or promotion, or who encourages, causes or does
36 retaliatory action or reprisal against a whistleblower, or anyone believed or suspected
37 to be one shall be liable for an offense defined under this Act.

38 Any employee who refuses to follow orders of employers that would ~~cause them~~
39 ~~to~~ violate any provision of this Act shall likewise be protected from reprisals and
40 retaliatory action in the workplace.

41 For purposes of this protection, an applicant for employment shall be deemed an
42 employee and entitled to such protection.

43 Provided however, that an employer of a whistleblower shall be notified through
44 a certification issued by the Implementing Agency within a period of thirty (30) days,
45 from the date when the whistleblower last reported for work, stating that the employee

1 has been qualified as a whistleblower under the provisions of this Act and its
2 implementing rules and regulations. Provided further that an employer shall have the
3 option to remove said whistleblower from employment after securing a clearance from
4 the Civil Service Commission and the Department of Labor and Employment,
5 whichever the case may be, in case of a prolonged absence due to transfer or permanent
6 relocation under this Act or R.A. No. 6981.

7 **SEC. 18. Protection against other Actions.** - A whistleblower who has made a
8 disclosure under this Act shall not be subject to any liability whether administrative,
9 civil, criminal for making such a disclosure. No action, claim or demand may be taken
10 against a whistleblower for making such disclosure, nor any evidence presented shall
11 be used against him/her in court; *Provided*, that the whistleblower is qualified under
12 Section 5 of this Act.

13 This protection shall however not apply to a qualified whistleblower who shall
14 commit any false or misleading disclosure or commit substantial breach of the
15 memorandum of agreement.

16 **SEC.19. Discriminatory Hiring.**- Any individual, firm, corporation, office or
17 employer who shall deny a qualified applicant of employment, or who shall reject
18 his/her application for employment solely on the ground that the applicant is or will
19 be a whistleblower, shall be guilty of an offense punishable by not more than six (6)
20 months imprisonment with the accessory penalty of suspension of the right to hold
21 public office, in case of a public officer or employee, and shall be civilly liable to
22 indemnify the whistleblower for damages as may be awarded by the court.

23 **SEC. 20. Retaliatory Action in the Workplace.** - Any person who shall commit any
24 retaliatory act in a workplace as defined under this Act, against an employee who is a
25 whistleblower, or believed or suspected to be one, shall be guilty of an offense and shall
26 suffer the penalty of not more than six (6) months imprisonment with the accessory
27 penalty of suspension of the right to hold public office, in case of a public officer or
28 employee, and shall be civilly liable to indemnify a whistleblower in case damages are
29 incurred and as may be awarded by the court.

30 Toward this end, the aggrieved whistleblower shall be entitled to the provisional
31 remedy of injunction against any retaliatory action in the workplace, prejudicial
32 conduct or discriminatory treatment by reason of the said whistleblower's intended or
33 actual disclosure.

34 The proceedings herein shall be independent of any action that an aggrieved
35 person may take before the Civil Service Commission or the Department of Labor and
36 Employment for unfair discriminatory practices, back wages, or other labor dispute, or
37 before other quasi-judicial agencies that may or may not have arisen from a disclosure,
38 or a believed or suspected disclosure.

39 **SEC. 21. Penalty for Retaliatory Acts against a Whistleblower.** - Any person who
40 commits any of the retaliatory acts as defined in this Act against a whistleblower
41 and/or hinders, delays, prevents or dissuades a whistleblower from:

42 (A) Attending, assisting or testifying before any investigating agency or quasi-
43 judicial body or judicial;

44 (B) Reporting to a law enforcement officer or judge the commission or
45 possible commission of an offense or a violation of conditions of probation,
46 parole, or release pending judicial proceedings;

1 (C) Seeking the arrest of another person in connection with the offense;

2 (D) Causing a criminal prosecution, or a proceeding for the revocation of a
3 parole or probation; or

4 (E) Performing and enjoying the rights and benefits under this Act or attempts
5 to do so

6 shall be fined not more than One Hundred Thousand Pesos (Php 100,000.00) or suffer
7 imprisonment of or not less than six (6) months but not more than six (6) years or both
8 at the discretion of a court and shall also suffer the penalty of perpetual disqualification
9 from holding public office in case of a public officer or employee.

10 **SEC. 22. Benefits and Security and Protection of a Qualified Whistleblower.** - A
11 qualified whistleblower shall be entitled to an allowance equivalent to his /her daily
12 basic financial requirement, provided he/she requests for said allowance and the
13 Implementing Agency determines and approves the reasonableness of such request.

14 A qualified whistleblower shall likewise be entitled to housing and personal
15 security regardless of whether the disclosure is made in confidence or in public.

16 Accordingly, the Implementing Agency is hereby authorized to allocate funds as
17 provided for in Section 32 hereof for the full satisfaction of the benefits and security and
18 protection of a qualified whistleblower.

19 This section is without prejudice to any benefits a qualified whistleblower may
20 be entitled to under R.A. No. ~~6894~~ 6981 provided that the necessary amount shall be
21 sourced from the budget as provided for in Section 32 hereof and that no duplication of
22 benefit shall ensue.

23 **SEC. 23. Financial Rewards for Whistleblower.** - A qualified whistleblower shall be
24 entitled to a corresponding monetary reward on a contingency basis, equivalent to at
25 least ten percentum of the amount which may be recovered or the amount of One
26 Million Pesos (Php 1,000,000.00), whichever is lower, as a result of his/her disclosure.

27 **SEC. 24. Abstract.** - All government agencies, offices, bureaus and local
28 government units, including government owned or controlled corporations, whether or
29 not with original charters, shall conspicuously display an abstract of this Act and the
30 rights and protections of whistleblowers, including the obligations of employers under
31 this Act. Such abstract shall be provided in the implementing rules and regulations.

32 All government agencies, offices, bureaus and local government units, including
33 government owned and controlled corporations, whether or not with original charters,
34 shall likewise put in place internal procedures for dealing with whistleblowers
35 consistent with the provisions of this Act and its implementing rules and regulations.
36 Said internal procedure shall be widely disseminated to all employees.

37 All other employers, specifically those in the private sector, shall also
38 conspicuously display notices of their employees' protections and their obligations
39 under this Act and its implementing rules and regulations.

40 **SEC. 25. Failure of an Employer to Post Abstract-** The failure to post an Abstract or
41 internal procedures as required under Section 5 of this Act shall constitute an offense
42 and shall be penalized with a fine in the amount of One Hundred Thousand Pesos (Php
43 100,000.00) for the first offense. Said amount shall be doubled for every succeeding
44 offense/s.

1 **SEC. 26. *Failure to Act or Report to the Implementing Agency.***- Any person under
2 obligation to report a disclosure under this Act to the Implementing Agency, who fails
3 to do so within the period of two (2) months, or who fails to act thereon or cause an
4 investigation thereof, shall be guilty of an offense and shall suffer the penalty of not
5 more than one (1) month imprisonment, and/or a fine amounting to not more than Fifty
6 Thousand Pesos (Php 50,000.00) without prejudice to any other liability that may be
7 imposed upon such person under existing laws.

8 **SEC. 27. *Confidentiality of the Proceedings.*** - All proceedings involving application
9 and/or enjoyment of the benefits under this Act, including any action taken thereon,
10 shall be confidential in nature. No information or documents given or submitted in
11 support thereof shall be released except upon written order of the Implementing
12 Agency, and provided such disclosure shall not endanger the life of a qualified
13 whistleblower.

14 **SEC. 28. *Powers and Functions of the Implementing Agencies or Agency .*** - In
15 addition to their respective powers and functions under existing laws, the
16 Implementing Agencies shall:

- 17 (a) Supervise, monitor and coordinate all efforts relative to the implementation
18 and enforcement of the provisions of this Act;
- 19 (b) Investigate all disclosures made under this Act, prosecute or recommend
20 prosecution of the same when warranted;
- 21 (c) Evaluate the qualification of whistleblowers for coverage within this Act, and
22 whichever the case may be, make the appropriate decision on their
23 entitlement to the benefits and security and protection extended herein;
- 24 (d) Undertake, in coordination and cooperation with the private and public
25 sectors, an information campaign to educate the public on the provisions and
26 benefits of this Act;
- 27 (e) Develop plans and implement programs to further encourage whistleblowers
28 on acts constituting improper conduct with a view to effective deterrence
29 and/or prosecution;
- 30 (f) Control and administer, through coordination and consistent with the
31 provisions and purpose of this Act, the protection and benefits of
32 whistleblowers and the funds necessary to carry out the provisions of this
33 Act;
- 34 (g) Call upon, or deputize any department, bureau, office or any other
35 government agency or public official to assist in the effective implementation
36 and enforcement of this Act; and
- 37 (h) Grant immunity in accordance with the provisions of this Act and its
38 implementing rules and regulation.

39
40 **SEC. 29. *Implementing Agency, Option of Whistleblower.*** - A whistleblower shall
41 have the right to choose which Implementing Agency he/she intends to be admitted
42 and qualified as a whistleblower. As such, the Implementing Agency so chosen shall
43 have the primary jurisdiction and authority to exercise the powers and functions
44 provided for under Section 28 of this Act.

1

2 **SEC. 30. Congressional Whistleblower Program.** - The Senate and the House of
3 Representatives may have their own Whistleblower's Program for resource persons or
4 whistleblowers appearing before them or their respective committees.

5 The resource person or whistleblower, with his/her express consent, may be
6 admitted into the program upon the recommendation of the legislative committee
7 where his/her testimony is needed when in its judgment there is pressing necessity
8 therefor: *Provided*, That such recommendation is approved by the President of the
9 Senate or the Speaker of the House, whichever the case may be.

10 The Senate or the House of Representative, whichever the case may be, shall
11 have primary jurisdiction in the administration and implementation of the program
12 independent from any other agency of government when the investigation or the safety
13 of the resource person or whistleblower shall be prejudiced.

14
15 **SEC. 31. Implementing Rules and Regulations.** - There is hereby created a
16 Whistleblower Council which shall be composed of the Implementing Agencies and
17 headed by the Office of the Solicitor General.

18 The Council shall be primarily and solely responsible for the drafting and
19 promulgation of the necessary Implementing Rules and Regulations (IRR) for the
20 effective implementation of this Act. The Council's submission to Congress of the
21 approved IRR and the causing of its publication in at least two (2) newspapers of
22 general circulation shall render the council *functus officio*.

23 **SEC. 32. Funding.** -The amount One Hundred Million Pesos (Php 100,000,000.00)
24 is hereby authorized to be appropriated out of any funds in the National Treasury not
25 otherwise allocated to carry into effect the purpose of this Act.

26 Other funding schemes or sources that may be authorized under existing laws
27 shall be allowed in furtherance hereof.

28 The funds appropriated under this section shall be allocated amongst the
29 implementing agencies based on actual requirements and as may be provided for under
30 the implementing rules and regulations; *Provided*, however, that the initial amount shall
31 be first released to the Department of Justice.

32 **SEC.33.Separability Clause.**- If any provision or part hereof, is held invalid or
33 unconstitutional, the remainder of the law or the provisions not otherwise affected
34 thereby shall remain valid and subsisting.

35 **SEC. 34.Repealing Clause.** - Any law, presidential decree or issuance, executive
36 order, letter of instruction, administrative order, rule or regulation contrary to or
37 inconsistent with, the provisions of this Act is hereby repealed, modified, or amended
38 accordingly.

39 **SEC. 35.Effectivity Clause.** - This Act shall take effect fifteen (15) days after its
40 publication in the Official Gazette or at least two (2) newspapers of general circulation.

Approved,