



SENATE

S. No. 87

'19 JUL -1 P2 :38

Introduced by **Senator Richard J. Gordon**

RECEIVED

AN ACT PROVIDING FOR AN "OPT-OUT" SYSTEM OF ORGAN AND TISSUE DONATION, PROMOTING THE RIGHT TO HEALTH, PROVIDING PENALTIES THEREFOR, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Article II, Section 15 of the 1987 Constitution provides that, "the State shall protect and promote the right to health of the people and instill health consciousness among them." There is an increasing number of kidney disease which affect Filipinos. End Stage Renal Disease (ESRD) which is a consequence of underlying diseases such as diabetes mellitus and hypertension increased the demand for medications and treatments such as the hemodialysis.

In the Philippines, the estimated cost of hemodialysis is P3,000 per session. If the patient is on it three times a week, the total cost would be P468,000 a year. However, this amount does not include other medications and laboratories that an average person would need. To address this concern, government medical institutions offer free or low-cost dialysis treatment to Filipinos. Just recently, the Philippine Red Cross extended its arms to lessen the suffering of people afflicted with kidney failure by providing a modern state-of-the-art dialysis center with quality healthcare.

Despite the availability of dialysis machines, kidney transplantation is still the treatment of choice for ESRD because it offers a better-quality life and long-term survival. The estimated life expectancy post-transplant is 17.19 years compared to only 5.48 years, if the patient remains on dialysis. Moreover, the difference in the total quality of life in terms of physical, social, emotional, spiritual, and financial aspects between transplant vis-à-vis patients was determined to be 18.12% greater in transplant patients.

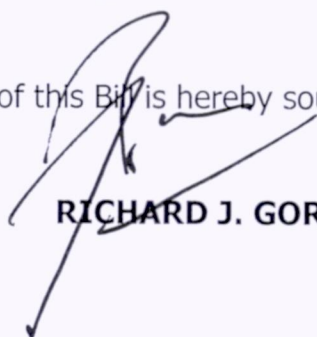
Unlike in other developed countries, kidney donors in the Philippines come mostly from living related donors (95%) and a mere 5% from deceased donors despite efforts made by the government and non-governmental organizations to encourage organ donations.

The incentive for systematic reform of organ and tissue donation has arisen internationally because of the increased incidence of end stage organ failure and the corresponding growth in need for transplants. Several countries have responded to this challenge by implementing strategies to increase organ and tissue donation, and now, have established reform models. The "Opt-In" or "Opt-Out" donation models are the more known. "Opt-In" donation system means that only those with explicit consent are considered donors. While, "Opt-Out" donation system means that everyone is treated as a donor unless they specifically object to do so. Both strategies allow individuals (or their next of kin) power to determine what happens to their cadaveric organs: the difference between them is the "default" treatment of someone who has expressed no wish either way. Opt-Out strategies are likely to increase donation rates because those who do not register a preference either way will be treated as donors. Opt-Out organ donation systems are often called "presumed consent."

In recent years, technical, social, and public opinion in many countries has shifted towards the view that Opt-Out provisions can help promote organ donation. Two components of transplantation regulation- presumed consent and allocation priority- are thought to increase the donor population by decreasing the ease of opting out and giving registered donors priority among the pools of individuals in need of organ transplant. The joint implementation of these components is believed to yield beneficial effects. Explicit Opt-Out laws have long been among the major interventions used to increase the pool of potential donors in countries such as Austria, Belgium, the Czech Republic, Finland, France, Greece, Hungary, Israel, Italy, Luxembourg, Norway, Poland, Spain, Slovenia, Sweden and Turkey. There is evidence that supports the association between presumed consent and increased donation rates and that countries with Opt-Out laws have rates 25 to 25% higher than those in countries requiring explicit consent. However, presumed consent appears to be only one of several factors. Other factors include potential donor availability, transplantation infrastructure, health care spending, and public attitudes, as well as familial consent and donor registries.

If a person can be an organ recipient, they should also be able to give an organ and vice versa, This principle is consistent with the view that a fair concept of justice calls for reciprocal altruism, because organs may be considered a scarce societal resource – i.e. the demand for donated organs is higher than the supply of such organs. It also justifies the perceived unfair action of free-riders: those who are willing to receive an organ but unwilling to donate one. Moral duty must be the foundation of our organ donation laws. This duty places a legal obligation on any citizen to contribute to the system they stand to benefit from. It is this context that this Opt-Out system of organ donation is sought to be approved in substitution of the voluntary organ donation system existing under the "Organ Donation Act of 1991."

In view of the foregoing, the immediate approval of this Bill is hereby sought.



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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 "Organ and Tissue
2 Donation Act of 2019."

3 Sec. 2. *Coverage.* – This Act shall cover all government and private hospitals,
4 health facilities, organ and tissue retrieval organizations, medical and allied medical
5 practitioners or professionals, foundations and non-government organizations that
6 are involved in organ and tissue donation from deceased donors for transplantation.

7 Sec. 3. *Definitions.* – For purposes of this Act, the following terms shall be
8 defined as follows:

9 a. Allocation. - The assignment of human tissues and organs to a transplant
10 candidate, based on a set of rules.

11 b. Brain Death Criteria. - A set of standards, guidelines, or rules that determine
12 and diagnose brain death by neurological criteria as determined by the
13 Philippine Neurological Association (PNA).

14 c. Clinical Donor Coordinator (CDC). - A healthcare professional who shall be
15 designated to coordinate with the donor family and hospital in order to
16 facilitate a donation and proper transport of donated organs or tissues.

- 1 d. Clinical Transplant Coordinator (CTC). - A designated and trained healthcare
2 professional that takes the central role and acts as liaison between the
3 referring hospital and members of the retrieval and transplant teams. He/she
4 shall have the responsibility of coordinating the transplant candidate's
5 evaluation, management, and follow-up care.
- 6 e. Death. - The irreversible cessation of circulatory and respiratory functions or
7 the irreversible cessation of all functions of the entire brain, including the
8 brain stem.
- 9 1) Brain Death. - The irreversible cessation of cerebral and brain stem
10 function; characterized by absence of electrical activity in the brain, blood
11 flow to the brain, and brain function as determined by clinical assessment
12 of responses. A brain dead person is dead, although his or her
13 cardiopulmonary functioning may be artificially maintained for some time.
- 14 2) Cardiac Death. - A death resulting from the irreversible cessation of
15 circulatory and respiratory function.
- 16 f. Deceased. - A decedent or dead person, includes stillborn infant or fetus.
- 17 g. Department of Health - Philippine Network for Organ Sharing (PhilNOS). - the
18 implementing office of the national organ donation and transplantation
19 program of the DOH, which oversees and facilitates organ and tissue donation
20 and transplantation involving deceased donors in the country. It shall serve
21 as the central coordinating body to ensure that all organs and tissues from
22 deceased donors are allocated according to established criteria.
- 23 h. Donor. - A deceased human being who is a source of organs and/or tissues
24 for the purpose of transplantation.
- 25 i. Eye Bank Technician. - A board-eligible or board-certified nurse or medical
26 technologist who underwent training in the science of eye banking which is
27 conducted by an organization duly-accredited by the DOH. Provided that, the
28 training is in accordance with accepted international standards of eye banking
29 and shall include, but not limited to, retrieval, processing, storage, and
30 distribution of eye tissue.
- 31 j. Hospital. - A facility devoted primarily to the diagnosis, treatment, and care of
32 individuals suffering from illness, disease, injury, or deformity, or in need of

1 surgical, obstetrical or other medical and nursing care. It shall also be
2 construed as any institution, building or place where there are facilities and
3 personnel for the aforementioned purposes.

4 k. Medical Practitioner. - Any physician, dentist, nurse, pharmacist, or
5 paramedical or other supporting personnel (including medical and dental
6 technicians, nursing assistants, and therapists).

7 l. Organ. - A differentiated and vital part of the human body, formed by
8 different tissues, that maintains its structure, vascularization and capacity to
9 develop physiological functions with an important level of autonomy.

10 m. Organ and Tissue Retrieval Organization (OTRO). - A hospital-based
11 organization accredited by the DOH, created for the purpose of detecting,
12 identifying, and evaluating potential organ and tissue donors, and recovering
13 such from deceased donors for individuals needing transplantation. OTROs, in
14 coordination with the CDC and CTC, shall serve as the vital link between the
15 donor and recipient. Their responsibilities include brain death certification,
16 donor maintenance, and retrieval, preservation, and transport of organs
17 and/or tissues for transplantation.

18 n. Organ and Tissue Retrieval Team (OTRT). - A group made up of highly-skilled
19 healthcare professionals led by a surgeon who is competent to safely lead
20 the retrieval of organs and/or tissues for transplantation.

21 o. Philippine Organ Donor and Recipient Registry System (PODRRS). - A national
22 computerized and strictly confidential database of all organ transplant
23 candidates, recipients, organ donors, and transplants performed in the
24 Philippines. The System shall also contain the list of individuals who chose
25 and expressed to opt-out from donating organs and/or tissue, as provided in
26 this Act.

27 p. Physician. - A medical practitioner who is authorized to practice medicine
28 under the laws of the Republic of the Philippines.

29 q. Potential Multiple Organ Donor (PMOD). - Any patient who will imminently
30 become brain dead or who currently meets the criteria for brain death who
31 may donate more than one organ and/or tissue(s).

- 1 r. Procurement. - A process that includes donor identification, evaluation,
2 obtaining consent for donation, donor maintenance, and retrieval of organs
3 and/or tissues.
- 4 s. Recipient. - A patient to whom human organs and/or tissues are transplanted.
- 5 t. Referring Hospital (RH). - A hospital that identifies and refers potential donors
6 to OTPOs; or to the appropriate Tissue Bank. RHs are required to refer and
7 report potential organ donors to the DOH-PhilNOS.
- 8 u. Tissue. - All constituent parts of the human body formed by cells.
- 9 v. Tissue Bank. - A hospital unit where activities of processing, preservation,
10 storage, or distribution of human tissues are undertaken. It may also be
11 responsible for procurement or testing of tissues.
- 12 w. Transplantation. - The transfer (engraftment) of human cells, tissues, or
13 organs from a donor to a recipient with the aim of restoring function/s in the
14 body.
- 15 x. Transplant Candidate - A patient diagnosed to have end-stage organ disease
16 that is qualified to undergo an organ and/or tissue transplant procedure.
- 17 y. Transplant Facility (TF) - A hospital accredited by the DOH to perform organ
18 and/or tissue transplantation.

19 Sec. 4. *Determination and Declaration of Death.* - A person shall be
20 determined and declared dead if:

- 21 1) In the opinion of the consulting physician, in concurrence with the attending
22 physician, on the basis of acceptable standards of medical practice, there is
23 an irreversible cessation of all brain functions; and considering the absence of
24 such functions, further attempts at resuscitation or continued supportive
25 maintenance would not be successful in restoring such natural functions. In
26 this case, death shall be deemed to have occurred at the time when these
27 conditions first appeared; or
- 28 2) In the opinion of the attending physician, based on the acceptable standards
29 of medical practice, there is an absence of natural respiratory and cardiac
30 functions and, attempts at resuscitation would not be successful in restoring
31 those functions. In this case, death shall be deemed to have occurred at the
32 time these functions ceased.

1 *Provided that*, the death of the person in Sec. 3 hereof shall be determined in
2 accordance with the Brain Death Criteria provided by the PNA, by which brain death
3 shall be declared by two (2) different physicians who are both not part of the
4 transplant team. The physicians are preferably, but not limited to, a neurologist,
5 neurosurgeon, internist, or anesthesiologist who shall determine and establish brain
6 death based on existing guidelines. The death shall be recorded in the patient's
7 medical record.

8 *Sec. 5. Establishment of Organ and Tissue Retrieval Organizations (OTROs).* –
9 The DOH, in coordination with the DOH-PhilNOS, shall accredit and ensure the
10 establishment of OTROs in tertiary hospitals, government and private, as part of the
11 national organ and tissue procurement network.

12 The OTROs shall establish affiliations with facilities/institutions that provide
13 ancillary/support services such as, but not limited to, laboratory diagnostic capability
14 in virology, tissue typing, imaging facility, to include at least an ultrasound machine
15 with doppler capability, and ambulance services for donor/s, organ/s, and tissue/s
16 transport.

17 *Provided that*, each OTRO shall have an Organ Retrieval Team whose
18 members are licensed and board-certified surgical and medical experts. *Provided*
19 *that*, collaborations with other retrieval teams of other transplant facilities without an
20 OTRO can be entertained on a case-by-case basis.

21 Each OTRO shall be mandated to serve its designated Donor Service Area
22 (DSA) which shall be determined by DOH and DOH-PhilNOS, through population-
23 based designation, in coordination with the Philippine Statistics Authority (PSA).

24 All Tertiary Hospitals and Trauma Centers, with or without OTROs, shall be
25 required to have CDC and CTC in order to optimize the identification and referral of
26 donors and/or PMODs.

27 *Sec. 6. Retrieval of Organs and Tissue After Death.* – The designated medical
28 practitioner of a hospital may, subject to and in accordance with this Act, authorize,
29 in writing, the removal of any organ and/or tissue of a dead person unless he/she
30 has opted-out to organ and tissue donation, as confirmed by DOH-PhilNOS through
31 the PODRRS.

1 Organ procurement may be performed in any hospital provided that is well-
2 equipped and capable of performing such operation while tissue procurement shall
3 be performed by the appropriate Tissue Bank, as accredited by the DOH.

4 Provided that, for possible medicolegal cases and unidentified dead
5 individuals, no procurement of organ and/or tissue shall be performed and the OTRO
6 shall immediately communicate and inform the Medicolegal Division and Crime
7 Laboratory of the Philippine National Police (PNP) and/or National Bureau of
8 Investigation (NBI).

9 Moreover, no authority shall be given for the removal of organs and/or tissues
10 from the body of the deceased if:

- 11 1) During his/her lifetime, he/she has registered an objection to organ and/or
12 tissue donation, as provided in this Act, after his/her death;
- 13 2) He/she is not a citizen of the Philippines. Provided that, Filipinos who have
14 lost their citizenship and obtained citizenship in another country, and are
15 residents in the Philippines, may also be given authority to donate their
16 organs to a living related transplant recipient, in accordance with the Opt-In
17 System provided in Section 8 hereof; unless with explicit consent to donate;
- 18 3) He/she is below eighteen (18) years of age unless both living parent(s) or
19 legal next-of-kin or legal guardian has consented to such removal; or
- 20 4) He/she is an incompetent person, unless the living parent(s) or legal next-of-
21 kin or legal guardian has consented to such removal.

22 *Sec. 7. Opt-Out System.* - Upon the effectivity of this Act, any person who
23 objects to the removal of his/her organ and/or tissue after his death may register his
24 objection, in respect of that organ and/or tissue, with the DOH-PhilNOS at any time
25 or with the following agencies:

- 26 a. Land Transportation Office (LTO) upon driver's license renewal;
- 27 b. Government Services Insurance System (GSIS);
- 28 c. Social Security System (SSS);
- 29 d. Philippine Health Insurance Corporation (PhilHealth);
- 30 e. Commission on Elections (COMELEC); or
- 31 f. Such other department or agency assigned by the PSA.

1 Such objection shall be registered and recorded real-time in the PODRRS.
2 Upon the receipt of the duly-signed written objection, the concerned agency shall
3 thereafter issue a certification and an opt-out card to the person which shall serve as
4 a proof that his objection was duly registered and recorded.

5 Provided that, any person who has registered his/her opt-out may cancel
6 his/her registration at any time in the prescribed form, as may be determined by the
7 DOH-PhilNOS, in coordination with the abovementioned agencies. Such cancellation
8 shall be recorded real-time in the PODRRS.

9 Sec. 8. *Opt-In System.* – Upon the effectivity of this Act, any person who
10 desires to donate his/her organs and/or tissues, may register, in respect of such
11 organ and/or tissue, with the DOH-PhilNOS.

12 Upon receipt of the duly-signed written opt-in form, DOH-PhilNOS shall issue
13 a certification and an opt-in card to the person, which shall serve as proof of such
14 registration. Such registration shall be recorded and maintained in the PODRRS.

15 Provided that, any person who has registered his/her opt-in may cancel
16 his/her registration at any time in the prescribed form, as may be determined by the
17 DOH-PhilNOS. Such cancellation shall be recorded real-time in the PODRRS.

18 Sec. 9. *Allocation of Organs and Tissues.* - In the allocation of any organ
19 and/or tissues retrieved pursuant to this Act, matching and other circumstances, as
20 may be determined by DOH and DOH-PhilNOS shall be considered.

21 Sec. 10. *Roles and Functions of DOH-PhilNOS.* - In addition to the roles and
22 functions of the DOH-PhilNOS, as provided by official DOH issuances, policies, laws,
23 rules and/or regulations, it shall act as the central coordinating body to ensure that
24 all deceased donors of organs and/or tissues are allocated according to established
25 criteria and such other roles and functions, as may be deemed necessary. Provided
26 that, DOH-PhilNOS shall operate in coordination with OTROs.

27 Sec. 11. *Hospital Transplant Ethics Committees (HTECs).* - All hospitals and
28 transplant facilities shall establish their own HTECs. HTECs shall monitor and resolve
29 ethical issues that may arise in the process of organ and tissue donation and
30 transplantation.

1 The functions of the HTECs shall be in accordance with DOH policies and
2 guidelines and shall have its own Standard Operating Procedures (SOPs) based on
3 the recommendations of the National Transplant Ethics Committee (NTEC).

4 The members of the HTEC shall ensure its independence from political,
5 institutional, professional, and market influence. HTEC members shall undergo basic
6 and continuing training on organ and tissue donation and transplantation.

7 *Sec. 12. National Transplant Ethics Committee (NTEC).* - The NTEC shall be
8 established under DOH and shall serve as the national oversight of the HTECs on
9 ethical issues regarding organ and tissue donation and transplantation. In addition,
10 the NTEC is tasked to:

- 11 a. Assist in the formulation of national ethical standards and guidelines on
12 organ and tissue transplantation;
- 13 b. Assist in the development of legislation, rules, and regulations regarding
14 organ and tissue donation and transplantation;
- 15 c. Provide opinions, recommendations, and final resolution of cases referred
16 by HTECs;
- 17 d. Assist in the monitoring of hospitals to ensure compliance with ethical
18 standards or guidelines in relation to organ and tissue donation and
19 transplantation;
- 20 e. Foster awareness on ethical health care issues on organ and tissue
21 donation and transplantation;
- 22 f. Participate in international discussions and collaborations with similar
23 committees and organizations in the field; and
- 24 g. Perform such other functions as may be deemed necessary by the
25 Secretary of Health.

26 *Sec. 13. Persons Authorized to Perform the Retrieval and Transplantation of*
27 *Organs and Tissues.* – The retrieval and transplantation of organ and tissues shall
28 only be performed by transplant surgeons duly accredited and certified by the
29 Philippine Society of Transplant Surgeons. Provided that, the removal of the eye and
30 eye tissues shall be performed only by Eye Bank Technicians who undergo training
31 in the science of eye banking conducted by an organization duly-accredited by the
32 DOH. Such trainings shall be in accordance with the accepted international

1 standards of eye banking and shall include, but not limited to, retrieval, processing,
2 storage, and distribution of eye tissue.

3 Sec. 14. *Transport of Donated Organs and Tissues.* - In order to maintain the
4 quality and integrity of organs and tissues for transplantation, to ensure traceability,
5 and to minimize any potential risk, it is vital that donor organs and tissues and their
6 accompanying blood and tissue samples are packaged, labeled, and transported to
7 the Transplant Facility appropriately, and in a speedy and timely manner.

8 Sec. 15. *PhilHealth Assistance.* - Organ and tissue transplantation and
9 deceased organ and tissue procurement, under this Act, shall be covered, partially or
10 in full, by the Philippine Health Insurance Corporation (PhilHealth). Provided that,
11 the assistance given by PhilHealth shall be determined through fair and transparent
12 assessment process.

13 Sec. 16. *Prohibited Acts.* - The following acts shall be prohibited:

- 14 a. Selling of Organs and/or Tissues. To enter into a contract or arrangement
15 under which a person agrees, for valuable consideration, whether given or
16 to be given to himself/herself or to another person, the sale or supply of
17 any organ or tissue, whether before or after his or her death or the death
18 of another person, as the case may be;
- 19 b. Buying of Organs and/or Tissues. To give or offer to give valuable
20 consideration for the sale or supply of, or for an offer to sell or supply, any
21 organ from the body of another person;
- 22 c. Performing organ and/or tissue removal and/or transplantation of an
23 unauthorized person. To remove and / or transplant any organ and/or
24 tissue of a person without an authorized physician;
- 25 d. Advertising and promoting the buying and selling of organs and/or tissues.
26 No person shall issue or cause to be issued any advertisement relating to
27 the buying or selling of any organ and/or tissue in the Philippines; and
- 28 e. Destroying, forging, mutilating, and altering the PODRRS or any related
29 documentation. To willfully destroy, forge, mutilate, or make any
30 unauthorized alteration in the PODRRS or any related documentation.

31 Sec. 17. *Penalties* - The following penalties are hereby provided:

- 1 a. Any person found guilty of committing any of the acts enumerated in
2 Section 12 (a), (b) and (c) shall suffer the penalty of imprisonment of
3 twenty (20) years and a fine of not less than One million pesos
4 (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);
5 b. Any person found guilty of committing any of the acts under Section 12
6 (d) and (e) shall suffer the penalty of imprisonment of two (2) years and
7 a fine not less than One hundred thousand pesos (P100,000.00) but not
8 more than Five hundred thousand pesos (P500,000.00).

9 *Sec. 18. Education and Information Campaign.* - To ensure public awareness
10 of the maximum benefits of organ and tissue donation provided in this Act, the DOH,
11 in cooperation with institutions such as the National Kidney and Transplantation
12 Institute (NKTI), civic and non-government health organizations, and other health-
13 related agencies involved in the donation and transplantation of human organs and
14 tissues, as well as the Department of Education (DepEd) and the Commission on
15 Higher Education (CHED) shall undertake public information and education program
16 for this purpose.

17 The DOH shall ensure that all health professionals, both in government and
18 private sectors, as well as media organizations from print, radio, and television are
19 encouraged to undertake massive public information campaign to emphasize the
20 importance of organ and tissue donation in relation to the opt-out system.

21 DepEd and CHED shall mandate the inclusion of organ and tissue donation
22 and the opt-out system, for increased awareness, in the school curriculum and in all
23 medical and paramedical related courses, respectively. Moreover, the importance of
24 organ and tissue donation and the opt-out system shall be included in the Health
25 and Sciences subjects in the curriculum of both the elementary and secondary levels
26 as well as in the general education curriculum in the collegiate level. The Secretary
27 of Health shall coordinate with the Secretary of Education and the Chairperson of
28 CHED for the effective and efficient implementation of this Act.

29 The DOH shall further endeavor to disseminate massive public information
30 campaign on organ and tissue donation through other means, such as, but not
31 limited to, the internet, social media, and print ads. The DOH shall also provide
32 annual professional training programs and seminars for clinical staff in the

1 management and implementation of this Act, particularly on the deceased organ
2 and/or tissue donation process.

3 Sec. 19. *Phased Implementation.* - The DOH and DOH-PhilNOS, in
4 coordination with concerned agencies, shall develop strategies and approaches for
5 the phased implementation of this Act which shall initially consist of massive public
6 information campaign through national and local consultations, surveys, impact
7 assessments, trainings and seminars, print and online advertisements, television and
8 radio advertisements, among others, for the first six (6) months following the
9 effectivity of this Act.

10 Immediately after the effectivity of this Act, any individual who decides to
11 opt-out from organ and/or tissue donation may do so in accordance to Sec. 7 of this
12 Act. Provided that, six (6) months following the effectivity of this Act, the opt-out
13 system of organ and/or tissue donation shall be fully implemented.

14 Sec. 20. *Data Management.* - The DOH and DOH-PhilNOS, in coordination
15 with the National Privacy Commission (NPC) and other concerned agencies, shall
16 ensure that all data compiled under this Act shall be strictly confidential through the
17 implementation of appropriate organizational, physical, and technical security
18 measures in accordance to existing laws, rules, and regulations.

19 Sec. 21. *Appropriation.* - The amount of One Billion Pesos
20 (P1,000,000,000.00) shall be appropriated for the management and implementation
21 of this Act which shall be included in the General Appropriations Act (GAA).

22 Sec. 22. *Repealing Clause.* - All laws, decrees, orders, rules and regulations
23 or other issuances or parts thereof inconsistent with the provisions of this Act are
24 hereby repealed or modified accordingly.

25 Sec. 23. *Separability Clause.* - If any portion or provision of this Act is
26 declared unconstitutional, the remainder of this Act or any provision not affected
27 thereby shall remain in force and effect.

28 Sec. 24. *Effectivity.* - This Act shall take effect after fifteen (15) days
29 following the completion of its publication either in the Official Gazette or in a
30 newspaper of general circulation in the Philippines.

31 Approved,