

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

8 JAN 29 1924

SENATE
S. No. 2030

RECEIVED BY: FA

Introduced by Senator Miriam Defensor Santiago

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.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

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1 AN ACT
2 TO PENALIZE 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

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

8 SECTION 1. *Short Title.* - This Act shall be known as the "Anti-Racketeer
9 Influenced and Corrupt Organizations Act of 2008."

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

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

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

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

23 (C) "Racketeering Activity" means any act involving kidnapping; murder,
24 mutilation; homicide; serious physical injuries; arson; robbery; theft; illegal possession of

1 firearm, ammunition or explosives; bribery and other graft and corrupt practices; illegal
2 gambling; carnapping; fencing; gunrunning; illegal logging; white slavery or prostitution;
3 illegal recruitment; smuggling; piracy; illegal fishing; illegal importation; manufacture or
4 sale of dangerous drugs and illegal maintenance of a drug den; swindling (estafa);
5 counterfeiting; monopolies; and combinations in restraint of trade; falsification of land
6 titles; securities fraud; bank frauds; dealing in obscene matters and sexual and economic
7 exploitation of the disabled and mendicants as defined under existing criminal statutes.

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

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

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

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

16 SECTION 4. *Prohibited Activities.* - (A) It shall be unlawful for any person who
17 has received any income or benefit, either directly or indirectly, from a pattern of
18 racketeering activity, to use or invest, directly indirectly, any part of such income or
19 benefit, or the proceeds of such income or benefit, in acquisition of any interest in, or the
20 establishment or operation of, any enterprise which is engaged in, or the activities of
21 which affect commerce.

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

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

1 SECTION 5. *Criminal Penalties.* – (A) Imprisonment or fine or both - Any
2 person found guilty or convicted by final judgment of violating any of the prohibited
3 activities enumerated in Section 4 above, shall be punished by imprisonment of not less
4 than ten (10) years nor more than twenty (20) years, and if the violation is based on a
5 racketeering activity for which the maximum penalty includes life imprisonment or death,
6 the death penalty for violating any provision of Section 4 above, shall likewise be life
7 imprisonment or death, and a fine ranging from One Hundred Thousand pesos
8 (P100,000.00) up to One Million pesos (P1,000,000.00);

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

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

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

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

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

27 SECTION 6. *Jurisdiction.* - The Regional Trial Court exercising jurisdiction over
28 the place where any one of the elements constituting an act racketeering activity is

1 committed, resulting in a pattern of racketeering activity, shall exercise exclusive original
2 jurisdiction over criminal prosecutions for violation of any provisions of this Act, as well
3 as over applications for the issuance and grant of applicable provisional remedies under
4 the Rules of Court filed in relation to said criminal prosecutions, which provisional
5 remedy may include attachment, and/or injunctions with prayer for the issuance of a
6 temporary restraining order, as well as the forfeiture of property provided for under this
7 Act, regardless of the place or location of any property object of the provisional remedy
8 sought or subject of forfeiture, the residence of the defendants, or the location of the
9 enterprise of the defendant.

10 SECTION 7. *Temporary Restraining Order (TRO)*. – For purposes of securing a
11 temporary restraining order from the court, there must be clear and convincing evidence
12 that the properties of the defendant which are sought to be restrained, where involved in a
13 violation of this Act, that such properties would be subject to forfeiture under provisions
14 of this Act and that the government have reasonable grounds to believe that defendant
15 was likely to conceal or otherwise make the properties inaccessible to the Government
16 prior to conclusion of trial..

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

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

6 (A) The Government will prevail on the issue of forfeiture of properties of the
7 defendant;

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

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

14 SECTION 9. *Judgment of Forfeiture.* – Upon conviction and a declaration of guilt
15 of the defendant by final judgment for violation of this Act, the Court shall enter a
16 judgment for violation of this Act, and the Court shall enter a judgment of forfeiture of
17 the property in favor of the Government, appointing the Secretary as receiver or
18 conservator of all property ordered forfeited, and who shall act subject to the court's
19 control and supervision.

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

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

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

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

9 SECTION 13. *Rights of Third Parties.* -- Any person, other than the defendant
10 asserting a legal interest in property ordered forfeited may, within thirty (30) days from
11 publication by the Secretary of the judgment of forfeiture in two (2) national newspaper
12 of general circulation in the Philippines, petition the court for a hearing to adjudicate the
13 validity of his alleged interest in the property. While the petition is pending resolution,
14 the Secretary of Justice shall not sell or otherwise dispose of the property forfeited. If
15 after hearing, the court determines that the petitioner has established by preponderance of
16 evidence that -

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

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

22 SECTION 14. *Civil Remedies.* -- (A) Where to file - Any of the Regional Trial
23 Courts of the place where any element of any racketeering activity constituting a pattern
24 of racketeering activity has been committed, shall have jurisdiction to prevent or restrain
25 violations of Section 5 irrespective of where the defendant resides or is found, or where
26 the enterprise or property is located, by issuing appropriate orders, including but not
27 limited to:

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

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

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

8 (B) Who can file -

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

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

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

20 SECTION 16. *Subpoena Powers.* – (A) Wherever the Secretary has reason to
21 believe that any person or enterprise may be in possession or control of any documentary
22 materials relevant to a racketeering investigation, he may, prior to the institution of a
23 criminal or civil proceeding thereon, shall in writing cause to be served upon such person
24 or enterprise a *subpoena duces tecum* requiring such person to produce such material for
25 examination.

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

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

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

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

12 SECTION 17. *Rules and Procedures.* – The Secretary of Justice shall adopt rules
13 and procedures:

14 (A) To govern its proceedings;

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

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

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

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

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

24 SECTION 19. *Separability Clause.* – If any provision or part hereof is held
25 invalid or unconstitutional, the remainder of the law or the provision not otherwise
26 affected shall remain valid and subsisting.

1 SECTION 20. *Repealing Clause.* – Any law, presidential decree or issuance,
2 executive order, letter of instruction, administrative order, rule or regulation contrary to,
3 or inconsistent with, the provision of this Act is hereby repealed, modified or amended
4 accordingly.

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

Approved.