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

S E N A T E

S.No. 135

Introduced by Senator FRANKLIN M. DRILON

EXPLANATORY NOTE

"No other single piece of legislation has been more abused and its intendments perverted, than B.P. 22." (Judge David G. Nitafan, Notes and Comments on the Bouncing Checks Law, Second Revised Edition, 1995)

Thirty-one years have passed since *Batas Pambansa Blg. 22*, otherwise known as "*An Act Penalizing The Making Or Drawing And Issuance Of A Check Without Sufficient Funds Or Credit,*" was passed into law. And nearly twenty-four years since the Supreme Court in the landmark case of *Lozano v. Martinez* (146 SCRA 323) made the doctrinal pronouncement that B.P. 22 is not repugnant to the constitutional proscription against imprisonment for debt – thus sustaining the constitutionality of the statute.

Since then innumerable cases for violation of B.P. 22 flooded and clogged the docket of the courts, a good number of which reached the Supreme Court and disposed of in the manner dictated by *Lozano*.

While this author is fully cognizant of the rationale for the law, *i.e.*, the need to curb the practice of putting worthless checks in circulation as it can very well pollute the channels of trade and commerce and injure the banking system, the rampant and almost indiscriminate resort to the statute as a tool to coerce payments have made it imperative for Congress to re-examine the efficacy of the law.

Although *Lozano* clarifies that B.P. 22 is not intended or designed to coerce a debtor to pay his debt, this is precisely what is happening.

We are all aware of the practice of merchants, financing companies and other lenders of requiring borrowers to issue a certain number of post-dated checks corresponding to the number of months of installment applied for by the borrower. These checks are then kept on file by the creditor to be brought out only on their respective due dates to coerce payment under threat of criminal prosecution that can lead to imprisonment upon conviction in case the borrower fails to replace the checks with cash. The checks,

therefore, have become a veritable Damocles Sword over the head of the borrower.

Equally prevalent is the practice of creditors of filing before the prosecutor's office as many counts of B.P. 22 as there were "bounced" checks even if one is merely a replacement of another, and even if said checks were issued by the same drawer on only one occasion, in consideration of the same transaction and to the same payee. While this is allowed under the law, the same has resulted in severely clogged court dockets. It is estimated that in the Metropolitan Manila area alone, approximately thirty percent (30%) of the trial courts' dockets involve supposed violations of B.P. 22.

What is more lamentable, however, is that once the creditors get paid either during the preliminary investigation, pre-trial or during trial, they lose interest in the prosecution of the case and disappear, oftentimes not even advising the Prosecutor of their having lost their desire to pursue the case. This has led to a perversion of the judicial process.

True enough, financing companies and other creditors, through the potent threat of imprisonment imposable under B.P. 22, have made the prosecutor's office and the courts as their collection agents, using the awesome powers of the State to pressure their debtors to pay their obligations or suffer possible imprisonment.

The statute, therefore, has by practice become nothing more than a veiled device of creditors to coerce payment of debts under pain of imprisonment. This is in apparent mockery and distortion of the original intention of the law.

In *Eduardo Vaca, v. Court of Appeals* (G.R. No. 131714, 16 November 1998; 298 SCRA 656, 664), the Supreme Court modified the sentence imposed for violation of B.P. 22 by deleting the penalty of imprisonment and imposing only the penalty of fine in an amount double the amount of the check. The Court held:

> "Petitioners are first-time offenders. They are Filipino entrepreneurs who presumably contribute to the national economy. Apparently, they brought this appeal, believing in all good faith, although mistakenly that they had not committed a violation of B.P. Blg. 22. Otherwise, they could simply have accepted the judgment of the trial court and applied for probation to evade a prison term. It would best serve the ends of criminal justice if in fixing the penalty within the range of discretion allowed by Section 1, par. 1, the same philosophy underlying the Indeterminate Sentence Law is observed, namely, that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order. In this case, we believe that a fine in an amount equal to double the amount of the check

involved is an appropriate penalty to impose on each of the petitioners."

In *Rosa Lim v. People of the Philippines* (G. R. No. 130038, 18 September 2000), the Supreme Court *en banc*, applying *Vaca* also deleted the penalty of imprisonment and sentenced the drawer of the bounced check to the maximum of the fine allowed by B.P. 22, and concluded that "such would best serve the ends of criminal justice."

On November 21, 2000, the Supreme Court issued Administrative Circular No. 12-2000 asking all courts and judges to take note of the policy of the Supreme Court on the matter of the imposition of penalties for violation of B.P. 22 as adopted in *Vaca* and *Rosa Lim.*

In Administrative Circular No. 13-2001 (February 14, 2001), the Supreme Court clarified:

> "The clear tenor and intention of *Administrative Circular No. 12-2000* is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in *B.P. Blg. 22.*
>
> "The pursuit of this purpose clearly does not foreclose the possibility of imprisonment for violations of B.P. Blg. 22. Neither does it defeat the legislative intent behind the law.
>
> "Thus, *Administrative Circular No. 12-2000* establishes a rule of preference in the application of the penal provisions of *B.P. Blg. 22* such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the Judge. Should the Judge decide that imprisonment is the more appropriate penalty, *Administrative Circular No. 12-2000* ought not be deemed a hindrance.
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> "It is, therefore, understood that:
>
> "1. *Administrative Circular 12-2000* does not remove imprisonment as an alternative penalty for violations of *B.P. Blg. 22;*
>
> "2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the

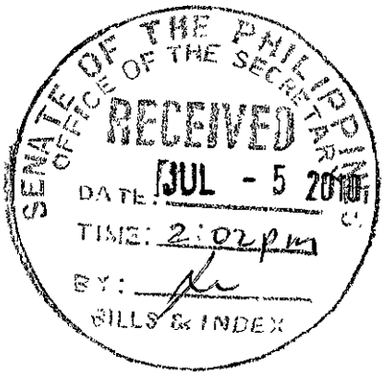
offense, work violence on the social order, or otherwise be contrary to the imperatives of justice;

"3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the *Revised Penal Code* provisions on subsidiary imprisonment."

Under these premises, this bill seeks to remove imprisonment as penalty for violations of B.P. 22.

The passage of this bill is earnestly sought.

FRANKLIN M. DRILON
Senator



FIFTEENTH CONGRESS OF THE)
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S. No. 135

Introduced by Senator Franklin M. Drilon

AN ACT
REMOVING IMPRISONMENT AS PENALTY FOR VIOLATIONS OF BATAS PAMBANSA BLG. 22, OTHERWISE KNOWN AS "AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT"

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

SECTION 1. Section 1 of Batas Pambansa Blg. 22 is hereby amended to read as follows:

"SECTION 1. *Checks without sufficient funds.* – Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished **[**by imprisonment of not less than thirty days but not more than one (1) year or**]** by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos**[**, or both such fine and imprisonment at the discretion of the court**]**.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act."

SECTION 2. This Act shall take effect after fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved,