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SENATE

Senate Bill No. 458

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INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

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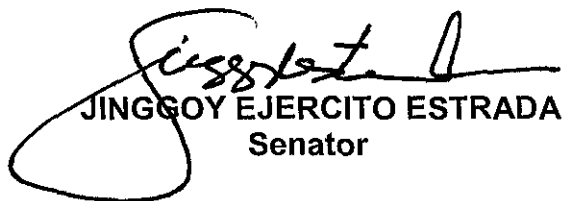
EXPLANATORY NOTE

The development of proprietary economic information is an integral part of a nation's commerce. Its development, protection and lawful exchange are essential to the competitiveness of critical segments of Philippine business and industry.

The theft, misappropriation and wrongful use of Philippine proprietary economic information by foreign governments and their agents or instrumentalities can cost our economy millions and possibly billions, of pesos each year.

Existing laws do not give adequate protection to proprietary economic information. It also seeks to advance the development and lawful use of Philippine proprietary economic information by protecting such information from the theft, wrongful destruction or alteration, misappropriation and conversion by foreign governments and their agents or instrumentalities. This bill seeks to prevent economic espionage.

Hence, the immediate approval of this bill is earnestly sought.

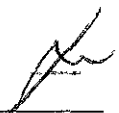
  
JINGGOY EJERCITO ESTRADA  
Senator

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AN ACT  
DEFINING THE CRIME OF ECONOMIC ESPIONAGE AND PROVIDING  
PENALTIES THEREFOR

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

**SECTION 1. Short Title.** - This Act may be cited as the "**Economic Espionage and Protection of Proprietary Information Act.**"

**SEC. 2. Statement of Policy.** - It is hereby declared the policy of the State to prevent economic espionage and further the development and lawful use of Philippine proprietary economic information.

**SEC. 3. Definition of Terms.** - As used in this Act, the term -

- 1) "Foreign Corporation, institution or instrumentality" means any corporation, agency, component, institution, association, instrumentality or legal, commercial or business entity that is substantially owned, controlled, sponsored, commanded, managed, patronized, dominated or chartered by a foreign government or subdivision of a foreign government;
- 2) "Foreign Agent" means any officer, employee, proxy, servant, delegate or representative of a foreign nation or government;
- 3) "Person" means a natural person, corporation, agency, association, institution or any other legal, commercial, or business entity;
- 4) "Proprietary economic information" means all forms and types of financial, business, scientific, technical, economic or engineering information including but not limited to data, plans, tools, mechanisms, compounds, formulas, designs, prototypes, processes, procedures, programs, codes or commercial strategies, whether tangible or intangible and whether stored, compiled or memorialized physically, electronically, graphically, photographically or in writing provided that the following concur:

- (a) the owner thereof has taken reasonable measures to keep such information confidential;

(b) the information is not available generally to, or accessible by, the public; and

(c) the information is not a matter of "public concern", as defined by law.

5) "Owner" means any Filipino person or any Philippine Government department, agency or instrumentality in which, rightful legal, beneficial or equitable title to or license in, proprietary economic information is reposed;

6) "Filipino person" means -

(a) in the case of a natural person, a Philippine citizen or permanent resident alien; and

(b) in the case of an artificial person, a juridical entity substantially owned or controlled by the Philippine Government or by Filipino citizens or permanent resident aliens, or incorporated under Philippine laws.

**SEC. 4. Economic Espionage.** - Engaging in economic espionage to aid foreign nations, governments, corporations, institutions or instrumentalities.

(a) Any person who; with intent to, or reason to believe it will injure or disadvantage any owner and benefit or advantage any foreign nation, government, corporation, institution or instrumentality who -

- 1) steals, wrongfully appropriates, takes, carries away or conceals or by fraud, artifice or deception obtains proprietary economic information;
- 2) wrongfully copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates or conveys proprietary economic information;
- 3) being entrusted with, or having lawful possession or control of, or access to, proprietary economic information, wrongfully copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates or conveys the same;
- 4) receives, buys or possesses proprietary economic information, knowing the same to have been stolen or wrongfully appropriated, obtained, or converted;
- 5) attempts to commit any offense described in the preceding paragraphs (1), (2), (3) or (4);
- 6) wrongfully solicits another to commit any offense described in paragraphs (1), (2), (3) or (4); or
- 7) conspires with one or more other persons to commit any offense described in paragraphs (1), (2), (3) or (4) and one or more of such persons do any act to effect the object of the conspiracy, shall, except as provided in the next subsection (b), be fined not less than Five Hundred

Thousand Pesos (P500,000.00), or imprisoned for a period ranging from fifteen (15) to twenty-five (25) years, or both.

(b) Any corporation that commits any offense described in the preceding subsection (a) shall be fined not less than One Million Pesos (P100,000,000.00).

**SEC. 5. Vicarious liability.** - Any officer, director, manager or other person occupying a position of authority and responsibility for the acquisition, use or management of proprietary economic information for any corporation or other business or commercial entity who -

- (1) knows or has reason to know that agents or employees of the corporation or entity have wrongfully acquired or manipulated proprietary economic information in violation of Section 4 of this Act; and
- (2) directly or indirectly authorizes, permits or suffers the information wrongfully acquired or manipulated to be used to injure or disadvantage any owner and benefit or advantage any foreign nation, government, corporation, institution or instrumentality shall be fined not less than Five Hundred Thousand Pesos (P500,000.00) or imprisonment for a period ranging from ten (10) to fifteen (15) years, or both.

**SEC. 6. Forfeiture.** - -

(a) Notwithstanding any provision of law to the contrary, any person convicted of a violation of this Act shall forfeit to the Philippine Government -

(1) any property constituting or derived from or any proceeds the person obtained, directly or indirectly from the commission of such violation; and

(2) any of the person's property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of this Act.

(b) The court, in imposing penalty on the offender for a violation of this Act, shall order that the property described in subsection (a) of this section be forfeited in favor of the Philippine Government.

**SEC. 7. Extraterritoriality.** -

(a) Notwithstanding any provision of law to the contrary, this Act applies to conduct occurring outside the territorial jurisdiction of the Philippines if -

(1) the offender is a Filipino citizen; or

(2) the victim of the offense is an "owner" as defined in Section 3 of this Act, and the offense was intended to have, or had an effect in the Philippines.

**SEC. 8. Construction with other laws.** - This Act shall not be construed to preempt or displace any other existing legal remedies, whether civil or criminal, for the misappropriation of proprietary economic information.

**SEC. 9. Preservation of Confidentiality.** - In any prosecution under this Act, the court shall preserve the confidentiality of alleged proprietary economic information by any reasonable and *l a f i l* means including, but not limited to -

- (1) the granting of protection orders in connection with discovery proceedings; and
- (2) the holding of in-camera hearings, sealing relevant portions of the record and the ordering of any person involved in the proceedings not to disclose the alleged proprietary economic information *w i t h o u t* prior court approval. Any owner of the proprietary economic information which is the subject of the offense may request the prosecution to seek such protective action.

**SEC. 10. Non-applicability to lawfully authorized law enforcement or intelligence activities.** - Any act in which information is seized, taken, transported, transmitted or transferred pursuant to, or in furtherance of any lawfully authorized investigative, protective or intelligence activity of a law enforcement agency of the Philippines, or of any of its political subdivisions, shall not be deemed a violation of Sections 4 and 5 of this Act.

**SEC. 11. Separability Clause** - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

**SEC. 12. Repealing Clause.** - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

**SEC. 13. Effectivity Clause.** - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

*Approved,*