

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

8 SEP -3 2016

S E N A T E

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S.B. No. 2595

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Introduced by Senator Loren Legarda

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### EXPLANATORY NOTE

Innovation is defined as “the generation, diffusion, absorption and application of new technologies, knowledge or ideas which are generally regarded as essential drivers of long-term economic growth and development.”

Developed countries have long since acknowledged the correlation between innovation and economic development having prioritized successful technology transfers and innovation policies to sustain and facilitate their growth. The remarkable productivity growth recorded in the United States, Japan, some European countries and recently India is a consequence of this precedence. Sufficient investment in research and development, highly capacitated research institutions, strong university-industry research collaboration, promotion of entrepreneurship and economic activities, and well-defined intellectual property rights regime support the innovation activities set by the aforementioned countries.

As enshrined in the 1987 Philippine Constitution, it is the policy of the State to “give priority to research and development, invention, innovation, and their utilization; and to science and technology education, training, and services.” Certain laws for the protection of the intellectual property rights have also been enacted to safeguard innovative knowledge in the country.

Amidst initiatives, the Philippines lack the system that would transfer and commercialize the results of the studies done by government-funded R&D institutions, thereby failing to realize the potentials of our country’s competitiveness in the global arena. This is clearly manifested in the 2007-2008 Global Competitiveness Report which gives the Philippines a global competitiveness index of 3.99. The country, thus, claims the 71<sup>st</sup> ranking, which is low compared to the high rankings of our Asian neighbors like Singapore (7<sup>th</sup>), Hong Kong (12<sup>th</sup>), Korea (11<sup>th</sup>), Japan (8<sup>th</sup>), Malaysia (21<sup>st</sup>) and Thailand (28<sup>th</sup>). In the same report, the Philippines garnered the 79<sup>th</sup> position, a far cry from the ranks of our neighboring countries in the Southeast Asian region such as Singapore (11<sup>th</sup>), Malaysia (21<sup>st</sup>), Indonesia (41<sup>st</sup>) and Thailand (36<sup>th</sup>), in terms of innovation.

The problem can be traced from the lack of a favorable policy environment that encourages strong support from both public and private sector necessary for successful technology transfer. In contrast with other countries, the Philippines has not enacted

measures that are instrumental in creating a system on translating publicly funded R&D results into tangible technology that would facilitate the country's economic development.

This bill therefore proposes to establish a policy framework that shall effectively aid transfer of technology from the government R&D institutions to appropriate industries. The salient features of the proposed measure include:

1. Establishment of the Technology Information Access Facility which shall serve as a common access facility for all technologies generated from R&D funded by Government Funding Agencies and those generated by Research and Development Institutes;
2. Development of Internal IP Policies and establishment of technology licensing offices (TLOs) and/or technology business development offices;
3. Financial guidelines in terms of revenue sharing and usage of income derived from the technology transfer;
4. Compulsory licensing procedure for the promotion of the Intellectual Property Rights; and
5. Establishment of the rights and responsibilities of Spin Off Firms and Government Funding Agencies as well as Research and Development Institutes.

Furthermore, this proposed measure encourages coordination of both the public and private sector to facilitate the fulfilment of its objectives.

In cognizance of science and technology's role in national development, this bill will harness the opportunities brought by globalization but at the same time protect and secure the exclusive rights of the scientists, inventors, and other gifted citizens to their intellectual property. The Philippines needs to rise from its state of being a laggard in international development and address its own needs to upgrade the welfare of its people.

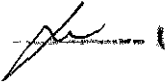
In view of the foregoing considerations, the approval of this bill is earnestly sought.

  
**LOREN LEGARDA**  
Senator

FOURTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
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SENATE

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S.B. No. **2595**

Introduced by Senator Loren Legarda

**AN ACT PROVIDING THE FRAMEWORK AND SUPPORT SYSTEM FOR THE OWNERSHIP, MANAGEMENT, USE, AND COMMERCIALIZATION OF INTELLECTUAL PROPERTY GENERATED FROM R&D FUNDED BY GOVERNMENT**

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

**ARTICLE I**

**TITLE, DECLARATION OF POLICY, OBJECTIVES AND SCOPE OF PRACTICE**

**SECTION 1. Short Title.** -This Act shall be known as the *Technology Transfer Act of 2008*.

**SECTION 2. Declaration of Policies and Principles.** The State fully recognizes that science and technology are essential for national development and progress. It shall, therefore, give priority to research and development, invention, innovation, and their utilization. It shall also encourage the widest and systematic participation of all stakeholders in policy making related to science and technology, and in the generation, transfer and utilization of intellectual property.

To harness the opportunities brought by globalization, the State shall facilitate the transfer and promote the utilization of intellectual property from all sources for the national benefit. It shall protect and secure the exclusive rights of scientists, inventors, and other gifted citizens to their intellectual property particularly when beneficial to the people.

**SECTION 3. Objective.** This Act aims to promote more effective use, management, and commercialization of intellectual property resulting from research and development funded by government to the benefit of national economy and taxpayers and consistent with the needs of government to disseminate, diffuse and transfer economically relevant knowledge and technologies.

**SECTION 4. Definition of terms.** For purposes of this Act,

1. "*Intellectual property (IP)*" is the term used to describe tangible assets resulting from the creative work of an individual or organization. They form the basis of legal rights as defined in Republic Act 2893 (Intellectual Property Code of the

Philippines). These legal rights provide protection to the creator of the original material. They can trade in the same as physical assets and can be extremely valuable;

2. *“Intellectual Property Rights (IPR)”* refers to the entitlement and enjoyment of the attributes of ownership over intellectual properties as defined by law;
3. *“Government Funding Agency (GFA)”* refers to an executive agency that provides research grants from government appropriations including government-managed Official Development Assistance (ODA) funds;
4. *“Research and development institute (RDI)”* refers to a public or private Filipino organization, association, partnership, joint venture, or a corporation that performs research funded by GFAs;
5. *“Research Funding Agreement”* refers to a contract entered into by and among GFA, RDI, and researcher. It governs ownership of IP, duties of GFAs and RDIs, technology disclosure, exclusivity of the license, use for commercialization establishment of spin-off firms, technologies for research use, and sharing of income and benefits from technology commercialization;
6. *“Spin off firm”* refers to an independent business technology taker created through the initiative of the researcher-employee who generated the technology;
7. *“Technology”* refers to the process by which one party gains access to technology of another party, and successfully learns it and applies it for productive ends; and
8. *“Technology transfer”* refers to the process by which one party gains access to technology of another party, and successfully learns it and applies it for productive ends.

**SECTION 5. *Scope of Practice.*** This Act shall cover the following:

1. All R&D activities carried out by research and development institutions on behalf of the Philippine Government;
2. All intellectual properties derived from R&D activities funded by government that have commercial potential;
3. All government agencies that fund R&D activities; and
4. All R&D institutions including higher education institutions that implement government funded R&D

## ARTICLE II

### INTELLECTUAL PROPERTY OWNERSHIP

**SECTION 6. *Ownership of Intellectual Property*** generated from research funded by GFA shall, in general, be vested in the RDI that actually performed the research, unless there are valid and compelling reasons to the contrary (as may be defined in Chapter X, Part 1 of RA 8293- Intellectual Property Code, and the mandated

functions of the GFA). This is in recognition of the fact that RDIs are in better position to identify the potential for economic utilization of intellectual property, subject to their having the right skills and management capability.

It should also be recognized that the GFAs need not own the IP generated in the research they funded to be able to use it for Government purposes. The RDI owning the IP can license it for the use of the GFA.

In case of joint funding, the RDIs shall the IPs but R&D funding agreements should consider the policies of contracting parties whether private or international parties.

### ARTICLE III

#### RIGHTS AND RESPONSIBILITIES

**SECTION 7. *Rights and Responsibilities of Government Funding Agency.*** Under this Act the GFA shall:

1. Protect government interest in the IP generated from the R&D that it funded through suitable provisions in the R&D funding agreement;
2. Monitor efforts and effectiveness of the RDI in securing IP protection and pursuing IP commercialization, as well as provide alternative solutions in case of shortfall in RDI's performance in utilizing and commercializing the IP;
3. Ensure adequate freedom to use the IP for its policy and business needs including its use for further research to expand the knowledge frontier, and requirements for publication of information as appropriate in accordance with government policy; and
4. Allow sharing of revenues from IP commercialization in a way that is not onerous to discourage commercialization.

**SECTION 8. *Rights and Responsibilities of the Research and Development Institutes.*** RDI's shall be entitled to the following rights and responsibilities:

1. Identify, protect, and manage the IP generated from R&D funded by GFA and pursue commercial exploitation diligently as a required performance stipulated in the R&D funding agreement;
2. Provide a means for addressing any shortfall of its performance in utilizing and commercializing the IP;
3. Notify GFA of all patent applications and assignments made;
4. Report to GFA progress of IP commercialization efforts and of all license granted;
5. Keep account of revenues and payments to the GFA f revenue sharing is provided in the R&D funding agreement;

6. Ensure that they have access to the skills and management capability to effectively perform their responsibilities of owning, managing, and exploiting the IP. Smaller RDIs that may need external advice are encouraged to pool and share resources; and
7. Accord their staff with incentives consistent with existing laws to sustain efforts in identifying valuable IP and pursuing IP commercialization.

#### ARTICLE IV

##### MANAGEMENT OF IPs FROM R&D PERFORMED BY GOVERNMENT RDIs THROUGH THEIR OWN BUDGET

###### *SECTION 9. Responsibilities of RDI performing R&D with their Own Budget.*

All government RDIs performing R&D shall submit intellectual property management report to the national government agencies that they are attached to. The report shall contain plans for securing protection on IPs with commercial promise, the technology transfer approaches to be pursued, and the progress of ongoing commercialization of technologies derived from R&D funded from their own budget

###### *SECTION 10. Responsibilities of the concerned National Government Agencies.*

Concerned government agencies shall monitor efforts and effectiveness of their RDIs in securing IP protection and pursuing IP commercialization, based on the annual statement of plans and actions of managing the IPs submitted by the RDIs.

#### ARTICLE V

##### REVENUE SHARING

*SECTION 11. Revenue Sharing.* All revenues from the commercialization of IPs from R&D funded by GFA shall accrue to the RDI, unless there is a revenue sharing provision in the R&D funding agreement. In all cases, GFA and RDI shall negotiate whether a revenue sharing scheme will be included as entitlement clauses in the R&D funding agreement.

Sharing of revenue between RDI and researcher shall be governed by an employer-employee contract.

#### ARTICLE VI

##### ESTABLISHMENT OF SPIN-OFF FIRMS

*SECTION 12. Commercialization by Researchers/Technology Generators.* On meritorious cases, an RDI shall allow its researcher-employee to commercialize the IP generated from R&D funded by GFA through the creation of a spin-off firm provided that its researcher-employee takes a leave of absence for a period not exceeding two years.

The RDIs shall properly manage any possible conflict of interest by issuing/establishing appropriate guidelines for its research/employee. Mechanisms for handling conflicts are the following:

The RDIs shall properly manage any possible conflict of interest by issuing/establishing appropriate guidelines for its research/employee. Mechanisms for handling conflicts are the following:

1. RDIs shall ensure that its staff are made fully accountable for their researches and that commercial objectives do not divert the staff from carrying out the RDI's core research program
2. Heads of RDI should ensure that where a member of the staff has financial interest in a spin-off company (e.g. shareholding, personal dictatorship, or consultancy agreement), this individual should not also act as an RDI contact with that company on day-to-day matters;
3. Where staffs are nominated as non executive directors to the board of a sin-off company in which the RDI or its sponsor hold an equity stake, they should have a clear duty to ensure that RDI's interests are not compromised by their role; and
4. RDIs should take steps to ensure that collaborative undertaking with a spin-off company is governed by a formal agreement.

## ARTICLE VII

### COMPULSORY LICENSING

**SECTION 13. *Applicability of Compulsory Licensing.*** This law shall adopt the grounds, terms and conditions of Chapter X (Compulsory Licensing) Part I of RS 8293, Intellectual Property Code of the Philippines on the granting of license to exploit a protected IP, even without the agreement of the IP owner, in favor of any person who has shown his capability to exploit the IP.

## ARTICLE VIII

### USE OF INCOME FROM COMMERCIALIZATION OF IP ASSETS

**SECTION 14. *Use of Income-*** Public RDIs undertaking technology transfer shall be vested with the authority to use the income derived from commercialization of IP generated from R&D funded by GFAs. Income from commercialization of IP generated from R&D funded by GFAs. Income from commercialization shall be used to compensate the researcher-employee; and to fund R&D, S&T capability building, and technology transfer activities including the establishment and management of technology licensing offices.

All income from IP commercialization shall be deposited in a revolving fund established by the RDI and shall be exempted from the duty of remitting such income to the Bureau of Treasury. The revolving fund shall be subjected to regular auditing of the Commission on Audit.

## ARTICLE IX

### INSTITUTIONAL MECHANISM

**SECTION 15. *Establishment of Technology Information Access Facility.*** The Department of Science and Technology (DOST) shall establish a common access facility

for all technologies generated from R&D funded by GFAs and those generated by RDIs through their own budget. All RDIs shall contribute to this Technology Information Access Facility.

**SECTION 16. *Development of Internal IP Policies and Establishment of technology licensing offices (TLOs) and/or technology business development offices-*** All public RDIs with substantial R&D capacity involved in technology transfer activities are encouraged to establish their own TLOs in whatever form they may deem appropriate and develop their own IP policies in accordance/in support with the policies of the Intellectual Property Philippines.

## ARTICLE X

### MISCELLANEOUS, TRANSITORY, AND FINAL PROVISIONS

**SECTION 17. *Funding.*** The activities and operational expenses related to the implementation of this Act shall be funded from the budget appropriations of GFAs and RDIs.

**SECTION 18. *Periodic review.*** Every three (3) years from the effective of this Act, an independent review panel to be appointed by the President shall review the policies and programs on technology transfer under this Act and shall recommend appropriate measures to the President and to both Houses of Congress.

**SECTION 19. *Implementing Rules and Regulations.*** The Department of Science and Technology, in collaboration with the Intellectual Property Philippines, shall lead GFAs in formulating the IRR for the effective implementation of this Act. The DOST Secretary shall chair the drafting committee. The IRR shall be issued within 90 days after the effectivity of this Act. Copies of the IRR shall be submitted to the Committees on Science and Technology of both Houses of Congress within (30) days after its promulgation, as well as to other appropriate agencies as may be required by law.

**SECTION 20. *Repealing Clause.*** All laws, presidential decrees, executive orders, presidential proclaims, rules and regulations or part thereof which may be contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

**SECTION 21. *Separability Clause.*** If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

**SECTION 22. *Effectivity.*** This Act shall take effect fifteen (15) days after its complete publication in two (2) newspaper general circulation.

*Approved,*