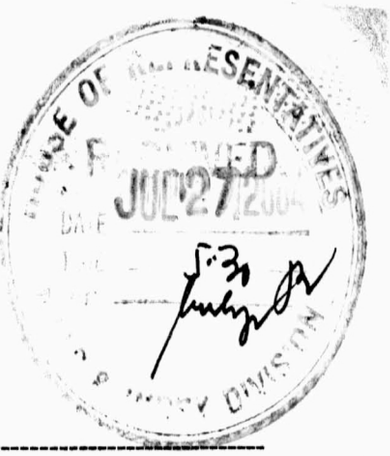
Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
First Regular Session

House Bill No. 1734



Introduced by the **Honorable ROILO GOLEZ**

EXPLANATORY NOTE

Kickbacks have been said to be a "nationwide, well entrenched problem" not only in the country but also in more developed economies.

Jurisprudence has provided in Sy Suan vs Regala (105 Phil. 1028) that "an agreement to pay 10% or allocation issued by a government agency, for services rendered in the procurement thereof is null and void *ab initio* for being contrary to good customs, public order and public policy."

Kickbacks are a form of commercial bribery. They are made to improperly induce or reward a variety of contractor-related actions, including, but not limited to, the award of sub-contract, the disqualification, falsification, or disclosure or competitive bids, the acceptance of inferior products, or the modification of contract terms.

Kickbacks can occur in the form of cash, gifts, services, or anything of value. Whatever form they take, kickbacks definitely serve to undermine honest and fair commercial transaction. Kickbacks, by its nature, corrupt the procurement system in private or public environments. These activities drive out honest competitors and destroy the markets in which the Government or businessmen must transact, thus eroding the public confidence in the transaction processes.

In filing the measure, the author hopes that the passage of the bill would vest law implementors with a complementary tool to minimize kickbacks and eradicate the notion that people would go on doing their jobs, securing contracts and enriching one's self from a system greased with money. Kickbacks in whatever form is corruption and corruption is an arbitrary restraint on natural, open and free competition.

Passage of this bill will hopefully add to the regime of laws that would redound to the benefit of the limited government coffers and the public or customers at large.

ROILO GOLEZ

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AN ACT
PROHIBITING THE PRACTICE OF OFFERING, GIVING OR ATTEMPTING TO GIVE OR OFFER, OR ACCEPTING A KICKBACK IN ANY KIND OF COMMERCIAL TRANSACTIONS, AND FOR OTHER PURPOSES

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

SECTION 1. This Act shall be known as the "Anti-Kickback Act."

SEC. 2. For purposes of this Act, the words and phrases used herein shall, unless the context indicated otherwise, mean and understood to man as follows:

(a) Kickback is any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided or given directly or indirectly by:

1.) Any contractor or the employee, representative or agent of such contractor; or

2.) The seller, lessor lessee, owner or buyer of any kind of property for the purpose of improperly obtaining or rewarding favorable treatment by any person in connection with any transaction.

(b) Transaction is an offer made by a party or parties for the construction, remodeling, improvement or repair of any kind of property; the sale, lease, or obtaining of any right over any kind of property; the furnishing or obtaining of services, materials or supplies by any person: *Provided,* That the payment of a commission to a broker, agent, or attorney-in-fact for any legitimate service done and recognized under existing laws or business practices is not covered by nor embraced in this definition.

SEC. 3. It shall be unlawful for any person to

(a) Provide or give, or attempt to provide or give, or offer to provide or give any kickback;

(b) Solicit, accept, or attempt to accept any kickback; or

(c) Include, directly or indirectly, the amount of a kickback prohibited under this Act in the contract price charged by a contractor, seller, lessor or supplier for the transactions enumerated in Section 2 thereof.

SEC. 4. Any person who shall commit any of the acts declared unlawful under Section 3 thereof shall, upon conviction by the court, suffer the penalty of imprisonment of not less than five (5) years nor more than twenty (20) years and pay a fine of not less than five thousand pesos (P5,000.00) nor more than three times the amount of the kickback involved in the transaction, whichever is the heavier penalty, at the discretion of the court.

If the offender is a public official or employee, he shall, in addition, suffer the penalty of perpetual absolute disqualification from holding a public office.

If the offender is an alien, he shall be deported after service of sentence without need of further proceedings.

In case the offender is a corporation, partnership, single proprietorship, firm or any other commercial or legal entity, the penalty shall be imposed upon the person in the corporation, partnership, single proprietorship, firm or other commercial or legal entity who authorized or was responsible for the commission of the unlawful act. In addition, the license of the erring corporation, partnership, single proprietorship or other commercial firm or legal entity shall be ordered cancelled.

SEC. 5. (a) An aggrieved party may, in a civil action, recover a civil penalty from any person who has committed any of the acts declared unlawful under Section 3 hereof. The amount of the civil penalty shall be:

1. three times the amount of each kickback involved in the transaction; and

2. an additional amount of not less than ten thousand pesos (P10,000.00) nor more than two hundred thousand pesos (P2000,000.00) for each separate commission of any of the acts prohibited or declared unlawful under this Act, at the discretion of court.

(b) The Republic of the Philippines or any of its instrumentalities or political subdivisions may, in a civil action, recover a civil penalty from any person who shall violate Section 3 of this Act by a transaction wherein it is either a party directly or indirectly involved or adversely affected by such transaction.

(c) The civil action authorized under this Act shall be barred unless the action is commenced within five (5) years after (1) the date on which the prohibited act or conduct upon which the cause of action is based occurred, and (2) the date on which the aggrieved party knew or should have reasonably known that the unlawful act had occurred.

SEC. 6. In those cases wherein the Government is involved in or affected by the transaction, the contracting officer or the particular contracting office or agency concerned or the Commission on Audit may offset or order the offsetting of the amount of kickback provided, accepted, or given in violation of Section 3 of this Act against any money owed by it to a contractor for a service or furnishing of supplies and materials or any other form of transaction entered into by the office concerned to which the kickback relates.

SEC. 7. (a) Every contractor doing business with Government or any of its instrumentalities or political subdivisions shall have in place and follow reasonable procedure designed to prevent and detect any violation of Section 3 of this Act in its operations and direct business relationships with Government or any of its instrumentalities or political subdivisions.

(b) Whenever for the supply of materials, equipment or services, or sale or lease of any property to the Government or any of its instrumentalities or political subdivisions, a contractor has reasonable ground to believe that a violation of Section 3 hereof may have been committed or is about to occur, said contractor shall promptly report the same in writing to the Commission on Audit and the Office of the Ombudsman. In the case of purely private transactions, the report shall be made to the Department of Justice.

(c) Evidence that a contractor has reported or supplied information on matters called for in the preceding paragraph shall constitute favorable proof of responsibility on the part of the contractor in the conduct of his affairs.

SEC. 8. In all hearings, inquiries, and proceedings concerning the offense of kickback defined and punished under this Act, no person subpoenaed to testify as a witness shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to prosecution: *Provided*, That no person shall be prosecuted criminally for or on account of any matter concerning which he is compelled after having claimed the privilege against self-incrimination, to testify and produce evidence, documentary or otherwise.

Under such terms and conditions as the prosecutor may determine, taking into account the pertinent provisions of the Rules of Court, a person whose testimony or whose possession and production of documents or other evidence which may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted under this Act, may be granted immunity from criminal prosecution: *Provided*, That the immunity granted under this and the immediately preceding paragraph shall not exempt such person from criminal prosecution for perjury or false testimony. Including removal or demotion from office.

SEC. 9. Nothing in this Act shall be construed as diluting the viability of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, except that the offense of kickback shall be prosecuted under the law which imposes a heavier penalty.

SEC. 10. If any provision of this Act or the application of such provision to any person or circumstance is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SEC. 11. All laws, decrees, executive orders, and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby modified, superseded or repealed, as the case may be.

SEC. 12. This Act shall take effect fifteen (15) days following its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved,