

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

THIRTEENTH CONGRESS

House Bill No. 1736



Introduced by the **Honorable ROILO GOLEZ**

EXPLANATORY NOTE

This bill which is commonly called the proposed "RICO LAW" is primarily aimed at preventing the use of money and power by organized crime syndicates to subvert and corrupt legitimate businesses by facilitating the prosecution of and imposing stiffer penalties for criminal offenders.

This bill will greatly help our law enforcement agencies, most importantly in the Judiciary in curtailing the activities of organized crime syndicates and prosecute them for their illegal activities. We have been a witness to a lot of arrests and filing of charges against alleged kidnap-for-ransom groups as well as gambling and drug lords only to end up being acquitted for lack of evidences to merit their prosecution.

Under this proposed bill, the following are considered prohibited activities:

- a) Knowingly participating, either directly or indirectly, with or in an enterprise, conducting a pattern of racketeering activity;
- b) Receiving any money or property derived directly or indirectly, from a pattern of racketeering activity;
- c) Using or investing, directly or indirectly, any part of the money or property received or derived, directly or indirectly, from a pattern of racketeering activity in any interest in or in establishment or operation of any business;
- d) Acquiring or maintaining through a pattern of racketeering activity, directly or indirectly, any interest in or control or any business enterprise; and
- e) Conspiring in the conduct of any unlawful acts provided herein.

Moreover, the bill also provides for the following features:

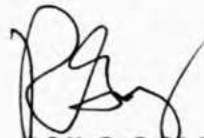
- a) Covering a wide range of racketeering activities which will include kidnapping; murder; arson; robbery; illegal possession of firearms or explosives; bribery; illegal gambling; importation, manufacture, sale,

delivery, distribution and transportation of prohibited drugs and maintenance of a drug den; and other illegal activities;

- b) Requiring at least two (2) predicate acts of racketeering activity, within ten (10) years before and after the effectivity of the Act, to establish a "pattern";
- c) Imposing maximum penalty of life imprisonment or death and a fine of not less than One Hundred Thousand Pesos (P100,000.00) nor more than One Million Pesos (P1,000,000.00) to those found guilty of a racketeering activity; and
- d) Forfeiture and sequestration by the government of any property by any person convicted of any prohibited activities.

This representation strongly believes that the passage of this RICO bill is the culmination of Congressional investigations on illegal gambling and other illegal activities since it will empower and authorize the government to go after the illegally acquired assets of people involved in illegal activities and transactions.

Considering the importance of this measure, I earnestly urged for the early approval of this bill.



ROILO GOLEZ

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Introduced by Honorable ROILO GOLEZ

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AN ACT
CURTAILING THE ILLEGAL ACTIVITIES OF RACKETEERS AND POWERFUL
SYNDICATES IN THE PHILIPPINES

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

SECTION 1. *Title of the Act.* - This Act shall also be known as the **"Racketeer-Influenced and Corrupt Organizations (RICO) Act of 2004"**.

SEC. 2. *Declaration of Policy.* - It is the policy of the State to promote and maintain a sound economy anchored on legitimate business enterprises and transactions and fueled by honest capital derived from legitimate and lawful sources and activities. It is likewise the policy of the State to curb organized and sophisticated crimes and the laundering of the proceeds of these crimes into legitimate business and activities by depriving the criminals the opportunity to enjoy the proceeds of their wrong doings.

SEC. 3. *Liberal Construction.* - The provisions of this Act shall be liberally construed to effectuate the policy declared under this Act. However, the constitutional rights of any person accused under this Act shall not be impaired.

SEC. 4. *Definitions.* - For purposes of this Act, the words and phrases used herein shall, unless the context indicated otherwise, mean and understood to mean as follows:

a) **"Person"** is any individual, association, partnership, corporation, entity or any group of individuals, associations, corporations or entities.

b) **"Enterprise"** is any legitimate business or establishment formed as corporation, partnership, single proprietorship, formal or informal association, or as a group of individuals whether possessed of juridical personality or not.

- c) **"Racketeering activity"** whether by an organized conspiracy or by an individual, is any attempt or act involving all of the following crimes of kidnapping, for the purpose of ransom; murder for money; arson; robbery; illegal possession of firearms, and explosives for purposes of gunrunning, whether syndicated or not; bribery; other graft and corrupt practices; syndicated illegal gambling; organized syndicated carnapping; piracy; hijacking; illegal logging; illegal mining; white slavery; illegal recruitment; smuggling; illegal fishing; fencing, as a result of theft or robbery; importation, manufacture, sale, administration, delivery, distribution and transportation of prohibited drugs and maintenance of a drug den; large-scale swindling; syndicated film piracy; electronic and computer software piracy and/or fraud; counterfeiting; violation of intellectual property rights; monopolies and combination in restraint of trade; syndicated land grabbing and falsification of land titles, whether private or public land; securities fraud, bank frauds; and sexual exploitation of children as defined under existing and similar general and special laws and other acts of similar nature where the objective is to raise money or generate funds.
- d) **"Pattern"** of racketeering activity requires at least two (2) predicate acts of racketeering activity, one of which occurred after the effectivity of this Act and the other occurring either within ten (10) years before the one occurring after the effectivity of this Act or within ten years after the one occurring after the effectivity of this Act.
- e) **"Racketeering investigator"** is an attorney or investigator so designated by the Secretary of Justice or the Solicitor General to serve as racketeer document custodian and charged with the duty of enforcing or carrying into effect this Act.
- f) **"Dummy"** is a person secretly acting for another who is apparently representing his own interests; tool of another.
- g) **"Sequestration"** means taking into custody or placing under the States control or possession any asset, fund, or other property, as well as relevant records, papers and documents in order to prevent their concealment, destruction, impairment, or dissipation pending the determination whether the said asset, fund or property is ill-gotten or a result of any illegal activities punished under this Act.

- SEC. 5. *Prohibited Activities.* - It shall be unlawful for any person to:
- a) Knowingly participate, either directly or indirectly with or in an enterprise conducting a pattern of racketeering activity;
 - b) Received any money or property derived directly or indirectly, from a pattern of racketeering activity, or act as dummy of any person in order to hide or conceal money or property acquired through racketeering activities as defined herein;

- c) Use or invest directly or indirectly, any part of the money or property received or derived, directly or indirectly, from a pattern of racketeering activity in any interest in or the establishment or operation of any business.
- d) Acquire or maintain through a pattern of racketeering activity, directly or indirectly any interest in or control of any business enterprise.
- e) Conspire in the conduct of any unlawful acts provided herein.

SEC. 6. *Penalties.* - Any person who commits any of the prohibited activities under Section 5 of this Act shall, upon conviction, be penalized by imprisonment of not less than ten (10) years nor more than twenty (20) years and if found guilty of a racketeering activity for which the maximum penalty includes life imprisonment or death, the penalty shall be life imprisonment or death, and a fine of not less than One Hundred Thousand Pesos (100,000.00) nor more than One Million Pesos (1,000,000.00).

SEC. 7. *Forfeiture.* - In addition to penalties provided in the Preceding Section, any person convicted of any prohibited activities provided under Section 5 hereof shall forfeit in favor of the Philippine Government:

- 1. any interest acquired or maintained through racketeering activity or a pattern of racketeering activity;
- 2. any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprises which any person has established, operated, controlled, conducted, or participated in the conduct of such unlawful acts; and
- 3. any property constituting, or derived from any proceeds which the person obtained directly or indirectly, from racketeering activities.

All rights, titles and interest in property described in the preceding paragraph shall be vested in the Philippine Government upon the commission of the act giving rise to forfeiture under this Section. The manner of disposition thereof shall be in accordance with Section 14 of this Act.

SEC. 8. *Jurisdiction.* - Any of the regional trial courts of the place where any of the racketeering activity constituting the pattern of racketeering activity has been committed including those with jurisdiction over heinous crimes, shall have jurisdiction over cases filed under this Act and applications for forfeiture including petitions for temporary restraining order or injunction under the next succeeding section regardless of the location of any property subject to forfeiture or where the person resides or where the enterprise is located.

SEC. 9. *Sequestration.* - All known properties of the defendant shall be subjected to sequestration upon the filing of a criminal complaint against him.

SEC. 10. *Temporary Restraining Order.* - A Temporary restraining order effective for sixty (60) days may be issued upon application by the Secretary of the Department of Justice or the Solicitor General without notice or opportunity for a hearing before, during or after the filing of the information directing the defendant or any person acting on his behalf to desist from disposing and to preserve the availability of the property for forfeiture, if the Philippine government demonstrates that there is probable cause to believe that the property would be subject to forfeiture and that the provision of notice will jeopardize the availability of the property for forfeiture.

SEC. 11. *Preliminary Injunction.* - Within (60) days after the issuance of a temporary restraining order, the court shall conduct a hearing with notice to all properties concerned. A writ of preliminary injunction shall be issued if the court determines that:

- a) There is substantial probability that the Philippine government will prevail on the issue of forfeiture and that failure to issue the writ will result in the property being destroyed, removed, disposed of or otherwise made available for forfeiture; and
- b) The need to preserve the availability of the property through the writ outweighs the hardship on any party against whom it is directed.

SEC. 12. *Evidence Required.* - In the hearing for the prosecution of cases filed under this Act, the sole testimony of a participant or conspirator, if credible, can be the basis for conviction of the other defendants: provided That, for purposes of the hearing for the writ of preliminary injunction, the court shall not be bound by the technical rules on evidence under the rules of court; Provided further, that the evidence was taken without violating the constitutional rights of the accused.

SEC. 13. *Judgement of Forfeiture.* - Upon conviction of person under this section, the court shall enter a judgement of forfeiture of the property in favor of the Philippine government and shall authorize the Secretary of Justice or the Solicitor General to seize all properties ordered forfeited: Provided, That the judgement of forfeiture in the original case shall be without prejudice to the right of the government to initiate further forfeiture proceedings on properties of the accused which may later on be discovered as part or the proceeds of the commission of the crime of racketeering.

SEC. 14. *Disposition of Forfeited Property.* - Following the seizure of the property, the Secretary of Justice or the Solicitor General shall direct the disposition of the property by sale or any other commercially feasible means pursuant to existing laws, rules and regulations on the sale of government properties. Any property right or interest not exercisable by or transferable for value to the Philippine government shall expire and shall not revert to the defendant, nor shall the defendant or any person acting on his behalf be eligible to purchase forfeited property at any sale held by the Philippine government.

SEC. 15. *Restitution of Property to Victims.* - The court entering the judgement of conviction and forfeiture, upon finality of the decision, shall hear

petitions by victims of racketeering activity for restitution of property or compensation. The court may order portions of the proceeds of the sale of forfeited property deposited with the National Treasury to be paid to the victims.

SEC. 16. *Rights of Third Parties.* - No party claiming an interest in property subject to forfeiture may:

- a) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property; or
- b) Commence an action at law or equity nor may any court issue a restraining order or injunction against the Philippine government concerning the validity of his alleged interest in the property subject to forfeiture.

However, any person, other than the defendant asserting a legal interest property ordered forfeited may, within thirty (30) days from publication by the Secretary of Justice or Solicitor General of the judgement for forfeiture in two (2) national papers of general circulation in the Philippines, petition the court for a hearing to adjudicate the validity of his alleged interest in the property.

SEC. 17. *Substitution of Other Properties.* - The court shall order the substitution and/or forfeiture of any other property of the defendant equivalent to value of any property described in Section 7, if any of the said properties:

- a) Cannot be located upon the exercise of due diligence;
- b) Has been transferred or sold to a third party who acquired the same in good faith;
- c) Has been placed beyond the jurisdiction of the courts;
- d) Has been substantially diminished in value; or
- e) Has been commingled with other property which cannot be divided without difficulty.

SEC. 18. *Civil Remedies.* - a) The Secretary of Justice or the Solicitor General may initiate civil action in any of the regional trial courts of the place where any element of any racketeering activity has been committed which shall have jurisdiction to prevent or restrain unlawful acts provided under Section 5 hereof, irrespective of where the person resides or is found or where the enterprise or property is located by issuing appropriate orders, including but not limited to:

- 1) Ordering any person to divest himself of any interest, direct or indirect in any enterprise;
- 2) Imposing reasonable restrictions on the future activities or investments of any person including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; or

- 3) Ordering the dissolution or reorganization of any enterprise, making provision for the rights of innocent persons.

A final judgement rendered in favor of the Philippine government in any criminal proceeding shall be an estoppel for the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceedings brought by the Philippine government.

- c) Any person injured in his person, business or property or his heirs, by reason of prohibited activities under Section 5 hereof, may sue therefor in the appropriate regional trial court as provided in the preceding paragraph and may be entitled to recover threefold the damages he sustains and the cost of the suit, including a reasonable attorneys fees against all persons found guilty under this Act.

SEC. 19. *Expedited Action.* - In any civil action instituted under the preceding Section, the regional trial court shall expeditiously try and hear the case, giving it preference to the same over all other civil cases.

SEC. 20. *Subpoena Duces Tecum.* - a) Whenever the Secretary of Justice of the Solicitor General has reason to believe that any person or enterprise may be in possession or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a criminal or civil proceedings, apply with the court for the issuance of a *subpoena duces tecum* thereon, requiring such person to produce such materials for examination.

b) Any person who has duly served with subpoena *duces tecum* shall make available for inspection, copying or reproduction to the custodian designated therein at any place agreed upon and shall certify under oath that the copies are true reproductions of the original, which certified copies shall be admissible in court as originals.

c) While in the possession of the custodian, no material so reproduced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Secretary of Justice or Solicitor General.

SEC. 21. *Statute of Limitations.* - One of the predicate acts of racketeering must have been committed within ten (10) years of the date of the information, otherwise violations of this Act shall be deemed to have prescribe.

SEC. 22. *Consolidation of Cases.* - The trial for criminal liability for each predicate act of racketeering activity shall be consolidated with the court hearing the RICO case.

SEC. 23. *Repealing Clause.* - All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby amended, repealed or modified accordingly.

SEC. 24. *Separability Clause.* - If, for any reason or reasons, any part or provision of this Code shall be held unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 25. *Effectivity.* - This Act shall take effect fifteen (15) days after its complete publication in at least two (2) national newspapers of general circulation.

Approved,