

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Manila

THIRTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 1963



Introduced By Honorable Robert Ace S. Barbers

EXPLANATORY NOTE

Criminal syndicates such as drug traffickers, money launderers, smugglers, or kidnap-for ransom syndicates operate behind the aegis of power and influence. More than often, their operation remains unhampered and untouched as they bribe their way out of obstacles posed even by most powerful and influential officials, of people, in and out of government.

Even the most powerful public official can prey to the persuasion and intimidation of criminal syndicates whose extensive network influence may even include politicians, ranking law enforcers and public servants.

Perhaps, their being "untouchable" may also be akin to the protection of laws that govern banking and financial institutions.

This piece of legislation proposes stronger measures against the pervasive and powerful criminal syndicates, racketeers and other socially and economically pernicious criminal organizations. It seeks to deprive those organized elements the operational fund for their activities.

Aside from securing criminal conviction of members of powerful crime syndicates and their accomplices, this bill also aims to deny them the fruits of their illegal activities, on which they live lavish lifestyles.

Hence the passage of this bill is earnestly sought.


ROBERT ACE S. BARBERS

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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 in Congress assembled:

SECTION 1. Title of the Act – This Act shall be known as the “Racketeer-Influenced and Corrupt Organizations (RICO) Act”.

SECTION 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 wrongdoings.

SECTION 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.

SECTION 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” means:
 - (i) any of the following offenses penalized under the Revised Penal Code: murder (Art. 248), homicide (Art. 249), kidnapping (Art. 267, as amended by RA 7659),

slavery (Art. 272), fraudulent insolvency (Art. 314), estafa (Art. 315), destructive arson (Art. 320 to 326-B, as amended by P.D. No. 1613, P.D. 1944 and RA 7659), robbery (Arts. 293 to 303), brigandage (Arts. 306 to 307), theft (Arts. 308 to 310), corruption of minors (Art. 340), white slave trade (Art. 341), or incriminating machinations (Art. 363), punished by the Revised Penal Code;

- (ii) any of the following offenses punishable under Title Four, (Crimes Against Public Interest) Chapter One (Forgeries), Section 1 to 4 and 6, of the Revised Penal Code: counterfeiting the great seal of the Government of the Philippine Islands, forging the signature or stamp of the Chief Executive (Art. 161), using forged signature or counterfeit seal or stamp (Art. 162), making and importing and uttering false coins (Art. 163), mutilation of coins (Art. 164), selling of false or mutilated coins, without connivance (Art. 165), forging of treasury bank notes, or other documents payable to bearer (Art. 166), counterfeiting, importing, and uttering instruments not payable to bearer (Art. 167), illegal possession and use of false treasury or bank notes or other instruments of credit (Art. 178), falsification of public documents (Art. 170), falsification of public officer or employee, or notary or ecclesiastical minister (Art. 171), falsification by private individual and use of falsified documents (Art. 172), falsification of wireless, cable, telegraph and telephone messages, and use of said falsified messages (Art. 173), false medical certificates, false certificates of merits or service, etc. (Art. 174), using false certificates (Art. 175), manufacturing and possession of instruments for falsification (Art. 176); and Chapter three (Frauds), Sections One (Machinations, Monopolies and Combinations) and Two (Frauds in Commerce and Industry), all of the Revised Penal Code; any act which is indictable under the National Internal Revenue Code, as amended, in connection with the collection of taxes and other revenues due to the government and under RA No. 1935, as amended by P.D. No. 84, " The Tariff and Customs Code", such as tax evasion and technical smuggling; any act penalized under Title I, Chapters I, II and III of P.D. No. 442, " The Labor Code of the Philippines, " as amended by P.D. No. 2018 and RA No. 8042 (The Migrant Workers and Overseas Filipino Act of 1995 "), dealing with large-scale illegal recruitment and illegal placement of Filipino workers abroad;

- (iii) " Graft and corrupt practices", such as those acts which are penalized under Title Seven (Crimes Committed by Public Officers), Chapters Two (Malfeasance and Misfeasance in Office), Three (Frauds and Illegal Exactions and Transactions) and Four (Malversation of Public Funds of Property), and of the Revised Penal Code; any act indictable under the provisions of RA No. 3019, The Anti-Graft and Corrupt Practices Act", as

- amended; "Plunder" as defined under RA No. 7080, as amended by RA 7659; and
- (iv) violation of special penal laws against illegal possession of firearms, ammunition or explosives, and gun running (P.D. No. 1866 as amended by RA 8294); gambling and betting, cockfighting, (P.D. No. 1602), and transmission and gambling information; carnapping (RA No. 6539 as amended by RA No. 6539 as amended by RA No. 7659); fencing (P.D. No. 1612); illegal logging (P.D. No. 705); illegal fishing (P.D. No. 704); illegal quarrying (RA 7942); importation, manufacture, sale, administration, delivery, distribution, and transportation, or otherwise dealing in narcotic or other dangerous drugs (RA No. 6425, as amended by P.D. Nos. 44, 1675, 1683, 1708, and B.P. Bldg. 170, and RA No. 7659), falsification/forgery of land titles (Sections 118-119, Act No. 496, as amended); securities (B.P. Bldg. 178, as amended,) bank frauds (RA No. 7653, "The New Central Bank Act", in relation to RA No 7400 amending RA No. 3591, " The Charter of the Philippine Deposit Insurance Corporation"); insurance fraud, murder for insurance, insurance license franchising; sexual and economic exploitation of children (RA No. 6710); economic exploitation of the disabled and the mendicants (P.D. No. 1563); professional squatting (RA Nos. 772 and 7279); unauthorized or illegal wiretapping (RA No. 4200); obstruction of criminal justice and tampering with evidence (P.D. No. 1829); violation of immigration laws by syndicates; electronic and computer software piracy and/or fraud; large scale estafa, black marketing and hoarding, and cartels; and anti-trusts schemes, practices and devices

- 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 a prosecutor so designated by the Secretary of Justice who shall be charged with the duty of enforcing or carrying into effect this Act and who shall also serve as racketeer document custodian.
- 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 by the court of 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.

SECTION 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) Receive any money or property derived directly or indirectly, from a pattern of racketeering activity, or act as a 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.

SECTION 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 (P100,000.00) nor more than One Million Pesos (P1,000,000.00).

SECTION 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 enterprise 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.

SECTION 8. Jurisdiction – Any of the regional trial courts of the place where any elements of 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.

SECTION 9. Sequestration – All known properties of the dependant shall be subject sequestration upon the filing of a criminal complaint against him by the Department of Justice.

SECTION 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 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.

SECTION 11. Preliminary Injunction - Within sixty (60) days after the issuance of a temporary restraining order, the court shall conduct a hearing of notice to all parties 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.

SECTION 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.

SECTION 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 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 of the proceeds of the commission of the crime of racketeering.

SECTION 14. Disposition of Forfeited Property.- Following the seizure of the property, the Secretary of Justice 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 the value to the Philippine government shall expire and shall not revert to the defendant or any person acting on his behalf be eligible to purchase forfeited property at any sale held by the Philippine government.

The proceeds of any sale or other disposition of property shall be deposited in the National Treasury under a special account and shall not be used until the defendant's appeal, if any, has finally been decided. If the defendant's conviction is reversed, the amount shall be returned to the defendant.

SECTION 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.

SECTION 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 in property ordered forfeited may, within thirty (30) days from publication by the Secretary of Justice of the judgement of forfeiture in two (2) National papers of general circulation of the Philippines, petition the court for a hearing to adjudicate the validity of his alleged interest in the property.

If, after hearing, the court determines that the petitioner has established by preponderance of evidence that: a) the petitioner has legal rights, or interest in the property or; b) the petitioner is a bonafide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was acquired through a racketeering act or otherwise subject to forfeiture, the court shall amend the order of forfeiture in accordance with its findings.

SECTION 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 of the defendant equivalent to value of any property described in Section 7, if any of the said properties:

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

SECTION 18. Civil Remedies- a) The Secretary of Justice may initiate civil action in any of the regional trial courts of the place where any element of any racketeering activity constituting a pattern of racketeering activity has been committed which shall have jurisdiction to prevent or restrain unlawful acts

provided under Section 5 hereof, irrespective of where a person resides or is found or where the enterprise for 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 engage in; or
- 3) Ordering the dissolution or reorganization of any enterprise, making provision for the rights of innocent person.

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

- b) Any person injured in his person, business or property or his/hers , by reason of prohibited activities under Section 5 hereof, may sue therefore in the appropriate Regional Trial Court as provided in the proceeding paragraph and may be entitled to recover threefold the damages he sustains and the cause of the suit, including reasonable attorney's fees against all person found guilty under this Act.

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

SECTION 20. Subpoena Duces Tecum

- a) Whenever the Secretary of Justice 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 the subpoena Duces Tecum thereon, requiring such person or enterprise to produce such material for examination.
- b) Any person who has been duly served with subpoena duces tecum shall make available a required materials 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 reproduction of the original, which certified copies shall be admissible in court as originals.
- c) While in the possession of the custodian, no material so reproduce shall be available for examination, without the consent of the person who produce such material, any individual order done by the Secretary of Justice.

SECTION 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 prescribed.

SECTION 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.

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

SECTION 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.

SECTION 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,