

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
Quezon City



THIRTEENTH CONGRESS  
First Regular Session

House Bill No. 3948

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INTRODUCED BY HON. RAUL T. GONZALEZ, JR.

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AN ACT  
PROVIDING FOR THE PROTECTION OF  
WHISTLEBLOWERS IN GOVERNMENT AND  
APPROPRIATING FUNDS THEREFOR

EXPLANATORY NOTE

Whistleblowers, as persons who through their work become aware of and inform on illegal or corrupt activities that damage the wider public interest, are among the most principled, idealistic and civic-spirited people. Despite not being directly or personally affected by the danger or illegality that they expose, whistleblowers risk ruined careers and reputations, ostracism by peers, and harassment from enemies, if they disclose information about activities that damage the common good. Ramon Magsaysay awardee Dr. Jiang Yanyong, who disobeyed his government's gag order and forced China to publicly reveal and finally confront the spread of the SARS virus, is a good example of how whistleblowers safeguard the common good by alerting the public to an imminent danger.

By exposing wrongdoing in government, whistleblowers serve the public interest and contribute to the overall reduction of graft and corruption, grave abuse of discretion, and gross mismanagement of government resources. It is therefore to the State's interest to protect whistleblowers.

Fear of reprisal and the ingrained *pakikisama* system serve as major deterrents in institutionalizing a positive whistleblowing culture in the Philippine civil service. Compounding this problem is the State's ambiguous policy towards public employees who disclose irregularities in government. Whistleblower protection is a policy that all government leaders support in public but few in power actually tolerate.

In order to embolden would-be whistleblowers to come out with what they know, the State needs to declare a clear-cut policy towards them. By enacting measures that will

protect whistleblowers from reprisal and harassment, the Whistleblower Protection Act of the Philippines seeks to create a positive whistleblowing culture in government wherein inappropriate behavior is challenged at all levels in order to strengthen accountability and efficiency in the Philippine civil service.

Premises considered, the immediate approval of this Bill is respectfully sought.

  
ATTY. RAUL T. GONZALEZ, JR.

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**APPROPRIATING FUNDS THEREFOR**

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

**SECTION 1. *Short Title.*** – This Act shall be known as “The Whistleblower Protection Act of the Philippines.”

**SECTION 2. *Declaration of Policy.*** Employees who make disclosures of:

- a.) illegal acts
- b.) situations that pose a serious and imminent threat to the public

serve the common good by assisting in the elimination of graft and corruption, grave abuse of discretion, and gross waste of government resources. It is hereby declared a policy of the State to protect whistleblowers from all forms of harassment, retaliatory action and other prohibited personnel practices.

**SECTION 3. *Purpose.*** The purpose of this Act is to strengthen the protection of government employees who dare to become whistleblowers, to prevent reprisals and harassment against them, and to help eliminate wrongdoing within the government by:

- a. mandating that whistleblowers should not suffer adverse consequences as a result of their disclosure of prohibited practices;

- b. establishing that the Office of the Ombudsman and the Civil Service Commission shall act in the interests of whistleblowers who seek assistance from the said agencies;
- c. ensuring that, while prosecuting and disciplining those who commit irregularities in government, the safety and security of whistleblowers remain a paramount consideration of the State;
- d. granting whistleblowers in government certain rewards, compensatory claims, merits, and preferential treatment in requests for transfers.

#### SECTION 4. *Definition of Terms.*

- a. "Whistleblower" refers to a government employee, former employee or an applicant who, upon witnessing behavior and/or acquiring knowledge of transactions and/or activities that are contrary to the public interest and/or safety, decides to make a disclosure to a public body about the aforementioned behavior, transactions or activities or to speak out publicly about the same. A whistleblower is different from a complainant in the sense that whistleblowers are not directly affected by the behaviors, transactions or activities they expose while complainants have a personal stake in the matter about which he or she complains.
- b. "Employer" means any individual, partnership, association, corporation, or any person or group of persons acting directly or indirectly on behalf of any branch or agency of the National Government, or of a local government unit, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof. Employer shall include the superiors of the whistleblower and the agents, contractors or subcontractors of the employer.
- c. "Public body" means:
  - (1) the Congress of the Philippines, or any member thereof;
  - (2) the Supreme Court of the Philippines, or a lower court, or any member thereof;
  - (3) any national or local regulatory or administrative agency or authority, or instrumentality thereof;
  - (4) any law enforcement agency, prosecutorial office, or police or peace officer;

(5) any division, board, bureau, office, committee or commission of any of the public bodies described in the above paragraphs of this subsection;

(6) any print, broadcast or internet media organization

- d. "Supervisor" means any individual in an organization who has the authority to direct and control the work performance of the affected whistleblower, or who has authority to take corrective action regarding the violation of the law, rule or regulation of which the whistleblower complains.
- e. "Retaliatory action" means the discharge, suspension, demotion, involuntary transfer or reassignment, violation of the terms and conditions of a settlement agreement, harassment, death threat, blacklisting or the refusal to hire an employee, the revocation of a security clearance or other determination that an employee is not "fit for duty," or other adverse employment action taken against a whistleblower in the terms and conditions of employment, or other actions which interfere with the whistleblower's ability to perform his or her work.
- f. "Improper act" means any practice, procedure, action or failure to act which violates any law or any rule, regulation or declaratory ruling adopted pursuant to law, or any professional code of ethics.

**SECTION 5. *Duty of Public Officials and Employees To Disclose Improper Acts.*** – All public servants have a duty to report and to disclose to a public body any illegality that they witness in the performance of their work. Likewise, a public employee has a right to refuse to obey an order that is clearly illegal or downright contrary to public interest and/or public safety.

**SECTION 6. *Protection against Retaliatory Actions and Prohibited Personnel Practices*** - An employer may not take any retaliatory action against a whistleblower who does any of the following:

- a. Discloses, expresses an intention to disclose, or is about to disclose to a supervisor or to a public body, an activity, policy or practice of the whistleblower's employer or another employer, which the whistleblower reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, a violation of environmental or public health and safety requirements, or, in the case of a whistleblower who is a licensed or certified health care professional, constitutes improper quality of patient care;
- b. Provides information to, or testifies before, any public body;
- c. Expresses objections to, opposes or refuses to participate in any activity, policy or practice that is:

(1) in clear violation of a law, or a rule or regulation promulgated pursuant to law; or

(2) fraudulent or criminal.

#### SECTION 7. *Remedies Available to Whistleblowers*

a. Upon violation of any of the provisions of this Act, an aggrieved whistleblower, whether a current employee or former employee may, within one year, file a claim with the Civil Service Commission. A final order of the Civil Service Commission can be subject to judicial review and enforcement.

b. A violation of this statute has occurred only if the whistleblower demonstrates, by a preponderance of the evidence, that any behavior described in section 6, paragraphs a, b, c of this Act was a contributing factor in subsequent unfavorable action that constitutes retaliatory action against the whistleblower. However, relief may not be ordered if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable action against the same whistleblower in the absence of such behavior.

c. All remedies available under the Civil Service Laws and the Witness Protection Program of the Department of Justice shall be available to whistleblowers. Whistleblowers shall be entitled to the following relief:

(1) an injunction to restrain continued violation of this Act;

(2) the reinstatement of the whistleblower to the same position held before the retaliatory action;

(3) the reinstatement of full fringe benefits and seniority rights;

(4) the compensation for lost wages, benefits and other forms of remuneration;

(5) the payment by the employer of all reasonable costs, expert witness fees, and attorney's fees;

(6) compensatory damages;

(7) special damages.

#### SECTION 8. *Qui Tam Provision*

a. Within 180 days after this Act is enacted into law, every government agency shall publish regulations setting forth procedures in which whistleblowers may

apply for a reward based on a reasonable percentage of any compensation, savings or recovery including, but not limited to, civil or criminal penalties or monies obtained in settlement agreements obtained by the Government of the Philippines as a result of the disclosure of the whistleblower.

- b. Each agency shall provide within its rules a recovery provision in which the whistleblower obtains a reward in an amount set forth by the concerned agency. The rules shall be subject to public comment.
- c. A final decision by an agency whether or not to provide a reward to a particular whistleblower, and the amount of such reward, shall be subject to judicial review. An agency shall issue a final decision on the amount within one year after the whistleblower makes a claim for said reward.

#### SECTION 9. *Powers and Functions of the Office of the Ombudsman.*

- a. The Office of the Ombudsman is hereby mandated to safeguard the rights of whistleblowers and to protect them from acts of reprisal, retaliatory action, harassment and other prohibited personnel practices. The Office of the Ombudsman is mandated to:
  - (1) receive and investigate allegations of reprisal, retaliatory action, harassment and prohibited personnel practices, and, where appropriate bring petitions for stays, and petitions for corrective action, and file a complaint or make recommendations for disciplinary action;
  - (2) receive, review, and, where appropriate, forward to the Office of the President, Department of Justice or the appropriate department head, disclosures of violations of any law, rule, or regulation, or gross mismanagement, gross waste of funds, grave abuse of authority, or a substantial and specific danger to public health or safety.
- b. Whenever the Office of the Ombudsman receives information from a whistleblower, the said Office shall review such information and, within 15 days after receiving the information, determine whether there is substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, grave abuse of authority, or substantial and specific danger to public health and safety.
- c. Upon request of the whistleblower, and upon proper validation and recommendation of the Office of the Ombudsman, the whistleblower may be entitled to a security detail and protection under the Witness Protection Program of the Department of Justice.

SECTION 10. *Confidentiality of Whistleblower Identity* - The Office of the Ombudsman may not reveal the identity of any individual who makes a disclosure without such individual's consent unless the Office of the Ombudsman determines that the disclosure of the individual's identity is necessary because of an imminent danger to national security, public health or safety or imminent violation of any criminal law.

SECTION 11. *Preference in Transfers for Whistleblowers* – The State shall grant preferential treatment to any request for transfer of whistleblowers.

- a. Any person who meets the conditions for whistleblower protection set forth by this Act, and upon prior certification by the Office of the Ombudsman that such person is a whistleblower, may voluntarily apply for a transfer to another position within the agency where he is currently employed or to another agency of government.
- b. The head of agency concerned shall prioritize and give preference to applications for transfer of whistleblowers provided that the position being applied for transfer is of the same rank as the position currently held by the whistleblower and if:
  - (1) the whistleblower is qualified for such position;
  - (2) the whistleblower is eligible for appointment to such position
- c. If the whistleblower applies for a transfer and the concerned official rejects such application, the official shall provide the whistleblower with a written notification of the reasons for the rejection within 30 days after receiving such application.
- d. A whistleblower whose application for transfer is rejected may request the head of such agency to review the rejection. Such request for review shall be submitted to the head of the agency within 30 days after the whistleblower receives notification. The head of the agency shall complete the review within 30 days after receiving a request for review, and shall provide a written statement of findings to the whistleblower, the Office of the Ombudsman, and the Civil Service Commission.

SECTION 12. *Annual Report* – The Office of the Ombudsman shall submit an annual report to Congress regarding its activities and accomplishments in the implementation of this Act. The said report shall also include whatever recommendations for legislation or any other action by Congress that the Office of the Ombudsman may consider appropriate.

SECTION 13. *Posting* – Government agencies shall conspicuously display posters and distribute brochures that inform government employees of the protections provided to whistleblowers under this Act. Within 180 days of the enactment of this law, the Office of the Ombudsman, in coordination with the Civil Service Commission, shall publish rules and regulations implementing this law.

SECTION 14. *Appropriations*. – The initial amount of One Hundred Million Pesos (P100,000,000.00) is hereby appropriated for the effective implementation of this Act. Thereafter, such amount as may be necessary for the continued implementation of this Act shall be included in the General Appropriations Act.

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

Approved,