

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Thirteenth Congress
First Regular Session

House Bill No. 4448



Introduced by Representative **TEODORO A. CASIÑO**

EXPLANATORY NOTE

This bill seeks to support the efforts of the government and the populace to rid the former of corruption by setting up a system of rewards and protection for whistleblowers and their families. Such measure is in consonance and furtherance of the constitutional mandate that a public office is a public trust and the maintenance of honesty and integrity in the public service of the government.

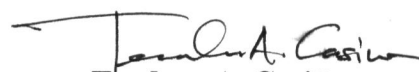
The lack of a legal framework for rewards, protection and security to whistleblowers has resulted in their minimal protection and their families from probable retaliation, trial by publicity, outright miscarriage of justice or summary execution. Moreover, a strong pressure by some sectors of society from an apparent stigma that haunts a whistleblower more often than not outweighs any motivation to speak up.

This being the case, corrupt government officials and employees are emboldened to continue their nefarious activities as they feel slight fear of exposure or being caught and brought to justice. Meanwhile, potential whistleblowers are discouraged, demoralized and dissuaded because they anticipate nothing except hardship if ever they evaluate the effects of any act of disclosure. Such circumstances aggravate the worsening condition of graft and corruption in the country.

Thus, a mechanism to secure the person of a whistleblower and counter the stigma of ostracism must be set up so that any potential whistleblower or informant on graft and corrupt activities will not hesitate to come out in the open.

This bill will set up such a mechanism specifically by (1) establishing a monetary rewards system for the benefit of whistleblowers, (2) protecting informants against reprisals and against civil or criminal liability when they make public interest disclosures, (3) securing the safety of whistleblowers and their families, (4) ensuring that public disclosures are made to the proper public authorities, (5) ensuring that inappropriate publication of unsubstantiated disclosures does not happen, and (6) ensuring that proper records on disclosures are kept and safeguarded.

IN VIEW OF THE FOREGOING, immediate approval thereof is highly recommended.


Teodoro A. Casiño

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**“AN ACT PROVIDING FOR PROTECTION, SECURITY
AND BENEFITS OF WHISTLEBLOWERS AND FOR
OTHER PURPOSES.”**

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

Section 1. ***Name of the Act.*** – This Act shall be known as the “***Whistleblower Act of 2005***”.

Sec. 2. ***Declaration of Policy.*** - Public Office is a public trust. The policy of the State is to promote and ensure full accountability in the conduct of its officers and employees, and exact full retribution from those who shall engage in graft and corrupt practices. Towards this end, the State shall:

- (a) maintain honest and high standards of integrity in the public service;
- (b) safeguard the national interest through the prosecution of corrupt and erring public officials and employees; and
- (c) encourage and facilitate the disclosure of corrupt conduct and practices in public service by providing benefits and protection to whistleblowers.

Nothing in this Act shall diminish or restrict the entitlement, receipt or enjoyment by a whistleblower or an informant of more or higher benefits provided in existing laws.

Sec. 3. ***Definition of Terms.*** – As used in this Act, the following terms shall mean:

- (a) “***Acts constituting graft and corruption***”, any conduct, act or omission of public officers and/or employees solely, or in cooperation or conspiracy with private persons which are covered by, or constitute as violations of:
 - 1.) Republic Act No. 3019;
 - 2.) Republic Act No. 6713;
 - 3.) Republic Act No. 7078;
 - 4.) Presidential Decree No. 46;
 - 5.) Titles II and VII of Book Two of the Revised Penal Code.
- (b) “***Employee***”, any person who is made to suffer work by, or who renders service for, an employer. The term shall include public officers and employees as defined in this Act as well as any person considered an “employee” under the Labor Code.

- (c) “**Employer**”, any individual, partnership, association, corporation or entity, including the government, or any person or group of persons who shall directly or indirectly for or on behalf of said individual, partnership, association, corporation or entity, hires an employee as defined in this Act.
- (d) “**Government**” includes the National Government, and any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations and their subsidiaries, and the Local Government Units.
- (e) “**Whistleblower**”, an informant or any person who has privileged or personal knowledge or access to data, events or information, of any conduct constituting graft and corruption as defined under this Act by public officer/s and employee/s, and shall deliberately disclose of individual, collective or organized conduct constituting graft and corruption as provided in this Act.
- (f) “**Public officer**” any person holding any public office in the Government of the Republic of the Philippines by virtue of an appointment, election or contract.
- (g) “**Retaliatory action**”, any negative or obstructive responses, reactions or reprisals to a disclosure made under this Act aimed at, pertaining to, or against a whistleblower or an informant or any of the members of his/her family and relatives up to the fourth civil degree of consanguinity or affinity, including but not limited to criminal, civil or administrative proceedings commenced or pursued against said whistleblower or any of the members of his family or relatives up to the second degree of consanguinity or affinity as well as retaliatory action in the workplace.
- (h) “**Retaliatory action in workplace**”, any discriminatory conduct or policies which affect promotion or job assignment including undue negative performance appraisal, close monitoring by supervisors, unwarranted criticisms or avoidance by co-employees, blacklisting from other job opportunities or prejudicial transfers by reason of a disclosure made under this Act. And
- (i) “**Qualified Whistleblower**”, an informant or any person qualified and admitted into the Whistleblower’s Program of the Office of the Ombudsman in accordance with this Act and the Rules and Regulations.

Sec. 4. **Coverage.** – Conduct constituting graft and corruption, whether commenced or consummated before the effectivity of this Act, shall mean any conduct, acts or omissions of public officers and/or employees solely, or in cooperation or conspiracy with private persons, which are covered by, or amount to violations of:

- 1.) Presidential Decree No. 46 otherwise known as “MAKING IT PUNISHABLE FOR PUBLIC OFFICIALS AND FOR PRIVATE PERSONS TO GIVE GIFTS ON ANY OCCASION INCLUDING CHRISTMAS”;
- 2.) Republic Act No. 3019 otherwise known as “ANTI-GRAFT AND CORRUPT PRACTICES ACT”;
- 3.) Republic Act No. 6713 otherwise known as “AN ACT ESTABLISHING A CODE OF ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE,

ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES”;

- 4.) Republic Act No. 7078 otherwise known as the “ANTI-PLUNDER LAW;
- 5.) Titles II and VII of Book Two of the Revised Penal Code on “CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE and CRIMES COMMITTED BY PUBLIC OFFICERS”.

Sec. 5. ***Admission to the Program.*** – Whistleblowers or informants whether from the public or private sector, shall be entitled to the benefits under this Act, provided, that all the following requisites concur:

- (a) The disclosure is voluntary, in writing and under oath;
- (b) The disclosure relates to conduct constituting graft and corruption under this Act;
- (c) The disclosure is not yet subject of a complaint filed with the Office of the Ombudsman or investigated by any other investigating agency, unless, in the opinion of the Ombudsman, such disclosure is necessary for an effective and successful investigation or prosecution, or essential for the acquisition of material evidence not yet in its possession;
- (d) The information given by the whistleblower can be corroborated; and
- (e) The information disclosed leads to a successful gathering of evidence and/or conduct of investigation sufficient to sustain a finding of probable cause for the filing of a criminal complaint or information before a court of competent jurisdiction.

Sec. 6. ***Necessity of Testimony.*** - The testimony of a whistleblower in court shall not be necessary for the entitlement or enjoyment of the benefits of this Act. In the event that the a whistleblower’s testimony is required as found by the Office of the Ombudsman to be necessary and indispensable for a successful prosecution of a case, he shall be entitled to the additional benefits and protection under R. A. No. 6891 otherwise known as the Witness Protection Program.

Sec. 7. ***Memorandum of Agreement with the Person to be Protected.*** – Before a person is provided protection as a whistleblower or informant for the State, he shall first execute a *Memorandum of Agreement* which shall set forth his/her responsibilities including the following:

- (a) To provide information to and testify before all appropriate law enforcement officials concerning any appropriate proceeding in connection with or arising from the activities involved in the offense subject matter thereof;
- (b) To avoid a commission of a crime;
- (c) To take all necessary precautions to avoid detection by others of the facts concerning the protection provided him under this Act;
- (d) To cooperate with respect to all reasonable requests of officers and employees of the government who are providing him/her protection under this Act; and
- (e) To regularly inform the appropriate program official of his current activities and address.

Sec. 8. ***Breach of the Memorandum of Agreement.*** – Substantial breach of the *Memorandum of Agreement* shall be a ground for the termination of the protection provided under this Act; *Provided*, however, that before terminating the same, the Ombudsman shall send notice to a whistleblower concerned, stating therein the reason for such termination. Reasonable time shall be afforded a whistleblower or informant to take appropriate and necessary measures for his/her protection and security in view thereof.

Sec. 9. ***Protection against other Actions.*** – A whistleblower or any person who has made a disclosure under this Act shall not be subject to any liability whether administrative, civil, criminal or other proceedings for making such a disclosure or acts in relation thereto. No action, claim or demand may be taken against a whistleblower for making such disclosure, nor any evidence presented shall be used against him in court.

This protection shall also operate as immunity in favor of a whistleblower or informant against any action or proceeding taken against him/her by any person subject of a disclosure, by reason thereof and acts in relation to subject of disclosure.

Sec. 10. ***Defense of Privileged Communication.*** – A whistleblower or any person who has made a disclosure under this Act shall have, as defense in any other inquiry or proceeding, the absolute privilege with respect to the subject matter of his/her disclosure or information given to the proper authorities.

Sec. 11. ***Confidentiality.*** – Except insofar as allowed by this Act, during and after the disclosure, and throughout and after any proceeding taken thereafter, a whistleblower or an informant is entitled to absolute confidentiality as to:

- (a) His identity;
- (b) The subject matter of his disclosure; and
- (c) The person to whom such disclosure was made.

There shall be no such confidentiality in his/her identity if a whistleblower or an informant makes a public disclosure of a conduct constituting graft and corruption unless, notwithstanding such public disclosure, he has taken means and measures obviously intended to preserve his anonymity.

Sec. 12. ***No Breach of Duty of Confidentiality.*** – An informant who has made a disclosure under this Act on whom a provision of law, regulation, issuance, practice or other convention, imposes upon him/her a duty to maintain confidentiality with respect to any information disclosed, is considered not to have committed a breach thereof.

Sec. 13. ***Confidential Information.*** – No person to whom a disclosure has been made or referred shall divulge any information that may identify or tend to identify a whistleblower or informant or reveal the subject matter of such disclosure, except only as to the following circumstances:

- (a) The whistleblower consents in writing prior to a disclosure of an information;
- (b) The disclosure is indispensable and essential as determined by the office of the Ombudsman, having regard to the necessary proceedings to be taken after the disclosure; or
- (c) The disclosure or referral is made pursuant to an obligation under this Act.

The prohibition on disclosure under this Section shall apply to any person who has become privy to any confidential information, whether officially or by other means.

Sec. 14. ***Protection against Disciplinary Action or Reprisals.*** – A whistleblower or a person who has made or is believed or suspected to have made a disclosure under this Act is not liable to disciplinary action for making said disclosure.

Prohibited acts under this section include retaliatory action in a workplace or prejudicial conduct towards whistleblower, such as: discriminatory actions behind policies and procedures, reprimand, punitive transfers, unwarranted referral to a psychiatrist or counselor, and undue poor performance reviews. Other prejudicial conducts include obstruction of an investigation, withdrawal of essential resources, undue reports and the attachment of unfair personnel file notes.

To this end, any employer who shall discourage and impose sanctions or reprisals based on workplaces interaction, which shall include workplace ostracism, questions and attacks on motives, accusations of disloyalty and dysfunction, public humiliation, and the denial of work or promotion, or who encourages, causes or does retaliatory action or

reprisal against a whistleblower or anyone believed or suspected to be one shall be liable for an offense defined under this Act.

Any employee who refuses to follow orders of employers that would cause them to violate any provision of this Act shall likewise be protected from reprisals and retaliatory action in the workplace.

For purposes of this protection, an applicant for employment shall be deemed an employee and entitled to such protection.

Provided however, that an employer of a whistleblower shall be notified through a certification issued by the Office of the Ombudsman, within a period of thirty (30) days from the date when the whistleblower last reported for work. Provided further that an employer shall have the option to remove said whistleblower from employment after securing a clearance from the Office of the Ombudsman and the Department of Labor and Employment in case of a prolonged absence due to transfer or permanent relocation under this Act or R. A. No. 6891.

Sec. 15. *Security and Protection of a Whistleblower.* – When determined to be necessary and appropriate by the Office of the Ombudsman, a whistleblower, even if the disclosure is made in confidence, shall be entitled to personal security. Should, at anytime, the identity of the informant be revealed, or his anonymity compromised, the whistleblower shall, in addition to the other benefits under this Act, and when warranted, be entitled to the benefits of R. A. No. 6891.

Sec. 16. *Confidentiality of the Proceedings.* – All proceedings involving application and/or enjoyment of the benefits under this Act, under the Office of the Ombudsman, including any action taken thereon, shall be confidential in nature. No information or documents given or submitted in support thereof shall be released except upon written order of the Office of the Ombudsman, and provided such disclosure shall not endanger the life of a qualified whistleblower.

Sec. 17. *Financial Rewards for Whistleblowers.* – The whistleblower shall be entitled to a corresponding monetary reward in accordance with the provisions of this Act and the implementing Rules and Regulations.

The informant shall receive an amount in accordance with the following schedule:

SALARY GRADE OF MOST SENIOR RESPONDENT	FINANCIAL REWARD OF QUALIFIED WHISTLEBLOWER
33	5,000,000
32	4,000,000
31	3,000,000
30	2,500,000
29	2,000,000
28	1,500,000
27	1,000,000
26	900,000
24-25	800,000
22-23	700,000
20-21	600,000
18-19	500,000
16-17	400,000
14-15	300,000
12-13	200,000
10-11	100,000
5-9	75,000
1-4	50,000

Upon being qualified as a whistleblower and admitted to the program by the Office of the Ombudsman, fifty percent (50%) of the reward shall be given to the qualified whistleblower. The remaining fifty percent (50%) shall be given prior to the filing of a case in a proper court.

For cases susceptible to pecuniary estimation, such as plunder, forfeiture of ill-gotten wealth, bribery, malversation and damage or injury to government, the whistleblower shall be entitled to an additional reward of ten percent (10%) of the amount recovered by final judgment.

During the pendency of the case, however, a whistleblower shall be advanced the amount equivalent to not less than twenty five percent (25%) of the additional reward of the total award due consistent with the nature of the case and the amount involved and deemed recoverable. This shall be given in accordance with the Rules and Regulations implementing this Act.

Sec. 18. **Abstract.** – All government agencies, offices, bureaus and local government units, including government-owned or controlled corporations, whether or not with original charters, shall conspicuously display an abstract of this Act and the rights and protections of whistleblowers, including the obligations of employers under this Act. Such abstract shall be provided in the Rules and Regulations.

All government agencies, offices, bureaus and local government units, including government owned and controlled corporations, whether or not with original charters, are likewise required to put in place internal procedures for dealing with whistleblowers or informants, consistent with the provisions of this Act and the Rules and Regulations. Said internal procedure shall be widely disseminated to all the employees.

Sec. 19. **Credibility of an Informant.** – In all cases, the fact of the entitlement of the qualified whistleblower or informant to the protection and benefits provided in this Act shall not be admissible in evidence to diminish or affect his credibility.

Sec. 20. **Penalty for Retaliatory Acts against a Whistleblower.** – Any person who commits any of the retaliatory acts as defined in this Act against a qualified whistleblower or informant and/or hinders, delays, prevents or dissuades said whistleblower from:

- (a) Attending, assisting or testifying before any investigating agency or quasi-judicial body or judicial;
- (b) Reporting to a law enforcement officer or judge the commission or possible commission of an offense, or a violation of conditions of probation, parole, or release pending judicial proceedings;
- (c) Seeking the arrest of another person in connection with the offense;
- (d) Causing a criminal prosecution, or a proceeding for the revocation of a parole or probation; and
- (e) Performing and enjoying the rights and benefits under this Act or attempt to do so.

Shall be fined not more than One Hundred Thousand Pesos (Php 100,000.00) or suffer imprisonment of not less than six (6) months but not more than six (6) years or both at the discretion of a court, and shall also suffer the penalty of perpetual disqualification from holding public office in case of a public officer or employee.

Sec. 21. **Violation of Confidentiality.** – Any person who violates the protection of confidentiality of a protected disclosure under Sections 10, 11, 12 and 15 of this Act, shall suffer the penalty of not more than six (6) years but not less than six (6) months with an accessory penalty of temporary absolute disqualification for public office in case of a public officer or employee, and shall be civilly liable to indemnify the informant in such amount of damages as may be awarded and deemed reasonable by a competent court.

Sec. 22. ***Retaliatory Action in the Workplace.*** – Any person who shall commit any retaliatory act in a workplace as defined in this Act, against an employee who is a whistleblower or an informant or believed or suspected to be one, shall be guilty of an offense and shall suffer the penalty of not more than six (6) months imprisonment with the accessory penalty of suspension of the right to hold office in case of a public officer or employee, and shall be civilly liable to indemnify a whistleblower of damages as may be awarded by a competent court.

Toward this end, an aggrieved whistleblower shall be entitled to the provisional remedy of injunction against any retaliatory action in the workplace, prejudicial conduct or discriminatory treatment by reason of whistleblower's disclosure.

The proceedings herein shall be independent of any action that an aggrieved person may take before the Civil Service Commission or the Department of Labor and Employment for unfair or discriminatory practices, back wages, or other labor disputes, or before other quasi-judicial agencies that may or may not have arisen from a disclosure or believed or suspected disclosure.

Sec. 23. ***Discriminatory Hiring.*** – Any person, firm, corporation, office or employer who shall deny a qualified applicant for employment, or who shall reject his application for employment due to knowledge, belief or suspicion that an applicant is a whistleblower or informant for the State, shall be guilty of an offense and shall suffer the penalty of not more than Six (6) months imprisonment with the accessory penalty of suspension of the right to hold public office in case of a public officer or employee, and shall be civilly liable to indemnify the informant of damages as may be awarded by a competent court.

Sec. 24. ***Failure of an Employer to Post Abstract.*** – The failure to post an *Abstract* required under Section 17 of this Act shall constitute an offense and shall be penalized with a fine in the amount of One Hundred Thousand Pesos (Php 100,000.00) for the first offense. The amount shall be doubled for every succeeding offense, and shall suffer an imprisonment of not more than six (6) months at the discretion of the court with the accessory penalty of suspension of the right to hold public office in case of a public officer or employee. For this purpose, the president, manager, or head of office, bureau or agency shall be held responsible.

Sec. 25. ***Failure to Act or Report to the Office of the Ombudsman.*** – Any person under obligation to report a disclosure under this Act to the Office of the Ombudsman, who fails to do so within a period of two (2) months, or who fails to act thereon or cause an investigation thereof, shall be guilty of an offense and shall suffer the penalty of not more than one (1) month imprisonment, and/or a fine amounting of not more than Fifty Thousand Pesos (Php 50,000.00).

Sec. 26. ***False and Misleading Disclosures.*** – Any person who deliberately and voluntarily gives false or misleading information in connection with conduct constituting graft and corruption under this Act shall, in addition to penalties under other laws, be guilty of an offense and shall suffer the penalty of imprisonment of not more than twelve (12) years and shall also suffer the penalty of perpetual absolute disqualification from holding public office in case of public officer or employee, in addition to other criminal and civil liability he may incur under existing laws.

Sec. 27. ***Powers and Functions of the Ombudsman.*** – In addition to its powers and functions under existing laws, the Office of the Ombudsman shall have the following powers and functions:

- (a) Supervise, monitor and coordinate all efforts relative to the implementation and enforcement of the provisions of this Act;
- (b) Investigate all disclosures made under this Act and prosecute the same when warranted;

- (c) Evaluate the qualification of whistleblowers or informants for coverage within this Act, and make the appropriate decision on their entitlement to the benefits extended herein;
- (d) Undertake, in coordination and cooperation with the private and public sectors, an information campaign to educate the public on the provisions and benefits of this Act;
- (e) Develop plans and implement programs to further encourage whistleblowers or informants on graft and corrupt activities with a view to effective deterrence and/or prosecution;
- (f) Control and administer, consistent with the provisions and purpose of this Act, the protection and benefits of whistleblowers in connection with the cases within the coverage of Section 4 of this Act;
- (g) Call upon, or deputize any department, bureau, office or any other government agency or public official to assist in the effective implementation and enforcement of this Act; and
- (h) Grant immunity in accordance with the provisions of this Act and its implementing Rules and regulation.

Sec. 28. **Implementing Rules and Regulations.** – The Office of the Ombudsman shall promulgate such Rules and Regulations as maybe necessary to implement the intent and purposes of this Act. Said Rules and Regulations shall be published in two (2) newspapers of general circulation.

Sec. 29. **Repealing Clause.** – All laws, decrees, executive issuances, rules and regulations inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 30. **Funding.** – The amount of One Hundred million pesos (Php100,000,000.00) is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated to carry into effect the purpose of this Act.

Other funding schemes or sources, subject to the limitation, shall be allowed in furtherance hereof.

Sec. 31. **Separability Clause.** – The declaration of unconstitutionality or invalidity of any provision of this Act shall not affect the other provision hereof.

Sec. 32. **Effectivity Date.** – This Act shall take effect after fifteen (15) days following its publication in two (2) newspapers of general circulation.

Approved: _____.