

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

15TH CONGRESS
First Regular Session

HOUSE BILL NO. 2922

Introduced by **REP. SALVADOR H. ESCUDERO III**

EXPLANATORY NOTE

Section 27, article II of the 1987 Constitution provides that as a State Policy, "The State shall maintain honesty and integrity in public service and take positive and effective measure against graft and corruption."

Furthermore, Section 1, Article XI of the 1987 Constitution provides that, "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

It is the intent of this bill to encourage citizens to stand up and report alleged violations of law, improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer or employee, and private entity. Furthermore by protecting citizens who disclose wrongdoing from retaliatory acts, we hereby strengthen accountability and reduce corruption in the public and private sectors.

Hence, in the best interest of the Republic, the immediate approval of this bill is urgently sought.


SALVADOR H. ESCUDERO III
Representative
1st District, Sorsogon

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AN ACT
PROVIDING FOR PROTECTION, SECURITY AND BENEFITS OF
WHISTLEBLOWERS

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

SECTION 1. *Short Title.* - This Act shall be known as the “Whistleblower Protection Act.”

SEC. 2. *Declaration of Policy.* - Public Office is a public trust. It is the policy of the State 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 corruption practices. Toward 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 the public service by providing benefits provided in existing laws.

SEC. 3. *Definitions.* - As used in this Act:

(A) “Employer” shall mean 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, employs an employee as defined in this Act.

(B) “Employee” shall mean 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) “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.

(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) "Retaliatory action" shall refer to any negative or obstructive responses, reactions or reprisals to the 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. Said actions shall include 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.

(F) "Retaliatory action in workplace" shall mean 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.

(G) "Acts constituting graft and corruption" shall mean any conduct, act or omission of public officers and employees solely, or in cooperation, conspiracy with or with the assistance of, regardless of the manner, private persons which is covered by, or constitute as a violation of, among others:

(1) Presidential Decree No. 46 otherwise known as "Making it punishable for Public Officials and Employees to receive, 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 Conduct and Ethical Standards for Public Officials and Employees;"

(4) Republic Act No. 7080 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; and

(6) All other laws which penalize or sanction any act or omission of a public officer or employee.

(H) "Whistleblower" shall refer to an informant or any person who has personal knowledge or access to data of any information or event involving acts constituting graft and corruption and chooses to voluntarily disclose the same.

(I) "Qualified Whistleblower" shall mean a whistleblower or informant qualified and admitted into the Whistleblower's Program of the Office of the Ombudsman in accordance with this Act and its implementing rules and regulations.

SEC. 4. *Coverage.* – Notwithstanding the provisions of law on prescription of crimes, this Act shall cover all acts constituting graft and corruption irrespective of the time of commission.

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 acts constituting graft and corruption; and
- (c) The information to be disclosed is admissible in evidence and that it is sufficient to sustain a finding of probable cause.

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 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. *Credibility of a Whistleblower/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. 8. *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 or agencies concerning any appropriate proceeding in connection with or arising from the activities involved in the subject offense/s;
- (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. 9. *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 or informant concerned, stating therein the reason for such termination. Reasonable time shall be afforded a whistleblower or informant to take appropriate and necessary for his/her protection and security in view thereof.

SEC. 10. *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 acts constituting graft and corruption unless, notwithstanding such public disclosure, he has taken means and measures obviously intended to preserve his anonymity.

SEC. 11. *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. 12. *Violation of Confidentiality.* – Any person **OR INDIVIDUAL** 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 one (1) 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 whistleblower or informant in such amount of damages as may be awarded and deemed reasonable by the court.

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 a believed or suspected disclosure.

SEC. 13. *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. 14. *Defense of Privileged Communication.* – A whistleblower, informant 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. 15. *False and Misleading Disclosures.* – Any person **OR INDIVIDUAL** who deliberately and voluntarily gives false or misleading information in connection with acts constituting graft and corruption under this Act shall, in addition to the penalties provided in other laws, be guilty of an offense and shall suffer the penalty of imprisonment of not more than two (2) years and shall also suffer the penalty of perpetual absolute disqualification from holding public office, in case of a public officer or employee, without prejudice to other criminal and civil liability such person or individual may incur under existing laws.

SEC. 16. *Protection against Disciplinary Action or Reprisals.* – A whistleblower, informant, 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 a whistleblower or informant, 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 has discourage and impose sanctions or reprisals based on workplace interactions, 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, informant, 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 or informant 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 or informant last reported for work. Provided further that an employer shall have the option to remove said whistleblower or informant 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. 17. *Protection against other Actions.* – A whistleblower, informant 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 or informant for making such disclosure, nor any evidence presented shall be used against him/her 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. 18. *Discriminatory Hiring.* – Any individual, firm, corporation, office or employer who shall deny a qualified applicant for employment, or who shall reject his application for employment solely on the ground that the applicant is or will be a whistleblower or informant, 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 whistleblower or informant of damages, if there be any, and as may be awarded by the court.

SEC. 19. *Retaliatory Action in the Workplace.* – Any person or individual who shall commit any retaliatory act in a workplace as defined under this Act, against an employee who is a whistleblower or 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 public office, in case of a public officer or employee, and shall be civilly liable to indemnify a whistleblower in case damages are incurred and as may be awarded by the court.

Toward this end, the 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 the said whistleblower's intended or actual 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 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 a believed or suspected disclosure.

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 or informant 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; or
- (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 or 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. *Security and Protection of a Whistleblower/Informant.* – When determined to be necessary and appropriate of the Office of the Ombudsman, a whistleblower or informant, 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 or informant shall, in addition to the other benefits under this Act, and when warranted, be entitled to the benefits of R.A. No. 6891.

SEC. 22. *Financial Rewards for Whistleblower.* – The whistleblower shall be entitled to a corresponding monetary reward in accordance with the provision of this Act and its 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/INFORMANT
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 or informant 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 the case in a proper court.

For cases susceptible to pecuniary estimation, such as plunder, forfeiture of ill-gotten wealth, bribery, malversation and damage or inquiry 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 (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 this Act's implementing rules and regulations.

SEC. 23. *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 implementing rules and regulations.

All government agencies, offices, bureaus and local government units, including government owned and controlled corporations, whether or not with original charters, shall likewise put in place internal procedures for dealing with whistleblowers or informants,

consistent with the provisions of this Act and its implementing rules and regulations. Said internal procedure shall be widely disseminated to all employees.

All other employers, specifically those in the private sector, shall also conspicuously display notices of their employees' protections and their obligations under this Act and its implementing rules and regulations.

SEC. 24. *Failure of an Employer to Post Abstract* - The failure to post an Abstract or internal procedures as required under Section 5 of this Act shall constitute an offense and shall be penalized with a fine in the amount of One Hundred Thousand Pesos (P100,000.00) for the first offense. Said amount shall be doubled for every succeeding offense/s.

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 the 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 to not more than Fifty Thousand Pesos (Php 50,000.00) without prejudice to any other liability that may be imposed upon such person under existing laws.

SEC. 26. *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. 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 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 on acts constituting graft and corruption 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;
- (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 effectively implement the provisions of this Act. Said implementing rules and regulations shall be published in at least two (2) newspapers of general circulation.

SEC. 29. *Funding.* -The amount One Hundred Million Pesos (Php100,000,000.00) is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise allocated to carry into effect the purpose of this Act.

Other funding schemes or sources that may be authorized under existing laws shall be allowed in furtherance hereof.

SEC. 30. *Separability Clause.* - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provisions not otherwise affected thereby shall remain valid and subsisting.

SEC. 31. *Repealing Clause.* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with, the provisions of this Act is hereby repealed, modified, or amended accordingly.

SEC. 32. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or at least two (2) newspapers of general circulation.

Approved,