

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4379



Introduced by: Hon. Angelina "Helen" D.L. Tan, M.D.

EXPLANATORY NOTE

According to the Asian Institute of Management's consolidated report "Whistleblowing in the Philippines: Awareness, Attitudes and Structures, whistleblowing against corruption, as an exercise of responsible citizenship, helps create new societal and organizational cultures and values that emphasize integrity and honesty in the workplace. It creates inspiring stories that in the long run reduce people's tolerance for questionable practices of doing business and public service.

Initiatives to encourage whistleblowing in the country are not new. Several laws were already in place to encourage whistleblowing to curb bribery and other corrupt practices. However, the existing legal framework barely meets the need for whistleblower's protection and support. Considering the risks of whistleblowing in a culture that has a high tolerance for corruption, the existing legal framework fails to provide attractive incentives for actual whistleblowing.

Hence, this measure is being proposed to help curtail graft and corruption in government by ensuring the security of whistleblowers who divulge the erring practices of public officials and employees. It is hoped that through this measure, many citizens will be encouraged to report improper use of government office as well as corrupt practices of public officials.

In the best interest of the nation, the immediate approval of this bill is urgently sought.


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4th District, Quezon

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AN ACT
PROVIDING FOR THE PROTECTION, SECURITY AND BENEFITS OF
WHISTLEBLOWERS AND APPROPRIATING FUNDS THEREFOR

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, Security and Benefit 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 corrupt practices. Towards this end, the State shall:

- (a) Maintain honesty and high standards of integrity in the public service;
- (b) Safeguard the national interest through the investigation and 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 and protection to whistle blowers.

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

SEC. 3. *Definition of Terms.* - As used in this Act, the following terms are hereby defined as follows:

- (a) *Acts constituting graft and corruption* refer to any conduct, act or omission of public officers and employees solely or in cooperation or conspiracy with private persons, which are covered by, or constitute as violations hereof;
 - (1) Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act";
 - (2) Sections 7, 8 and 9 of Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees";
 - (3) Republic Act No. 7080, entitled "An Act Defining and Penalizing the Crime of Plunder";
 - (4) Presidential Decree No. 46, entitled "Making it Punishable for Public Officials and Employees to Receive, and for Private Persons to Give, Gifts on Any Occasion, Including Christmas"; and
 - (5) Title VII, Book Two of the Revised Penal Code on "Crimes Committed by Public Officers".
- (b) *Council* refers to the Whistleblower Benefits and Protection Council created pursuant to Section 29 of this Act.
- (c) *Employee* refers to 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.
- (d) *Employer* refers to 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.

(e) *Government* refers to 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 (LGUs).

(f) *Informant* refers to any person who has 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 who shall deliberately disclose of individual, collective or organized conduct constituting graft and corruption as provided in this Act.

(g) *Program* refers to the "Whistleblower Protection, Security and Benefit Program" which the Council shall formulate and implement pursuant to this Act. .

(h) *Public officer* refers to any person holding any public office in the Government of the Republic of the Philippines by virtue of an appointment, election or contract.

(i) *Whistleblower* refers to an informant admitted into the Program of the Council in accordance with this Act and its rules and regulations.

(j) *Reprisal* refers to any negative or obstructive response or reaction to a disclosure made under this Act aimed at, pertaining to, or against a whistle-blower or any of the members of the family and relatives up to the second degree of consanguinity or affinity including, but not limited to, criminal, civil or administrative proceedings commenced or pursued against said whistle blower or any of the members of the family or relatives up to the second degree of consanguinity or affinity as well as reprisal in the workplace.

(k) *Reprisal in workplace* refers to any discriminatory conduct or policies against a whistleblower 'which affect promotion or job assignment including undue negative performance appraisal, unusual and unwarranted 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.

SEC. 4. *Coverage.* Conduct constituting graft and corruption, whether commenced or consummated before the effectivity of this Act, refers to 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 amount to violations of Presidential Decree No. 46; Republic Act No. 3019; Sections 7, 8 and 9 of Republic Act No. 6713; Republic Act No. 7080; and Title VII, Book Two of the Revised Penal Code on "Crimes Committed by Public Officers".

SEC. 5. *Admission to the Program.* - Whistleblowers admitted into the Program, whether from the public or private sector, shall be entitled to the protection and 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) Such disclosure is necessary for an effective and successful investigation or prosecution, or essential for the acquisition of material evidence not yet in the possession of the Council;

(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 to the benefits and protection under this Act, subject to the provision of Section 17 herein. In the event that the whistleblower's testimony is determined by the Council to be necessary and indispensable to the success of an investigation or the prosecution of a case, the whistle blower shall be entitled to the additional benefits and protection under Republic Act No. 6981, otherwise known as the "Witness Protection, Security and Benefit Act".

SEC. 7. *Memorandum of Agreement With the Whistleblower.* - As a prerequisite to the availment of the protection and benefits under this Act, a whistleblower shall enter into a Memorandum of Agreement with the Department of Justice (DOJ), which shall set forth the whistle blower's responsibilities including the following:

- (a) To provide information to and testify before all inquiries, in aid of legislation, and before any law enforcement official 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 involving moral turpitude;
- (c) To take all necessary precautions to avoid detection by others of the facts concerning the protection provided under this Act;
- (d) To cooperate with respect to all reasonable requests of officers and employees of the government who are providing protection under this Act; and
- (e) To regularly inform the appropriate program official of the whistle blower's 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 immediate termination of the protection and benefits provided under this Act. The Council shall send notice to a whistle blower concerned, stating therein the reason for such termination. In view thereof, a whistleblower shall be afforded reasonable time to take appropriate and necessary protection and security measures. In addition, the whistle blower shall return all the financial rewards received pursuant to Section 17 of this Act.

SEC. 9. *Protection Against Other Actions.* - A whistleblower or an informant who has made a disclosure under this Act shall not be subject to any liability in any proceeding. Any disclosure made or any document submitted to the Council shall be inadmissible in evidence against the whistleblower.

This protection shall also operate as immunity in favor of a whistleblower or informant against any action or, proceeding taken against the whistleblower 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 the disclosure or information given to the proper authorities.

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

- (a) Whistle blower's identity;
- (b) The subject matter of the disclosure; and
- (c) The person to whom such disclosure was made.

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

SEC. 12. *No Breach of Duty of Confidentiality.* - A whistleblower or an informant who has made a disclosure under this Act, on whom a provision of law, regulation, issuance, practice or other convention, imposes 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 whistle blower or informant or reveal the subject matter of such disclosure, except under the following circumstances:

- (a) The whistle blower or the informant consents in writing prior to a disclosure of an information;
- (b) The disclosure is indispensable and essential as determined by the Council, 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 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 reprisals in the workplace or prejudicial conduct towards a whistleblower such as: discriminatory actions behind policies and procedures, unwarranted reprimand, punitive transfers, malicious referral to a psychiatrist or counselor, and unfounded or baseless poor performance reviews. Other prejudicial actions include obstruction of an investigation, withdrawal of essential resources, undue reports and the attachment of false personnel files or 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 the 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 Council, within a period of thirty (30) days from the date when the whistle blower 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 Council and the Department of Labor and Employment (DOLE) in case of a prolonged absence due to transfer or permanent relocation under this Act or Republic Act No. 6981.

SEC. 15. *Security and Protection of a Whistleblower.* – When determined to be necessary and appropriate by the Council, a whistleblower, even if the disclosure is made in confidence, shall be entitled to personal security. For this purpose, the Council may request any law enforcement agency for assistance. 'Should, at anytime, the identity of the whistle blower be revealed, or anonymity compromised, the whistle blower may, upon the recommendation of the Council, be entitled to the benefits of Republic Act No. 6981, in addition to the other benefits under this Act.

SEC. 16. *Confidentiality of the Proceedings.* - All proceedings before the Council involving application and/ or enjoyment of the benefits under this Act, 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 Council, and provided such disclosure shall not endanger the life of a whistle blower.

SEC. 17. *Financial Rewards for Whistleblowers.* – The whistleblower shall be entitled to a corresponding monetary reward in accordance with the following stages:

Stages	If the case is susceptible of pecuniary estimation	If the case is not susceptible of pecuniary estimation
Upon admission into the Program	P200,000	P100,000

Upon filing of the
Case with the
Office of the
Ombudsman

P100,000

P50,000

Upon completion
of the testimony
of the whistleblower

P100,000

P50,000

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

SEC. 18. *Return of the Amount Received as Financial Rewards.* - A whistle blower admitted into the Program who deliberately and voluntarily gives false or misleading information in connection with conduct constituting graft and corruption as defined under this Act or who unjustifiably recants testimony shall, in addition to the penalties provided in Section 21 and Section 22 of this Act, be required to return all the amounts received as financial rewards.

SEC. 19. *Abstract.* - All government agencies, offices, bureaus and LGUs, 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 whistle blowers or informants, including the obligations of employers under this Act. Such abstract shall be provided in the rules and regulations to be promulgated pursuant to Section 31 of this Act.

All government agencies, offices, bureaus and LGUs, including government-owned and -controlled corporations, whether or not with original charters, are likewise required to put in place internal procedures for dealing with whistle blowers 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. 20. *Credibility of a Whistleblower.* - In all cases, the fact of the entitlement of the whistleblower to the protection and benefits provided in this Act shall not be admissible in evidence to diminish or affect the whistle blower's credibility.

SEC. 21. *Penalty for Giving False and Misleading Information.* - The penalty of imprisonment of not less than six (6) years but not more than twelve (12) years shall be imposed upon a whistleblower who deliberately and voluntarily gives false or misleading information in connection with conduct constituting graft and corruption under this Act. If the offender is a public officer or employee, the penalty of dismissal from the service and the accessory penalty of perpetual absolute disqualification from holding public office shall also be imposed.

In addition, the offender may be held criminally and civilly liable under existing laws.

SEC. 22. *Penalty for, Unjustified Recantation.* - The unjustified recantation of testimony by a whistle blower shall constitute an offense and shall be punishable by a penalty of imprisonment of not less than four (4) years but not more than six (6) years.

SEC. 23. *Penalty for Reprisal Against Whistleblower.* - The penalty of imprisonment of not less than six (6) years but not more than twelve (12) years or a fine of not more than One hundred thousand pesos (Php100,000.00), or both, at the discretion of the court shall be imposed upon any person who shall commit any act of reprisal as defined in this Act against a whistle blower and/or hinders, delays, prevents or dissuades said whistleblower from:

(a) Attending, assisting or testifying before any investigating agency or judicial or quasi-judicial

body;

(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 any 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.

In addition, the penalty of dismissal from the service and the accessory penalty of perpetual absolute disqualification from holding public office shall be imposed upon an offender who is a public officer or employee.

SEC. 24. *Penalty for Violation of Confidentiality.* - The penalty of imprisonment of not less than six (6) months but not more than six (6) years shall be imposed upon any person who shall violate the protection of confidentiality of a protected disclosure under Sections 10, 11, 13 and 16 of this Act. The penalty of dismissal from the service and the accessory penalty of temporary absolute disqualification from holding public office shall also be imposed upon an offender who is a public officer or employee. In addition, the offender shall be civilly liable to indemnify the whistleblower or informant in such amount of damages as may be awarded and deemed reasonable by a competent court.

SEC. 25. *Penalty for Reprisal in the Workplace.* - The penalty of imprisonment of not more than six (6) years but not more than twelve (12) years shall be imposed upon any person who shall commit any act of reprisal in the workplace as defined in this Act, against an employee who is a whistle blower or believed or suspected to be one. The penalty of dismissal from the service and the accessory penalty' of temporary absolute disqualification from holding public office shall also be imposed upon an offender who is a public officer or employee. In addition, the offender shall be civilly liable to indemnify the whistleblower in such amount of damages as may be awarded and deemed reasonable by a competent court.

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

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

SEC. 26. *Penalty for Discriminatory Hiring.* - The penalty of imprisonment of not more than six (6) months shall be imposed upon any person or employer who shall deny a qualified applicant for employment, or who shall reject an application for employment solely on the ground that an applicant is a whistle blower or informant for the State. If the offender is a corporation, partnership, association, or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager and/or any responsible officer who participated in the commission of the offense.

The penalty of dismissal from the service and the accessory penalty of suspension of the right to hold public office shall also be imposed upon the offender who is a public officer or employee.

In addition, the offender shall be civilly liable to indemnify the whistle blower in such amount of damages as may be awarded and deemed reasonable by a competent court.

SEC. 27. *Failure of an Employer to Post Abstract.* - The failure to post an abstract required under Section 19 of this Act shall constitute an offense and shall be punishable with a fine of One hundred thousand pesos (Php100,000.00) for the first offense. The amount shall be doubled

for every succeeding offense, and punishable with imprisonment of not more than six (6) months at the discretion of the court. For this purpose, the president, general manager, or head of agency, office or bureau shall be held criminally liable and shall suffer the accessory penalty of suspension of the right to hold public office.

SEC. 28. *Failure to Act or Report to the Council.* - Any person under obligation to report a disclosure under this Act to the Council, 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 held liable and shall suffer the penalty of not more than one (1) month imprisonment or a fine of not more than Fifty thousand pesos (Php50,000.00) at the discretion of the court.

SEC. 29. *Whistleblower Benefits and Protection Council.* - A Whistleblower Benefits and Protection Council is hereby created composed of the Overall Deputy Ombudsman as Chairperson, and the following as members:

- (a) Prosecutor General, DOJ;
- (b) Special Prosecutor, Ombudsman;
- (c) Witness Protection Program Director, DOJ;
- (d) Executive Director, Anti-Money Laundering Council;
- (e) Director, Legal Service, Philippine National Police, in case the respondent is a member thereof;
- (f) The Judge Advocate General of the Armed Forces of the Philippines, in case the respondent is a member thereof;
- (g) A representative from the civil society /nongovernment organization involved in anti-corruption and good governance to be appointed by the Chairperson of the Council, upon the recommendation of the members thereof; and
- (h) A representative from the business sector to be appointed by the Chairperson of the Council, upon the recommendation of the Philippine Chamber of Commerce and Industry.

The existing personnel of the Office of the Ombudsman shall serve as secretariat to the Council.

SEC. 30. *Powers and Functions of the Council.* - In addition to its powers and functions under existing laws, the Council shall have the following powers and functions:

- (a) Monitor, coordinate and evaluate all efforts relative to the implementation and enforcement of the provisions of this Act;
- (b) Evaluate the disclosure and qualification of whistleblowers or informants for coverage within this Act, and make the appropriate decision on their entitlement to the benefits extended herein;
- (c) 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;
- (d) Develop plans and implement programs to further encourage whistle blowers or informants on graft and corrupt activities with a view to effective deterrence and/or prosecution;
- (e) Control and administer, consistent with the provisions and purposes of this Act, the protection and benefits of whistle blowers in connection with the cases within the coverage of Section 4 of this Act;
- (f) 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
- (g) Grant immunity in accordance with the provisions of this Act and its implementing rules and regulations.

SEC. 31. *Appropriations.* - The amount necessary to carry out the provisions of this Act shall be included in the annual General Appropriations Act.

SEC. 32. *Implementing Rules and Regulations.* - The Council shall promulgate such rules and regulations as may be 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. 33. *Separability Clause.* - If any portion or provision of this Act or the application thereof shall be declared invalid or unconstitutional, the validity of other parts or provisions not affected thereby shall continue to be in full force and effect.

SEC. 34. *Repealing Clause.* - All laws, decrees, executive issuances, rules and regulations inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 35. *Effectivity Clause.* - This Act shall take effect fifteen (15) days following its complete publication in two (2) newspapers of general circulation.

Approved,