

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5630



Introduced by **HON. ROY V. SEÑERES**

EXPLANATORY NOTE

The Philippines has a solemn obligation to protect and promote the right to health, which is intimately linked with the self-preservation and self-perpetuation of the Filipino people. Article II, Section 15 of the 1987 Philippine Constitution mandates that the State "shall protect and promote the right to health of the people and instill health consciousness among them."

In the Philippines, at least eighty seven thousand six hundred (87,600) Filipinos die every year from tobacco-related diseases, or approximately two hundred forty (240) deaths every day.¹ In 2009, the Philippines was revealed to have one of the highest smoking populations in the world, ranking 9th for males and 16th for females.² These figures underscore the urgent need to adopt and implement more effective measures to curb tobacco consumption.

As a State Party to the *World Health Organization Framework Convention on Tobacco Control* ("WHO FCTC"), the world's first public health treaty which aims to address the global tobacco epidemic and to provide protection to the world's population against the health hazards tobacco use and tobacco smoke, the Philippines has an international obligation to uphold the principles contained therein.

Protection against tobacco industry interference³ is an indispensable requirement to the realization of all provisions of the WHO FCTC. This is premised on the principle that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.⁴ Recognizing the need to counter the tobacco industry's efforts to undermine tobacco control⁵ and to inform the public of the tobacco industry's efforts to undermine tobacco control measures,⁶ Article 5.3 of the FCTC states that "[i]n setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law." Article 5.3 is grounded in extensive evidence showing that the tobacco industry has been subverting tobacco control measures on a global

¹ Department of Health National Tobacco Control Coordinating Office, data available at <<http://www.beat-tobacco.ph/national-tobacco-control-strategy/introduction/>> Last accessed on 14 January 2014; see also Quimbo SLA, Casorla AA, Miguel-Baquilod M, Medalla FM, Xu X, Chaloupka FJ. (2012), *The Economics of Tobacco and Tobacco Taxation in the Philippines*, Paris: International Union Against Tuberculosis and Lung Disease.

² American Cancer Society (2009); *The Tobacco Atlas*, 3rd ed., 23-25.

³ "Tobacco industry interference" refers to the broad array of tactics utilized by the tobacco industry to interfere with or influence public health measures related to tobacco control in order to promote its interests.

⁴ Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control ("FCTC Guidelines"), Conference of the Parties, Decision WHO FCTC/COP2(14), available at <http://www.who.int/WHO_FCTC/guidelines/adopted/guidel_2011/en/>.

⁵ WHO FCTC, Preamble.

⁶ World Health Assembly ("WHA") Resolution WHA54.18, citing the findings of the Committee of Experts on Tobacco Industry Documents; WHO, TOBACCO COMPANY STRATEGIES TO UNDERMINE TOBACCO CONTROL ACTIVITIES AT THE WHO (July 2000).

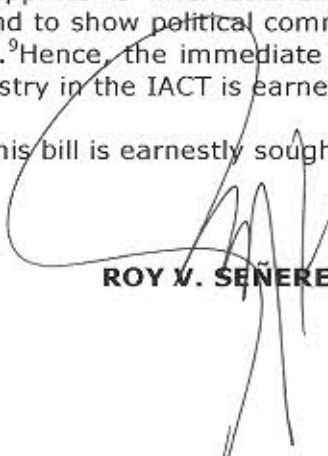
scale.⁷The tobacco industry has vast accesses to resources and employs sophisticated techniques to impede tobacco control measures.⁸

Republic Act No. 9211 or the *Tobacco Regulation Act of 2003* ("RA 9211"), the first comprehensive law on tobacco control in the Philippines, became effective in 2003, two years before the FCTC came into force. The main policy areas of RA 9211 are: (a) smoke-free environment, (b) sale to minors, (c) health warnings, and (d) advertising, promotions, and sponsorships. RA 9211 created the Inter-Agency Committee-Tobacco ("IACT") to implement the provisions of the Act. Significantly, Section 29 (g) of RA 9211 provides that a "representative from the Tobacco Industry to be nominated by the legitimate and recognized associations of the industry" be among the members of the IACT. The representation of tobacco industry interests in a regulatory body mandated to implement, enforce, and monitor the implementation of a tobacco control measure is in contravention of Article 5.3 of the WHO FCTC. Notably, RA 9211 does not contain any provision addressing tobacco industry interference nor does it contain any safeguards for its member agencies and organizations to be protected from tobacco industry tactics. RA 9211 established the IACT to implement the provisions of the Act.

There is a gap in the implementation of the Philippines' obligation to implement Article 5.3 of the WHO FCTC as a result of the composition of the IACT under RA 9211. Considering the vast range of forms that tobacco industry interference may take, it is necessary to alter the composition of the IACT under RA 9211 so as to eliminate the main venue by which the tobacco industry is able to exert its commercial and vested interests through its participation in the government's administration and implementation of tobacco control measures.

As a State Party to the FCTC, the Philippines is internationally bound to comply with its treaty obligations in good faith and to show political commitment not to undermine the objectives set out in the FCTC.⁹Hence, the immediate approval of this Bill requiring the removal of the tobacco industry in the IACT is earnestly sought.

In view of the foregoing, the approval of this bill is earnestly sought.



ROY V. SEÑERES

⁷ WHA54.18.

⁸ Briefing Paper: Implementing Article 5.3, from the Second Session of the Conference of the Parties to the WHO FCTC, available at <http://www.WHO_FCTC.org/images/stories/2007/fca-2007-cop-article5-3-cop2-briefing-en.pdf>, last accessed 10 August 2014.

⁹*Secretary of Justice vs. Hon. Ralph C. Lantion*, supra; Vienna Convention on the Law of Treaties, Section 26

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Introduced by **HON. ROY V. SEÑERES**

AN ACT
ACT STRENGTHENING THE INTER-AGENCY COMMITTEE-TOBACCO (IAC-TOBACCO) TO ENSURE COMPLIANCE WITH ARTICLE 5.3 OF THE WORLD HEALTH ORGANIZATION FRAME WORK CONVENTION ON TOBACCO CONTROL (WHO FCTC) THEREBY AMENDING FOR THIS PURPOSE SECTIONS 2, 4, 29, 31, 32, 36 AND 39 OF REPUBLIC ACT 9211, OTHERWISE KNOWN AS THE TOBACCO REGULATION ACT OF 2003

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

SEC. 1. Section 2 of Republic Act 9211, otherwise known as the Tobacco Regulation Act of 2003, is hereby amended to read as follows:

SECTION 2. Policy.—It is the policy of the State to protect the populace from hazardous products and promote the right to health and instill health consciousness among them. [It is also the policy of the State, consistent with the Constitutional ideal to promote the general welfare, to safeguard the interests of the workers and other stakeholders in the tobacco industry.] For these purposes, the government shall institute a [balanced] policy whereby the use, sale and advertisements of tobacco products shall be regulated in order to promote a healthful environment and protect the citizens from the hazards of tobacco smoke[, and at the same time ensure that the interests of tobacco farmers, growers, workers and stakeholders are not adversely compromised].

SEC. 2. Section 4 of the same Act is hereby amended by inserting new paragraphs to read as follows and the same are hereby renumbered accordingly:

"Section 4. Definition of Terms - As used in this Act:

x x x

(V) "TOBACCO INDUSTRY" - REFERS TO ORGANIZATIONS, ENTITIES, ASSOCIATIONS, AND INDIVIDUALS THAT WORK FOR AND IN BEHALF OF THE TOBACCO INDUSTRY, SUCH AS BUT NOT LIMITED TO TOBACCO MANUFACTURERS, WHOLESALE DISTRIBUTORS, IMPORTERS OF TOBACCO PRODUCTS, TOBACCO RETAILERS, FRONT GROUPS AND/OR ORGANIZATIONS, INCLUDING BUT NOT LIMITED TO LAWYERS, SCIENTISTS AND LOBBYISTS WHO WORK TO FURTHER THE INTERESTS OF THE TOBACCO INDUSTRY; AND

(W) "UNECESSARY INTERACTIONS" - REFERS TO ALL INTERACTIONS WITH THE TOBACCO INDUSTRY THAT IS NOT STRICTLY NECESSARY FOR THE LATTER'S EFFECTIVE REGULATION, SUPERVISION AND CONTROL."

SEC. 3. Section 29 of the same Act is hereby further amended to delete paragraph h to read as follows:

SECTION 29. Implementing Agency. — An Inter-Agency Committee—Tobacco CONTROL (IAC-Tobacco CONTROL), which shall have the exclusive power and function to administer and implement the provisions of this Act, is hereby created. The IAC-Tobacco CONTROL shall be chaired by the Secretary of the [Department of Trade and Industry (DTI)] DEPARTMENT OF HEALTH (DOH) with the Secretary of the [Department of Health (DOH)] DEPARTMENT OF EDUCATION (DEPED) as Vice Chairperson. The IAC-Tobacco CONTROL shall have the following as members:

- a. Secretary of the Department of Agriculture (DA);
- b. Secretary of the Department of Justice (DOJ);
- c. Secretary of the Department of Finance (DOF);
- d. Secretary of the Department of Environment and Natural Resources (DENR);
- e. Secretary of the Department of Science and Technology (DOST);
- f. Secretary of the [Department of Education (DepEd)] DEPARTMENT OF TRADE AND INDUSTRY (DTI); AND;

[g. Administrator of the national Tobacco Administration (NTA);]

[h. A representative from the Tobacco Industry to be nominated by the legitimate and recognized associations of the industry; and]

[i.] G. ONE (1) representative EACH from [a] AT LEAST THREE (3) nongovernment organizationS (NGOS) involved in public health promotion, WITHOUT ECONOMIC AND/OR FIDUCIARY TIES TO THE TOBACCO INDUSTRY, OR DO NOT KNOWINGLY REPRESENT OR RECEIVE PAYMENT FROM ANY TOBACCO PRODUCT MANUFACTURER OR WHOLESALER, OR ANY PARENT, AFFILIATE OR SUBSIDIARY OF A TOBACCO PRODUCT MANUFACTURER OR WHOLESALER, OR ANY PERSON, INTEREST GROUP, ADVOCACY ORGANIZATION, LAW FIRM, ADVERTISING AGENCY, OR OTHER BUSINESS OR ORGANIZATION THAT REPRESENTS THE INTERESTS OF THE TOBACCO INDUSTRY, nominated by DOH in consultation with the concerned NGOs.”

THE DEPARTMENT SECRETARIES SHALL DESIGNATE THEIR RESPECTIVE AUTHORIZED PERMANENT REPRESENTATIVE TO THE IAC-TOBACCO CONTROL; PROVIDED, SAID PERMANENT REPRESENTATIVE SHALL HAVE A RANK NOT LOWER THAN ASSISTANT SECRETARY.

THE DEPARTMENT SECRETARIES SHALL DESIGNATE THEIR RESPECTIVE AUTHORIZED PERMANENT REPRESENTATIVE TO THE IAC-TOBACCO CONTROL; PROVIDED, SAID PERMANENT REPRESENTATIVE SHALL HAVE A RANK NOT LOWER THAN ASSISTANT SECRETARY.

IN ORDER TO FACILITATE COORDINATION AMONG MEMBERS OF THE IAC-TOBACCO CONTROL, THE DEPARTMENT OF HEALTH AS THE LEAD AGENCY SHALL PROVIDE THE SECRETARIAT. THE SECRETARIAT SHALL ACT AS THE COORDINATING BODY OF THE IAC-TOBACCO CONTROL AND SHALL PROVIDE THE FOLLOWING FUNCTIONS SUCH AS, BUT NOT LIMITED TO, SETTING OF MEETINGS, MANAGING OF IMPORTANT LOGISTICS AND CIRCULATION OF INFORMATION AND DOCUMENTS AMONG MEMBERS.

SEC. 4. A new provision is hereby inserted to be denominated as Section 29-A to read as follows:

SECTION 29-A. PROTECTION OF THE IAC-T FROM TOBACCO INDUSTRY INTERFERENCE. -ALL MEMBERS OF THE IAC-T ARE PROHIBITED FROM INTERACTING WITH THE TOBACCO INDUSTRY, EXCEPT WHEN STRICTLY NECESSARY FOR ITS EFFECTIVE REGULATION, SUPERVISION AND CONTROL. ANY NECESSARY INTERACTION MUST BE CONDUCTED PUBLICLY AND TRANSPARENTLY, AND EFFORTS MUST BE TAKEN TO PREVENT OR CORRECT ANY PERCEPTION OF PARTNERSHIP WITH THE TOBACCO INDUSTRY.

ALL MEMBERS OF THE IAC-T ARE STRICTLY PROHIBITED FROM ACCORDING PREFERENTIAL TREATMENT TO THE TOBACCO INDUSTRY; SOLICITING OR ACCEPTING ANY GIFT, GRATUITY, FAVOR, ENTERTAINMENT OR ANYTHING OF MONETARY VALUE FROM THE TOBACCO INDUSTRY; FAILING TO DISCLOSE, RETAINING, AND/OR ACQUIRING ANY FINANCIAL OR MATERIAL INTEREST IN, OR OTHER POTENTIAL SOURCE OF CONFLICT OF INTEREST WITH THE TOBACCO INDUSTRY; AND ACCEPTING ANALOGOUS FAVORS FROM THE TOBACCO INDUSTRY.

SEC. 5. Section 31 of the same Act is hereby further amended by inserting a new paragraph to read as follows:

SECTION 31. Compliance Monitoring.—Not later than one (1) year after the date of the effectivity of this Act, and annually thereafter, the IAC-Tobacco CONTROL shall submit to the President of the Philippines and to both Houses of Congress a Compliance Monitoring Report on the compliance of the manufacturers on all applicable laws and ordinances with respect to the manufacture and distribution of tobacco products.

The report shall contain pertinent information on the methods, goals and implementation program of said manufacturers with respect to the requirements of this Act.

A SEPARATE REPORT SHALL BE SUBMITTED BY THE MEMBERS OF THE IAC-TOBACCO CONTROL ENUMERATING THE MEASURES ESTABLISHED TO LIMIT INTERACTIONS WITH THE TOBACCO INDUSTRY AND ENSURE THE TRANSPARENCY OF THOSE INTERACTIONS THAT OCCUR, AS WELL AS POLICIES IMPLEMENTED TO PROTECT THEIR AGENCIES FROM TOBACCO INDUSTRY INTERFERENCE.

SEC. 6. Section 32 of the same Act is hereby further amended by inserting a new paragraph to read as follows:

SECTION 32. Penalties.—The following penalties shall apply:

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D. VIOLATION OF SECTIONS 29-A. - IF THE OFFENDER IS A PUBLIC OFFICIAL, HE SHALL BE SUBJECT TO ADMINISTRATIVE DISCIPLINARY ACTION PURSUANT TO RULE XIV (DISCIPLINE) OF THE OMNIBUS RULES IMPLEMENTING BOOK V OF EO 292, AS MAY BE AMENDED, MODIFIED, CHANGED, ADDED TO, DELETED FROM, OR SUPERSEDED BY THE ENACTMENT OF ANY NEW LAW, WITHOUT PREJUDICE TO THE CRIMINAL AND/OR CIVIL ACTIONS UNDER EXISTING LAWS, RULES, AND REGULATIONS.

SEC. 7. A new provision is hereby inserted to be denominated as Section 36-A to read as follows:

SECTION 36-A. CITIZEN SUITS. - FOR PURPOSES OF ENFORCING THE PROVISIONS OF THIS ACT OR ITS IMPLEMENTING RULES AND REGULATIONS, ANY CITIZEN MAY FILE AN APPROPRIATE CIVIL, CRIMINAL OR ADMINISTRATIVE ACTION IN THE PROPER COURTS OR ADMINISTRATIVE BODY AGAINST ANY PUBLIC OFFICER WHO WILLFULLY OR GROSSLY NEGLECTS THE PERFORMANCE OF AN ACT SPECIFICALLY ENJOINED AS A DUTY BY THIS ACT, ITS IMPLEMENTING RULES AND REGULATIONS, INCLUDING THE TEMPLATE, GUIDELINES, OR OTHER REGULATIONS; OR ABUSES HIS AUTHORITY IN THE PERFORMANCE OF HIS DUTY; OR, IN ANY MANNER, IMPROPERLY PERFORMS HIS DUTIES UNDER THIS ACT OR ITS IMPLEMENTING RULES AND REGULATIONS.

THE ADMINISTRATIVE, CIVIL AND CRIMINAL ACTIONS ALLOWED UNDER THIS SECTION SHALL BE CUMULATIVE AND CUMULATIVE AND SHALL NOT PRECLUDE ANY OTHER PERSON FROM FILING A SIMILAR ACTION.

THE COURT SHALL EXEMPT SUCH ACTION FROM THE PAYMENT OF FILING FEES AND STATEMENTS LIKEWISE, UPON PRIMA FACIE SHOWING OF THE NON-ENFORCEMENT OR VIOLATION COMPLAINED OF, EXEMPT THE PLAINTIFF FROM THE FILING OF AN INJUNCTION BOND FOR THE ISSUANCE OF PRELIMINARY INJUNCTION. IN THE EVENT THAT THE CITIZEN SHOULD PREVAIL, THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES, MORAL DAMAGES AND LITIGATION COSTS AS APPROPRIATE.

SEC. 8. Repealing Clause. - All laws, decrees, presidential proclamations, executive orders, rules and regulations or parts thereof inconsistent herewith, are hereby repealed or modified accordingly.

SEC. 9. Separability Clause. - If any provision of this Act is held invalid or declared unconstitutional, the other provisions which are not affected thereby shall remain valid and subsisting.

SEC. 10. Effectivity. - This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in two (2) newspapers of general circulation, whichever comes first.

Approved,