

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 4582



Introduced by TUCP Party-List
Rep. RAYMOND DEMOCRITO C. MENDOZA

EXPLANATORY NOTE

Pole-vaulting is a proliferating illegal practice of banana growers which involves willfully and intentionally violating contractual obligations and side-selling to other traders (mostly to fly-by-night spot buyers). It has become a serious problem that the Department of Agriculture recognizes its ill effects to the banana export industry, in effect viewing it as an act of economic sabotage. Further, it damages the reputation of the Philippines as a lead exporter of world-class Cavendish bananas.

Ideally, under a growership contract, banana exporters would buy fresh bananas from farmers and producers on the basis of a contract that lasts from three (3) to five (5) years. These contracts obligate a producer's harvest exclusively to a buyer for a fixed price. In turn, the buyer is obligated to buy all the bananas produced by the farmer, which meet the quality specifications of the market, regardless of the demand.

This system is beneficial for both parties because it gives the farmer a guaranteed income while ensuring the buyer a reliable volume for export. It also provides a mechanism to ensure productivity and sustainability of the grower's farm.

The demand for bananas worldwide is greatest from January to May. Buyers often have a hard time meeting market demands. This is when pole-vaulting occurs. Taking undue advantage of the situation, some fly-by-night spot buyers would go around the country and visit farmers, enticing them to break or short change their contracts in exchange for selling their produce, regardless of the quality, at a higher price.

Pole-vaulting would also often leads to sporadic incidents between growers and banana firms while criminal cases have been filed against those who

commit pole-vaulting. These were eventually dismissed due to the lack of laws and jurisprudence to support the cases. Due to this, the offenders have been emboldened to commit pole-vaulting to the detriment of their contractual partners.

In Davao del Norte and Compostela Valley alone, there are more than 300 small banana growers cultivating in at least 1,500 hectares of land. Small banana growers' average cultivate anywhere between 10 hectares of land to one (1) to two (2) hectares of land.

Recognizing the socio-economic benefits that the banana export industry provides to the national economy and the communities it serve, stronger measures must be introduced to curtail pole-vaulting.

Hence, passage of this Bill is earnestly sought.


RAYMOND DEMOCRITO C. MENDOZA
Representative, TUCP Party-List

1 Republic of the Philippines
2 HOUSE OF REPRESENTATIVES
3 Quezon City

4 SEVENTEENTH CONGRESS
5 First Regular Session

6
7 House Bill No. **4582**
8
9

10
11
12 *Introduced by TUCP Party-List*
13 Rep. RAYMOND DEMOCRITO C. MENDOZA
14

15
16 **AN ACT**
17 **DECLARING BUYING OR SELLING OF EXPORTABLE CAVENDISH**
18 **BANANAS FROM CONTRACTED FARMS TO A NON-PARTY TO THE**
19 **CONTRACT AS ECONOMIC SABOTAGE, PRESCRIBING PENALTIES**
20 **THEREOF AND FOR OTHER PURPOSES.**
21

22
23 *Be it enacted by the Senate and House of Representatives of the Philippines*
24 *in Congress assembled:*
25

26
27 **SECTION 1. Short Title.** – This Act shall be known as the “*Exportable*
28 *Banana Anti-Pole Vaulting Act*”.
29

30 **SEC. 2. Declaration of Policy.** – It is the policy of the State to promote the
31 productivity and quality of the agriculture sector particularly the banana export
32 industry and to protect the subsisting marketing contract between banana
33 companies, their growers and farmers from unscrupulous traders and
34 exporters, who by their seasonal entry in the Philippines, makes illegal
35 purchase of exportable bananas from farms of growers that results to the
36 violation of the following types of banana contracts namely Production
37 Purchase Agreement, Marketing or Growership Agreement and similar
38 agreements between the banana companies and their growers and farmers,
39 significantly affecting the stability of prices, and the quality of exported fruits
40 which is generally labelled as a product of the Philippines.
41

42 The State shall impose higher sanctions against buying and selling of
43 exportable bananas from contracted banana farms to parties that are not
44 parties to the contract, as an economic self-preservation measure to shield
45 itself from the manipulative scheme of economic saboteurs, and to protect the
46 livelihood of our farmers and to ensure their economic well-being and the
47 investment of the companies that finances the development of the farmers’
48 land. Likewise, it helps to ensure to guarantee the payment of loan granted to
49 farmers by financing institutions. This measure will effectively create a system
50 that will allow a quarantine procedure preventing the spread of diseases
51 particularly Furasium Wilt or Panama disease and other diseases of banana.

SEC. 3. Economic Sabotage. – The crime of Economic Sabotage involves buying and selling of bananas from a farm that is covered by Marketing or Growership Agreement and similar agreements whatever the size of the farm is, to a non-party to the contract. Economic sabotage is committed through any of the following acts:

- (a) Exporting bananas without the required exporter, grower and packing plant accreditation from the regulatory agencies;
- (b) Using accreditation and export permits of persons, natural or juridical, other than those specifically named in the permit;
- (c) Using fake, fictitious or fraudulent export permits or shipping documents;
- (d) Selling, lending, leasing, assigning, consenting or allowing the use of accreditation and export permits of corporations, associations, cooperatives, or single proprietorships by other persons;
- (e) Organizing dummy associations, cooperatives, or single proprietorships for the purpose of acquiring accreditation and export permits;
- (f) Transporting or storing bananas coming from farms with subsisting contract between a buyer and farmer without the written consent of both party regardless of quantity; and
- (g) Acting as consolidator or broker of the violating exporter/ party.

SEC. 4. Penalties. – (a) The penalty of life imprisonment and a fine of twice the fair value of all the boxed or packed banana that were harvested from the farm in the last three (3) preceding years until the provision of the contract is faithfully complied with or until the contract expires if party involved violates the contract. Also the aggregate amount of the taxes, duties and other charges shall be imposed on any person who commits any of the acts enumerated under Section 3 of this Act.

(b) The penalty of imprisonment of not less than seventeen (17) years but not more than twenty (20) years, and a fine of twice the fair value of the boxed packed banana product harvested from farm where violation the agreement was committed. This shall be computed based on the actual total production from the last three preceding years, until the contract expires, and shall be imposed on the officers of dummy corporations, associations, cooperatives, or single proprietorship who knowingly buy, lease, assign, consent or allow the violation of this law.

(c) The penalty of imprisonment of not less than fourteen (14) years but not more than seventeen (17) years and a fine equal to the fair value of the boxed packed bananas that were actually harvested in the preceding year from the farm until the contract expires shall be imposed on person who commits any of the acts enumerated under Section 3 of this Act. This fine shall also include the aggregate amount of the taxes, duties and other charges avoided. The foregoing shall also be imposed on the following:

(1) The registered owner and its lessee or charterer, in case of lease, of a chartered boat, motorized commercial vessel of more than three (3) gross tonnage, who knowingly transports the banana product subject of the act of economic sabotage, regardless of quantity;

(2) The registered owner and its lessee, in case of lease of trucks, vans and other means of transportation, who knowingly transports the banana product subject of the act of economic sabotage, regardless of quantity;

(3) The registered owner and lessee of a warehouse, or any property, who knowingly stores the banana product subject of the act of economic sabotage; or

(d) The penalty of imprisonment of not less than twelve (12) years but not more than fourteen (14) years and a fine equal to the fair value of the average total boxes packed bananas production per hectare in the last three (3) years of fruits harvested from the contracted farm computed until the expiration of the contract shall be imposed on the following:

(1) The registered Party in the marketing or growership contract that sells bananas coming from a farm covered by an agreement to a non-party to the contract, unless authorized by the other party.

(2) The registered owner and its lessee, in case of lease, of less than six (6) wheeler trucks, vans and other means of transportation, who knowingly transports the banana product subject to economic sabotage, regardless of quantity.

When the offender is a juridical person, criminal liability shall attach to its president, chief operating officer or manager who consents to or knowingly tolerates the commission of the prohibited crime.

Any person, natural or juridical, found guilty under this Act shall also suffer the penalty of perpetual absolute disqualification to engage in any business involving buying of exportable bananas coming from contracted farm.

In applying the above mentioned penalties, if the offender is an alien and the prescribed penalty is not life imprisonment, he/she shall be deported after serving the sentence without further proceedings for deportation.

If the offender is a government official or employee, who in the performance of his duty allows the violation of this law, the penalty shall be the maximum as herein above prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and be voted upon or from participating in an election to public office.

SEC. 5. *Presumption of Pole Vaulting.* – Allowing harvest of fruits without the intent to deliver it to the registered buyer and mere possession of banana properly identified to have come from a contracted farm without the necessary permits from parties in the growership contract shall be prima facie evidence of the violation of this law.

SEC. 6. *Implementing Rules and Regulations.* – The Department of Agriculture, in consultation with concerned agencies, shall promulgate the implementing rules and regulations of this Act within thirty (30) days, upon its effectivity. The Department of Agriculture shall create a Mediation Board composed of representatives from the accredited banana growers associations and banana exporters associations and the representative of the Legal Department of the Department of Agriculture to attend to complaint regarding violation of this law and the economic review of the growership contract.

SEC. 7. *Prescription of Crimes.* – The crime punishable under this Act shall prescribe in twenty (20) years.

SEC. 8. *Separability Clause.* – If any portion of this Act is declared unconstitutional or invalid, the portions or provisions which are not affected shall continue to be in full force and effect.

SEC. 9. *Repealing Clause.* – All laws, decrees, executive issuances, rules and regulations inconsistent with this Act are hereby repealed and/or modified accordingly.

SEC. 10. *Effectivity Clause.* – This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,