

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

SEVENTEENTH CONGRESS
FIRST REGULAR SESSION

HOUSE BILL NO. 5132



Introduced by CIBAC Party-List Representative
Sherwin Tugna

AN ACT AMENDING REPUBLIC ACT NO. 3019, ALSO KNOWN AS "THE ANTI-GRAFT AND CORRUPT PRACTICES ACT", TO CRIMINALIZE GRAFT AND CORRUPT PRACTICES IN THE PRIVATE SECTOR, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

The evils of graft and corruption have always plagued both the public and private sectors of our society in the Philippines. "Graft and corruption in our society weakens our democracy and the integrity of our various institutions, leads to violations of human rights, distorts markets, prevents the proper delivery of basic services to the people, increases inequality and injustice in the society and allows organized crime, terrorism and other threats to human security to flourish."¹

In order to address this problem, the United Nations adopted an instrument to address globally the problem of graft and corruption. The United Nations Convention Against Corruption (UNCAC) provides the clear message that the international community is determined to prevent and control corruption.

Article 21 of UNCAC particularly states:

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another

¹Kofi A. Annan, Foreword of UN Secretary General in the United Nations Convention Against Corruption (UNCAC) which was signed by the Philippines in November 2006.

person, in order that he or she, in breach of his or her duties, act or refrain from acting.

The Philippines currently has no laws that specifically penalize corruption in the private sector. Corruption has always been associated with the government. People always see that corruption is only prevalent in government offices, agencies and departments. Public officials are the ones who abuse their power and position to gain advantage. However, it is forgotten that graft and corruption is not limited in the government sector. Graft and corruption occurs and thrives because of the consciousness of the people engage in it, and the people who allow it to occur just because everyone is involved in it. Many Filipinos have been born during times when graft and corruption has already been prevalent in the society. When government officials are being prosecuted for committing graft and corruption, many would say "eh sino ba ang di gumagawa?" Such remark shows that the Philippine society recognizes the existence of graft and corruption and somehow has accepted it already. Thus, this reality results to lack of political and moral will of all Filipinos comprising our nation to fight graft and corruption.

Graft and corruption occurs in private sector as well. It is a reality that people use money, position, or any advantage as an inducement or reward in order to get what they want. These activities are considered forms of graft and corruption. In line with the thrust of UNCAC, now is the right time to amend R.A. 3019 or the "Anti-Graft and Corrupt Practices Act" to include a provision that will penalize corruption in the private sector. In doing this, a clear message is being sent out that graft and corruption is prohibited in any sector of the society. All Filipinos are part of the fight against graft and corruption.

Furthermore, there is a need to increase the fines and penalties for violations of Anti-Graft and Corrupt Practices Act in order to deter people from committing such acts. The period before acts committed in violation of R.A. No. 3019 prescribe must be lengthened to ensure that the violators could not escape the consequences of their illegal acts by fleeing or hiding for a long period of time. Also, a provision stating that when the violator is not within the Philippines, the prescription of the crime committed does not run.

Lastly, there is a need for all heads of government offices, agencies, departments as well as heads of corporations and businesses to make reports showing advantages received which are allowed and permitted under this law and to enable the Office of the Ombudsman to inspect, copy and reproduce such reports for reference, conduct of studies and adoption of other measures for corruption prevention.

In view of the foregoing, immediate passage of the bill is earnestly sought.



Sherwin Tugna

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

SEVENTEENTH CONGRESS
FIRST REGULAR SESSION

HOUSE BILL NO. 5132

Introduced by CIBAC Party-List Representative
Sherwin Tugna

AN ACT AMENDING REPUBLIC ACT NO. 3019, ALSO KNOWN AS THE "ANTI-GRAFT AND CORRUPT PRACTICES ACT", TO CRIMINALIZE GRAFT AND CORRUPT PRACTICES IN THE PRIVATE SECTOR, AND FOR OTHER PURPOSES

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

SECTION 1. Section 1 of R.A. No. 3019, as amended, is hereby amended to read as follows:

Section 1. Statement of policy. It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.

THE PHILIPPINE GOVERNMENT ALSO RECOGNIZES THAT TO FIGHT THE EVILS OF GRAFT AND CORRUPTION, ALL CITIZENS MUST PARTICIPATE AND TAKE PART IN IT. CONSEQUENTLY, GRAFT AND CORRUPT PRACTICES OR ANY ACT WHICH MAY LEAD THERETO OCCURRING IN THE PRIVATE SECTOR AND ONLY BETWEEN AND AMONG PERSONS WORKING FOR AND TRANSACTING WITH THE PRIVATE SECTOR MUST BE REPRESSED AND PENALIZED.

SECTION 2. Section 2 of R.A. No. 3019, as amended, is hereby amended to read as follows:

Section 2. Definition of terms. As used in this Act, that term

(A) "ADVANTAGE" MEANS-

(I) ANY GIFT, LOAN, FEE, REWARD OR COMMISSION CONSISTING OF MONEY OR OF ANY VALUABLE SECURITY OR OF OTHER PROPERTY OR INTEREST IN PROPERTY OF ANY DESCRIPTION;

(II) ANY OFFICE, EMPLOYMENT OR CONTRACT;

(III) ANY PAYMENT, RELEASE, DISCHARGE OR LIQUIDATION OF ANY LOAN, OBLIGATION OR OTHER LIABILITY, WHETHER IN WHOLE OR IN PART;

(IV) ANY OTHER SERVICE, OR FAVOUR (OTHER THAN ENTERTAINMENT), INCLUDING PROTECTION FROM ANY PENALTY OR DISABILITY INCURRED OR APPREHENDED OR FROM ANY ACTION OR PROCEEDINGS OF A DISCIPLINARY, CIVIL OR CRIMINAL NATURE, WHETHER OR NOT ALREADY INSTITUTED;

(V) THE EXERCISE OR FORBEARANCE FROM THE EXERCISE OF ANY RIGHT OR ANY POWER OR DUTY; AND

(VI) ANY OFFER, UNDERTAKING OR PROMISE, WHETHER CONDITIONAL OR UNCONDITIONAL, OF ANY ADVANTAGE WITHIN THE MEANING OF ANY OF THE PRECEDING PARAGRAPHS (I), (II), (III), (IV) AND (V), BUT DOES NOT INCLUDE AN ELECTION CONTRIBUTION WITHIN THE MEANING OF THE OMNIBUS ELECTION CODE;

(B) "AGENT" INCLUDES ANY PERSON EMPLOYED BY OR ACTING FOR ANOTHER.

(C) "ENTERTAINMENT" MEANS THE PROVISION OF FOOD OR DRINK, FOR CONSUMPTION ON THE OCCASION WHEN IT IS PROVIDED, AND OF ANY OTHER ENTERTAINMENT CONNECTED WITH, OR PROVIDED AT THE SAME TIME AS SUCH PROVISIONS.

(D)(a) "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(E) "INDIVIDUAL" INCLUDES THE PRIVATE PERSON CHARGED WITH THE PUBLIC OFFICER OR THE PRIVATE PERSON CHARGED WITH VIOLATION OF SECTION 7 OF THIS ACT.

(F)(d) "Person" includes natural and juridical persons, unless the context indicates otherwise.

(G) "PRINCIPAL" INCLUDES-

(I) AN EMPLOYER;

(II) A BENEFICIARY UNDER A TRUST;

(III) A TRUST ESTATE AS THOUGH IT WERE A PERSON;

(IV) ANY PERSON BENEFICIALLY INTERESTED IN THE ESTATE OF A DECEASED PERSON;

(V) THE ESTATE OF A DECEASED PERSON AS THOUGH IT WERE A PERSON; AND

(VI) IN THE CASE OF AN EMPLOYEE OF THE GOVERNMENT, THE HEAD OF THE OFFICE, AGENCY OR DEPARTMENT CONCERNED.

~~(H)(b) "Public officer" [includes: elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph]~~
INCLUDES ELECTIVE AND APPOINTIVE OFFICIALS AND EMPLOYEES, PERMANENT OR TEMPORARY, WHETHER IN THE CAREER OR NON-CAREER SERVICE, INCLUDING MILITARY AND POLICE PERSONNEL, WHETHER OR NOT THEY RECEIVE COMPENSATION, REGARDLESS OF AMOUNT.

~~(I)(e) "Receiving any ADVANTAGE[gift]" includes the act of accepting directly or indirectly AN ADVANTAGE [a gift] from a person other than a member of the public officer's OR INDIVIDUAL'S immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the ADVANTAGE IS NOT ALLOWED UNDER SECTION 7 OF THIS ACT[value of the gift is under the circumstances manifestly excessive.]~~

SECTION 3. A new section 7 must be added which reads:

SECTION 7. CORRUPTION BY PRIVATE PERSONS. THE FOLLOWING SHALL BE LIABLE FOR AN OFFENSE

(A) ANY AGENT WHO, WITHOUT REASONABLE EXCUSE, SOLICITS OR ACCEPTS ANY ADVANTAGE AS AN INDUCEMENT TO OR REWARD FOR OR OTHERWISE ON ACCOUNT OF HIS-

(I) DOING OR FORBEARING TO DO, OR HAVING DONE OR FORBORNE TO DO, ANY ACT IN RELATION TO HIS PRINCIPAL'S AFFAIRS OR BUSINESS; OR

(II) SHOWING OR FORBEARING TO SHOW, OR HAVING SHOWN OR FORBORNE TO SHOW, FAVOUR OR DISFAVOUR TO ANY PERSON IN RELATION TO HIS PRINCIPAL'S AFFAIRS OR BUSINESS, SHALL BE GUILTY OF AN OFFENCE.

(B) ANY PERSON WHO, WITHOUT REASONABLE EXCUSE, OFFERS ANY ADVANTAGE TO ANY AGENT AS AN INDUCEMENT

1 TO OR REWARD FOR OR OTHERWISE ON ACCOUNT OF THE
2 AGENT'S-

3 (I) DOING OR FORBEARING TO DO, OR HAVING DONE OR
4 FORBORNE TO DO, ANY ACT IN RELATION TO HIS
5 PRINCIPAL'S AFFAIRS OR BUSINESS; OR

6 (II) SHOWING OR FORBEARING TO SHOW, OR HAVING
7 SHOWN OR FORBORNE TO SHOW, FAVOUR OR
8 DISFAVOUR TO ANY PERSON IN RELATION TO HIS
9 PRINCIPAL'S AFFAIRS OR BUSINESS, SHALL BE GUILTY
10 OF AN OFFENCE.

11 (C) ANY AGENT WHO, WITH INTENT TO DECEIVE HIS PRINCIPAL,
12 USES ANY RECEIPT, ACCOUNT OR OTHER DOCUMENT-

13 (I) IN RESPECT OF WHICH THE PRINCIPAL IS INTERESTED;
14 AND

15 (II) WHICH CONTAINS ANY STATEMENT WHICH IS FALSE
16 OR ERRONEOUS OR DEFECTIVE IN ANY MATERIAL
17 PARTICULAR; AND

18 (III) WHICH TO HIS KNOWLEDGE IS INTENDED TO MISLEAD
19 THE PRINCIPAL, SHALL BE GUILTY OF AN OFFENCE.

20 (D) IF AN AGENT ACCEPTS AN ADVANTAGE, NEITHER HE NOR
21 THE PERSON WHO OFFERED THE ADVANTAGE SHALL BE
22 GUILTY OF AN OFFENSE UNDER SECTION 7 (A) OR (B) IF:

23 (I) THE ACT IS DONE WITH THE PERMISSION OF HIS
24 PRINCIPAL, BEING PERMISSION WHICH COMPLIES WITH
25 SECTION 7(E) BELOW;

26 (II) THE ADVANTAGE IS UNSOLICITED;

27 (III) THE ADVANTAGE IS OF SMALL OR INSIGNIFICANT
28 VALUE AND OFFERED OR GIVEN AS A MERE ORDINARY
29 TOKEN OF GRATITUDE OR FRIENDSHIP ACCORDING TO
30 LOCAL CUSTOMS OR USAGE;

31 (E) FOR THE PURPOSES OF SECTION 7(D) PERMISSION SHALL-

32 (I) BE GIVEN BEFORE THE ADVANTAGE IS OFFERED OR
33 ACCEPTED; OR

34 (II) IN ANY CASE WHERE AN ADVANTAGE HAS BEEN
35 OFFERED OR ACCEPTED WITHOUT PRIOR PERMISSION,
36 BE APPLIED FOR AND GIVEN AS SOON AS REASONABLY
37 POSSIBLE AFTER SUCH OFFER OR ACCEPTANCE,

1 AND FOR SUCH PERMISSION TO BE EFFECTIVE FOR THE
2 PURPOSES OF SECTION 7(D), THE PRINCIPAL SHALL,
3 BEFORE GIVING SUCH PERMISSION, HAVE REGARD TO
4 THE CIRCUMSTANCES IN WHICH IT IS SOUGHT.

5 SECTION 4. All provisions using the term "gift" shall be accordingly amended to use
6 the term "advantage" instead as defined herein.

7 SECTION 5. Sections 7, 8, and 9 must be renumbered as Sections 8, 9, and 10
8 respectively.

9 SECTION 6. Section 9 of R.A. No. 3019, as amended, is hereby amended to read as
10 follows:

11 **Section 9. Penalties for violations.** (a) Any public officer or private
12 person committing any of the unlawful acts or omissions enumerated in
13 Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment
14 for not less than six (6) years and one (1) month but not nor more than
15 fifteen (15) years AND A FINE OF NOT LESS THAN FIVE HUNDRED
16 THOUSAND PESOS NOR MORE THAN ONE MILLION PESOS,
17 perpetual disqualification from public office, and confiscation or
18 forfeiture in favor of the Government of any prohibited interest and
19 unexplained wealth manifestly out of proportion to his salary and other
20 lawful income.

21 Any complaining party at whose complaint the criminal prosecution was
22 initiated shall, in case of conviction of the accused, be entitled to
23 recover in the criminal action with priority over the forfeiture in favor of
24 the Government, the amount of money or the thing he may have given
25 to the accused, or the value of such thing.

26 (B) ANY PRIVATE PERSON COMMITTING THE ACTS MENTIONED
27 IN SECTION 7 SHALL BE PUNISHED WITH IMPRISONMENT FOR
28 NOT LESS THAN SIX (6) YEARS AND ONE (1) MONTH BUT NOT
29 MORE THAN FIFTEEN (15) YEARS AND A FINE NOT LESS THAN
30 FIVE HUNDRED THOUSAND PESOS NOR MORE THAN ONE
31 MILLION PESOS, AND PAYMENT OF DAMAGES TO PERSONS
32 PREJUDICED BY THE ACTS COMMITTED.

33 (Cb) Any public officer in violation of any of the provisions of Section
34 8[7] of this Act shall be punished by a fine of not less than THIRTY
35 PERCENT NOR MORE THAN SIXTY PERCENT OF HIS ANNUAL
36 INCOME [~~one hundred pesos nor more than one thousand pesos~~], or
37 by imprisonment not exceeding one year and six months, or by both
38 such fine and imprisonment, at the discretion of the Court.

39 The violation of said section proven in a proper administrative
40 proceeding shall be sufficient cause for removal or dismissal of a public
41 officer, even if no criminal prosecution is instituted against him.

SECTION 7. Sections 10, 11, 12, 13 and 14 must be renumbered as Sections 11, 12, 13, 14 and 15 respectively.

SECTION 8. Section 14 of R.A. No. 3019, as amended, is hereby amended to read as follows:

Section 14. Exception. Unsolicited ADVANTAGE [gift] of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act PROVIDED THAT THE ADVANTAGE IS GIVEN OR RECEIVED UNDER CONDITIONS MENTIONED IN SECTION 7(D) AND THE PERMISSION OF THE PRINCIPAL IS OBTAINED UNDER THE FOLLOWING CIRCUMSTANCES MENTIONED IN SECTION 7 (E).

Nothing in this Act shall be interpreted to prejudice or prohibit the practice of any profession, lawful trade or occupation by any private person or by any public officer who under the law may legitimately practice his profession, trade or occupation, during his incumbency, except where the practice of such profession, trade or occupation involves conspiracy with any other person or public official to commit any of the violations penalized in this Act.

SECTION 9. A new section 15 must be added which reads:

SECTION 15. ALL HEADS OF GOVERNMENT OFFICES, AGENCIES, DEPARTMENTS AS WELL AS HEADS OF CORPORATIONS AND BUSINESSES, OR OF THEIR APPLICABLE DEPARTMENTS OR OFFICES MUST MAKE AVAILABLE REPORTS OF ADVANTAGES RECEIVED AND PERMITTED UNDER THIS LAW. THE REPORTS MUST PROVIDE THE PARTICULAR DETAILS OF THE ADVANTAGE RECEIVED INCLUDING BUT NOT LIMITED TO WHO ARE THE PERSONS WHO GAVE THE ADVANTAGE, WHAT IS THE PECUNIARY AMOUNT OF THE ADVANTAGES RECEIVED, REASON FOR THE RECEIPT OF THE ADVANTAGES. THE REPORTS MUST BE REDUCED IN TABULAR FORMS EVERY QUARTER FOR EASY REFERENCE. THE INFORMATION OBTAINED BY HEADS OF GOVERNMENT OFFICES, AGENCIES, DEPARTMENTS AS WELL AS HEADS OF CORPORATIONS AND BUSINESSES, OR OF THEIR APPLICABLE DEPARTMENTS OR OFFICES MUST BE KEPT FOR FIVE (5) YEARS.

THE REPORTS SHALL BE MADE AVAILABLE FOR INSPECTION, COPYING, REPRODUCTION BY THE OFFICE OF OMBUDSMAN AT REGULAR WORKING HOURS ON REGULAR BUSINESS DAYS.

SECTION 10. Separability Clause. - If any provision of this Act is declared invalid, the other provisions not affected thereby shall remain valid.

1 Section 11. Repealing Clause. - All laws, proclamations, executive orders, rules and
2 regulations or parts thereof inconsistent with this Act are hereby repealed, modified
3 or amended accordingly: *Provided*, That no person shall be deemed to be vested
4 with any property or other right by virtue of the enactment or operation of this Act.

5 Section 12. Effectivity Clause. - This Act shall take effect fifteen (15) days after its
6 complete publication in the *Official Gazette* or in at least two (2) national newspapers
7 of general circulation whichever comes earlier.

8
9 Approved,