

Annex 0

FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)

2 MAY 1988

SENATE
S.B. No. 3533

Introduced by Senator Richard J. Gordon, Chairman and members of the
Committee on Accountability of Public Officers and Investigations

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.

RICHARD J. GORDON

SENATE
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Committee on Accountability of Public Officers and Investigations

AN ACT PROVIDING FOR WHISTLEBLOWER BILL OF RIGHTS

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

SECTION 1. Short Title. – This Act shall be known as the “Whistleblower Protection Act of 2009.”

SECTION 2. Definitions of Terms. – As used in this act and unless otherwise specified, the following words or terms shall have the meaning indicated:

- (a) A “Whistleblower” is a person who publicly reveals a concealed misconduct or a commission or attempted commission of a crime by a person, employer, employee, or an agency whether of a public or private entity. Provided, however, that said person has not participated or has refused to participate in the misconduct or the violation or attempted violation of law.
- (b) “Whistleblowing” is the disclosure, making public, giving evidence to, an information that a whistleblower reasonably believes constitutes:
 - (i) a violation of law, rule, regulation, policy,
 - (ii) gross mismanagement,
 - (iii) gross waste of funds,
 - (iv) abuse of authority,
 - (v) threat to public interest such as fraud and corruption,
 - (vi) or a substantial and specific danger to public health or safety;
- (c) “Employer” is any individual, partnership, association, corporation, or any person or group of persons who has the power and right to control and direct the employee in the material details of how the work is to be performed, which includes any public or privately owned corporation, branches of government, or any other political subdivision, authority, commission, or board, or any other agency or instrumentality thereof;
- (d) “Superior / Supervisor” is an individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust

their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment;

- (e) "Retaliatory Action" is the discharge, suspension, transfer, or demotion of any employee / whistleblower or the withholding of bonuses, reduction in salary or benefits, or any other action that may adversely affect his rights and interests taken by his employer, superior, supervisor or head of agency;
- (f) "Gross Mismanagement" is the continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact;
- (g) "Gross Waste of Funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

SECTION 3. Actions Prohibited.

It shall be unlawful for any Employer, Superior, Supervisor or Head of Agency to retaliate or perform such acts which can be deemed as "Retaliatory Acts" as defined in this code against an employee / whistle blower.

SECTION 4. Nature of Information Disclosed. The information disclosed under this section must include:

- (a) Any violation or suspected violation of any law, rule, or regulation committed by an employee or agent of government agency or private entity which creates and presents a substantial and specific danger to the public interest, safety, or welfare.
- (b) Any act or suspected act of gross mismanagement and misconduct, malfeasance, misfeasance, non-feasance or gross neglect of duty, gross waste of public funds committed by an employee or agent and public officials of a government agency.

SECTION 5. To Whom Information Disclosed.

The information disclosed under this section must be made to his superior / supervisor or any other person in authority who has the power to prevent, remedy, correct the wrongdoing or any government agency having the authority to investigate, prosecute the violation or act, including, but not limited to, the Philippine National Police, The National Bureau of Investigation, the Office of the Ombudsman and the Department of Justice.

SECTION 6. Whistleblowers and Persons Protected.

Legal protections accorded under this Act to employees / whistleblowers and their spouse and/or any member of the family within the first (1st) civil degree by consanguinity or affinity who:

- (a) disclose information on their own initiative in a written and signed complaint or affidavit; or
- (b) are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or national government agency; and,
- (c) refuse to participate in any retaliatory action prohibited by this section; or who initiate a complaint against or testify regarding an illegal act.

SECTION 7. Remedies.

- (a) Any whistleblower or employee of or applicant for employment with any government agency, who is discharged, disciplined, or subjected to other retaliatory action, or denied employment, because he or she engaged in an activity protected by this section may file a complaint without need of exhausting all available contractual or administrative remedies, before a court of competent jurisdiction within one (1) year after the action prohibited by this section is committed.

SECTION 8. Relief. – In any action brought under this section, the relief must include the following:

- (a) Reinstatement of the whistleblower or employee to the same position held before the retaliatory action was commenced, or to an equivalent position or reasonable front pay as alternative relief;
- (b) Reinstatement of the whistleblower or employee's full fringe benefits and seniority rights, as appropriate;
- (c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the retaliatory action;
- (d) Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the whistleblower or employee filed a frivolous action in bad faith;
- (e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction;
- (f) Temporary reinstatement to the whistleblower or employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Commission on Human Rights, as applicable, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the whistleblower or employee which includes documentation of the employee's violation of a disciplinary standard or performance deficiency.

SECTION 9. Preemption. Nothing in this Act shall be deemed to diminish the rights, privileges, or remedies of any whistleblower or employee under any law or regulation or under any collective bargaining agreement or employment contract. No whistleblower or employee may waive through the private contract any right set forth in this Act, except as set forth in Section 7, and no employee may be compelled to adjudicate his or her rights under this Act pursuant to a collective bargaining agreement or any other arbitration agreement.

SECTION 10. Settlement. – The rights afforded employees under this Act may not be waived or modified

SECTION 11. Penal Clause. – Any person who violates any provision of this Act shall suffer pay a fine of not less than two hundred thousand pesos (P200,000) but not more than five hundred thousand pesos (P500,000) and suffer an imprisonment of not less than two (2) years but not more than six (6) years.

Upon filing of an appropriate complaint, and after due notice and hearing, the proper authorities may also cause the cancellation or revocation of the business permit, permit to operate, franchise and other similar privileges granted to any private entity that fails to abide the provisions of this Act.

SECTION 12. Separability Clause. – If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 13. 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.

SECTION 14. Effectivity Clause. – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspaper of general circulation.

Approved,