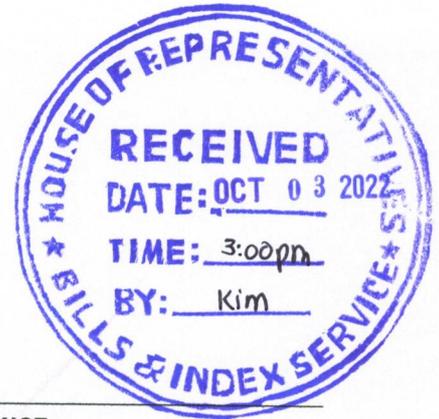


NINETEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 5353

EXPLANATORY NOTE

Organized crime has become so pervasive in the country that law enforcement agencies and the judiciary have been crippled by the degree of organization and diversification of these syndicates.

Money obtained by these criminal organizations through murder, mayhem, kidnapping, illegal drug, illegal gambling and other racketeering activities have been used to infiltrate legitimate business ventures, labor unions and other democratic institutions and which as a result, have fallen prey to the influence of organized crime. The economic stability of the country is further weakened by reason of organized crime's increasing influence in the nation's trade and commerce.

The purpose of this bill is to eliminate racketeering and criminal syndicates by imposing stiffer penalties. It also includes provisions for the forfeiture of illegally acquired assets of persons and entities engaged in illegal activities including money laundering.

With some modifications, this bill is similar to the Racketeer-Influenced and Corrupt Organizations (RICO) Statute of the United States which helped law enforces and prosecutors in obtaining convictions and forfeiture of properties of crime lords in the country. Similar bills have also been filed during the previous Congresses, which, unfortunately, failed to be enacted into law due to lack of time.

As a consultant to the Presidential Anti-Crime Commission (PACC) headed by Vice President Joseph "Erap" Estrada, I conducted a six-month research on the Racketeer Influenced and Corrupt Organizations (RICO) law of the United States which was very successful in breaking up organized crime syndicates in the US, such as the Mafia, and putting these criminals behind bars.

This in-depth study, which brought me to Washington D.C. where I researched at the US Department of Justice specifically its Organized Crime and Racketeering Section under Paul E. Coffey, and The Library of Congress, expanded my paper on RICO which I submitted in fulfillment of the seminar-The Black Letter Law of White Collar Crime – which I took during my Master of Laws studies at Columbia Law School in New York City under Professors John C. Coffee, Jr. and Jed S. Rakoff.

The more I studied the U.S. RICO law, the more I am convinced that this is the law that we need to be able to stop the rise of kidnapping for ransom and armed robberies of banks committed by crime syndicates in our country.

A similar law which should be enacted in the Philippines will give our law enforcement officers and prosecutors the much-needed legal mechanisms to counter these crimes and enable them to secure convictions against these syndicates.

The enactment of RICO Law in 1970 in the United States culminated four decades of congressional efforts to combat organized crime. RICO was the end product of a long process of legislative effort to develop new legal remedies to deal with an old problem: "organized crime."

In 1951, the Kefauver Committee in the U.S. Senate disclosed the problem of organized crime infiltration into legitimate business. By 1960, the criminal infiltration of labor unions had been documented by the McClellan Committee. The McClellan Committee exposed the structure of a national syndicate of organized crime known as the Mafia or La Cosa Nostra.

Following televised congressional hearings in 1963 at which Mafia member Joseph Valachi exposed the inner structure, rules, and history of La Cosa Nostra, President Lyndon Johnson appointed a commission, headed by Attorney-General Nicholas Katzenback, to study the "cancer of organized crime." In its 1967 report, the Katzenback Commission proclaimed that the "core" of organized crime was the Mafia or La Cosa Nostra, which consisted of "24 groups operating as criminal cartels in large cities across the Nation." To combat this hydra, the commission recommended important new measures, and after substantial reworking and broadening, RICO emerged in a new bill in 1969 and was enacted as part of the Organized Crime Control Act of 1970.

In 1989, Justice Department came up with statistics on the kinds of criminal cases filed under RICO. It also cited an American Bar Association study classifying the kinds of private civil RICO cases filed.

RICO had achieved spectacular success in its assaults on organized crime, particularly during the 1980s. Using RICO as their chief weapon, federal prosecutors have convicted more than one thousand organized crime members and associates since 1981. It has been estimated that of the fifty most powerful Mafia figures in the country, about half have been tried under RICO in recent years. The following list of organized crime "bosses" convicted under RICO may convey some sense of the law's effectiveness:

New York (Five "Families")

Anthony Salerno, Genovese Family Boss
Carmine Persico, Jr., Colombo Family Boss
Philip Rastelli, Bonanno Family Boss
Anthony Corallo, Lucchese Family Boss
Paul Castellano, Gambino Family Boss
(indicted; murdered before trial)

Philadelphia/Atlantic City

Nicodemo Scarfo

Cleveland

James Licavoli

Los Angeles

Peter Milano
Dominic Brooklier

New Orleans

Carlos Marcello

Boston

Genarro Anguilo (ranking figure)

Sicily

Gaetano Badalementi (exiled head of Sicilian Mafia Commission)

RICO had also been used effectively against many other vicious criminal gangs, including drug traffickers and terrorists. RICO's use, however, has extended beyond these gangs. Justice Department statistics classifying RICO cases according to the principal predicates alleged in the indictment show that the cases break down as follows: political corruption (28%); narcotics (27%); fraud in the private sector (13%); labor racketeering (7%); government procurement fraud (6%); gambling (5%); and securities violations (1%). Among other things, these statistics show that while RICO cases involving securities violations and

other types of private sector fraud have attracted much publicity and criticism, such case form a relatively small percentage of RICO prosecutions.

Turning to civil RICO suits, these suits begun by private parties began even more slowly than criminal prosecutions, but grew exponentially in the 1980s, according to an American Bar Association study. This study classified the essential allegations in private civil RICO cases as follows: securities fraud (4%); bribery or commercial bribery (1%); and offenses associated with professional criminal activity (8%). These statistics contrast sharply with those for criminal RICO cases noted earlier.

It is hoped that by having a proposed Philippine law on the Eradication of Racketeers and Powerful Syndicates passed against racketeers and organized crime syndicates during this Congress, we will contribute immensely to the eradication of syndicated/organized crime groups in the Philippines not only by the actual busting of these crime groups but by giving the proper legal infrastructure to put these criminals behind bars and to recover the proceeds of their crimes in favor of the state and their victims.

Due to the importance of this measure, immediate passage at this is earnestly sought.



RUFUS B. RODRIGUEZ

NINETEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
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HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 5353

**AN ACT
TO ERADICATE RACKETEERS AND POWERFUL SYNDICATES IN THE PHILIPPINES**

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

Section 1. Title of the Act. – This Act shall be known as the “Eradication of Racketeers and Powerful Syndicates Law”.

Section 2. Declaration of Policy. – The unabated rise in organized and syndicated crimes, and the increasing involvement of law enforcement officers and government officials in organized crimes have seriously undermined the pursuit of the State to achieve the economic, social and political goals of Philippines. It is hereby declared as the policy of the State to give priority in enacting and enforcing new and stronger measures against organized criminality in order to enhance the peace and order condition of the country.

Sec. 3. Liberal Construction. – The provisions of this Act shall be liberally construed to give effect to the policy declared under Section 2 hereof. However, the constitutional rights of any person accused under this Act shall not be impaired.

Sec. 4. Definitions. – As used in this Act:

1. “Person” means any individual, association, partnership, corporation, entity or any group of individuals, association, corporations or entities.

2. “Enterprise” includes any individual or association, partnership, corporation or other legal entity or any union or group of individuals associated in fact whether for legitimate or illegitimate purposes.

3. “Racketeering activity” means any attempt or act involving kidnapping; murder, arson; robbery; illegal possession of firearm, ammunition or explosives; bribery; and other anti-graft and corrupt practices; gambling; carnapping; fencing; gun running; illegal logging; white slavery; illegal recruitment; smuggling; piracy; illegal fishing; importation, manufacture, sale, administration, delivery, distribution and transportation of prohibited drugs and maintenance of a drug den; squatting; swindling (estafa); film piracy; counterfeiting; violation of intellectual property rights; monopolies and combinations in restraint of trade; falsification of land titles; securities fraud, bank frauds, dealing in obscene matters and sexual exploitation of children; economic exploitation of children, the disabled and others (mendicancy), as defined under existing criminal statutes;

4. "Pattern" of racketeering activity requires at least two predicate acts of racketeering activity, one of which occurred after the effective date of this Act and the other occurring either within ten years before the one occurring after the effectivity of the act or within ten years after the one occurring after the effectivity of this Act.

Sec. 5. Prohibited Activities.

1. It shall be unlawful for any person to knowingly participate, either directly or indirectly with or in an enterprise conducting a pattern of racketeering activity.

2. It shall be unlawful for any person through a pattern of racketeering activity to acquire or maintain directly or indirectly any interest in or control of any business enterprise, whether legitimate or illegitimate.

3. It shall be unlawful for any person to propose or conspire to violate any of the unlawful acts provides herein.

Sec. 6. Criminal Penalties.

a. Imprisonment or fine or both. Whoever violates any provision of Section 4 shall be imprisoned for a period from ten years to twenty years and if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment, the penalty shall be life imprisonment and a fine from Php100,000.00 to Php1,000,000.00;

b. Consolidation of cases. The trial for criminal liability for each predicate act of racketeering activity shall be consolidated with the court hearing the RICO case;

c. Forfeiture. In addition to imprisonment and fine, the violator shall forfeit to the Philippine government:

1. any interest the person has acquired or maintained in violation of Section 4;
2. any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over: any enterprise which the person has established, operated, controlled, conducted, or participated in, in violation of Section 4; and
3. any property constituting or derived from any proceeds which the person obtained directly or indirectly, from racketeering activities in violation of Section 4.

d. Vesting of right in property. All rights, titles and interests in property described in preceding paragraph vests in the Philippine government upon the commission of the act giving rise to forfeiture under this section.

e. Jurisdiction. Any of the Regional Trial Courts of the place where any element of any of the racketeering activity constituting the pattern of racketeering activity has been committed shall have jurisdiction over prosecutions under this act and applications for forfeiture including petitions for temporary restraining order or injunction under the next succeeding section without regard to the location of any property subject to forfeiture or where the person resides or where the enterprise is located.

1. Temporary Restraining Order. A temporary restraining order effective for twenty days may be issued upon application by the Philippine Government without notice or opportunity for a hearing before, during or after the filing of the information directing the defendant or any person acting on his behalf to desist from disposing and to preserve the availability of property for forfeiture, if the Philippine government demonstrates that there is probable cause to believe that the property would be subject to forfeiture and that the provision of notice will jeopardize the availability of the property for forfeiture.

2. Preliminary Injunction. Within twenty days after the issuance of a temporary restraining order, the court shall conduct a hearing with notice to all parties concerned. A writ of injunction shall be issued if the court determines that:

a) There is substantial probability that the Philippine government will prevail on the issue of forfeiture and that failure to issue the writ will result in the property being destroyed, removed, disposed or otherwise made unavailable for forfeiture; and

b) The need to preserve the availability of the property through the writ outweighs the hardship on any party against whom it is directed.

f. Evidence Required. – In the hearing for the prosecution of cases filed under this Act, the sole testimony of a participant or conspirator, if credible, can be the basis for conviction of the other accused; *Provided*, That, for purpose of the hearing for the writ of preliminary injunction, the court shall not be bound by the technical rules on evidence under the rules of court; *Provided, further*, That the evidence was taken without violating the constitutional rights of the accused.

g. Judgment for forfeiture. Upon conviction of person under this section, the court shall enter a judgment of forfeiture of the property to the Philippine government and shall authorize the Secretary of Justice to seize all property ordered forfeiture.

h. Disposition of forfeited property. (a) Following the seizure of the property, the Secretary of Justice shall direct the disposition of the property by sale or any other commercially feasible means. Any property right or interest not exercisable by or transferable for value to the Philippine government shall expire and shall not revert to the defendant, nor shall the defendant or any person acting on his behalf be eligible to purchase forfeited property at any sale held by the Philippine government. (b) The proceeds of any sale or other disposition of property shall be deposited in the National Treasury under a special account and shall not be used until the defendant's appeal, if any, has finally been decided. If the defendant's conviction is reversed, the amount shall be returned to the defendant.

i. Restitution of property to victims. The court entering the judgment of correction and forfeiture, upon finality of the decision, shall hear petitions by victims of racketeering activity for restitution of property or compensation. The court may order portions of the proceeds of the sale of forfeited property deposited with the National Treasury to be paid to the victims.

j. Rights of Third parties.

1) No party claiming an interest in property subject to forfeiture may -

a) intervene in a trial or appeal of a criminal case involving the forfeiture of such property; or

b) commence an action at law or equity nor may any court lower than the Supreme Court issue a restraining order or injunction against the Philippine Government concerning the validity of his alleged interest in the property subject to forfeiture.

2) However, any person, other than the defendant asserting a legal interest in property ordered forfeited may, within thirty days from publication by the Secretary of Justice, of the judgment forfeiture in two national papers of general circulation in the Philippines, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. If, after the hearing, the court determines that the petitioner has established by preponderance of evidence that – a) the petitioner has legal right, or interest in the property; or b) the petitioner is a bonafide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was acquired through a racketeering act or otherwise subject to forfeiture the court shall amend the order of forfeiture in accordance with its determination.

k. Substitution of other properties. If any of the properties described in Section 5(c) as a result of any act or omission of the defendant -

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the courts;
- (4) has been substantially diminished in value; or
- (5) has been commingled with or other property which cannot be divided without difficulty;

The court shall order the forfeiture of any other property of the defendant up to the value of any property described in Section 5(c).

Sec. 7. Civil Remedies.

A. Who can bring civil suit -

1. The Philippine government.

a) Any of the Regional Trial Courts of the place where any element of any racketeering activity constituting a pattern of racketeering activity has been committed shall have jurisdiction to prevent or restrain violations of Section 4 irrespective of where the person resides or is found or where the enterprise or property is located by issuing appropriate orders, including but not limited to:

- (1) ordering any person to divest himself of any interest, direct or indirect in any enterprise.
- (2) imposing reasonable restriction on the future activities or investments of any person including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; or
- (3) ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

b) The Secretary of Justice may institute proceedings under this section.

c) A Final judgment rendered in favor of the Philippine government in any criminal proceeding shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceedings brought by the Philippine government.

2. By private plaintiffs. Any person injured in his person, business or property by reason on violation of Section 4 or his heirs, may sue therefor in the appropriate Regional Trial Court mentioned in the preceding paragraph and shall recover threefold the damages he sustains and the cost of the suit, including reasonable attorney's fees.

B. Expedited Action. In any civil action instituted under this section, the Regional Trial Court shall expeditiously hear the case by giving it preference over all other civil cases.

C. Civil Investigative Demand.

- (a) Whenever the Secretary of Justice has reason to believe that any person or enterprise may be in possession or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a criminal or civil proceeding, thereon, issue in writing and caused to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.
- (b) The Secretary of Justice shall designate a racketeering investigator to serve as racketeer document custodian.
- (c) Any person who has duly been served by the civil investigative demand shall make available for inspection and copying or reproduction to the custodian designated therein at any place agreed upon and shall certify under oath that the copies are true reproduction of the original, which certified copies shall be admissible in court as originals.
- (d) While in the possession of the custodian, no material so reproduced shall be available for examination, without the consent of the person who produced such material or by any individual other than the Secretary of Justice.
- (e) Whenever any person fails to comply with any civil investigative demand, the Secretary of Justice may file in the appropriate Regional Trial Court having jurisdiction a petition for an order of such court for the enforcement of the civil investigative demand; if the person disobeys the order of the court, he shall be liable for contempt of court.

Sec. 8. Statute of limitations. One of the predicate acts of racketeering must have been committed within ten years of the date of the information; otherwise, violations of this act shall be deemed to have prescribed.

Sec. 9. Separability clause. If for any reason, any section or provision of this Act is declared null and void, no other section, provision, or part thereof shall be affected and the same shall remain in full force and effect.

Sec. 10. Repealing clause. All laws, presidential decrees, rules and regulations or parts thereof inconsistent with this act are deemed amended, repealed, or modified accordingly.

Sec. 11. Effectivity. This act shall take effect fifteen (15) days after its publication in at least two (2) newspaper of general circulation.

Approved,