

NINETEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
Third Regular Session

)
)
)

25 FEB -4 P5:38

RECEIVED



SENATE

S. B. No. 2980

(In Substitution of Senate Bill No. 2368)

Prepared and submitted by the Committee on National Defense and Security, Peace, Unification and Reconciliation with Senator Jinggoy Ejercito Estrada as author thereof.

AN ACT
DEFINING AND PENALIZING ESPIONAGE AND OTHER OFFENSES AGAINST
NATIONAL SECURITY

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

1 Section 1. *Short Title.* – This Act shall be known as the “New Anti-Espionage Act.”

2 Sec. 2. *Declaration of Policy.* – It is a declared policy of the State that paramount
3 consideration shall be given to its national sovereignty, territorial integrity, national
4 interest, and the right to self-determination. The State recognizes that espionage is
5 inimical to its sovereignty and democracy. Further, the fight against espionage,
6 clandestine acquisition of sensitive information and unlawful obtaining of classified
7 information that affect the national security or national defense requires comprehensive
8 approach. To this end, the State shall adopt and implement effective measures to combat
9 and prevent espionage to protect and promote national security and interests.

10 In the implementation of the policy stated above, the State shall uphold the basic
11 rights and fundamental liberties of the people as enshrined in the Constitution.

12 Sec 3. *Definition of Terms.* – As used in this Act:

- 13 a) *Classified matter* refers to information or materials in whatever nature or form,
14 that is designated as classified for national security purposes. It includes

1 everything classified under any issuance or legislation concerning the security
2 classification of matters and information;

3 b) *Critical infrastructure* refers to assets, systems, public works and networks,
4 including but not limited to transportation, utilities, digital systems and
5 information and communications technology, whether physical or virtual, that
6 are considered vital and their destruction or disruption would have a debilitating
7 impact on national security, health and safety, or economic well-being of
8 citizens, or any combination thereof;

9 c) *Cyber* refers to digital technologies, computer or computer network, data and
10 the electronic medium in which online communication takes place;

11 d) *National Defense* refers to the mechanism of the State to marshal a nation's
12 forces and resources to protect national interests, sovereignty and territorial
13 integrity and respond to threats thereto;

14 e) *National defense assets* refer to the following premises, materials, and utilities
15 used by the Armed Forces of the Philippines, including its auxiliaries:

16 1) *National defense premises* shall include but are not limited to, all buildings,
17 grounds, mines, missile launch facilities, data centers, communication and
18 information facilities, or other places where national defense material is
19 produced, manufactured, repaired, stored, mined, extracted, distributed,
20 loaded, unloaded, or transported, together with all machinery and
21 appliances contained therein; where communications and data are
22 processed, stored, transmitted, connected, and coordinated; where missiles
23 are stored, assembled, and operated; and all ports, arsenals, navy yards,
24 prisons, camps, or other army, naval, or air stations;

25 2) *National defense materials* shall include satellite and other intelligence,
26 surveillance and reconnaissance systems, arms, weapon system, munition,
27 missile, livestock, clothing, food, or fuel, communications, codes, formulas,
28 gadgets, computers, communication devices, and shall also include supplies
29 and all other articles of whatever description, and any part or ingredient

thereof, intended for, adapted to, or suitable for the use of the Philippines in connection with national defense; and

3) *National defense utilities* shall include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, or aircraft, or any other means of transportation whatsoever, whereon or whereby such national defense materials or any troops of the Philippines are being or may be transported either within the limits of the Philippines or upon the high seas; and all dams, reservoirs, aqueducts, water and gas mains, oil or gasoline stations, pipes, structures, and buildings, whereby or in connection with which water, or gas, or oil, or gasoline, or other fluid is being furnished, or may be furnished to national defense premises and all electric light and power, steam or pneumatic power, telephone, and telegraph plants, poles, wires, facilities, fiber optic infrastructures, antennas, base transceiver stations, data centers, satellites, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply water, light, heat, gas, oil, gasoline, fluid, power, or facilities of communication to national defense premises;

f) *National security* refers to a state or condition in which the people's welfare, well-being, ways of life, government and its institutions, territorial integrity, sovereignty, and core values are protected and enhanced;

g) *National Security Facility* refers to a building, installation or area housing classified or sensitive information, materials, or equipment, and is protected by security measures to prevent unauthorized access of classified information;

h) *Person* refers to any natural and juridical persons unless the context indicates otherwise; and

i) *Prohibited Place* refers to a land, building, airspace, maritime domain, systems, network, cyberspace or any area designated by the President or the President's

1 authorized representative, or the Secretary of National Defense as such to
2 protect the security, safety and interests of the State.

3 Sec. 4. *Espionage*. – Espionage is committed by any person who, within or outside
4 the Philippines, deals with classified matters without authority, through physical,
5 electronic, cyber, or any other means, which causes or has intent to cause injury to the
6 Philippines or gives or tends to give advantage to a state, nation, entity or individual,
7 whether foreign or domestic.

8 Dealing with a classified matter shall mean receiving, obtaining, collecting,
9 possessing, processing, recording, copying, reproducing, disclosing or communicating,
10 publishing, delivering, transferring, transmitting, making available, concealing,
11 intercepting, interfering, selling, procuring, buying, altering, compromising or destroying
12 its integrity, or allowing classified information under one's custody to be removed from
13 its proper place, delivered, communicated, transmitted, or disclosed to an unauthorized
14 person, stolen, abstracted, intercepted or compromised.

15 Any person who accesses any sketch, drawing, map, lay out, blueprint, graphical
16 or multimedia representation of critical infrastructure, prohibited place, or national
17 defense assets, without authority shall also be held liable for espionage: *Provided*, That
18 only the President or the President's authorized representative, or the Secretary of
19 National Defense, as the case may be, may grant authorization to enter or deal with
20 representations of prohibited places and national defense premises.

21 Any person who makes or assists in making a false declaration or statement for
22 the purpose of obtaining authorization from a competent authority shall be presumed
23 guilty of this offense.

24 Possession of a classified matter by an unauthorized person shall be *prima facie*
25 evidence of disclosure against the person who, by reason of his official functions, is in
26 custody of said classified matter.

27 Any person who commits the aforementioned acts shall suffer the penalty of life
28 imprisonment without the benefit of parole and the benefits provided in Articles 29, 94,
29 97, 98 and 99 of Act No. 3815, or the "Revised Penal Code" as amended by Republic Act

No. 10592 and by a fine of not less than Twenty million pesos (Php20,000,000.00) but not more than Fifty million pesos (Php50,000,000.00).

Sec. 5. *Conspiracy to Commit Espionage.* – Conspiracy to commit espionage as defined in Section 4 hereof shall be penalized with life imprisonment without the benefit of parole and the benefits provided in Articles 29, 94, 97, 98 and 99 of Act No. 3815, or the “Revised Penal Code” as amended by Republic Act No. 10592 and by a fine of not less than Twenty million pesos (Php20,000,000.00) but not more than Fifty million pesos (Php50,000,000.00).

There is conspiracy when two (2) or more persons come to an agreement concerning the commission of espionage as defined in Section 4 hereof and decide to commit the same.

Sec. 6. *Proposal to Commit Espionage.* – Any person who proposes to commit espionage as defined in Section 4 hereof shall suffer the penalty of ten (10) to twelve (12) years imprisonment and by a fine of not less than Ten million pesos (Php10,000,000.00) but not more than Twenty million pesos (Php20,000,000.00).

There is proposal when the person who has decided to commit espionage proposes its execution to some other person or persons.

Sec. 7. *Acts of destruction, interference, and obstruction.* – It shall be unlawful for any person to cause or attempt to cause destruction, interference, or obstruction to the government’s activities against threats to national defense and national security by:

a) making or causing to be made, or attempting to make or cause to be made any national defense or national security material in a defective manner, including those used or employed in the making, producing, manufacturing, or repairing of such materials; or

b) destroying or attempting to destroy any national defense assets.

Any person found to be in violation of this provision shall suffer the penalty of ten (10) to twelve (12) years imprisonment and a fine of not less than Ten million pesos (Php10,000,000.00) but not more than Twenty million pesos (Php20,000,000.00).

Sec. 8. *Disloyal Acts or Words Affecting National Defense, National Security, and Critical Infrastructure.* – It shall be unlawful for any person to commit any of the following

1 acts to any member of the government or any institution or entity whose function is
2 critical to the preservation and promotion of national defense and national security, or
3 protection of critical infrastructure:

- 4 a) incite, coerce, deceive, or otherwise cause insubordination, disloyalty, mutiny,
5 or refusal of duty by any member of the aforementioned entities;
- 6 b) distribute any material or information that incites, coerces, deceives, or causes
7 insubordination, disloyalty, mutiny, or refusal of duty by any member of the
8 aforementioned entities;
- 9 c) make, disseminate or convey false reports, information or statements causing
10 interference with or obstruction to the operation or success of the government,
11 particularly in matters relating to national security or defense, or to promote
12 the success of enemy forces; or,
- 13 d) obstruct the recruitment or enlistment efforts of the military or the uniformed
14 personnel during armed conflict.

15 Any person found to be in violation of this provision shall suffer the penalty of ten
16 (10) to twelve (12) years imprisonment and a fine of not less than Ten million pesos
17 (Php10,000,000.00) but not more than Twenty million pesos (Php20,000,000.00).

18 *Sec. 9. Unlawful Possession or Control of Surveillance or Mapping Equipment.* – It
19 shall be unlawful for any person to possess or control any surveillance system or
20 equipment, including but not limited to cameras, listening or tracking devices, or any
21 other technological means for the purpose of surveilling, monitoring, or spying on
22 government officials, military personnel, or individuals involved in national security or
23 defense activities, prohibited places, critical infrastructure, national defense assets or
24 making a map related thereto. Any person found to be in violation of this Section shall
25 suffer the penalty of ten (10) to twelve (12) years imprisonment and a fine of not less
26 than Ten million pesos (Php10,000,000.00) but not more than Twenty million pesos
27 (Php20,000,000.00).

28 *Sec. 10. Abetting or Aiding.* – Any person who abets or aids another to commit any
29 of the offenses defined and penalized under this Act shall suffer the penalty of ten (10)

1 to twelve (12) years imprisonment and a fine of not less than Ten million pesos
2 (Php10,000,000.00) but not more than Twenty million pesos (Php20,000,000.00).

3 Sec. 11. *Harboring, Concealing or Facilitating the Escape of Violators of the Law.*

4 — Harboring, concealing or facilitating the escape of a person whom one knows, or has
5 reasonable ground to believe or suspect, has committed, or is about to commit, any of
6 the offenses defined and penalized under this Act shall suffer the penalty of ten (10) to
7 twelve (12) years imprisonment and a fine of not less than Ten million pesos
8 (Php10,000,000.00) but not more than Twenty million pesos (Php20,000,000.00).

9 Sec. 12. *Liability of Government Officials and Employees, Military Officers and*
10 *Personnel, Foreigners and Juridical Entities.* — A government official or employee found
11 guilty of committing any of the offenses punishable under this Act shall suffer absolute
12 perpetual disqualification from any public office and the maximum penalty provided in
13 this Act.

14 Military officers and personnel charged with violations under this Act shall be tried
15 by General Courts-Martial under Commonwealth Act No. 408 or the "Articles of War," as
16 amended.

17 Foreigners found guilty of committing any offense punishable herein shall, in
18 addition to the penalties prescribed under this Act, be deported immediately without
19 further proceedings after the service of sentence and be permanently barred from
20 entering the country.

21 The partner, president, director, manager, trustee, administrator or officer of any
22 juridical entity who consents to, knowingly tolerates or, due to negligence, fails to prevent
23 the commission of a violation of this Act shall be held liable. In addition to the payment
24 of fine by the juridical entity, its registration and license to operate with the appropriate
25 government authorities shall be cancelled and revoked permanently, as ordered by the
26 Court, without prejudice to the imposition of sanctions pending trial.

27 Sec. 13. *Designation of Prohibited Places by Proclamation.* — For purposes of this
28 Act, the President or the President's duly authorized representative, or the Secretary of
29 National Defense, as the case may be, may designate prohibited places where military or
30 classified activities, matters or information relative to defense and national security are

1 conducted, prepared, manufactured, processed, used, or stored indicating the reason for
2 such designation.

3 National defense premises and national security facilities as defined herein shall be
4 considered prohibited places without need of such proclamation.

5 Sec. 14. *Classification and Custody of Classified Matters During Inquiry,*
6 *Investigation and Prosecution.* – All inquiries, investigations, and prosecutions related to
7 espionage, including any related documents, evidence, proceedings, and
8 communications, shall be classified according to the security sensitivity of the matter
9 involved. Such classified matters shall be handled in accordance with the existing and
10 subsequent guidelines in the handling of classified matters and shall only be accessible
11 to individuals with the requisite security clearance and on a need-to-know basis.

12 Access to any material or information pertaining to espionage inquiries,
13 investigations, or prosecutions shall be strictly limited to authorized persons whose duties
14 require such access, including law enforcement, intelligence officers, military officials,
15 judicial authorities, and personnel directly involved in the conduct of the investigation or
16 prosecution. Any unauthorized disclosure, dissemination, or sharing of classified
17 information related to espionage cases shall be subject to penalties as provided under
18 Section 4 of this Act.

19 The Department of Justice (DOJ) and Office of the National Security Adviser shall
20 ensure the proper classification, safeguarding, and control of such sensitive information,
21 including establishing of procedures for access, review, and declassification, where
22 appropriate.

23 Sec. 15. *Surveillance of Suspects and Interception and Recording of*
24 *Communications.* – The provisions of Republic Act No. 4200, otherwise known as the
25 “Anti-Wiretapping Law” to the contrary notwithstanding, a military personnel, law
26 enforcement agent, or intelligence officer duly authorized by their respective heads of the
27 agency may, upon written order of the Regional Trial Court where any of the elements
28 for the violation of this Act has been committed or about to be committed, wiretap,
29 overhear, and listen to, intercept, screen, read, surveil, record or collect, with the use of
30 any mode, form, kind or type of electronic, mechanical or other equipment or device or

1 technology now known or may hereafter be known to science or with the use of any other
2 suitable ways and means for the above purposes, any private messages in whatever form,
3 kind or nature, spoken or written words any person charged or suspected of committing
4 any of the offenses defined and penalized under this Act: *Provided*, That such written
5 order shall only be issued or granted upon written application and the examination under
6 oath or affirmation of the applicant and the witnesses one may produce and a showing:
7 (1) that there are reasonable grounds to believe that any of the crimes enumerated herein
8 has been committed or is being committed or is about to be committed; (2) that there
9 are reasonable grounds to believe that evidence will be obtained essential to the
10 conviction of any person for, or to the solution of, or to the prevention of, any of such
11 crimes; and (3) that there are no other means readily available for obtaining such
12 evidence.

13 The law enforcement agent, military personnel, or intelligence officer shall (1) file
14 an *ex parte* application with the Regional Trial Court, where the telecommunications
15 service providers (TSPs) and internet service providers (ISPs) are situated, for the
16 issuance of an order, to compel TSPs and ISPs to produce all customer information and
17 identification records as well as call and text data records, content and other cellular or
18 internet metadata of any person suspected of any of the crimes defined and penalized
19 under the provisions of this Act; and (2) furnish the National Telecommunications
20 Commission (NTC) with a copy of said application. The NTC shall be notified by the court
21 upon the issuance of the order to ensure immediate compliance.

22 Sec. 16. *Forfeiture of Materials and Effects*. – Upon conviction for any offense
23 under this Act, all materials and effects directly used or intended to be used in the
24 commission of such offense may be subject to forfeiture in favor of the government and
25 disposed of in accordance with applicable laws, regulations, and procedures.

26 Sec. 17. *Extraterritorial Application*. – The provisions of this Act shall apply to any
27 person, who commits any of the offenses defined and penalized under this Act, regardless
28 of the stage of the commission of the offense, within or outside the territorial jurisdiction
29 of the Philippines.

1 Sec. 18. *Implementing Rules and Regulations.* – Within one hundred twenty (120)
2 days from the effectivity of this Act, the Department of National Defense, the DOJ, and
3 the National Intelligence Coordinating Agency shall formulate the necessary rules and
4 regulations to ensure the efficient and effective implementation of this Act.

5 Sec. 19. *Separability Clause.* – If any provision of this Act is declared
6 unconstitutional, the remainder thereof not otherwise affected shall remain in full force
7 and effect.

8 Sec. 20. *Repealing Clause.* – Article 117 of the Revised Penal Code, Commonwealth
9 Act No. 616, and other laws, rules and regulations inconsistent with this Act are hereby
10 repealed. All other laws, decrees, executive orders, letters of instruction, proclamations,
11 or administrative regulations that are inconsistent with the provisions of this Act are
12 hereby repealed, amended or modified accordingly.

13 Sec. 21. *Effectivity.* – This Act shall take effect after fifteen (15) days following its
14 publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,