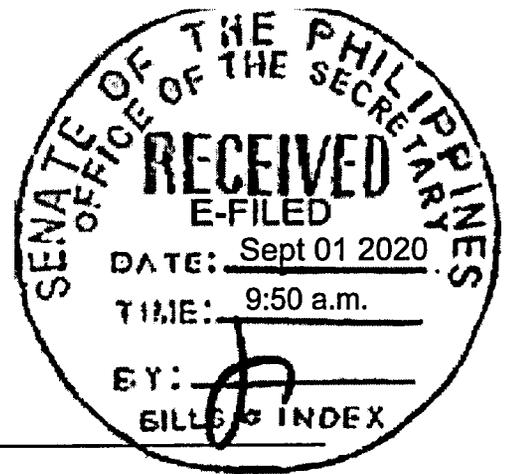


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

SENATE
S. No. 1802



Introduced by Senator Grace Poe

AN ACT
AMENDING REPUBLIC ACT NOS. 1405, OTHERWISE KNOWN AS "THE
SECRECY OF BANK DEPOSITS LAW"

Explanatory Note

In 1955, Republic ("Rep.") Act No. 1405 or the law prohibiting disclosure of or inquiry into, deposits with any banking institution, was enacted primarily to deter private hoarding, boost the economy, and enhance state protection of privacy rights. Thereafter, Rep. Act No. 1405 was amended by Presidential Decree ("PD") No. 1792, which expanded the exceptions to the absolute confidentiality rule, including instances when the examination is made in the course of a special or general examination of a bank and is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed, and that it is necessary to look into the deposit to establish such fraud or irregularity. However, PD No. 1792 was later expressly repealed by Rep. Act No. 7653, otherwise known as "The New Central Bank Act," effectively reinstating the version of Rep. Act No. 1405 prior to PD No. 1792.

Decades after the enactment of Rep. Act No. 1405, the financial sector landscape has evolved such that transactions and financial products became more complex. Financial technology made transactions easier to execute at the shortest possible time and capital flowed freely into the Philippine economy. These innovations and ease of transactions enabled, necessitated and encouraged Filipinos to place their money in the banks, and spurred the economy to some extent. Somehow, the objectives of Rep. Act No. 1405 to deter private hoarding and boost the economy are achieved. However, with Rep. Act No. 1405, there are depositors who hide behind the cloak of deposit secrecy to perpetuate their ingenious ways of defrauding counterparties, regulators or the government.

It is recognized that the existing secrecy of bank deposit laws of the Philippines are more constraining for prudential supervision than similar laws in

other jurisdictions.¹ A review of 49 countries assessed against the Basel Core Principles (BCP) since 2012² shows that only one other country – Lebanon³ – has similar limitations for prudential supervision as the Philippines.⁴ This limitation impedes transparent governance and anti-corruption mechanisms.

For example, in the recent incident involving Wirecard, *Bangko Sentral ng Pilipinas* ("BSP"), in the exercise of its supervisory powers, is unable to direct the banks involved to submit to BSP specific deposit or account information about the parties involved. This hinders the conduct of a swifter, more focused and more direct investigation that will result in more timely and conclusive decisions. In the said case, BSP relied on reports and representations of the banks involved and other available information surrounding the incident.

Meanwhile, other jurisdictions with strong bank secrecy arrangements have provided their prudential authority with unrestricted access to all bank records.⁵ In well-known international financial centres like Switzerland, Singapore and Hong Kong, the prudential supervisors have the power to access all bank records, including depositor information.⁶ This power is, however, combined with clear and strong professional secrecy arrangements.⁷

The International Monetary Fund notes that prudential supervision is aligned with the interest of depositors and, therefore, should not be seen as conflicting with the objectives of bank secrecy; that the objective of prudential supervision is to see after the safety and soundness of banks and the banking sector as a whole; that prudential authorities work towards this objective in order to protect depositors from losses due the failure of banks and to promote the stability and soundness of the banking sector as a whole; and that not being able to properly fulfill their mandate as a result of bank secrecy laws might actually be detrimental to depositors.⁸

Thus, to address the unintended consequences of the secrecy of bank deposit laws, and heed the call of the global community for a more transparent financial system environment, Rep. Act No. 1405 should be amended, which will be limited only within the very narrow confines of banking supervision. This will effectively restore the authority of BSP to examine bank deposits under PD No. 1792.

¹ International Monetary Fund Financial Sector Assessment Program, Background Note (Draft), Bank Secrecy Impediments to Financial Sector Supervision. March 2020. p. 15.

² When the revised BCP framework was published.

³ According to the Lebanon Law on Banking Secrecy (1956), banks are subjected to bank secrecy. Bank managers and employees who by virtue of their position have access to bank books and operation may not disclose information on client names funds or personal matter to any party. Violation of the secrecy provision is punishable by three to twelve months imprisonment.

⁴ *Supra*, note 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Supra*, note 1.

One of the significant amendments proposed in the bill is the inclusion of the inquiry or examination made by BSP, in the exercise of its supervisory powers, as one of the exceptions to the prohibition to examine, inquire or look into deposits, provided that: (i) there is reasonable ground to believe that a fraud, serious irregularity or unlawful activity has been or is being committed; (ii) it is necessary to look into the deposit to establish such fraud, irregularity or unlawful activity; (iii) the results of such examination shall be for the exclusive use of BSP and shall not be made available to any person or entity, whether public or private, except under such conditions as may be prescribed by the Governor or the Monetary Board of BSP; (iv) no deposit shall be examined, inquired or looked into by BSP during an election period to the prejudice of a candidate for an electoral office; and (v) the authority of BSP to examine, inquire or look into deposits in the exercise of its supervisory powers shall not apply to funds deposited and placed in a deposit account prior to the effectivity of this Act, as secrecy of deposits may be considered a form of vested right, which cannot be impaired. The foregoing exemptions are recommended to also apply to foreign currency deposits in banks operating in the Philippines including off-shore branches of domestic banks.

Notably, as safeguard against using the Act for political motives during the election period, it is proposed that no deposit shall be examined, inquired or looked into by BSP during said period to the prejudice of a candidate for an electoral office. In addition, the bill proposes to consider the use of the Act for political persecution or harassment as one of the unlawful acts under the Act. It is believed that the amendment to Rep. Act No. 1405 should not be used to facilitate political harassment or malicious prosecution. Such will prevent to a great extent the indiscriminate disclosure by any person who may have obtained any information on deposits, thereby adversely affecting the privacy of a depositor.

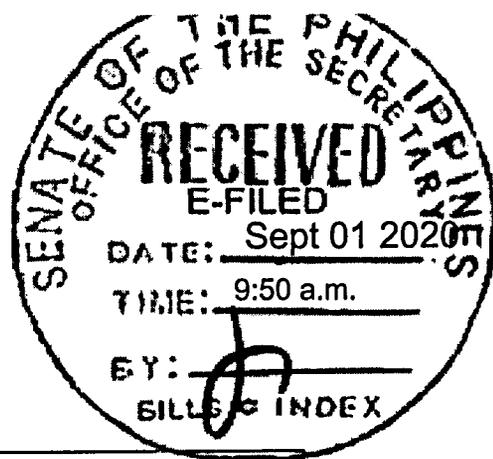
In view of the foregoing, the early passage of this bill is earnestly recommended.



GRACE POE

EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
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SENATE
S. No. **1802**



Introduced by Senator Grace Poe

AN ACT
AMENDING REPUBLIC ACT NOS. 1405, OTHERWISE KNOWN AS "THE
SECRECY OF BANK DEPOSITS LAW"

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

1 Section 1. Section 2 of Republic Act No. 1405, otherwise known as
2 "The Secrecy of Bank Deposits Law" is hereby amended to read, as follows:
3 SECTION 2. All deposits, ~~of whatever nature~~ **AS DEFINED**
4 **UNDER REPUBLIC ACT NO. 3591, AS AMENDED,** ~~with banks~~
5 ~~or banking institutions in the Philippines including investments in~~
6 ~~bonds issued by the Government of the Philippines, its political~~
7 ~~subdivisions and its instrumentalities,~~ are hereby considered as of
8 an absolutely confidential nature and may not be examined, inquired
9 or looked into by any person, government official, bureau or office,
10 except upon written permission of the depositor, or in cases of
11 impeachment, or upon order of a competent court in cases of
12 bribery or dereliction of duty of public officials, or in cases where
13 the money deposited ~~or invested~~ is the subject matter of the
14 litigation, **OR IN CASES WHERE THE INQUIRY OR**

15 EXAMINATION IS MADE BY THE *BANGKO SENTRAL NG*
16 *PILIPINAS* IN THE EXERCISE OF ITS SUPERVISORY
17 POWERS: *PROVIDED*, THAT THERE IS REASONABLE
18 GROUND TO BELIEVE THAT A FRAUD, SERIOUS
19 IRREGULARITY OR UNLAWFUL ACTIVITY HAS BEEN OR IS
20 BEING COMMITTED AND THAT IT IS NECESSARY TO LOOK
21 INTO THE DEPOSIT TO ESTABLISH SUCH FRAUD,
22 IRREGULARITY OR UNLAWFUL ACTIVITY: *PROVIDED*
23 *FURTHER*, THAT THE RESULTS OF SUCH EXAMINATION
24 SHALL BE FOR THE EXCLUSIVE USE OF THE *BANGKO*
25 *SENTRAL NG PILIPINAS* AND SHALL NOT BE MADE
26 AVAILABLE TO ANY PERSON OR ENTITY, WHETHER PUBLIC
27 OR PRIVATE, EXCEPT UNDER SUCH CONDITIONS AS MAY
28 BE PRESCRIBED BY THE GOVERNOR OR THE MONETARY
29 BOARD OF THE *BANGKO SENTRAL NG PILIPINAS*:
30 *PROVIDED FURTHERMORE*, THAT NO DEPOSIT SHALL BE
31 EXAMINED, INQUIRED OR LOOKED INTO BY THE *BANGKO*
32 *SENTRAL NG PILIPINAS* DURING AN ELECTION PERIOD TO
33 THE PREJUDICE OF A CANDIDATE FOR AN ELECTORAL
34 OFFICE: *PROVIDED FINALLY*, THAT THE AUTHORITY OF
35 *BANGKO SENTRAL NG PILIPINAS* TO INQUIRE, EXAMINE
36 OR LOOK INTO DEPOSITS IN THE EXERCISE OF ITS
37 SUPERVISORY POWERS SHALL NOT APPLY TO FUNDS

38 **DEPOSITED AND PLACED IN A DEPOSIT ACCOUNT PRIOR**
39 **TO THE EFFECTIVITY OF THIS ACT.**
40 **THE FOREGOING EXEMPTIONS SHALL APPLY TO FOREIGN**
41 **CURRENCY DEPOSITS IN BANKS OPERATING IN THE**
42 **PHILIPPINES INCLUDING OFF-SHORE BRANCHES OF**
43 **DOMESTIC BANKS.**

44 Sec. 2. Section 3 of Republic Act No. 1405, is hereby amended to read
45 as follows:

46 SECTION 3. It shall be unlawful for any official, employee, of a
47 banking institution **OR THE *BANGKO SENTRAL NG PILIPINAS*,**
48 to disclose to any person other than those mentioned **AND UNDER**
49 **SUCH CONDITIONS PROVIDED** in Section 2 hereof, information
50 concerning said deposits. **IT SHALL ALSO BE UNLAWFUL FOR**
51 **ANY PERSON TO USE THIS ACT FOR POLITICAL**
52 **PERSECUTION OR HARASSMENT OR AS AN INSTRUMENT TO**
53 **HAMPER COMPETITION IN TRADE AND COMMERCE.**

54 Sec. 3. *Repealing Clause.* – The following are hereby repealed subject
55 to the provisions of this Act:

- 56 a. Sections 2, 3, 4 and 6 of Republic Act No. 1405, as amended, also known
57 as the "Secrecy of Bank Deposits Act";
58 b. Sections 8 and 12-A of Republic Act No. 6426, as amended, also known
59 as the "Foreign Currency Deposit Act of the Philippines," with respect to
60 foreign currency deposits;

- 61 c. Section 6 Republic Act No. 8367, also known as the "Revised Non-Stock
62 Savings and Loan Association act of 1997," with respect to all deposits
63 of whatever nature with a Non-Stock Savings and Loan Associations as
64 provided under Republic Act No. 8367;
- 65 d. Section 33 of Republic Act No. 6848, also known as the "Charter of the
66 Al-Amanah Islamic Investment Bank of the Philippines," with respect to
67 banking transactions relating to all deposits of whatever nature as
68 provided under Republic Act No. 6848;
- 69 e. Section 26(a)(2) of Republic Act No. 7353, also known as the Rural
70 Banks Act of 1992, as amended; and
- 71 f. Section 21(a)(2) of Republic Act No. 7906, also known as the Thrift
72 Banks Act of 1995.

73 All other Acts or parts of Acts, Special Charters, Executive Order, Rules and
74 Regulations, which are inconsistent with the provisions of this Act, are hereby
75 repealed.

76 *Sec. 4. Separability Clause.* – If any provision or section of this Act is
77 held to be unconstitutional or invalid, the other provisions or sections hereof,
78 which are not affected thereby shall continue to be in full force and effect.

79 *Sec. 5. Effectivity.* – This Act shall take effect fifteen (15) days following
80 its publication in the *Official Gazette* or in a newspaper of general circulation
81 in the Philippines