



Republic of the Philippines
PROVINCE OF LEYTE

SANGGUNIANG PANLALAWIGAN

COMMITTEE ON RULES, LAWS and PRIVILEGES
and TRADE, INVESTMENT and ECONOMIC AFFAIRS

JOINT COMMITTEE REPORT

No. ____ S. 2023

This is with reference to the proposed provincial ordinance entitled "An Ordinance Banning the Sale, Rental, Transfer, Distribution, Manufacture, and/or Production of Pirated, Counterfeit, or Fake Goods, or Drugs/Medicines and for Other Purposes which is an ordinance co-sponsored by the chairpersons and some members of the committee on Rules, Laws and Privileges and the Committee on Trade, Investment and Economic Affairs.

The said ordinance is being enacted pursuant to the State's policy to enhance the enforcement of intellectual property rights and to safeguard the health of the people. It is also proposed to counter piracy and counterfeiting of intellectual property rights and to support the efforts of the government to collect unrealized revenues and taxes.

The legal basis of which are as follows:

- a. Section 2 of R.A. No. 8203 or the "Special Law on Counterfeit Drugs" which provides that in order to safeguard the health of the people, the state shall provide for their protection against counterfeit drugs.
- b. Department of Interior and Local Government in its Memorandum Circular No. 2020-124 which enjoins local government units (LGUs) to issue an Ordinance banning the sale, transfer, distribution, manufacture, and/or production of pirated, counterfeit, or fake goods within the LGU.

Upon review and careful perusal of the proposed ordinance, the joint committee find no provision which contravenes the Constitution and other existing laws. Otherwise stated, the same is compliant to the general limitations of legislation that:

- a. It does not contravene the Constitution;
- b. It is not unfair or oppressive;
- c. It is not partial or discriminatory;
- d. It does not prohibit trade;
- e. It is general and consistent with public policy; and,
- f. It is not unreasonable.

In view thereof, the joint committee adopts the draft of the said ordinance and resolve that the same be scheduled for approval on second and third reading.

Submitted this 30th day of November, 2023, Palo, Leyte



Hon. Atty. Ronnan Christian M. Reposar
Chairperson Committee on Rules, Laws and Privileges
Member of Trade, Investment and Economic Affairs

Hon. Marie Katryn V. Kabigting
Chairperson Committee on
Trade, Investment and Economic Affairs

Hon. Atty. Carlo P. Loreto
Vice Chairperson Committee on Rules, Laws and Privileges

Hon. Wilson S. Uy
Member Committee on Rules, Laws and Privileges
Member of Trade, Investment and Economic Affairs

Hon. Michael L. Cari
Member Committee on Rules, Laws and Privileges

Hon. Nolie Caña
Member Committee on Rules, Laws and Privileges

Hon. Raissa J. Villasin
Member Committee on Trade,
Investment and Economic Affairs

Hon. Ma. Corazon E. Remandaban
Member Committee on Trade,
Investment and Economic Affairs

PROPOSED PROVINCIAL ORDINANCE No. _____

AN ORDINANCE BANNING THE SALE, RENTAL, TRANSFER, DISTRIBUTION, MANUFACTURE, AND/OR PRODUCTION OF PIRATED, COUNTERFEIT, OR FAKE GOODS, OR DRUGS/MEDICINES AND FOR OTHER PURPOSES

WHEREAS, the Provincial Government of Leyte adheres to the policy of the national government to curb the proliferation and introduction into commerce of pirated, counterfeit, or fake goods, or drugs/medicines and the commission of other acts that violate intellectual property rights as protected by law;

WHEREAS, piracy and counterfeiting of intellectual property rights not only cause economic prejudice and demoralization among legitimate businessmen and establishments which offer products and services dependent on intellectual property protection, but also undermine the Province strategy for growth and development and result in unrealized revenues and taxes;

WHEREAS, Section 2 of R.A. No. 8203 or the “Special Law on Counterfeit Drugs” provides that in order to safeguard the health of the people, the state shall provide for their protection against counterfeit drugs.

WHEREAS, the State’s policy to enhance the enforcement of intellectual property rights requires the determined and active support of the local government units;

WHEREAS, Department of Interior and Local Government in its Memorandum Circular No. 2020-124 enjoins local government units (LGUs) to issue an Ordinance banning the sale, transfer, distribution, manufacture, and/or production of pirated, counterfeit, or fake goods within the LGU.

NOW THEREFORE, BE IT ORDAINED by the _____th Sangguniang Panlalawigan of Leyte, in regular session assembled that:

SECTION 1. *Short Title.* This Ordinance shall be known as the “Anti-Pirated, Anti-Counterfeit and/or Anti-Fake Goods, or Drugs/Medicines Ordinance.”

SECTION 2. *Purpose.* This Ordinance aims to prevent the sale, rental, transfer, distribution, manufacture and/or production of pirated, counterfeit, or fake goods, or drugs/medicines.

SECTION 3. *Scope.* This Ordinance applies to all persons who are engaged in the sale, rental, transfer, distribution, manufacture and/or production of pirated, counterfeit, or fake goods, or drugs/medicines within the territorial jurisdiction of the Province of Leyte.

SECTION 4. *Definition of Terms* – For the purpose of this Ordinance, the following terms are defined as follows:

- a. ***Counterfeit Drugs/Medicines*** – refer to medical products with the correct ingredients but not in the amount as provided hereunder, wrong ingredients, without active ingredients, with sufficient quantity of active ingredients, which results in the reduction of drug safety, efficacy, quality, strength or purity. It is a drug which is deliberately and fraudulently mislabeled with respect to identity

and/or source or with fake packaging, and can apply to both branded and generic products. It shall also refer to: 1) the drug itself or the container or labeling thereof or any part of such drug, container or labeling bearing *without authorization* the trademark, trade name or other identification mark or imprint or any likeness to that which is owned or registered in the Bureau of Patent, Trademark and Technology Transfer (BPTTT) in the name of another natural or juridical person; 2) a drug product refilled in containers by an unauthorized persons if the legitimate labels or marks are used; 3) a drug which contains no amount of or a different active ingredient or less than eighty percent (80%) of the active ingredient it purports to possess as distinguished from an adulterated drug including reduction or loss of efficacy due to expiration.

- b. **Counterfeit Goods** – refer to any goods or materials including packaging bearing *without authorization* a trademark which is identical to a trademark validly registered with the Intellectual property Office of the Philippines (IPOPHL) or already declared as a well-known mark internationally and in the Philippines by a competent authority in respect of such goods or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question.
- c. **Goods** – refer to alcoholic drinks, cigarettes, cell phones, construction materials, parts of vehicles, cosmetics, foot wears, clothes, foods and other items, articles, products or commodities that individuals or companies sell, and in turn, consumers purchase these goods to fill a want or need. They are tangible items with physical attributes that you can touch, feel and see—like color, size, shape and weight.
- d. **Persons** – refer to natural and juridical persons
- e. **Pirated Goods**– refer to any goods, materials, or content which are made, produced, or replicated without the consent of the right holder or person duly authorized by the right holder and which are made, produced, or replicated directly or indirectly from articles or content where the making of that copy would have constituted an infringement of copyright or related rights.
- f. **Premises** – refer to the areas inside and outside of the building, house or store being used for business including the extension such as, stall, table, etc., within two (2) meters from the door, window, or any opening leading to such building, house or store.

SECTION 5. Condition in the Business Permits. All business licenses and permits issued by the component Cities and Municipal Governments in the Province of Leyte shall carry the express conditions: a) that the licensee shall not engage in the sale, rental, transfer, distribution, manufacture and/or production of pirated, counterfeit, or fake goods, or drugs/medicines; and (b) that the licensee shall not allow other persons to commit said acts within the licensee's business establishments or premises.

SECTION 6. Suspension and Cancellation of Permit. Any breach or violation of the condition as set forth in the preceding Section shall be a ground for the suspension of the business permit or license for a period of not more than ten (10) days for the first violation, thirty (30) days for the second violation, and cancellation thereof for a third and

subsequent violations, without prejudice to the imposition of penalty under Section 11.1(a) hereof.

SECTION 7. *Confiscation of Goods and/or Drugs/Medicines.* The pirated, counterfeit, and/or fake goods or medicines of any person engaged in any business or trade, with or without any license or permit shall be confiscated without prejudice to the application of suspension or cancellation of permit under Section 6 and imposition of penalty under Section 11.1(a) hereof, and disposed of in accordance with law.

SECTION 8. *Procedure of Confiscation.* The implementing unit/s shall observe the following procedures in the confiscation of items as provided on the preceding section:

- a. Apprise the violator that the item he/she is selling, renting, transferring, distributing, manufacturing and/or producing is subject for confiscation under this ordinance.
- b. Issue Ordinance Violation Receipt (*OVR*) to the violator as provided for in the succeeding Section hereof.
- c. The confiscated items shall be transported by the members of the implementing unit/s to the designated storage room for safekeeping.
- d. The confiscation shall be reported to the nearest PNP Station for record purposes.

SECTION 9. *Storage Room.* The confiscated items prior to proper disposal shall be placed or kept on the storage room or area under the watch of a custodian. The storage room and the custodian shall be both designated by the Leyte Provincial Police Office Director.

SECTION 10. *Notice of Order to Suspend, Cancel, or Confiscate.* In the cases covered under Sections 5 and 6 hereof, the violator-licensee may, within twenty four (24) hours from the notice of an order to suspend or cancel the business license or permit or to confiscate of pirated, counterfeit, or fake goods, or drugs/medicines, present and submit to the office of the mayor a request for reconsideration of the said order. The Mayor shall decide the said request within fifteen (15) days from receipt thereof.

The notice of suspension or cancellation of the business license or permit shall be issued by the Mayor after an inspection of the business establishment concerned is conducted. The inspection may be on occasion of a general inspection regularly conducted by the concerned LGU, or for such purpose only upon receipt of a complaint or information that the licensee is engaged in the sale, rental, transfer, distribution, manufacture, and/or production of pirated, counterfeit, or fake goods, or drugs/medicines.

SECTION 11. *Penalties.*

11.1 The penalty of a fine of Three Thousand Pesos (PhP 3,000.00) or an imprisonment for a period not exceeding three (3) months, or both, in the discretion of the court, shall be imposed *for every violation* upon:

- a) Any person who, having been issued a business license or permit, shall commit a breach of any of the conditions thereof imposed by Section 5 of this Ordinance;

11.2 The penalty of a fine of Five Thousand Pesos (PhP 5,000.00) or an imprisonment for a period not exceeding six (6) months, or both, in the discretion of the court, shall be imposed *for every violation* upon:

- a) Any person who, without any business license or permit, shall engage in the sale, rental, transfer, distribution, manufacture, and/or production of pirated, counterfeit, or fake goods, medicines, or services.

SECTION 12. *Juridical Person Liable.* Should the offense be committed by juridical person, the stockholder, chairperson, president, office director, trustee, partner, or manager who committed or caused the commission of such offense, shall be held liable.

SECTION 13. *No Double Jeopardy.* The prosecution of commission of any of the foregoing offenses shall not constitute a bar for the prosecution of offense under the Intellectual Property Code and other related laws, provided the accused shall not be placed in double jeopardy.

SECTION 14. *Ordinance Violation Receipt (OVR).* A member of the implementing unit/s shall issue OVR to the violator as proof of apprehension, another copy of the OVR shall be retained by the implementing unit/s and the third copy shall be transmitted by it to the SP Secretariat for record purposes. If the violator refused to receive the OVR, his name shall be written by a member of the implementing unit/s on the OVR with a notation "refused to receive" on the space right beneath his name.

Copy of this OVR shall be presented by the violator of this Ordinance to the Treasurer of the concerned Local Government Unit during the payment of administrative fine.

SECTION 15. *Offer to Compromise.* Any violator of this Ordinance may offer to compromise by paying the administrative fine. An offer to compromise shall only be applied to the first and second violations. For this purpose, the fines prescribed for in Section 11 hereof for the first and second violations shall be treated as administrative fines. An offer to compromise shall no longer be allowed for third and succeeding violations.

SECTION 16. *Payment of Administrative Fine.* -Administrative Fine shall be paid to the Office of the Treasurer of the Province or its component LGU where the violation happened and a corresponding official receipt shall thereafter be issued. The violator shall then present the official receipt to the concerned member of the implementing Task Force for appropriate action.

SECTION 17. *Non-Payment of Administrative Fine.* If the violator of this Ordinance fails or refuses to pay the administrative fine within three (3) days upon receipt or refusal to receive the OVR, appropriate case shall be filed in court by the implementing Task Force against the said violator.

SECTION 18. *Sharing of Administrative Fine.* Administrative fine shall be shared as follows:

- a. If fine is paid to the Treasurer of the component LGU, sixty percent (60%) of such fine shall accrue as revenue and be retained by such LGU and forty percent (40%) shall accrue as revenue of the Province and be remitted to the Provincial Treasurer's Office.

- b. If fine is paid to the Treasurer of the Province, sixty percent (60%) of such fine shall accrue as revenue and be retained by the Province and forty percent (40%) shall accrue as revenue of the component LGU and be remitted to the Treasurer's Office of such LGU.

SECTION 19. *Implementing Rules and Regulations.* The Provincial Legal Office, and Leyte Provincial Police Office, in consultation with the Committee on Rules, Laws and Privileges and the Committee on Trade, Investment and Economic Affairs of the Sangguniang Panlalawigan, shall draft the Implementing Rules and Regulations (IRR) within thirty (30) days after the approval of this Ordinance.

SECTION 20. *Implementing Unit/s.* This Ordinance shall be implemented by the Leyte Provincial Police Office, if necessary, with the assistance or coordination of the National Bureau of Investigation, Food and Drug Administration, Intellectual Property Rights Enforcement Office, and other agencies of the government.

SECTION 21. *Separability Clause.* If any provision or part thereof is declared invalid or unconstitutional, other provisions of this Ordinance or parts hereof not otherwise affected shall remain valid and subsisting.

SECTION 22. *Repealing Clause.* All prior ordinances or parts thereof inconsistent with this Ordinance are hereby repealed or modified accordingly.

SECTION 23. *Effectivity Clause.* A copy of this Ordinance shall be posted in three (3) conspicuous places within the Leyte Provincial Capitol for three (3) consecutive weeks, and be published in a newspaper of general circulation within the Province of Leyte. This Ordinance shall take effect on the day following its publication, or at the end of the period of posting, whichever occurs later.