

SENATE

S. No. 2512

Introduced by Senator Manuel "Lito" M. Lapid

EXPLANATORY NOTE

The Philippines has been called the "TEXT" capital of the world due to the large volume of Short Messaging System (SMS) traffic exchange in the country. It has been estimated that the number of cellular phone subscribers in the Philippines reached over 23 million and is still growing at a rapid rate.

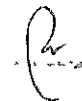
Mobile phones, being the most common personal accessories among many Filipinos, have a deeper market penetration than landline phones, making it an attractive target for advertising. Over the internet, "Spamming" or the means of bombarding personal e-mails with unsolicited messages and advertisements, has been a perennial problem of many subscribers. It is foreseen that a similar problem in the wireless industry will follow suit.

At present, advertising through mobile phones comes in the form of occasional promotional announcements by cellular operators. However, there are growing reports that subscribers are sent company promotions, announcements, and other advertisements for a fee without their consent. In order to abate the possible abuse of the wireless industry with unsolicited messages and advertisements, it is suggested that we discourage companies, as early as now, from using mobile phone text messaging in promoting their products and services.

In view of the foregoing, immediate approval of this measure is earnestly requested.


MANUEL "LITO" M. LAPID
Senator

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AN ACT
REGULATING THE USE OF TEXT, GRAPHICS, MULTIMEDIA AND
OTHER SIMILAR MESSAGING SYSTEMS OF MOBILE PHONES AS
MEDIUM FOR BUSINESS ENTITY ADVERTISEMENTS AND FOR OTHER
PURPOSES

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

SECTION 1. Short Title. - This Act shall be known as "**Cellular Phone Message Spamming Protection Act of 2010**".

SEC. 2. Definition of Terms. - Whenever used in this Act, the following terms shall mean:

- a) *Advertisements* - shall refer to any form of business promotions, announcements, and other messages relevant to company affairs.
- b) *Multimedia Messaging Service (MMS)* - shall refer to a technology that allows one to create, send, and receive text messages including a live streaming or pre-recorded video and audio signals transmitted by a 2.5G or 3G (third generation) wireless telephone system.
- c) *Short Message Service (SMS) or Text Messaging* - is a small text message of up to 160 characters transmitted by a Global System for Mobile Telecommunications (GSM) phone or other digital type wireless phone to another SMS enabled device.

d) *Network Operator* – shall refer to a personnel of a network provider authorized to directly and simultaneously transmit messages to all its subscribers by way of SMS and other similar means.

e) *Network Provider* – shall refer to any wireless telephone or cellular phone company capable of transmitting text, graphic and multimedia signals using its telecommunications network.

f) *Unsolicited Advertisements* – shall refer to commercial advertisements sent by business entities to cellular phone subscribers who did not signify their intention to receive SMS advertisements as reflected in the subscriber's advertisement consent reply form issued by the Network Provider.

SEC. 3. *Prohibited Act.* – It shall be unlawful for business entities to send unsolicited advertisements directly to cellular phone subscribers or through a network operator via transmission arrangement with the network provider using SMS, graphics, or MMS. Provided however, that in case the unsolicited advertisement will originate from the network provider, it shall not be liable to the penalties provided in this act. Provided further, that such advertisements of the Network provider shall only be limited to service announcements affecting the subscribers.

SEC. 4. *Advertisement Consent Reply Form.* - All cellular phone network providers shall be required to make part of their subscriber's application form, a portion that will reflect the latter's intention or rejection to receive SMS advertisements. Provided however, that in case of existing subscribers, a separate consent reply form shall be sent to them individually.

SEC. 5. *Coverage.* – All business entities registered with the Securities and Exchange Commission (SEC) and the Department of Trade and Industry (DTI) as well as individuals and non-profit organizations who connive in the execution of the prohibited acts stated herein, shall be covered by this act.

SEC. 6. *Penalties.* - Any person who shall violate this Act shall, upon conviction, be punished by a fine of not less than Five Hundred Thousand Pesos (P500,000.00) but not more than One Million Pesos (Php1,000,000.00), or an

imprisonment of not less than six (6) months but not more than six (6) years, or both, at the discretion of the court: *Provided*, however, That if the violation is made by a corporation, association, or partnership, the penalty provided herein shall be imposed upon the directors, president, or managing partners; *Provided further*, That if the transmission of advertisement is coursed through a network provider, it shall take on the liability of the penalty imposed.

SEC. 7. Separability Clause. – If, for any reason, any section or provision of this Act shall be held unconstitutional or invalid, the other section or provision not otherwise affected shall remain valid.

SEC. 8. Repealing Clause. – All laws, decrees, orders, or administrative rules and regulations or any part thereof which may be inconsistent with the provision of this Act are hereby repealed, amended or modified accordingly.

SEC. 9. Effectivity. – This Act shall take effect thirty (30) days after its publication in two (2) newspapers of national circulation.

Approved,