

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

74 JUN 30 P5:24

RECEIVED BY: Alu

S E N A T E

S. No. 428

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

Telecommunications is one of the industries that have benefited the most from rapid advances in information technology. In less than a decade, the use of cellular phones has been so successfully popularized, that a cellular phone has come to be seen as an indispensable personal accessory, especially among members of middle and high-income families.

As part of its exponential growth, the telecommunications industry has not been spared from growing pains. Among these are problems of interconnection, adaptability to new technology, lumpy capital requirements, pricing and cross-subsidy, frequency allocation, and telecommunications fraud and the destruction of facilities.

Of the several types of telecommunications fraud, cellular phone cloning and subscription fraud have affected the most number of individuals and companies, resulting in huge financial losses to these victims.

This bill defines, and enumerates certain schemes of telecommunications fraud and destruction of telecommunications facilities, and prescribes sanctions and penalties as deterrents to these offenses.

In view of the foregoing, the immediate passage of this proposed measure is earnestly sought.


SERGIO OSMEÑA III
Senator

04 JUN 30 P5:24

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

INTROD BY: Osmeña

S E N A T E

S. No. 428

Introduced by Senator S. R. Osmeña III

AN ACT
TO PROHIBIT AND PENALIZE TELECOMMUNICATIONS FRAUD AND THE
DESTRUCTION OF TELECOMMUNICATIONS FACILITIES, AND FOR OTHER
PURPOSES

*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 Anti-
2 **Telecommunications Fraud Act of 2004.**"

3 **Sec. 2. Declaration of Policy** - It is hereby declared the policy of the
4 State to protect the general public from:

5 a) fraudulent acts involving cellular phone cloning, subscription fraud,
6 illegal use of radio spectrum or frequency and other illegal schemes of
7 acquiring telecommunications service;

8 a) the use of telecommunications unit, device and equipment unauthorized
9 by the National Telecommunications Commission; and

10 b) the wanton and malicious destruction of telecommunications facilities.

11 **Sec. 3. Definition of Terms** - As used herein, the term:

12 a) **Commission** - shall refer to the National Telecommunications
13 Commission or its successor agency.

- 1 **b) Public Telecommunications Entity (PTE)** - shall refer to any person,
2 firm, partnership or corporation, lawfully engaged in the provision of
3 telecommunications services to the public for compensation.
- 4 **c) Telecommunications Unit** - shall refer to any fixed wire, wireless
5 radio, cellular telephone, pager, fax machine, computer or other
6 device capable of providing telecommunications through transmission,
7 emission or reception of any sign, signal, writing, image, picture, video,
8 sound, data, voice, music or intelligence of any nature.
- 9 **d) Electronic Serial Number (ESN)/Capcode/ Mobile Identification**
10 **Number (MIN)/ Electronic/International Mobile Equipment Identity**
11 **(EMEI/IMEI)/ Subscriber Identity Module (SIM)** - shall mean a unique
12 identification number, electronically programmed into or attached to a
13 telecommunications unit.
- 14 **e) Electronic Serial Number Reader** - shall refer to any device or
15 instrument capable of recognizing the
16 ESN/Capcode/MIN/EMEI/IMEI/SIM of a telecommunications unit.
- 17 **f) Illegal Telecommunications Unit** - shall refer to a
18 telecommunications unit, with a part or accessory altered, modified,
19 reprogrammed through cloning or any other similar process. The term
20 includes, clone phones, stolen cellular phones, wireless radio units or
21 other similar cellular phones, wireless radio units and other
22 telecommunication units capable of gaining unauthorized or illegal
23 access to a communications system operated by a PTE.
- 24 **g) Cloning Device** - shall refer to any type of instrument, device,
25 machine or equipment which is capable of being used and employed
26 for cloning as defined herein. An ESN reader not registered with the
27 Commission shall also be considered a cloning device.

1 h) **Telecommunications Card** - shall mean an instrument to access
2 and/or use a telecommunications system, network or service, such as
3 pre-paid cards, credit cards, calling cards or such other similar cards.

4 i) **Subscriber** - shall refer to a person, natural or juridical, who has
5 legitimately acquired telecommunications service with the authorization
6 and permission of a PTE.

7 j) **Type Approval** - shall refer to a process wherein a
8 telecommunications unit, device or equipment is tested by the
9 Commission or by the PTE pursuant to a prior authorization from the
10 Commission, for conformance to applicable standards, at its or an
11 authorized agency's Equipment Standards Laboratory.

12 k) **Type Acceptance** - shall refer to a process wherein a
13 telecommunications unit, device or equipment is evaluated on the
14 basis of technical tests and certifications issued by reputable foreign
15 approval or certification agencies;

16 **Sec. 4. Prohibited Acts and Penalties** - The following acts are hereby
17 declared prohibited and unlawful:

18 a) **Cloning** - Any person found guilty of tampering or manipulating any
19 part or device of any telecommunications unit, a card or accessory
20 thereof, by using, utilizing or employing any electronic device,
21 computer, its combination or any other equipment of similar nature in
22 order to access and program and/or duplicate the Electronic Serial
23 Number (ESN)/Capcode, Mobile Identification Number (MIN),
24 Electronic/International Mobile Equipment Identity (EMEI/IMEI) or
25 Subscriber Identity Module (SIM) or otherwise duplicate subscriber
26 data of a duly registered telecommunications unit into another
27 telecommunications unit without the written authorization or approval of
28 a PTE shall suffer the penalty of imprisonment of not less than four (4)

1 years and one (1) day to six (6) years and a fine of Five hundred
2 thousand pesos (P500,000.00).

3 **b) Operation of Illegal Telecommunications Unit -**

4 1) Any person found guilty of knowingly or willfully manufacturing,
5 selling and/or distributing illegal telecommunications units shall
6 suffer the penalty of imprisonment of not less than two (2) years and
7 one (1) day to four (4) years and a fine of Three hundred thousand
8 pesos (P300,000.00).

9 2) Any person found guilty of knowingly or willfully operating, utilizing
10 or employing illegal telecommunications unit shall suffer the penalty
11 of imprisonment of not less than one (1) year and one (1) day to
12 two (2) years and a fine of One hundred thousand pesos
13 (P100,000.00).

14 **c) Illegal Use of Radio Spectrum or Frequency -** Any person found
15 guilty of using a radio spectrum or frequency without the written
16 authority of the Commission, the PTE or any other authorized entity
17 shall suffer the penalty of imprisonment of not less than four (4) years
18 and one (1) day to six (6) years and a fine of Three hundred thousand
19 pesos (P300,000.00).

20 **d) Illegal Connection to a Landline Telephone -** Any person found guilty
21 of connecting to or linking with a landline telephone without the written
22 consent of the subscriber and having the calls charged therein shall
23 suffer the penalty of imprisonment of not less than two (2) years and
24 one (1) day to four (4) years and a fine of Three hundred thousand
25 pesos (P300,000.00).

26 **e) Payphone Fraud -** Any person found guilty of tampering or
27 manipulating a public pay telephone to gain access to the PTE's
28 network or for services which are not normally available through the

1 payphone without authority from the PTE shall suffer the penalty of
2 imprisonment of not less than six (6) months and one (1) day to one
3 (1) year and a fine of One hundred thousand pesos (P100,000.00).

4 **f) *Third Number Fraud*** - Any person found guilty of placing a call to a
5 specific number but having the call charged to neither the caller nor the
6 called number without the consent of the subscriber of the third
7 number or by securing the consent of the subscriber of the third
8 number through deceitful means shall suffer the penalty of
9 imprisonment of not less than six (6) months and one (1) day to one
10 (1) year and a fine of One hundred thousand pesos (P100,000.00).

11 **g) *Telecommunications Card Fraud*** -

12 1) Any person found guilty of manufacturing, distributing or selling fake,
13 stolen, tampered or unauthorized telecommunications cards which can
14 access or be used for accessing and/or using the telecommunications
15 system, network or service of the PTE shall suffer the penalty of
16 imprisonment of not less than four (4) years and one (1) day to six (6)
17 years and a fine of Five hundred thousand pesos (P500,000.00).

18 2) Any person found guilty of manufacturing, distributing or selling
19 telecommunications card which cannot access or be used for
20 accessing and/or using the telecommunications system, network or
21 service of a PTE shall suffer the penalty of imprisonment of not less
22 than two (2) years and one (1) day to four (4) years and a fine of
23 Three hundred thousand pesos (P300,000.00).

24 3) Any person found guilty of using fake, stolen, tampered or
25 unauthorized telecommunications cards for the purpose of accessing
26 and/or using the telecommunications system, network or service of a
27 PTE shall suffer the penalty of imprisonment of not less than six (6)

1 months and one (1) to one (1) year and a fine of One hundred
2 thousand pesos (P100,000.00).

3 ***h) Subscription Fraud -***

4 1) Any person found guilty of obtaining telecommunications service
5 in one's own favor under false identity and/or false statements
6 or pretenses of employment, occupation, income, financial
7 capacity, residential or billing address; or using false, forged,
8 altered or intercalated service agreements and supporting
9 subscription requirements shall suffer the penalty of
10 imprisonment of not less than one (1) year and one (1) day to
11 two (2) years and a fine of One hundred thousand pesos
12 (P100,000.00).

13 2) Any person found guilty of deceiving a PTE to grant service to
14 another person, under any of the circumstances in the
15 preceding number or when such another person does not exist,
16 is no longer living, does not reside within the Philippines or
17 never applied for telecommunications service with the PTE to
18 whom such submission was made, or having applied, did not
19 apply under the terms and conditions stated in false, forged,
20 altered or intercalated submissions, or who otherwise would not
21 have been qualified to obtain such service under the standards
22 and requirements of the PTE shall suffer the penalty of
23 imprisonment of not less than two (2) years and one (1) day to
24 four (4) years and a fine of Three hundred thousand pesos
25 (P300,000.00).

26 3) Any person found guilty of deceiving a PTE to activate service or
27 release telecommunications units by submitting or procuring the
28 submission of authentic documents when such submissions

1 have not, however, been authorized by the person subject of
2 such submissions, and where the person subject of such
3 submission shall not have received and accepted the service
4 applied for despite its activation by the PTE shall suffer the
5 penalty of imprisonment of not less than two (2) years and one
6 (1) day to four (4) years and a fine of Three hundred thousand
7 pesos (P300,000.00).

8 4) Any person, dealer, sub-dealer or agent of a PTE found guilty
9 of maliciously or intentionally failing to deliver to the subscriber-
10 on-record service units, devices and/or accessories, delivering it
11 to a person other than the subscriber-on-record shall suffer the
12 penalty of imprisonment of not less than two (2) years and one
13 (1) day to four (4) years and a fine of Five hundred thousand
14 pesos (P500,000.00).

15 *i) Solicitation Fraud* - Any person, telecommunications
16 equipment/service dealer or agent of telecommunications services
17 found guilty of misrepresenting the rates, fees, subscription plans,
18 equipment costs, and/or other terms and conditions of subscription to a
19 telecommunication service, to the prejudice of the subscriber and/or
20 the PTE shall suffer the penalty of imprisonment of not less than one
21 (1) year and one (1) day to two (2) years and a fine of One hundred
22 thousand pesos (P100,000.00).

23 *j) Illegal Installation of a Telecommunications Unit* - Any person found
24 guilty of installing or causing to be installed a telecommunications unit,
25 device or equipment which is without a type approval or type
26 acceptance, into a telecommunications network without the permission
27 of the Commission or the PTE who owns the network shall suffer the
28 penalty of imprisonment of not less than one (1) year and one (1) day

1 to two (2) years and a fine of One hundred thousand pesos
2 (P100,000.00).

3 **k) Other Similar Fraudulent Schemes.** - Any person, not otherwise
4 authorized by a PTE, who is found guilty of abandoning a
5 telecommunications service or transferring the possession or
6 ownership of a telecommunications unit with the intent of evading
7 payment of charges, or employing any means, scheme, process or
8 device to defraud the government, the public, or the PTE of fees or
9 charges for services rendered or equipment owned by the PTE shall
10 suffer the penalty of imprisonment of not less than one (1) year and
11 one (1) day to two (2) years and a fine of One hundred thousand
12 pesos (P100,000.00).

13 **l) Illegal Operation of a Public Telecommunications Service** - Any
14 person found guilty of operating or providing a public
15 telecommunications service without any valid authority under the law or
16 license or any proper authorization from the Commission shall suffer the
17 penalty of imprisonment of not less than four (4) years and one (1) day
18 to six (6) years and a fine of Five hundred thousand pesos
19 (P500,000.00).

20 **m) Destruction of Telecommunications Facilities** - Any person found
21 guilty of want only and maliciously damaging, destroying or removing
22 telecommunications facilities and accessories of authorized PTE's
23 resulting to system disruption or network degradation shall suffer the
24 penalty of imprisonment of not less than four (4) years and one (1) day
25 to six (6) years and a fine of Five hundred thousand pesos
26 (P500,000.00).

1 **Sec. 5. Persons Liable in Case the Offender is a Juridical Person** - If
2 the offense is committed by a corporation, partnership, association or any other
3 juridical person, the penalty shall be imposed against the officer/s, member/s
4 and/or employee/s who took part in the commission of the offense, who
5 consented thereto or who is/are otherwise responsible. This is without prejudice to
6 the filing of civil and administrative action against said corporation, partnership,
7 association or other juridical person.

8 **Sec. 6. Qualifying Circumstances** - An additional penalty of two (2) years
9 imprisonment shall be imposed, when any of the acts prohibited as defined in this
10 Act is committed:

- 11 a) by a syndicate of three (3) or more persons conspiring and
12 confederating with one another in the commission of the offense;
- 13 b) in conspiracy with an employee of the PTE;
- 14 c) by a foreigner, who shall likewise be deported immediately after service
15 of sentence and forever barred from entry to the country; or
- 16 d) by a public officer or employee, who shall likewise suffer perpetual
17 absolute disqualification from public office.

18 **Sec. 7. Evidence of Cloning and Other Frauds** - For purposes of
19 criminal prosecution, the following shall be sufficient to establish *prima facie*
20 evidence of:

- 21 a) **Cloning** - Mere possession of a cloning device or an illegal
22 telecommunications unit.
- 23 b) **Illegal Use of Frequency** - Mere possession of a radio transmitter or
24 transceiver without authority from the Commission.
- 25 c) **Telecommunications Card Fraud** - Mere possession of an
26 unauthorized, tampered, stolen or manipulated telecommunications
27 card.

1 d) **Illegal Operation of a Public Telecommunications Service** - The
2 absence of a Certificate of Public Convenience and Necessity,
3 provisional or permanent license and/or authorization from the
4 Commission prior to operation.

5 e) **Subscription Fraud** - The mere submission of forged or fraudulent,
6 intercalated and/or altered subscription documents by the applicant for
7 service and/or any person, dealer or agent whether or not the PTE
8 shall have in fact granted or activated the service.

9 **Sec. 8. Confiscation and Forfeiture of the Proceeds or Instruments of**
10 **the Crime** - Every penalty imposed for the commission of any of the acts
11 punishable in this Act shall carry with it the forfeiture of the proceeds of the crime
12 and the instruments or tools with which it was committed. Those items which
13 are not the subject of lawful commerce shall be destroyed by the Government.

14 **Sec. 9. Prosecution of Offenses** - The prosecution of offenses under
15 this Act may be initiated by any affected person, subscriber, PTE or the
16 Commission.

17 **Sec. 10. Registration of Electronic Serial Number Reader** - Upon the
18 effectivity of this Act, no person or entity who is not an authorized PTE shall
19 import into the Philippines any ESN reader. For this purpose, the Bureau of
20 Customs shall require the presentation of the certificate of authorization to import
21 issued by the Commission and in the absence thereof, to confiscate and cause
22 the forfeiture of such equipment in favor of the Government.

23 Electronic serial number readers already in the Philippines shall be
24 registered with the Commission within six (6) months from the date of effectivity
25 of this Act. Otherwise, mere possession thereof shall be considered illegal and
26 shall subject the possessor to the penalties provided in Section 4-a hereof.

27 **Sec. 11. Non-Disconnection of Telecommunications Service** - A PTE
28 shall not disconnect the telecommunications service of a subscriber who has a

1 verified written complaint for erroneous billings, pending resolution of said
2 complaint by the PTE and/or the Commission. The subscriber shall, however
3 pay the uncontested items of the bill and agree to the PTE's implementation of
4 measures to immediately prevent any possible further erroneous billing.

5 If the subscriber refuses to pay the contested bill despite a resolution of
6 the Commission adverse to the subscriber then the PTE shall disconnect the
7 service unless directed otherwise.

8 **Sec. 12. *Liability Under Other Laws*** - Prosecution under this act shall be
9 without prejudice to any liability for violation of any provision of the Revised Penal
10 Code and other laws, rules and regulations.

11 **Sec. 13. *Non-entitlement to the Benefits of the Probation Law*** - Any
12 provision of law to the contrary notwithstanding, a person convicted under this Act
13 shall not be entitled to the benefits of Presidential Decree No. 968, as amended,
14 otherwise known as the Probation Law of 1976.

15 **Sec. 14. *Prescription of Offenses*** - Offenses penalized under this Act and
16 the rules and regulations issued pursuant thereto shall prescribe in twenty (20)
17 years.

18 **Sec. 15. *Promulgation of Implementing Rules*** - Within ninety (90) days
19 from the effectivity of this Act, the Commission shall promulgate the rules and
20 regulations necessary to implement the provisions of this Act.

21 **Sec. 16. *Repealing Clause*** - Any provision of law, decree, executive
22 order or issuance inconsistent herewith is hereby repealed and/or modified
23 accordingly.

24 **Sec. 17. *Separability Clause*** - If any section or provision of this Act is
25 held invalid, all the other provisions not affected thereby shall remain valid.

26 **Sec. 18. *Effectivity Clause*** - This Act shall take effect fifteen (15) days
27 after the completion of its publication in the *Official Gazette* or in at least two (2)
28 newspapers of general circulation.