

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

SENATE  
OFFICE OF THE SECRETARY

'04 JUN 30 P10:42

SENATE

S. No. 777

RECEIVED BY: *[Signature]*

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INTRODUCED BY HON. MANUEL B. VILLAR, JR.

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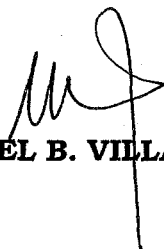
**EXPLANATORY NOTE**

With the proliferation of modern communication gadgets and continuous advancing of telecommunications technology, there is a felt need to come up with measures that would protect the telecom industry.

This proposed legislation aims to protect the public from phone cloning, telecom fraud, unauthorized use of radio spectrum or frequency, telecom unit, device or equipment, and the malicious destruction of telecom facilities.

Violators of this Act will be penalized with imprisonment of not less than six months to six years and imposed with a fine of not less than P100,000 to P500,000.

To protect both consumers and the telecommunications industry, immediate passage of this bill is earnestly sought.

  
**MANUEL B. VILLAR, JR.**

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**AN ACT  
PROHIBITING TELECOMMUNICATIONS FRAUD AND DESTRUCTION OF  
TELECOMMUNICATIONS FACILITIES, PROVIDING, PENALTIES THEREFOR  
AND FOR, OTHER PURPOSES**

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

SECTION 1. *Title.* - This Act shall be known as "The Anti-Telecommunications Fraud of 2004."

SECTION 2. *Declaration of Policy.* - It is hereby declared the policy of the State to protect the general public from phone cloning, illegal use of radio spectrum or frequency, and other forms of telecommunications fraud; the use of the telecommunications unit, device and equipment unauthorized by the National Telecommunications Commission and the wanton and malicious destruction of telecommunications facilities.

SECTION 3. *Definition of Terms.* - The following terms, as used herein, shall mean:

- a. Telecommunications Unit - Any fixed wire, wireless radio, cellular telephone, pager, fax machine, computer or other device capable of providing telecommunications through transmission, emission or reception of any sign, signal, writing, image, picture, video, sound, data, voice, music or intelligence of any nature;
- b. Electronic Serial Number (ESN)/Capcode/Mobile Identification Number (MIN)/Electronic/International Mobile Equipment Identity (EMEI/IMEI) Subscriber Identity Module (SIM) - Identification numbers, electronically programmed into or attached to a telecommunications unit;
- c. Electronic Serial Number Reader - Any device or instrument capable of recognizing the ESN/Capcode/MIN/EMEI/SIM of a telecommunications unit;
- d. Cloning Device - Any type of instrument, device, machine or equipment capable of being used and employed for cloning. An ESN reader not

registered with the commission shall also be considered an illegal cloning device;

- e. Illegal Telecommunications Unit - A telecommunications unit, with a part or accessory altered, modified, reprogrammed through cloning or any other similar process. The term includes, cloned phones, stolen cellular phones, wireless radio units or other similar cellular phones, wireless radio units and other telecommunication units capable of gaining unauthorized or illegal access to a communications system operated by a PTE;
- f. Telecommunications Card - An instrument to access and/or use a telecommunications system network or service, such as pre-paid cards, credit cards, calling cards or such other similar cards;
- g. Subscriber - A person, natural or juridical, who has legitimately acquired telecommunications service with the authorization and permission of a PTE;
- h. Commission - Refers to the National Telecommunications Commission or its successor agency;
- i. Type Approval - Refers to process wherein a telecommunications unit, device or equipment is tested by the Commission or by the PTE pursuant to a prior authorization from the Commission, for conformance to applicable standards, as its or an authorized agency's Equipment;
- j. Type acceptance - Refers to a process wherein a telecommunications unit device or equipment is evaluated on the basis of technical tests and certifications issued by reputable foreign approval or certification agencies; and
- k. Public Telecommunications Entity (PTE). - Any public or private person, firm, partnership or corporation, lawfully engaged in the business of providing telecommunications services to the public for compensation.

SECTION 4. *Prohibited Acts.* - The following acts are hereby declared prohibited and unlawful:

- a. Cloning - The act or technical process of tampering or manipulating any part or device of any telecommunications unit, a card or accessory thereof, by using, utilizing or employing any electronic device, computer, its combination or any other equipment of similar nature in order to access and program and/or duplicate the Electronic Serial Number (ESN)/Capcode, Mobile Identification Number (MIN), Electronic/International Mobile Equipment Identity (EMEI/IMEI) or Subscriber Identity Module (SIM) or otherwise duplicate subscriber data of a duly registered telecommunications unit into another telecommunications unit without the authorization or approval of a PTE;

- b. Operation of Illegal Telecommunications Unit - The act of knowingly or willfully:
  - 1. Manufacturing, selling and/or distributing illegal telecommunications units or;
  - 2. Operating, utilizing or employing illegal telecommunications unit;
- c. Illegal Use of Radio Spectrum or Frequency - The act of using a radio spectrum or frequency without the written authority of the Commission, the PTE or any other authorized entity;
- d. Illegal Connection to a Landline Telephone - The act by a person of connecting to or linking with a landline telephone without the written consent of the subscriber and having the calls charged therein;
- e. Payphone Fraud - The act of tampering or manipulating a public pay telephone to gain access to the PTE's network or for services which are not normally available through the payphone without authority from the PTE
- f. Third Number Fraud - The act by a person of placing a call to a specific number but having the call charged to neither the caller nor the called number without the consent of the subscriber of the third number or by securing the consent of the subscriber of the third number through deceitful means;
- g. Telecommunications Card Fraud - The following shall constitute Telecommunications card fraud:
  - 1. The act of manufacturing, distributing or selling fake, stolen, tampered or unauthorized telecommunications cards which can access or be used for accessing and/or using the telecommunications system, network or service of a PTE; or
  - 2. Selling telecommunications cards which cannot access or be used for accessing and/or using the telecommunications system, network or service of a PTE; or
  - 3. Using fake, stolen, tampered or unauthorized telecommunications cards for the purpose of accessing and/or using the telecommunications system, network or service of a PTE;
- h. Subscription Fraud - The following shall constitute subscription fraud:
  - 1. The act of any person who shall obtain telecommunications service in one's own favor on any of the following circumstances:
    - a) Under false identity and/or false statements;
    - b) Under pretenses of employment, occupation, income, financial capacity, residential or billing address; or
    - c) Using false, forged, altered or intercalated service agreements and supporting subscription requirements;

2. Any person who shall deceive the PTE to grant service to another person, under any of the circumstances enumerated in the preceding number or when such another person does not exist, is no longer living, does not reside within the Philippines or never applied for telecommunications service with the PTE to whom such submission was made, or having applied, *did not apply under the terms and conditions stated in false, forged, altered or intercalated submissions*, or who otherwise would not have been qualified to obtain such service under the standards and requirements of the PTE;
3. Any person who shall deceive the PTE to activate service or release telecommunications units by submitting or procuring the submission of authentic documents when such submissions have not, however, been authorized by the person subject of such submissions, and where the person subject of such submission shall not have received and accepted the service applied for despite its activation by the PTE; or
4. Any dealers, sub-dealer or agent of a PTE who maliciously or intentionally fails to deliver to the subscriber-on-record service units, devices and/or accessories, or shall deliver it to a person other than the subscriber-on-record
  - i. Solicitation Fraud-The act of any person or entity, telecommunications equipment/service dealer or agent of telecommunications service who to the prejudice of the subscriber and/or the PTE, misrepresent the rates, fees, subscription plans, equipment costs, and/or other terms and conditions of subscription to a telecommunications service;
  - j. Illegal Installation of a Telecommunications Unit - The act of installing or causing to be installed a telecommunications unit, device or equipment which is without a type approval or type acceptance into a telecommunications network without the permission of the Commission or the PTE who owns the network;
  - k. Other Fraudulent Schemes – Unless otherwise authorized by a PTE, the following shall be considered fraudulent schemes
    1. Abandoning a telecommunications service or transferring the possession or ownership of a telecommunications unit with the intent of evading payment of charges; or
    2. Employing any means, scheme, process or device to defraud the government, the public, or the PTE of fees or charges for services rendered or equipment owned by the PTE.
1. Illegal Operation of a Public Telecommunications Service - The act of operating or providing a public telecommunications service without any

valid authority under the law or license or any proper authorization from the Commission; and

- m. Destruction of Telecommunications Facilities - The wanton and malicious act of damaging, destroying or removing telecommunications facilities and accessories of authorized PTE's resulting to system disruption or network degradation

SECTION 5. *Penalties.*- The following penalties are hereby imposed against any person found guilty of violation of the prohibited acts enumerated in the preceding section as follows:

- a. Cloning - Imprisonment of not less than four (4) years and one (1) day to six (6) years and a fine of Five hundred thousand pesos (P500,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- b. Operations of Illegal Telecommunications Unit - Violation of subsection (1) shall be punishable by imprisonment of not less than two (2) years and one (1) day to four (4) year and a fine of Three hundred thousand pesos (P300,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher.  
Violation of subsection (2) shall be punishable by imprisonment of not less than one (1) year and one (1) day to two (2) years and a fine of One hundred thousand pesos (P100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- c. Illegal Use of Radio Spectrum or Frequency - Imprisonment of not less than four (4) years and one (1) day to six years and a fine of Three hundred thousand pesos;
- d. Illegal Connection to Landline Telephone. - Imprisonment of not less than two (2) years and one (1) day to four (4) years and a fine of Three hundred thousand pesos (P300,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- e. Payphone Fraud. - Imprisonment of not less than six (6) months and one (1) day to one (1) year and a fine of One hundred thousand pesos (P100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- f. Third Number Fraud-Imprisonment of not less than six (6) months and one (1) day to one (1) year and a fine of One hundred thousand pesos (P100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;

- g. Telecommunications Card Fraud. - Violation of subsection (1) shall be punishable by imprisonment of not less than four (4) years and one (1) day to six (6) years and a fine of Five hundred thousand pesos (P500,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher.
- Violation of subsection (2) shall be punishable by imprisonment of not less than two (2) years and one (1) day to four (4) years and a fine of Three hundred thousands pesos (300,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is the higher.
- Violation of subsection (3) shall be punishable by imprisonment of not less than two (2) years and one (1) day to four (4) years and fine of Three hundred thousand pesos (P300,000.00) or three times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher.
- Violation of subsection (1) shall be punishable by imprisonment of not less than two (2) years and one (1) day to four (4) years and a fine of Five hundred thousand pesos (P500,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher.
- h. Solicitation Fraud. - Imprisonment of not less than one (1) year and one (1) day to two (2) years and a fine of One hundred thousand pesos (P100,000.00) or three times, the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- i. Illegal Installation of a Telecommunications Unit. - Imprisonment of not less than one ( 1 ) year and one (1) day to two (2) years and a fine of One hundred thousand pesos (P100,000.00) or three (3) times the amount of damages suffered by the PTE, as deter-mined by the Court, whichever is higher;
- j. Other Fraudulent Schemes. - Imprisonment of not less than one (1) year and one (1) day to two (2) years and a fine of One hundred thousand pesos (P100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- k. Illegal Operation of a Public Telecommunications Service. -Imprisonment of not less than four (4) years and one (1) day to six (6) years and a fine of Five hundred thousand ( P500,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- l. Destruction of Telecommunications Facilities.- Imprisonment of not less than four (4) years and one (1) day to six (6) years and a fine of Five hundred thousand pesos (P500,000.00) or three (3) times the amount of

damages suffered by the PTE as determined by the Court, whichever higher;

When the offender is a juridical person, the penalty shall be imposed against the Officer responsible for the Commission of the offense.

SECTION 6. *Qualified Offenses.* - When any of the acts prohibited under section 4 of this Act is committed by or in conspiracy with an employee of the PTE or by a syndicate of two or more persons in conspiracy with one another, an additional penalty of two (2) years imprisonment and a fine of double the amount originally imposable shall be suffered by each offender.

SECTION 7. *Confiscation and Forfeiture of the Proceeds or Instruments of the Crime.* - Every penalty imposed for the commission of any of the acts punishable in this Act shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed. Those items which are not the subject of lawful commerce shall be destroyed by the Government.

SECTION 8. *Evidence of Cloning and Other Frauds.* - The following shall be prima facie evidence of violation of this Act:

- a. Possession of a cloning device or and illegal telecommunications unit;
- b. Possession of a radio transmitter or transceiver without authority from the Commission;
- c. Possession of an unauthorized, tampered, stolen or manipulated telecommunications card;
- d. The absence of a Certificate of Public Convenience and Necessity, provisional or permanent license and/or authorization from the Commission prior to operation of a Public Telecommunications Service; and
- e. Submission of forged or fraudulent, intercalated and/or altered subscription documents by the applicant for service.

SECTION 9. *Complaining Parties and Prosecution Under Other Law.* - Any complaint for violation of this Act may be initiated by an affected person, subscriber, a PTE, or the Commissions. Moreover, prosecution under this Act shall not bar any prosecution under other administrative or penal laws, and vice versa.

SECTION 10. *Registration of Electronic Serial Number Reader.*- Upon the effectivity of this Act, no person or entity who, unless otherwise authorized, shall import into the Philippines any electronic serial number reader. For this purpose, the Bureau of Customs shall require the presentation of the certificate of authorization to



import issued by the Commission and in the absence thereof, to confiscate and cause the forfeiture of such equipment in favor of the Government.

Electronic serial number readers already in the Philippines shall be registered with the Commission within six (6) months from the date of effectivity of this Act. Otherwise, mere possession thereof shall be considered illegal and shall subject the possessor to the penalties provided in Section 5-A hereof.

SECTION 11. *Prohibition Against Disconnection of Telecommunications Service.* - A PTE is prohibited from disconnecting the telecommunications service of a subscriber who has filed a verified written complaint for erroneous billings, pending resolution of said complaint by the PTE and/or the Commission. The subscriber shall, however pay the uncontested items of the bill.

Should the subscriber refuses to pay the contested bill despite a resolution by the Commission in favor of the PTE, then the latter may disconnect the service unless directed otherwise.

SECTION 12. *Promulgation of Implementing Rules.*- Within ninety (90) days from the effectivity of this Act, the Commission shall promulgate an Implementing Rules and Regulations for the Act.

SECTION 13. *Repealing Clause.* - All law, decrees, orders, and rules and regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 14. *Separability Clause.* - If any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof not affected thereby shall continue to be in effect.

SECTION 15. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) newspapers of general circulation.

*Approved,*