

**EIGHTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES**
Third Regular Session

Office of the Secretary

'21 DEC -1 P 6:37

SENATE

S. B. NO. 2460

RECEIVED

Introduced by **SENATOR JOEL VILLANUEVA**

**AN ACT PROVIDING FOR AN OPT-IN MECHANISM FOR
TELEPHONE AND MOBILE SUBSCRIBERS, PROTECTING SUCH
SUBSCRIBERS FROM ELECTRONIC THREATS THROUGH THE
MISUSE OF DIGITAL TECHNOLOGY, AND PROVIDING PENALTIES
FOR VIOLATIONS THEREOF**

EXPLANATORY NOTE

With the advancements made in technology also come the evolution of phishing attacks in several platforms such as short message services, e-mails, and calls.

Recently, many citizens complained of receiving scam text messages that offer fake jobs promising high wages and other valuable products at seemingly discounted prices, a scheme now called "smishing," a form of text message phishing that lures consumers into giving away personal or financial information.

With the unemployment rate as of September 2021 reaching 8.9% (4.25 Million Filipinos) and an underemployment rate of 14.2% (6.18 Million Filipinos),¹ this scheme will undoubtedly mislead some recipients, thereby necessitating the need for the Philippine government to take affirmative action to address these types of spam.

This bill shall define "spam" as a call or text message that may fall under any one of the following categories:

¹ Unemployment rate in September 2021 is Estimated at 8.9 Percent, available at <https://psa.gov.ph/content/unemployment-rate-september-2021-estimated-89-percent> (last accessed December 1, 2021).

- (1) Not initiated by the recipient of the call or message containing commercial promotions or advertisements and did not opt-in to receive the same;
- (2) Causes an installation of programs on the subscriber's device without consent;
- (3) Contains false or misleading electronic representations redirecting to websites, chat platforms, etc. and
- (4) Triggers the collection of personal information by accessing an electronic device illegally.

The bill also provides for an automatic opt-out mechanism for all telephone and mobile subscribers from spam calls or messages and allows the subscriber to provide the initial prior consent for the receipt of commercial or promotional advertisements from any person, whether natural or juridical, without prejudice to the availability of the option of a subsequent opt-out mechanism.

Under its prohibited acts, there shall be a *prima facie* presumption of a violation of this Act if the subscriber opted out of receiving any calls or text messages, or when the subscriber has declined to further give consent to the continuation of the call or text, or when the unsolicited call or text falls within the 2nd to 4th categories as discussed above.

Continuous monitoring and oversight shall be required of concerned government agencies such as the National Privacy Commission, the National Telecommunications Commission, and the National Bureau of Investigation, in coordination with relevant stakeholders, to further improve and develop the technical and industry efforts to protect the data privacy of citizens.

Given the foregoing, it is imperative that the interests of our telephone and mobile subscribers be protected and upheld in line with the policy of the State to protect the fundamental right to privacy of communication while ensuring free flow of information to promote innovation and growth, as guaranteed under the 1987 Constitution as well as by Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012." This bill will redound to the benefit of millions of subscribers who will have the freedom to choose with whom they shall transact, and will reduce, if not eliminate, the proliferation of potentially risky and harmful unsolicited calls or messages.

Thus, the immediate passage of this bill is earnestly sought.


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

**CHAPTER I
TITLE AND DECLARATION OF POLICY**

SECTION 1. Short Title. – This Act shall be known as the “Anti-Spam Act of 2021.”

SECTION 2. Declaration of Policy. It is hereby declared the policy of the State to:

- (a) Protect the fundamental right to privacy of communication while ensuring free flow of information to promote innovation and growth, guaranteed under the 1987 Constitution of the Republic of the Philippines as well as by Republic Act No. 10173, otherwise known as the “Data Privacy Act of 2012”;
- (b) Protect the data privacy of telephone and mobile phone service subscribers;
- (c) Provide a standard of conduct for businesses and industries in sending calls and text messages to subscribers; and
- (d) Set as default the opt-in mechanism and provide subscribers the opportunity to give prior consent before receiving calls and texts inducing the purchase of goods or services and other forms of solicitation.

**CHAPTER II
DEFINITION OF TERMS**

SECTION 3. Definition of Terms. – As used in this Act:

- (a) **Caller or sender** refers to any natural person, or in the case of a juridical person, an employee or agent thereof, who initiates a call or a text message for the purpose of making a call or text message, whether outbound or unsolicited;

- (b) **Consent** refers to a written contract signed by both the subscriber and the entity or its authorized representative, indicating that the subscriber opted to receive such calls or text messages;
- (c) **Outbound call or text** refers to a telephone call or text message initiated by any caller or sender;
- (d) **Prize** refers to anything offered, or purportedly offered, and given, or purportedly given, to a subscriber user by chance;
- (e) **Subscriber/s** refer to client/s of telecommunications companies, whether under a pre-paid or post-paid plan;
- (f) **Text** refers to any message sent via short message service (SMS);
- (g) **Upselling** refers to soliciting the purchase of goods or services following an initial transaction during a single telephone call or text message;
- (h) **Unsolicited call or text** or **Spam** refers to a call or a text message that may be any one of the following:
- (1) Not initiated by the recipient of the call or message containing commercial promotions or advertisements and did not opt-in to receive the same;
 - (2) Causes an installation of programs on the subscriber's device without consent;
 - (3) Contains false or misleading electronic representations redirecting to websites, chat platforms, etc. and
 - (4) Triggers the collection of personal information by accessing an electronic device illegally.

CHAPTER III SUBSCRIBER'S RIGHTS AND DUTIES AND RESPONSIBILITIES OF A CALLER OR SENDER

SECTION 4. Automatic Opt-Out and Subscriber's Prior Consent. – As a default, all subscribers are automatically opted out of receiving unsolicited calls or texts as defined under this Act. Commercial or promotional advertisements may only be sent to a subscriber who has given prior consent or has specifically opted-in to receive said messages without additional cost; *Provided, That*, a subscriber who has given prior consent or opted in may choose to opt-out any time, likewise without additional cost.

SECTION 5. Requirement for a Caller or Sender. – No person shall make an unsolicited call or text message unless such person discloses the full name of the caller or sender, the company, or organization for whose benefit the call or text message is being made, and the telephone number of a fixed line where such identity can be established and verified.

1 **SECTION 6. Opt-out Mechanism.** – All entities shall provide a mechanism for
2 subscribers to opt-out any time from receiving calls or messages at no cost to the
3 subscriber. The opt-out mechanism must enable the subscriber or recipient to indicate the
4 decision not to receive any commercial or promotional advertisement from the entity.

5
6 **SECTION 7. Filing of Complaint.** – Complainants may initially file their complaints with
7 the entity concerned, which shall act on all complaints received within fifteen (15) days
8 from receipt.

9
10 Complainants who are not satisfied with the action of the entity may bring the matter to
11 the National Telecommunications Commission.

12 13 14 **CHAPTER V** 15 **PROHIBITED ACTS, FINES, AND PENALTIES**

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17 **SECTION 8. Prohibited Acts.** – No person, whether natural or juridical, shall make an
18 unsolicited call or text message, as defined under this Act, to any telephone or mobile
19 number.

20
21 There shall be a *prima facie* presumption of a violation of this Act if the subscriber opted
22 out of receiving any calls or text messages, or when the subscriber has declined to further
23 give consent to the continuation of the call or text, or when the unsolicited call or text falls
24 within the definition under Sections 3(h)(2), 3(h)(3), and 3(h)(4) of this Act.

25
26 The use of an automatic dialer or any electronic device that automatically or randomly
27 contacts telephone numbers is prohibited.

28
29 Any violation of this section shall constitute the crime of unauthorized processing as
30 defined and penalized under Section 25(a) and 25(b) of the Data Privacy Act of 2012,
31 without prejudice to a further fine that may be imposed by the Privacy Commission as
32 provided for in this Act.

33
34 **SECTION 9. Liability of Caller or Sender.** – A caller or sender who commits any violation
35 under this Act shall be held solely liable. If the caller or sender acted for the benefit of
36 another person, natural or juridical, and with authority from the latter, they shall be both
37 held separately liable for the violation. However, if the caller or sender acted for the benefit
38 of another person, natural or juridical, without authority from the latter, the former shall be
39 held solely liable.

40
41 Any caller or sender who calls or sends a text message to a subscriber in violation of the
42 provisions of this Act shall be fined for each call or text.

43
44 **SECTION 10. Third-party Access.** – The entity that shall allow access to numbers of
45 their subscribers to other persons, whether natural or juridical, without the latter's consent
46 shall be held liable under this Act, without prejudice to liability under the Data Privacy Act.
47 For the avoidance of doubt, blanket consent shall be prohibited.

48
49 **SECTION 11. Exceptions.** – This Act shall not apply to a caller or sender under the
50 following circumstances:

- 51
52 (a) In representation of a public agency who is not promoting any of its programs for
53 a commercial purpose;

- 1
2 (b) Action is undertaken in a personal capacity;
3
4 (c) Action is prompted by a necessity to respond to an emergency that threatens life,
5 health, or safety of any individual;
6
7 (d) When the sole purpose of the call or text is to:
8
9 (1) Facilitate, complete, or confirm a transaction that the recipient of the message
10 has previously agreed to enter with the sender;
11
12 (2) Within the specified warranty period, provide warranty information, product
13 recall information, or safety or security information with respect to a product or
14 service purchased or used by the recipient of the message;
15
16 (3) Deliver goods or services, including product updates or upgrades, that the
17 recipient of the message is entitled to receive under the terms of the transaction
18 that the recipient previously agreed to enter with the sender;
19
20 (e) When with reference to an ongoing purchase or use by the recipient of goods or
21 services offered by the sender, the sole purpose of the call or text is to:
22
23 (1) Notify a change in its terms or features;
24
25 (2) Notify a change in the standing or status of the recipient of the message; or
26
27 (3) Provide, at regular periodic intervals, account balance information or other type
28 of account statement with respect to a subscription, membership, account, loan,
29 or comparable ongoing commercial relationship;
30
31 (f) When its sole purpose is to conduct general market research through surveys,
32 provided that, with respect to consumer goods and services, no reference shall be
33 made to any specific brand and in no case shall include any offer for sale of goods
34 and services;
35
36 (g) When sent to an organization other than an individual acting in a personal capacity,
37 for whatever purpose of the receiving organization; and
38
39 (h) When done by duly recognized charities, religious institutions, or educational
40 institutions which are not considered telemarketers, non-profit organizations, and
41 other exempt organizations under appropriate rules and regulations.
42

43 **SECTION 12. Penalties.** – Without prejudice to administrative sanctions that may be
44 imposed by the Privacy Commission, or to civil or criminal liability, any person found to be
45 in violation of any provision of this Act or its implementing rules and regulations, shall be
46 imposed the following penalties:
47

- 48 (a) For a juridical person, a fine of not less than Fifty Thousand Pesos (P50,000.00)
49 nor more than One Hundred Thousand Pesos (P100,000.00) for each violation;
50 *Provided, That its officers directly responsible for the violation shall suffer the*
51 *penalty of fine not less than Fifty Thousand Pesos (P50,000.00) but not more than*
52 *One Hundred Thousand Pesos (P100,000.00); or*

- (b) For a natural person, a fine of not less than Fifty Thousand Pesos (P50,000.00) but not more than One Hundred Thousand Pesos (P100,000.00).

CHAPTER VI FINAL PROVISIONS

SECTION 13. Oversight and Review. – Within three (3) months from the effectivity of this Act, and every six (6) months thereafter, the Privacy Commission, the National Telecommunications Commission, and the National Bureau of Investigation, in consultation with relevant stakeholders in the private sector, shall each submit reports to Congress, containing information on the implementation of the provisions of this Act, as well as other pertinent information, including but not limited to, investigations initiated on spam and scam calls or messages and status thereof, and technical and industry efforts undertaken to combat the proliferation of unsolicited calls or text messages.

SECTION 14. Appropriations. – The Privacy Commission shall immediately include in its programs the implementation of this Act, the initial funding of which shall be charged against its current year's appropriations. Thereafter, such sums as maybe necessary for the continued implementation of this Act shall be included in the Annual General Appropriations Act.

Proceeds from penalties herein imposed shall accrue to the General Fund.

SECTION 15. Implementing Rules and Regulations. – Within ninety (90) days from the effectivity of this Act, the Privacy Commission, upon consultation with relevant stakeholders, shall formulate the rules and regulations for the effective implementation of this Act.

SECTION 16. Separability Clause. – If, for any reason, any section, clause, or term of this Act is held to be illegal, invalid, or unconstitutional, such parts not affected by such declaration shall remain in full force and effect.

SECTION 17. Repealing Clause. – All laws, presidential decrees, issuances, executive orders, letters of instruction, rules and regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 18. Effectivity Clause. – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or a newspaper of general circulation.

Approved,