

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

5 AUG 23 P 2:48

SENATE
S.B. No. 2088

RECEIVED BY: _____

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

This bill was originally drafted by the interns of the Summer sa Senado 2005 internship program, namely: Bernice V. Francisco; Andrew I. Ruanto; Eugen Aison T. Soriano; and Reynard Kayne R. Ycasiano.

The Constitution provides that:

Article 2, Section 24. The State recognizes the vital role of communication and information in nation-building; and

Article 16, Section 9. The State shall protect the consumers from trade malpractices and from substandard or hazardous products;

Republic Act No. 7394, also known as the "Consumer Act of the Philippines," provides that:

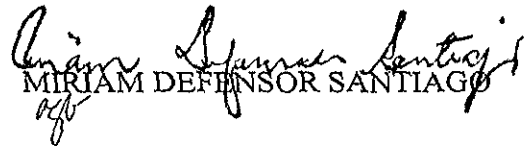
The State shall promote and encourage fair, honest and equitable relations among parties in consumer transactions and *protect the consumer against deceptive, unfair and unconscionable sales acts or practices.* (Article 48) (Italics supplied.)

The use of cellular mobile phones has influenced the Filipino lifestyle and has become a necessity even among the young. For better or worse, keeping in touch with family, friends, and business colleagues has become more convenient as cellular mobile phone technology improves and becomes cheaper.

Along with the rapid increase in cellular mobile phone subscribers, however, there are increasing complaints about certain unwanted services which include ringing tones, polyphonic tones, video and picture messages, etc. Specifically, prepaid credit has been deducted involuntarily due to these unsought services that the cellular mobile phone providers extend to their subscribers. Evidently, these networks force subscribers to enter into an excessively one-sided transactions or contracts of adhesion.

The right of subscribers to decide how they may want to spend their credits should be affirmed; only they can decide how to get value out of their hard-earned money.

This bill seeks to prohibit cellular mobile phone service providers from conveying or transmitting unsought services that are automatically and involuntarily charged against the account of subscribers by imposing penalties on unlawful acts of the said providers.


MIRIAM DEFENSOR SANTIAGO

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

5 AUG 23 P2:48

SENATE
S.B. No. **2088** RECEIVED BY: _____

Introduced by Senator Miriam Defensor Santiago

AN ACT
PROHIBITING CELLULAR MOBILE PHONE PROVIDERS FROM
CONVEYING UNSOUGHT SERVICES THAT ARE AUTOMATICALLY AND
INVOLUNTARILY CHARGED AGAINST THE ACCOUNT OF SUBSCRIBERS,
IMPOSING PENALTIES ON UNLAWFUL ACTS OF THE PROVIDERS

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

SECTION 1. *Short Title.* — This Act shall be known as the "Unsought Cellular Mobile Phone Services Act of 2005."

SECTION 2. *Declaration of Policy.* — The State recognizes the vital role of telecommunications in economic growth and development. Towards this end, the state shall implement measures to achieve the following objectives:

- a) safeguarding against deceptive, unfair and unconscionable trade acts and practices;
- b) provision for information and education to facilitate sound choice and the proper exercise of rights by the consumer;
- c) provision for adequate rights and means of redress; and
- d) provision for sanctions and penalties for the offenders.

SECTION 3. *Definition of Terms.* —

- a) "Account" -- refers to the financial credit of a subscriber;
- b) "Cellular mobile phone" -- refers to any wireless telephone that communicates with a local transmitter using a short-wave analog or digital transmission. This definition includes units that are capable of relaying and receiving visible and/or audible electronic messages;

c) "NTC" – refers to the National Telecommunications Commission;

d) "Postpaid Credit" – refers to a conventional method of payment for wireless service where a subscriber pays for a significant portion of services and usage in arrears, subsequent to consuming the services;

e) "Prepaid Credit" – refers to a method of payment for wireless service that allows a subscriber to prepay for a set amount of airtime in advance of actual usage;

f) "Provider" – refers to every cellular mobile phone service provider or any profit-oriented entity or company that provides wireless telecommunications to its subscribers;

g) "Subscriber" – refers to a user of wireless service bought from a provider or a person who avails the cellular mobile phone services offered by a provider; and

h) "Unsought services" – refers to the services which include ringing tones, polyphonic tones, video and picture messages, etc., that a subscriber did not purchase under his postpaid or prepaid account but is nonetheless sent or transmitted to him without permission.

SECTION 4. *Unlawful Acts.* — It shall be unlawful for any provider to automatically and involuntarily charge its subscribers for unsought services that in effect:

a) reduce the prepaid credit of a subscriber; or

b) increase the postpaid credit of a subscriber.

The prohibition of this section shall not apply to unsought yet free-of-charge services used by any provider to induce its subscribers for purposes of advertisement, campaign, and promotion.

SECTION 5. *Information Campaign.* — The NTC shall undertake to implement an education and awareness campaign to inform the public of the provisions of this Act. It shall regularly publish a list of the offenders found to have violated any provision of this Act.

SECTION 6. *Penalties for Unlawful Acts.* —

(a) *In General.* — Not later than three (3) months after the date of enactment of this Act, the NTC, in coordination with the Department of Trade and Industry (DTI), shall issue rules and regulations that —

- i) prohibit any automatic and involuntary charge for unsought services;
- ii) impose appropriate sanctions such as suspension of the operation and/or revocation of the permit to operate of the guilty provider;
- iii) impose a penalty of not less than Five Hundred Thousand Pesos (P500,000.00) but not more than One Million Pesos (P1,000,000.00); and
- iv) carry out the provisions of this Act.

(b) *Determination of Unlawful Acts.* — The NTC, in coordination with the DTI, shall develop a system that will determine whether any cellular mobile phone service provider commits any unlawful acts provided in Section 4.

SECTION 7. *Disposition of Penalties.* — All penalties under this Act shall be earmarked solely and used exclusively for the following:

- a) the development and maintenance of a long-term strategic national development plan for telecommunications; and
- b) the provision of adequate and efficient telecommunications facilities in unserved and underserved areas.

SECTION 8. *Separability Clause.* — If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 9. *Repealing Clause.* — Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly.

SECTION 10. *Effectivity Clause.* — This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,