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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article 111, Section 3 provides that (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the Court or when public safety or order requires otherwise as prescribed by law, and (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

The present law which protects the privacy of communication is R.A. 4200, also known as the Anti-Wire Tapping Act. The strides taken by telecommunications have rendered the law obsolete. Modern telecommunication devices have made the right to privacy of communication and correspondence easier to violate without incurring any liability under the law. Also, the penalty provided in R.A. 4200 for a violation of its provisions seems to be inadequate in deterring the-commission such offenses. Several employees of a major telecommunications company revealed that police and military authorities use the company's facilities for unauthorized wiretapping. The executive branch of the government has even manifested intentions of moving to legalize intercepting electronic or oral communication through telecommunication devices as a means of law enforcement which may be applied to offenses which are totally unrelated to public safety or order, much less to the security of the state. Reports in the media also indicate that wiretapping is being used for political purposes.

This bill seeks to safeguard this constitutional right by providing for a parallel procedure laid down by the Constitution and the Rules of Court in protecting the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. In cases where the Constitution allows infringement of this right,

that is when public safety or public order requires, the present bill requires the State to undergo a more stringent procedure, considering that the right to privacy of communications is vulnerable to abuse and its vulnerability has been aggravated by the recent developments in telecommunications technology.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO



Introduced by Senator Miriam Defensor Santiago

1 AN ACT
2 PROHIBITING WIRE, ELECTRONIC, AND ORAL COMMUNICATIONS
3 INTERCEPTION AND PROVIDING PENALTIES THEREFOR

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

6 SECTION 1. *Short Title.* – This Act may be cited as the “Wire, Electronic and
7 Oral Communications Interception Act of 2008.”

8 SECTION 2. *Declaration of Policy.* – It is the policy of the State to ensure the
9 inviolability of a person’s right to privacy of communication and correspondence.

10 SECTION 3. *Definition of Terms.* – For purposes of this Act, the term:

11 (A) “Wire communication” means any aural transfer made in whole or in part
12 through the use of facilities for the transmission of communications by the aid of wire,
13 cable or other like connection between the point of origin and the point of reception
14 (including the use of such connection in a switching station) furnished or separated by
15 any person engaged in providing or operating such facilities for the transmission of local
16 or international communications and such term includes any electronic storage of such
17 communication.

18 (B) “Oral communication” means any oral communication uttered by a person
19 exhibiting an expectation that such communication is not subject to interception under
20 circumstances justifying such expectation, but such term does not include any electronic
21 communication.

22 (C) “State” means the Government of the Republic of the Philippines or any
23 political subdivision thereof.

1 (D) "Intercept" means the aural or other similar means of acquisition of the
2 contents of any wire, electronic, or oral communication through the use of any electronic,
3 mechanical or other device;

4 (E) "Electronic, mechanical or other device" means any device or apparatus
5 which can be used to intercept a wire, oral, or electronic communication other than –

6 (1) Any telephone or telegraph instrument, equipment or facility, or any
7 component thereof, that is either (a) furnished to the subscriber or user by a
8 provider of wire or electronic communication service in the ordinary course of its
9 business and being used by the subscriber or user in the ordinary course of its
10 business or furnished by such subscriber or used for connection to the facilities of
11 such services and used in the ordinary course of its business or (b) being used by a
12 provider of wire or electronic communication service in the ordinary course of its
13 business, or by an investigative or law officer in the ordinary course of his duties;
14 and

15 (2) *A hearing or similar device being used to correct subnormal hearing to*
16 *not better than normal;*

17 (F) "Person" means public officer, and any individual, partnership, association, or
18 corporation;

19 (G) "Investigative or law enforcement officer" means any officer of the
20 government who is empowered by law to conduct investigations or to make arrests for
21 the offenses enumerated in Section 8 of this Act, and any attorney duly authorized to
22 prosecute or participate in the prosecution of such offenses;

23 (H) "Contents" when used with respect to any wire, oral, or electronic
24 communication includes any information concerning the substance, purport, or meaning
25 of that communication;

26 (I) "Judge of a court of competent jurisdiction" means a judge of any Regional
27 Trial Court, having territorial jurisdiction over the place where the offense (used as basis
28 for application to an authorization is committed;

1 (J) "Aggrieved person" means a person who was a party to any intercepted wire,
2 oral, or electronic communication or a person against whom the interception was
3 directed.

4 (K) "Electronic communication" means any transfer of signs, signals, writing,
5 images, sounds, data, intelligence of any nature transmitted in whole or in part by a wire,
6 radio, electronic, magnetic, photoelectronic or photooptical system but does not include –

- 7 (1) any wire or oral communication;
- 8 (2) any communication made through a tone-only paging device; or
- 9 (3) any communication from a tracking device;

10 (L) "User" means any person or entity who –

- 11 (1) uses an electronic communication service; and
- 12 (2) is duly authorized by the provider of such service to engage in such
13 use;

14 (M) "Electronic communications system" means any wire, radio,
15 electromagnetic, photooptical or photoelectronic facilities for the transmission of
16 electronic communications and any computer facilities or related electronic equipment
17 for the electronic storage of such communications;

18 (N) "Electronic communication service" means any service which provides to
19 users thereof the ability to send or receive wire or electronic communications;

20 (O) "Readily accessible to the general public" means, with respect to a radio
21 communication, that such communication is not –

- 22 (1) scrambled or encrypted;
- 23 (2) transmitted using modulation techniques whose essential parameters
24 have been withheld from the public with the intention of preserving the privacy of
25 such communication;
- 26 (3) carried on a subcarrier or other signal subsidiary to a radio
27 transmission;
- 28 (4) transmitted over a communication system provided by a common
29 carrier, unless the communication is a tone only paging system communication;

1 (5) transmitted on frequencies allocated in accordance with rules
2 promulgated by the National Telecommunications Commission, unless, in the
3 case of a communication transmitted on a frequency otherwise allocated that is
4 not exclusively allocate to broadcast auxiliary services, the communication is a
5 two-way voice communication by radio; or

6 (6) an electronic communication.

7 (P) "Electronic storage" means –

8 (1) any temporary, intermediate storage of a wire or electronic
9 communication incidental to the electronic transmission thereof; and

10 (2) any storage of such communication by an electronic communication
11 service for purposes of backup protection of such communication.

12 (Q) "Aural transfer" means a transfer containing the human voice at any point
13 between and including the point of origin and the point of reception.

14 (R) "Offense against national security" means such offenses that endanger the of
15 the State or of human lives, liberty and property committed through the activities of
16 invaders, insurrectionists and rebels.

17 SECTION 4. *Interception and Disclosure of Wire, Oral, or Electronic*
18 *Communications Prohibited.* – Except as otherwise specifically provided in this Act any
19 person who –

20 (A) Intentionally intercepts, endeavors to intercept or procures any other person to
21 intercept or endeavor to intercept any wire, oral, or electronic communication; or
22 electronic communication; or

23 (B) Intentionally uses, endeavors to use, or procures any other person to use or
24 endeavor to use any electronic, mechanical, or other device to intercept any oral
25 communication when –

26 (1) Such device is affixed to or otherwise transmits a signal through a wire
27 cable or other like connection used in wire communication; or

1 (2) Such device transmits communications by radio, or interferes with the
2 transmission of such communication;

3 (C) Intentionally discloses or endeavors to disclose, to any other person the
4 contents of any wire, oral or electronic communication, knowing or having reason to
5 know that the information was obtained through the interception of a wire, oral,
6 electronic communication in violation of the provisions of this Act;

7 (D) Intentionally uses or endeavors to use, the contents of any wire, oral, or
8 electronic communication, knowing or having reason to know that the information was
9 obtained through the interception of a wire, oral or electronic communication in violation
10 of the provisions of this Act, shall be liable for the penalties provided in Section 15 of
11 this Act.

12 SECTION 5. *Lawful Acts.* –

13 (A) It shall not be unlawful for an operator of a switchboard, or an officer,
14 employee, or agent of a provision of wire or electronic communication service, whose
15 facilities are used in the transmission of a wire or electronic communication, to intercept,
16 disclose or use that communication in the normal course of his employment while
17 engaged in any activity which is necessary incident to the rendition of his service or to
18 the protection of the rights or property of the provider of that service, except that a
19 provider or wire communication service to the public shall not utilize service observing
20 or random monitoring except for mechanical or service quality control checks.

21 (1) Notwithstanding any other law, providers of wire or electronic
22 communication service their officers, employees and agents, landlords,
23 custodians, or other persons, are authorized to provide information, facilities, or
24 technical assistance, to persons duly authorized as provided in Section 10 of this
25 Act, to intercept wire, oral, or electronic communications or to conduct electronic
26 surveillance, if such provider, its officers, employees or agents, landlords,
27 custodian, or other specified person, has been provided with a court order
28 directing such assistance signed by the authorizing judge.

1 (2) No cause of action shall lie in any court against any provider of wire or
2 electronic communication service, its officers, employees, or agents, landlord,
3 custodian, or other specified person for providing information facilities, or
4 assistance in accordance with the terms of a court order under this Act.

5 (B) It shall not be unlawful under this Act for an officer, employee, or agent of the
6 Commission, in the normal course of his employment and in discharge of the monitoring
7 responsibilities exercised by the Commission in the enforcement of pertinent laws, to
8 intercept a wire or electronic communication, or oral communication transmitted by
9 radio, to disclose or use the information thereby obtained.

10 (C) Nothing contained in this Act, shall be deemed to affect the acquisition by the
11 State of foreign intelligence information from international or foreign communications,
12 or foreign intelligence activities conducted in accordance with otherwise applicable laws.

13 (D) It shall not be unlawful under this Act for any person –

14 (1) To intercept or access an *electronic communication made through an*
15 *electronic communication system that is configured so that such electronic*
16 *communication is readily accessible to the general public;*

17 (2) To intercept any radio communication which is transmitted –

18 (a) By any station for the use of the general public, or that relates
19 to ships, aircraft, vehicles, or persons in distress;

20 (b) By any governmental, law enforcement, civil defense, private
21 land, mobile or public safety communication system, including police and
22 fire readily accessible to the general public;

23 (c) by a station operating on an authorized frequency within the
24 bands allocated to the amateur, citizen's band, or general mobile radio
25 services; or

26 (d) by any marine or aeronautical communications system;

27 (3) intercept any wire or electronic communication the transmission of
28 which is causing harmful interference to any lawfully operating station or

1 consumer electronic equipment to the extent necessary to identify the source of
2 such interference; or

3 (4) for other users of the same frequency to intercept any radio
4 communication made through a system that utilizes frequencies monitored by
5 individuals engaged in the provision or the use of such system, if such
6 communication is not scrambled or encrypted.

7 (E) It shall be unlawful under this Act for a provider of electronic communication
8 service to record the fact that a wire or electronic communication was initiated or
9 completed in order to protect such provider, another provider furnishing service toward
10 the completion of the wire or electronic communication, or a user of that service from
11 fraudulent, unlawful or abusive use of such service.

12 (F) Except as provided in subsection (B) of this Section, a person or entity
13 providing an electronic communication service to the public shall not intentionally
14 divulge contents of any communication (other than one to such person or entity, or an
15 agent thereof while in transmission of that service to any person or entity other than an
16 addressee - intended recipient - such communication or an agent of such addressee or
17 intended recipient.

18 (G) A person or entity providing electronic communication service to the public
19 shall divulge the contents of any such communication --

20 (1) with the lawful consent of the originator and addressee or intended
21 recipient of such communication.

22 (2) to a person employed or authorized or whose facilities are used, to
23 forward such communication to its destination; or

24 (3) which were inadvertently obtained by the service provider and which
25 appear to pertain to the commission of a crime, if such divulgence is made to a
26 law enforcement agency.

27 SECTION 6. *Confiscation of Wire, Oral or Electronic Communication*
28 *Intercepting Devices.* -- Any electronic, mechanical or other device used, sent, carried,

1 manufactured, assembled, possessed, sold, or advertised in violation of the provisions of
2 this Act shall be seized and forfeited to the State. All provisions of law relating to (1) the
3 seizure, summary, and judicial forfeiture and condemnation of articles used or produced
4 for violations of any penal law; (2) the disposition of such articles; (3) the remission or
5 mitigation of such forfeiture; (4) the compromise of claims; and (5) the award of
6 compensation to informers in respect of such forfeitures shall apply to seizures and
7 forfeitures incurred, or alleged to have been incurred, under the provisions of this Act,
8 shall be performed with respect to seizure and forfeiture of electronic, mechanical, or
9 other intercepting devices under this section by such officers, agents, or other persons as
10 may be authorized or designated for that purpose by the proper judicial authorities.

11 SECTION 7. *Prohibition of Use as Evidence of Intercepted Wire or Oral*
12 *Communications.* – Whenever any wire or oral communication has been intercepted, or
13 part of the contents of such communication and no evidence derived therefrom may be
14 received in evidence in any trial, hearing or other proceeding in or before any court,
15 department officer, agency, regulatory body, legislative committee, or other authority of
16 the State, or any political subdivision thereof if the disclosure of that information would
17 be in violation of this Act.

18 SECTION 8. *Authorization for Interception of Wire, Oral, or Electronic*
19 *Communications.* –

20 (A) The Secretary of the Department of Justice (hereinafter referred to as
21 “Secretary of Justice”) or any State Prosecutor, provincial or city prosecutor may
22 authorize an application to a judge of court of competent jurisdiction for, and such judge
23 may grant in conformity with Section 10 of this Act an order authorizing or approving the
24 interception of wire or oral communications by the National Bureau of Investigation, or a
25 law enforcement agency responsible for the investigation of the offense as to which the
26 application is made when such interception may provide or has provided evidence of the
27 commission of the crimes of treason, espionage, provoking war and disloyalty in case of
28 war, piracy, mutiny n the high seas, rebellion, conspiracy and proposal to commit

1 ' rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to
2 sedition, kidnapping as defined by the Revised Penal Code, and commission of offenses
3 against national security including any conspiracy to commit the same.

4 (B) The Chief State Prosecutor, or the Chief Prosecutor of any political
5 subdivision may apply to a judge of a court of competent jurisdiction for, and such judge
6 may grant in conformity with Section 10 of this Act an order authorizing, or approving
7 the interception of wire, oral, or electronic communications by any investigative or law
8 enforcement officers having responsibility for the investigation of the offense as to which
9 the application is made, when such interception may provide or has provided evidence of
10 the commission of the crimes of treason, espionage, provoking war and disloyalty in case
11 of war, piracy, mutiny n the high seas, rebellion, conspiracy and proposal to commit
12 rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to
13 sedition, kidnapping as defined by the Revised Penal Code, and commission of offenses
14 against national security including any conspiracy to commit the same.

15 SECTION 9. *Authorization for Disclosure and Use of Intercepted Wire, Oral, or*
16 *Electronic Communications.* –

17 (A) Any investigative or law enforcement officer who, by means authorized y this
18 Act has obtained knowledge of the contents of any wire, oral or electronic
19 communication, or evidence derived therefrom, may disclose such contents to another
20 ' investigative or law enforcement officer to the extent that such disclosure is appropriate
21 to the proper performance of the official duties of the officer making or receiving the
22 disclosure.

23 (B) Any investigative or law enforcement officer who, by means authorized by
24 this Act, has obtained knowledge of the contents of any wire, oral, or electronic
25 communication or evidence derived therefrom may use such contents to the extent he
26 sees appropriate to the proper performance of his official duties.

27 (C) Any person who has received, by means authorized by this Act, any
28 information concerning a wire, oral, or electronic communication, or evidence derived

1 therefrom intercepted in accordance with the provisions of this Act may disclose the
2 contents of that communication or such derivative evidence while giving testimony under
3 oath or affirmation in any proceeding held under the authority of the State or political
4 subdivision thereof.

5 (D) No otherwise privileged wire, oral, or electronic communication intercepted in
6 accordance with, or in violation of, the provisions of this Act shall lose its privileged
7 character.

8 (E) When an investigative or law enforcement officer, while engaged in
9 intercepting wire, oral, or electronic communications relating to offenses other than those
10 specified in the order of authorization or approval, the contents thereof, and evidence
11 derived therefrom may be disclosed or used as provided in subsection (A) and (B) of this
12 section. Such contents and evidence derived there. Such contents and evidence derived
13 therefrom may be used under subsection (C) of this Section when authorized or approved
14 by a judge of a court of competent jurisdiction where such judge finds on subsequent
15 application that the contents were otherwise intercepted in accordance with the provisions
16 of this Act. Such application shall be made as soon as practicable.

17 SECTION 10. *Authorization for Interception of Wire, Oral or Electronic*
18 *Communication.* –

19 (A) Each application for an order authorizing or approving the interception of a
20 wire, oral, or electronic communication under this Act shall be made in writing upon oath
21 or affirmation to a judge of competent jurisdiction and shall state the applicant's authority
22 to make such application. Each application shall include the following information:

23 (1) The identity of the investigative or law enforcement officer making the
24 application, and the officer authorizing the application;

25 (2) A full and complete statement of the facts and circumstances relied
26 upon by the applicant, to justify his belief that an order should be issued,
27 including (1) details as to the particular offense that has been, is being, or is about
28 to be committed, (2) except as otherwise provided in subsection (K) of this

1 section, a particular description of the nature and location of the facilities from
2 which or the place where the communication is to be intercepted, (3) a particular
3 description of the type of communication sought to be intercepted, (4) the identity
4 of the person/s, if known, committing the offenses and whose communications are
5 to be intercepted.

6 (3) A full and complete statement as to whether or not other investigative
7 procedure have been tried and failed or why they reasonably appear to be unlikely
8 to succeed if tried or to be too dangerous;

9 (4) A statement of the period of time for which the interception is required
10 to be maintained. If the nature of the investigation is such that the authorization
11 for interception should not automatically terminate when the described type of
12 communication has been first obtained, a particular description of facts
13 establishing probable cause to believe that additional communications of the same
14 type will occur thereafter.

15 (5) A full and complete statement of the facts concerning all previous
16 applications known to the individual authorizing and making the application,
17 made to any judge for authorization to intercept, or for approval of interceptions
18 of wire, oral, or electronic communications involving any of the same persons,
19 facilities or places specified in the application, and the action taken by the judge
20 on each such application; and

21 (6) Where the application is for the extension of an order, a statement
22 setting forth the results thus far obtained from the interception, or a reasonable
23 explanation of the failure to obtain such results.

24 (B) The judge may require the applicant to furnish additional testimony or
25 documentary evidence in support of the application.

26 (C) Upon such application the judge may enter an ex parte order, as requested or
27 as modified authorizing or approving interception of wire, oral, or electronic
28 communications within the territorial jurisdiction of the court in which the judge is
29 sitting. The judge may issue such order to cover cases outside of his territorial

1 jurisdiction only in the case of a mobile interception device. The order shall be issued if
2 the judge determines, in the basis of the facts submitted by the applicant, that –

3 (1) there is probable cause for belief that an individual is committing, has
4 committed, or is about to commit a particular offense enumerated in Section 8 of
5 this Act.

6 (2) there is probable cause for belief that particular communications
7 concerning such offense will be obtained through such interception;

8 (3) normal investigative procedures have been tried and have failed or
9 reasonably appear to be unlikely to succeed if tried or to be too dangerous;

10 (4) except as provided in subsection K of this Section, there is probable
11 cause for belief that the facilities from which, or the place where, the wire, oral, or
12 electronic communications are to be intercepted are being used, or about to be
13 used, in connection with the commission of such offense, or are leased to, listed in
14 the name of, or commonly used by such person.

15 (D) Each order authorizing or approving the interception of any wire, oral, or
16 electronic communication under this Act shall specify –

17 (1) the identification of the person/s, if known, whose communications are
18 to be intercepted;

19 (2) the nature and location of the communication facilities as to which, or
20 the place where, authority to intercept is granted;

21 (3) a particular description of the type of communication sought to be
22 intercepted and a statement of the particular offense to which it relates;

23 (4) the identity of the agency authorized to intercept the communications,
24 and of the person authorizing the application; and

25 (5) the period of time during which such interception is authorized,
26 including a statement as to whether or not the interception shall automatically
27 terminate when the described communication has been first obtained. An order
28 authorizing the interception of a wire, oral, or electronic communication under
29 this Act shall upon request of the applicant, direct that a provider of wire or

1 electronic communication service, landlord, custodian or other person shall
2 furnish the applicant forthwith all information, facilities and technical assistance
3 necessary to accomplish the interception unobtrusively and with a minimum of
4 interference with the services that such provider, landlord, custodian, or person is
5 according the person whose *communications are to be intercepted*. Any provider
6 of wire or electronic communication service, landlord, custodian, or other person
7 furnishing such facilities or technical assistance shall be compensated therefor by
8 the applicant for reasonable expenses incurred in providing such facilities or
9 assistance.

10 (E) No order entered under this section may authorize or approve the interception
11 of any wire, oral, or electronic communication for any period longer than is necessary to
12 *achieve the objective of the authorization, nor in any event longer than thirty days*. Such
13 thirty-day period begins on the earlier of the day on which the investigative or law
14 enforcement officer first begins to conduct an interception under the order or ten days
15 after the order is entered. Extensions of an order may be granted, but only upon
16 application for an extension made in accordance with subsection (A) of this Section and
17 the Court making the findings required by Section (C) of this Section. The period of
18 extension shall be no longer than the authorizing judge deems necessary to achieve the
19 purposes for which it was granted *and in no event for longer than thirty days*. Every
20 order and extension thereof shall contain a provision that the authorization to
21 intercept shall be excepted as soon as practicable shall be conducted in such a way as to
22 minimize the interception of communications not otherwise subject to interception under
23 this Act, and must terminate upon attainment of the authorized objective, or in any event
24 *in thirty days*. In the event the intercepted communication is in a code or foreign
25 language, and an expert in that foreign language or code is not reasonably available
26 during the interception period, *minimization may be accomplished as soon as practicable*
27 after such interception. An exception under this Act may be conducted in whole or in part
28 by Government personnel or by an individual operating under a contract with the

1 Government, acting under the supervision of an investigative or law enforcement officer
2 authorized to conduct interception.

3 (F) Whenever an order authorizing interception is entered pursuant to this Act, the
4 order shall require reports to be made to the judge who issued the order showing what
5 been made toward achievement of the authorized objective and the need for progress has
6 continued interception. Such reports shall be made at such intervals as the judge may
7 require.

8 (G) Notwithstanding any other provision of this Act, any investigative or law
9 enforcement officer, specifically designated by the Secretary, who reasonably determines
10 that –

11 (1) An emergency situation exists that involves –

12 (a) Immediate danger of death or serious physical injury to any
13 person;

14 (b) Conspiratorial activities threatening the national security
15 interest; or

16 (c) Conspiratorial activities characteristic of organized crime, that
17 requires a wire, oral, or electronic communication to be intercepted before
18 an order authorizing such interception can, with due diligence, be
19 obtained, and

20 (2) There are grounds upon which an order could be entered under this
21 Act to authorize such interception, may intercept such wire, oral or electronic
22 communication provided an application for an order approving the interception is
23 made in accordance with this section within forty-eight (48) hours after the
24 interception has occurred, or begins to occur. In the absence of an order, such
25 interception shall immediately terminate when the communication sought is
26 obtained or when the application for the order is denied, whichever is earlier. In
27 the event such application for approval is denied, or in other case where the
28 interception is terminated without an order having been issued, the contents of
29 any wire, oral, or electronic communication intercepted shall be treated as having

1 been obtained in violation of this Act, and all recording and/or records acquired
2 shall be deposited with the court where the application was made.

3 (H)(1) The contents of any wire, oral, or electronic communication intercepted by
4 means authorized by this Act shall, if possible, be recorded on tape or wire or other
5 comparable device. The recording of the contents of any wire, oral, or electronic
6 communication under this subsection shall be done in such a way as will protect the
7 recording from editing or other alterations. Immediately upon the expiration of the period
8 of the order, or extensions thereof, such recordings shall be made available to the judge
9 issuing such order and sealed under his directions. Custody of the recordings shall be
10 wherever the judge orders. They shall not be destroyed except upon an order of the
11 issuing or denying judge and in any event shall be kept for ten years. Duplicate
12 recordings may be made for use or disclosure pursuant to the provisions of subsections
13 (A) and (B) of Section 9 of this Act for investigations. The presence of the seal provided
14 for by this subsection, or a satisfactory explanation for the absence thereof, shall be a
15 prerequisite for the use or disclosure of the contents of any wire, oral, or electronic
16 communication or evidence derived therefrom under subsection (C) of Section 9.

17 (2) Applications made and orders granted under this Act shall be sealed by
18 the judge. Custody of the applications and orders shall be wherever the judge
19 directs. Such applications and order shall be disclosed only upon a showing of
20 good cause before a judge of competent jurisdiction and shall not be destroyed
21 except on order of the issuing or denying judge, and in any event shall be kept for
22 ten (10) years.

23 (3) Any violation of the provisions of this subsection may be punished as
24 contempt of the issuing or denying judge.

25 (4) Within a reasonable time but not later than ninety days after the filing
26 of an application for an order of approval under the provisions of this Act which
27 is denied or the period granted or extensions thereof under an order has
28 terminated, the issuing or denying judge shall cause to be served, on the persons
29 named in the order of the application and such other parties to intercepted

1 communications as the judge may determine in his discretion that is in the interest
2 of justice, an inventory which shall include notice of –

3 (a) the fact of the entry of the order or the application;

4 (b) the date of the entry and the period of authorized, approved or
5 disapproved interception, or the denial of the application; and

6 (c) the fact that during the period wire, oral, or electronic
7 communications were or were not intercepted. The judge, upon the filing
8 of a motion, may in his discretion make available to such person or his
9 counsel for inspection such portions of the intercepted communications,
10 application and orders as the judge determines to be in the interest of
11 justice. On an ex parte showing of good cause to a judge of court of
12 competent jurisdiction the serving of the inventory required by this
13 subsection may be postponed.

14 (I) The contents of any wire, oral, or electronic communication intercepted
15 pursuant to this Act or evidence derived therefrom shall not be received in evidence or
16 otherwise disclosed in any trial, hearing or other proceeding before any court unless each
17 party, not less than ten (10) days before the trial, hearing, or proceeding, has been
18 furnished with a copy of the court order, and accompanying application, under which the
19 interception was authorized or approved. This ten-day period may be waived by the judge
20 if he finds that it was not possible to furnish the part with the above information ten days
21 before the trial, hearing, or proceeding and that the part will not be prejudiced by the
22 delay in receiving such information.

23 (J) (1) Any aggrieved person in any trial, hearing or proceeding in or before any
24 court, department, officer, agency, regulatory body, or other authority of the State, or a
25 political subdivision thereof, any move to suppress the contents of any wire or oral
26 communication intercepted pursuant to this Act, or evidence derived therefrom, on the
27 grounds that –

28 (a) The communication was unlawfully intercepted;

1 (b) The order of authorization or approval under which it was
2 intercepted is insufficient on its face; or

3 (c) The interception was not made in conformity with the order of
4 authorization or approval. Such motion shall be made before the trial,
5 hearing, or proceeding unless there was no opportunity to make such
6 motion or the person was not aware of the grounds of the motion. If the
7 motion is granted, the contents of the intercepted wire or oral
8 communication or evidence derived therefrom, shall be treated as having
9 been obtained in violation of this Act. The judge, upon the filing of such
10 motion by the aggrieved person, may in his discretion make available to
11 the aggrieved person or his counsel for inspection such portions of the
12 intercepted communication or evidence derived therefrom as the judge
13 determines to be in the interests of justice.

14 (2) The State shall have the right to appeal from an order granting a
15 motion to suppress made under paragraph (1) of this subsection, or the denial of
16 an application for an order of approval, if the prosecution shall certify to the judge
17 or other official granting such motion or denying such application that the appeal
18 is not taken for purposes of delay. Such appeal shall be taken within fifteen (15)
19 days after the date the order was entered and shall be diligently prosecuted. The
20 State may also avail of the special civil action provided under Rule 65 of the
21 Rules of Court whenever applicable.

22 (3) The remedies and sanctions prescribed in this Act with respect to the
23 interception of electronic communications are the only judicial remedies and
24 sanctions for violations of any provision of this Act involving involving such
25 communications.

26 (K) The requirements of subsections (A)(1)(b) and (C)(4) of this section relating
27 to the specification of the facilities from which, or the place where, the communication is
28 to be intercepted do not apply if --

1 (1) in the case of an application with respect to the interception of an oral
2 communication

3 (a) the application is by an investigative or law enforcement
4 officer and is approved by the proper authorities prescribed by this Act

5 (b) the application contains a full and complete statement as to
6 why such specification is not practical and identifies the person
7 committing the offense and whose communications are to be intercepted;
8 and

9 (c) the judge finds that such specification is not practical.

10 (2) in the case of an application with respect to a wire or electronic
11 communication service --

12 (a) the application is by a State investigative or law enforcement
13 officer and is approved by the proper authorities prescribed in this Act.

14 (b) the application identifies the person believed to be committing
15 the offense and whose communications are to be intercepted and the
16 applicant makes a showing of a purpose, on the part of that person, to
17 thwart interception by changing facilities; and

18 (c) the judge finds that such purpose has been adequately shown.

19 (L) An interception of a communication under an order with respect to which the
20 requirements of subsections (A)(2)(b) and (C)(4) of this section do not apply by reason of
21 subsection (K) shall not begin until the facilities from which, or the place where, the
22 communication is to be intercepted is ascertained by the person implementing the
23 interception order. A provider of wire or electronic communications service that has
24 received an order as provided for in subsection (K)(2) may move the court to modify or
25 squash the order on the ground that its assistance with respect to the interception cannot
26 be performed in a timely or reasonable fashion. The court, upon notice to the
27 government, may decide a motion expeditiously.

1 SECTION 11. *Reports Concerning Intercepted Wire, Oral or Electronic*
2 *Communication.* –

3 (A) Within thirty (30) days after the expiration of an order (or each extension
4 thereof) entered under Section 10, or the denial of an order approving an interception, the
5 issuing or denying judge shall report to the Court Administrator of the Supreme Court–

6 (1) the fact that an order or extension was applied for;

7 (2) the kind of order or extension applied for (including whether or not the
8 order was an order with respect to which the requirements of subsection
9 (A)(2)(b) and (C)(4) of this section did not apply by reason of section 10(K) of
10 this Act;

11 (3) the fact that the order or extension was granted as applied for, was
12 modified or was denied;

13 (4) the period of interceptions authorized by the order, and the number and
14 duration of any extensions of the order;

15 (5) the offense specified in the order or application, or extension of an
16 order.

17 (6) the identity of the applying investigative or law enforcement officer
18 and agency making the application and the person authorizing the application; and

19 (7) the nature of the facilities from which or the place where
20 communications were to be intercepted,

21 (B) In January of each year the Secretary of Justice shall report to the Court
22 Administrator of the Supreme Court –

23 (1) the information required by paragraphs (1) through (7) of the
24 preceding paragraph (A) with respect to each application for an order or extension
25 made during the preceding calendar year;

26 (2) a general description of the interceptions made under such order or
27 extension including (a) the approximate nature and frequency of other
28 communications intercepted, and (b) the approximate nature, amount, and cost of
29 the manpower and other resources used in the interceptions;

1 (3) the number of arrests resulting from interceptions made under such
2 order or extensions of an order, and the offenses for which arrests were made;

3 (4) the number of trials resulting from such interceptions;

4 (5) the number of motion to suppress made with respect to such
5 interceptions, and the number granted or denied;

6 (6) the number of convictions resulting from such interceptions and the
7 offenses and the offenses for which the convictions were obtained and a general
8 assessment of the importance of the interceptions; and

9 (7) the information required by paragraphs (B) through (F) of this
10 subsection with respect to orders or extensions obtained in a preceding calendar
11 year.

12 (C) In April of each year the Court Administrator of the Supreme Court shall
13 transmit to Congress a full and complete report concerning the number of applications for
14 orders authorizing or approving the interception of wire, oral, or electronic
15 communications pursuant to this Act and the number of orders and extensions granted or
16 denied pursuant to this Act during the preceding calendar year. Such report shall include
17 a summary and analysis of the data required to be filed by the Supreme Court by
18 subsections (1) and (2) of this Section. The Supreme Court is hereby authorized to issue
19 binding regulations dealing with the content and form of the reports required to be filed
20 by subsections (A) and (B) of this Section.

21 SECTION 12. *Recovery of Civil Damages Authorized.* – Any person whose wire,
22 oral, or electronic communication is intercepted, disclosed, or intentionally used, in
23 violation of this Act may recover from the person or entity w hich engaged in that
24 violation such relief as may be appropriate through a civil action which may proceed
25 independently from the criminal prosecution instituted under this Act.

26 SECTION 13. *Injunction against Illegal Interception.* – Whenever it shall appear
27 that any person is engaged or is about to engage in any act which constitutes or will
28 constitute a felony in violation of this Act, any aggrieved person any initiate a civil action

1 in a court of competent jurisdiction to enjoin such violation. The court shall proceed as
2 soon as practicable to the learning and determination of such an action, and may, at any
3 time before final determination, enter such a restraining order or prohibition, or take such
4 other action as is warranted to prevent a continuing and substantial injury to the State or
5 to any person or class of persons for whose protection the action is brought.

6 SECTION 14. *Enforcement by Court Issuing Surveillance Order.* – If a court
7 authorizing an interception under Section 10 (D)(5) of this Act finds that a
8 telecommunications carrier has failed to comply with the requirements of the
9 authorization containing an order of assistance, direct that the carrier comply forthwith
10 and may direct that a provider of support services to the carrier or the manufacturer of the
11 carrier’s transmission or switching equipment furnish forthwith modifications necessary
12 for the carrier to comply.

13 (A) Civil Penalty. –

14 (1) In general – A court issuing an order under this section against a
15 telecommunications carrier, a manufacturer of telecommunications transmission
16 or switching equipment or a provider of telecommunications support services may
17 impose a fine of up to Ten Thousand Pesos (P10,000.00) per day for each day of
18 violation after the issuance of the order or after such future date as the court may
19 specify.

20 (2) Considerations – In determining whether to impose a civil penalty and
21 in determining its amount, the court shall take into account

22 (a) the nature, circumstance, and extent of the violation;

23 (b) the violator’s ability to pay, the violator’s good faith efforts to
24 comply in a timely manner, any effect on the violator’s ability to continue
25 to do business, the degree of culpability, and the length of any delay in
26 undertaking efforts to comply; and

27 (c) such other matters as justice may require.

1 SECTION 15. *Penalties.* – Any person found guilty of violating any provision of
2 this Act shall be imprisoned for a period ranging from six years and one day up to twelve
3 years and shall pay a fine of One Hundred Thousand Pesos (P100,000.00).

4 SECTION 16. *Separability Clause.* – If any provision, or part hereof, is held
5 invalid or unconstitutional, the remainder of the law or the provision not otherwise
6 affected shall remain valid and subsisting.

7 SECTION 17. *Repealing Clause.* – Any law, presidential decree or issuance,
8 executive order, letter of instruction, administrative order, rule or regulation contrary to
9 or inconsistent with, the provisions of this Act is hereby repealed, modified or amended
10 accordingly.

11 SECTION 18. *Effectivity Clause.* – This Act shall take effect fifteen (15) days
12 after its publication in at least two (2) newspapers of general circulation.

13 Approved.

/ptmt20June07