


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



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SENATE

Senate Bill No. 2900

RECEIVED BY: 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

The unabated advancement in telecommunications made it easier and cheaper to send messages to other people, regardless if the sender knows them or not, or if the recipient requested for the message or not. According to an article in Asia Africa Intelligence Wire as early as 2005, Mr. Ben Corby, chief executive officer of Australian anti-spam firm Total Block stated that "about half of the daily 35 billion emails sent worldwide last year was unsolicited".

Spam is defined as "unsolicited email, often of a commercial nature, sent indiscriminately to multiple mailing lists, individuals, or newsgroups". For a time, spam messages both in electronic mails and cellular phones were manageable and were tolerated by subscribers. However, it has tremendously increased in the past years that according to recent statistics quoted by Elite email platform in September 2010, "spam has grown to represent almost 80% of total email traffic with estimated impact to the global economy of approximately US\$25 billion dollars per year".

Spam poses threat, including security and virus, both to the users and the networks which prompted internet service providers to undertake anti-virus and anti-spam measures. A relevant number of countries have also enacted spam control laws for this purpose.

This proposed measure seeks to protect the internet and phone users from unsolicited commercial communications sent by electronic mail, text message or multimedia message. For this purpose, the bill proposes to formulate a code of practice, which, among others, will set "minimum standards of technical measures to effectively control the sending of unsolicited commercial electronic messages". Patterned after the spam control laws of other countries, it also provides for an unsubscribe facility which enables the recipients to block the spam sender from further sending unsolicited messages.


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


JINGGOY EJERCITO ESTRADA
Senator

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AN ACT
TO PROVIDE FOR THE CONTROL OF SPAM, WHICH IS UNSOLICITED
COMMERCIAL COMMUNICATIONS SENT IN BULK BY ELECTRONIC MAIL
OR BY TEXT OR BY MULTIMEDIA MESSAGING TO MOBILE TELEPHONE
NUMBERS, AND FOR OTHER PURPOSES

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

CHAPTER 1
GENERAL PROVISIONS

1 **SECTION 1. Short Title.** – This Act shall be known as the “**Spam Control Act of**
2 **2011**”.

3
4
5 **SEC. 2. Declaration of State Policy.** – It shall be the policy of the State to uphold
6 the role of communication and information in nation-building by protecting the
7 rights and privacy of the people who are availing of the technologies of
8 telecommunications.

9
10
11 **SEC. 3. Definition of Terms.** – As used in this Act:

12
13 (a) “**address harvesting software**” means software that is specifically
14 designed or marketed for use for –
15 1. searching the internet for electronic addresses; and,
16 2. collecting, compiling, capturing or otherwise harvesting
17 those electronic addresses;

18
19 (b) “**Commission**” refers to the National Telecommunications Commission
20 (NTC);

21
22 (c) “**business day**” means any day other than a Saturday, Sunday or public
23 holiday;

24
25 (d) “**dictionary attack**” means the method by which the electronic address of
26 a recipient is obtained using an automated means that generates

1 possible electronic addresses by combining names, letters, numbers,
2 punctuation marks or symbols into numerous permutations;

- 3
4 (e) "**electronic address**" means an electronic mail address or a mobile
5 telephone number to which an electronic message can be sent;
6
7 (f) "**header information**" means the source, destination and routing
8 information attached to an electronic message, including, where
9 applicable, the originating domain name and originating electronic mail
10 address, and any other information that appears in the line identifying, or
11 purporting to identify, the sender of the message;
12
13 (g) "**Internet access service provider**" means a person who provides a
14 service to give the public access to the Internet;
15
16 (h) "**mistake**" means reasonable mistake of fact;
17
18 (i) "**recipient**", in relation to an electronic message, means an authorized
19 user of the electronic address to whom the message is sent, and where a
20 recipient of an electronic message has one or more electronic addresses
21 in addition to the address to which the message was sent, the recipient
22 shall be treated as separate recipient with respect to each such address;
23
24 (j) "**sender**", in relation to an electronic message, means a person who
25 sends the message, causes the message to be sent, or authorizes the
26 sending of the message;
27
28 (k) "**unsubscribe request**" means a request by a recipient of an electronic
29 message, requesting the sender to cease sending any further electronic
30 messages to his electronic address.
31

32
33 **SEC. 4. Commercial Electronic Message.** – In this Act, a commercial electronic
34 message is an electronic message, where, having regard to –

- 35 (1) the content of the message;
36 (2) the way in which the message is presented; and,
37 (3) the content that can be located using the links, telephone numbers or
38 contact information, if any, set out in the message,

39 it is concluded that the primary purpose of the message is –

- 40 (a) to offer to supply goods or services;
41 (b) to advertise or promote goods or services;
42 (c) to advertise or promote a supplier, or a prospective supplier, of goods or
43 services;
44 (d) to offer to supply land or an interest in land;
45 (e) to advertise or promote land or interest in land;
46 (f) to advertise or promote a supplier, or a prospective supplier, of land or an
47 interest in land;
48 (g) to offer to provide a business opportunity or an investment opportunity;
49 (h) to advertise or promote a business opportunity or an investment
50 opportunity;
51 (i) to advertise or promote a provider, or a prospective provider, of a
52 business opportunity or an investment opportunity;
53 (j) to assist or enable a person, by deception, to dishonestly obtain property
54 belonging to another person;
55 (k) to assist or enable a person, by deception, to dishonestly obtain a
56 financial advantage from another person; or

1 (l) to assist or enable a person to dishonestly obtain a gain from another
2 person.

3
4 For purposes of paragraphs (a) to (l), it is immaterial –

- 5 (1) whether the goods, services, land, interest or opportunity exists; or,
6 (2) whether it is lawful to acquire the goods, services, land or interest, or take
7 up the opportunity.

8
9
10 **SEC. 5. *Sender of Commercial Electronic Message.*** – Any of the following
11 persons may be the individual who, or entity which, is the sender of the message:

- 12 (1) the supplier or prospective supplier referred to in paragraph (c) or (f) of
13 Section 4 of this Act;
14 (2) the provider or prospective provider referred to in paragraph (h) of Section
15 4 of this Act;
16 (3) the first-mentioned person referred to in paragraph (j), (k), or (l) of Section
17 4 of this Act.

18
19 Subject to the following paragraph, a person who knowingly allows his product or
20 service to be advertised or promoted by a sender shall be deemed to have
21 authorized the sending by the sender of any electronic message that advertises
22 or promotes that person's product or service.

23
24 For the purposes of the preceding paragraph, a person who takes reasonable
25 steps to stop the sending of any electronic message that advertises or promotes
26 that person's product or service shall be deemed not to have authorized the
27 sending of the message.

28
29
30 **SEC. 6. *Electronic Message.*** – In this Act, subject to Section 5 of this Act, an
31 electronic message is a message sent to an electronic address. However, it is
32 not an electronic message if it sent by way of a voice call made using a
33 telephone service.

34
35 For this purpose, it is immaterial –

- 36 (1) whether the electronic address exists; or,
37 (2) whether the message reaches its intended destination.

38
39
40 **SEC. 7. *"Unsolicited", Defined.*** – In this Act, an electronic message is unsolicited
41 if the recipient did not –

- 42 (a) request to receive the message; or,
43 (b) consent to the recipient of the message.

44
45 A recipient shall not be treated as having requested to receive the message or
46 consented to the receipt of the message merely because the electronic address
47 of the recipient was given or published by or on behalf of the recipient.

48
49 Where a recipient of an electronic message, other than an unsolicited electronic
50 message, submits an unsubscribe request, he shall not be treated as having
51 requested to receive or consented to the receipt of any message sent after the
52 expiration of ten (10) business days after the day on which the unsubscribe
53 request is submitted.

1 **SEC. 8.** *“Sending in Bulk”, Defined.* – For purposes of this Act, electronic
2 messages shall be deemed to be sent in bulk if a person sends, causes to be
3 sent or authorizes the sending of –

- 4 (a) more than one hundred (100) electronic messages containing the same
5 or similar subject matter during a 24-hour period;
6 (b) more than one thousand (1,000) electronic messages containing the
7 same or similar subject matter during a 30-day period; or
8 (c) more than ten thousand (10,000) electronic messages containing the
9 same or similar subject matter during a one-year period.

10
11 The Commissioner may, by order published in the Official Gazette, vary the
12 number of electronic messages specified in this Section.

13
14
15 **SEC. 9.** *Application of this Act.* – This Act shall not apply unless an electronic
16 message has a Philippine link, which can be determined by the following
17 circumstances:

- 18
19 (a) the message originates in the Philippines;
20 (b) the sender of the message is –
21 i. an individual who is physically present in the Philippines
22 when the message is sent; or
23 ii. an entity whose central management and control is in the
24 Philippines when the message is sent;
25 (c) the computer, mobile telephone, server or device that is used to access
26 the message is located in the Philippines;
27 (d) the recipient of the message is –
28 i. an individual who is physically present in the Philippines
29 when the message is accessed; or,
30 ii. an entity that carries on business or activities in the
31 Philippines when the message is accessed; or,
32 (e) if the message cannot be delivered because the relevant electronic
33 address has ceased to exist (assuming that the electronic address
34 existed), it is reasonably likely that the message would have been
35 accessed using a computer, mobile telephone, server or device located in
36 the Philippines.

37
38
39 **SEC. 10.** *Excluded Electronic Messages.* – Notwithstanding Section 9, this Act
40 shall not apply to any electronic message where the sending of the message is
41 authorized by the Government or a statutory body on the occurrence of any
42 public emergency, in the public interest or in the interests of public security or
43 national defense.

44
45 For this purpose, if any doubt arises as to the existence of a public emergency or
46 as to whether any electronic message is sent in the interests of public security or
47 national defense, a certificate signed by the Commissioner shall be conclusive
48 evidence of the matters stated therein.

49
50
51 **CHAPTER 2**
52 **DICTIONARY ATTACK AND ADDRESS HARVESTING SOFTWARE**

53
54
55 **SEC. 11.** *Application.* – This part shall apply to all electronic messages, whether
56 or not they are unsolicited commercial electronic messages.

1
2 **SEC. 12.** *Use of Dictionary Attack and Address Harvesting Software.* – No
3 person shall send, cause to be sent, or authorize the sending of an electronic
4 message to electronic addresses generated or obtained through the use of –
5 (a) a dictionary attack; or,
6 (b) address harvesting software.
7
8

9
10 **CHAPTER 3**
11 **UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES**
12

13 **SEC. 13.** *Application.* – This Chapter shall apply only to unsolicited commercial
14 electronic messages.
15

16
17 **SEC. 14.** *Requirements for Unsolicited Commercial Electronic Messages.* – Any
18 person who sends, causes to be sent or authorizes the sending of unsolicited
19 commercial electronic messages in bulk shall comply with the requirements
20 stated in this Section.
21

22 **A. Unsubscribe Facility**
23

24 (1) Subject to subparagraphs (2) and (3), every unsolicited commercial
25 electronic message shall contain –
26

27 a. an electronic mail address, an Internet location address, a
28 telephone number, a facsimile number or a postal address that
29 the recipient may use to submit an unsubscribe request; and,
30

31 b. a statement to the effect that the recipient may use the
32 electronic mail address, Internet location address, telephone
33 number, facsimile number or postal address, as the case may
34 be, provided in the unsolicited commercial electronic message
35 to submit an unsubscribe request, or a statement to similar
36 effect.
37

38 (2) Where the unsolicited commercial electronic message is received by
39 the recipient by electronic mail, the unsolicited commercial electronic
40 message shall include an electronic mail address to which the
41 recipient may submit an unsubscribe request.
42

43 (3) Where the unsolicited commercial electronic message is received by
44 the recipient by text or multimedia messaging sent to a mobile
45 telephone number, the unsolicited commercial electronic message
46 shall include –
47

48 a. a mobile telephone number to which the recipient may submit
49 an unsubscribe request by text if the unsolicited commercial
50 electronic message is received by text; or,
51

52 b. a mobile telephone number to which the recipient may submit
53 an unsubscribe request by text or multimedia messaging at the
54 recipient's option if the unsolicited commercial electronic
55 message is received by multimedia messaging.
56

57 (4) The statement referred to in subparagraph (1) (b) shall be presented –

- 1 a. in a clear and conspicuous manner; and,
2
3 b. in the English language and where the statement is presented in
4 two or more languages, the English language shall be one of
5 the languages.
6

7 (5) The electronic mail address, Internet location address, telephone
8 number, facsimile number or postal address referred to in
9 subparagraphs (1), (2), and (3) shall be –

10
11 a. valid and capable of receiving –

- 12
13 i. the recipient's unsubscribe request (if any); and
14 ii. a reasonable number of similar unsubscribe requests
15 sent by other recipients (if any),
16

17 at all times during a period of at least thirty (30) days after
18 the unsolicited commercial electronic message is sent; and,
19

20 b. legitimately obtained
21

22 (6) The use of the electronic mail address, Internet location address,
23 telephone number, facsimile number or postal address referred to in
24 subparagraphs (1), (2) and (3) to submit an unsubscribe request shall
25 not cost more than the usual cost of using that kind or a similar kind of
26 electronic mail address, Internet location address, telephone number,
27 facsimile number or postal address, as the case may be, using the
28 same kind of technology as was used to receive the unsolicited
29 commercial electronic message.
30

31 (7) Where a recipient submits an unsubscribe request using the facility
32 provided pursuant to this paragraph, no further unsolicited commercial
33 electronic messages shall be sent after the expiration of ten (10)
34 business days after the day on which the unsubscribe request is
35 submitted.
36

37 (8) Any person who receives an unsubscribe request under this
38 paragraph shall not disclose any information contained in the
39 unsubscribe request to any other person, except with the consent of
40 the person whose particulars are contained in the unsubscribe
41 request.
42

43 (9) Subparagraphs (1) to (7) shall not apply if the unsolicited commercial
44 electronic message is sent, caused to be sent or authorized to be sent
45 by mistake.
46

47 B. Labelling and Other Requirements 48

49 (1) Every unsolicited commercial electronic message shall contain –

- 50
51 a. where there is a subject field, a title in the subject field and that
52 title is not false or misleading as to the content of the message;
53
54 b. the letters "<ADV>" with a space before the title in the subject
55 field, or if there is no subject field, in the words first appearing in
56 the message, to clearly identify that the message is an
57 advertisement;

- c. header information that is not false or misleading; and,
- d. an accurate and functional electronic mail address or telephone number by which the sender can be readily contacted.

(2) Subparagraph (1) shall not apply if the unsolicited commercial electronic message is sent, caused to be sent or authorized to be sent by mistake.

CHAPTER 4 CIVIL ACTION

SEC. 15. *Aiding, Abetting, etc.* –

(1) No person shall –

- a. aid, abet or procure a contravention of Section 12 or 14 of this Act;
- b. induce, whether by threats, promises or otherwise, a contravention of Section 12 or 14;
- c. be in any way, directly or indirectly, knowingly concerned in or a party to, a contravention of Section 12 or 14;
- d. conspire with others to effect a contravention of Section 12 or 14.

(2) A person does not contravene the above subsection (1), Section 12 or 14 merely because he provides, or operates facilities for, online services or network access, or provides services relating to, or provides connections for, the transmission or routing of data.

SEC. 16. *Civil Action.* – Where there is a contravention of Section 12 or 14 of this Act in relation to electronic messages sent to electronic addresses, any person, who has suffered loss or damage as a direct or an indirect result of such contravention, may commence an action in a court against –

- a. the sender; or,
- b. a person who has contravened Section 15 (1).

This Section shall not affect any liability that any person has under any other written law or rule of law.

SEC. 17. *Injunction and Damages for Civil Action.* – Subject to the provisions of this Act, in an action under Section 16 (1), the types of relief that the court may grant include the following:

- (a) an injunction (subject to such terms, if any, as the court deems fit);
- (b) damages;
- (c) statutory damages.

1
2 The types of relief referred to in paragraphs (b) and (c) are mutually exclusive.

3
4 In any action under Section 16, the plaintiff shall be entitled, at his election, to –

5
6 (a) damages in the amount of the loss or damage suffered by the
7 plaintiff as a direct or an indirect result of the contravention referred
8 to in Section 16; or

9
10 (b) statutory damages –

11 (i) not exceeding One Thousand Pesos (P1,000.00) for each
12 electronic message referred to in Section 16; and,

13 (ii) not exceeding in the aggregate Forty Million Pesos
14 (P40,000,000.00), unless the plaintiff proves that his actual loss
15 from such electronic messages exceeds P40 million.

16
17 In awarding statutory damages, the court shall have regard to –

18
19 (a) whether the contravention by the defendant of Section 12, 14, or 15 (1) of
20 this Act was willful;

21
22 (b) any loss or damage that the plaintiff has suffered or is likely to suffer as a
23 direct or an indirect result of the contravention referred to in Section 16.

24
25 (c) any benefit shown to have accrued to the defendant by reason of the
26 sending of electronic messages;

27
28 (d) the need to deter other similar instances of sending of electronic
29 messages; and,

30
31 (e) all other relevant matters.

32
33 The loss referred to in this Section includes any pecuniary loss suffered as a
34 direct or an indirect result of the contravention referred to in Section 16.

35
36
37 **SEC. 18. *Costs and Expenses.*** – In any proceedings under this act, the court
38 may, in addition to exercising the powers conferred by Section 17 herein, order of
39 the defendant to pay to the plaintiff the costs and expenses of and incidental to
40 the proceedings, and any legal costs incurred in respect of the proceedings.

41
42
43 **CHAPTER 5**
44 **MISCELLANEOUS**

45
46
47 **SEC. 19. *Code of Practice.*** – Internet access service providers and
48 telecommunications service providers may, with the approval of the Commission,
49 issue a code of practice in connection with –

50
51 (a) minimum standards of technical measures to effectively control the
52 sending of unsolicited commercial electronic messages; and,

53
54 (b) such other matters as the Commission may require.

55
56 Every Internet access service provider and telecommunications service provider
57 shall comply with any code of practice approved by the Commission except that

1 if any provision in any such code of practice is inconsistent with this Act, that
2 provision shall not have effect to the extent of the inconsistency.

3
4
5 **CHAPTER 6**
6 **FINAL PROVISIONS**
7

8
9 **SEC. 20.** *Implementing Rules and Regulations.* – The Commission, together
10 with the other concerned agencies, shall promulgate the implementing rules and
11 regulations of this Act within ninety (90) days from the approval of this Act.
12

13
14 **SEC. 21.** *Repealing Clause.* – All laws, acts, presidential decrees, executive
15 orders, administrative orders, rules and regulations inconsistent with or contrary
16 to the provisions of this Act are deemed amended, modified or repealed
17 accordingly.
18

19
20 **SEC. 22.** *Separability Clause.* – If any part or provision of this Act is declared
21 invalid or unconstitutional, the other parts thereof not affected thereby shall
22 remain valid.
23

24
25 **SEC. 23.** *Effectivity Clause.* – This Act shall take effect fifteen (15) days upon
26 completion of its publication in at least two (2) national newspapers of general
27 circulation.
28

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30
31
32
33 *Approved,*