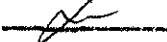


THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

6 FEB -6 P1:39

SENATE
S.B. No. 2203

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago


EXPLANATORY NOTE

The right to privacy is the "right to be let alone". It is considered "the most comprehensive of rights and the right most valued by civilized men."

As far back as 1968, the Supreme Court recognized the existence of a right to privacy when it held that "the right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection." *Morfe v. Mutuc*, 22 SCRA 424 (1968). Thus, while not explicitly identified in the Constitution, the right to privacy is nonetheless recognized and is deserving of protection as other fundamental rights.

With the advancement of technology, no sphere of privacy has been more exposed to violations than communication – specifically, telecommunications. Admittedly, laws such Republic Act No. 4200, otherwise known as the Anti-Wiretapping Act, have been enacted protecting what people say during a call, but no law has yet been passed which addresses the need to protect other aspects of people's calls such as who they call, when they call, how they call and how much it cost.


This bill seeks to reinforce the people's right to privacy by criminalizing the sale or fraudulent transfer or use of their telephone records.


MIRIAM DEFENSOR SANTIAGO

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

6 FEB -6 P1:9

SENATE
S.B. No. 2203

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

AN ACT
CRIMINALIZING THE SALE OR FRAUDULENT TRANSFER
OF TELEPHONE RECORDS

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 “Phone Records Protection Act of 2006.”

SECTION 2. *Declaration of Policy.* – It is the policy of the State to promote the general welfare of the people. Pursuant to this policy, this Act seeks to uphold the people’s right to privacy by criminalizing the sale or fraudulent transfer or use of their telephone records.

SECTION 3. *Definition of Terms.* – For purposes of this Act:

(A) “*Records of a Customer*” means any data or information associated with an individual contained in a database, networked or integrated databases, or other data system of a telephone service provider.

(B) “*Telecommunications Service*” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. It also includes cellular telephone service, broadband Personal Communication Service (PCS) telephone service, Covered Specialized Mobile Radio (SMR) service, and any successor service to such service, including so-called next generation or third generation service).

(C) "*Telecommunications Carrier*" means any provider of telecommunications services, except that such term does not include an aggregator of telecommunications services.

(D) "*Aggregator*" means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services.

SECTION 4. *Prohibition against Sale or Fraudulent Transfer of Telephone Records.* – It shall be unlawful for any person to knowingly and intentionally sell or fraudulently transfer or use, or attempt to sell or fraudulently transfer or use, the records of a customer of a telephone service provider.

SECTION 5. *Penalties.* – Any person found guilty of violating the preceding section shall be punished by a penalty of imprisonment of *arresto mayor*, or a fine of not more than One Hundred Thousand Pesos (P100,000.00), or both, at the discretion of the court, taking into consideration all attending circumstances.

Any telecommunications carrier found guilty of the same shall be fined an amount not more than Three Hundred Thousand Pesos (P300,000.00). In addition, a penalty of imprisonment of *arresto mayor* may be imposed on the entity's responsible officers, including, but not limited to, the president, vice-president, chief executive officer, general manager, managing director or officer directly responsible therefore, if any of them are found to have knowingly consented to such sale or fraudulent transfer or use, or attempt to sell or fraudulently transfer or use. In both in cases, the court shall take into consideration all attending circumstances.

SECTION 6. *Nonapplicability to Law Enforcement Agencies.* – Nothing in Section 4 shall prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain the records of a customer of a telephone service provider in connection with the performance of the official duties of the agency.

SECTION 7. *Exception for Law Enforcement Requests.* – A telecommunications carrier, or any employee thereof, shall not be in violation of Section 4 if such provider, upon request,

transfers or otherwise provides to a law enforcement agency, or any officer, employee, or agent of such agency the records of a customer of such provider; Provided, however, that such request is in connection with the performance of the official duties of the agency.

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

Approved,

/rgs