

FOURTEENTH CONGRESS OF THE REPUBLIC)  
OF THE PHILIPPINES )  
First Regular Session )

7 JUL -3 11:56

SENATE  
S.B. No. 746

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Introduced by Senator Miriam Defensor Santiago

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EXPLANATORY NOTE

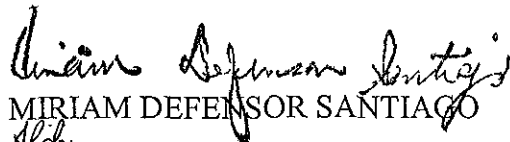
The 1987 Constitution, Article 2, Section 3 states that:

“Section 3. (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.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.”

Customer telephone records may be accessed without authorization of the customer by: 1) an employee of the telephone company selling the data; 2) "pretexting", whereby a data broker or other person pretends to be the owner of the phone and convinces the telephone company's employees to release the data to them; or 3) unauthorized access of accounts via the internet. In addition, phone records may be illegally tapped to obtain information which can be used against the consumer.

This bill seeks to implement the constitutional right to privacy of communications and correspondence by providing for measures which will make it more difficult to access the phone records of a consumer. <sup>1</sup>

  
MIRIAM DEFENSOR SANTIAGO  
*flch*

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<sup>1</sup> This bill was originally filed in the Thirteenth Congress, Third Regular Session.

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7 JUL -3 AM 1:56

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Introduced by Senator Miriam Defensor Santiago

AN ACT  
TO PROTECT CONSUMERS' PHONE 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 “Protecting Consumer Phone Records Act of 2007.”

SECTION 2. *Declaration of Policy.* – It is hereby declared the policy of the State to ensure the privacy of communication and correspondence, and to prohibit the unlawful and illegal use of information gathered in violation of this right, and to prohibit the obtaining of customer information from telecommunications carriers by false pretenses, and the sale or disclosure of such records obtained by false pretenses.

SECTION 3. *Definition of Terms* - As used in this section, the term –

(1) “IP-Enabled Voice Service” shall mean the provision of real-time 2-way voice communications offered to the public, or such classes of users as to be effectively available to the public, transmitted through customer premises equipment using TCP/IP protocol, or a successor protocol, for a fee (whether part of a bundle of services or separately) with interconnection capability such that the service can originate traffic to, or terminate traffic from, the public switched telephone network.

(2) “Telecommunications Carrier” is the means used to transport, engage and transmit any form of communication to another person or entity.

(3) “Confidential Phone Records Information” means information that -

(a) relates to the quantity, technical configuration, type, destination location, or amount of use of a service offered by a covered entity, subscribed to

1 by any customer of that covered entity, and kept by or on behalf of that covered  
2 entity solely by virtue of the relationship between that covered entity and  
3 customer;

4 (b) is made available to a covered entity by a customer solely by virtue of  
5 the relationship between that covered entity and the customer; or

6 (c) is contained in any bill, itemization, or account statement provided to a  
7 customer by or in behalf of a covered entity solely by virtue of the relationship  
8 between that covered entity and the customer.

9 (4) "Covered entity" includes any provider of IP-enabled voice service.

10 (5) "Customer" means a covered entity, any individual, partnership, association,  
11 joint stock company, trust, or corporation, or authorized representative of such customer,  
12 to whom the covered entity provides a product or service.

13 (6) "Wireless Telephone Number Information" means the telephone number,  
14 electronic address, and any other identifying information by which a calling party may  
15 reach a commercial mobile services customer, and which is assigned by a commercial  
16 mobile service provider to such customer, and includes the name and address of such  
17 customer.

18 (7) "Wireless Directory Assistance Service" means any service for connecting  
19 calling parties to a commercial mobile service customer when such calling parties  
20 themselves do not possess the wireless telephone number information of such customer.'

21 SECTION 4. *Unauthorized Acquisition, Use, or Sale of Confidential Customer*  
22 *Proprietary Network Telephone Information.*

23 (A) In General - It is unlawful for any person--

24 (1) to acquire or use the customer proprietary network information and  
25 phone records information of another person without that person's affirmative  
26 written consent by -

27 (1.1.) making false or fraudulent statements or representations to  
28 an employee of a covered entity;

1 (1.2.) making such false or fraudulent statements or representations  
2 to a customer of a covered entity;  
3 (1.3.) providing a document to a covered entity knowing that such  
4 document is false or fraudulent; or  
5 (1.4.) accessing customer accounts of a covered entity via the  
6 internet, without prior authorization from the customer to whom  
7 such confidential phone records information relates.

8 (2) to misrepresent that another person has consented to the acquisition or  
9 use of such other person's customer proprietary network information and phone  
10 records information in order to acquire such information;

11 (3) to obtain unauthorized access to the data processing system or records  
12 of a telecommunications carrier or an IP-enabled voice service provider in order  
13 to acquire the customer proprietary network information and phone records  
14 information of 1 or more other persons;

15 (4) to sell, or offer for sale, customer proprietary network information and  
16 phone records information; or

17 (5) to request that another person obtain customer proprietary network  
18 information and phone records information from a telecommunications carrier or  
19 IP-enabled voice service provider, knowing that the other person will obtain the  
20 information from such carrier or provider in any manner that is unlawful under  
21 this subsection.

22 (B) Exceptions. –

23 (1) Application of Other Laws - This Act does not prohibit any act or  
24 practice otherwise authorized by law, including any lawfully authorized  
25 investigative, protective, or intelligence activity of a law enforcement agency or  
26 the Republic of the Philippines, or an intelligence agency of the Republic of the  
27 Philippines.

1           (2) Caller ID - Nothing in this Act prohibits the use of caller identification  
2 services by any person to identify the originator of telephone calls received by  
3 that person.

4           SECTION 5. *Wireless Consumer Privacy Protection.*

5           (A) A provider of commercial mobile services, or any direct or indirect affiliate or  
6 agent of such a provider, may not provide the wireless telephone number information of  
7 any customer to any wireless directory assistance service unless the mobile service  
8 provider-

9           (1) provides a conspicuous, separate notice to the customer informing the  
10 customer of the right not to be listed in any wireless directory assistance service;  
11 and

12           (2) obtains express prior authorization for listing from such customer,  
13 separate from any authorization obtained to provide such customer with  
14 commercial mobile service, or any calling plan or service associated with such  
15 commercial mobile service, and such authorization has not been subsequently  
16 withdrawn.

17           (B) Publication of Directories Prohibited - A provider of commercial mobile  
18 services, or any direct or indirect affiliate or agent of such a provider, may not publish, in  
19 printed, electronic, or other form, or sell or otherwise disseminate, an individual's  
20 wireless telephone information held by any wireless directory assistance service, or any  
21 portion or segment thereof, unless the mobile service provider-

22           (1) provides a conspicuous, separate notice to the customer informing the  
23 customer of the right not to be listed; and

24           (2) obtains express prior authorization for listing from such customer,  
25 separate from any authorization obtained to provide such customer with  
26 commercial mobile service, or any calling plan or service associated with such  
27 commercial mobile service, and such authorization has not been subsequently  
28 withdrawn.

1 (C) No Consumer Fee for Retaining Privacy- A provider of commercial mobile  
2 services may not charge any customer for exercising any of the rights described under  
3 this subsection.

4 SECTION 6. *Right of Action.*

5 (A) Private Right of Action for Providers –

6 (1) A telecommunications carrier or IP-enabled voice service provider  
7 may bring a civil action in an appropriate court that meets applicable requirements  
8 relating to venue under the Rules of Court, and any court in which the carrier or  
9 service provider resides or conducts business --

10 (1.1.) based on a violation of this section or the regulations  
11 prescribed under this section to enjoin such violation;

12 (1.2.) to recover for actual monetary loss from such a violation, or  
13 to receive PhP 20,000 in damages for each such violation, whichever is  
14 greater; or

15 (1.3.) both.

16 (2) If the court finds that the defendant willfully or knowingly violated this  
17 section or the regulations prescribed under this section, the court may, in its  
18 discretion, increase the amount of the award to an amount equal to not more than  
19 three times the amount available under paragraph (1) of this subsection.

20 (B) Private Right of Action for Consumers –

21 (1) In General - An individual who has been injured as a direct result of  
22 his or her confidential proprietary network information being obtained, used, or  
23 sold in violation of this section may file a civil action in any court of competent  
24 jurisdiction against the person who caused the injury by violating this section.

25 (2) Remedies - A court in which such civil action has been brought may  
26 award damages of not more than PhP 20,000 for each violation of this section  
27 with respect to the plaintiff's customer proprietary network information.

28

1 (3) If the court finds that the defendant willfully or knowingly violated this  
2 section or the regulations prescribed under this section, the court may, in its  
3 discretion, increase the amount of the award to not more than 3 times the damages  
4 determined by the court under paragraph (2).

5 (C) *Civil Penalty* –

6 (1) In General - Any person who violates this section shall be subject to a  
7 civil penalty of not more than PhP 20,000 for each violation or each day of a  
8 continuing violation, except that the amount assessed for any continuing violation  
9 shall not exceed a total of PhP 20,000,000 for any single act or failure to act.

10 (2) Separate Violations - A violation of this section with respect to the  
11 customer proprietary network information of one person shall be treated as a  
12 separate violation from a violation with respect to the customer proprietary  
13 network information of any other person.

14 SECTION 7. *Separability Clause.* – If any provision or part thereof, is held  
15 invalid or unconstitutional, the remainder of the law or the provision not otherwise  
16 affected shall remain valid and subsisting.

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

21 SECTION 9. *Effectivity Clause.* – This Act shall take effect fifteen (15) days  
22 after its publication in at least two (2) newspapers of general circulation.

23 Approved,