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SENATE
S. No. 91

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE


The Constitution, Article 13, Section 11 provides that:

SEC. 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.

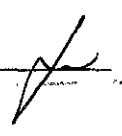
This bill seeks to implement the constitutional right to privacy of communications and correspondence by providing for measures which will make it more difficult to access the phone records of a consumer.¹


MIRIAM DEFENSOR SANTIAGO

¹ This bill was originally filed in the Thirteenth Congress, Third Regular Session.

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1 AN ACT
2 TO PROTECT CONSUMERS' PHONE RECORDS
3

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

6 SECTION 1. *Short Title.* -This Act shall be known as the "Protecting Consumer Phone
7 Records Act."

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

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

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

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

1 (3) "Confidential Phone Records Information" means information that -

2 (a) relates to the quantity, technical configuration, type, destination location, or
3 amount of use of a service offered by a covered entity, subscribed to by any customer of
4 that covered entity, and kept by or on behalf of that covered entity solely by virtue of the
5 relationship between that covered entity and customer;

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

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

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

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

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

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

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

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

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

3 (1.1.) making false or fraudulent statements or representations to an employee of a
4 covered entity;

5 (1.2.) making such false or fraudulent statements or representations to a customer
6 of a covered entity;

7 (1.3.) providing a document to a covered entity knowing that such document is
8 false or fraudulent; or

9 (1.4.) accessing customer accounts of a covered entity via the internet, without
10 prior authorization from the customer to whom such confidential phone records
11 information relates.

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

15 (3) to obtain unauthorized access to the data processing system or records of a
16 telecommunications carrier or an IP-enabled voice service provider in order to acquire the
17 customer proprietary network information and phone records information of one or more other
18 persons;

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

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

25 (B) Exceptions. -

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

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

7 SECTION 5. *Wireless Consumer Privacy Protection.*

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

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

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

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

1 service, or any calling plan or service associated with such commercial mobile service,
2 and such authorization has not been subsequently withdrawn.

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

5 SECTION 6. *Right of Action.*

6 (A) Private Right of Action for Providers -

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

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

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

15 (1.3.) both.

16 (2) If the court finds that the defendant willfully or knowingly violated this section or the
17 regulations prescribed under this section, the court may, in its discretion, increase the amount of
18 the award to an amount equal to not more than three times the amount available under paragraph
19 (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 his or her
22 confidential proprietary network information being obtained, used, or sold in violation of this
23 section may file a civil action in any court of competent jurisdiction against the person who
24 caused the injury by violating this section.

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

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

7 (C) *Civil Penalty* -

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

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

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

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

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

23 Approved,