

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

OFFICE SEN. TRILLANES

10 JUL -6 11:02

SENATE

RECEIVED [Signature]

S. NO. 293

Introduced by Senator Antonio "Sonny" F. Trillanes IV

L

EXPLANATORY NOTE

A person's right to privacy as stated under Article III, Section 3 of the Philippine Constitution is not only limited to a person's right against unlawful intrusion into one's home or personal effects but also extends to a person's communication or correspondence whether it be spoken, written, or electronic.

This right to privacy of communication and correspondence is further strengthened with the enactment of Republic Act No. 4200 entitled, "An Act to Prohibit and Penalize Wire Tapping and other related Violations of the Privacy of Communication, and for other Purposes" which prohibited and penalized wiretapping.

This proposed bill, in support with the measures mentioned above, further reinforces a person's right to privacy of communications and correspondence by providing additional means that would make it more difficult to access phone records of consumers which may be accessed without their authorization.

In view of the foregoing, immediate approval of this measure is earnestly sought.


ANTONIO "SONNY" F. TRILLANES IV
Senator

10 JUL -6 AM 10:02

SENATE

RECEIVED

S. NO. 293

Introduced by Senator Antonio "Sonny" F. Trillanes IV

AN ACT
TO PROTECT CONSUMERS' PHONE RECORD

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

1 **SEC. 1. Short Title.** - This Act shall be known as the "Protecting Consumers' Phone
2 Records Act of 2010"

3
4 **SEC. 2. Declaration of Policy.** - It is hereby declared the policy of the State
5 to ensure the privacy of communication and correspondence, and to prohibit the
6 unlawful and illegal use of information gathered in violation of this right, and to
7 prohibit the obtaining of customer information from telecommunications carriers
8 by false pretenses, and the sale or disclosure of such records obtained by false
9 pretenses.

10
11 **SEC. 3. Definition of Terms.** - As used in this section, the term --

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

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

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

21 (a) relates to the quantity, technical configuration, type, destination
22 location, or amount of use of a service offered by a covered entity, subscribed to
23 by any customer of that covered entity, and kept by or on behalf of that covered

1 entity solely by virtue of the relationship between that covered entity and
2 customer;

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

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

8 (4) "Covered Entity" - includes any provider of IP-enabled voice service.

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

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

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

19
20 **SEC. 4. *Unauthorized Acquisition, Use, or Sale of Confidential Customer Proprietary***
21 ***Network Telephone Information.*** --

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

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

26 (1.1.) making false or fraudulent statements or representations to an employee of a
27 covered entity;

28 (1.2.) making such false or fraudulent statements or representations to a
29 customer of a covered entity;

30 (1.3.) providing a document to a covered entity knowing that such document is
31 false or fraudulent; or

32 (1.4.) accessing customer accounts of a covered entity via the Internet, without
33 prior authorization from the customer to whom such confidential phone records
34 information relates.

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

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

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

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

12 (B) Exceptions. -

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

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

19
20 **SEC. 5. Wireless Consumer Privacy Protection. -**

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

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

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

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

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

37 (2) obtains express prior authorization for listing from such customer, separate from
38 any authorization obtained to provide such customer with commercial mobile

1 service, or any calling plan or service associated with such commercial mobile
2 service and such authorization has 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
6 **SEC. 6. Right of Action. -**

7 (A) Private Right of Action for Providers -

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

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

14 (1.2.) to recover for actual monetary loss from such a violation, or to receive PhP
15 20,000 in damages for each violation, whichever is greater; or

16 (1.3.) both

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

21 (B) Private Right of Action for Consumers -

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

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

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

33 (C) Civil Penalty -

34 (1) In General - Any person who violates this section shall be subject to a civil penalty of
35 not more than PhP 20,000 for each violation or each day of a continuing violation, except
36 that the amount assessed for any continuing violation shall not exceed a total of PhP
37 20,000,000 or any single act or failure to act.

1 (2) Separate Violations - A violation of this section with respect to the customer
2 proprietary network information of one person shall be treated as a separate violation
3 with respect to the customer proprietary network information of any other person.
4

5 **SEC. 7. *Separability Clause.*** -- If any provision or part thereof, is held invalid or
6 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
7 valid and subsisting.
8

9 **SEC. 8. *Repealing Clause.*** - Any law, presidential decree or issuance, executive order,
10 letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with the
11 provisions of this Act is hereby repealed, modified or amended accordingly.
12

13 **SEC. 9. *Effectivity Clause.*** -- This Act shall take effect fifteen (15) days after its
14 publication in at least two (2) newspapers of general circulation.

Approved,