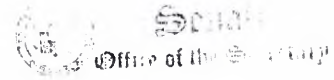


**NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)**



'22 JUL 12 A11 :29

SENATE

RECEIVED BY

S. B. NO. 366

Introduced by **SENATOR JOEL VILLANUEVA**

**AN ACT
PROVIDING FOR AN OPT-IN MECHANISM FOR TELEPHONE AND
MOBILE SUBSCRIBERS, PROTECTING SUCH SUBSCRIBERS FROM
ELECTRONIC SCAMS AND THREATS THROUGH THE MISUSE OF
DIGITAL TECHNOLOGY, AND PROVIDING PENALTIES FOR
VIOLATIONS THEREOF**

EXPLANATORY NOTE

With the advancements made in technology also come the evolution of phishing attacks in several platforms, such as short message services, e-mails, and calls.

Recently, many citizens complained of receiving scam text messages that offer fake jobs promising high wages and other valuable products at seemingly discounted prices, a scheme now called "smishing," a form of text message phishing that lures consumers into giving away personal or financial information.

With the unemployment rate as of April 2022 reaching 5.7% (equivalent to 2.76 million Filipinos) and an underemployment rate of 14.0% (equivalent to 6.40 million Filipinos),¹ this scheme will undoubtedly mislead (and have misled) some recipients, thereby necessitating the need for the Philippine government to take affirmative action to address these types of spam.

This bill seeks to put an end to the proliferation of spam messages that have been constantly increasing in recent months. Under this bill, "spam" is defined as a call or text message that may fall under any one of the following categories:

- (1) Not initiated by the recipient of the call or message containing commercial promotions or advertisements, the recipient of which did not opt-in to receive the same;

¹ Unemployment rate in September 2021 is Estimated at 8.9 Percent, available at <https://psa.gov.ph/content/unemployment-rate-september-2021-estimated-89-percent> (last accessed December 1, 2021).

- (2) Causes an installation of programs on the subscriber's device without consent;
- (3) Contains false or misleading electronic representations redirecting to websites, chat platforms, and similar online platforms and
- (4) Triggers the collection of personal information by accessing an electronic device illegally.

To enhance the privacy protection of individual subscribers, this bill automatically opts out all telephone and mobile subscribers from spam calls or messages, and allows the subscriber to provide his or her prior consent before any commercial or promotional advertisements can be sent to such subscriber, whether natural or juridical, without prejudice to the availability of the option of a subsequent opt-out mechanism.

Mobile network service providers are also mandated under this bill to provide user-friendly reporting mechanisms for their subscribers and immediately act on complaints, upon due investigation, to prevent further unsolicited calls and texts from such mobile number.

This bill also establishes a *prima facie* presumption of a violation of its provisions if the subscriber opted out of receiving any calls or text messages, or when the subscriber has declined to further give consent to the continuation of the call or text but still receives such messages, or when the unsolicited call or text falls within the 2nd to 4th categories as discussed above.

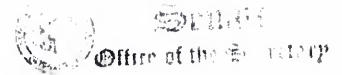
To ensure that the provisions of this Act will be implemented effectively, this bill mandates the National Privacy Commission, the National Telecommunications Commission, and the National Bureau of Investigation, in coordination with relevant stakeholders, to further improve and develop the technical and industry efforts to protect the data privacy of citizens.

Given the foregoing, it is imperative that the interests of our telephone and mobile subscribers are protected and upheld in line with the policy of the State to protect the fundamental right to privacy of communication, while ensuring free flow of information to promote innovation and growth, as guaranteed under the 1987 Constitution as well as by the Data Privacy Act of 2012. This bill will redound to the benefit of millions of subscribers who will have the freedom to choose with whom they transact, and will reduce, if not eliminate, the proliferation of potentially risky and harmful unsolicited calls or messages.

Thus, the immediate passage of this bill is earnestly sought.


SENATOR JOEL VILLANUEVA *JV*

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DIGITAL TECHNOLOGY, AND PROVIDING PENALTIES FOR
VIOLATIONS THEREOF**

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

**CHAPTER I
TITLE AND DECLARATION OF POLICY**

1 **SECTION 1. Short Title.** – This Act shall be known as the “Anti-Spam Act of 2022.”
2

3 **SEC. 2. Declaration of Policy.** – It is hereby declared the policy of the State to:
4

- 5 (a) Uphold the fundamental right to privacy of communication while ensuring free flow
6 of information to promote innovation and growth, guaranteed under the 1987
7 Constitution of the Republic of the Philippines, as well as by Republic Act No.
8 10173, otherwise known as the “Data Privacy Act of 2012”;
9
10 (b) Protect the data privacy of telephone and mobile phone service subscribers;
11
12 (c) Provide a standard of conduct for businesses and industries in sending calls and
13 text messages to subscribers;

- 1 (d) Set as default the opt-in mechanism and provide subscribers the opportunity to
2 give prior consent before receiving calls and texts inducing the purchase of goods
3 or services and other forms of solicitation; and
4
5 (e) Require service providers to implement user-friendly grievance mechanisms to
6 report unsolicited calls or texts.
7

8 **CHAPTER II**
9 **DEFINITION OF TERMS**

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11 **SEC. 3. Definition of Terms.** – As used in this Act:
12

- 13 (a) **Caller or sender** refers to any natural person, or in the case of a juridical person,
14 an employee or agent thereof, who initiates a call or a text message for the purpose
15 of making a call or text message, whether outbound or unsolicited;
16
17 (b) **Consent** refers to a written contract signed by both the subscriber and the entity
18 or its authorized representative, indicating that the subscriber opted to receive such
19 calls or text messages;
20
21 (c) **Outbound call or text** refers to a telephone call or text message initiated by any
22 caller or sender;
23
24 (d) **Prize** refers to anything offered, or purportedly offered, and given, or purportedly
25 given, to a subscriber user by chance;
26
27 (e) **Subscriber/s** refer to client/s of telecommunications companies, whether under a
28 pre-paid or post-paid plan;
29
30 (f) **Text** refers to any message sent via short message service (SMS);
31
32 (g) **Upselling** refers to soliciting the purchase of goods or services following an initial
33 transaction during a single telephone call or text message;
34
35 (h) **Unsolicited call or text** or **Spam** refers to a call or a text message that may be
36 any one of the following:
37
38 (1) Not initiated by the recipient of the call or message containing commercial
39 promotions or advertisements and the recipient of which did not opt-in to
40 receive the same;
41
42 (2) Causes an installation of programs on the subscriber's device without consent;
43
44 (3) Contains false or misleading electronic representations redirecting to websites,
45 chat platforms, and similar platforms; and
46
47 (4) Triggers the collection of personal information by accessing an electronic
48 device illegally.
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CHAPTER III
SUBSCRIBER'S RIGHTS AND
DUTIES AND RESPONSIBILITIES OF A CALLER OR SENDER

SEC. 4. Automatic Opt-Out and Subscriber's Prior Consent. – As a default, all subscribers are automatically opted out of receiving unsolicited calls or texts as defined under this Act. Commercial or promotional advertisements may only be sent to a subscriber who has given prior consent or has specifically opted-in to receive said messages without additional cost; *Provided*, That a subscriber who has given prior consent or opted in may choose to opt-out any time, without additional cost.

SEC. 5. Requirement for a Caller or Sender. – No person shall make an unsolicited call or text message unless such person discloses the full name of the caller or sender, the company, or organization for whose benefit the call or text message is being made, and the telephone number of a fixed line where such identity can be established and verified.

SEC. 6. Opt-out Mechanism. – All entities shall provide a mechanism for subscribers to opt-out any time from receiving calls or messages at no cost to the subscriber. The opt-out mechanism must enable the subscriber or recipient to indicate the decision not to receive any commercial or promotional advertisement from the entity.

SEC. 7. Filing of Complaint. – Complainants may initially file their complaints with the mobile network provider concerned, which shall act on all complaints received within fifteen (15) days from receipt.

Mobile network providers shall implement user-friendly and immediate reporting mechanisms for their respective subscribers and shall, upon due investigation, put in place measures to prevent further unsolicited calls or texts from the reported number.

Complainants who are not satisfied with the action of the entity may bring the matter to the National Telecommunications Commission (NTC).

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CHAPTER IV
PROHIBITED ACTS, FINES, AND PENALTIES

SEC. 8. Prohibited Acts. – No person, whether natural or juridical, shall make an unsolicited call or text message, as defined under this Act, to any telephone or mobile number.

There shall be a *prima facie* presumption of a violation of this Act if the subscriber opted out of receiving any calls or text messages, or when the subscriber has declined to further give consent to the continuation of the call or text, or when the unsolicited call or text falls within the definition under Sections 3(h)(2), 3(h)(3), and 3(h)(4) of this Act.

The use of an automatic dialer or any electronic device that automatically or randomly contacts telephone numbers is prohibited.

Any violation of this Section shall constitute the crime of unauthorized processing as defined and penalized under Section 25(a) and 25(b) of Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012 and its implementing rules and regulations, without prejudice to a further fine that may be imposed by the National Privacy Commission (NPC) as provided for in this Act.

1 **SEC. 9. Liability of Caller or Sender.** – A caller or sender who commits any violation
2 under this Act shall be held solely liable. If the caller or sender acted for the benefit of
3 another person, natural or juridical, and with authority from the latter, they shall be both
4 held separately liable for the violation. However, if the caller or sender acted for the benefit
5 of another person, natural or juridical, without authority from the latter, the former shall be
6 held solely liable.
7

8 Any caller or sender who calls or sends a text message to a subscriber in violation of the
9 provisions of this Act shall be fined for each call or text.
10

11 **SEC. 10. Third-party Access.** – The entity that shall allow access to the phone numbers
12 of their subscribers to other persons, whether natural or juridical, without the subscribers'
13 consent shall be held liable under this Act, without prejudice to liability under the Data
14 Privacy Act. For the avoidance of doubt, blanket consent shall be prohibited.
15

16 **SEC. 11. Exceptions.** – This Act shall not apply to a caller or sender under the following
17 circumstances:
18

- 19 (a) In representation of a public agency who is not promoting any of its programs for
20 a commercial purpose;
21
- 22 (b) Action is undertaken in a personal capacity;
23
- 24 (c) Action is prompted by a necessity to respond to an emergency that threatens life,
25 health, or safety of any individual;
26
- 27 (d) When the sole purpose of the call or text is to:
28
- 29 (1) Facilitate, complete, or confirm a transaction that the recipient of the message
30 has previously agreed to enter with the sender;
31
- 32 (2) Within the specified warranty period, provide warranty information, product
33 recall information, or safety or security information with respect to a product or
34 service purchased or used by the recipient of the message;
35
- 36 (3) Deliver goods or services, including product updates or upgrades, that the
37 recipient of the message is entitled to receive under the terms of the transaction
38 that the recipient previously agreed to enter with the sender;
39
- 40 (e) When with reference to an ongoing purchase or use by the recipient of goods or
41 services offered by the sender, the sole purpose of the call or text is to:
42
- 43 (1) Notify a change in its terms or features;
44
- 45 (2) Notify a change in the standing or status of the recipient of the message; or
46
- 47 (3) Provide, at regular periodic intervals, account balance information or other type
48 of account statement with respect to a subscription, membership, account, loan,
49 or comparable ongoing commercial relationship;
50
- 51 (f) When its sole purpose is to conduct general market research through surveys,
52 provided that, with respect to consumer goods and services, no reference shall be

1 made to any specific brand and in no case shall include any offer for sale of goods
2 and services;

3
4 (g) When sent to an organization other than an individual acting in a personal capacity,
5 for whatever purpose of the receiving organization; and

6
7 (h) When done by duly recognized charities, religious institutions, or educational
8 institutions which are not considered telemarketers, non-profit organizations, and
9 other exempt organizations under appropriate rules and regulations.

10
11 **SEC. 12. Penalties.** – Without prejudice to administrative sanctions that may be imposed
12 by the NPC, or to civil or criminal liability, any person found to be in violation of any
13 provision of this Act or its implementing rules and regulations, shall be imposed the
14 following penalties:

15
16 (a) For a juridical person, a fine of not less than Fifty Thousand Pesos (P50,000.00)
17 nor more than One Hundred Thousand Pesos (P100,000.00) for each violation;
18 *Provided,* That its officers directly responsible for the violation shall suffer the
19 penalty of fine not less than Fifty Thousand Pesos (P50,000.00) but not more than
20 One Hundred Thousand Pesos (P100,000.00); or

21
22 (b) For a natural person, a fine of not less than Fifty Thousand Pesos (P50,000.00)
23 but not more than One Hundred Thousand Pesos (P100,000.00).

24
25
26 **CHAPTER V**
27 **FINAL PROVISIONS**

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29 **SEC. 13. Oversight and Review.** – Within three (3) months from the effectivity of this
30 Act, and every six (6) months thereafter, the NPC, NTC, and the National Bureau of
31 Investigation, in consultation with relevant stakeholders in the private sector, shall each
32 submit reports to Congress, containing information on the implementation of the
33 provisions of this Act, as well as other pertinent information, including, but not limited, to
34 investigations initiated on spam and scam calls or messages and status thereof, and
35 technical and industry efforts undertaken to combat the proliferation of unsolicited calls or
36 text messages.

37
38 **SEC. 14. Appropriations.** – The NPC shall immediately include in its programs the
39 implementation of this Act, the initial funding of which shall be charged against its current
40 year's appropriations. Thereafter, such sums as may be necessary for the continued
41 implementation of this Act shall be included in the annual General Appropriations Act.

42
43 Proceeds from penalties herein imposed shall accrue to the General Fund.

44
45 **SEC. 15. Implementing Rules and Regulations.** – Within ninety (90) days from the
46 effectivity of this Act, the NPC, upon consultation with relevant stakeholders, shall
47 formulate the rules and regulations for the effective implementation of this Act.

48
49 **SEC. 16. Separability Clause.** – If, for any reason, any section, clause, or term of this
50 Act is held to be illegal, invalid, or unconstitutional, such parts not affected by such
51 declaration shall remain in full force and effect.

1 **SEC. 17. Repealing Clause.** – All laws, presidential decrees, issuances, executive
2 orders, letters of instruction, rules and regulations inconsistent with the provisions of this
3 Act are hereby repealed or modified accordingly.

4
5 **SEC. 18. Effectivity Clause.** – This Act shall take effect fifteen (15) days after its
6 publication in the Official Gazette or in two (2) newspapers of general circulation.

7
8 **Approved,**