

Republic of the Philippines
HOUSE OF THE REPRESENTATIVES
Quezon City, Metro Manila

Seventeenth Congress
First Regular Session

HOUSE BILL NO. **3817**



Introduced by Honorable Arthur R. Defensor, Jr.

EXPLANATORY NOTE

The right to privacy had been long recognized as among the fundamental rights that inhere to every person by virtue solely of his humanity. Indeed, it is a right most valued by civilized men that commands respect in any jurisdiction governed by the rule of law. Under Sections 2 and 3 of the Bill of Rights in our Constitution, the right to privacy is held sacred by commanding:

“Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant and warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

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.”

To preserve the enjoyment of such right by the people, the Anti-Wiretapping Law was enacted by Congress on 19 June 1965, almost fifty (50) years ago. Since then, the unstoppable advancement of information and communication technology has operated to diminish traditional zones of privacy enjoyed by the people. The coming of the digital age ushered in an era of unprecedented convenience and interconnectivity

which revolutionized the life of the ordinary Filipino. The developments in technology proliferated seemingly benign and innocuous devices which coupled by malice and mischief, possess the potential to undermine the very civil liberties held dear in our democratic society.

Unfortunately, the law has failed to keep a pace of the continuously evolving realities thrust upon us by the technologies achieved by human ingenuity. Moreover, the interest of government in maintaining security, peace, and order, as well as the indiscriminate enforcement of the law demand equal consideration for these interests are likewise essential in any civilized and democratic society.

At present, there are four (4) modes by which an individual may communicate with others: (1) oral, (2) written, (3) wire, and (4) electronic communications. With the exception of written communications, all these modes are ephemeral and non-corporeal in character and for this reason, are easily susceptible to interception, reproduction, and disclosure with the numerous digital devices possessing an incidental capacity to do so.

This Bill seeks to improve the old Anti-Wiretapping law by expanding the general prohibition to the interception and disclosure of oral, wire, and electronic communications. It provides for adaptable statutory standards designed to address future advancements and developments in information and communication technology. It likewise seeks to strike a delicate balance between the competing yet, equally compelling, interest to the right to privacy of individuals and the maintenance of peace and order and law enforcement by drawing concepts from the Electronic Communications Privacy Act (18 U.S.C. 2510-2522) of the United States of America.

The foregoing duly considered, the approval of this bill is earnestly sought.



ARTHUR R. DEFENSOR, JR.

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SEVENTEENTH CONGRESS
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HOUSE BILL NO. **3817**

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AN ACT
PROHIBITING THE INTERCEPTION AND DISCLOSURE OF ORAL, WIRE,
OR ELECTRONIC COMMUNICATIONS AND OTHER VIOLATIONS OF THE
RIGHT TO PRIVACY OF COMMUNICATION AND FOR OTHER PURPOSES

1 **Section 1. Short Title.** - This Act shall be known as the "Privacy of
2 Communications Act of 2018".
3

4 **Section 2. Declaration of Policy.** - It is the policy of the State to ensure the
5 inviolability of the right of the people to be the privacy of communication and
6 correspondence as provided by the 1987 Constitution. However it is likewise
7 recognized that such right is not absolute in view of other equally compelling state
8 interests such as the right of the State to investigate, prosecute, and punish violators
9 of the law. Accordingly, such right of privacy may be overcome by lawful order of
10 the court, or when public safety or order requires as provided by law.
11

12 As new technologies continue to be discovered and become commonplace in
13 an ever increasingly digitalized world, it is recognized that the law must ever keep
14 apace in evaluating its impact on privacy rights and to ensure that the right of
15 privacy enjoyed by the people is adequately guaranteed by law.
16

17 **Section 3. Declaration of Terms.** - For the purposes of this Act, unless the
18 context indicates otherwise:
19

20 (a) "Aggrieved person" refers to any person, natural or juridical,
21 whose communications, whether wire, oral, or electronic, were intercepted in
22 violation of the provisions of this Act.
23

24 (b) "Contents" as used in this Act and when used with respect to
25 any wire, oral, or electronic communication, includes any information
26 concerning the substance, purport, or meaning of that communication.
27

28 (c) "Court of competent jurisdiction" refers to any regional trial
29 court, the Court of Tax Appeals, Court of Appeals, Sandiganbayan, and the
30 Supreme Court having or in the exercise of lawful jurisdiction under the law
31 and the Constitution.

32
33 (d) "Electronic communication" refers to any communication made
34 in whole through the means of electronic data messages or electronic
35 documents as defined by Republic Act No. 8792 and the Rules on Electronic
36 Documents and regardless of the form of output thereof.

37
38 (e) "Electronic, mechanical, or other communication intercepting
39 device" means any device or apparatus whose primary purpose is the
40 surreptitious interception of a wire, oral, or electronic communication as
41 defined by this Act other than—

42
43 (1) any telephone, cellular phone, or telegraph instrument,
44 equipment or facility, or any component thereof,

45
46 (i) furnished to the subscriber or user by a provider of
47 wire or electronic communication service in the ordinary course of
48 its business and being used by the subscriber or user in the
49 ordinary course of its business or furnished by such subscriber or
50 user for connection to the facilities of such service and used in the
51 ordinary course of its business; or

52
53 (ii) being used by a provider of wire or electronic
54 communication service in the ordinary course of its business, or by
55 an investigative or law enforcement officer in the ordinary course
56 of his duties;

57
58 (2) a hearing aid or similar device being used to correct subnormal
59 hearing to not better than normal.

60
61 (f) "Intercept" refers to the acquisition of the contents, either in
62 whole or in part, of any wire, electronic, or oral communication through the
63 use of any electronic, mechanical, or other device.

64
65 (g) "Investigative or law enforcement officer" means any officer or
66 agent of the Republic of the Philippines or any political subdivision thereof,
67 who is empowered by law to conduct investigations of or to make arrests for
68 criminal offenses penalized by law, and any attorney authorized by law to
69 prosecute or participate in the prosecution of such offenses.

70
71 (h) "Oral communication" refers to any communication uttered,
72 spoken, or otherwise made by gestures, facial expressions and such other
73 communication not expressed in writing by a person exhibiting an

74 expectation that such communication is not subject to interception under
75 circumstances justifying such expectation, but such term does not include any
76 electronic communication as defined by this Act.
77

78 (i) "Wire communication" refers to any aural transfer made in
79 whole or in part through the use of facilities for the transmission of
80 communications by the aid of wire, cable, or other like connection between
81 the point of origin and the point of reception (including the use of such
82 connection in a switching station) furnished or operated by any person
83 engaged in providing or operating such facilities for the transmission of
84 interstate or foreign communications or communications affecting interstate
85 or foreign commerce.
86

87 (j) "Computer trespasser" –
88

89 (1) means a person who accesses a protected computer without
90 authorization and thus has no reasonable expectation of
91 privacy in any communication transmitted to, through, or
92 from the protected computer; and
93

94 (2) does not include a person known by the owner or operator
95 of the protected computer to have an existing contractual
96 relationship with the owner or operator of the protected
97 computer for access to all or part of the protected computer.
98

99 **Section 4. Coverage.** – This Act shall cover all oral, wire, and electronic
100 communications made in whole or in part within the territorial jurisdiction of the
101 Republic of the Philippines.
102

103 **Section 5. Prohibition against Interception of Communication.** – The act of
104 intercepting or attempting to intercept any wire, oral, or electronic communication
105 covered by this Act made by and between any person shall be prohibited and
106 penalized in accordance with Sections 14 and/or 17 of this Act.
107

108 **Section 6. Exceptions to the Prohibition against Interception of Communication.** –
109 Except as otherwise provided by law, the following shall be excepted from the
110 prohibition provided in the immediately preceding Section:
111

112 (a) Any interception of communication made pursuant to a lawful
113 surveillance conducted in accordance with the provisions of this Act;
114

115 (b) Any interception of communication made by an officer,
116 employee, or agent of a provider of wire or electronic communication service,
117 whose facilities are used in the transmission of a wire or electronic
118 communication made in the normal course of his employment while engaged
119 in any activity which is a necessary incident to the rendition of his service or

120 to the protection of the rights or property of the provider of that service,
121 except that a provider of wire communication service shall not utilize service
122 observing or random monitoring except for mechanical or service quality
123 control checks;
124

125 (c) Any interception of communication made by a person acting
126 pursuant to or in connection with a lawful surveillance or criminal
127 investigation made by investigative or law enforcement officers in accordance
128 with the provisions of this Act, where such person is a party to the
129 communication;
130

131 (d) Any interception of communication made where one of the
132 parties to the communication has given prior consent to such interception;
133

134 (e) Any interception of electronic communication made through an
135 electronic communication system that is readily accessible to the general
136 public;
137

138 (f) Any interception of electronic communication by radio which
139

140 (1) Is transmitted by any station for the use of the
141 general public;
142

143 (2) Relates to ships, aircraft, vehicles, or persons in
144 distress or by any governmental, law enforcement, civil
145 defense, private land mobile, or public safety
146 communications system readily accessible to the general
147 public;
148

149 (3) Is made by a station operating on an
150 authorized frequency within the bands allocated to or made
151 available to the general public; and
152

153 (4) Is made by any marine or aeronautical
154 communications system.
155

156 (g) Any interception of communication made by a person acting
157 under color of law of a computer trespasser transmitted to, through, or from a
158 computer which is protected from unwarranted or unlawful access by its
159 owner or operator protected computer; *Provided that:*
160

161 (1) The owner or operator of the protected
162 computer authorizes the interception of the computer
163 trespasser's communications on the protected computer;
164

(2) The person making the interception is engaged in lawful surveillance or criminal investigation in accordance with the provisions of this Act; and

(3) Such interception does not acquire communications other than those transmitted to or from the computer trespasser.

Section 7. *Prohibition against Disclosure of Intercepted Communication.* – The act of intentionally disclosing or who attempts to disclose to any person other than the intended recipient the contents of any wire, oral, or electronic communication obtained in violation of this Act shall be prohibited and penalized in accordance with Sections 14 and/or 17 of this Act.

The act of disclosing or attempting to disclose to any person other than the intended recipient the contents of any wire, oral, or electronic communication properly obtained pursuant to lawful surveillance or criminal investigation in accordance with this Act with intent to improperly obstruct, impede, or interfere with such lawful surveillance or criminal investigation, shall be prohibited and penalized in accordance with Sections 14 and/or 17 of this Act.

Section 8. *Exceptions to Prohibition against Disclosure of Intercepted Communication.* – Except as otherwise provided by law, the following shall be excepted from the prohibition provided in the immediately preceding Section:

(a) Where the disclosure of the intercepted communication is made with the consent of the originator or any addressee or intended recipient of such communication; and

(b) Where the disclosure of the intercepted communication is made to a person employed or authorized, or whose facilities are used, to forward such communication to its destination.

Section 9. *Prohibition against the Manufacture of Wire, Oral, or Electronic Communication Intercepting Devices.* – The manufacture or assembly of a device whose primary use, purpose, or function is the surreptitious interception of wire, oral, or electronic communications shall be prohibited and penalized in accordance with Sections 14 and 17 of this Act, except when such person who engages in the manufacture or assembly of a device as defined by this Section obtains the written approval of the National Telecommunications Commission (NTC).

Section 10. *Prohibition against the Possession of Wire, Oral, or Electronic Communication Intercepting Devices.* – The possession by a person of an electronic, mechanical, or other communications intercepting device without a prior written approval from the NTC and after payment of proper registration fees therefore shall

211 be prohibited and penalized in accordance with Sections 14 and 17 of this Act;
212 *Provided that*, no such registration fees shall be charged for wire, oral, or electronic
213 communication intercepting devices procured by an investigative or law
214 enforcement officer as defined by this Act.
215

216 **Section 11. Habeas Data as Remedy against Illegal Interception of Communication.**

217 - Upon a showing that any person is engaged or is about to engage in any act which
218 constitutes a violation or tends to violate the provisions of this Act, the aggrieved
219 party may file, before a court of competent jurisdiction, a petition for the issuance of
220 a writ of *habeas data* to enjoin the act complained of, or to order the deletion or
221 destruction of the communication illegally intercepted. Such court may likewise
222 issue a writ of injunction, whether preliminary or final, and grant any such relief as
223 may be just and equitable under the circumstances.
224

225 **Section 12. Recovery of Civil Damages.** - Any person whose wire, oral, or
226 electronic communication had been intercepted, disclosed, or intentionally used in
227 violation of this Act may file a civil action for recovery of damages from the person
228 or entity, other than the Republic of the Philippines or any of its departments,
229 agencies, or political subdivisions, which engaged in such unlawful act.
230

231 **Section 13. Statute of Limitations.** - An action for civil liability pursuant to the
232 immediately preceding Section must be filed within two years from the date the
233 plaintiff knew or reasonably should have known the illegal interception of
234 communication or illegal use or disclosure of such communication intercepted.
235

236 **Section 14. Administrative Liability.** - Any act or omission committed by an
237 officer, employee, or agent of the Republic of the Philippines or any of its
238 departments, agencies, or political subdivisions which constitutes a violation of this
239 Act shall constitute grave misconduct or conduct prejudicial to the best interest of
240 the service and accordingly be grounds for administrative liability pursuant to
241 pertinent rules and regulations governing the Civil Service; *Provided that*, nothing in
242 this Section shall be construed to preclude or prevent the filing of appropriate
243 criminal charges against such officer, employee, or agent for a violation of this Act.
244

245 **Section 15. Assistance to Lawful Surveillance or Criminal Investigation.** -
246 Notwithstanding any contrary provision of law, investigative or law enforcement
247 officers are hereby authorized to intercept oral, wire, or electronic communication
248 pursuant to a lawful surveillance or criminal investigation; *Provided that*, no
249 interception of communication pursuant to a lawful surveillance or criminal
250 investigation shall be allowed without an order by a court of competent jurisdiction
251 based on probable cause to be determined personally by the judge after examination
252 under oath or affirmation of the applicant and the witnesses he may produce,
253 particularly describing the place and persons subject of the surveillance; *Provided*
254 *further*, that such order shall clearly delineate the extent, scope, and limits of the
255 surveillance.
256

Providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorize to intercept wire, oral, or electronic communications in accordance with this Section.

Section 16. Exclusionary Rule. – Any form of communication obtained or secured in violation of or non-compliance with the procedures provided by this Act and its implementing rules and regulations by any investigative or law enforcement officer shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

Section 17. Penal Provisions. – Any person who knowingly or wilfully violates the provisions of this Act shall be punished by imprisonment of not less than six (6) months to not more than twelve (12) years or a fine of not less than One Hundred Thousand Pesos (P100,000) and not more than Five Million Pesos (P5,000,000).

Section 18. Non-applicability to written communication. – Notwithstanding any provision of this Act to the contrary, this Act shall not apply to any communication made in writing or communicated through the means of any material containing letters, words, numbers, figures, symbols or other modes of written expression.

Section 19. Implementing Rules and Regulations. – The Department of Justice (DOJ), Department of Interior and Local Government (DILG), Department of Information Technology and Communication (DITC), and Department of National Defense (DND), shall provide the necessary implementing rules and regulations within thirty (30) days upon the approval of this Act and after its publication in at least two (2) newspapers of general circulation.

Section 20. Repealing Clause. – All provisions of laws and rules inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

Section 21. Separability Clause. – If, for any reason, any section or provision of this Act is declared unconstitutional or invalid, the other sections or provisions not affected thereby shall remain in full force and effect.

Section 22. Effectivity Clause. – This Act shall take effect after fifteen (15) days following its publication in a newspaper of general circulation.

Approved,