

Republic of the Philippines
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **3629**



Introduced by Representative Federico S. Sandoval II

EXPLANATORY NOTE

This bill seeks to prohibit the transmission of spam messages or unsolicited commercial or promotional advertisements through broadcast message service and providing penalties for violation thereof.

The National Telehealth Center, based in the University of the Philippines, Manila disclosed that on March 2015, there were already 115 million mobile subscriptions in the Philippines. This means that in a country of 100 million people, the mobile penetration rate is a staggering 113%. It is also worth mentioning that since January 2014, there has been a 7% growth in the number of mobile subscriptions in the country, emphasizing that mobile phone usage remains to be the most favoured means of communication among Filipinos.

In recent years, the Philippines has been labelled as the "texting capital of the world." Although Smart Telecommunications reported a 20% decline in short messaging service (SMS) volume, user engagement was not actually reduced. Only, Filipino mobile users made a transition from one form of communication to another, specifically toward internet-based applications that are available in the virtual market today. This is understandable, since Filipinos, being highly sociable beings, use their mobile phones to communicate practically everything and anything to and with their families and friends.

This high level of user engagement in mobile telecommunications in the country today is seen by many as an opportunity for business growth, with public telecom entities (PTEs) and content providers using the platform to promote and advertise their goods, services or investments. The trend is a convenient and efficient tool for the PTEs and content providers to maximize their earning potential. However, these messages often come unsolicited, intrusive and annoying. Worse, prepaid subscribers complain of "disappearing or vanishing load" after receiving these unsolicited commercial and promotional advertisements, also known as spam messages.

In 2005, the National Telecommunications Commission (NTC) issued Memorandum Circular 03-03-2005 which provides rules and regulations on broadcast messaging service. Although administrative and penal sanctions were imposed, these were not enough to deter

most PTEs and content providers from sending spam messages, which impairs the reliability, efficiency and optimal use of mobile phone services.

It is the belief of this Representation that a law on this matter must be passed in line with the duty of the State to protect the public welfare. This bill provides measures to effectively control the delivery of these unsolicited messages, impose sanctions for those who violate, protect the subscriber's privacy and identify the National Telecommunications Commission (NTC) as the authorized lead agency.

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



FEDERICO S. SANDOVAL II

Republic of the Philippines
HOUS OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3629

Introduced by Representative Federico S. Sandoval II

AN ACT
PROHIBITING THE TRANSMISSION OF SPAM MESSAGES OR
UNSOLICITED COMMERCIAL AND PROMOTIONAL
ADVERTISEMENTS THROUGH BROADCAST MESSAGING
SERVICE AND PROVIDING PENALTIES FOR VIOLATION
THEREOF

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 “*Anti-Spam Messages Act.*”

SEC. 2. *Declaration of Policy.* – The State recognizes the vital role of information and telecommunications in nation-building. Pursuant to this, the State shall protect the rights and welfare of mobile phone subscribers and the whole telecommunications industry. Towards this end, the State shall institute measures to promote a safer and more secure environment for the use of information and communications technologies and to ensure that all mobile phone subscribers are accorded efficient and reliable telecommunications services.

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

- a.) **Broadcast messaging service** refers to the system which allows the sending of the same short messaging service (SMS) or multimedia messaging service (MMS) message to a large number of mobile phones;
- b.) **Commercial advertisement** refers to an advertisement which offers to purchase, sell, barter or lease any product, goods, service or land, or provide a business, investment or gaming opportunity;
- c.) **Content provider** refers to an organization that creates and maintains databases containing information from an information provider;
- d.) **Multimedia messaging service (MMS)** refers to the service which allows users to send and receive messages containing images, videos, audio and text;
- e.) **Opt-in** refers to the consent given by the subscriber for inclusion on a specific list to receive direct marketing through SMS or MMS;

- f.) **Opt-out** refers to the subscriber's choice to unsubscribe from future unsolicited commercial or promotional advertisements and push messages;
- g.) **Promotional advertisements** refers to the advertisements designed to increase the availability of or promote any product, goods, service, land, business, investment or gaming opportunity;
- h.) **Public telecom entity** refers to any person, firm, partnership or corporation, government or private, engaged in the provision of telecommunications services to the public for compensation;
- i.) **Push messages** refers to information transmitted to the mobile phone, either subscribed or unsolicited messages, without a user request and are initiated by the server of the content provider;
- j.) **Short messaging service (SMS)** refers to a service for sending messages to mobile phones that use Global System for Mobile Communications in text format, also known as text messaging; and
- k.) **Spam message** refers to any unsolicited and unwanted message sent using broadcast messaging service aimed as a commercial or promotional advertisement.

SEC. 4. Prohibition. – It is hereby prohibited for any public telecom entity (PTE) or content provider operating within the country to send or cause to send to a post-paid or pre-paid mobile phone any unsolicited and unwanted message using broadcast messaging service aimed as a commercial or promotional advertisement, also known as spam message, which includes the following:

- a.) A request for consent to send a message for commercial and promotional advertisements;
- b.) Announcement of winning of prizes, raffle draws and request for subscriber action such as reply through calls or text messages, or requiring other potentially detrimental actions from subscribers;
- c.) Claims or statements in commercial or promotional advertisements that are untrue, greatly exaggerated, or may not be supported by the advertised product or service; and
- d.) Message that promotes a person as being one who is involved in any of the items referred to in paragraphs (a), (b) or (c).

SEC. 5. Exemptions. – The following are exempt from the coverage of this Act:

- a.) Messages that facilitate, complete, or confirm a commercial transaction that the subscriber or recipient previously agreed to enter into with the person or organization who sent or caused to send the message;
- b.) Messages that provide warranty information, product recall information, or safety or security information about the goods or services used or purchased by the recipient;
- c.) Messages that inform product updates or upgrades that the recipient is entitled to receive; and
- d.) Messages that provide emergency, distress, public service information, network advisories and other consumer welfare and protection related advisories.

SEC. 6. *Subscriber's Consent.* – Commercial or promotional advertisements, or push messages may be sent only to subscribers who have given their prior consent or have specifically opted-in to receive said messages, **without additional cost.**

For purposes of this Act, **consent** means the presence of a written contract signed by both the subscriber and the PTE or content provider, as the case may be, indicating that the subscriber opted-in to receive such commercial or promotional advertisements, or push messages.

All commercial or promotional advertisements, or push messages must contain an accurate description of the message, identity and contact number of the PTE or content providers who sent or caused to send the message.

SEC. 7. *Opt-Out Mechanism.* – PTEs or content providers shall provide a mechanism for subscribers who have opted-in to opt-out from the broadcast messaging service at anytime. The opt-out mechanism must enable the subscriber or recipient to indicate, **at no cost**, the decision to no longer receive any commercial or promotional advertisement, or push message from the PTE or content provider.

SEC. 8. *Subscriber Privacy.* – PTEs and content providers are prohibited from retaining and sharing personal information including names, ages, birthdates, telephone numbers and other contact information submitted by any subscriber, in connection with or for the purpose of sending spam messages, without the consent of the subscriber who owns the personal information.

A subscriber who expressed prior consent pursuant to the preceding paragraph may revoke such consent at anytime. A PTE or content provider shall comply with the subscriber's request or act on the revocation of the consent to disclose personal information and subscription data within a reasonable period of time, which shall not exceed fifteen (15) days.

SEC. 9. *Filing of Complaint.* – Complainants may initially file their complaints with the PTE or content provider, which shall act on all complaints received within fifteen (15) days from receipt of such complaints.

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

SEC. 10. *Authority of National Telecommunications Commission.* – The NTC shall, *motu proprio*, or upon a verified complaint by a subscriber, investigate and impose the appropriate penalty on the offender for violations of Sections 4, 6, 7 and 8 of this Act.

In violation of Section 4 or 6 of this Act, the offending party shall first be issued an order to refrain from further sending spam or push messages. Non-compliance with the order to refrain from further sending spam or push messages shall be a ground for the filing of the appropriate complaint against the offending party.

SEC. 11. *Penalties.* – Any person, corporation, partnership, association, agency or other juridical entity who violates Sections 4, 6, 7 and 8 of this Act and fails to comply with the directive of the NTC to refrain from further sending spam or push messages shall be imposed a penalty of not less than Fifty Thousand Pesos (P50,000.00) for each offense committed.

If the offender is a corporation, partnership, association, agency or other juridical entity, the penalty shall be imposed on the officer or officers of the corporation, partnership, association, agency or other juridical entity who caused the violation.

SEC. 12. *Implementing Rules and Regulations.* – Within sixty (60) days from the effectivity of this Act, the Secretary of Information and Communications Technology, in coordination with the Commissioner of the National Telecommunications Commission, shall promulgate the necessary rules and regulations for the effective implementation of this Act.

SEC. 13. *Separability Clause.* – If any section or provision of this Act is declared unconstitutional or invalid, the other sections or provisions which are not affected shall continue to be in full force and effect.

SEC. 14. *Repealing Clause.* – All laws, decrees, executive orders, proclamations, rules and regulations and other issuances or part or parts thereof which are inconsistent with the provisions of this Act are hereby amended or modified accordingly.

SEC. 15. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,