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SENATE

Senate Bill No. 1233

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INTRODUCED BY SEN. MANNY VILLAR

EXPLANATORY NOTE

The bill provides for the definition of the different telecommunication fraud, their gravity as special offenses with the penal sanctions, the implementing body to achieve its desired ends, among others. The bill is highlighted by the following important provisions:

1. The explicit enumeration of the different species of telecommunication fraud:

- Cloning
- Operation of Illegal Telecommunications Unit
- Illegal Use of Radio Spectrum or Frequency
- Illegal Connection to a Landline Telephone
- Payphone Fraud
- Third Number Fraud
- Telecommunications Card Fraud
- Subscription Fraud
- Solicitation Fraud
- Illegal Installation of a Telecommunications Unit

2. It provides the penal sanction for each category of special crimes.

3. It provides an assurance to citizens who are telecommunications subscribers the assurance to citizens who are telecommunications service or their telephones disconnected simply because of erroneous billings and similar telecommunications defects.

Both the telecommunications company and the subscribers are set in the crossroads where each one at one time suffers the stigma of violation. The existence of criminal syndicates and unscrupulous individuals victimizing both the telecommunication entities and subscribers are anathema to information technology development. But for the subscribers, their greatest dilemma is the prevailing practice of telecommunications companies to bill their subscribers with services that has not been utilized by them.

Premises stated, this legislation is submitted for early enactment.


MANNY VILLAR

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Senate Bill No. 1233

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AN ACT
PROHIBITING TELECOMMUNICATIONS FRAUD AND DESTRUCTION OF
TELECOMMUNICATIONS FACILITIES, PROVIDING PENALTIES
THEREFORE AND FOR OTHER PURPOSES

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

SECTION 1. Title - This Act shall be known as "The Anti-
Telecommunication Fraud Act of 2010."

SEC. 2. Declaration of Policy - It is hereby declared the policy of the
State to protect the general public from phone cloning, illegal use of radio
spectrum or frequency, and other forms of telecommunications fraud; the use of
telecommunications unit, device and equipment not authorized by the National
Telecommunication Commission and the wanton and malicious destruction of
telecommunication facilities.

SEC. 3. Definition of Terms - The following terms, as used herein, shall
mean:

- a) Telecommunication Unit - Any fixed wire, wireless radio, cellular
telephone, pager, fax machine, computer or other device capable of
providing telecommunications through transmission, emission or
reception of any sign, signal, writing, image, picture, video, sound,
data, voice, music or intelligence of any picture;
- b) Electronic Serial Number (ESN)/Capcode/Mobile Identification Number
(MIN)/Electronic/International Mobile Equipment Identity (EME/OMEI)
Subscriber Identify Module (SIM). - Identification numbers,
electronically programmed into or attached to a telecommunications
unit;
- c) Electronic Serial Number Reader - Any device or instrument capable of
recognizing the ESN/Capcode/MIN/EME/OMEI/SIM of a
telecommunications unit;
- d) Cloning Device - Any type of instrument, device, machine or equipment
capable of being used and employed for cloning. An ESN reader not

registered with the Commission shall also be considered an illegal cloning device;

- e) **Illegal Telecommunications Unit** - A telecommunications unit, with a part or accessory altered, modified, reprogrammed through or any other similar process. The terms wireless radio units or other similar cellular phones, wireless radio units and other telecommunication units capable of gaining unauthorized or illegal access to a communications system operated by a PTE;
- f) **Telecommunications Card** - An instrument to access and/or use a telecommunications system, network or service, such as pre-paid cards, credit cards, calling cards or such other similar cards;
- g) **Subscriber** - A person, natural or juridical, who has legitimately acquired telecommunications service with the authorization and permission of a PTE;
- h) **Commission** - Refers to the National Telecommunications Commission or its successor agency;
- i) **Type of approval** - Refers to a process wherein a telecommunications unit, device or equipment is tested by the Commission or by the PTE pursuant to a prior authorization form the Commission, for conformance to applicable standards, as its or an authorized agency's Equipment;
- j) **Type Acceptance** - Refers to a process wherein a telecommunications unit device or equipment is evaluated on the basis of technical tests and certification agencies; and
- k) **Public Telecommunications Entity (PTE)** – Any public or private person, firm, partnership or corporation, lawfully engaged in the business of providing telecommunications services to the public for compensation.

SEC. 4. Prohibited Entity (PTE) - The following acts are hereby declared prohibited and unlawful:

- **Cloning** - The act or technical process of tampering or manipulating any part or device of any telecommunications unit, a card accessory thereof, using utilizing or employing any electronic device, computer, its combination or any other equipment of similar nature in order to access and program and/or duplicate the Electronic Serial Number (ESN)/Capcode, Mobile Identification Number (MIN), Electronic/International Mobile Equipment Identify (EMEI/MEI) or Subscriber Identify Module (SIM) or otherwise duplicate subscriber data of a duly registered telecommunications unit without authorization or approval of a PTE;
- **Operation of Illegal Telecommunications Unit** - The act of knowingly or willfully;
 1. Manufacturing, selling and/or distributing illegal telecommunications units; or
 2. Operating, utilizing or employing illegal telecommunications unit.

- **Illegal Use of Radio Spectrum or Frequency** - The act of using a radio spectrum or frequency without the written authority of the Commission, the PTE or any other authorized entity;
- **Illegal Connection to a Landline Telephone** - The act by a person of connecting to or linking with a landline telephone without the written consent of the subscriber and having the calls charged therein;
- **Payphone Fraud** - The act of tampering or manipulating a public pay telephone to gain access to the PTEs network or for services which are not normally available through the payphone without authority from the PTE;
- **Third Number Fraud** - The act by a person of placing a call to a specific number but having the call charged to neither the caller nor the called number without the consent of the subscriber of the third number or by securing the consent of the subscriber of the third number through deceitful means;
- **Telecommunication Card Fraud** – The act of:
 1. manufacturing, distributing or selling
- **Subscription Fraud** – The act of:
 1. any person who shall obtain telecommunications service in one's own favor on any of the following circumstances:
 - a. under false identity and/or false statements;
 - b. under pretenses of employment, occupation, income, financial capacity, residential or billing address; or
 - c. using false, forged, altered or intercalated service agreements and supporting subscription requirements;
 2. any person who shall deceive the PTE to grant service to another person, under any of the circumstances enumerated in the preceding number or when such another person does not exist, is no longer living, does not reside within the Philippines or never applied for telecommunications service with the PTE to whom such submission was made, or having applied, did not apply under the terms and conditions stated in false, forged, altered or intercalated submission, or who otherwise would not have been qualified to obtain such service under the standards and requirements of the PTE;
 3. any person who shall deceive the PTE to activate service telecommunications units by submitting or procuring the submission of authentic documents when such submissions, and where the subject of such submission shall not have received and accepted the service applied for despite its activation by the PTE; or
 4. any dealer, sub-dealer or agent of a PTE who maliciously or intentionally falls or deliver to the subscriber-on-record service units, devices and/or accessories, or shall deliver it to a person other than the subscriber-on-record;

- Solicitation Fraud - The act of any person or entity, telecommunications equipment/service dealer or agent of telecommunications services who to the prejudice of the subscriber: and/or the PTE, misrepresent the rates, fees, subscription plans, equipment cost, and/or other terms and conditions of subscription to a telecommunication service;
- Illegal Installation of a Telecommunications Unit - The act of installing or causing to be installed a telecommunications unit, device or equipment which is without a type approval or type acceptance, into a telecommunications network without the permission of the Commission or the PTE who owns the network;
- Other Fraudulent Schemes - The act of any person, not otherwise authorized by a PTE, of:
 1. Abandoning a telecommunications service or transferring the possession or ownership of telecommunications unit with the intent of evading payment of charges; or
 2. Employing any means, scheme, process or device to defraud the government the public, or the PTE of fees or charges for services rendered or equipment owned by the PTE.
- Illegal Operation of a Public Telecommunications Service - The act of operating or providing a public telecommunications facilities and accessories of authorized a PTE's resulting to system disruption or network degradation.

SEC. 5. Penalties - The following penalties are hereby imposed against any person found guilty or violation of the prohibited acts enumerated in the preceding section:

- a. Cloning - Imprisonment of not less than four (4) years and one (1) day to six (6) years and a fine of Five Hundred Thousand Pesos (₱500,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- b. Operation of Illegal Telecommunications Unit - For subsection;
 1. Imprisonment of not less than two (2) years and one (1) day to four (4) years and a fine of three hundred thousand pesos (₱300,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
 2. Imprisonment of not less than one (1) year and one (1) day to four (4) years and a fine of One hundred thousand pesos (₱100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- c. Illegal Use of Radio Spectrum or Frequency - Imprisonment of not less than four (4) years and one (1) day to six (6) years and a fine of Three Hundred Thousand Pesos (₱300,000.00);
- d. Illegal Connection to a Landline Telephone - Imprisonment of not less than two (2) years and one (1) day to six (6) years and a fine of

- Three Thousand Pesos (₱300,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
- e. Payphone Fraud - Imprisonment of not less than six (6) months and one (1) day to one (1) year and a fine of One hundred thousand pesos (₱100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever higher;
 - f. Third Number Fraud - Imprisonment of not less than six (6) months and one (1) day to one (1) year and a fine of One hundred thousand pesos (₱100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
 - g. Telecommunication Card Fraud - Fraud subsection:
 - h. Subscription Fraud -For subsection:
 - 1. Imprisonment of not less than four (4) years and one (1) day to six (6) years and a fine of One hundred thousand pesos (₱100,000.00) or three (3) times the amount of damages suffered by the PTE, as determine by the Court, whichever is higher;
 - 2. Imprisonment of not less than two (2) years and one (1) day to four (4) years and a fine of Three hundred thousand pesos (₱300,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
 - 3. Imprisonment of not less than two (2) years and one (1) to four (4) years and a fine of Three hundred thousand pesos (₱300,000.00),or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher; and
 - 4. Imprisonment of not less than two (2) years and one (1) day to four (4) years and a fine of Five hundred thousand pesos (₱500,000.00) or three (3) times the amount damages suffered by the PTE, as determined by the Court, whichever is higher.
 - i. Solicitation Fraud - Imprisonment of not less than one (1) year and one (1) day to two (2) years and a fine of One hundred thousand pesos (₱100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
 - j. Illegal Installation of a Telecommunications Unit - Imprisonment of not less than one (1) year and one (1) day to two (2) years and a fine of One hundred thousand pesos (₱100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;
 - k. Other Fraudulent Schemes - Imprisonment of not less than one (1) year and one (1) day to two (2) years and a fine of One hundred

thousand pesos (₱100,000.00) or three (3) times the amount of damages suffered by the PTE, as determined by the Court, whichever is higher;

- I. **Illegal Operation of a Public Telecommunications Service** - Imprisonment of not less than four (4) years and one (1) day to six (6) years and a fine of Five hundred thousand pesos (₱500,000.00) or three (3) times the amount damages suffered by the PTE, as determined by the Court, whichever is higher.

SEC. 6. Qualified Offenses - When any of the acts prohibited under Section 4 of this Act is committed by or conspiracy with an employee of the PTE or by a syndicate of two or more persons in conspiracy with one another, an additional penalty of two (2) years imprisonment and a fine of double the amount originally imposed shall be suffered by each offender.

SEC. 7. Confiscation and Forfeiture of the Proceeds or Instruments of the Crime - Every penalty imposed for the commission of any of the acts punishable in this act shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed. Those items which are not the subject of lawful commerce shall be destroyed by the Government.

SEC. 8. Evidence of Cloning and Other Frauds - For purposes of criminal prosecution, the following shall be sufficient to establish prima facie evidence of:

1. Cloning - Mere possession of a cloning device or an illegal telecommunications unit;
2. Illegal Use of Frequency - Mere possession of a radio transmitter or transceiver without authority from the Commission;
3. Telecommunications Card Fraud - Mere possession of an unauthorized, tampered, stolen or manipulated telecommunication card;
4. Illegal Operation of a Public Telecommunications Service - The absence of a Certificate of Public Convenience and Necessity, provisional or permanent license and/or authorization from the Commission prior to operation; and
5. Subscription Fraud - The mere submission of forged or fraudulent, intercalated and/or altered subscription documents by the applicant for service and/or any person, dealer or agent whether or not the PTE shall have in fact granted or activated the service.

SEC. 9. Complaining Parties and Prosecution Under Other Laws - Any complaint for violation of this Act may be initiated by an affected person, subscriber, a PTE, or the Commission. Moreover, prosecution under this Act shall not bar any prosecution under other administrative or penal laws, and vice versa.

SEC. 10. Registration of Electronic Serial Number Reader - Upon the effectivity of this Act, no person or entity who is not an authorized PTE shall import into the Philippines any electronic serial number reader. For this Purpose, the Bureau of Customs shall require the presentation of the certificate of authorization to import issued by the Commission and in the absence thereof, to confiscate and cause the forfeiture of such equipment in favor of the Government.

Electronic serial number readers already in the Philippines shall be registered with the Commission within six (6) months from the date of effectivity of this Act. Otherwise, mere possession thereof shall be illegal and shall subject the possessor to penalties provided in Section 5-A hereof.

SEC. 11. Non-Disconnection of Telecommunications Service - A PTE shall not disconnect the telecommunications service of a subscriber who has verified written complaint for erroneous billings, pending resolution of said complaint by the PTE and/or the Commission. The subscriber shall, however pay the uncontested items of the bill and agree to the PTE's implementation of measures to immediately prevent any possible further erroneous billing.

If the subscriber refuses to pay the contested bill despite a resolution of the Commission adverse to the subscriber then the PTE shall disconnect the service unless directed otherwise.

SEC. 12. Promulgated of Implementing Rules - Within ninety (90) days from the effectivity of this Act, the Commission shall promulgate the rules, measures, guidelines and other standards with the appropriate sanctions thereof, to:

- a. promote efficiency and adequacy of service;
- b. prescribe solutions to drop calls, billings, any of the above frauds and the disruption of telecommunication service; and
- c. protect subscriber's right and interest.

SEC. 13. Repealing Clause - Any provision of law, decree, executive order or issuance inconsistent herewith is hereby repealed and/or modified accordingly.

SEC. 14. Separability Clause - If for any reason, any section or provision of this Act is declared to be unconstitutional or invalid, the other sections or provisions hereof which are not affected shall continue to be in full force and effect.

SEC. 15. Effectivity - This Act shall take effect thirty (30) days after approval and publication in the Official Gazette.

Approved,