

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Batasang Pambansa, Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2873

Authored by Hon. JOSEPH VICTOR G. EJERCITO

EXPLANATORY NOTE

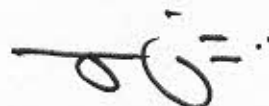
The right to the privacy of communication and correspondence is enshrined in the Constitution in Section 3 of Article III which reads as follows: Section 3, (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires 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 this end, Republic Act No. 4200 entitled "Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communication and for other Purposes" remains as primary implementing law. It penalizes, among other acts, the unauthorized of any wire or cable, "or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word x x x."

While the law is still an effective tool in enforcing the constitutional proscription, recent events show that we need new measures to protect this sacred right. Merely increasing the penalty or violations seems to be not enough. New methods must be sought and employed.

The principal purpose of this bill is to regulate the ownership, possession, sale, use and importation of wiretapping devices and violations thereon shall be meted with corresponding penalty. The rationale is that such devices, while not absolutely prohibited, should be owned, possessed, sold, imported or used by those who are deemed qualified by the law. Thus, another layer of protection is afforded because then, before a person could get a court order to use a wiretapping device, he must first be qualified to own or use the same.

With the forgoing considerations, the passage of this bill is earnestly sought.



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AN ACT *
AMENDING CERTAIN SECTIONS OF REPUBLIC NO. 4200, OTHERWISE KNOWN AS 'AN ACT TO PROHIBIT AND PENALIZE WIRE TAPPING AND OTHER RELATED VIOLATIONS OF THE PRIVACY OF COMMUNICATION, AND FOR OTHER PURPOSES' BY INCREASING THE PENALTIES PROVIDED THEREIN AND REGulating THE OWNERSHIP, POSSESSION, SALE, IMPORTATION AND USE OF WIRETAPPING DEVICES, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES

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

SECTION 1. After Section 1 of Republic No. 4200, a new section shall be inserted which shall read as follows:

"SECTION 1-A WIRETAPPING DEVICES SHALL ONLY BE SOLD AND/OR IMPORTED BY MANUFACTURERS OR DEALERS DULY AUTHORIZED BY THE NATIONAL TELECOMMUNICATIONS COMMISSION, HEREINAFTER REFERRED TO AS THE COMMISSION. THE COMMISSION IS HEREBY AUTHORIZED TO ISSUE PERMITS, UPON APPLICATION, TO POSSESS AND/OR USE WIRETAPPING DEVICES TO THE PHILIPPINE NATIONAL POLICE, ARMED FORCES OF THE PHILIPPINES, NATIONAL BUREAU OF INVESTIGATION, BUREAU OF IMMIGRATION, BUREAU OF CUSTOMS; OR OTHER LAW-ENFORCEMENT GOVERNMENT AGENCIES, OTHER AGENCIES OF THE GOVERNMENT THAT SHALL USE WIRETAPPING DEVICES IN SOME ASPECTS OF THEIR FUNCTIONS, NOT OTHERWISE PROHIBITED BY LAW, MUST LIKEWISE SECURE THE NECESSARY PERMIT FROM THE COMMISSION BEFORE OPERATING THE SAME.

EVERY PERMIT TO POSSESS AND/OR USE A WIRETAPPING DEVICE SHALL BE VALID FOR TWENTY-FOUR (24) MONTHS UPON ISSUANCE. FOR THESE PURPOSES, THE COMMISSION

SHALL BE ALLOWED TO COLLECT REASONABLE REGISTRATION FEES FOR THE EFFECTIVE IMPLEMENTATION OF THIS ACT.

WITHIN THE PERIOD OF SIX (6) MONTHS FROM THE EFFECTIVITY OF THIS ACT, ALL PERSONS OTHER THAN THOSE MENTIONED IN THE SECOND PARAGRAPH HEREOF WHO OWN OR ARE OTHERWISE IN POSSESSION OF SUCH WIRETAPPING DEVICES MUST SURRENDER THE SAME TO THE COMMISSION., THROUGH ANY OF ITS REGIONAL OFFICES, FOR PROPER INDEMNIFICATION. THE COMMISSION IS HEREBY AUTHORIZED TO FORMULATE AN INDEMNIFICATION SCHEME FOR THE SURRENDERED WIRETAPPING DEVICES.

FOR PURPOSES OF THIS SECTION, "WIRETAPPING DEVICE OR DEVICES" SHALL REFER TO ANY WIRE OR CABLE, OR ANY OTHER DEVICE OR ARRANGEMENT, PRIMARILY USED TO SECRETLY OVERHEAR, INTERCEPT, OR RECORD ANY COMMUNICATION OR SPOKEN WORD SUCH AS, BUT NOT LIMITED TO, A DEVICE COMMONLY KNOWN AS A DICTAPHONE OR DICTAGRAPH OR DETECTAPHONE OR WALKIE-TALKIE OR TAPE RECORDER, OR HOWEVER OTHERWISE DESCRIBED. THE TERM SHALL NOT INCLUDE THOSE ELECTRONIC EQUIPMENT OR DEVICES WHOSE VOICE OR SOUND RECORDING FUNCTION IS ONLY INCIDENTAL OR IS NOT ITS PRINCIPAL FUNCTION SUCH A, BUT NOT LIMITED TO, STEREOS, CASSETTE RECORDERS, CELLULAR PHONES, AND THE LIKE.

TO EFFECTIVELY IMPLEMENT THE PROVISIONS OF THIS ACT, THE COMMISSIONER SHALL ISSUE THE EMPLEMENTING RULES AND REGULATIONS WITHIN NINETY (90) DAYS UPON APPROVAL OF THIS ACT."

SECTION 2. Section 2 thereof shall be deleted and a new Section 2 shall be inserted and which shall read as follows:

"SECTION 2 PROHIBITED ACTS. - "(A). ANY PERSON WHO WILFULLY OR KNOWINGLY DOES OR WHO SHALL AID, PERMIT, OR CAUSE TO BE DONE ANY OF THE ACTS DECLARED TO BE UNLAWFUL IN SECTION 1 HEREOF SHALL, UPON CONVICTION THEREOF, BE PUNISHED BY RECLUSION TEMPORAL IN ITS MINIMUM PERIOD TO ITS MEDIUM PERIOD WITH ITS ACCESSORY PENALTIES OR A FINE OF NOT LESS THAN EIGHTY THOUSAND PESOS (80,000.00) BUT NOT MORE THAN ONE HUNDRED THOUSAND PESOS (100,000.00) AND, IF THE OFFENDER IS AN ALIEN, HE SHALL BE SUBJECT TO DEPORTATION PROCEEDINGS.

(B) ANY PERSONS WHO SELLS, PURCHASES, TRANSFERS THE OWNERSHIP, DISTRIBUTES, OR OTHERWISE DISPOSES OR POSSESSES A WIRETAPPING DEVICE WITHOUT FIRST SECURING THE NECESSARY PERMIT FROM THE COMMISSION SHALL BE PUNISHED WITH IMPRISONMENT OF PRISION MAYOR IN ITS MINIMUM PERIOD TO ITS MAXIMUM PERIOD OR A FINE OF NOT LESS THAN FORTY THOUSAND PESOS (40,000.00) BUT NOT MORE THAN SIXTY THOUSAND PESOS (60,000.00), OR BOTH, AT THE DISCRETION OF THE COURT.

(C) ANY PERSON WHO IMPORTS OR MANUFACTURES A WIRETAPPING DEVICE WITHOUT OBTAINING PRIOR AUTHORIZATION FROM THE COMMISSION SHALL BE PUNISHED WITH IMPRISONMENT OF PRISION CORRECCIONAL IN ITS MEDIUM PERIOD TO ITS MAXIMUM PERIOD OR A FINE OF NOT LESS THAN TWENTY THOUSAND PESOS (20,000.00) NOT NOT MORE THAN FORTY THOUSAND PESOS (40,000.00), OR BOTH, AT THE DISCRETION OF THE COURT.

(D) ANY PERSONS WHO OWNS OR POSSESSES A WIRETAPPING DEVICE WITHOUT SECURING THE NECESSARY PERMIT AS STATED IN SECTION 1-A HEREOF, OR WHOSE PERMIT THEREFOR HAS EXPIRED, SHALL BE PUNISHED WITH IMPRISONMENT OF PRISION CORRECCIONAL IN ITS MINIMUM PERIOD TO ITS MEDIUM PERIOD OR A FINE OF NOT LESS THAN TEN THOUSAND (10,000.00) BUT NOT MORE THAN TWENTY THOUSAND (20,000.00), OR BOTH, AT THE DISCRETION OF THE COURT.

IF THE VIOLATION UNDER THIS SECTION IS COMMITTED BY OR THROUGH THE COMMANDOR ORDER OF ANOTHER PERSON, PARTNERSHIP OR CORPORATION, THE PENALTIES HEREIN PROVIDED SHALL LIKEWISE BE IMPOSED ON SUCH OTHER PERSON, OR THE RESPONSIBLE OFFICER OR OFFICERS OF SUCH PARTNERSHIP OR CORPORATION.

IF THE OFFENDER IS A OUBLIC OFFICIAL OR EMPLOYEE AND THE OFFENDED PARTY IS A PRIVATE PERSON, OR IF THE OFFENSE IS COMMITTED FOR POLITICAL PURPOSES, THE PENALTY SHALL BE IN ITS MAXIMUM. IN CASE THE OFFENDER IS A PUBLIC OFFICIAL OR EMPLOYEE, HE SHALL BE REMOVED FROM OFFICE AND PERPETUALLY DISQUALIFIED FROM HOLDING ANY PUBLIC OFFICE.

IF THE OFFENSE IS COMMITTED FOR POLITICAL PURPOSES, THE PENALTY SHALL LIKEWISE BE IN ITS MAXIMUM PERIOD. ACCOMPLICES SHALL, UPON CONVICTION, BE METE THE PENALTY EQUIVALENT TO THE MINIMUM IMPOSABLE PENALTY THEREIN PROVIDED. ACCESSORIES SHALL BE METED THE PENALTY WHICH IS EQUIVALENT TO THE [PERIOD NEXT LOWER TO THE MINIMUM PENALTY, WHILE THE FINE THEREFOR IS FIVE TOUSAND (5,000) PESOS LOWER THAN THE MINIMUM PRESCRIBED THEREIN.

THE CONFISCATED OR SURREDERED WIRETAPPING DEVICES UNDER THIS ACT SHALL BE DESTROYED BY THE PHILLIPINE NATIONAL POLICE IN PUBLIC VIEW AND A REPORT THEREON SHALL BE SUBMITTED TO THE COMMISSION."

SECTION 3. An amount of twenty million pesos (Php 20,000.00) to be charged against the savings under the current appropriations of the Department of Transportation and Communication (DOTC) is hereby allocated for the indemnification scheme stated in Section 1 hereof.

SECTION 4. If, for any reason, any part or provision of this Act shall be declared as unconstitutional or invalid, such parts or provisions not affected thereby shall remain in full force and effect

SECTION 5. All laws, executive orders, presidential decrees, letters of instruction, rules and regulations, or parts thereof which are inconsistent with any of the provisions of this Acts are hereby repealed and/or amended accordingly.

SECTION 6. This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved,