

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

Fifteenth Congress
Second Regular Session

HOUSE BILL NO. 5746



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 or 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."

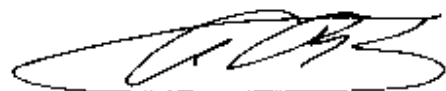
To preserve the enjoyment of such right by the people, the Anti-Wiretapping Law was enacted by Congress on 19 June 1965, almost fifty (50) years ago. Since then, the unstoppable advancement of information and communications technology has operated to diminish traditional zones of privacy enjoyed by the 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 apace of the continuously evolving realities thrust upon us by the technologies achieved by human ingenuity. Moreover, the interests 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, interests 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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FIFTEENTH CONGRESS
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HOUSE BILL NO. 5746

Introduced by Honorable Arthur R. Defensor, Jr.

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.**

Section 1. *Short Title.* – This Act shall be known as the “Privacy of Communications Act of 2012”.

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

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

Section 3. *Definition of Terms.* – For the purposes of this Act, unless the context indicates otherwise:

- (a) “Aggrieved person” refers to any person, natural or juridical, whose communications, whether wire, oral, or electronic, were intercepted in violation of the provisions of this Act.

- (b) "Contents" as used in this Act and when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.
- (c) "Court of competent jurisdiction" refers to any Regional Trial Court, the Court of Tax Appeals, Court of Appeals, Sandiganbayan, and the Supreme Court, having or in the exercise of lawful jurisdiction under the law and the Constitution.
- (d) "Electronic communication" refers to any communication made in whole through the means of electronic data messages or electronic documents as defined by Republic Act No. 8792 and the Rules on Electronic Documents and regardless of the form of output thereof.
- (e) "Electronic, mechanical, or other communication intercepting device" means any device or apparatus with the capability of surreptitious interception of a wire, oral, or electronic communication as defined by this Act other than --
 - (1) any telephone, cellular phone, or telegraph instrument, equipment or facility, or any component thereof,
 - (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business, and being used by the subscriber or user in the ordinary course of its business, or furnished by such subscriber or user for connection to the facilities of such service, and used in the ordinary course of its business; or
 - (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;
 - (2) a hearing aid or similar device being used to correct subnormal hearing to not better than normal.
- (f) "Intercept" refers to the acquisition of the contents, either in whole or in part, of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.
- (g) "Investigative or law enforcement officer" means any officer or agent of the Republic of the Philippines or any political subdivision thereof, who is empowered by law to conduct investigations of, or to make arrests for criminal offenses penalized by law, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

- (h) "Oral communication" refers to any communication uttered, spoken, or otherwise made by gestures, facial expressions and such other communication not expressed in writing by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication as defined by this Act.
- (i) "Wire communication" refers to any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce.
- (j) "Provider" refers to the operator of a wire, radio, electromagnetic, photooptical, or photoelectronic facilities, whether or not licensed by the Government for such purpose, for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.
- (k) "Computer trespasser" –
 - (1) means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and
 - (2) does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.

Section 4. Coverage. - This Act shall cover all oral, wire, and electronic communications made in whole or in part within the territorial jurisdiction of the Republic of the Philippines.

Section 5. Prohibition against Interception of Communication. - The act of intercepting or attempting to intercept any wire, oral, or electronic communication covered by this Act made by and between any person shall be prohibited and penalized in accordance with Section 17 of this Act.

Section 6. Exceptions to the Prohibition against Interception of Communication. - Except as otherwise provided by law, the following acts shall not be covered by the prohibition provided in the immediately preceding Section:

- (a) Any interception of communication made pursuant to a lawful surveillance or criminal investigation conducted in accordance with the provisions of this Act;
- (b) Any interception of communication made by an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication made in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service public shall not utilize service observing or random monitoring except for mechanical or service quality control checks;
- (c) Any interception of communication made by a person acting pursuant to, or in connection with, a lawful surveillance or criminal investigation made by investigative or law enforcement officers in accordance with the provisions of this Act, where such person is a party to the communication;
- (d) Any interception of communication made where one of the parties to the communication has given prior consent to such interception;
- (e) Any interception of electronic communication made through an electronic communication system that is readily accessible to the general public;
- (f) Any interception of electronic communication by radio which:
 - (1) Is transmitted by any station for the use of the general public;
 - (2) Relates to ships, aircraft, vehicles, or persons in distress or by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system readily accessible to the general public;
 - (3) Is made by a station operating on an authorized frequency within the bands allocated to or made available to the general public; and
 - (4) Is made by any marine or aeronautical communications system.
- (g) Any interception of communication made by a person acting under color of law of a computer trespasser transmitted to, through, or from a computer which is protected from unwarranted or unlawful access by its owner or operator protected computer; *Provided that:*
 - (1) The owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

- (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.* –

- (a) The act of intentionally disclosing or attempting to disclose to any person other than the intended recipient the contents of any wire, oral, or electronic communication intentionally obtained in violation of this Act shall be prohibited and penalized in accordance with Section 17 of this Act.
- (b) 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 Section 17 of this Act.

Section 8. *Exceptions to Prohibition against Disclosure of Intercepted Communication.* – Except as otherwise provided by law, the following acts shall not be covered by 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 or Sale of Wire, Oral, or Electronic Communication Intercepting Devices.* – The manufacture, assembly, or sale 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 Section 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 a device whose primary use, purpose, or function is the surreptitious interception of wire, oral, or electronic communications with intent to use such device without a prior written

approval from the NTC and after payment of proper registration fees therefore shall be prohibited and penalized in accordance with Section 17 of this Act; *Provided that*, no such registration fees shall be charged for wire, oral, or electronic communication intercepting devices procured by an investigative or law enforcement officer as defined by this Act.

Section 11. Habeas Data as Remedy against Illegal Interception of Communication. – Upon a showing that any person is engaged, or is about to engage in, any act which constitutes a violation or tends to violate the provisions of this Act, the aggrieved party may file, before a court of competent jurisdiction, a petition for the issuance of a writ of *habeas data* to enjoin the act complained of, or to order the deletion or destruction of the communication illegally intercepted. Such court may likewise issue a writ of injunction, whether preliminary or final, and grant any such relief as may be just and equitable under the circumstances.

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

Section 13. Statute of Limitations. – An action for civil liability pursuant to the immediately preceding Section must be filed within two (2) years from the date the aggrieved party knew or reasonably should have known the illegal interception of communication or illegal use or disclosure of such communication intercepted.

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

Section 15. Assistance to Lawful Surveillance or Criminal Investigation. – Notwithstanding any contrary provision of law, investigative or law enforcement officers are hereby authorized to intercept oral, wire, or electronic communication for the purposes of pursuant to an order by a court of competent jurisdiction based probable cause to be determined personally by the judge after examination under oath or affirmation of the applicant and the witnesses he may produce, particularly describing the place and persons subject of the surveillance or investigation and the contents of the oral, wire, or electronic communication sought to be intercepted; *Provided that*, such order shall clearly delineate the extent, scope, and limits of the surveillance or investigation.

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 authorized 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 six (6) years or a fine of not less than Three Hundred Thousand Pesos (P300,000.00) and not more than One Million Pesos (P1,000,000.00), or both at the discretion of the court, *provided that*, the following corresponding penalties shall be imposed for the specific violations hereunder:

- (a) Imprisonment of not less than three (3) months to not more than five (5) years or a fine of not less than One Hundred Thousand Pesos (P100,000.00) and not more than Five Hundred Thousand Pesos (P500,000.00), or both at the discretion of the court upon any person who violates Sections 7 (a) and 10 of this Act;
- (b) Imprisonment of not less than one (1) year to not more than eight (8) years or a fine of not less than Three Hundred Thousand Pesos (P300,000.00) and not more than One Million Two Hundred Thousand Pesos (P1,200,000.00), or both, at the discretion of the court upon any person who violates Section 7 (b) of this Act;
- (c) Imprisonment of not less than two (2) years to not more than ten (10) years or a fine of not less than Five Hundred Thousand Pesos (P500,000.00) and not more than Two Million Pesos (P2,000,000.00), or both, with the accessory penalty of forfeiture of the proceeds of the criminal enterprise, at the discretion of the court upon any person who violates Section 9 of this Act;

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), DILG, DOTC, and 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.