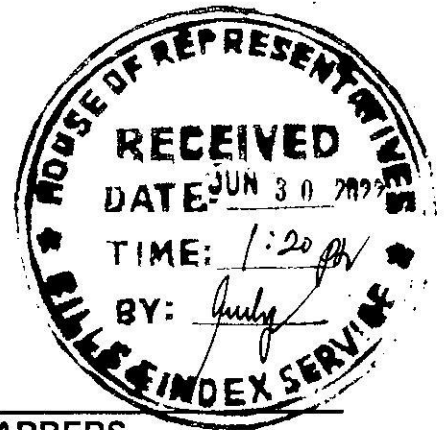


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
First Regular Session

House Bill No. 96



Introduced by **HON. ROBERT ACE S. BARBERS**

EXPLANATORY NOTE

AN ACT AMENDING REPUBLIC ACT NO. 4200, ENTITLED, 'AN ACT TO PROHIBIT AND PENALIZE WIRE TAPPING AND OTHER RELATED VIOLATIONS OF THE PRIVACY OF COMMUNICATION'

This bill is a re-filed version of a measure that was approved last 17th Congress of the House of Representatives and was transmitted to the Senate of the Philippines.

Republic Act No. 4200 or Anti-Wiretapping Act of 1965 was enacted fifty-four (54) years ago pursuant to the constitutionally guaranteed right of privacy of communication. However, it does not cover electronic devices or future technology as it only prohibits recording private communication using "dictaphone or dictagraph or walkie-talkie or tape recorder."

With technological advancement, it is high time to amend the said law to keep pace with the advances in communications and telecommunications to protect our privacy of communication.

The current law makes it difficult for the government to go after criminal syndicates who make use of new technology in their illegal operations. A clearer language must be defined to cover both existing and possible technology.

Thus, this bill seeks to amend the Anti-Wire Tapping Law to include usage of electronic devices or similar means. It also increases the penalty for violation of the law and widens the scope of cases where wiretapping is allowed to be conducted by law enforcers with authorization from the court.

Moreover, the bill prohibits public telecommunication entities engaged in voice and data transmission to retain data for more than one year, except those which are the subject of a pending case

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

HON. ROBERT ACE S. BARBERS
2nd District, Surigao del Norte

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AN ACT AMENDING REPUBLIC ACT NO. 4200, ENTITLED, 'AN ACT TO PROHIBIT AND PENALIZE WIRE TAPPING AND OTHER RELATED VIOLATIONS OF THE PRIVACY OF COMMUNICATION'

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

SECTION 1. Section 1 of Republic Act No. 4200 is hereby amended to read as follows:

"Section 1. It shall be unlawful for any person, not being authorized by [all] **ANY** [the] part[ies]Y to any **ORAL, WIRE, RADIO, DIGITAL OR ELECTRONIC** private communication [or spoken word], to tap [any wire or cable, or by using any other device or arrangement, to secretly overhear,] intercept [,] or record such communication [or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described:] **WITH THE USE OF ANY ELECTRONIC, MECHANICAL, DIGITAL OR ANALOG PHONE SYSTEM, OR SIMILAR DEVICES.**

It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any **ORAL, WIRE, RADIO, DIGITAL OR ELECTRONIC PRIVATE** communication [or spoken word] secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: Provided, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition.

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SEC. 2. Section 2 of Republic Act No. 4200 is hereby amended to read as follows:

"Section 2. Any person who willfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding section or who violates the provisions of the following section or of any order issued thereunder, or aids, permits, or causes such violation shall, upon conviction thereof, be punished by imprisonment for not less than six months [or more than six years] **TO A MAXIMUM OF SIX (6) YEARS IMPRISONMENT WITHOUT THE BENEFIT OF PROBATION**, and with the accessory penalty of perpetual absolute disqualification from public office if the offender be a public official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings **AFTER SERVICE OF SENTENCE.**"

SEC. 3. Section 3 of Republic Act No. 4200 is hereby amended to read as follows:

"Section 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer[,] **OR LAW ENFORCER** who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, **COUP D'ETAT, CONSPIRACY AND PROPOSAL TO COMMIT COUP D'ETAT**, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, **ROBBERY IN BAND AS DEFINED AND PENALIZED BY ARTICLES 294, 295, 296, 299 AND 302 OF THE REVISED PENAL CODE AND PRESIDENTIAL DECREE NO. 532, OTHERWISE KNOWN AS THE "ANTI-PIRACY AND ANTI-HIGHWAY ROBBERY LAW OF 1974," VIOLATION OF RA 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002", AS AMENDED, VIOLATION OF RA 3019, OR THE "ANTI-GRAFT AND CORRUPT PRACTICES ACT", SYNDICATED ILLEGAL RECRUITMENT AS DEFINED AND PUNISHED UNDER REPUBLIC ACT NO. 8042, OR THE "MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995", AS AMENDED, VIOLATIONS OF REPUBLIC ACT NO. 9160, OTHERWISE KNOWN AS THE "ANTI-MONEY LAUNDERING ACT OF 2001", AS AMENDED**, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: Provided, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed; [Provided, however,, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to

commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed:](2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and (3) that there are no other means readily available for obtaining such evidence.

The order granted or issued shall specify: (1) the identity of the person or persons whose communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location; (2) the identity of the peace officer authorized to overhear, intercept, or record the communications, conversations, discussions, or spoken words; (3) the offense or offenses committed or sought to be prevented; and (4) the period of the authorization. The authorization [shall be effective for the period specified in the order which shall not exceed sixty (60) days from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest.] **MAY BE EXTENDED OR RENEWED FOR ANOTHER NINETY (90) DAYS FROM THE EXPIRATION OF THE ORIGINAL PERIOD, SUBJECT TO RENEWAL: PROVIDED, THAT THE COURT IS SATISFIED THAT SUCH EXTENSION OR RENEWAL IS IN THE PUBLIC INTEREST; PROVIDED, FURTHER, THAT THE APPLICATION FOR EXTENSION OR RENEWAL IS FILED BY THE ORIGINAL APPLICANT, OR IN CASE OF PHYSICAL OR MENTAL DISABILITY OR DEATH, A MEMBER OF THE TEAM NAMED IN THE ORIGINAL ORDER OF THE AUTHORIZATION.**

All recordings made under court authorization shall, within [forty-eight hours] **TEN DAYS** after the expiration of the period fixed in the order, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. **IT SHALL BE UNLAWFUL FOR ANY PERSON, POLICE OR LAW ENFORCEMENT OFFICIAL TO OMIT OR EXCLUDE FROM THE AFFIDAVIT ANY ITEM OR PORTION ABOVEMENTIONED.** The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

ANY RECORDING AUTHORIZED BY WRITTEN ORDER OF THE COURT SHALL NOT BE ADMISSIBLE IN EVIDENCE AGAINST ANY PERSON WHO IS A PARTY TO THE COMMUNICATION, CONVERSATION, DISCUSSION, OR SPOKEN WORD WHICH ARE OVERHEARD, INTERCEPTED, OR RECORDED, IF THE PERSON'S IDENTITY IS NOT SPECIFIED IN SUCH WRITTEN ORDER AS REQUIRED IN THE SECOND PARAGRAPH OF THIS SECTION. THE NAME AND PERSONAL CIRCUMSTANCES OF SUCH PERSON, OR ANY OTHER INFORMATION WHICH TEND TO ESTABLISH THE PERSON'S IDENTITY SHALL NOT BE DISCLOSED TO THE PUBLIC.

ANY PERSON, POLICE OR LAW ENFORCEMENT OFFICER WHO VIOLATES ANY OF THE ACTS PRESCRIBED IN THE PRECEEDING PARAGRAPHS SHALL SUFFER THE PENALTY OF NOT LESS THAN SIX (6) MONTHS TO SIX (6) YEARS OF IMPRISONMENT.

The court referred to in this section shall be understood to mean the [Court of First Instance] **REGIONAL TRIAL COURT** within whose territorial jurisdiction the acts for which authority is applied for are to be executed.

SEC. 4. A new section to be known as Section 3-A shall be inserted to read as follows:

“ **SECTION 3-A. IT SHALL LIKEWISE BE UNLAWFUL FOR PUBLIC TELECOMMUNICATION ENTITIES AND OTHER SIMILAR ENTERPRISES ENGAGED IN THE BUSINESS OF VOICE AND DATA TRANSMISSION THROUGH WIRE, RADIO, DIGITAL OR ELECTRONIC MEANS, TO RETAIN FOR MORE THAN ONE (1) YEAR RECORDS OF VOICE AND DATA, WHICH ARE NOT THE SUBJECT OF ANY PENDING CASE, INCLUDING INFORMATION ON THE IDENTITY OF THE PARTIES, ORIGIN, DESTINATION, DATE, TIME AND DURATION OF THE COMMUNICATION UNLESS OTHERWISE ORDERED BY A COURT OF COMPETENT JURISDICTION FOR PURPOSES ALLOWED UNDER SECTION 3 OF THIS ACT.**

ANY PERSON WHO WILFULLY OR KNOWINGLY VIOLATES THE PROHIBITION HEREIN PRESCRIBED OR WHO AIDS, PERMITS, OR CAUSES SUCH VIOLATION SHALL, UPON CONVICTION THEREOF, BE PUNISHED BY IMPRISONMENT OF NOT LESS THAN SIX (6) YEARS BUT NOT MORE THAN TWELVE (12) YEARS AND A FINE OF ONE MILLION PESOS (PHP 1,000,000.00), AND WITH THE ACCESSORY PENALTY OF PERPETUAL ABSOLUTE DISQUALIFICATION FROM PUBLIC OFFICE IF THE OFFENDER BE A PUBLIC OFFICIAL AT THE TIME OF THE COMMISSION OF THE OFFENSE:

PROVIDED, THAT IF THE PERSON WHO COMMITS THE VIOLATION IS AN ALIEN, THE PERSON SHALL BE SUBJECT TO DEPORTATION PROCEEDINGS AFTER SERVICE OF SENTENCE.

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SEC. 5. *Separability Clause.* – Should any provision of this Act or any part thereof be declared invalid, the other provisions, insofar as they are separable from the invalid one, shall remain in full force and effect.

SEC. 6. *Repealing Clause.* – All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 7. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in Official Gazette or in a newspaper of general circulation.

Approved,