

SENATE

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S.B. No. 365

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Introduced by SEN. WIN GATCHALIAN

AN ACT
PROHIBITING ALL PUBLIC TELECOMMUNICATIONS ENTITIES AND
INFORMATION AND COMMUNICATIONS TECHNOLOGY PROVIDERS
FROM IMPOSING AN EXPIRATION PERIOD ON THE VALIDITY OF
PREPAID LOAD CREDITS AND THEIR FORFEITURE

EXPLANATORY NOTE

This legislation seeks to make the expiration and forfeiture of all denominations of prepaid load credits a thing of the past. It will have an impact on **142,432,163** prepaid subscribers – that is **96.6%** of the total number of mobile subscribers¹ in the country as of the first quarter of 2019 –

¹

	Globe*	PLDT**	TOTAL
POSTPAID	2,642,734	2,363,689 of which: Smart: 1,464,873 Sun: 898,616	5,006,423 (3.4%)
PREPAID	80,846,966 of which: Globe: 39,328,681 TM: 41,518,285	61,585,197 of which: Smart: 22,011,859 Sun: 6,041,687 TNT: 33,531,651	142,432,163 (96.6%)
Q1 2019 TOTAL Mobile Subscribers***	83,489,700	63,948,886	147,438,586

* GLOBE from SEC Form 17-Q 2019 (April 23, 2019) Accessible thru:
<https://www.globe.com.ph/content/dam/globe/brie/About-us/investor->

who stand to lose their hard-earned prepaid load credits due to non-use before the expiration period.

The National Telecommunications Commission (NTC)², the Department of Information and Communications Technology (DICT)³, and the Department of Trade and Industry (DTI)⁴, pursuant to their respective mandates, signed on December 20, 2017 Joint Memorandum Circular No. 05-12-2017.⁵ It prescribed the validity of prepaid load credits of all information and communications technology (ICT) providers and public telecommunications entities (PTEs) with a denomination of PhP300 and above to one year effective last January 5, 2018. The following were excluded from its coverage: (1) prepaid loads purchased for promos; and (2) bucket of services with specific period of use duly approved by the DTI and/or the NTC.

The 2017 circular amended Memorandum Circular No. 03-07-2009⁶ which provided for the expiration periods of prepaid loads depending on the amount of credits purchased. Prepaid loads with higher value had longer expiration or validity period. This system was based on an analysis conducted in 2009 involving 75.57 million prepaid subscribers with the corresponding carrying cost per prepaid subscriber of around PhP3 per day.⁷ As more than 90% of the costs of the networks are fixed, the carrying cost per subscriber decreases as the subscribers multiply.⁸

Ten years after the 2009 study, the number of prepaid subscribers has almost doubled from around 75 million to the present 142 million – a clear

relations/documents/SEC-PSE-Disclosures/2019/Quarterly/Quarterly-Report-17Q/GLO-1Q19-17Q-v2.pdf

** PLDT from SEC Form 17-Q 2019 (May 9, 2019) Accessible thru: <http://www.pds.com.ph/wp-content/uploads/2019/05/Disclosure-No.-1255-2019-Quarterly-Report-for-Period-Ended-March-31-2019-SEC-FORM-17-Q.pdf>

*** Covers phone and broadband subscribers.

² Republic Act No. 7925, otherwise known as the Public Telecommunications Policy Act of the Philippines.

³ Republic Act No. 10884, otherwise known as the Department of Information and Communications Technology Act of 2015.

⁴ Republic Act No. 7394, otherwise known as the Consumer Act of the Philippines.

⁵ Prescribing a One (1) Year Expiration Period for Prepaid Loads.

⁶ Otherwise known as Guidelines on Prepaid Loads, dated July 3, 2009.

⁷ NTC-DICT-DTI Joint Memorandum Circular No. 05-12-2017.

⁸ *Ibid.*

indication of how the prepaid call and text industry has immensely penetrated the everyday lives of Philippine consumers – making prepaid load an essential commodity. Sustaining a scheme that imposes the expiration of prepaid credits that were purchased by the consumers' hard-earned money forces them to consume their prepaid load, albeit unnecessarily, to get the full value of the credits or risk forfeiture and be left with zero load⁹ – a waste of the prepaid subscriber's money; an income for the PTE and the ICT provider.

This bill thus makes it a prohibited act to impose an expiration period on the validity of all denominations of prepaid load credits – whether purchased via prepaid card or electronic load – and the eventual forfeiture of such credits on an active prepaid account. Every peso spent by the consumer to purchase prepaid load credits must be usable until fully consumed. In protecting the consumer's every single peso, the telecommunications industry will help in enabling the mobile economy bring the rapid technological changes and benefits of the digital revolution within the reach of the poor and disadvantaged, thereby creating prosperous and inclusive societies. I hope that this legislation will be an instrument in realizing this goal, and I earnestly seek for its immediate approval.



WIN GATCHALIAN

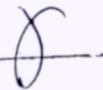
⁹ <http://www.congress.gov.ph/press/details.php?pressid=10516>

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

1 Section 1. *Title.* – This Act shall be known as the “*Prepaid Load Forever*
2 *Act of 2019.*”

3
4 Sec. 2. *Declaration of Policy.* – It is hereby declared the policy of the
5 State to recognize the vital role of information and communications
6 technology in nation-building. It likewise recognizes the primary role of the
7 private sector as an engine of economic growth and guarantees the right of
8 individuals and private entities to own, establish, and operate economic
9 enterprises. However, as the Constitution provides that the use of property
10 bears a social function, the right of private entities is subject to the duty of
11 the State to intervene when the common good so requires – including
12 protecting the interest of consumers, promoting their general welfare, and
13 establishing standards of conduct of business and industry. Towards this
14 end, the State shall implement measures to protect the consumer against

1 unfair and unconscionable sales acts and practices, and provide information
2 and education to facilitate sound choice and proper exercise of consumer
3 rights.

4
5 *Sec. 3. Definition of Terms.* – As used in this Act:

- 6 a. *Active Prepaid Account* refers to a number with any activity involving
7 voice, short messaging system (SMS) or text, mobile data, value
8 added services (VAS), or any other telecommunications service;
- 9 b. *Dormant Prepaid Account* refers to a number without any activity
10 involving voice, short messaging system (SMS) or text, mobile data,
11 value added services (VAS), or any other telecommunications service
12 within a period of one year;
- 13 c. *Information and Communications Technology* or *ICT* refers to the
14 totality of electronic means to access, create, collect, store, process,
15 receive, transmit, present, and disseminate information;
- 16 d. *Information and Communications Technology* or *ICT Provider* refers
17 to any entity in the ICT sector, which includes telecommunications
18 and broadcast information operators, ICT equipment
19 manufacturers, multimedia content developers and providers, ICT
20 solution providers, internet service providers, ICT training
21 institutions, software developers, and ICT-ES providers;
- 22 e. *Prepaid* refers to the type of account that requires its owners to
23 purchase load credits before telecommunications services can be
24 used;
- 25 f. *Prepaid Load Credit* refers to the monetary value or the consumable
26 amount loaded via prepaid card or electronic load to a device that
27 enables a subscriber to use telecommunications services;
- 28 g. *Prepaid Subscriber* refers to any person, natural or juridical, who
29 avails of telecommunications services from a public
30 telecommunications entity and/or information and
31 communications technology provider by purchasing credit in
32 advance of service use. The purchased credit is used to pay for

1 telecommunications services at the point the service is accessed or
2 consumed;

3 h. *Public Telecommunications Entity* or *PTE* refers to any duly
4 authorized public telecommunications entity that offers voice, short
5 messaging system (SMS) or text, mobile data, value added services
6 (VAS), or any other telecommunications services to the public for a
7 fee; and

8 i. *Telecommunications* refers to any process which enables a
9 telecommunications entity to relay and receive voice, data,
10 electronic messages, written or printed matter, fixed or moving
11 pictures, words, music or visible or audible signals, or any control
12 signals of any design and for any purpose by wire, radio, or other
13 electromagnetic, spectral, optical or technological means.

14
15 Sec. 4. *Prohibited Acts.* – The following shall constitute prohibited acts
16 of any PTE or ICT provider and are hereby declared to be unlawful:

- 17 a. Imposition of an expiration period on the validity of unused prepaid
18 load credits, whether purchased via prepaid card or electronic load;
19 b. Forfeiture of such prepaid load credits on an active prepaid account,
20 save for the purpose of availing of the mobile number portability
21 service; and
22 c. Refusal to give a refund to any prepaid subscriber whose load credits
23 were forfeited without any valid cause.

24 In view of paragraph b, a prepaid account that has become dormant
25 shall be deducted one peso for every day of inactivity from its remaining load
26 credits until such credits are fully consumed.

27
28 Sec. 5. *Penal Provision.* – Any director, officer, employee, or agent of a
29 PTE or ICT provider providing prepaid telecommunications services who shall
30 violate any of the acts mentioned under Sec. 4 hereof shall, upon conviction,
31 be subject to the penalty of a fine of not less than One Hundred Thousand
32 Pesos (PhP 100,000.00) but not to exceed One Million Pesos (PhP

1 1,000,000.00) or imprisonment of not less than two (2) years but not more
2 than six (6) years, or both, upon the discretion of the court.

3 If the violation was committed by or in the interest of a juridical person
4 duly licensed to engage in business in the Philippines, the following penalties
5 shall be imposed:

6 a. First offense – a fine of Five Hundred Thousand Pesos (PhP
7 500,000.00);

8 b. Second offense – a fine of One Million Pesos (PhP 1,000,000.00) plus
9 suspension of license to engage in business for a period of thirty (30)
10 days; and

11 c. Third offense – a fine of Two Million Pesos (PhP 2,000,000.00) plus
12 immediate revocation of license to engage in business.

13
14 *Sec. 6. Implementing Rules and Regulations (IRR).* – Within ninety (90)
15 days from the effectivity of this Act, the National Telecommunications
16 Commission shall coordinate with the Department of Information and
17 Communications Technology and the Department of Trade and Industry to
18 promulgate rules and regulations and other issuances as may be necessary
19 to ensure the effective implementation of this Act, including the issuance of
20 proper and adequate information dissemination of its contents and benefits
21 to the general public.

22 The IRR issued pursuant to this Act shall take effect fifteen (15) days
23 after its publication in a newspaper of general circulation.

24
25 *Sec. 7. Separability Clause.* – If any provision of this Act is held invalid
26 or unconstitutional, the other provisions not affected thereby shall remain in
27 full force and effect.

28
29 *Sec. 8. Repealing Clause.* – All laws, decrees, executive orders,
30 proclamations, rules and regulations, and issuances, or parts thereof which
31 are inconsistent with the provisions of this Act, are hereby repealed, amended
32 or modified accordingly.

1 Sec. 9. *Effectivity.* – This Act shall take effect fifteen (15) days after its
2 publication in the Official Gazette or in any newspaper of general circulation.
3 Approved,