

THE ELECTRONIC TRANSFER OF FUNDS CRIME (NO. 2)
BILL, 2000

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No. 26 of 2000

Sixth Session Fifth Parliament Republic of Trinidad
and Tobago

SENATE

BILL

AN ACT to regulate the transfer of money by an
electronic terminal by use of a card for the
purpose of instructing or authorising a financial
institution to debit or credit a cardholder's
account when anything of value is purchased and
for other related purposes.

THE ELECTRONIC TRANSFER OF FUNDS CRIME (NO. 2)
BILL, 2000

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The main purpose of this Bill is to regulate the transfer of money through an electronic terminal by means of a card for the purpose of instructing or authorising a financial institution to debit or credit a cardholder's account when anything of value is purchased. The application of the Bill is limited to bank cards, credit cards or smart cards or other similar type of cards used for purchasing anything of value.

Clause 1 provides the short title to the Bill.

Clause 2 would define certain important words used in the Bill. The difference between a bank card, credit card and a smart card should be noted. Similarly, the difference between a counterfeit card, expired card and revoked card.

Clause 3 would make it a summary offence for a person to knowingly give false information to a financial institution to procure the issuance of a card to himself.

Clause 4 would make it an offence for a person to take possession of a card from another without consent or knowingly to receive a stolen card.

Clause 5 would make it an offence for a person to receive and retain a card knowing that it was lost, mislaid or mistakenly delivered to him.

Clause 6 would make it an offence for a person to receive and retain possession of two or more cards belonging to other persons which he knew were taken or retained under clause 5.

Clause 7 would make it an offence for a person, who is not an issuer, to sell a card to or buy a card from another person other than an issuer.

Clause 8 would make it an offence for a person to obtain control of a card as security for a debt with intent to commit fraud.

Clause 9 would make it an offence for a person to make or to alter in any manner a card, and he is presumed to have an intent to defraud if he has possession of two or more counterfeit cards.

Clause 10 would make it an offence for a person knowingly to sign the card of another person.

Clause 11 would make it an offence for a person to obtain anything of value by use of a forged card or a card obtained or retained fraudulently.

Clause 12 would make it an offence for a creditor to furnish goods and services on a card he knew was obtained or retained fraudulently or illegally or was forged, expired or revoked, or represented to the issuer that he has furnished goods and services when in fact he has not done so.

Clause 13 would make it an offence for a person who knowingly received goods and services obtained in breach of clause 12.

Clause 14 would provide that certain defences are not available for a prosecution under this Act, for which this is the Bill.

Clause 15 would make it an offence for a person knowingly to obtain anything of value by use of a false, fictitious, counterfeit, revoked or expired card, card number or other credit device.

Clause 16 would make it an offence to traffic three or more counterfeit cards, invoices, etc., or card account numbers of another person.

Clause 17 would make it an offence to receive, possess, buy or sell card-making equipment with intent to use it to make counterfeit cards.

Clause 18 would make it an offence to alter in any manner a card invoice after the cardholder has signed that invoice.

Clause 19 would restrict the liability of a cardholder who has lost possession of his card to five hundred dollars, provided that notice is given within seven days, and where the cardholder, with knowledge, fails to report the loss after seven days, he is deemed to accept liability to any extent for loss to the issuer from illegal use of the card.

Clause 20 seeks to prevent a financial institution from disclosing the names of cardholders, their addresses and card numbers to any other person without the written consent of the cardholder, except disclosures to another financial institution for credit rating purposes only.

BILL

AN ACT to regulate the transfer of money by an electronic terminal by use of a card for the purpose of instructing or authorising a financial institution to debit or credit a cardholder's account when anything of value is purchased and for other related purposes.

[, 2000]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

- Short title **1. This Act may be cited as the Electronic Transfer of Funds Crime (No. 2) Act, 2000.**
- Interpretation **2. In this Act—**
- “authorised manufacturer” means a financial institution which or any other person who is authorised under any written law to produce a card;
- “bank card” means any instrument, token, device, or card, whether known as a bank service card, banking card, check guarantee card, or debit card or by any other similar name, issued with or without a fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value or for use in an automated banking device to obtain money or any of the services offered through the device;
- “card” means a bank card, credit card, or smart card;
- “cardholder” means the person named on the face of a bank card, credit card or a smart card to whom or for whose benefit such a card is issued by an issuer;
- “card-making equipment” means any equipment, machine, plate, mechanism, impression, or any other device designed, used, or capable of being used to produce a card, a counterfeit card, or any aspect or component of a card;
- “counterfeit card” means a bank card, credit card or a smart card which is fictitious, altered, or forged and includes any facsimile or false representation, depiction, or component of such a card, or

any such card which is stolen, obtained as part of a scheme to defraud, or otherwise unlawfully obtained, and which may or may not be embossed with account information or an issuer's information;

“credit” includes a cash loan, or any other financial accommodation;

“credit card” means any instrument, token, device, or card, whether known as a charge card or by any other similar name, issued with or without a fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit from a creditor or for use in an automated banking device to obtain money or any of the services offered through the device;

“creditor” means a person or company that agrees or is authorised by an issuer to supply goods, services, or anything else of value and to accept payment by use of a bank card, credit card, or smart card for the supply of such goods, services or anything else of value to the cardholder;

“expired card” means a card which is no longer valid because the term shown on it has expired;

“financial institution” means a company as defined under section 2 of the Financial Institutions Act, 1993;

Act No. 18 of 1993

“issuer” includes a financial institution which or any other person who issues a card;

“receives” or “receiving” means acquiring possession, title or control or accepting a card as security for credit;

“revoked card” means a card which is no longer valid because permission to use it has been suspended or terminated by the issuer, whether on its own or on the request of the cardholder;

“smart card” means any instrument, token, device, or card, or whether known by any other similar name, and encoded with a stated money value and issued with or without a fee by an issuer for use of the cardholder in obtaining goods, services, or anything else of value, except money;

“traffic” means to sell, transfer, distribute, dispense, or otherwise dispose of property or to buy, receive, possess, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of such property.

False statement

3. A person who makes or causes to be made, either directly or indirectly, any false statement as to a material fact in writing, knowing it to be false and with intent that it be relied on respecting his identity or that of any other person or his financial condition or that of any other person for the purpose of procuring the issuance of a card to himself or another person commits an offence and is liable on summary conviction to a fine of thirty thousand dollars.

Theft by taking or retaining possession of card

4. (1) A person who takes a card from the possession, custody or control of—

(a) the cardholder; or

(b) a person holding or having possession of the card with the consent of the cardholder,

without the cardholder’s or the person’s consent or who, with knowledge that it has been so taken, receives the card with intent to use, sell, or to transfer it to a person

other than the issuer or the cardholder commits an offence and is liable on—

(i) summary conviction to a fine of thirty thousand dollars and to imprisonment for two years; or

(ii) conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years.

(2) For the purposes of this section, taking a card without consent includes obtaining it by any conduct defined or known as larceny or common-law theft, or by obtaining property by false pretence, or by extortion.

5. A person who receives a card that he knows or ought to reasonably know to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder and who retains possession with intent to use, sell, or to traffic it to a person other than the issuer or the cardholder commits an offence and is liable on summary conviction to a fine of twenty thousand dollars. Card theft

6. A person, other than the issuer, who receives and retains possession of two or more cards issued in the name or names of different cardholders, which cards he has knowledge were taken or retained under circumstances which constitute a card theft commits an offence and is liable on summary conviction to a fine of twenty thousand dollars. Dealing in card of another

7. A person other than an issuer who sells a card or a person who buys a card from a person other than an issuer commits an offence and is liable on summary conviction to a fine of twenty thousand dollars. Purchase or sale of card of another

8. A person who, with intent to defraud the issuer, a creditor, or any other person, obtains control over a Obtaining control of card as security for debt

card as security for a debt commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

Card forgery

9. (1) A person who, with intent to defraud an issuer, a creditor, or any other person, falsely makes, embosses, or alters in any manner a card or utters such a card or who, with intent to defraud, has a counterfeit card or any invoice, voucher, sales draft, or other representation or manifestation of a counterfeit card in his possession, custody, or control commits an offence and is liable on—

(a) summary conviction to a fine of thirty thousand dollars and to imprisonment for two years; or

(b) conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years.

(2) A person, other than an authorised manufacturer or issuer, who possesses a counterfeit card is presumed to have the intent to defraud as required under subsection (1).

(3) A person falsely makes a card when he makes or draws in whole or in part a device or instrument which purports to be the card of a named issuer but which is not such a card because the issuer did not authorise the making or drawing, or when he alters a card which was validly issued.

(4) A person falsely embosses a card when, without the authorisation of the named issuer, he completes a card by adding any of the matter, including the signature of the cardholder, which an issuer requires to appear on the card before it can be used by a cardholder.

10. A person, other than the cardholder or a person Signing a card of another authorised by him, who, with intent to defraud the issuer or a creditor, signs a card commits an offence and is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for three years.

11. A person who, with intent to defraud an issuer or Fraudulent use of a card a creditor, uses, for the purpose of obtaining money, goods, services, or anything else of value, a card obtained or retained fraudulently or a card which he knows is forged, or who obtains money, goods, services, or anything else of value by representing, without the consent or authorisation of the cardholder, that he is the holder of a specified card, or by representing that he is the holder of a card and such card has not in fact been validly issued, commits an offence and is liable on—

- (a) summary conviction to a fine of thirty thousand dollars and to imprisonment for two years; or
- (b) conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years.

12. (1) A creditor who, with intent to defraud the Fraud by person authorised to provide goods, services, etc. issuer or the cardholder, furnishes goods, services, or anything else of value upon presentation of a card which he knows is obtained or retained fraudulently or illegally or a card which he knows is forged, expired, or revoked commits an offence and is liable on—

- (a) summary conviction to a fine of thirty thousand dollars and to imprisonment for two years; or
- (b) conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years.

(2) A creditor who, with intent to defraud the issuer, or the cardholder, fails to furnish goods,

services, or anything else of value which he represents in writing to the issuer or the cardholder that he has furnished commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for two years.

(3) A person who is authorised by a creditor to furnish goods, services, or anything else of value upon presentation of a card or a card account number by a cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, or the cardholder, presents to the issuer or the cardholder, for payment, a card transaction record of sale, which sale was not made by such person or his agent or employee, commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for two years.

(4) A person who, without the creditor's authorisation, employs, solicits or otherwise causes a person who is authorised by the creditor to furnish goods, services or anything else of value upon presentation of a card account number by a cardholder, or employs, solicits or otherwise causes an agent or employee of such authorised person, to remit to the creditor a card transaction record of a sale that was not made by such authorised person or his agent or employee commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for two years.

Receipt of money,
etc., obtained by
fraudulent use of
cards

13. A person who receives money, goods, services or anything else of value obtained in breach of section 12, knowing or believing that it was so obtained commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for two years.

Defences not
available

14. It shall not be a defence to a prosecution for an offence under this Act that a card that is not a counterfeit card is offered for use or sale as a counterfeit card,

and a person, other than the defendant, who has breached this Act has not been convicted, arrested, or identified.

15. (1) A person who, with knowledge, unlawfully obtains credit or purchases any goods, services or anything else of value by the use of any false, fictitious, counterfeit or expired card, card number or other credit device, or by the use of any card, card number, or other credit device of another person without the authority of that other person to whom such card, number or device was issued, or by the use of any card, card number, or other credit device in any case where such card, number or device has been revoked and notice of the revocation has been given to the person to whom it was issued commits an offence and is liable on—

(a) summary conviction to a fine of thirty thousand dollars and to imprisonment for two years; or

(b) conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years.

(2) For the purpose of this section, knowledge of revocation shall be presumed to have been received by a cardholder seven working days after such notice has been sent to him by post at his last known address.

16. (1) A person who is found in possession of three or more counterfeit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit cards, or card account numbers of another person is deemed to have the same for the purpose of trafficking, unless the contrary is proved, the burden of proof being on the accused.

(2) A person who commits the offence of trafficking under subsection (1) is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for five years.

Possession of card-making equipment

17. A person who receives, possesses, transfers, buys, sells, controls, or has custody of any card-making equipment with intent that such equipment be used in the manufacture of counterfeit cards commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for five years.

Alteration of card invoice

18. A person who, with intent to defraud another person, falsely alters any invoice for money, goods, services, or anything else of value obtained by use of a card after that invoice has been signed by the cardholder or a person authorised by him commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for two years.

Liability for misuse of card

19. (1) A cardholder shall not be liable to the issuer for any loss arising from use of the card by another person not acting, or to be treated as acting, as the cardholder's agent.

(2) Subsection (1) does not prevent the cardholder from being made liable to the extent of five hundred dollars for loss to the issuer arising from use of the card by another person during a period beginning when the card ceases to be in the possession of any authorised person and ending when the card is once more in the possession of an authorised person.

(3) Subsection (1) does not prevent the cardholder from being made liable to any extent for loss to the issuer from use of the card by a person who acquired possession of it with the cardholder's consent.

(4) Subsections (2) and (3) shall not apply to any use of the card after the issuer has been given oral or written notice that the card is lost, stolen, or is for any other reason liable to misuse.

(5) Subsections (2) and (3) shall not apply unless the issuer provides the cardholder with particulars of the name, address and telephone number of a person stated to be the person to whom notice is to be given under subsection (4).

(6) Notice under subsection (4) takes effect when received, but where it is given orally, it shall be treated as not taking effect if not confirmed in writing within seven clear days.

(7) Any sum paid by the cardholder for the issue of the card, to the extent, if any, that it has not been previously offset by use made of the card, shall be treated as paid towards satisfaction of any liability under subsection (2) or (3).

(8) The cardholder, issuer or any person authorised by the cardholder to use the card shall be authorised persons for the purpose of subsection (2).

20. (1) Subject to subsection (2), a financial institution shall not make available, lend, donate, or sell any list or portion of a list of any cardholders and their addresses and account numbers to any person without the prior written permission of the cardholder. Card lists prohibited

(2) A financial institution may make available to another financial institution, which seeks to determine only the cardholder's credit rating, any list or portion of a list of any cardholders and their addresses without the permission of the cardholder but must, within seven working days, give written notice of the disclosure to the cardholder.

(3) A financial institution which breaches subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

Passed in the Senate this day of ,
2000.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day
of , 2000.

Clerk of the House

I confirm the above.

Speaker

No. 26 of 2000

SIXTH SESSION

FIFTH PARLIAMENT

REPUBLIC OF

TRINIDAD AND TOBAGO

BILL

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Received and read the

First time.....

Second time.....

Third time.....
