

BELIZE:

ELECTRONIC TRANSFER OF FUNDS CRIMES BILL, 2021

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BELIZE:

BILL

for

AN ACT to provide for the regulation of the transfer of money through electronic means; and to provide for matters connected therewith or incidental thereto.

(Gazetted, 2021.)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

PART 1

Preliminary

1. This Act may be cited as the

Short title.

ELECTRONIC TRANSFER OF FUNDS CRIMES BILL, 2021,

2. In this Act—

Interpretation.

“authorised manufacturer” means a financial institution 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, credit card, debit card, electronic wallet or token 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 or online to obtain money or any of the services offered through the device or online;

“card” means a bank card, credit card, smart card, electronic wallet, token or device or the number or data associated with a bank card, credit card, smart card, electronic wallet, token or device;

“cardholder” means the person to whom or for whose benefit a card is issued by an issuer and whose name appears on the face of the card or is stored in the application as the owner of the card;

“card-making equipment” means any software, equipment, machine, plate, mechanism, impression, or 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 that is fictitious, altered, or forged and includes any facsimile or false representation, depiction, or component of a bank card, or any bank card that 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 written contractual agreement wherein a cash loan, or any other financial service or product is provided to a person and the repayment of the debt incurred is deferred;

“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 of value on credit from a merchant or for use in an automated banking device to obtain money or any of the services offered through the device;

“merchant” means a person or company or business that agrees or is authorised by an issuer to supply goods, services, or anything else of value and receives payment for such through the use of a card;

“electronic fund transfer” means any transfer of funds that is initiated through an electronic terminal, telephone, electronic system, the Internet, or through online services for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account or the balance of a smart card;

“electronic terminal” means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer and includes point-of-sale terminals, automated teller machines, and cash dispensing machines;

“electronic wallet” means an encrypted storage medium holding financial information that can be used to complete electronic transactions without re-entering the stored data at the time of the transaction;

“electronic system” means any electronic device or a group of interconnected or related devices, one or more of which, pursuant to an electronic program, performs automatic processing of data and includes an electronic storage medium;

“expired card” means a bank card which is no longer valid because the term for which it was issued has expired;

“financial institution” means a domestic bank as defined under Domestic Banks and Financial Institutions Act or an international bank as defined under the International Banking Act or a credit union as defined under the Credit Unions Act or any other financial entity in Belize licensed to conduct financial business or a foreign financial institution authorized under the law of its jurisdiction;

Act No. 11 of
2012.
CAP. 267.
CAP. 314.

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

“receives” means to acquire possession, title or control of a card;

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

“smart card” means a physical card that has an embedded integrated chip that acts as a security token;

“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; and

“transaction” means an exchange, or purchase or transfer of goods, services or funds by whatever means including through the use of a card, the internet, wire transfer, conduct an electronic transfer of funds, obtain funds or deposit funds into an electronic wallet.

PART II

Offences

3.—(1) A person commits an offence who, for the purpose of procuring the issuance of or access to a card for himself or another person makes or causes to be made, either directly or indirectly, a false statement, in writing, as to a material fact, or during an audio or video recording knowing the statement to be false and with intent that it be relied upon in relation to his identity or financial condition or the identity or financial condition of another person.

False statement.

(2) A person who commits an offence under sub-section (1), is liable on summary conviction to a fine of twenty five thousand dollars or a term of imprisonment of six months, or to both fine and imprisonment.

Electronic Transfer of Funds Crimes

Theft by taking
or retaining
possession of
card or details of
card.

4.—(1) A person commits an offence who,—

- (a) without consent, knowingly takes or withholds a card from—
 - (i) the cardholder; or
 - (ii) another person with possession of the card with the consent of the cardholder; or
- (b) receives a card, with intent to use, sell, or to transfer it to a person other than the issuer or the cardholder.

(2) A person who commits an offence under sub-section (1), is liable on summary conviction to a fine of twenty five thousand dollars and to a term of imprisonment of two years; or on conviction on indictment to a fine of fifty thousand dollars and to a term of imprisonment of five years.

(3) For the purpose of sub-section (1), taking a card without consent includes obtaining the card or the data associated with it by any conduct defined or known as larceny or fraud, or by obtaining property by deception, or extortion.

(4) A person commits an offence who, gains possession, custody or control of a card—

- (a) by or with the knowledge or consent of the cardholder;
- (b) by a person with possession of the card with consent of the cardholder; or
- (c) by a person authorised, in writing, by the cardholder to use the card,

and unlawfully retains possession, custody or control of the card with intent to use it and uses it to obtain money, goods, services or anything of value.

(5) A person who commits an offence under sub-section (4), is liable on summary conviction to a fine of twenty five thousand dollars and to imprisonment for five years, or on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for seven years.

Card theft.

5.—(1) A person commits an offence who, receives a card that he knows or ought reasonably to know to be lost, mislaid, or delivered under a mistake and uses or retains possession of the card, with intent to use, sell, or traffic it to a person other than the issuer or the cardholder.

Electronic Transfer of Funds Crimes

(2) A person who commits an offence under sub-section (1), is liable on summary conviction to a fine of twenty five thousand dollars or to imprisonment of one year or to both fine and imprisonment.

6.—(1) A person, other than the issuer, commits an offence who, with knowledge that a card was taken or retained in circumstances under section 4 or 5, receives and retains possession of two or more cards issued in the name of different cardholders.

Dealing in card of another dollars.

(2) A person who commits an offence under sub-section (1), is liable on summary conviction to a fine of twenty five thousand dollars or to imprisonment of one year or to both fine and imprisonment .

7.—(1) A person, other than an authorised manufacturer or an issuer, commits an offence if that person sells a card or buys a card from a person other than an authorised manufacturer or an issuer.

Purchase or sale of card of another.

(2) A person who commits an offence under sub-section (1) is liable on summary conviction to a fine of twenty five thousand dollars or to imprisonment for a term of one year or to both fine and imprisonment .

8. A person who, with intent to defraud the issuer, a merchant, or any other person, acquires and retains possession, custody or control of a card as security for a debt, commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars or to imprisonment a term of one year or to both fine and imprisonment.

Obtaining control of card as security.

9.—(1) A person commits an offence who, 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, and with intent to defraud the issuer, a merchant or any other person—

Forgery.

- (a) falsely makes, embosses, or alters in any manner a card;
- (b) presents such a card.

(2) A person who commits an offence under sub-section (1) is liable on—

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

(3) A person, other than an authorised manufacturer or issuer, who possesses a counterfeit card, card making or card programming equipment is deemed to have the intent to commit an offence under sub-section (1).

- (4) For the purposes of sub-section (1), a person—
 - (a) 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; or
 - (b) falsely embosses a card when, without the authorisation of the named issuer, he completes a card by adding any information, including the signature of the cardholder to the card.

Fraudulent use of card.

10.—(1) A person commits an offence who. for the purpose of obtaining money, goods, services, or anything of value and with intent to defraud an issuer or a merchant, uses, a card —

- (a) that is obtained or retained fraudulently;
 - (b) which he knows is forged;
 - (c) by representing—
 - (i) without the consent or authorisation of the cardholder, that he is the holder of a card; or
 - (ii) that he is the holder of a card that is not validly issued,
- (2) A person who commits an offence under sub-section (1) is liable on
 - (a) summary conviction to a fine of twenty five thousand dollars and to a term of imprisonment of two years; or
 - (b) on conviction on indictment to a fine of fifty thousand dollars and to a term of imprisonment of five years.
- (3) A person commits an offence who, by any means forces—
 - (a) a cardholder, or a person with possession of the card with the consent of the cardholder;, or
 - (b) any person authorised in writing by the cardholder to use the card—
 - (i) to obtain money, goods, services or anything of value for the person; or

- (ii) to disclose the password or card number to the person or another person for the purpose of obtaining money, goods, services or anything of value.

(3) A person who commits an offence under sub-section (2) is liable on—

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

11.—(1) A merchant commits an offence if that merchant, with intent to defraud the issuer or a cardholder, provides goods, services, or anything of value upon presentation of a card which he knows is—

Fraud by merchant etc.

- (a) obtained or retained fraudulently or illegally; or
- (b) forged, expired, or revoked.

(2) A merchant who commits an offence under sub-section (1) is liable on—

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

(3) A merchant commits an offence if that merchant, with intent to defraud the issuer, or a cardholder, fails to provide goods, services, or anything of value which he represents in writing to the issuer or the cardholder that he has provided.

(4) A merchant who commits an offence under sub-section (3) is liable on summary conviction to a fine of twenty five thousand dollars and to imprisonment for a term of two years.

(5) 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 commits an offence if that person, 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 authorised person or his agent or employee.

(6) A person who commits an offence under sub-section (5) is liable on summary conviction to a fine of twenty five thousand dollars and to a term of imprisonment of two years.

(7) A person commits an offence if that person, without a merchant's authorisation—

- (a) employs, solicits or otherwise causes another person (who is authorised by the merchant), upon presentation of a card account number [by a cardholder] to provide goods, services or anything of value, or
- (b) solicits or otherwise causes an agent or employee of a person who is authorised by the merchant to remit to the merchant a card transaction record of a sale that was not made by the person who is authorised by the merchant or his agent or employee.

(5) A person who commits an offence under sub-section (7), is liable on summary conviction to a fine of twenty five thousand dollars and to imprisonment for a term of two years.

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

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

Defence not available.

13. 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.

Obtaining goods, etc., by use of false, expired or revoked card.

14.—(1) A person commits an offence who, with knowledge, unlawfully obtains credit or purchases any goods, services or anything of value, using a—

- (a) false, fictitious, counterfeit or expired card, card number or other credit device;
- (b) card, card number, card information or other credit device of another person without the authority of that other person, or
- (c) card, card number, or other credit device in any case where the card, number or device is revoked and notice of the revocation was given to the person to whom the card is issued.

(2) A person who commits an offence under sub-section (1) is liable on—

- (a) summary conviction to a fine of twenty five thousand dollars and to imprisonment for a term of two years; or

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

(3) For the purpose of this section, knowledge of revocation shall be presumed, unless the contrary is proved, to have been received by a cardholder [seven] clear days after the notice is sent to him by post at his last known address or where the cardholder has agreed to notice electronically 72 hours after the notice is sent to him via electronic means.

15.—(1) A person who, except in connection with a lawful purpose, 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 presumed, unless the contrary is proved, to possess them for the purpose of trafficking.

Trafficking in counterfeit card.

(2) A person who commits the offence of trafficking under sub-section (1) is liable on—

- (a) summary conviction to a fine of twenty five thousand dollars and to imprisonment for a term of twenty five years; or
- (b) indictment to a fine of fifty thousand dollars and to imprisonment for a term of seven years.

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

Possession of card-making equipment.

17.—(1) A person commits an offence if that person, with intent to defraud another person—

Alteration of card invoice.

- (a) signs or marks any card transaction record of sale; or
- (b) falsely alters any card transaction record of sale or invoice for money, goods, services, or anything of value obtained by use of a card after the card transaction record of sale or invoice is signed by the cardholder or a person authorised by him; or
- (c) carries out a transaction.

(2) A person who commits an offence under sub-section (1), is liable on summary conviction to a fine of twenty five thousand dollars and to imprisonment for a term of two years.

Electronic Transfer of Funds Crimes

General offence
for fraudulent
electronic fund
transfer.

18.—(1) A person commits an offence, where such an offence is not otherwise provided for under this Act, who, in the course of an electronic fund transfer or any transaction, with intent to defraud an issuer or a merchant—

- (a) uses the personal or financial data, security information, credit account numbers or card, of another person,; or
- (b) obtains via an electronic transfer of funds or transaction any money, goods, services, or anything of value by using the personal or financial data, security information, credit account numbers or card, of another or
- (c) by representing that he is another person.

(2) A person who commits an offence under sub-section (1) is liable on—

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

Tampering with
ATM.

19.—(1) A person who adds to, affixes a device to, removes from, tampers with, breaks, destroys or steals, an automated teller machine, commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for a term of ten years.

(2) A person commits an offence if that person—

- (a) obtains money, cardholder information, card information or anything of value from an automated teller machine as a result of a breach of sub-section (1), or
- (b) receives money or cardholder information or card information or anything of value knowing or believing that it was so obtained.

(3) A person who commits an offence under sub-section (2) is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for a term of ten years.

Software Piracy.

20.—(1) A person commits an offence if that person, hacks, reproduces, distributes or sells an electronic wallet or card software or intends to hack, reproduce, distribute or an electronic wallet or card software, without the consent or authority of the authorised manufacturer or issuer.

(2) A person who commits an offence under sub-section (1) is liable on—

Electronic Transfer of Funds Crimes

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

21.—(1) A person commits an offence if that person, installs, uploads or inserts any virus, trojan, key logger, malware, spyware or otherwise tampers with an electronic wallet, card software, online banking service or website or interrupts or disables the use of an electronic wallet, card software, online banking service or website with distributed denial of service attacks.

Tampering with Software.

(2) A person who commits an offence under sub-section (1) is liable on—

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

22.—(1) A person commits an offence if that person fraudulently obtains or receives the personal information of a cardholder through social engineering or through any other means including hacking or installing malware, viruses or key loggers and uses the personal information to conduct a transaction.

Identity Theft.

(2) A person who commits an offence under sub-section (1) is liable on—

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

PART III

Obligations of financial institution and consumer

23.—(1) A cardholder shall not unless he acts in collusion with another person be liable to the issuer for any loss arising from use of the card by any person not acting, or to be treated as acting, as the cardholder's agent.

Liability for misuse of card.

(2) Sub-section (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.

Electronic Transfer of Funds Crimes

(3) Sub-section (2) shall not apply to the use of a card after the cardholder has revoked consent and the issuer is given notice within two days of discovering that the card is liable to misuse.

(4) The issuer shall provide the cardholder with particulars of a telephone number or online address or physical person to whom notice is to be given under sub-section (3).

(5) Notice under sub-section (3) shall take effect when received, but where it is given orally, it shall be confirmed in writing within fourteen clear days.

(6) Any sum paid by a cardholder for the issue of a 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 sub-section (2).

Documentation
of transfers.

24. For each electronic fund transfer initiated by a cardholder from an electronic system or electronic terminal, the financial institution holding the cardholder's account or transaction data shall, directly or indirectly, at the time the transfer is initiated, make available to the cardholder written or electronic documentation of such transfer and such documentation may include—

- (a) the amount involved and date the transfer is initiated;
- (b) the type of transfer;
- (c) the identity of the cardholder's account with the financial institution from which or to which funds are transferred;
- (d) the identity of any third party to whom or from whom funds are transferred; and
- (e) the location or identification of the electronic terminal involved.

Card lists
prohibited.

25.—(1) Subject to sub-section (2), a financial institution shall not, unless provided by order of the Court or under any other written law, make available, lend, donate, or sell any list or portion of any list of cardholders and their addresses and account numbers to any person without the prior written permission of the cardholder.

(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 any list of cardholders and their addresses without the permission of the cardholder.

(3) A financial institution under sub-section (2), shall, within seven working days of making the list available provide written notice of the disclosure to the cardholder.

(4) A financial institution that fails to comply with the requirement under sub-section (1) commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars.

PART IV

Miscellaneous

26.—(1) Subject to sub-section (2), this Act shall have effect in relation to any person, whatever his nationality or citizenship, outside or within Belize; and where an offence under this Act is committed by a person in any place outside of the Belize, the person shall be dealt with as if the offence had been committed within Belize.

Territorial scope
of offences under
this Act.

(2) For the purposes of sub-section (1), this Act shall apply if, for the offence in question -

- (a) the accused was in Belize at the material time;
- (b) the card, electronic system or data was in Belize at the material time;
- (c) the card was issued by a financial institution in Belize; or
- (d) the damage occurred within Belize, whether or not paragraph (a), (b) or (c) applies.

27. The Minister may make regulations as he considers necessary, with respect to—

Regulations.

- (a) the electronic transfer of funds;
- (b) use of cards for electronic fund transfers including relating to—
 - (i) security;
 - (ii) encryption and clearance functions; or
- (c) any regulations as the Minister considers necessary to give purpose and effect to this Act.