

# ANTIGUA AND BARBUDA

## THE ELECTRONIC TRANSFER OF FUNDS CRIMES ACT, 2006

### ARRANGEMENT OF SECTIONS

#### Section

#### **Part 1 - Preliminary**

1. Short title
2. Interpretation

#### **Part II - Offences**

3. False statement
4. Theft by taking or retaining possession of card
5. Card theft
6. Dealing in card of another
7. Purchase or sale of card of another
8. Obtaining control of card as security
9. Forgery
10. Signing a card of another
11. Fraudulent use of card
12. Fraud by person authorised to provide goods, services, etc.
13. Receipt of money, etc., obtained by fraudulent use of card
14. Defences not available
15. Obtaining goods, etc., by use of false, expired, or revoked card
16. Trafficking in counterfeit card
17. Possession of card-making equipment
18. Alteration of card invoice
19. General offence for fraudulent electronic fund transfer

#### **Part III Miscellaneous**

20. Territorial scope of offences under this Act
21. Liability for misuse of card
22. Card lists prohibited
23. Clearance functions
24. Regulations

**ANTIGUA AND BARBUDA**

**THE ELECTRONIC TRANSFER OF FUNDS CRIMES ACT, 2006**

**NO. OF 2006**

**A BILL FOR**

**AN ACT** to regulate the transfer of money by electronic means by use of a card or data associated with 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.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**Part 1 Preliminary**

**1. Short Title**

This Act may be cited as the Electronic Transfer of Funds Crimes Act, 2006.

**2. Interpretation**

In this Act—

“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 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 over the Internet to obtain money or any of the services offered through the device or over the Internet;

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

“cardholder” means the person named on the face of a 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 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;

“electronic” means relating to technology having electrical, magnetic, optical, electromagnetic, or similar capabilities, whether digital, analogue or otherwise;

“electronic fund transfer” means any transfer of funds that is initiated through an electronic terminal, telephone, computer, magnetic tape, the Internet, or through online services for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

“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 in the Banking Act, 2005, (Act No 14 of 2005) or the Financial Institutions (Non- Banking Act), Cap 169 or a foreign financial institution authorized under the law of its jurisdiction to issue cards;

“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;

“Minister” means the Minister with responsibility for electronic commerce;

“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.

## **Part II - Offences**

### **3. False statement**

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.

### **4. Theft by taking or retaining possession of card or details of card**

(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 or to imprisonment for two years or to both; or
- (ii) conviction on indictment to a fine of fifty thousand dollars or to imprisonment for five years or to both.

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

## **5. Card theft**

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 or to imprisonment for one year or to both.

## **6. Dealing in card of another**

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 or to imprisonment for one year or to both.

## **7. Purchase or sale of card of another**

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 or to imprisonment for one year or to both.

## **8. Obtaining control of card as security**

A person who, with intent to defraud the issuer, a creditor, or any other person, obtains control over a card as security for a debt commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for one year or to both.

## **9. Forgery**

(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 or to imprisonment for two years or to both; or

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

(2) A person, other than an authorized 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. Signing a card of another**

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

#### **11. Fraudulent use of card**

A person who, with intent to defraud an issuer or 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 or to imprisonment for two years or to both; or
- (b) conviction on indictment to a fine of fifty thousand dollars or to imprisonment for five years or to both.

#### **12. Fraud by person authorised to provide goods, services, etc**

(1) A creditor who, with intent to defraud the 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 or to imprisonment for two years or to both; or
- (b) conviction on indictment to a fine of fifty thousand dollars or to imprisonment for five years or to both.

(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 or to imprisonment for two years or to both.

(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 or to imprisonment for two years or to both.

(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 or to imprisonment for two years or to both.

### **13. Receipt of money, etc., obtained by fraudulent use of card**

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 or to imprisonment for two years or to both.

### **14. Defences not available**

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

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

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

**16. Trafficking in counterfeit card**

(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 or to imprisonment for five years or to both.

**17. Possession of card-making equipment**

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 conviction on indictment to a fine of fifty thousand dollars or to imprisonment for five years or to both.

**18. Alteration of card invoice**

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 or to imprisonment for two years or to both.

**19. General offence for fraudulent electronic fund transfer**

A person who, in the course of an electronic fund transfer, uses, with intent to defraud an issuer or a creditor, the personal or financial data or credit account numbers or card of another, or who obtains money, goods, services, or anything else of value by using without authorisation using the personal or financial data or credit account numbers or card of another or by representing that he is another, where such an offence is not otherwise provided for under this Act, commits an offence and is liable on—

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

**Part III – Miscellaneous**

**20. Territorial scope of offences under this Act**

(1) Subject to subsection (2), this Act shall have effect in relation to any person, whatever his nationality or citizenship, outside as well as within Antigua & Barbuda; and where an offence under this Act is committed by a person in any place outside of the Antigua & Barbuda, he may be dealt with as if the offence had been committed within Antigua & Barbuda.

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

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

## **21. Liability for misuse of card**

- (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.
- (2) Subsection (1) does not prevent the cardholder from being made liable to the extent of one 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 notice within two days of discovering 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 confirmed in writing within fourteen 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).

## **22. Card lists prohibited**

- (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.
- (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.

**23. Clearance functions**

- (1) A financial institution may contract third-parties to perform electronic funds transfer clearance functions.
- (2) Financial institutions may form a clearing house on a collective or cooperative basis and the operation of such clearing functions may be performed by such collective or by a third-party.

**24. Regulations**

The Minister may make such regulations with respect to the use of cards for electronic fund transfers including relating to security, encryption and clearance functions as may be deemed necessary and any regulations as may be deemed necessary to give purpose and effect to this Act.

Passed by the House of Representatives  
this day of 2006.

Passed by the Senate  
this day of 2006.

Speaker

President

## **THE ELECTRONIC TRANSFER OF FUNDS CRIMES ACT, 2006**

### **Memorandum**

The main purpose of this Bill is to regulate the transfer of money through electronic means, including via computers, over the Internet or an electronic terminal, by means of a card or number or data associated with 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 Bill creates a number of offences related to the theft, forgery and other dishonest use of a credit card, debit card, bank card, smart card, or the number and data associated with such card, and is intended to build user confidence in electronic commerce and electronic transfers. It should be noted that the Bill was drafted to be technology neutral, so that the same offences, whether committed in a shop in Antigua & Barbuda, at an electronic terminal or used to purchase good or services over the Internet, apply in a similar manner. This Bill thus closes a gap which exists in the law with respect to the use of credit cards and debit cards, including for transactions over the Internet, while facilitating the uptake in Antigua & Barbuda of new methods of doing business, including electronic commerce (e-commerce) and mobile commerce (m-commerce).

The application of the Bill, save for clause 19, is limited to bank cards, credit cards or smart cards or other similar type of cards used for purchasing anything of value and includes the number or data associated with such cards.

Clause 2 defines certain key words used in the Bill. Note that a card is defined to include the number or data associated with a 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 or the number and data of such 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 or the number and data of such 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 a counterfeit card.

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 or the number and data of such card obtained or retained fraudulently.

Clause 12 would make it an offence for a creditor to furnish goods and services on a card or the number and data of such 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 in counterfeit cards where three or more counterfeit cards, invoices, etc., or card account numbers of another person are found in one's possession.

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 make it an offence to use the personal or financial data or credit account numbers of another to effect an electronic fund transfer where such an offence is not otherwise provided for under this Act, for which this is the Bill.

Clause 20 would provide the territorial scope of offences under this Act, for which this is the Bill, whether the offender is a citizen or not, provided, however, that he or the card, data and computer was in the Antigua & Barbuda at the material time, or damage occurred within Antigua & Barbuda or the card involved was issued by a financial institution in Antigua & Barbuda.

Clause 21 would restrict the liability of a cardholder who has lost possession of his card to [a sum equivalent to one hundred dollars, provided that notice is given within two days, and where the cardholder, with knowledge, fails to report the loss after two days, he is deemed to accept liability to any extent for loss to the issuer from illegal use of the card.

Clause 22 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.

Clause 23 allows for the formation and use of clearing houses by financial institutions.

Clause 24 is a general regulation making power.