

COMMONWEALTH OF DOMINICA

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COMMONWEALTH OF DOMINICA

ACT NO. 17 OF 2013

I assent



CHARLES A. SAVARIN
President

18th November, 2013

**AN ACT TO PROVIDE FOR THE REGULATION OF
THE TRANSFER OF MONEY THROUGH
ELECTRONIC MEANS AND FOR RELATED
MATTERS.**

(Gazetted 28th November , 2013.)

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:

1. (1) This Act may be cited as the -

Short title and
commencement.

ELECTRONIC FUNDS TRANSFER ACT, 2013.

(2) This Act shall come into operation on the 1st day of
October, 2013.

Interpretation.

2. In this Act -

“authorized 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 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 named on the face of a card to whom or for whose benefit the card is issued by an issuer;

“card-making equipment” means any software, 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 fund transfer” means any transfer of funds that is initiated through an electronic terminal, telephone, electronic system, 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;

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 card which is no longer valid because the term shown on it has expired;

“financial institution” means a company as defined under section 2

Act No. 16 of 2005.

of the Banking Act 2005, or a foreign financial institution authorized under the law of its jurisdiction to issue cards;

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

“Minister” means the Minister of Finance;

“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 by 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, a false statement as to a material fact in writing, knowing it to be false and with intent that it be relied on respecting

(a) the identity of the person or any other person; or

(b) the financial conditions of the person or 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. (1) A person who takes a card from the possession, custody or control of -

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

(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 a term of two years or to both; or

(ii) conviction on indictment to a fine of fifty thousand dollars or to imprisonment for a term of 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. 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 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

Dealing in card of another.

commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

Purchase or sale of 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.

Obtaining control of card as security.

8. A person who, with intent to defraud an 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.

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 or to imprisonment for a term of two years or to both; or

(b) conviction on indictment to a fine of fifty thousand dollars or to imprisonment for a term of 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 information, 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 a 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 twenty thousand dollars or to imprisonment for a term of three years or to both.

Signing a card of another.

11. 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 the card has not in fact been validly issued, commits an offence and is liable on -

Fraudulent use of card.

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

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

12. (1) A creditor who, with intent to defraud the issuer or the cardholder, furnishes goods, services, or anything else of value on presentation of a card which he knows is obtained or retained

Fraud by person authorised to provide goods, services, etc.

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

(3) A person who is authorised by a creditor to furnish goods, services, or anything else of value on 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 the 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 a term of 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 on 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 the 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 a term of two years or to both.

13. A person who receives money, goods, services or anything else of value obtained in breach of section 15, 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 a term of two years or to both.

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

14. It is not a defence to a prosecution for an offence under this Act that -

Defences not available.

- (a) a card that is not a counterfeit card is offered for use or sale as a counterfeit card;
- (b) a person, other than the accused, 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 the card, number or device was issued, or by the use of any card, card number, or other credit device in any case where the 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-

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

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

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

Possession of counterfeit cards, invoices, etc..

16. A person who possesses counterfeit cards, invoices, vouchers, sales drafts or other representations or manifestations of counterfeit cards or card account numbers of another person commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of two years or to both.

Trafficking in counterfeit cards, invoices, etc..

17. (1) A person who traffics counterfeit cards, invoices, vouchers, sales drafts or other representations or manifestations of counterfeit cards or card account numbers of another person commits an offence and is liable on-

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

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

(2) For the purpose of an offence committed contrary to subsection (1), a person found in possession of three or more items referred to in that subsection is deemed to be in possession of the items for the purpose of trafficking unless the contrary is proved, the burden of proof being on the accused.

Defence in relation to offences under section 16 and 17.

18. In any proceedings for an offence under section 16 or 17 (1) in which it is proved that the accused had an item referred to in that section in his possession, it is a defence for the accused to prove that, knowing or suspecting it to be an item referred to in that

section, the accused took possession of the item for the purpose of –

- (a) preventing another person from committing or continuing to commit an offence in connection with that item and that as soon as possible after taking possession of it the accused took all reasonable steps to the accused to destroy the item or deliver it into the custody of a person fully entitled to take custody of it; or
- (b) delivering that item into custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession of it the accused took all steps that were reasonably open to the accused to deliver it into the custody of that person.

19. A person who receives, possesses, transfers, buys, sells, controls, or has custody 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;

Possession of card-making equipment.

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

20. 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 a term of two years or to both.

Alteration of card invoice.

General offence for fraudulent electronic fund transfer.

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

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

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

Liability for misuse of card.

22. (1) A cardholder is not unless he acts in collusion with another person 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) do 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) do 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 are authorised persons for the purpose of subsection (2).

23. (1) Subject to subsection (2), a financial institution shall not make available, lend, donate, or sell any list or portion of a list

Card lists prohibited.

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 contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

Regulations.

24. The Minister may make regulations respecting any matter considered necessary to carry out effectively the intent and purpose of this Act.

Passed in the House of Assembly this 28th day of October, 2013.

VERNANDA RAYMOND (MRS)
Clerk of the House of Assembly