

No. of 2019

VIRGIN ISLANDS
ELECTRONIC FUNDS TRANSFER ACT, 2019
ARRANGEMENT OF SECTIONS

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I Assent

Governor

, 2019

VIRGIN ISLANDS

No. of 2019

A Bill for

AN ACT to provide for the regulation of the transfer of money through electronic means and for related matters.

[Gazetted , 2019]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Electronic Transfer of Funds Act, 2019.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

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

“cardholder” means the person named on the face of a card to whom or for whose benefit such a card is issued;

“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 authorising a bank or other 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;

“issuer” includes a bank or other 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 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; and

“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.

Application of Act.

3. This Act shall apply where

- (a) the offence is committed by a person who was in the Virgin Islands at the material time;
- (b) the card, electronic system or data was in the Virgin Islands at the material time;
- (c) the card was issued by a bank or financial institution in the Virgin Islands; or
- (d) the damage occurred within the Virgin Islands, whether or not paragraph (a), (b) or (c) applies.

False statement.

4. 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 his or her identity or that of any other person or his or her financial condition or that of any other person for the purpose of procuring the issuance of a card to himself or herself, or another person commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

- 5. (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 not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both; or
 - (ii) conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years, or 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.
- 6.** A person who receives a card that he or she 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 not exceeding five thousand dollars.
- 7.** 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 or she 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 not exceeding five thousand dollars.
- 8.** 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 not exceeding five thousand dollars.
- 9.** 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 not exceeding five thousand dollars.
- 10. (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,
- Theft by taking or retaining possession of a card.
- Card theft.
- Dealing in card of another.
- Purchase or sale of card of another.
- Obtaining control of card as security.
- Forgery.

voucher, sales draft, or other representation or manifestation of a counterfeit card in his or her possession, custody, or control commits an offence and is liable on

- (a) summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both; or
- (b) conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years, or both.

(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 or she 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 or she alters a card which was validly issued.

(4) A person falsely embosses a card when, without the authorisation of the named issuer, he or she 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.

Signing a card of another.

11. A person, other than the cardholder or a person authorised by him or her, 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 not exceeding five thousand dollars or to imprisonment for a term not exceeding three years, or both.

Fraudulent use of card.

12. 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 or she 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 or she is the holder of a specified card, or by representing that he or she 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 not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both; or
- (b) indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years, or both.

13. (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 or she 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

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

- (a) summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both; or
- (b) conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years, or 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 or she represents in writing to the issuer or the cardholder that he or she has furnished commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both.

(3) A person who is authorised by a creditor to furnish goods, services, or anything else of value upon presentation of a card 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 or her agent or employee, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both.

(4) A person who, without the creditor's authorisation, employs, solicits or otherwise causes

- (a) 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
- (b) 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 or her agent or employee,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both.

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

14. A person who receives money, goods, services or anything else of value obtained in breach of section 16, knowing or believing that it was so obtained commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both.

Defences not available.

15. 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.

16. (1) A person who, unlawfully obtains credit or purchases any goods, services or anything else of value by knowingly using

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

commits an offence.

(2) For the purpose of subsection (1), knowledge of revocation shall be presumed to have been received by a cardholder seven clear days after such notice has been sent to him or her by post at his or her last known address, or where the cardholder has agreed to be notified electronically, seventy-two hours after such notice has been sent to him or her by electronic means.

(3) A person who commits an offence under subsection (1) is liable on

- (a) summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both; or
- (b) conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years, or both.

Trafficking in counterfeit card.

17. (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 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

- (a) summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both; or
- (b) conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years, or both.

18. 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

Possession of card-making equipment.

- (a) summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding five years, or both; or
- (b) conviction on indictment to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding fifteen years, or both.

19. 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 or her commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding two years, or both.

Alteration of card invoice.

20. (1) A person who, in the course of an electronic fund transfer,

Fraudulent electronic fund transfer.

- (a) uses, with intent to defraud an issuer or a creditor, the personal or financial data or card of another; or
- (b) with intent to defraud an issuer or a creditor, obtains money, goods, services, or anything else of value by using the personal or financial data or card of another; or
- (c) with intent to defraud an issuer or a creditor, represents that he or she is another,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on

- (a) summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years, or both; or
- (b) on conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years, or both.

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

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

Liability for
misuse of card.

21. (1) A cardholder shall not unless he or she 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

- (a) 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, except that the cardholder shall not be liable for more than one hundred dollars; or
- (b) for loss to the issuer from use of the card by a person who acquired possession of it with the cardholder's consent.

(3) Subsection (2) 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.

(4) Subsection (2) 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 (3).

OBJECTS AND REASONS

This Bill seeks to regulate the transfer of money through electronic means such as by use of bank cards, credit cards, smart cards, online banking transfers and mobile commerce, for the purpose of authorising payments to or from a cardholder's account.

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 or a bank account, and is intended to build user confidence in electronic commerce and electronic transfers.

Clause 1 provides for the short title and commencement.

Clause 2 would define certain key words used in the Act.

Clause 3 would provide for the scope of application of the Act.

Clause 4 would make it an offence for a person to knowingly give false information to a bank or other financial institution to procure the issuance of a card to himself, herself or another person.

Clause 5 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 6 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 or her.

Clause 7 would make it an offence for a person to receive and retain possession of two or more cards belonging to other persons which he or she knew were taken or retained or retained under circumstances which constitute a card theft.

Clause 8 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 9 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 10 would create offences relating to forgery.

Clause 11 would make it an offence for a person to knowingly sign the card of another person.

Clause 12 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 13 would make it an offence for a creditor to furnish goods and services on a card he or she knew was obtained or retained fraudulently or illegally or was forged, expired or revoked, or falsely represented to the issuer that he or she has furnished goods and services.

Clause 14 would make it an offence for a person to knowingly receive goods and services obtained in breach of clause 16.

Clause 15 would exclude certain defences for a prosecution under this Act.

Clause 16 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 or other credit device.

Clause 17 would make it an offence to traffic three or more counterfeit cards, invoices, etc., or card account numbers of another person.

Clause 18 would make it an offence to receive, possess, buy or sell card-making equipment with intent to use it to make counterfeit cards.

Clause 19 would make it an offence to alter in any manner a card invoice after the cardholder has signed that invoice.

Clause 20 would make it an offence to use the personal or financial data or credit account numbers of another to affect an electronic fund transfer.

Clause 21 would restrict the liability of a cardholder who has lost possession of his or her card to a sum of not more than 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 or she is deemed to accept liability to any extent for loss to the issuer from illegal use of the card.

Clause 22 would seek to prevent a bank or other 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 bank or financial institution for credit rating purposes only.

Premier.