



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



SEVENTEENTH CONGRESS

Second Regular Session

House Bill No. **6355**

Introduced by Representative Jose Enrique S. Garcia III

EXPLANATORY NOTE

Article 2, Section 9 of the 1987 Constitution states that "The state shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."

With the rapid advancement in information technology and the continually expanding use of access devices in commercial financial transactions, there is now a growing need for the State to strengthen the protection accorded to persons using access devices, such as credit cards, in their financial transactions.

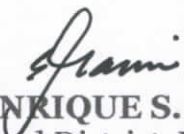
The amount of losses in fraudulent credit card transactions spiked to Php 506.8 Million and the number of online scam cases rose to over 500 in 2016. Credit-card fraud has many forms, of which the most common type involves "cloning" or a scheme where individuals or syndicates would connive with some employees of stores or restaurants, including waiters or cashiers, to duplicate or copy vital information from a legitimate credit card. These people obtain card information by swiping the card in an electronic skimmer that will read the confidential information stored in the credit card's magnetic strip. After sufficient information has been accumulated, the same is given to syndicates which then use the information for fraudulent transactions.

Section 9 of Republic Act (RA) No. 8484, otherwise known as the "Access Devices Regulation Act of 1998", provides that "[a]ny person who possesses one or more counterfeit access devices or uses the said access device with intent to defraud financial transactions is punishable by law." It further provides that obtaining money or anything of value through the use of a device, with intent to defraud or with intent to gain financial advantage is also punishable by law.

Despite the existence of R.A. No. 8484 for almost two decades now, critics have pointed out that the implementation of said law is ineffective because the agencies tasked to implement it lack the technical capabilities, technology and know-how to effectively catch up with the developments in computer and information technology (IT).

In view thereof, there is an urgent need to amend the provisions of R.A. No. 8484 and give the implementing agencies the legal basis to create and utilize tools to address the issue of credit card fraud in the country in order to protect the public from this unscrupulous undertaking. It is likewise timely and appropriate to include credit card fraud committed through the use of computer system among the cybercrime offenses defined under R.A. No. 10175 and provide a tougher penalty therefor.

The passage of this bill is earnestly and sincerely sought.


JOSE ENRIQUE S. GARCIA III
Second District, Bataan



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AN ACT STRENGTHENING THE MEASURES AGAINST CREDIT CARD FRAUD, AMENDING FOR THE PURPOSE REPUBLIC ACT 8484, OTHERWISE KNOWN AS THE "ACCESS DEVICES REGULATION ACT OF 1998" AND REPUBLIC ACT 10175, OTHERWISE KNOWN AS THE "CYBERCRIME PREVENTION ACT OF 2012"

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 3 of Republic Act 8484 is hereby amended to read as follows:

"Section 3. Definition of terms. – For purposes of this Act, the terms:

(a) Access Device – means any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, **mobile software application**, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, goods, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(b) Counterfeit Access Device – means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or counterfeit access device, **or any unauthorized copy or reproduction of a valid access device;**

(c) Unauthorized Access Device – means any access device that is stolen, lost, expired, revoked, canceled, suspended, or obtained with intent to defraud; **Provided that, an unauthorized copy or reproduction of a valid access device shall be considered as an unauthorized access device;**

1 X X X

2 **(m) Hacking** – refers to the unauthorized access into or
3 interference in a computer system/server or information and
4 communication system; or any access in order to corrupt,
5 alter, steal, or destroy using a computer or other similar
6 information and communication devices without the
7 knowledge and consent of the owner of the computer or
8 information and communications system, including but not
9 limited to the introduction of computer viruses and other
10 machinations, resulting in the corruption, destruction,
11 alternation, theft or loss of electronic data messages or
12 electronic documents.

13 **(n) Online Banking** – refers to the use of the internet by bank
14 customers in order to manage their bank accounts and
15 perform account transactions.

16 **(o) Merchant** – refers to a business that accepts payments by
17 debit or credit cards.

18 **(p) Mobile Payment** – generally refer to payment services
19 operated under financial regulation and performed from or
20 via a mobile device.

21 **SECTION 2.** Section 9 of Republic Act 8484 is hereby amended to read as
22 follows:

23 **“Section 9. Prohibited Acts.** – The following acts shall constitute
24 access device fraud and are hereby declared to be unlawful:

25 X X X

26 **(q) copying or counterfeiting any credit card, and obtaining**
27 **any information therein with the intent of accessing the**
28 **account and operating the same whether or not cash is**
29 **withdrawn or monetary injury is caused by a perpetrator**
30 **against the account holder, partner merchant, or the**
31 **depository bank;**

32 **(r) possession of any type of skimming device or any**
33 **electronic gadget or equipment that is used to perpetuate any**
34 **of the foregoing acts; and,**

35 **(s) accessing, with or without authority, any application,**
36 **online banking accounts, credit card account in a fraudulent**
37 **manner, regardless of whether or not it will result in**
38 **monetary loss to the account holder.”**

39 **SECTION 3.** Section 10 of Republic Act 8484 is hereby amended to read as
40 follows:

1 **"Section 10. Penalties.** – Any person committing any of the acts
2 constituting access device fraud enumerated in the immediately
3 preceding section shall be punished with:

4 ~~(a) a fine of Ten thousand pesos (P10,000.00) or twice the value~~
5 ~~obtained by the offense, whichever is greater and imprisonment for not~~
6 ~~less than six (6) years and not more than ten (10) years, in the case of~~
7 ~~an offense under Section 9 (b)-(e), and (g)-(p) which does not occur~~
8 ~~after a conviction for another offense under Section 9;~~

9 ~~(b) a fine of Ten thousand pesos (P10,000.00) or twice the value~~
10 ~~obtained by the offense, and imprisonment for not less than ten (10)~~
11 ~~years and for not more than twelve (12) years, in the case of an offense~~
12 ~~under Section 9 (a), and (f) of the foregoing section, which does not~~
13 ~~occur after a conviction for another offense under Section 9; and~~

14 ~~(c) a fine of Ten thousand pesos (P10,000.00) or twice the value~~
15 ~~obtained by the offense, or imprisonment for not less than twelve (12)~~
16 ~~years and not more than twenty (20) years, or both, in the case of any~~
17 ~~offense under Section 9, which occurs after a conviction for another~~
18 ~~offense under said subsection, or an attempt to commit the same.~~

19 **(a) imprisonment for not less than twelve (12) years and not**
20 **more than twenty (20) years and a fine twice the equivalent**
21 **of the aggregate amount of all affected or exposed bank**
22 **accounts, but the fine shall not be less than five hundred**
23 **thousand pesos (Php 500,000.00), in the case of an offender**
24 **who is in possession of ten (10) or more counterfeit access**
25 **devices and/or unauthorized accessed devices and was able**
26 **to access at least one (1) account or had gained credit by the**
27 **fraudulent use of any such access device in his possession;**

28 **(b) imprisonment for not less than six (6) years and not more**
29 **than twelve (12) years and a fine twice the equivalent of the**
30 **aggregate amount of all affected or exposed bank accounts,**
31 **but the fine shall not be less than two hundred and fifty**
32 **thousand pesos (Php 250,000.00), in the case of an offender**
33 **who is in possession of ten (10) or more counterfeit access**
34 **devices and/or unauthorized accessed devices but was not**
35 **proven to have accessed any account nor had gained credit by**
36 **the fraudulent use of any such access device in his**
37 **possession;**

38 **(c) imprisonment for not less than four (4) years and not**
39 **more than six (6) years and a fine twice the value of the**
40 **fraudulently obtained credit, without prejudice to the civil**
41 **liability of the offending party, in the case of an offense**
42 **involving fraudulent use of a credit card;**

43 **(d) imprisonment for not less than six (6) and not more than**
44 **ten (10) years, and a fine of five hundred thousand pesos**
45 **(Php 500,000.00) or twice the amount obtained by the**
46 **offender, whichever is higher, without prejudice to the civil**
47 **liability of the offender, in the case of an offense under**

section 9 (b), (c), (d), (e), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (s), which does not occur after a conviction for an offense under section 9.

(e) imprisonment for not less than ten (10) and not more than twelve (12) years, and a fine of five hundred thousand pesos (Php 500,000.00) or twice the amount obtained by the offender, whichever is higher, without prejudice to the civil liability of the offender, in the case of an offense under section 9 (a), (f), (q) which does not occur after a conviction for an offense under section 9.

(f) imprisonment for not less than twelve (12) and not more than twenty (20) years, and a fine of eight hundred thousand pesos (Php 800,000.00) or twice the amount obtained by the offender, whichever is higher, without prejudice to the civil liability of the offender, in the case of an offense under section 9, which occurs after a conviction for another offense under said subsection, or an attempt to commit the same; and

(g) the penalty of life imprisonment and a fine of not less than one million pesos (Php 1,000,000.00) but not more than five million pesos (Php 5,000,000.00) shall be imposed upon an offense involving economic sabotage.

There is economic sabotage:

- (1) If any of the prohibited acts in Section 9 involve hacking of a bank system; or
- (2) If the offense under Section 9(s) affected fifty (50) or more online banking accounts, credit cards, ATM cards, and debit cards.

SECTION 4. Section 14 of Republic Act 8484 is hereby amended to read as follows:

“Section 14. Presumption and prima facie evidence of intent to defraud. – The mere possession, control or custody of:

x x x

(f) a genuine access device, not in the name of the possessor, or not in the ordinary course of the possessor's trade or business, shall be prima facie evidence that such device or equipment is intended to be used to defraud.

A cardholder who abandons or surreptitiously leaves the place of employment, business or residence stated in his application or credit card, without informing the credit card company of the place where he could actually be found, if at the time of such abandonment or surreptitious leaving, the outstanding and unpaid balance is past due for at least ninety (90) days and is more than ~~Ten thousand pesos~~

(P10,000.00) **Two Hundred Thousand Pesos (P200,000.00)**, shall be prima facie presumed to have used his credit card with intent to defraud.

SECTION 5. Section 16 of Republic Act 8484 is hereby amended to read as follows:

“Section 16. Reporting requirements. – All companies engaged in the business of issuing access devices, including banks, financing companies and other financial institutions issuing access devices, **as well as all partner merchants**, shall **conduct initial investigation on any reported access device fraud** and furnish ~~annually real-time, on or before the 31st of March of the succeeding year, reports on the result thereof to the Credit Card Association of the Philippines regarding access device frauds committed against the holders of such entities in the preceding calendar year, to the National Bureau of Investigation (NBI) and the Anti-Cybercrime Group of the Philippine National Police (PNP).~~ **The report shall contain a narration about the fraud committed and an identification of the perpetrator, if feasible. The report shall further constitute the complaint necessary for the NBI or the Anti-Cybercrime Group of the PNP to pursue further investigation and prosecution of the fraud.**

Notwithstanding this requirement, banks, financing companies and other financial institutions, including their subsidiaries and affiliates, issuing access devices shall continue to be regulated and supervised by the Bangko Sentral ng Pilipinas while other companies issuing access devices shall continue to be regulated and supervised by the Securities and Exchange Commission.

The NBI and the Anti-Cybercrime Group of the PNP may compel access device issuers and partner merchants to cooperate and assist in investigations on access device frauds as well as the submission of additional data as needed on a case to case basis.

Failure to comply with the orders from law enforcement authorities shall be punished as a violation of Presidential Decree No. 1829 with imprisonment of *prison correctional* in its maximum period or a fine of One hundred thousand pesos (Php 100,000.00) or both, for each and every noncompliance with an order issued by law enforcement authorities.”

SECTION 6. Section 4 of Republic Act 10175 is hereby amended to read as follows:

“SEC. 4. Cybercrime Offenses. – The following acts constitute the offense of cybercrime punishable under this Act:

x x x

(c) Content-related Offenses:

1 (1) Cybersex. — The willful engagement, maintenance, control, or
2 operation, directly or indirectly, of any lascivious exhibition of sexual
3 organs or sexual activity, with the aid of a computer system, for favor or
4 consideration.

5 x x x

6 (5) Access devices fraud — The unlawful or prohibited acts
7 defined and punishable by Republic Act No. 8484 or Access
8 Devices Regulation Act of 1998, committed through a
9 computer system: *Provided*, That the penalty to be imposed
10 shall be (1) one degree higher than that provided for in
11 Republic Act No. 8484.

12 **SECTION 7. REPEALING CLAUSE** - All laws, presidential decrees,
13 executive orders, letters of instruction, administrative rules and regulations or
14 parts thereof which are contrary to or inconsistent with the provisions of this
15 Act are hereby repealed or modified accordingly.

16
17 **SECTION 8. SEPARABILITY CLAUSE** – Should any part or provision of
18 this Act be held unconstitutional or invalid, all other provisions hereof which
19 are not affected thereby shall continue to be in full force and effect.

20
21 **SECTION 9. EFFECTIVITY.** – This Act shall take effect after fifteen (15)
22 days following its complete publication in the Official Gazette or in two (2)
23 newspapers of general circulation whichever is earlier.

24
25 **Approved.**