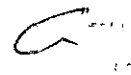


THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUN 17 P 3:34

SENATE
S.B. No. 1731

FILED BY: 

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Every technological breakthrough changes the procedure in transacting business. The payment of bills, whether it be for utilities, groceries, gasoline, medicine, or any other item, can now be made thru a credit card, automated teller machine card, or by telephone.

The use of electronic systems to transfer funds has provided substantial benefits to consumers. However, due to the characteristics of such systems, the application of existing consumer protection legislation is unclear. The rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers are undefined.

This bill seeks to establish the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.


MIRIAM DEFENSOR SANTIAGO

THIRTEENTH CONGRESS OF THE REPUBLIC)
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'04 AUG 17 P3:04

SENATE
S.B. No. 1731

Introduced by Senator Miriam Defensor Santiago

AN ACT
DEFINING THE RIGHTS AND LIABILITIES OF PARTIES IN ELECTRONIC FUND
TRANSFERS

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

SECTION 1. *Short Title.*- This Act shall be known as the "Electronic Fund Transfer Act."

SECTION 2. *Declaration of Policy.*- It is the policy of the State to promote commercial transactions. Toward this end, the State shall enact measures to protect the rights and define the liabilities of parties in commercial transactions.

SECTION 3. *Definitions.*- As used in this Act -

(1) the term "accepted card or other means of access" means a card code or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person, to whom such card or other means of access was issued, has requested and received, or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(3) the term "Board" means the Board of Governors of the *Bangko Sentral ng Pilipinas*;

(4) the term "business day" means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(5) the term "consumer" means a natural person;

(6) the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Such term includes direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include-

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account;

(B) any transfer of funds, other than those processed by automated clearinghouses, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a pre-arranged plan and under which periodic or recurring transfers are not contemplated;

(7) the term "electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(8) the term “financial institution” means a bank, a savings and loan association, a mutual savings bank, a credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term “pre-authorized electronic fund transfer” means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term “unauthorized electronic fund transfer” means an electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer’s account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorize; (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer; or (C) which constitutes an error committed by a financial institution.

SECTION 4. *Regulations.*- (1) The Board shall prescribe regulations to carry out the purposes of this Act. In prescribing such regulations, the Board shall:

(A) consult with the other affected agencies and take into account and allow for, the continuing evolution of electronic banking services and the technology utilized in such services.

(B) prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(C) to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions; and

(1) any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

(2) The Board shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of the following section and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. With respect to the disclosures required by Section 5, the Board shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

(3) Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers, as, in the judgment of the Board, are necessary or proper to effectuate the purposes of this Act, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. This Board shall by regulation modify the requirements imposed by this Act on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this subchapter.

(4) In the event that electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this Act are made applicable to such persons and services.

SECTION 5. *Terms and Conditions of Transfers.*-

(1) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in

accordance with regulations of the Board. Such disclosures shall be in readily understandable language and shall include, to the extent applicable-

(A) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

(B) the telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be effected;

(C) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

(D) any charges for electronic fund transfers or for the right to make such transfers;

(E) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(F) the consumer's right to receive documentation of electronic fund transfers under Section 6;

(G) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 8 and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(H) the financial institution's liability to the consumer under Section 10; and

(I) under what circumstances the financial institution will, in the ordinary course of business, disclose information concerning the consumer's account to third person.

(2) A financial institution shall notify a consumer in writing at least twenty-one (21) days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (1) of this section if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account

without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (1)(C) of this section, the Board shall require subsequent notification if such a change is made permanent.

(3) For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this Act, the information required to be disclosed to the consumer under subsection (1) of this section shall be disclosed not later than the earlier of -

(A) the first periodic statement required by section 6 after the effective date of this Act; or

(B) thirty (30) days after the effective date of this Act.

SECTION 6. *Documentation of Transfers.*-

(1) For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable -

(A) the amount involved and the date the transfer is initiated;

(B) the type of transfer;

(C) the identity of the consumer'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.

(2) For a consumer's account which is scheduled to be credited by a pre-authorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Board. The means of notice elected shall be disclosed to the consumer in accordance with section 5 of this Act.

(3) A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Except as provided in subsection (4) and (5) of this section, such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three (3) months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth -

(A) with regard to each electronic fund transfer during the period, the information described in subsection (1) of this Section, which may be provided on an accompanying document;

(B) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;

(C) the balances in the consumer's account at the beginning of the period and at the close of the period; and

(D) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such address and telephone number shall be preceded by the caption "Direct Inquiries to:" or other similar language indicating that the address and number are to be used for such inquiries or notices.

(4) In the case of a consumer's passbook account which may not be accessed by electronic fund transfers other than pre-authorized electronic fund transfers crediting the account, a financial institution may, in lieu of complying with the requirements of subsection (3) of this section, upon presentment of the passbook, provide the consumer in writing with the amount and date of each such transfer involving the account since the passbook was last presented.

(5) In the case of consumer's account, other than a passbook account, which may not be accessed by electronic fund transfers other than pre-authorized electronic fund transfers crediting the account, the financial institution may provide a periodic statement on a quarterly basis which otherwise complies with the requirements of subsection (3) of this Section.

(6) In any action involving a consumer, any documentation required by this section to be given to the consumer which indicates that an electronic fund transfer was made to another

person shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made.

SECTION 7. *Pre-authorized Transfers.* —

(1) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of pre-authorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three (3) business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen (14) days of an oral notification if, when the oral notification is made, the consumer advised of such requirement and the address to which such confirmation should be sent.

(2) In the case of pre-authorized transfers from a consumer's account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer provide reasonable advance notice to the consumer, in accordance with regulations of the Board, of the amount to be transferred and the scheduled date of the transfer.

SECTION 8. *Error Resolution.* -

(1) If a financial institution, within sixty (60) days after having transmitted to a consumer documentation pursuant to this Act, receives oral or written notice in which the consumer -

(A) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;

(B) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to Section 6, the consumer's account, contains an error and the amount of such error; and

(C) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred, the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and

determination to the consumer within ten (10) business days. The financial institution may require written confirmation to be provided to it within ten (10) business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (3) of this section, nor shall the financial institution be liable under subsection (5) of this section if the written confirmation is not received within the ten-day period referred to in the previous sentence.

(2) If the financial institution determines that an error did occur, it shall promptly, but in no event more than one (1) business day after such determination, correct the error, subject to section 9, including the crediting of interest where applicable.

(3) If a financial institution receives notice of an error in the manner and within the time period specified in subsection (1) of this section, it may, in lieu of the requirements of subsections (1) and (2) of this Section, within ten (10) business days after receiving such notice provisionally recredit the consumer's account for the amount alleged to be in error, subject to Section 9, including interest where applicable, pending the conclusion of its investigation and its determination of whether an error has occurred. Such investigation shall be concluded not later than forty-five (45) days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

(4) If the financial institution determines after its investigation pursuant to subsection (1) or (3) of this section that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within three (3) business days after the conclusion of its investigation, and upon the request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

(5) If any action under this Act, the court finds that -

(A) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (3) of this section, and the financial

institution (i) did not make a good faith investigation of the alleged error; or (ii) did not have a reasonable basis for believing that the consumer's account was not in error; or

(B) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation, then the consumer shall be entitled to treble damages.

(6) For the purpose of this section, an error consists of -

- (A) an unauthorized electronic fund transfer;
- (B) an incorrect electronic fund transfer from or to the consumer's account;
- (C) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;
- (D) a computational error by the financial institution;
- (E) the consumer's receipt for an incorrect amount of money from an electronic terminal;
- (F) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this Act; or
- (G) any other error described in regulations of the Board.

SECTION 9. *Consumer Liability.*-

(1) A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other means of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph or fingerprint, or by electronic or mechanical confirmation. In no event, however, shall a consumer's liability for an unauthorized transfer exceed the lesser of -

- (A) One Thousand Pesos (P1,000.00); or
- (B) The amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of or otherwise becomes aware of, circumstances which lead to the reasonable belief that

an unauthorized electronic fund transfer involving the consumer's account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty (60) days of transmittal of the statement (or in extenuating circumstances such as extended travel or hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer for losses which the financial institution establishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two (2) business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a longer period which is reasonable under the circumstances), but the consumer's liability under this subsection in any such case may not exceed a total of Ten Thousand Pesos (P10,000.00) or the amount of unauthorized electronic fund transfers which occur following the close of two (2) business days (or such longer period) after the consumer learns of the loss or theft but prior to notice to the financial institution under this subsection, whichever is less.

(2) In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (2) of this Section have been met, and, if the transfer was initiated after the effective date of this Act, that the disclosures required to be made to the consumer under Section 5 were in fact made in accordance with such section.

(3) In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

(4) Nothing in this section imposes liability upon a consumer for an authorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution.

(5) Except as provided in this Section, a consumer incurs no liability from an unauthorized electronic fund transfer.

SECTION 10. *Liability of Financial Institutions.*-

(1) Subject to subsections (2) and (3) of this Section, a financial institution shall be liable to a consumer for all damages proximately caused by -

(A) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

(i) the consumer's account has insufficient funds;

(ii) the funds are subject to legal process or other encumbrance restricting such transfer;

(iii) such transfer would exceed an established credit limit;

(iv) an electronic terminal has insufficient cash to complete the transaction; or

(v) as otherwise provided in regulations of the Board.

(B) the financial institution's failure to make an electronic fund transfer due to insufficient funds when the financial institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer's account which would have provided sufficient funds to make the transfer.

(C) The financial institution's failure to stop payment of a pre-authorized transfer from a consumer's account when instructed to do so in accordance with the terms and conditions of the account.

(2) A financial institution shall not be liable under subsection (2)(A) or (B) of this Section if the financial institution shows by a preponderance of the evidence that its action or failure to act resulted from -

(A) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or

(B) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund transfer or, in the case of a pre-authorized transfer, at the time such transfer should have occurred.

(3) In the case of a failure described in subsection (1) of this Section which was not intentional and which resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error, the financial institution shall be liable for actual damages proved.

SECTION 11. Issuance of Cards or Other Means of Access.-

(1) No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than -

(A) in response to a request or application therefore; or

(B) as renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial insurer or a successor.

(2) Notwithstanding the provisions of subsection (A) of this section, a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if -

(A) such card, code, or other means of access is not validated;

(B) such distribution is accompanied by a complete disclosure, in accordance with Section 5, of the consumer's rights and liabilities which apply if such card, code, or other means of access is validated;

(C) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

(D) such card, code or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(3) For the purpose of subsection (2) of this Section, a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

SECTION 12. *Suspension of Obligations.*- If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

SECTION 13. *Compulsory Use of Electronic Fund Transfers.*- No person may -

(1) condition the extension of credit to a consumer on such consumer's repayment by means of pre-authorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

SECTION 14. *Waiver of Rights.*- No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this Act. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this subchapter or a waiver given in settlement of a dispute or action.

SECTION 15. *Separability Clause.*- If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 16. *Repealing Clause.*- Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

SECTION 17. *Effectivity Clause.*- This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

FN: 337