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(In Substitution of S. B. Nos. 336, 1663, 2039, 2171 and 2407, taking into
consideration H.B. No. 7393)

Prepared by the Committee on Banks, Financial Institutions & Currencies, with
Senators Poe, Zubiri, Marcos, Estrada, Villanueva, Gatchalian, Legarda, Revilla and
Villar M., as authors thereof

**AN ACT DEFINING AND PENALIZING FINANCIAL ACCOUNT SCAMMING
AND OTHER OFFENSES, AND PROVIDING FOR THE ENFORCEMENT
MECHANISMS THEREFOR**

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

1 **SECTION 1. Short Title.** - This Act shall be known as the "Anti-Financial
2 Account Scamming Act (AFASA)".

3 **SEC. 2. Declaration of Policy.** - The State recognizes the vital role of banks,
4 non-bank financial institutions, other payment service providers, and the general
5 banking public in promoting and maintaining a stable and efficient financial system.
6 The State also acknowledges that with the increased use of electronic commerce and
7 digital financial services, there is a need to promote awareness on the proper use of
8 Financial Accounts and to protect the public from cybercriminals and criminal
9 syndicates who target Financial Accounts or lure Account Owners into becoming
10 accessories or perpetrators of fraudulent activities. The State shall undertake measures
11 to protect all persons from cybercrime schemes by regulating the use of Financial
12 Accounts and preventing their use in fraudulent activities.

13 **SEC. 3. Definition of Terms.** - As used in this Act, the following terms are hereby
14 defined as follows:

15 **a) Account Owner** refers to the person to whom a Financial Account belongs or
16 under whose name the account was opened or registered;

17 **b) Electronic Communications** refer to phone calls, short messaging service
18 (SMS), social media platform-enabled messages, electronic mail (email),
19 technology-powered instant messaging, and other messages sent via electronic
20 means;

1 **c) Electronic Wallet or E-wallet** refers to an electronic instrument or device
2 that can store digital value;

3 **d) Financial Account** refers to an account used to avail of products or services
4 offered by Institutions such as:

5 1. An interest or non-interest-bearing deposit, trust, investment, or
6 credit card account;

7 2. Other transaction account maintained with a bank, non-bank, or
8 financial institution;

9 3. E-wallet; and

10 4. Any other account used to avail financial products or services defined
11 under Section 3(c) of Republic Act No. 11765 or the "Financial
12 Products and Services Consumer Protection Act".

13 **e) Fraud Management Systems (FMS)** refer to a comprehensive set of
14 automated and real-time monitoring and detection systems to identify and block
15 disputed, suspicious or other online transactions;

16 **f) Institutions** refer to banks, non-banks, other financial institutions, payments
17 and financial service providers under the jurisdiction of the BSP;

18 **g) Mass Mailer** refers to a service or software used to send electronic
19 communications to an aggregate of fifty (50) or more recipients;

20 **h) Multi-Factor Authentication (MFA)** refers to an authentication method that
21 requires two (2) or more verification factors to gain access to a resource; and

22 **i) Sensitive Identifying Information** refers to any information that can be
23 used to access an individual's Financial Accounts such as usernames,
24 passwords, bank account details, credit card, debit card, and e-wallet
25 information among other electronic credentials, and other confidential and
26 personal information.

27 **SEC. 4. Prohibited Acts.** - The following acts shall constitute Financial
28 Account scamming under this Act:

29 a. *Money Muling Activities* – A person performing any of the following acts for the
30 purpose of obtaining, receiving, depositing, transferring or withdrawing proceeds
31 that are known to be derived from crimes, offenses, or social engineering schemes
32 shall be considered as a money mule:

33 1. Using, borrowing or allowing the use of a Financial Account;

- 1 2. Opening a Financial Account under a fictitious name or using the
2 identity or identification documents of another;
- 3 3. Buying or renting a Financial Account;
- 4 4. Selling or lending a Financial Account; or
- 5 5. Recruiting, enlisting, contracting, hiring, utilizing or inducing any
6 person to perform the acts mentioned in items 1 to 4 of this
7 subsection.

8 **b. *Social Engineering Schemes.*** - A social engineering scheme is committed by a
9 person who obtains sensitive identifying information of another person, through
10 deception or fraud, resulting in unauthorized access and control over the person's
11 Financial Account, by performing any of the following acts:

- 12 1. Misrepresenting oneself as acting on behalf of an Institution, or
13 making any false representations to solicit another person's sensitive
14 identifying information; or
- 15 2. Using electronic communications to obtain another person's sensitive
16 identifying information.

17 **c. *Economic Sabotage.*** - The prohibited acts under Section 4(a) and (b) shall be
18 considered as economic sabotage when committed under any of the following
19 circumstances:

- 20 1. By a group of three (3) or more persons conspiring or confederating
21 with one another;
- 22 2. Against three (3) or more persons individually or as a group;
- 23 3. Using a mass mailer; or
- 24 4. Through human trafficking.

25 **SEC. 5. Other Offenses.** - The following shall also constitute as offenses under
26 this Act:

- 27 a) Willfully aiding or abetting in the commission of any of the offenses enumerated
28 under Section 4;
- 29 b) Willfully attempting to commit any of the offenses enumerated under Section 4;
- 30 c) Opening a Financial Account under a fictitious name or using the identity or
31 identification documents of another;
- 32 d) Buying or renting a Financial Account; or

1 e) Selling a Financial Account.

2 **SEC. 6. Responsibility to Protect Access to Client's Financial Account. -**
3 Institutions shall ensure that access to their clients' Financial Accounts is protected by
4 adequate risk management systems and controls such as, MFA, FMS, and other
5 Account Owner enrollment and verification processes: *Provided*, That such risk
6 management systems and controls are proportionate and commensurate to the nature,
7 size and complexity of their operations.

8 Institutions that are determined by the BSP to be compliant with the
9 requirements of adequate risk management systems and controls shall not be liable
10 for any loss or damage, arising from the offenses under Sections 4 and 5.

11 Without prejudice to other liabilities under existing laws and consistent with BSP
12 rules and regulations, Institutions shall be liable for restitution of funds to the Account
13 Owners for failure to employ adequate risk management systems and controls, or
14 failure to exercise the highest degree of diligence in preventing loss or damage arising
15 from the offenses under Sections 4 and 5. Conviction shall not be a prerequisite to the
16 restitution of funds.

17 **SEC. 7. Temporary Holding of Funds Subject of a Disputed**
18 **Transaction. -** Institutions shall have the authority to temporarily hold the funds
19 subject of a disputed transaction within the period prescribed by BSP, which shall not
20 exceed thirty (30) calendar days, unless otherwise extended by a court of competent
21 jurisdiction.

22 A transaction shall be considered disputed if the Institution, based on
23 information obtained from another Institution, a complaint from an aggrieved party,
24 or a finding under its own FMS, has reasonable ground to believe that such transaction
25 appears to be:

- 26 a. Unusual;
- 27 b. Without clear economic purpose;
- 28 c. From an unknown or illegal source, or unlawful activity; or
- 29 d. Facilitated through social engineering schemes.

30 Where such belief arises from a finding under its own FMS, the Institution shall
31 perform acts as may legally be warranted to preserve the integrity of the Financial
32 Account.

33 No administrative, criminal or civil liability shall be imposed against an
34 Institution or its directors, trustees, officers, and employees for holding the funds
35 subject of a disputed transaction when done in accordance with BSP rules and
36 regulations.

37 The BSP shall issue rules and regulations on: the circumstances under which
38 Institutions are required to exercise such authority to avoid probable fraud; the
39 grounds for, procedure and period of holding funds; verification and validation process;

1 the release of funds subject of disputed transaction; and other actions that may be
2 undertaken by the Institutions and Account Owners during the period of temporary
3 holding of funds.

4 **SEC. 8. Coordinated Verification of a Disputed Transaction.** - Upon
5 receipt of a complaint, an information from another Institution, or detection through
6 FMS, the Institutions and the Account Owners involved shall initiate a coordinated
7 verification process to validate the disputed transaction, regardless of whether the
8 funds remain in the banking system or not. The provisions of Republic Act No. 1405,
9 as amended; Republic Act No. 6426, or the "Foreign Currency Deposit Act of the
10 Philippines," as amended; Republic Act No. 8367 or the "Revised Non-stock Savings
11 and Loan Association Act of 1997"; and Republic Act No. 10173 or the "Data Privacy
12 Act of 2012" shall not apply during the coordinated verification process of a disputed
13 transaction.

14 **SEC. 9. Liability for Failure to Temporarily Hold Funds.** - An Institution
15 that fails to temporarily hold funds subject of a disputed transaction, as required under
16 this Act and relevant BSP rules and regulations, shall be liable for loss or damage
17 arising from such failure, including the restitution of the disputed funds to the Account
18 Owner.

19 **SEC. 10. Liability for Improper Holding of Funds.** - Without prejudice to
20 liabilities under existing laws, an Institution that holds funds subject of a disputed
21 transaction beyond the allowable period, or improperly holds funds, as provided in this
22 Act and relevant BSP rules and regulations, shall be subjected to administrative action
23 under Republic Act No. 7653, otherwise known as the "New Central Bank Act," as
24 amended.

25 **SEC. 11. Malicious Reporting.** - Any person who, with malice or in bad faith,
26 reports or files completely unwarranted or false information that results in the
27 temporary holding of funds shall be punished under Section 16 (e) of this Act.

28 **SEC. 12. Investigation and Inquiry Into Financial Accounts.** - The BSP
29 shall have the authority to investigate and inquire into Financial Accounts which may
30 be involved in the commission of a prohibited act or offense under Sections 4 and 5
31 hereof. The provisions of R.A. No. 1405, as amended; R.A. No. 6426, as amended;
32 R.A. No. 8367; and R.A. No. 10173 shall not apply to Financial Accounts subject to
33 BSP's investigation.

34 Any of the information gathered from the investigation or inquiry of a Financial
35 Account by the BSP pursuant to this section, may be used for the enforcement of this
36 Act and in the implementation of relevant provisions of R.A. No. 11765 .

37 The authority to investigate and inquire into Financial Accounts under this
38 section shall be exercised by a duly authorized officer or body from the BSP.

1 No court below the Court of Appeals shall have jurisdiction to enjoin the BSP
2 from exercising its authority to investigate and inquire into any Financial Account under
3 this Act.

4 An Institution, or any of its directors, officers, or employees shall be held free
5 and harmless from any accountability or liability for any act done in compliance with
6 an order from the BSP for an inquiry or investigation of a Financial Account.

7 **SEC. 13. Cybercrime Warrants and Related Orders.** – Without prejudice to
8 the authority of the cybercrime units of the National Bureau of Investigation (NBI) and
9 the Philippine National Police (PNP), the BSP or its duly authorized officer or body shall
10 have the authority to apply for cybercrime warrants and to issue the orders provided
11 in Chapter IV of Republic Act No. 10175 or the “Cybercrime Prevention Act of 2012”
12 with respect to the electronic communications used in any violation of this Act. The
13 BSP may request the assistance of the NBI and the PNP in the investigation of cases
14 and the enforcement and implementation of cybercrime warrants and related orders
15 for violations of this Act.

16 **SEC. 14. Sharing of Information of Financial Accounts.** – The BSP shall
17 have the authority to issue rules on information-sharing and disclosure with law
18 enforcement and other competent authorities in connection with its inquiry and
19 investigation of Financial Accounts under this Act: *Provided*, That any information on
20 the Financial Account which may be shared by BSP shall be used solely to investigate
21 and prosecute cases involving violations of Sections 4 and 5 of this Act and to
22 implement the relevant provisions of R.A. No. 11765.

23 **SEC. 15. Prohibition on the Disclosure of Information of a Financial**
24 **Account.** - Unless otherwise allowed under existing laws, directors, trustees, officers,
25 or employees of an Institution, government officials or employees, or other persons
26 who obtained information on the Financial Account subject of BSP’s inquiry or
27 investigation under this Act, shall be prohibited from disclosing such information on
28 the Financial Account for purposes other than those mentioned in Sections 12 and 14
29 hereof.

30 **SEC. 16. Penalties.** - a) A person found guilty of the prohibited acts under
31 Section 4 (a) shall be penalized with imprisonment of not less than six (6) years but
32 not more than eight (8) years, and a fine of at least One Hundred Thousand Pesos
33 (Php100,000.00) but not exceeding Five Hundred Thousand Pesos (Php500,000.00).
34 In addition, if the prohibited act falls under Section 4 (a), items (1) to (4), the court
35 shall also order the closure of the Financial Account involved in the transaction and
36 forfeiture in accordance with Article 45 of the Revised Penal Code, without prejudice
37 to Section 17 of this Act.

38 b) A person found guilty of any of the prohibited acts enumerated under Section 4 (b)
39 shall be penalized with imprisonment of not less than ten (10) years but not more than
40 twelve (12) years and a fine of at least Five Hundred Thousand Pesos (Php500,000.00)
41 but not exceeding One Million Pesos (Php1,000,000.00): *Provided*, That the penalty of

1 not less than twelve (12) years but not more than fourteen (14) years of imprisonment
2 and a fine of at least One Million Pesos (Php1,000,000.00) but not exceeding Two
3 Million Pesos (Php2,000,000.00) shall be imposed if the target or victim of the acts
4 enumerated in Section 4 (b) is a senior citizen at the time the offense was committed.

5 c) A person found guilty of any of the prohibited acts involving economic sabotage
6 enumerated under Section 4 (c) shall be penalized with life imprisonment and a fine
7 of not less than One Million Pesos (Php1,000,000.00) but not exceeding Five Million
8 Pesos (Php5,000,000.00).

9 d) A person found guilty of other offenses enumerated in Section 5 shall be penalized
10 with imprisonment of not less than four (4) years but not more than six (6) years and
11 a fine of at least One Hundred Thousand Pesos (Php100,000.00) but not exceeding
12 Two Hundred Thousand Pesos (Php200,000.00). In addition, if the prohibited act falls
13 under Section 5(c), (d) or (e), the court shall also order the closure of the Financial
14 Account.

15 e) A person found guilty of reporting or filing completely unwarranted or false
16 information that resulted in the temporary holding of funds under Section 11 shall be
17 penalized with imprisonment of not less than one (1) year but not more than five (5)
18 years or a fine of not less than Fifty Thousand Pesos (Php50,000.00) but not exceeding
19 Two Hundred Thousand Pesos (Php200,000.00), or both, at the discretion of the court.

20 f) A person found guilty of knowingly or willfully obstructing, impeding, frustrating, or
21 delaying the inquiry and investigation of the BSP as provided under Section 12 shall
22 be penalized with imprisonment of not less than one (1) year but not more than five
23 (5) years or a fine of not less than Fifty Thousand Pesos (Php50,000.00) but not
24 exceeding Two Hundred Thousand Pesos (Php200,000.00), or both, at the discretion
25 of the court.

26 g) An official, employee, or agent of an Institution, the government, or any person
27 who obtained information on the Financial Account subject of BSP's inquiry or
28 investigation who shall commit the prohibited act under Section 15 shall be penalized
29 with imprisonment of not less than one (1) year but not more than five (5) years or a
30 fine of not less than Fifty Thousand Pesos (Php50,000.00) but not exceeding Two
31 Hundred Thousand Pesos (Php200,000.00), or both, at the discretion of the Court.

32 h) When an offender is a juridical person, the fine to be imposed shall be double the
33 amount of the corresponding penalty but shall not exceed Ten Million Pesos
34 (Php10,000,000.00). The liability imposed on the juridical person shall be without
35 prejudice to the criminal liability of the responsible officer who committed the
36 prohibited acts or other offenses under this Act.

37 i) A government official or employee who shall be found guilty of the acts or offenses
38 under Sections 4 and 5 shall, in addition to the penalties prescribed under this section,
39 suffer perpetual absolute disqualification from holding any appointive or elective
40 position in the government, or in any agency, entity, or instrumentality thereof.

1 **SEC. 17. Civil Liability in Case of Conviction.** – A conviction for violation of
2 this Act shall carry with it civil liability, which may include restitution for the damage
3 done in favor of the aggrieved party of any unwarranted benefit derived from such
4 violation.

5 **SEC. 18. Administrative Sanctions.** – Without prejudice to the criminal and
6 civil liabilities prescribed under this Act, the administrative sanctions specified in
7 Republic Act No. 7653 or the “New Central Bank Act”, as amended, shall be imposed
8 upon the Institution, its directors, officers, trustees, employees, or agents, for violation
9 of this Act or any related rules, regulations, orders or instructions of the BSP.

10 **SEC. 19. Criminal Liability Under Other Laws.** - Prosecution under this Act
11 shall be without prejudice to prosecution for any violation of the Revised Penal Code,
12 as amended, or special laws such as Republic Act No. 8484 or the “Access Devices
13 Regulation Act of 1998,” as amended; Republic Act No. 9160 or the “Anti-Money
14 Laundering Act of 2001,” as amended; and R.A. No. 10175.

15 Prohibited Acts under Sections 4 and 5 of this Act shall be considered as “Unlawful
16 Activities” under Section 3(I) of Republic Act No. 9160, otherwise known as the “Anti-
17 Money Laundering Act of 2001,” as amended.

18 **SEC. 20. Immunity of Trafficked Persons from Criminal Liability.** -
19 Victims of trafficking in persons as defined under Republic Act No. 9208, or the “Anti-
20 Trafficking in Persons Act of 2003,” as amended, shall be free from criminal liability
21 for acts committed as a direct result of being trafficked. Conviction under R.A. No.
22 9208, as amended, shall not be a prerequisite to this defense, and it shall be sufficient
23 to show clear and convincing evidence of circumstances under prevailing manuals,
24 guidelines, and similar instruments on victim identification issued by the Inter-Agency
25 Council Against Trafficking (IACAT).

26 **SEC. 21. Jurisdiction.** - The Regional Trial Court shall have jurisdiction over
27 any violation of the provisions of this Act. Jurisdiction shall lie if any of the elements
28 was committed within the Philippines or committed with the use of any device, tool,
29 equipment, computer system or infrastructure, wholly or partly situated in the country,
30 or when by such commission, damage is caused to a natural or juridical person who
31 was in the Philippines at the time the offense was committed.

32 **SEC. 22. General Principles Relating to International Cooperation.** – To
33 the widest extent possible, all relevant instruments on international cooperation in
34 criminal matters and arrangements agreed on the basis of reciprocal legislation and
35 domestic laws, shall be given full force and effect for the purposes of investigations
36 or proceedings concerning criminal offenses related to computer systems and data, or
37 for the collection of evidence in the electronic form.

38 **SEC. 23. Implementing Rules and Regulations.** - Within one (1) year from
39 the effectivity of this Act, the BSP, in coordination with the Department of Justice
40 (DOJ), the Department of Information and Communications Technology (DICT), the
41 NBI, the PNP, the Cybercrime Investigation and Coordination Center (CICC), and the
42 Anti-Money Laundering Council (AMLC), and upon consultation with relevant

1 stakeholders, shall promulgate the rules and regulations to effectively implement the
2 provisions of this Act.

3 A cooperative mechanism shall be established among the Institutions, the BSP,
4 concerned government agencies and the private sector, to ensure the effective
5 enforcement of the provisions and prosecution of cases under this Act.

6 **SEC. 24. Separability Clause.** - If any provision of this Act is declared invalid
7 or unconstitutional, the remainder thereof not otherwise affected shall remain in full
8 force and effect.

9 **SEC. 25. Repealing Clause.** - All laws, presidential decrees, executive orders,
10 letters of instructions, proclamations or administrative regulations that are inconsistent
11 with the provisions of this Act are hereby repealed, amended or modified accordingly.

12 **SEC. 26. Effectivity.** - This Act shall take effect after fifteen days (15)
13 following its publication in the *Official Gazette* or in a national newspaper of general
14 circulation.

15 Approved,