

REFERRED To: JED 4/3/2023
(HOUSE)

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

March 31, 2023

FIRST

Regular Session, 2023

H. B. 23-40

A BILL FOR AN ACT

To amend the crime of misuse of financial instruments to include debit cards and assign a punishment.

**BE IT ENACTED BY THE 23RD NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Purpose.** The purpose of the Act is to update the offense of
2 misuse of financial instruments to include debit cards and to correct drafting errors
3 that removed the punishment assigned to that offense. In PL 20-85, the Legislature
4 repealed the offense of misuse of credit cards and redrafted the offense under the
5 title of misuse of financial instruments, adding other offenses as well. However,
6 drafting errors in that Act left out assignment of a punishment for the offense
7 involving credit cards and neglected to include debit cards. This Act restores the
8 punishment, expands the offense to include debit cards, permits the aggregation of
9 multiple losses and thereby fully authorizes prosecution under misuse of financial
10 instruments by credit or debit cards.

11 **Section 2. Amendment.** 6 CMC §1704 of the Commonwealth Code is
12 hereby amended to read as follows:

1 § 1704. Misuse of Financial Instruments.

2 (a) A person commits an offense if the person misuses a credit or debit card
3 to obtain property, services, or a valuable benefit from one or more individuals, any
4 governmental entity, a casino licensee, or a corporation or any other entity.

5 (b) A person misuses a credit or debit card if the person uses a credit or debit
6 card for the purpose of obtaining property, services, or a valuable benefit with
7 knowledge at the time of the transaction that:

8 (1) the card is stolen or forged; or

9 (2) the card has been revoked or cancelled; or

10 (3) the person using the card is unauthorized by the issuer; or

11 (4) the person using the card has obtained consent from the person in whose
12 name the card is issued by use of a threat of violence or bodily harm, physical
13 intimidation or physical coercion.

14 (c) A person commits an offense if the person who, willfully and with the
15 intent to defraud, signs, issues or passes a check, marker, or similar sight order for
16 the payment of money, to obtain:

17 (1) money;

18 (2) property;

19 (3) services;

20 (4) a valuable benefit, or

1 (5) the extension of credit in a business or consumer transaction or in a
2 transaction with a casino licensee in any Senatorial District in the Commonwealth
3 drawn upon any real or fictitious person, bank, firm, partnership, corporation or
4 depository, when the person has insufficient money, property or credit with the
5 drawee of the instrument to pay it in full upon its presentation ~~commits an offense~~
6 ~~of theft.~~

7 (d) In a criminal action arising out of or based on a violation of subsection
8 (c) of this section, the intent to defraud or engage in theft and knowledge that the
9 casino credit instrument, check or other similar sight order for payment will be
10 dishonored or not paid is presumed to exist if:

11 (1) the instrument is drawn on a purported account which does not exist; or

12 (2) a written demand for payment was sent to the maker by certified or
13 registered mail in accordance with 7 CMC § 2442 which demand shall contain the
14 conspicuous notices for treble damages and payment of attorney's fees and the
15 maker failed to pay the dishonored instrument in full plus any bank charges incurred
16 by the payee within 30 days of the maker's receipt of the mailing; or

17 (3) a mailing which complies with 7 CMC § 2442, but is returned because
18 of no delivery or the maker's failure to claim the mailing from the appropriate
19 postal authorities.

20 This presumption is not conclusive but is proof of intent and knowledge
21 which can be rebutted by the drawer or maker. This subsection shall not apply to

1 any post-dated check, post-dated marker, or other similar sight order for payment
2 which is post-dated.

3 (e) Except as otherwise provided in this subsection, a person commits an
4 offense if the person, who willfully and with the intent to defraud, signs a gaming
5 guarantee, promissory note, an IOU, a post-dated check, or makes any written
6 promise to pay on a future date, for purposes of obtaining:

7 (1) money;

8 (2) property;

9 (3) services;

10 (4) a valuable benefit, or

11 (5) the extension of credit in a business or consumer transaction or in a
12 transaction with a casino licensee in any Senatorial District in the Commonwealth
13 knowing that payment will not be made upon presentation or when due, is guilty of
14 the offense of theft.

15 In a criminal action arising out of or based on a violation of this subsection,
16 the intent to defraud or engage in theft will be presumed to exist if payment is not
17 made when due or upon presentment and remains unpaid for 30 days after payment
18 is due or after presentment. This presumption is not conclusive but is proof of intent
19 and knowledge which can be rebutted by the drawer or maker. For purposes of this
20 subsection, a payment not made when due or upon presentment shall immediately

1 begin accruing interest at the rate of 12% per annum and payment in full must
2 include payment of the accrued interest.

3 (f) With respect to any criminal action arising out of or based on a violation
4 of subsections (c) or (e):

5 (1) The presumption of intent and knowledge is not conclusive, but is proof
6 of intent and knowledge which can be rebutted by the preponderance of the
7 evidence at trial.

8 (2) The Attorney General's Office, upon written request from a casino
9 licensee in any senatorial district or any other person who is victimized by a
10 violation of a subsection (c) or (e), may, in its sole discretion, agree to pursue
11 criminal action against the alleged perpetrator. Any such written request must
12 involve a sum of \$100,000 or greater and must contain the following
13 representations:

14 (i) The debt is evidenced by a writing signed by the alleged perpetrator;

15 (ii) There has not been any violation of the Federal Fair Debt Collection
16 Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692o;

17 (iii) The prerequisite for establishing the rebuttal presumption of intent and
18 knowledge have been satisfied; and

19 (iv) The alleged perpetrator has signed an extradition waiver if the alleged
20 perpetrator resides outside the Commonwealth or is otherwise living outside of the
21 Commonwealth.

1 (3) Ten percent (10%) of the principal debt plus interest and liquidated
2 damages, if any, recovered as restitution or paid as part of a pre-trial disposition or
3 paid by the alleged perpetrator to the victim, directly or indirectly, after the
4 Attorney General has decided in writing to pursue a criminal action shall belong to
5 the Commonwealth. Of the ten percent (10%) due the Commonwealth, five percent
6 (5%) shall be paid to the general fund and five percent (5%) shall be retained by
7 the Office of the Attorney General for use solely for the recruitment and training if
8 its professional staff and the acquisition of office equipment and supplies.

9 (4) The amount of the loss for purposes of a criminal action brought
10 pursuant to subsection (c) shall be the treble damage amount allowable by 7 CMC
11 § 2442.

12 (5) A conviction under either subsection (c) or (e) shall be punishable by 6
13 CMC § 1601(b). In addition to any other penalty, the court shall order the convicted
14 person to pay restitution.

15 (g) A conviction under subsection (a) & (b) shall be punishable by
16 confinement for up to 4 years, a fine of up to \$1,500, or both. In addition to any
17 other penalty, the court shall order the convicted person to pay restitution.

18 ~~(6) If a complainant causes a criminal action to be commenced under~~
19 ~~subsection (c) or (e) but refuses to testify in the action or otherwise refuses to~~
20 ~~cooperate in the prosecution, then the complainant is presumed to have acted~~

1 ~~maliciously and without probable cause. This presumption is not conclusive but is~~
2 ~~subject to rebuttal by a preponderance of the evidence.~~

3 **Section 3. Severability.** If any provisions of this Act or the application of
4 any such provision to any person or circumstance should be held invalid by a court
5 of competent jurisdiction, the remainder of this Act or the application of its
6 provisions to persons or circumstances other than those to which it is held invalid
7 shall not be affected thereby.

8 **Section 4. Savings Clause.** This Act and any repealer contained herein
9 shall not be construed as affecting any existing right acquired under contract or
10 acquired under statutes repealed or under any rule, regulation, or order adopted
11 under the statutes. Repealers contained in this Act shall not affect any proceeding
12 instituted under or pursuant to prior law. The enactment of the Act shall not have
13 the effect of terminating, or in any way modifying, any liability, civil or criminal,
14 which shall already be in existence on the date this Act becomes effective.

15 **Section 5. Effective Date.** This Act shall take effect upon its approval by
16 the Governor, or it becoming law without such approval.

Prefiled: 3/31/2023

Date: 3/31/2023

Introduced by: _____

Rep. Marissa R. Flores

Reviewed for Legal Sufficiency by:

J. Maly 3.31.23
House Legal Counsel