

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 893



Introduced by Rep. MARIO VITTORIO "MARVEY" A. MARIÑO
5th District, Batangas

**AN ACT LIMITING THE LIABILITY OF A CARDHOLDER FOR
UNAUTHORIZED TRANSACTIONS IN CASES OF LOSS, FRAUD
OR THEFT OF CREDIT OR DEBIT CARDS, AMENDING FOR THE
PURPOSE REPUBLIC ACT NO. 10870**

EXPLANATORY NOTE

Scenario:

Juan Dela Cruz was issued a credit card by a certain bank. While he was in the mall, his wallet containing this credit card was pickpocketed. It was only when he was about to pay at a restaurant that he realized his wallet containing said credit card was missing. Prior reporting of the lost or stolen credit card, the thief successfully made several transactions using Juan Dela Cruz's credit card. Juan Dela Cruz alone is made to answer and pay for all these fraudulent and unauthorized charges. The merchant store has no liability whatsoever. The credit card issuer would simply say "the credit card holder is completely liable for any transactions made prior the reporting of the lost or stolen credit card".

Forget the fact that your wallet was stolen, that your credit card was used by the thief, that your signature was forged, that no identification card was asked to be presented, or that your credit card activity was highly suspicious. Under our current laws, you are solely liable.

For years, this has been the standard practice of credit card issuers—hold innocent cardholders liable for fraudulent and unauthorized transactions made prior to reporting of the lost or stolen credit card. While some credit card issuers are considerate enough to absolve innocent credit cardholders of liability, many still adhere to this standard practice as it has been reinforced by the recently enacted law, Republic Act (R.A.) No. 10870 entitled "An Act Regulating the Philippine Credit Card Industry".


Section 15 of R.A. No. 10870 provides that *in case a credit card is lost or stolen, any transaction made prior to reporting to the credit card issuer shall be for the account of the cardholder*. While some people still find logic in this provision, its absoluteness in holding cardholders liable runs contrary to the declared policy of the State to protect cardholders against unfair practices, credit card fraud and scams.

In countries like the United States of America and Malaysia, this practice of holding innocent cardholders liable for fraudulent and unauthorized transactions due to lost or stolen cards has long been abandoned. The Fair Credit Billing Act (FCBA), a United States federal law, limits the liability of cardholders for unauthorized charges to \$50. Nonetheless, some credit card companies, like Visa and Mastercard, often waive the \$50 liability.¹ In fact, both Visa² and Mastercard³ have zero liability protection for unauthorized transactions.

Clause 15.2 of Bank Negara's Credit Card Guidelines (BNM/RH/GL-041-01)(the "Guidelines"), on the other hand, provides that the cardholder's maximum liability for unauthorized transactions as a consequence of a lost or stolen credit card shall be limited to the specified by the issuer of credit cards, which shall not exceed RM250, provided the cardholder has not acted fraudulently or has not failed to inform the issuer of credit cards as soon as reasonably practicable after having found that his credit card is lost or stolen.⁴

It is time we follow suit and give this needed protection to the public.

In view of the foregoing, immediate passage of this bill is earnestly requested.


MARIO VITTORIO "MARVEY" A. MARIÑO

¹ Dilworth, K. (June 5, 2015). *Your Rights Under the Fair Credit Billing Act*. Retrieved on April 12, 2018 from <https://www.creditcards.com/credit-card-news/fair-credit-billing-act-1282.php>

² Visa. *Zero Liability*. Retrieved on April 16, 2018 from <https://www.visa.com/chip/personal/security/zero-liability.jsp>

³ SEA Mastercard. *Zero Liability Protection*. Retrieved on April 16, 2018 from <https://sea.mastercard.com/en-region-sea/consumers/payment-technologies/safety-and-security/zero-liability-protection.html>

⁴ Skrine Law Firm. *Liability on Unauthorized Credit Card Charges*. Retrieved April 12, 2018 from http://www.skrine.com/home/index.php?option=com_content&view=article&id=500&Itemid=717

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

SECTION 1. Section 3 of Republic Act No. 10870 is amended to read as follows:

"Sec. 3. *Scope and Coverage.* – This Act shall govern all credit AND DEBIT card issuers, acquirers and all credit AND DEBIT card transactions.

SECTION 2. Section 5 of Republic Act No. 10870 is amended to read as follows:

"Sec 5. *Definition of terms.* – As used in this Act, the following terms are defined as follows:

(s) xxx

(t) *Card fraud* is a wide-ranging term for theft and fraud committed using a credit or debit card or any similar payment mechanism as a fraudulent source of funds. The purpose is to obtain unauthorized funds from a credit card holder's account. It is also adjunct to identity theft.

(u) *Debit card* is a plastic payment card that can be used instead of cash when making purchases. It is similar to a credit card, but unlike a credit card, the money comes directly from the user's bank account when performing a transaction.

(v) *Reasonable time* is defined as so much time as is necessary under the circumstances for a reasonable prudent and diligent man to do, conveniently, what the contract or duty requires should be done,

having a regard for the rights, and possibility of loss, if any, to the other party.⁵”

SECTION 3. Section 8 of Republic Act No. 10870 is amended to read as follows:

“Sec. 8. *Service Level Agreement* – There shall be, in the service level agreement between the acquiring banks and their partner merchants, a provision requiring merchants to perform due diligence to establish identity of the cardholders.

THE IDENTITY OF A CARDHOLDER SHALL BE ASCERTAINED BY REQUIRING THE PRESENTATION OF A VALID IDENTIFICATION CARD, A COMPARISON OF THE NAME AND SIGNATURE ON THE CREDIT CARD WITH THE NAME AND SIGNATURE ON THE ID PRESENTED BY THE CARDHOLDER, OR SOME OTHER MEANS OF AUTHENTICATING THE IDENTITY OF THE CARDHOLDER.

Nothing in this Act shall preclude a card issuer from verifying or seeking confirmation with the cardholder any purchase if in their assessment there is reasonable concern as to the validity of the purchase.”

SECTION 4. A new section designated as Sec. 8-A is hereby inserted to read as follows:

Sec. 8-A. *Liability of Partner Merchants* – Merchants shall bear the loss for failure to observe the due diligence required under Section 8 in ascertaining the identity of a cardholder in case of unauthorized transactions due to lost or stolen credit or debit cards and other cases of card fraud.

SECTION 5. Section 11 of Republic Act No. 10870 is amended to read as follows:

“Sec. 11. *Information to be Disclosed*. – A credit card issuer shall disclose to all credit cardholders and potential credit cardholders the following information:

xxx

(h) xxx

(i) A CLEAR AND PROPER DESCRIPTION OF THE MEANS BY WHICH THE CARD ISSUER MAY BE NOTIFIED OF THE LOSS OR THEFT OF CREDIT OR DEBIT CARD. THE TELEPHONE NUMBER DEDICATED SOLELY FOR REPORTING LOSS OR

⁵ *Far East Realty Investment, Inc. v. Court of Appeals*, 248 Phil. 497, 503-504 (1988)

THEFT OF CREDIT OR DEBIT CARDS SHALL BE PRINTED IN THE TERMS AND CONDITIONS AND BILLING STATEMENT.

(j) A REMINDER TO THE CARDHOLDER IN THE TERMS AND CONDITIONS AND BILLING STATEMENT THAT THE FAILURE TO REPORT THE LOSS OR THEFT OF A CREDIT OR DEBIT CARD WITHIN REASONABLE TIME WOULD RESULT TO POTENTIAL LIABILITY FOR UNAUTHORIZED TRANSACTIONS.

(k) Any other information that may be required by the BSP.

xxx”

SECTION 6. Section 15 of Republic Act No. 10870 is amended to read as follows:

Sec. 15. *Lost or Stolen Card.* – In case a card is lost or stolen, a cardholder incurs no liability from the unauthorized use of a card: *Provided*, that the cardholder does not act fraudulently: *Provided further*, that the cardholder reports the loss or theft of the card within reasonable time: *Provided, finally*, that the cardholder has not reported two or more incidents of unauthorized use in the immediately preceding 12-month period.

SECTION 7. A new section designated as Sec. 15-A is hereby inserted to read as follows:

Sec. 15-A. *Burden of proof.* In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions set forth in Section 15 have not been met.

SECTION 8. A new section designated as Sec. 15-B is hereby inserted to read as follows:

Sec. 15-B. *Card Security Features* – To protect cardholders from fraudulent and unauthorized transactions, card issuers shall establish card security features such as but not limited to the following:

- a. A PIN-enabled card allowing the cardholder to make purchases only by keying in a 4 or 6-digit PIN.
- b. Transaction notification alerting cardholders of their recent transactions and charges via SMS, e-mail or other electronic means.
- c. Transaction validation requiring cardholders to validate recent transactions or charges via SMS, e-mail or other electronic means.

SECTION 9. *Repealing Clause.* – All laws, decrees, executive orders, memorandum circulars inconsistent with the provisions of this Act are hereby amended, repealed or modified accordingly.

SECTION 10. *Effectivity.* – This act shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,