

THE LAW REFORM (FRADULENT TRANSACTIONS)
(SPECIAL PROVISIONS) ACT

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THE LAW REFORM (FRAUDULENT TRANSACTIONS)
(SPECIAL PROVISIONS) ACT

Acts
8 of 2013,
3 of 2014
3rd. Sch.

[28th March, 2013.]

PART I. *Preliminary*

1. This Act may be cited as the Law Reform (Fraudulent Transactions) (Special Provisions) Act.

Short title

2. In this Act—

Interpretation

“access device” means any card, plate, code, account-number, electronic serial number, mobile identification number, personal identification number and any other means of access that can be used alone or with another device, to obtain a benefit or other thing of value, or that can be used to initiate a transfer of money;

“benefit” includes any property, service or advantage;

“Court” means a Circuit Court;

“criminal organization” means any gang, group, alliance, network, combination or other arrangement among three or more persons (whether formally or informally affiliated or organized or whether or not operating through one or more bodies corporate or other associations)—

3 of 2014
3rd Sch

(a) that has as one of its purposes the commission of one or more serious offences; or

(b) in relation to which the persons who are a part thereof or participate therein (individually, jointly or collectively) issue threats or engage in violent conduct to—

(i) create fear, intimidate, exert power or gain influence in communities, or over other persons, in furtherance of unlawful activity; or

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- (ii) obtain, directly or indirectly, a financial or other material benefit.

“document” means anything in which information of any description is recorded;

“false pretence” means a representation of a matter of fact either present or past, made by words or otherwise, that is known by the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on the representation;

“property” means all property wherever it is situated including—

- (a) money;
- (b) all forms of real property or personal property; and
- (c) things in action and other intangible or incorporeal property.

PART II. *Offences*

Offence of obtaining property by a false pretense, etc

3.—(1) Notwithstanding anything contained in any other law, a person commits an offence where that person by a false pretense, whether directly or indirectly, through the medium of a contract or other arrangement, entered into by a false pretense—

- (a) obtains from any other person, any property for himself or any other person; or
- (b) induces any other person to deliver to him or any other person, any property.

(2) A person commits an offence where that person, by a false pretense, induces any other person to confer a benefit on him or on any other person by doing or permitting a thing to be done, on the understanding that the benefit has been or will be paid for or some other benefit would be provided in exchange.

(3) The references in subsections (1) and (2) to any other person are references to such other person, whether that

person is at the time of the commission of the offence within or outside Jamaica.

4. A person commits an offence where that person, by a false pretense, invites or otherwise induces any other person to visit Jamaica for any purpose connected with the commission of an offence under this Act.

Offence of inviting a person to visit Jamaica by a false pretense.

5. The owner, occupier or any other person responsible for the management of any premises, commits an offence where that owner, occupier or other person knowingly causes or knowingly permits the premises to be used for any purpose which constitutes an offence under this Act.

Offence of using premises for purposes which constitute an offence under Act.

6.—(1) A person commits an offence where that person, being in Jamaica, uses or causes to be used, an access device or other means, to transfer or transport, attempt to transfer or transport or cause to be transferred or transported, money or a monetary instrument—

Offence of using an access device to transfer or transport money or monetary instrument.

- (a) from a place in Jamaica to or through a place outside Jamaica;
- (b) to a place in Jamaica from or through a place outside Jamaica;
- (c) from a place outside Jamaica to another place outside Jamaica; or
- (d) from a place inside Jamaica to another place inside Jamaica,

if the person knows or has reasonable grounds to believe, that the money or the monetary instrument involved in such transfer or transportation constitutes or is substantially related to the proceeds of some form of unlawful activity.

(2) For the purposes of this section—

“monetary instrument” means a note, coin or other item that constitutes the currency of Jamaica or of any State other than Jamaica, a traveller’s cheque, personal cheque, bank cheque, money order, invest-

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ment security in bearer form or otherwise in such form that title thereto passes upon delivery;

“proceeds” in relation to any unlawful activity means any property derived or obtained, directly or indirectly through the carrying out of that activity;

“unlawful activity” means—

- (a) any act or activity constituting an offence under this Act; or
- (b) an offence against the laws of a State other than Jamaica involving obtaining property by fraud, where the acts constituting the offence are committed in whole or in part in Jamaica, and those acts would, if they had taken place entirely in Jamaica, also constitute an offence against the laws of Jamaica.

Offence of threatening or intimidating a person involved in a criminal investigation or trial of an offence

7. A person commits an offence where that person, with the intent to interfere with or otherwise affect a criminal investigation or a trial of an offence committed under this Act, threatens, intimidates, causes any injury or attempts to cause any injury, to a person who is involved, in any form or manner, in the criminal investigation or trial.

Offences relating to theft, forgery, etc., of access device

8.—(1) A person commits an offence where that person—

- (a) steals an access device;
- (b) forges or falsifies an access device;
- (c) possesses, uses or trafficks in an access device or a forged or falsified access device, knowing that it was obtained, made or altered—
 - (i) by an act or omission constituting an offence under this Act or any other law; or
 - (ii) by an act or omission in a State other than Jamaica where such act or omission, had it occurred in Jamaica, would have constituted an offence against the laws of Jamaica; or

(d) uses an access device knowing that it has been revoked or cancelled with the intent to commit an offence under this Act or any other law.

(2) A person commits an offence where that person fraudulently possesses, uses, trafficks in or permits another person to use any data from an access device (whether or not the data is authentic), that would enable such other person to use the access device or to obtain the services that are provided by the issuer of the access device.

(3) For the purposes of this section “traffick” means, in relation to an access device or any data derived from an access device, to sell, export from or import into Jamaica, distribute or deal with in any other way.

9. A person commits an offence where that person, without lawful justification or excuse, makes, repairs, buys, sells, exports from or imports into Jamaica, or possesses any instrument, device, apparatus, material or thing that he knows has been used or knows is adapted for use or intended for use—

Offences of making, repairing, buying, etc thing for copying data from an access device or forging or falsifying an access device

(a) in the copying of any data from an access device for use in the commission of an offence under this Act; or

(b) in the forging or falsifying of an access device.

10.—(1) A person commits an offence where that person knowingly obtains or possesses identity information of any other person in circumstances which give rise to a reasonable inference that the information has been used or is intended to be used to commit an offence under this Act or any other law.

Offences of knowingly obtaining or possessing, transmitting, distributing, etc identity information of a person

(2) A person commits an offence where that person transmits, makes available, distributes, sells or offers for sale, identity information of any other person, or has it in his possession in circumstances giving rise to a reasonable inference that the information has been used or is intended to be used to commit an offence under this Act or any other law.

(3) For the purposes of this section, “identity information” means any information, including—

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- (a) a fingerprint, voice print, retina image, iris image, DNA profile, or any other biological or physiological information; or
- (b) a name, address, date of birth, written signature, electronic signature, e-mail address, digital signature, user name, credit card number, debit card number, financial institution account number, health insurance number, driver's licence number, telephone number, taxpayer registration number, social security number, or any other unique personal identification number, or password,

being information of a type that is used, alone or in combination with other information, to identify or purport to identify an individual, whether living or dead.

Offence of
obtaining a
benefit by
menace

11.—(1) A person commits an offence where that person by use of telephony or any other electronic communication system, makes any demand with menaces on another person—

- (a) with a view to obtaining a benefit for himself or any other person; or
- (b) with the intent to cause loss to any other person.

(2) For the purposes of this section—

“data” means material in whatever form stored in an electronic communication system;

“electronic communication system” means a system for creating, generating, sending, receiving, storing, displaying or otherwise processing electronic documents or data;

“electronic document” means information that is created, generated, communicated, stored, displayed or processed by electronic means.

- 12.—(1) A person commits an offence where that person—
- (a) conspires with, aids, abets, counsels or procures any other person to commit an offence under this Act;
or
 - (b) incites or induces any other person by whatever means to commit an offence under this Act.

Conspiring to
commit,
aiding, etc.,
offence under
this Act.

(2) Where a false pretense which constitutes an element of an offence under this Act is contained in a document, a charge of an attempt to commit the offence shall not fail by reason only that the document was not received by the person to whom the false pretense was directed.

(3) Notwithstanding anything to the contrary in any other law, every act or thing done or omitted to be done by a person to facilitate the commission by him of an offence under this Act shall constitute an attempt to commit the offence.

13.—(1) A person who commits an offence under this Act shall be liable, on conviction on indictment in a Circuit Court, to the penalty specified in relation thereto in the second column of the Schedule.

Offences
and
penalties
Schedule.

(2) The Court may, in imposing a sentence under subsection (1), consider the following—

- (a) the age of the victim;
- (b) whether the victim suffers from a physical disorder or a mental disorder within the meaning of the *Mental Health Act*;
- (c) whether menaces were used in the commission of the offence;
- (d) whether persistent badgering or aggression was used in the commission of the offence; and
- (e) any other matter which the Court considers relevant.

PART III. *Enforcement Provisions*

Committal for trial without preliminary examination and trial without jury.

14.—(1) Where a person is charged with an offence under this Act, the person shall be committed for trial without any preliminary examination and shall be tried before a Judge of the Circuit Court sitting alone, without a jury.

(2) In this section, “preliminary examination” includes any proceedings, by whatever name called, for determining the committal of a person for trial.

Possession of property not accounted for.

15. In a trial for an offence under this Act, the fact that a person—

(a) is in possession of property for which he cannot satisfactorily account and which is disproportionate to his known sources of income; or

(b) had at or about the time of the commission of the alleged offence, obtained an accretion to his property for which he cannot satisfactorily account,

may be taken into consideration by the Court and is admissible as evidence to the extent relevant to any issue in the trial.

Powers of search and seizure.

16.—(1) Where a Justice of the Peace is satisfied by information on oath, and such further information as he may in the circumstances require, that there are reasonable grounds for suspecting that evidence of or relating to an offence under this Act is to be found on any premises specified in the information, he may issue a warrant in accordance with subsection (2).

(2) A warrant issued under this section may authorize a constable named therein, with such assistance as is reasonably necessary, and by the use of reasonable force, to—

(a) enter the premises and search for evidence of, or relating to, an offence under this Act; and

(b) seize property found in the course of the search that the constable believes, on reasonable grounds, to be

evidence of, or relating to, an offence under this Act.

17.—(1) In addition to any other penalty under this Act, the Court shall order a person convicted of an offence under this Act to make restitution to the victim of the offence by directing the person convicted—

- (a) where the property involved is money, to pay to the victim an amount equivalent to the loss sustained by the victim, which amount shall include any interest income which may otherwise have accrued for the period during which the person was deprived of his property; or
- (b) in any other case—
 - (i) to return the property to the victim or to a person designated by the victim; or
 - (ii) to pay an amount equal to the value of the property, where the return of the property is impossible or impracticable.

(2) An order of restitution may be enforced by the victim or by the prosecution on behalf of the victim in the same manner as a judgment in a civil action.

(3) Where a victim is deceased, the personal representative of the victim shall be entitled to receive restitution pursuant to an order made by the Court.

(4) For the purposes of this section, “personal representative” means the executor, administrator or heir of a deceased person.

PART IV. *General*

18.—(1) The Minister may make regulations generally for the proper administration of and giving effect to the provisions of this Act.

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(2) Regulations made under this Act may provide for the imposition of penalties, on conviction, of a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or of both such fine and imprisonment.

(3) Regulations made under this section shall be subject to affirmative resolution.

Power of
Minister to
amend
monetary
penalties.

19. The Minister may, by order, subject to affirmative resolution, amend any monetary penalty prescribed by this Act.

Review of
Act.

20. A review of this Act shall be conducted no later than five years after the commencement of this Act, by a committee of both Houses of Parliament appointed for the purpose.

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SCHEDULE

(Section 13)

Offences and Penalties

<u>First Column</u>		<u>Second Column</u>
<u>Brief Description of Offence</u>	<u>Relevant Section</u>	<u>Penalty (maximum on conviction) in Circuit Court</u>
1. Offence of obtaining property by a false pretense, <i>etc.</i>	3	Fine or imprisonment not exceeding twenty years or both such fine and imprisonment
2. Offence of inviting a person by a false pretense	4	Fine or imprisonment not exceeding twenty years or both fine and imprisonment
3. Offence of using premises for purposes which constitute an offence	5	Fine or imprisonment not exceeding fifteen years
4. Offence of transporting or attempting to transport money or a monetary instrument	6(1)	Fine or imprisonment not exceeding twenty years or both such fine and imprisonment
5. Offence of threatening, intimidating, causing injury, <i>etc.</i> , to a person	7	Imprisonment not exceeding twenty-five years
6. Offences relating to theft, forgery, possession, using, trafficking, <i>etc.</i> , of access device	8	Fine or imprisonment not exceeding fifteen years or both such fine and imprisonment
7. Offence of making, repairing, buying, selling, <i>etc.</i> , instruments, <i>etc.</i> , for copying access device, <i>etc.</i>	9	Fine or imprisonment not exceeding twenty years or both such fine and imprisonment

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SCHEDULE, *cont'd.*

First Column		Second Column
Brief Description of Offence	Relevant Section	Penalty (maximum on conviction) in Circuit Court
8. Offence of obtaining or possessing identity information	10(1)	Fine or imprisonment not exceeding fifteen years or both such fine and imprisonment
9. Offence of transmitting, making available, distributing, selling or offering for sale or possessing the identity information of any other person	10(2)	Fine or imprisonment not exceeding fifteen years or both such fine and imprisonment
10. Offence of obtaining a benefit by menace	11(1)	Imprisonment for a term not exceeding twenty years
11. Offence of conspiring, aiding, <i>etc.</i> , commission of offence	12	Imprisonment not exceeding fifteen years