

HB181 INTRODUCED



1 G3KECC-1
2 By Representatives Butler, Harrison, Yarbrough, Standridge,
3 Gidley, Lamb, Shirey, Hammett
4 RFD: Financial Services
5 First Read: 22-Mar-23
6



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SYNOPSIS:

Under existing law, a financial institution is not expressly prohibited from disclosing a customer's financial records in general, nor is it prohibited from disclosing its payment card records related to transactions categorized as firearms transactions.

This bill would establish the Second Amendment Financial Privacy Act prohibiting a financial institution from disclosing a customer's payment card records related to firearm transactions, with certain exceptions, and from engaging in certain discriminatory conduct toward a merchant or customer engaged in these transactions.

This bill would also amend existing law to expressly prohibit a bank or other financial institution from disclosing a customer's financial records, with certain exceptions.

This bill would allow the Department of Finance to disqualify a financial institution from the competitive bidding process for state contracts due to the institution's admitted violation of the act or the institution's public statements of its intent to enact policies that would violate the act.

This bill would establish civil penalties for violating the act.



HB181 INTRODUCED

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

A BILL
TO BE ENTITLED
AN ACT

Relating to financial institutions; to amend Section 5-5A-43, Code of Alabama 1975, to prohibit financial institutions from disclosing certain customer financial records of firearms transactions with certain exceptions; to allow the Department of Finance to disqualify a financial institution from any selection process for state contracts for violation of this prohibition; and to provide civil penalties and criminal penalties for violation of the act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This section shall be known and may be cited as the Second Amendment Financial Privacy Act.

Section 2. (a) The Legislature finds and declares all of the following:

(1) The Second Amendment to the United States Constitution guarantees the people the right to keep and bear arms.

(2) Section 26 of the Constitution of Alabama of 2022 provides that "Every citizen has a fundamental right to bear arms in defense of himself or herself and the state. Any restriction of this right shall be subject to scrutiny."



HB181 INTRODUCED

57 (3) In September of 2022, the world's three largest
58 payment card networks publicly announced they would assign a
59 unique merchant category code to firearms retailers accepting
60 payment cards for purchases, after 28 members of Congress sent
61 a public letter to the networks, pressuring them to adopt the
62 new code.

63 (4) In the letter to payment card networks, federal
64 lawmakers stated that the new merchant category code for
65 firearms retailers would be "...the first step towards
66 facilitating the collection of valuable financial data that
67 could help law enforcement in countering the financing of
68 terrorism efforts," expressing a clear government expectation
69 that networks will utilize the new Merchant Category Code to
70 conduct mass surveillance of constitutionally protected
71 firearms and ammunition purchases in cooperation with law
72 enforcement.

73 (5) The new merchant category code will allow the
74 banks, payment card networks, acquirers, and other entities
75 involved in payment card processing to identify and separately
76 track lawful payment card purchases at firearms retailers in
77 Alabama, paving the way for both unprecedented surveillance of
78 Second Amendment activity and unprecedented information
79 sharing between financial institutions and the government.

80 (6) This potential for cooperative surveillance and
81 tracking of lawful firearms and ammunition purchases will have
82 a significant chilling effect on citizens wishing to exercise
83 their federal and state constitutional rights to keep and bear
84 arms in the state.



HB181 INTRODUCED

85 (7) While federal law requires some financial
86 institutions to report transactions that are highly indicative
87 of money laundering or other unlawful activities, there is no
88 federal or state law authorizing financial institutions to
89 surveil and track lawful activities by customers in
90 cooperation with law enforcement. The federal Right to
91 Financial Privacy Act prohibits financial institutions from
92 disclosing customers' financial records except in limited
93 circumstances, and Section 5-5A-43, Code of Alabama 1975,
94 allows banks to disclose customers' financial records under
95 limited circumstances.

96 (b) Based on the above stated findings, it is the
97 intent of the Legislature to prohibit the misuse of payment
98 card processing systems to surveil, report, or otherwise
99 discourage constitutionally protected firearm and ammunition
100 purchases within Alabama's jurisdiction.

101 Section 3. As used in this act, the following words
102 have the following meanings:

103 (1) ASSIGN or ASSIGNMENT. A policy, process, or
104 practice of a financial institution which labels, links, or
105 otherwise associates a firearms code with a merchant or
106 payment card transaction in a manner that allows the financial
107 institution or any other entity facilitating or processing the
108 payment card transaction to identify whether a merchant is a
109 firearms retailer or whether a transaction involves the sale
110 of firearms or ammunition.

111 (2) CUSTOMER. Includes any person engaged in a payment
112 card transaction that a financial institution facilitates or



HB181 INTRODUCED

113 processes.

114 (3) DISCLOSURE. The transfer, publication, or
115 distribution of protected financial information to another
116 person for any purpose other than to process or facilitate a
117 payment card transaction.

118 (4) FINANCIAL INSTITUTION. Includes any entity involved
119 in facilitating or processing a payment card transaction,
120 including, but not limited to, a bank, acquirer, gateway,
121 payment card network, or payment card issuer.

122 (5) FINANCIAL RECORD. Includes any financial record
123 held by a financial institution related to a payment card
124 transaction that the financial institution has processed or
125 facilitated.

126 (6) FIREARMS CODE. Any code or other indicator a
127 financial institution assigns to a merchant or to a payment
128 card transaction which identifies whether a merchant is a
129 firearms retailer or whether the payment card transaction
130 involves the purchase of a firearm or ammunition. The term
131 includes, but is not limited to, a merchant category code
132 assigned to a retailer by a payment card network or other
133 financial institution.

134 (7) FIREARMS RETAILER. Any person engaged in the lawful
135 business of selling or trading firearms as defined in Section
136 13A-8-1, Code of Alabama 1975, or antique firearms, or
137 ammunition to be used in firearms.

138 (8) GOVERNMENT ENTITY. Any state or local government
139 agency or instrumentality thereof, located in the state.

140 (9) MERCHANT CATEGORY CODE. A four-digit code assigned



HB181 INTRODUCED

141 by a payment card network or other financial institution to a
142 retailer based on the types of goods and services offered to
143 its customers.

144 (10) PROTECTED FINANCIAL INFORMATION. Any record of a
145 sale, purchase, return, or refund involving a payment card
146 which is retrieved, characterized, generated, labeled, sorted,
147 or grouped based on the assignment of a firearms code.

148 Section 4. (a) Except as provided in Section 5-5A-43,
149 Code of Alabama, 1975, a financial institution may not
150 disclose a customer's protected financial information unless
151 the protected financial information is not singled out,
152 segregated, or disclosed based on the assignment of a firearms
153 code.

154 (b) (1) Notwithstanding subsection (a), a financial
155 institution may disclose a customer's protected financial
156 information if the customer provides the financial institution
157 with written authorization for the disclosure. The required
158 written authorization must include all of the following:

159 a. A statement that the customer consents to the
160 disclosure of the protected financial information for a
161 specified period.

162 b. A statement that the customer has the right to
163 refuse to consent to disclosure.

164 c. A statement that the customer understands his or her
165 right to revoke the consent at any time before the protected
166 financial information is disclosed.

167 d. A description of the financial records authorized to
168 be disclosed.



HB181 INTRODUCED

169 e. The purpose for which disclosure of the protected
170 financial information is authorized.

171 (2) The written authorization described in this
172 subsection may not be required as a condition of doing
173 business or transacting with any financial institution.

174 (c) (1) If a subpoena issued by a government entity
175 requires disclosure of a customer's protected financial
176 information, a financial institution may only disclose the
177 information if the subpoena meets the requirements of Rule 45
178 of the Alabama Rules of Civil Procedure.

179 (2) A subpoena issued by a government entity that
180 specifically requires disclosure of protected financial
181 information must meet both of the following requirements:

182 a. The subpoena must state that protected financial
183 information is being sought.

184 b. A copy of the subpoena must be served upon the
185 customer according and the subpoena must contain a
186 certification that the service was executed.

187 (d) A financial institution may not engage in any of
188 the following discriminatory conduct on the basis of a
189 firearms code:

190 (1) Declining a lawful payment card transaction based
191 on the assignment of a firearms code to the merchant or
192 transaction.

193 (2) Limiting or declining to do business with a
194 customer or potential customer based on the assignment of a
195 firearms code to previous lawful transactions involving the
196 customer or potential customer.



HB181 INTRODUCED

197 (3) Charging a higher transaction or interchange fee to
198 any merchant or for a lawful transaction, as compared to the
199 fee charged to a similarly situated merchant or for a similar
200 transaction, based on the assignment of a firearms code.

201 (4) Taking any other action against a customer or
202 merchant that is intended to suppress lawful commerce
203 involving firearms or ammunition.

204 Section 5. (a) A customer may bring a civil action for
205 damages against any financial institution or government entity
206 that causes the customer's protected financial information to
207 be disclosed in violation of this act. For each violation a
208 customer may recover any of the following:

209 (1) The greater of five thousand dollars (\$5,000) or
210 actual damages against any person who negligently or
211 recklessly violates this act.

212 (2) The greater of twenty thousand dollars (\$20,000) or
213 actual damages against any person who intentionally violates
214 this act.

215 (b) If a court finds that a violation of this act has
216 occurred as the result of a civil action filed pursuant to
217 subsection (a), the court shall award reasonable attorney fees
218 to the aggrieved party. A court may order such other relief,
219 including an injunction,
220 as the court may consider appropriate.

221 (c) It shall not be a defense to a civil action filed
222 pursuant to this section that the information was disclosed to
223 a federal government entity, if the disclosure is neither
224 required nor authorized by federal law or regulation.



HB181 INTRODUCED

225 (d) Any action under this section is barred unless the
226 action is commenced within five years after the violation
227 occurs.

228 (e) The remedies provided in this section are the
229 exclusive remedies for violations of this act.

230 Section 6. In selecting a financial institution to
231 provide a financial service or product to the state related to
232 payment card processing, the Department of Finance may
233 disqualify a financial institution from the competitive
234 bidding process or from any other official selection process
235 for any of the following reasons:

236 (1) A court of competent jurisdiction has entered an
237 order or opinion finding that the financial institution
238 violated this act at any time during a period of up to five
239 years immediately preceding the competitive bidding process or
240 selection process.

241 (2) The financial institution has admitted to violating
242 this act in the records of a court or other official
243 proceeding during a period of up to five years immediately
244 preceding the beginning of the competitive bidding process or
245 the selection process.

246 (3) The financial institution has publicly stated that
247 it has adopted or intends to adopt policies or practices that
248 violate this act.

249 Section 7. Section 5-5A-43, Code of Alabama 1975, is
250 amended to read as follows:

251 "§5-5A-43

252 (a) A bank or other financial institution as the term



HB181 INTRODUCED

253 is defined in Section 5-23-1, shall not disclose financial
254 records of its customers except pursuant to a lawful subpoena,
255 summons, warrant, or court order issued by or at the request
256 of any state agency, political subdivision, instrumentality,
257 or officer or employee thereof and served upon the
258 ~~bank~~financial institution. No ~~bank~~financial institution,
259 director, officer, employee, or agent thereof shall be held
260 civilly or criminally responsible for disclosure of financial
261 records pursuant to a subpoena, summons, warrant, or court
262 order which on its face appears to have been issued upon
263 lawful authority.

264 (b) Any person aggrieved by a violation of this section
265 may bring a civil action for thirty thousand dollars (\$30,000)
266 or actual damages, whichever is greater."

267 Section 8. This act shall become effective immediately
268 upon its passage and approval by the Governor, or upon its
269 otherwise becoming a law.

270

271