

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4
5 By: Representative Long

A Bill

HOUSE BILL 1620

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING FINANCIAL
9 INSTITUTIONS; TO CREATE THE SECOND AMENDMENT
10 FINANCIAL PRIVACY ACT; TO PROHIBIT FINANCIAL
11 INSTITUTIONS FROM USING CERTAIN FIREARM CODES TO
12 ENGAGE IN DISCRIMINATION; TO PROVIDE FOR ENFORCEMENT
13 FOR VIOLATIONS; AND FOR OTHER PURPOSES.

Subtitle

16 TO CREATE THE SECOND AMENDMENT FINANCIAL
17 PRIVACY ACT; TO PROHIBIT FINANCIAL
18 INSTITUTIONS FROM USING CERTAIN
19 DISCRIMINATORY PRACTICES; AND TO PROVIDE
20 FOR ENFORCEMENT OF VIOLATIONS.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25
26 SECTION 1. Arkansas Code Title 23, Chapter 32, is amended to add an
27 additional subchapter to read as follows:

28 Subchapter 6 – Second Amendment Financial Privacy Act

29
30 23-32-601. Title.

31 This subchapter shall be known and may be cited as the "Second
32 Amendment Financial Privacy Act".

33
34 23-32-602. Legislative findings and intent.

35 (a) The General Assembly finds that:

36 (1) The Second Amendment to the United States Constitution



1 guarantees the people the right to keep and bear arms;

2 (2) Article 2, § 5 of the Arkansas Constitution provides that
3 "The citizens of this State shall have the right to keep and bear arms, for
4 their common defense";

5 (3) In September 2022, the International Organization for
6 Standardization, headquartered in Switzerland, approved a new merchant
7 category code for firearm and ammunition merchants;

8 (4) In a letter to payment card networks, federal lawmakers
9 stated that the new merchant category code for firearms retailers would be
10 "...the first step towards facilitating the collection of valuable financial
11 data that could help law enforcement in countering the financing of terrorism
12 efforts", expressing a clear government expectation that networks will
13 utilize the new merchant category code to conduct mass surveillance of
14 constitutionally protected firearms and ammunition purchases in cooperation
15 with law enforcement;

16 (5) The new merchant category code will allow the financial
17 institutions, payment card networks, acquirers, and other entities involved
18 in payment card processing to identify and separately track lawful payment
19 card purchases at firearms retailers in this state, paving the way for both
20 unprecedented surveillance of Second Amendment activity and unprecedented
21 information sharing between financial institutions and the government;

22 (6) This potential for cooperative surveillance and tracking of
23 lawful firearms and ammunition purchases will have a significant chilling
24 effect on citizens wishing to exercise their federal and state constitutional
25 rights to keep and bear arms in this state;

26 (7) While federal law requires some financial institutions to
27 report transactions that are highly indicative of money laundering or other
28 unlawful activities, there is no federal or state law authorizing financial
29 institutions to surveil and track lawful activities by customers in
30 cooperation with law enforcement; and

31 (8) The creation or maintenance of records of purchases of
32 firearms or ammunition or the tracking of sales made by a firearms retailer
33 or ammunition retailers by a nongovernmental entity, including a financial
34 institution, without a substantial and historical business need or a
35 requirement imposed by law, may frustrate the right to keep and bear arms and
36 violate the reasonable privacy rights of lawful purchasers of firearms or

1 ammunition.

2 (b) It is the intent of the General Assembly, based on the findings in
 3 subsection (a) of this section, to prohibit the misuse by financial
 4 institutions of payment card processing systems to surveil, report, or
 5 otherwise discourage constitutionally protected firearm and ammunition
 6 purchases within this state.

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 8 23-32-603. Definitions.

9 As used in this subchapter:

10 (1) "Assign" means a financial institution policy, process, or
 11 practice that labels, links, or otherwise associates a firearms code with a
 12 merchant or payment card transaction in a manner that allows the financial
 13 institution or any other entity facilitating or processing the payment card
 14 transaction to identify whether a merchant is a firearms retailer or whether
 15 a transaction involves the sale of firearms or ammunition;

16 (2) "Customer" means any person engaged in a payment card
 17 transaction that a financial institution facilitates or processes;

18 (3) "Depository institution" means:

19 (A) A depository institution as defined in 12 U.S.C. §
 20 1813(c)(1), as it existed on January 1, 2023; or

21 (B) An insured credit union as defined in 12 U.S.C. §
 22 1752(7), as it existed on January 1, 2023;

23 (4) "Disclosure" means the transfer, publication, or
 24 distribution of protected financial information to another person or entity
 25 for any purpose other than to process or facilitate a payment card
 26 transaction;

27 (5)(A) "Financial institution" means an entity involved in
 28 facilitating or processing a payment card transaction.

29 (B) "Financial institution" includes:

30 (i) An acquirer;

31 (ii) A payment card network;

32 (iii) A payment card issuer;

33 (iv) A depository institution;

34 (v) A trust company;

35 (vi) A savings bank;

36 (vii) A person subject to the jurisdiction of the:

1 (a) United States Securities and Exchange
 2 Commission;

3 (b) Bank Commissioner under the Arkansas
 4 Banking Code of 1997, chapters 45-50 of this title;

5 (c) Securities Commissioner under the Arkansas
 6 Securities Act, § 23-42-101 et seq.; or

7 (d) Insurance Commissioner under the Arkansas
 8 Insurance Code; or

9 (viii) Any other institution that:

10 (a) Holds and receives deposits, savings, or
 11 share accounts;

12 (b) Issues certificates of deposit;

13 (c) Provides to its customers any deposit
 14 accounts subject to withdrawal by check, instrument, order, or electronic
 15 means to effect third-party payments;

16 (d) Provides insurance services; or

17 (e) Provides investment services;

18 (6) "Financial record" means a record held by a financial
 19 institution related to a payment card transaction that the financial
 20 institution has processed or facilitated;

21 (7)(A) "Firearms code" means a code or other indicator that a
 22 financial institution assigns to a merchant or to a payment card transaction
 23 that identifies whether or not:

24 (i) A merchant is a firearms retailer; or

25 (ii) The payment card transaction involves the
 26 purchase of a firearm or ammunition.

27 (B) "Firearms code" includes without limitation a merchant
 28 category code assigned to a retailer by a payment card network or other
 29 financial institution;

30 (8) "Firearms retailer" means a person or entity engaged in the
 31 lawful business of selling or trading firearms or ammunition to be used in
 32 firearms;

33 (9) "Protected financial information" means any record of a
 34 sale, purchase, return, or refund involving a payment card that is retrieved,
 35 characterized, generated, labeled, sorted, or grouped based on the assignment
 36 of a firearms code;

1 (10) "Savings bank" means a savings association or federal
2 savings association as defined in 12 U.S.C. § 1462, as it existed on January
3 1, 2023; and

4 (11) "Trust company" means:

5 (A) A national bank engaged in activities in a fiduciary
6 capacity under 12 U.S.C. § 92a and 12 C.F.R. Part 9;

7 (B) A trust company as defined in § 23-51-102; or

8 (C) An interstate bank that is authorized under the
9 Arkansas Banking Code of 1997, chapters 45-50 of this title, to exercise the
10 powers of a trust company in this state.

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12 23-32-604. Financial privacy – Firearm rights.

13 (a) A financial institution shall not knowingly keep or cause to be
14 kept a list, record, or registry of:

15 (1) Privately owned firearms; or

16 (2) Owners of privately owned firearms.

17 (b) A financial institution or an agent of the financial institution
18 shall not require for financial records the usage of or assign a firearms
19 code or ammunition merchant category code to a merchant located in Arkansas
20 that is a seller of firearms or ammunition separately from general
21 merchandise retailers or sporting goods retailers to customers.

22
23 23-32-605. Enforcement.

24 (a)(1) The Attorney General may investigate alleged violations of this
25 subchapter and, upon finding a violation, shall provide written notice to a
26 financial institution believed to be in violation of this subchapter.

27 (2) Upon receipt of the written notice under subdivision (a)(1)
28 of this section, the financial institution shall have thirty (30) calendar
29 days to cease the usage of a firearms code or ammunition merchant code for a
30 merchant located in Arkansas.

31 (b) If the financial institution fails to cease the usage of a
32 firearms code or ammunition merchant code for a merchant located in Arkansas
33 under subdivision (a)(2) of this section, the Attorney General may request an
34 injunction against the financial institution alleged to be in violation of
35 this subchapter, which a court may order, in addition to any other available
36 relief, as the court may consider appropriate.

1 (c)(1) A person that is harmed by a violation of this subchapter may
2 file a civil action to enjoin a violation of this subchapter.

3 (2) It is not a defense to a civil action filed under
4 subdivision (c)(1) of this section that the information was disclosed to a
5 United States Government entity, unless the disclosure or action is required
6 by federal law or federal regulation.

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8 SECTION 2. DO NOT CODIFY. EFFECTIVE DATE. This act is effective on
9 and after September 1, 2023.

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