

1 A bill to be entitled

2 An act relating to sales of firearms and ammunition;  
3 amending s. 790.335, F.S.; providing legislative  
4 findings; prohibiting payment settlement entities,  
5 merchant acquiring entities, or third party settlement  
6 organizations from assigning merchant category codes  
7 or otherwise classifying merchants of firearms or  
8 ammunition separately from general merchandise or  
9 sporting goods retailers; prohibiting entities  
10 involved in facilitating or processing payment card  
11 transactions from assigning to or requiring a merchant  
12 to use certain merchant category codes; authorizing a  
13 merchant of firearms or ammunition to be assigned or  
14 to use certain merchant category codes; specifying  
15 that any agreement or contractual provision to the  
16 contrary is void and in violation of the public policy  
17 of this state; authorizing the Department of  
18 Agriculture and Consumer Services to investigate  
19 certain alleged violations and bring administrative  
20 actions; providing an exception to complaint  
21 investigations by state attorneys; making technical  
22 changes; providing an effective date.

23  
24 WHEREAS, the International Standards Organization, based in  
25 Switzerland, recently approved a new merchant category code for

26 | firearm and ammunition merchants, and

27 |       WHEREAS, firearm and ammunition merchants historically have  
28 | been classified as sporting goods retailers or general  
29 | merchandise retailers, which has been sufficient for credit card  
30 | companies' business needs, and

31 |       WHEREAS, according to advocates for the new merchant  
32 | category code, the new code will allow credit card companies to  
33 | flag "suspicious" transactions, ostensibly for the purpose of  
34 | predicting and preventing future gun violence, and

35 |       WHEREAS, proponents indicate that the new merchant category  
36 | code is a "first step" but have given no guidance as to how to  
37 | distinguish suspicious activity from lawful sales, and

38 |       WHEREAS, the use of either merchant category code cannot  
39 | distinguish the sale of a firearm from the sale of a gun safe by  
40 | a firearms and ammunition merchant, and

41 |       WHEREAS, the use of the new merchant category code to  
42 | detect suspicious activities predicting future unlawful activity  
43 | will likely discourage financial institutions from serving  
44 | lawful retailers of firearms and ammunition and chill the lawful  
45 | exercise of Second Amendment rights, and

46 |       WHEREAS, current law requires a firearm retailer to conduct  
47 | a criminal history records check on a potential purchaser before  
48 | delivering a firearm to the purchaser, and

49 |       WHEREAS, the new merchant category code may result in  
50 | credit card companies reporting law abiding citizens to a law

51 enforcement agency based on overbroad definitions of suspicious  
 52 activity and the creation of a de facto gun registry and  
 53 watchlists of law abiding citizens, and

54 WHEREAS, the use of the new merchant category code will  
 55 likely make the job of law enforcement officers more difficult,  
 56 as those purchasing a firearm from a firearm retailer for an  
 57 unlawful purpose will likely purchase firearms with cash,  
 58 cryptocurrency, or other means that are difficult or impossible  
 59 to trace, and

60 WHEREAS, developing appropriate regulations for the sale of  
 61 firearms and ammunition while protecting the right of self-  
 62 defense is the role of democratically elected officials, not the  
 63 role of unelected bankers and foreign organizations, NOW,  
 64 THEREFORE,

65

66 Be It Enacted by the Legislature of the State of Florida:

67

68 Section 1. Paragraph (a) of subsection (1) and subsections  
 69 (2) and (4) of section 790.335, Florida Statutes, are amended to  
 70 read:

71 790.335 Prohibition of registration of firearms;  
 72 electronic records.—

73 (1) LEGISLATIVE FINDINGS AND INTENT.—

74 (a) The Legislature finds and declares that:

75 1. The right of individuals to keep and bear arms is

76 | guaranteed under both the Second Amendment to the United States  
77 | Constitution and s. 8, Art. I of the State Constitution.

78 |       2. A list, record, or registry of legally owned firearms  
79 | or law-abiding firearm owners is not a law enforcement tool and  
80 | can become an instrument for profiling, harassing, or abusing  
81 | law-abiding citizens based on their choice to own a firearm and  
82 | exercise their Second Amendment right to keep and bear arms as  
83 | guaranteed under the United States Constitution. Further, such a  
84 | list, record, or registry has the potential to fall into the  
85 | wrong hands and become a shopping list for thieves.

86 |       3. A list, record, or registry of legally owned firearms  
87 | or law-abiding firearm owners is not a tool for fighting  
88 | terrorism, but rather is an instrument that can be used as a  
89 | means to profile innocent citizens and to harass and abuse  
90 | American citizens based solely on their choice to own firearms  
91 | and exercise their Second Amendment right to keep and bear arms  
92 | as guaranteed under the United States Constitution.

93 |       4. The creation or maintenance of records of purchases of  
94 | firearms or ammunition or the tracking of sales made by a  
95 | retailer of firearms or ammunition by a nongovernmental entity,  
96 | including a financial institution, without a substantial and  
97 | historical business need or a requirement imposed by law, may  
98 | frustrate the right to keep and bear arms and violate the  
99 | reasonable privacy rights of lawful purchasers of firearms or  
100 | ammunition.

101        ~~5.4.~~ Law-abiding firearm owners whose names have been  
102 illegally recorded in a list, record, or registry are entitled  
103 to redress.

104        (2) PROHIBITIONS.—

105        (a) A ~~No~~ state governmental agency or local government,  
106 special district, or other political subdivision or official,  
107 agent, or employee of the ~~such~~ state or other governmental  
108 entity or any other person, public or private, may not ~~shall~~  
109 knowingly and willfully keep or cause to be kept any list,  
110 record, or registry of privately owned firearms or any list,  
111 record, or registry of the owners of those firearms.

112        (b) A payment settlement entity, merchant acquiring  
113 entity, or third party settlement organization as those terms  
114 are defined in s. 6050W of the Internal Revenue Code may not  
115 assign a merchant category code to or otherwise classify a  
116 merchant that is a seller of firearms or ammunition separately  
117 from general merchandise retailers or sporting goods retailers.

118        (c) An entity involved in facilitating or processing a  
119 payment card transaction, including, but not limited to, a  
120 financial institution, an acquirer, a payment card network, or a  
121 payment card issuer, may not assign to a merchant, or require a  
122 merchant to use, a merchant category code that classifies the  
123 merchant as a firearms or ammunition retailer or a similar  
124 classification. A merchant of firearms or ammunition may be  
125 assigned or may use a merchant category code for general

126 merchandise retailers or sporting goods retailers. Any agreement  
 127 or contractual provision to the contrary is void in violation of  
 128 the public policy of this state.

129 (4) PENALTIES.—

130 (a) Any person who, or entity that, violates paragraph  
 131 (2) (a) a provision of this section commits a felony of the third  
 132 degree, punishable as provided in s. 775.082 or s. 775.083.

133 (b) Except as required by ~~the provisions of~~ s. 16, Art. I  
 134 of the State Constitution or the Sixth Amendment to the United  
 135 States Constitution, ~~no~~ public funds may not shall be used to  
 136 defend the unlawful conduct of any person charged with a  
 137 violation of this section, unless the charges against the such  
 138 person are dismissed or the such person is determined to be not  
 139 guilty at trial. Notwithstanding this paragraph, public funds  
 140 may be expended to provide the services of the office of public  
 141 defender or court-appointed conflict counsel as provided by law.

142 (c) The governmental entity, or the designee of the such  
 143 governmental entity, in whose service or employ a list, record,  
 144 or registry was compiled in violation of paragraph (2) (a) this  
 145 ~~section~~ may be assessed a fine of up to not more than \$5  
 146 million, if the court determines that the evidence shows that  
 147 the list, record, or registry was compiled or maintained with  
 148 the knowledge or complicity of the management of the  
 149 governmental entity. The Attorney General may bring a civil  
 150 cause of action to enforce the fines assessed under this

151 paragraph.

152 (d) The Department of Agriculture and Consumer Services  
153 may investigate alleged violations of paragraph (2) (b) or  
154 paragraph (2) (c) and, upon finding a violation, bring an  
155 administrative action seeking to impose an administrative fine  
156 pursuant to s. 570.971 in the Class III category for each  
157 violation of paragraph (2) (b) or paragraph (2) (c) for each  
158 instance of an unlawfully classified retailer.

159 (e)-(d) The state attorney in the appropriate jurisdiction  
160 shall investigate complaints of criminal violations of this  
161 section, except for alleged violations of paragraph (2) (b) or  
162 paragraph (2) (c), and shall prosecute violators, where evidence  
163 indicates that a violation may have occurred, ~~shall prosecute~~  
164 ~~violators.~~

165 Section 2. This act shall take effect July 1, 2023.