

As Introduced

**135th General Assembly
Regular Session
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S. B. No. 148

Senator Johnson

Cosponsors: Senators Cirino, Gavarone, Huffman, S., O'Brien, Schaffer, Wilkin

A BILL

To enact sections 1349.84, 1349.85, and 1349.86 of 1
the Revised Code relating to payment card 2
transactions involving firearms and ammunition 3
retailers and to name this act the Second 4
Amendment Financial Privacy Act. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1349.84, 1349.85, and 1349.86 of 6
the Revised Code be enacted to read as follows: 7

Sec. 1349.84. As used in sections 1349.84 to 1349.86 of 8
the Revised Code: 9

(A) "Ammunition" has the same meaning as in section 10
2305.401 of the Revised Code and includes any ammunition 11
component. 12

(B) "Assign" or "assignment" refers to a financial 13
institution's policy, process, or practice that labels, links, 14
or otherwise associates a firearms code with a merchant or a 15
payment card transaction in a manner that allows the financial 16
institution or any other entity facilitating or processing the 17
payment card transaction to identify whether a merchant is a 18

firearms retailer or whether a transaction involves the sale of 19
firearms or ammunition. 20

(C) "Customer" means any person engaged in a payment card 21
transaction facilitated or processed by a financial institution. 22

(D) "Disclosure" means the transfer, publication, or 23
distribution of protected financial information to another 24
person for any purpose other than either of the following: 25

(1) To process or facilitate a payment card transaction; 26

(2) To take any actions related to dispute processing, 27
fraud management, or protecting transaction integrity from 28
concerns related to illegal activities, breach, or cybersecurity 29
risks. 30

(E) "Financial institution" means an entity other than a 31
merchant involved in facilitating or processing a payment card 32
transaction, including any bank, as defined in section 1309.102 33
of the Revised Code, acquirer, payment card issuer, payment card 34
network, payment gateway, or payment card processor. 35

(F) "Financial record" means any record or document held 36
by a financial institution that is related to a payment card 37
transaction the financial institution processed or facilitated, 38
including the original record or document, a copy of the record 39
or document, and any information included in, or derived from, 40
such a record or document. 41

(G) "Firearm" has the same meaning as in section 2923.11 42
of the Revised Code and includes a firearm component or 43
accessory. 44

(H) "Firearms retailer" means any person engaged in the 45
lawful business of selling or trading firearms, antique 46

firearms, or ammunition to be used in firearms or antique 47
firearms. 48

(I) "Firearms code" means any code or other indicator a 49
financial institution assigns to a merchant or to a payment card 50
transaction that identifies whether a merchant is a firearms 51
retailer or whether the payment card transaction involves the 52
purchase of a firearm or ammunition. "Firearms code" includes a 53
merchant category code assigned to a retailer by a payment card 54
network or other financial institution. 55

(J) "Government entity" means the state, a political 56
subdivision of the state, or any court, agency, or 57
instrumentality of the foregoing. 58

(K) (1) "Payment card" means any card that is issued 59
pursuant to an agreement or arrangement that provides for all of 60
the following: 61

(a) One or more issuers of such cards; 62

(b) A network of persons unrelated to each other, and to 63
the issuer, who agree to accept such cards as payment; 64

(c) Standards and mechanisms for settling the transactions 65
between the merchant acquiring entities and the persons that 66
agree to accept such cards as payment. 67

(2) "Payment card" includes credit cards, debit cards, 68
stored-value cards, including gift cards, as well as payment 69
through any distinctive marks of a payment card, such as a 70
credit card number. The acceptance as payment of any account 71
number or other indicia associated with a payment card shall be 72
treated in the same manner as accepting such payment card as 73
payment. 74

(L) "Payment card transaction" means any transaction in 75
which a payment card is accepted as payment. 76

(M) "Protected financial information" means any record of 77
a sale, purchase, return, or refund involving a payment card 78
that is retrieved, characterized, generated, labeled, sorted, or 79
grouped based on the assignment of a firearms code. 80

Sec. 1349.85. (A) Except for those records kept during the 81
regular course of a criminal investigation and prosecution, or 82
as otherwise required by law, no government entity or official, 83
and no agent or employee of a governmental entity shall 84
knowingly keep or cause to be kept any list, record, or registry 85
of privately owned firearms or the owners of those firearms. 86

(B) No financial institution or agent of a financial 87
institution shall do any of the following: 88

(1) Require the use of a firearms code in a way that 89
distinguishes a firearms retailer with a physical place of 90
business in this state from a general merchandise retailer or 91
sporting goods retailer; 92

(2) Subject to division (C) of this section, decline a 93
lawful payment card transaction involving a firearms retailer 94
based solely on whether the transaction is assigned a firearms 95
code; 96

(3) Disclose a financial record, including a firearms code 97
collected in violation of this section, unless the disclosure of 98
such financial record or firearms code is required by law. 99

(C) Nothing in this section prohibits a financial 100
institution from declining or otherwise refusing to process a 101
payment card transaction for any of the following reasons: 102

<u>(1) If necessary to comply with the laws of this state or</u>	103
<u>federal law;</u>	104
<u>(2) If requested by the customer;</u>	105
<u>(3) If necessary due to fraud controls;</u>	106
<u>(4) For the purpose of merchant category exclusions</u>	107
<u>offered by a financial institution for the purpose of</u>	108
<u>expenditure control or corporate card control.</u>	109
<u>(D) Nothing in this section limits the authority of a</u>	110
<u>financial institution to negotiate with responsible parties or</u>	111
<u>otherwise impairs a financial institution's actions related to</u>	112
<u>dispute processing, fraud management, protecting transaction</u>	113
<u>integrity from concerns related to illegal activities, breach,</u>	114
<u>or cyber risks.</u>	115
<u>Sec. 1349.86.</u> (A) <u>The attorney general shall investigate</u>	116
<u>alleged violations of section 1349.85 of the Revised Code. After</u>	117
<u>such an investigation, if the attorney general determines that a</u>	118
<u>violation of section 1349.85 of the Revised Code occurred, the</u>	119
<u>attorney general shall provide written notice to the person or</u>	120
<u>persons determined to have committed the violation.</u>	121
<u>(B) A person that is determined by the attorney general to</u>	122
<u>have violated section 1349.85 of the Revised Code shall cease</u>	123
<u>the violation within thirty days after receiving notice under</u>	124
<u>division (A) of this section.</u>	125
<u>(C) (1) If a person fails to comply with division (B) of</u>	126
<u>this section, the attorney general shall file an action against</u>	127
<u>that person in the court of common pleas of the county where the</u>	128
<u>alleged violation occurred to seek an injunction regarding the</u>	129
<u>alleged violation.</u>	130

(2) If the court finds that the person violated section 1349.85 of the Revised Code and has not ceased the activity constituting the violation, the court shall enjoin the person from continuing such activity. 131
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(3) If a person knowingly fails to comply with an injunction issued under division (C)(2) of this section after thirty days of being served with the injunction, the attorney general, upon petition to the court, shall seek to impose on that person a civil fine in an amount not to exceed ten thousand dollars per violation. In assessing such a civil fine, the court shall consider factors, including the financial resources of the violator and the harm or risk of harm to the rights under the Second Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 4 resulting from the violation. 135
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(4) In addition to the civil fine authorized by division (C)(3) of this section, if a person knowingly fails to comply with an injunction issued under division (C)(2) of this section after thirty days of being served with the injunction, the attorney general shall recover investigative costs and reasonable attorney's fees. 145
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(5) Any order assessing a civil fine under division (C)(3) of this section or investigative costs and attorney's fees under division (C)(4) of this section shall be stayed pending appeal of the order. 151
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(D) The remedies set forth in this section are the exclusive remedies for any violation of section 1349.85 of the Revised Code. 155
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(E) It shall be a defense to a proceeding initiated pursuant to this section that a firearms code was required to be 158
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disclosed or assigned by law. 160

(F) Either of the following may petition the attorney 161
general to investigate an alleged violation in accordance with 162
division (A) of this section: 163

(1) A firearms retailer physically located in this state 164
and whose business is the subject of an alleged violation of 165
section 1349.85 of the Revised Code; 166

(2) A customer who made a payment card transaction at a 167
firearms retailer physically located in this state and whose 168
business is the subject of an alleged violation of section 169
1349.85 of the Revised Code. 170

Section 2. This act shall be known as the Second Amendment 171
Financial Privacy Act. 172