

SENATE BILL 2223

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 8,
Chapter 6; Title 29; Title 38; Title 39; Title 45 and
Title 47, relative to merchant codes.

WHEREAS, the General Assembly of this State finds and declares that:

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

(2) Article I, Section 26, of the Tennessee Constitution provides "That the citizens of this state have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime";

(3) In September of 2022, the International Organization for Standardization (ISO), based in Switzerland, approved a new merchant category code for firearm and ammunition merchants;

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

(5) This potential for cooperative surveillance and tracking of lawful firearms and ammunition purchases will have a significant chilling effect on citizens wishing to

exercise their federal and state constitutional rights to keep and bear arms in Tennessee;

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

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

WHEREAS, based on the above stated findings, it is the intent of the General Assembly to prohibit the misuse of payment card processing systems to surveil, report, or otherwise discourage constitutionally protected firearm and ammunition purchases within the State of Tennessee; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 45, is amended by adding the following as a new chapter:

45-21-101.

This act is known and may be cited as the "Second Amendment Financial Privacy Act."

45-21-102.

As used in this chapter:

(1) "Customer" means a resident of this state engaged in a payment card transaction that a financial institution facilitates or processes;

(2) "Disclosure" or "disclose" means the transfer, publication, or distribution of protected financial information to another person or entity for any purpose other than:

(A) To process or facilitate a payment card transaction; or

(B) To take any actions related to dispute processing, fraud management, or protecting transaction integrity from concerns related to illegal activities, a data breach, or cyber risks;

(3) "Financial institution" means an entity involved in facilitating or processing a payment card transaction, including, but not limited to, a bank, an acquirer, a payment card network, or a payment card issuer;

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

(5) "Firearms merchant category code" means the merchant category code 5723 approved in September of 2022 by the International Organization for Standardization for firearms retailers or any other indicator that a financial institution assigns to a merchant that identifies a merchant as a firearms retailer or the payment card transaction as involving the purchase of a firearm, firearm ammunition, ammunition components for use with firearms, or firearm accessories;

(6) "Firearms retailer" means a person or entity physically located in this state and engaged in the lawful business of selling or trading firearms,

ammunition, ammunition components for use with firearms, or firearm accessories; and

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

45-21-103.

(a) A financial institution, or its agents, shall not require the usage of a firearms merchant category code by a firearms retailer physically located in this state in a manner that distinguishes a firearms retailer from a general merchandise retailer or a sporting goods retailer.

(b) A financial institution shall not discriminate against a firearms retailer by declining a lawful payment card transaction based solely on the assignment or non-assignment of a firearms merchant category code; provided, that a financial entity may decline or otherwise refuse to process the transaction on the basis of the firearms merchant category code only:

- (1) If necessary to comply with this section;
- (2) If requested by the customer; or
- (3) Due to fraud controls or merchant category exclusions offered by a financial entity for the purpose of expenditure control or corporate card control.

(c) Except as otherwise required by law or regulation, a financial institution shall not disclose a financial record, including protected financial information, that was collected in violation of this chapter unless the disclosure of the financial record or protected financial information was based on a good-faith conclusion that the entity's action was required by applicable law or regulation.

(d) This section does not limit the ability of a financial institution to negotiate with responsible parties or otherwise impair the financial institution's actions related to dispute processing, fraud management, or protecting transaction integrity from concerns related to illegal activities, a data breach, or cyber risks.

45-21-104.

(a) The attorney general and reporter shall investigate alleged violations of this chapter and, upon finding a violation, shall provide written notice to any individual or entity believed to be in violation. Written notice to a commercial entity must be made to the entity's registered agent. Upon receipt of the written notice from the attorney general and reporter, the entity shall cease any violation of this chapter within thirty (30) calendar days.

(b) A firearms retailer physically located in this state whose business was the subject of an alleged violation of this chapter or a customer who transacted at a firearms retailer physically located in this state whose business was the subject of an alleged violation of this chapter, may petition the attorney general and reporter to investigate an alleged violation of this chapter.

(c)

(1) If an individual or entity is found to be in violation of this chapter and fails to cease the violating activity after the expiration of thirty (30) calendar days from the receipt of written notice by the attorney general and reporter's office, then the attorney general and reporter shall pursue an injunction against the individual or entity alleged to be in violation of this chapter. The attorney general and reporter may pursue an injunction pursuant to this section in the chancery court of the judicial district where the alleged violation occurred.

(2) If a court finds that an individual or entity continues to be in violation of this chapter after thirty (30) calendar days from receiving written notice from the attorney general and reporter in accordance with subsection (a), then the court shall enjoin the individual or entity from continuing the activity found to be in violation of this chapter.

(3) If an individual or entity knowingly and willfully fails to comply with an injunction issued pursuant to subdivision (c)(2) within thirty (30) days after being served with the injunction, then the attorney general and reporter, upon petition to the court, may recover on behalf of the state a civil penalty in a sum not to exceed ten thousand dollars (\$10,000) for each violation committed after the expiration of the thirty-day period provided in subsection (a). In assessing a penalty, the court must consider the financial resources of the violator and the harm or risk of harm to the rights afforded to the individual pursuant to the Second Amendment of the United States Constitution resulting from the violation. The attorney general and reporter may also recover, in addition to the civil penalty pursuant to this subsection, investigative costs and reasonable attorney's fees. An order assessing a penalty for violation of this chapter must be stayed pending appeal of the order.

(d) It is a defense to a proceeding initiated pursuant to this chapter that the firearms merchant category code was required to be used based on a good-faith conclusion that the entity's disclosure or action was required by applicable law or regulation.

SECTION 2. Tennessee Code Annotated, Section 39-17-1326, is amended by designating subsection (b) as subdivision (b)(1) and adding the following new subdivision (b)(2):

(2)

(A) A financial institution or a financial institution's agent shall not intentionally:

(i) Use a firearms merchant category code in connection with a firearms retailer physically located in this state in a manner that distinguishes a firearms retailer from a general merchandise retailer or a sporting goods retailer; or

(ii) Require the usage of a firearms merchant category code by a firearms retailer physically located in this state in a manner that distinguishes a firearms retailer from a general merchandise retailer or a sporting goods retailer.

(B) A financial institution in violation of this subdivision (b)(2) is subject to a private right of action by a person or entity aggrieved by the violation.

SECTION 3. Tennessee Code Annotated, Section 39-17-1326(c), is amended by deleting "person whose information was disclosed and" and substituting "person or entity who".

SECTION 4. Tennessee Code Annotated, Section 39-17-1326, is amended by adding the following as a new subsection:

(e) As used in this section:

(1) "Financial institution" means an entity involved in facilitating or processing a payment card transaction, including, but not limited to, a bank, an acquirer, a payment card network, or a payment card issuer;

(2) "Firearms merchant category code" means the merchant category code 5723 approved in September of 2022 by the International Organization for Standardization for firearms retailers, or any other indicator that a financial institution assigns to a merchant that identifies a merchant as a firearms retailer or the payment card transaction as involving the purchase of a firearm, firearm

ammunition, ammunition components for use with firearms, or firearm accessories; and

(3) "Firearms retailer" means a person or entity physically located in this state and engaged in the lawful business of selling or trading firearms, ammunition, ammunition components for use with firearms, or firearm accessories.

SECTION 5. This act takes effect July 1, 2024, the public welfare requiring it.