

SENATE FILE NO. SF0171

Wyoming second amendment financial privacy act.

Sponsored by: Senator(s) Laursen, D, Biteman, Brennan,
Hutchings, Ide and Salazar and
Representative(s) Berger, Haroldson, Knapp,
Niemic, Singh, Tarver and Wylie

A BILL

for

1 AN ACT relating to banks, banking and finance; providing
2 legislative findings; prohibiting disclosure or use of
3 protected information relating to firearms and ammunition
4 sales as specified; prohibiting discrimination related to
5 firearm sales codes as specified; providing exceptions;
6 providing requirements for disclosure; authorizing civil
7 actions; providing definitions; and providing for an
8 effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.**

13

14 (a) The legislature finds that:

1

2 (i) The second amendment to the United States
3 constitution guarantees the people the right to keep and
4 bear arms;

5

6 (ii) In September of 2022, the world's three (3)
7 largest payment card networks publicly announced they would
8 assign a unique merchant category code to firearms
9 retailers accepting payment cards for purchases, after
10 twenty-eight (28) members of Congress sent a public letter
11 to networks, pressuring them to adopt the new code;

12

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

23

1 (iv) The new merchant category code will allow
2 banks, payment card networks, acquirers and other entities
3 involved in payment card processing to identify and
4 separately track lawful payment card purchases at firearms
5 retailers in this state, paving the way for unprecedented
6 surveillance of second amendment activity and information
7 sharing between financial institutions and the government;

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9 (v) This potential for cooperative surveillance
10 and tracking of lawful firearms and ammunition purchases
11 will have a significant chilling effect on citizens wishing
12 to exercise their federal and state constitutional rights
13 to keep and bear arms in this state;

14

15 (vi) While federal law requires some financial
16 institutions to report transactions that are highly
17 indicative of money laundering or other unlawful
18 activities, there is no federal or state law authorizing
19 financial institutions to surveil and track lawful
20 activities by customers in cooperation with law
21 enforcement. The federal Right to Financial Privacy Act
22 prohibits financial institutions from disclosing a

1 customer's financial records except in limited
2 circumstances;

3

4 (vii) This act shall be construed as a generally
5 applicable consumer financial protection law that does not
6 prevent or significantly interfere with the duly authorized
7 powers of any bank, nor does this article directly or
8 indirectly discriminate against any bank based on its
9 charter or structure; and

10

11 (viii) Based on the above stated findings, it is
12 the intent of the legislature to prohibit the misuse of
13 payment card processing systems to surveil, report or
14 otherwise discourage constitutionally protected firearm and
15 ammunition purchases and sales within this state.

16

17 **Section 2.** W.S. 1-39-122 and 13-10-401 through
18 13-10-406 are created to read:

19

20 **1-39-122. Liability; financial privacy.**

21

22 A governmental entity is liable for damages resulting from
23 a violation of W.S. 13-10-405 or 13-10-406(a) caused by the

1 negligent, reckless or intentional acts of public employees
2 while acting within the scope of their duties.

3

4

ARTICLE 4

5

SECOND AMENDMENT FINANCIAL PRIVACY

6

7

13-10-401. Definitions.

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(a) As used in this article:

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

(ii) "Customer" means any person who presents a payment card to a merchant for the purchase of goods or services;

1 (iii) "Customer's protected financial
2 information" means the protected financial information
3 appearing in the financial records of a customer;

4

5 (iv) "Disclosure" means the transfer,
6 publication or distribution of protected financial
7 information to another person for any purpose other than to
8 process or facilitate a payment card transaction;

9

10 (v) "Financial institution" means an entity
11 other than a merchant involved in facilitating or
12 processing a payment card transaction, including but not
13 limited to a bank, acquirer, gateway, payment card network
14 or payment card issuer;

15

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

20

21 (vii) "Firearms retailer" means any person
22 engaged in the lawful business of selling or trading
23 firearms or ammunition to be used in firearms;

1

2 (viii) "Firearms code" means any code or other
3 indicator a financial institution assigns to a merchant or
4 to a payment card transaction that identifies whether a
5 merchant is a firearms retailer or whether the payment card
6 transaction involves the purchase of a firearm or
7 ammunition. The term shall include but is not limited to a
8 merchant category code assigned to a retailer by a payment
9 card network or other financial institution;

10

11 (ix) "Government entity" means any state agency
12 or political subdivision or agency thereof, located in this
13 state;

14

15 (x) "Merchant" means a person or entity that
16 accepts payment cards from customers for the purchase of
17 goods or services. The term shall include a firearms
18 retailer that accepts payment cards for the lawful purchase
19 of firearms or ammunition;

20

21 (xi) "Payment card" means a credit card, charge
22 card, debit card or any other card that is issued to an

1 authorized card user and that allows the user to purchase
2 goods or services from a merchant; and

3

4 (xii) "Protected financial information" means
5 any record of a sale, purchase, return or refund involving
6 a payment card that is retrieved, characterized, generated,
7 labeled, sorted or grouped based on the assignment of a
8 firearms code;

9

10 (xiii) "This act" means W.S. 13-10-401 through
11 13-10-406.

12

13 **13-10-402. Disclosure of financial information**
14 **prohibitions; exceptions.**

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16 (a) A financial institution shall not disclose a
17 customer's protected financial information and a government
18 entity shall not access or obtain the information unless:

19

20 (i) Otherwise required by law and the protected
21 financial information is not singled out, segregated or
22 disclosed based on the assignment of a firearms code;

23

1 (ii) Disclosure is made pursuant to a valid
2 warrant issued in a criminal investigation, stating the
3 grounds or probable cause for its issuance;

4
5 (iii) The customer has provided written
6 authorization for disclosure, as provided in W.S.
7 13-10-403; or

8
9 (iv) Disclosure is made pursuant to a subpoena
10 or to a grand jury subpoena.

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12 **13-10-403. Disclosure authorized.**

13
14 (a) A financial institution may disclose a customer's
15 protected financial information if the customer provides
16 the financial institution with written authorization for
17 the disclosure. The written authorization described by
18 this section shall contain the following:

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20 (i) A statement that the customer consents to
21 the disclosure of the protected financial information for a
22 specific period;

23

1 (ii) A statement that the customer has the right
2 to refuse to consent to disclosure;

3

4 (iii) A statement that the customer understands
5 his or her right to revoke the consent at any time before
6 the protected financial information is disclosed;

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8 (iv) A description of the financial records
9 authorized to be disclosed;

10

11 (v) The purpose for which disclosure of the
12 protected financial information is authorized; and

13

14 (vi) The customer's signature.

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16 (b) The written authorization described in this
17 section shall not be required as a condition of doing
18 business or transacting with any financial institution.

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20 (c) The written authorization required by this
21 section shall be executed distinctly and separately from
22 other agreements or instruments entered into between the
23 customer and financial institution.

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2 **13-10-404. Subpoena requirements.**

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4 (a) If a subpoena issued by a government entity
5 requires disclosure of a customer's protected financial
6 information, a financial institution shall only disclose
7 the information if the subpoena meets the following
8 requirements:

9

10 (i) The subpoena must state that protected
11 financial information is being sought;

12

13 (ii) In addition to service on the financial
14 institution, a copy of the subpoena shall be served on the
15 customer and the subpoena shall contain a certification
16 that the service was executed on the customer.

17

18 **13-10-405. Discriminatory conduct.**

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20 (a) A financial institution shall not use a firearms
21 code to engage in the following discriminatory conduct:

22

1 (i) Declining a lawful payment card transaction
2 based on the assignment of a firearms code to the merchant
3 or transaction;

4

5 (ii) Limiting or declining to do business with a
6 customer, potential customer or merchant based on the
7 assignment of a firearms code to previous lawful
8 transactions involving the customer, potential customer or
9 merchant;

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11 (iii) Charge a higher transaction or interchange
12 fee to any merchant or for a lawful transaction, as
13 compared to the fee charged to a similarly situated
14 merchant or for a similar transaction, based on the
15 assignment of a firearms code; or

16

17 (iv) Take any action against a customer or
18 merchant that is intended to suppress lawful commerce
19 involving firearms or ammunition.

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21 **13-10-406. Civil actions.**

22

1 (a) A customer may bring a civil action for damages
2 against any financial institution or government entity that
3 causes the customer's protected financial information to be
4 disclosed in violation of this act. For each violation,
5 the customer may recover:

6

7 (i) Against any person who negligently or
8 recklessly violates this act, damages of ten thousand
9 dollars (\$10,000.00) or actual damages, whichever is
10 greater; and

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12 (ii) Against any person who intentionally
13 violates this act, damages of twenty-five thousand dollars
14 (\$25,000.00) or actual damages, whichever is greater.

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16 (b) A customer or merchant aggrieved by a violation
17 of W.S. 13-10-405 may bring a civil action for damages.
18 The customer or merchant may recover damages of thirty
19 thousand dollars (\$30,000.00) or actual damages, whichever
20 is greater.

21

22 (c) If pursuant to a lawsuit filed under subsections
23 (a) or (b) of this section a court finds that a violation

1 of this act has occurred, the court shall award reasonable
2 attorney fees to the aggrieved party. A court may order
3 other relief, including an injunction, as the court
4 considers appropriate.

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6 **Section 3.** W.S. 1-39-104(a) is amended to read:

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8 **1-39-104. Granting immunity from tort liability;**
9 **liability on contracts; exceptions.**

10

11 (a) A governmental entity and its public employees
12 while acting within the scope of duties are granted
13 immunity from liability for any tort except as provided by
14 W.S. 1-39-105 through 1-39-112 or 1-39-122. Any immunity in
15 actions based on a contract entered into by a governmental
16 entity is waived except to the extent provided by the
17 contract if the contract was within the powers granted to
18 the entity and was properly executed and except as provided
19 in W.S. 1-39-120(b). The claims procedures of W.S. 1-39-113
20 apply to contractual claims against governmental entities.

21

1 **Section 4.** This act is effective July 1, 2023.

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(END)