

By: Schaefer, Capriglione, Noble, et al.

H.B. No. 2837

Substitute the following for H.B. No. 2837:

By: Capriglione

C.S.H.B. No. 2837

A BILL TO BE ENTITLED

1 AN ACT

2 relating to prohibiting a person or entity from surveilling,
3 reporting, or tracking the purchase of firearms, ammunition, and
4 accessories through the use of certain merchant category codes;
5 imposing a civil penalty.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. This Act may be cited as the Second Amendment
8 Financial Privacy Act.

9 SECTION 2. The legislature finds that:

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

12 (2) Section 23, Article I, of the Texas Constitution
13 provides that "Every citizen shall have the right to keep and bear
14 arms in the lawful defence of himself or the State";

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

18 (4) In a letter to payment card networks, federal
19 lawmakers stated that the new merchant category code for firearms
20 retailers would be ". . . the first step towards facilitating the
21 collection of valuable financial data that could help law
22 enforcement in countering the financing of terrorism efforts,"
23 expressing a clear government expectation that payment card
24 networks will utilize the new merchant category code to conduct

1 mass surveillance of constitutionally protected firearms and
2 ammunition purchases in cooperation with law enforcement;

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

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

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

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

1 (9) Based on the above stated findings, it is the
2 intent of the legislature to prohibit the misuse of payment card
3 processing systems to surveil, report, or otherwise discourage
4 constitutionally protected firearm and ammunition purchases within
5 this state.

6 SECTION 3. Title 12, Business & Commerce Code, is amended by
7 adding Chapter 610 to read as follows:

8 CHAPTER 610. UNAUTHORIZED TRANSACTION CATEGORIZATION

9 Sec. 610.001. DEFINITIONS. In this chapter:

10 (1) "Electronic payment transaction" means a
11 transaction in which a person uses a payment card or other payment
12 code or device issued or approved through a payment card network to
13 debit a deposit account or use a line of credit, whether
14 authorization is based on a signature, personal identification
15 number, or other means.

16 (2) "Firearms code" means any merchant category code
17 approved by the International Organization for Standardization for
18 a firearms retailer, including Merchant Category Code 5723.

19 (3) "Firearms retailer" means any person or entity
20 engaged in the sale of firearms, ammunition for use in firearms, or
21 firearms accessories.

22 (4) "Payment card" means a credit card, debit card,
23 check card, or other card that is issued to an authorized user to
24 purchase or obtain goods, services, money, or any other thing of
25 value.

26 (5) "Payment card issuer" means a lender, including a
27 financial institution, or a merchant that receives applications and

1 issues payment cards to individuals.

2 (6) "Payment card network" means an entity that
3 directly or through a licensed member, processor, or agent provides
4 the proprietary services, infrastructure, and software that route
5 information and data to conduct debit card or credit card
6 transaction authorization, clearance, and settlement, and that an
7 entity uses in order to accept as a form of payment a brand of debit
8 card, credit card, or other device that may be used to carry out
9 debit or credit transactions.

10 Sec. 610.002. UNAUTHORIZED CATEGORIZATION OF CERTAIN
11 TRANSACTIONS. (a) A person or entity involved in facilitating or
12 processing an electronic payment transaction, including a payment
13 card issuer or payment card network, may not assign to a merchant or
14 require a merchant to use a firearms code.

15 (b) For the purposes of the sale of firearms, ammunition for
16 use in firearms, and firearms accessories, a firearms retailer may
17 not provide a firearms code to a payment card issuer or payment card
18 network and may only use or be assigned a merchant category code for
19 general merchandise retailers or sporting goods retailers. Any
20 agreement or contractual provision to the contrary is void.

21 (c) A payment card issuer or payment card network shall
22 notify the payment card holder in writing on every occasion that a
23 firearms code is assigned to an electronic payment transaction on
24 the payment card holder's account.

25 Sec. 610.003. INVESTIGATIVE AUTHORITY OF ATTORNEY GENERAL.

26 (a) If the attorney general has reasonable cause to believe that a
27 person or entity has engaged in, is engaging in, or is about to

1 engage in a violation of this chapter, the attorney general shall
2 issue a civil investigative demand. The procedures established for
3 the issuance of a civil investigative demand under Section 15.10
4 apply to the same extent and manner to the issuance of a civil
5 investigative demand under this section.

6 (b) The attorney general may request, pursuant to a civil
7 investigative demand issued under Subsection (a), that a person or
8 entity disclose any data that is relevant to an investigation
9 conducted by the attorney general. The attorney general shall
10 evaluate the data for compliance with the requirements set forth in
11 Section 610.002.

12 Sec. 610.004. NOTICE OF VIOLATION OF CHAPTER; OPPORTUNITY
13 TO CURE. (a) Not later than the 30th day before bringing an action
14 under Section 610.005, the attorney general must give written
15 notice to the person or entity identifying the specific provisions
16 of this chapter that are or were being violated.

17 (b) The attorney general may not bring an action against the
18 person or entity if the person or entity:

19 (1) cures the identified violation within the 30-day
20 period; and

21 (2) provides the attorney general a written statement
22 affirming that the person or entity has:

23 (A) cured the alleged violation;

24 (B) provided supporting documentation to show
25 how the violation was cured; and

26 (C) made changes to internal policies to prevent
27 the recurrence of any similar violation in the future.

Sec. 610.005. ENFORCEMENT; CIVIL PENALTY; INJUNCTION. (a)

Except as provided by Section 610.006, the attorney general has exclusive authority to enforce this chapter.

(b) A person or entity who violates this chapter and fails to cure the violation in accordance with Section 610.004, or who breaches a written statement provided to the attorney general under that section, is liable for a civil penalty in the amount of \$10,000 for each violation.

(c) The attorney general shall bring an action to:

(1) recover a civil penalty under this section; and

(2) restrain or enjoin a person or entity from violating this chapter.

(d) The attorney general may recover reasonable attorney's fees and other reasonable expenses incurred in investigating and bringing an action under this section.

(e) The attorney general shall deposit a civil penalty collected under this section in the state treasury to the credit of the general revenue fund.

Sec. 610.006. PRIVATE RIGHT OF ACTION. (a) A person who has used a payment card to purchase a firearm, ammunition for use in a firearm, or a firearm accessory may bring an action against a payment card issuer or payment card network to obtain:

(1) a declaratory judgment under Chapter 37, Civil Practice and Remedies Code, that the payment card issuer or payment card network has violated Section 610.002; or

(2) a judgment enjoining the payment card issuer or payment card network from violating Section 610.002.

1 (b) Except as provided by Subsection (a), this chapter may
2 not be construed as providing a basis for, or being subject to, a
3 private right of action for a violation of this chapter or any other
4 law.

5 SECTION 4. The changes in law made by Chapter 610, Business
6 & Commerce Code, as added by this Act, apply only to a purchase of a
7 firearm, ammunition for use in a firearm, or a firearm accessory
8 that takes place on or after the effective date of this Act.

9 SECTION 5. If any provision of this Act or its application
10 to any person or circumstance is held invalid, the invalidity does
11 not affect other provisions or applications of this Act that can be
12 given effect without the invalid provision or application, and to
13 this end the provisions of this Act are declared to be severable.

14 SECTION 6. This Act takes effect September 1, 2023.