

By: Schaefer

H.B. No. 2837

A BILL TO BE ENTITLED

1 AN ACT

2 relating to prohibiting financial institutions in Texas from
3 surveilling, reporting, or tracking the purchase of firearms and
4 ammunition; imposing a civil penalty.

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

6 SECTION 1. This act shall be known and may be cited as the
7 "Second Amendment Financial Privacy Act".

8 (a) The Legislature finds that:

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

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

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

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

1 cooperation with law enforcement;

2 (5) The new Merchant Category Code will allow the
3 banks, payment card networks, acquirers, and other entities
4 involved in payment card processing to identify and separately
5 track lawful payment card purchases at firearms retailers in the
6 State of Texas, paving the way for both unprecedented surveillance
7 of Second Amendment activity and unprecedented information sharing
8 between financial institutions and the government;

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

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

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

27 (9) Based on the above stated findings, it is the

1 intent of the Legislature to prohibit the misuse of payment card
2 processing systems to surveil, report, or otherwise discourage
3 constitutionally protected firearm and ammunition purchases within
4 the State of Texas.

5 SECTION 2. Chapter 271, Finance Code, is amended by adding
6 Section 271.007 to read as follows:

7 Sec. 271.007. DEFINITIONS. In this Section:

8 (1) "Customer" has the meaning assigned by Section
9 59.001, Finance Code.

10 (2) "Disclosure" means the transfer, publication, or
11 distribution of protected financial information to another person
12 or entity for any purpose other than to process or facilitate a
13 payment card transaction.

14 (3) "Financial institution" has the meaning assigned
15 by Section 201.101, Finance Code.

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

19 (5) "Firearms retailer" means any person or entity
20 engaged in the lawful business of selling or trading firearms or
21 ammunition to be used in firearms.

22 (6) "Firearms code" means the Merchant Category Code
23 5723 approved in September of 2022 by the International
24 Organization for Standardization for firearms retailers.

25 (7) "Government entity" means any county or
26 municipality, or state board, commission, agency, bureau,
27 department, or any other political subdivision of the state.

1 SECTION 3. Chapter 271, Finance Code, is amended by adding
2 Section 271.0071 to read as follows:

3 Sec. 271.0071. UNAUTHORIZED CATEGORIZATION OF FIREARMS AND
4 AMMUNITION TRANSACTIONS BY A FINANCIAL INSTITUTION. (a) Except
5 for those records kept during the regular course of a criminal
6 investigation and prosecution or as otherwise required by law, a
7 state governmental agency or local government, special district, or
8 other political subdivision or official, agent, or employee of the
9 state or other governmental entity or any other person, public or
10 private, other than the owner or owner's representative, may not
11 knowingly and willfully keep or cause to be kept any list, record,
12 or registry of privately owned firearms or any list, record, or
13 registry of the owners of those firearms.

14 (b) A financial institution or its agent may not require the
15 usage of the firearms code in a way that distinguishes a firearms
16 retailer physically located in the state of Texas from Texas
17 general merchandise retailers or sporting goods retailers.

18 (c) A financial institution may not discriminate against a
19 firearms retailer by:

20 (1) Declining a lawful payment card transaction based
21 solely on the assignment or non-assignment of a firearms code to the
22 merchant or transaction;

23 (2) Limiting or declining to do business with a
24 customer, potential customer, or merchant based on the assignment
25 or non-assignment of a firearms code to previous lawful
26 transactions involving the customer, potential customer, or
27 merchant;

1 (3) Charging a higher transaction or interchange fee
2 to any merchant or for a lawful transaction based on the assignment
3 or non-assignment of a firearms code; or

4 (4) Otherwise taking any action against a customer or
5 merchant that is intended to suppress lawful commerce involving
6 firearms, firearm accessories or components, or ammunition, which
7 action is based solely or in part on the customer's or merchant's
8 business involving firearms, firearm accessories or components, or
9 ammunition.

10 (d) Except as otherwise required by law, a financial
11 institution may not disclose a financial record, including a
12 firearms code that was collected in violation of this Act.

13 SECTION 4. Chapter 271, Finance Code, is amended by adding
14 section 271.0072 to read as follows:

15 Sec. 271.0072. VIOLATION OF UNAUTHORIZED CATEGORIZATION OF
16 FIREARM AND AMMUNITION TRANSACTIONS; CIVIL PENALTY. (a) The
17 Attorney General shall investigate alleged violations of this act
18 and, upon finding a violation, shall provide written notice to any
19 individual or entity, public or private, believed to be in
20 violation of this act. Upon receipt of such written notice from the
21 Attorney General, the entity shall have thirty (30) calendar days
22 to cease the requirement for usage of the firearms code by Texas
23 merchant physically located in Texas.

24 (b) Either a firearms retailer physically located in Texas
25 whose business was the subject of an alleged violation of this Act
26 or a customer who transacted at a firearms retailer physically
27 located in Texas whose business was the subject of an alleged

1 violation of this Act, may petition the Attorney General to
2 investigate the alleged violation in accordance with subsection
3 (a).

4 (c) If the Attorney General does not commence an action
5 within 90 days of receiving the petition under this subsection,
6 then the firearms retailer - or customer may file an action in court
7 to enjoin the individual or entity from requiring the firearms code
8 in violation of this Act.

9 (d) If an individual or entity is found to be requiring the
10 usage of a firearms code by any merchant physically located in Texas
11 in violation of this Act and fails to cease the requirement for
12 usage of the firearms code by any firearms retailer physically
13 located in Texas after the expiration of thirty (30) calendar days
14 from the receipt of written notice by the Attorney General's
15 office, the Attorney General shall pursue an injunction against any
16 individual or entity, public or private, alleged to be in violation
17 of this Act. The Attorney General shall pursue an injunction
18 pursuant to this subsection in court in the judicial district where
19 the alleged violation occurred against the individual or entity in
20 alleged violation of this Act.

21 (e) If a court finds that an individual or entity continues
22 to be in violation of this Act after thirty (30) calendar days from
23 receiving written notice from the Attorney General in accordance
24 with subsection (a) or from a finding by the court of a violation of
25 this Act in an action commenced under subsection (c), then the court
26 shall enjoin the individual or entity from continuing to require
27 the usage of the firearms code.

1 (f) If an individual or entity knowingly and willfully fails
2 to comply with an injunction as provided in subsection (e) above
3 within thirty (30) days after being served with the injunction,
4 then the court shall impose a civil penalty in a sum not to exceed
5 Ten Thousand Dollars (\$10,000.00) per violation of an injunction
6 issued pursuant to subsection (e), committed after the expiration
7 of the period of thirty (30) days after the entity was served with
8 the injunction. In assessing such a penalty, the Court shall
9 consider factors including the financial resources of the violator
10 and the harm or risk of harm to Second Amendment rights resulting
11 from the violation. Any order assessing a penalty for violation of
12 this Act pursuant to this paragraph shall be stayed pending appeal
13 of the order.

14 (g) In addition to the remedies provided in this section,
15 the Attorney General or a petitioner who prevails in an action under
16 this section shall recover reasonable expenses incurred in
17 obtaining the civil penalty, including court costs, reasonable
18 attorney's fees, investigative costs, witness fees, and deposition
19 expenses.

20 (h) It shall not be a defense to a civil action filed under
21 this act that such information was disclosed to a federal
22 government entity, unless such disclosure or action was made based
23 on a good faith conclusion that the disclosure or action was
24 required by federal law or regulation.

25 SECTION 5. The change in law made by this Act applies only
26 to a violation on or after the effective date of this Act.

27 Section 6. This Act takes effect September 1, 2023.