

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 2837  
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State Affairs  
5/13/2023  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 2837 amends current law relating to prohibiting a person or entity from surveilling, reporting, or tracking the purchase of firearms, ammunition, and accessories through the use of certain merchant category codes and imposes a civil penalty.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Authorizes this Act to be cited as the Second Amendment Financial Privacy Act.

SECTION 2. Provides that the legislature finds that:

- (1) the Second Amendment to the United States Constitution guarantees the people the right to keep and bear arms;
- (2) Section 23 (Right to Keep and Bear Arms), Article I (Bill of Rights), of the Texas Constitution provides that "Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State";
- (3) in September 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 payment card 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) the new merchant category code will allow banks, payment card networks, acquirers, and other entities involved in payment card processing to identify and separately track lawful payment card purchases at firearms retailers in this state, paving the way for unprecedented surveillance of Second Amendment activity and information sharing between financial institutions and the government;
- (6) 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 this state;
- (7) 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;

(8) 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

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

SECTION 3. Amends Title 12, Business and Commerce Code, by adding Chapter 610, as follows:

#### CHAPTER 610. UNAUTHORIZED TRANSACTION CATEGORIZATION

Sec. 610.001. DEFINITIONS. Defines "electronic payment transaction," "firearms code," "firearms retailer," "payment card," "payment card issuer," and "payment card network."

Sec. 610.002. UNAUTHORIZED CATEGORIZATION OF CERTAIN TRANSACTIONS. (a) Prohibits a person or entity involved in facilitating or processing an electronic payment transaction, including a payment card issuer or payment card network, from assigning to a merchant or require a merchant to use a firearms code.

(b) Provides that a firearms retailer, for the purposes of the sale of firearms, ammunition for use in firearms, and firearms accessories, is prohibited from providing a firearms code to a payment card issuer or payment card network and is authorized to use or be assigned a merchant category code only for general merchandise retailers or sporting goods retailers. Provides that any agreement or contractual provision to the contrary is void.

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

Sec. 610.003. INVESTIGATIVE AUTHORITY OF ATTORNEY GENERAL. (a) Requires the attorney general, if the attorney general has reasonable cause to believe that a person or entity has engaged in, is engaging in, or is about to engage in a violation of this chapter, to issue a civil investigative demand. Provides that the procedures established for the issuance of a civil investigative demand under Section 15.10 (Civil Investigative Demands) apply to the same extent and manner to the issuance of a civil investigative demand under this section.

(b) Authorizes the attorney general to request, pursuant to a civil investigative demand issued under Subsection (a), that a person or entity disclose any data that is relevant to an investigation conducted by the attorney general. Requires the attorney general to evaluate the data for compliance with the requirements set forth in Section 610.002.

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

(b) Prohibits the attorney general from bringing an action against the person or entity if the person or entity:

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

(2) provides the attorney general a written statement affirming that the person or entity has cured the alleged violation, provided supporting documentation to show how the violation was cured, and made changes to internal policies to prevent the recurrence of any similar violation in the future.

Sec. 610.005. ENFORCEMENT; CIVIL PENALTY; INJUNCTION. (a) Provides that the attorney general, except as provided by Section 610.006, has exclusive authority to enforce this chapter.

(b) Provides that 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) Requires the attorney general to bring an action to recover a civil penalty under this section and to restrain or enjoin a person or entity from violating this chapter.

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

(e) Requires the attorney general to 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) Authorizes a person who has used a payment card to purchase a firearm, ammunition for use in a firearm, or a firearm accessory to bring an action against a payment card issuer or payment card network to obtain:

(1) a declaratory judgment under Chapter 37 (Declaratory Judgments), 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.

(b) Prohibits this chapter, except as provided by Subsection (a), from being construed as providing a basis for, or being subject to, a private right of action for a violation of this chapter or any other law.

SECTION 4. Makes application of the changes in law made by Chapter 610, Business and Commerce Code, as added by this Act, prospective.

SECTION 5. Severability clause.

SECTION 6. Effective date: September 1, 2023.