AN ACT
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; imposing a civil penalty.

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

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

SECTION 2. 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, Article I, 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
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. Title 12, Business & Commerce Code, is amended by adding Chapter 610 to read as follows:

CHAPTER 610. UNAUTHORIZED TRANSACTION CATEGORIZATION

Sec. 610.001. DEFINITIONS. In this chapter:

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

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

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

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

(5) "Payment card issuer" means a lender, including a financial institution, or a merchant that receives applications and
issues payment cards to individuals.

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

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

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

(c) A payment card issuer or payment card network shall 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) 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, the attorney general shall
issue a civil investigative demand. The procedures established for
the issuance of a civil investigative demand under Section 15.10
apply to the same extent and manner to the issuance of a civil
investigative demand under this section.

(b) The attorney general may 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. The attorney general shall
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) Not later than the 30th day before bringing an action
under Section 610.005, the attorney general must give written
notice to the person or entity identifying the specific provisions
of this chapter that are or were being violated.

(b) The attorney general may not bring 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:

(A) cured the alleged violation;

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

(C) made changes to internal policies to prevent
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.
(b) Except as provided by Subsection (a), this chapter may not be 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. The changes in law made by Chapter 610, Business & Commerce Code, as added by this Act, apply only to a purchase of a firearm, ammunition for use in a firearm, or a firearm accessory that takes place on or after the effective date of this Act.

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

SECTION 6. This Act takes effect September 1, 2023.
H.B. No. 2837

President of the Senate

I certify that H.B. No. 2837 was passed by the House on May 3, 2023, by the following vote: Yeas 89, Nays 56, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2837 was passed by the Senate on May 19, 2023, by the following vote: Yeas 19, Nays 12.

Secretary of the Senate

APPROVED: ________________________________

Date

Governor