

Amendment No. 1 to SB2223

Bailey
Signature of Sponsor

AMEND Senate Bill No. 2223*

House Bill No. 2762

by deleting all language after the caption and substituting:

WHEREAS, the General Assembly of this State finds and declares that:

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

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

(3) 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 networks will utilize the new merchant category code to conduct mass surveillance of constitutionally protected firearms and ammunition purchases in cooperation with law enforcement;

(4) 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 Tennessee;

(5) 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; and

(6) 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

WHEREAS, based on the above stated findings, it is the intent of the General Assembly to prohibit the misuse of payment card processing systems to surveil, report, or otherwise discourage constitutionally protected firearm and ammunition purchases within the State of Tennessee; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 45, Chapter 2, is amended by adding the following as a new part:

45-2-2201.

This part is known and may be cited as the "Second Amendment Financial Privacy Act."

45-2-2202.

As used in this part:

(1) "Assign" or "assignment" means a financial institution's policy, process, or practice that labels, links, or otherwise associates a firearms code with a merchant or a payment card transaction in a manner that allows the financial institution or another 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;

(2) "Customer" means an individual or entity engaged in a payment card transaction facilitated or processed by a financial institution;

(3) "Financial institution" means an individual or entity other than a merchant involved in facilitating or processing a payment card transaction, including a bank, savings and loan association, state credit union, state trust company, acquirer, payment card issuer, payment card network, payment gateway, or payment card processor;

(4) "Firearm":

(A) Means a deadly weapon capable of expelling or propelling one (1) or more projectiles by the action of an explosive or combustible propellant; and

(B) Includes a firearm component or accessory;

(5) "Firearms code" means a merchant category code approved by the International Organization for Standardization or an equivalent successor organization that is specifically assigned to a firearms retailer;

(6) "Firearms retailer" means an individual or entity that is lawfully engaged, from a physical place of business in this state, in selling or trading firearms, antique firearms, or ammunition to be used in firearms or antique firearms;

(7) "Government entity" means this state, a political subdivision of this state, or any court, agency, or instrumentality of this state;

(8) "Payment card" means a credit card, charge card, debit card, or another card that is issued to an authorized card user and allows the user to purchase goods or services from a merchant; and

(9) "Payment card transaction" means a transaction in which a payment card is accepted as payment.

45-2-2203.

(a) Except for those records kept during the regular course of a criminal investigation and prosecution, or as otherwise required by law, a government entity, or an official, employee, or agent of a government entity, shall not knowingly keep or cause to be kept any list, record, or registry of privately owned firearms or the owners of such firearms.

(b) A financial institution, including an agent of the financial institution, shall not:

(1) Require or permit the assignment of a firearms code in a way that distinguishes a firearms retailer from other retailers; or

(2) Subject to subsections (c) and (d), decline a payment card transaction involving a firearms retailer based solely on the assignment of a firearms code.

(c) This section does not prohibit a financial institution from declining or otherwise refusing to process a payment card transaction for any of the following reasons:

(1) If necessary to comply with applicable state or federal law;

(2) If requested by the customer;

(3) If necessary due to fraud controls; or

(4) For the purpose of merchant category exclusions offered by a financial institution for the purpose of expenditure control or corporate card control.

(d) This section does not limit the authority of a financial institution to negotiate with responsible parties or otherwise impair a financial institution's actions related to any of the following:

(1) Dispute processing;

(2) Fraud risk, credit management, or other controls in the ordinary course of business operations;

(3) Protecting against illegal activities, breach, or cyber risks; or

(4) Restricting the use or availability of a firearms code in this state.

45-2-2204.

(a) The attorney general and reporter shall investigate allegations that an individual or entity, including a government entity, has violated § 45-2-2203 and, upon finding a violation, provide written notice to the individual or entity believed to have committed the violation. The individual or entity shall cease the violation within thirty (30) days after receiving such notice.

(b)

(1) If an individual or entity does not cease the violation within thirty (30) days after receiving notice pursuant to subsection (a), then the attorney general and reporter shall file an action against that individual or entity to seek an injunction in a court of competent jurisdiction.

(2) If the court finds that the individual or entity violated § 45-2-2203 and has not ceased the activity constituting the violation, the court shall enjoin the individual or entity from continuing such activity and may award any other relief that the court deems appropriate.

(3) If an individual or entity knowingly fails to comply with an injunction issued under subdivision (b)(2) after thirty (30) days of being served with the injunction, the attorney general and reporter, upon petition to the court, shall seek to impose on that individual or entity a civil fine in an amount not to exceed ten thousand dollars (\$10,000) for each violation committed after the expiration of the thirty-day period. In assessing such fine, the court shall consider as factors the financial resources of the violator, the harm or risk of harm to the rights under the Second Amendment to the United States Constitution and the Constitution of Tennessee, Article I, § 26, resulting from the violation.

(4) An order assessing a civil fine under subdivision (b)(3) must be stayed pending appeal of the order.

(c) The remedies set forth in this section are the exclusive remedies for any violation of § 45-2-2203.

(d) It is a defense to a proceeding initiated pursuant to this section that a firearms code was required to be disclosed or assigned by law.

(e) A firearms retailer physically located in this state whose business was the subject of an alleged violation of this part or a customer who transacted at a firearms retailer physically located in this state whose business was the subject of an alleged violation of this part may petition the attorney general and reporter to investigate an alleged violation of this part. If the attorney general and reporter declines to investigate, then the firearms retailer or customer may pursue an injunction in the chancery court of the judicial district where the alleged violation occurred. If that court finds that an individual or entity is responsible for a violation of this part, then the court shall enjoin such individual or entity from continuing the activity found to be in violation of this part.

SECTION 2. This act takes effect July 1, 2024, the public welfare requiring it.