

1 A bill to be entitled
2 An act relating to sales of firearms and ammunition;
3 amending s. 790.335, F.S.; providing legislative
4 findings; prohibiting payment settlement entities,
5 merchant acquiring entities, or third party settlement
6 organizations from assigning merchant category codes
7 or otherwise classifying merchants of firearms or
8 ammunition separately from general merchandise or
9 sporting goods retailers; prohibiting entities
10 involved in facilitating or processing payment card
11 transactions from assigning to or requiring a merchant
12 to use certain merchant category codes; authorizing a
13 merchant of firearms or ammunition to be assigned or
14 to use certain merchant category codes; specifying
15 that any agreement or contractual provision to the
16 contrary is void and in violation of the public policy
17 of this state; authorizing the Department of
18 Agriculture and Consumer Services to investigate
19 certain alleged violations and bring administrative
20 actions; providing an exception to complaint
21 investigations by state attorneys; making technical
22 changes; providing an effective date.

23
24 WHEREAS, the International Standards Organization, based in
25 Switzerland, recently approved a new merchant category code for

26 | firearm and ammunition merchants, and

27 | WHEREAS, firearm and ammunition merchants historically have
28 | been classified as sporting goods retailers or general
29 | merchandise retailers, which has been sufficient for credit card
30 | companies' business needs, and

31 | WHEREAS, according to advocates for the new merchant
32 | category code, the new code will allow credit card companies to
33 | flag "suspicious" transactions, ostensibly for the purpose of
34 | predicting and preventing future gun violence, and

35 | WHEREAS, proponents indicate that the new merchant category
36 | code is a "first step" but have given no guidance as to how to
37 | distinguish suspicious activity from lawful sales, and

38 | WHEREAS, the use of either merchant category code cannot
39 | distinguish the sale of a firearm from the sale of a gun safe by
40 | a firearms and ammunition merchant, and

41 | WHEREAS, the use of the new merchant category code to
42 | detect suspicious activities predicting future unlawful activity
43 | will likely discourage financial institutions from serving
44 | lawful retailers of firearms and ammunition and chill the lawful
45 | exercise of Second Amendment rights, and

46 | WHEREAS, current law requires a firearm retailer to conduct
47 | a criminal history records check on a potential purchaser before
48 | delivering a firearm to the purchaser, and

49 | WHEREAS, the new merchant category code may result in
50 | credit card companies reporting law-abiding citizens to a law

51 enforcement agency based on overbroad definitions of suspicious
 52 activity and the creation of a de facto gun registry and
 53 watchlists of law-abiding citizens, and

54 WHEREAS, the use of the new merchant category code will
 55 likely make the job of law enforcement officers more difficult,
 56 as those purchasing a firearm from a firearm retailer for an
 57 unlawful purpose will likely purchase firearms with cash,
 58 cryptocurrency, or other means that are difficult or impossible
 59 to trace, and

60 WHEREAS, developing appropriate regulations for the sale of
 61 firearms and ammunition while protecting the right of self-
 62 defense is the role of democratically elected officials, not the
 63 role of unelected bankers and foreign organizations, NOW,
 64 THEREFORE,

65

66 Be It Enacted by the Legislature of the State of Florida:

67

68 Section 1. Paragraph (a) of subsection (1) and subsections
 69 (2) and (4) of section 790.335, Florida Statutes, are amended to
 70 read:

71 790.335 Prohibition of registration of firearms;
 72 electronic records.—

73 (1) LEGISLATIVE FINDINGS AND INTENT.—

74 (a) The Legislature finds and declares that:

75 1. The right of individuals to keep and bear arms is

76 | guaranteed under both the Second Amendment to the United States
 77 | Constitution and s. 8, Art. I of the State Constitution.

78 | 2. A list, record, or registry of legally owned firearms
 79 | or law-abiding firearm owners is not a law enforcement tool and
 80 | can become an instrument for profiling, harassing, or abusing
 81 | law-abiding citizens based on their choice to own a firearm and
 82 | exercise their Second Amendment right to keep and bear arms as
 83 | guaranteed under the United States Constitution. Further, such a
 84 | list, record, or registry has the potential to fall into the
 85 | wrong hands and become a shopping list for thieves.

86 | 3. A list, record, or registry of legally owned firearms
 87 | or law-abiding firearm owners is not a tool for fighting
 88 | terrorism, but rather is an instrument that can be used as a
 89 | means to profile innocent citizens and to harass and abuse
 90 | American citizens based solely on their choice to own firearms
 91 | and exercise their Second Amendment right to keep and bear arms
 92 | as guaranteed under the United States Constitution.

93 | 4. The creation or maintenance of records of purchases of
 94 | firearms or ammunition or the tracking of sales made by a
 95 | retailer of firearms or ammunition by a nongovernmental entity,
 96 | including a financial institution, without a substantial and
 97 | historical business need or a requirement imposed by law, may
 98 | frustrate the right to keep and bear arms and violate the
 99 | reasonable privacy rights of lawful purchasers of firearms or
 100 | ammunition.

101 5.4. Law-abiding firearm owners whose names have been
 102 illegally recorded in a list, record, or registry are entitled
 103 to redress.

104 (2) PROHIBITIONS.—

105 (a) A ~~No~~ state governmental agency or local government,
 106 special district, or other political subdivision or official,
 107 agent, or employee of the ~~such~~ state or other governmental
 108 entity or any other person, public or private, may not ~~shall~~
 109 knowingly and willfully keep or cause to be kept any list,
 110 record, or registry of privately owned firearms or any list,
 111 record, or registry of the owners of those firearms.

112 (b) A payment settlement entity, merchant acquiring
 113 entity, or third party settlement organization as those terms
 114 are defined in s. 6050W of the Internal Revenue Code may not
 115 assign a merchant category code to or otherwise classify a
 116 merchant that is a seller of firearms or ammunition separately
 117 from general merchandise retailers or sporting goods retailers.

118 (c) An entity involved in facilitating or processing a
 119 payment card transaction, including, but not limited to, a
 120 financial institution, an acquirer, a payment card network, or a
 121 payment card issuer, may not assign to or require a merchant to
 122 use a merchant category code that classifies the merchant as a
 123 firearms or ammunition retailer or places the merchant in a
 124 similar classification. A merchant of firearms or ammunition may
 125 be assigned or may use a merchant category code for general

126 merchandise retailers or sporting goods retailers. Any agreement
 127 or contractual provision to the contrary is void in violation of
 128 the public policy of this state.

129 (4) PENALTIES.—

130 (a) Any person who, or entity that, violates paragraph
 131 (2) (a) ~~a provision of this section~~ commits a felony of the third
 132 degree, punishable as provided in s. 775.082 or s. 775.083.

133 (b) Except as required by ~~the provisions of~~ s. 16, Art. I
 134 of the State Constitution or the Sixth Amendment to the United
 135 States Constitution, ~~no~~ public funds may not shall be used to
 136 defend the unlawful conduct of any person charged with a
 137 violation of this section, unless the charges against the such
 138 person are dismissed or the such person is determined to be not
 139 guilty at trial. Notwithstanding this paragraph, public funds
 140 may be expended to provide the services of the office of public
 141 defender or court-appointed conflict counsel as provided by law.

142 (c) The governmental entity, or the designee of the such
 143 governmental entity, in whose service or employ a list, record,
 144 or registry was compiled in violation of paragraph (2) (a) ~~this~~
 145 ~~section~~ may be assessed a fine of up to ~~not more than~~ \$5
 146 million⁷, if the court determines that the evidence shows that
 147 the list, record, or registry was compiled or maintained with
 148 the knowledge or complicity of the management of the
 149 governmental entity. The Attorney General may bring a civil
 150 cause of action to enforce the fines assessed under this

151 paragraph.

152 (d) The Department of Agriculture and Consumer Services
 153 may investigate alleged violations of paragraph (2)(b) or
 154 paragraph (2)(c) and, upon finding a violation, bring an
 155 administrative action seeking to impose an administrative fine
 156 pursuant to s. 570.971 in the Class III category for each
 157 violation of paragraph (2)(b) or paragraph (2)(c) for each
 158 instance of an unlawfully classified retailer.

159 (e)-(d) The state attorney in the appropriate jurisdiction
 160 shall investigate complaints of criminal violations of this
 161 section, except for alleged violations of paragraph (2)(b) or
 162 paragraph (2)(c), and shall prosecute violators ~~and,~~ where
 163 evidence indicates that a violation may have occurred, ~~shall~~
 164 ~~prosecute violators.~~

165 Section 2. This act shall take effect July 1, 2023.