

2025 South Dakota Legislature

Senate Bill 81**AMENDMENT 81A
FOR THE INTRODUCED BILL**

1 **An Act to prohibit the use of a firearms code for transactions involving firearms,**
2 **accessories, components, and ammunition and to provide a civil penalty**
3 **therefor.**

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 **Section 1. That a NEW SECTION be added to a new chapter ~~51A-17~~ in title 37:**

6 Terms used in this Act mean:

- 7 (1) "Ammunition," firearm ammunition and cartridge casings, primers, bullets, and
8 propellant powder, designed for use in a firearm;
- 9 (2) "Assignment," a financial institution's policy, process, or practice, which labels,
10 links, or otherwise associates a firearms code with a merchant or payment card
11 transaction, in a manner that allows the financial institution or any other entity
12 facilitating or processing the payment card transaction to identify whether:
13 (a) A merchant is a firearms dealer; or
14 (b) A transaction involves the sale of firearms or ammunition;
- 15 (3) "Customer," any person engaged in a payment card transaction that a financial
16 institution facilitates or processes and any person, or the person's duly authorized
17 representative, who has transacted business with or has used the services of a
18 financial institution, or for whom a financial institution has acted as a fiduciary in
19 relation to an account maintained in the person's name;
- 20 (4) "Disclosure," the transfer, publication, or distribution of protected financial
21 information to another person, for any purpose other than to process or facilitate
22 a payment card transaction;
- 23 (5) "Financial institution," a bank, savings and loan association, trust company, or
24 credit union chartered pursuant to any state or federal law; a regulated consumer
25 lender, a money service business, payment card issuer, or other institution that is
26 by law under the jurisdiction of the Division of Banking; and an entity involved in

- 1 facilitating or processing a payment card transaction, including a bank, acquirer,
2 gateway, payment card network, or payment card issuer;
- 3 (6) "Financial record," any:
- 4 (a) Original or copy of a record or document held by a financial institution,
5 which pertains to a customer of the financial institution, including any record
6 of a transaction conducted by means of a customer bank communication
7 terminal or other electronic device;
- 8 (b) A record held by a financial institution, which relates to a payment card
9 transaction that the financial institution has processed or facilitated; and
- 10 (c) Information derived from any record or document referenced in this
11 subdivision;
- 12 (7) "Firearm," a weapon that is capable of expelling, is designed to expel, or may
13 readily be converted to expel a projectile by action of an explosive;
- 14 (8) "Firearm accessory or component," any:
- 15 (a) Device that is specifically adapted to enable the carrying, storage, or
16 wearing of a firearm;
- 17 (b) Device that is specifically adapted to enable the mounting of a firearm in or
18 on any conveyance;
- 19 (c) Device that is specifically adapted to be inserted into or affixed to a firearm
20 to alter, enable, or improve the capabilities or the functioning of the firearm;
- 21 (d) Ammunition carrier, aftermarket grip or stock, brace, flash suppressor,
22 folding stock, laser sight, light for target illumination, magazine, sound
23 suppressor, speed loader, telescopic sight, or any other item used in
24 conjunction with or mounted upon a firearm; and
- 25 (e) Equipment, machinery, material, tool, or other component used in making,
26 manufacturing, or reloading ammunition;
- 27 (9) "Firearms code," an indicator or code that:
- 28 (a) A financial institution assigns to a merchant or to a payment card
29 transaction and which identifies whether a merchant is a firearms dealer or
30 whether the payment card transaction involves the purchase of a firearm,
31 firearm accessories or components, or ammunition; and
- 32 (b) Includes a merchant category code assigned to a retailer by a payment card
33 network or other financial institution;
- 34 (10) "Firearms dealer," any:
- 35 (a) Retailer or merchant of firearm accessories or components;

- 1 **(b)** Any person engaged in the lawful business of selling or trading firearms or
2 antique firearms, as those terms are defined in 18 U.S.C. § 921 (January
3 1, 2025); or
- 4 **(c)** Any person engaged in the lawful business of selling ammunition for use in
5 firearms or antique firearms;
- 6 **(11)** "Governmental entity," this state, any political subdivision of this state, and any
7 agency or instrumentality of this state or a political subdivision of this state;
- 8 **(12)** "Merchant," an individual or entity accepting a payment card from a customer for
9 the purchase of a good or service, including a firearms dealer that accepts payment
10 cards for the lawful purchase of firearms, firearm accessories or components, or
11 ammunition;
- 12 **(13)** "Payment card," a charge card, credit card, debit card, or any other card that is
13 issued to an authorized user and allows the user to purchase goods or services
14 from a merchant; and
- 15 **(14)** "Protected financial information," any record of a sale, purchase, return, or refund,
16 involving a payment card that is retrieved, characterized, generated, labeled,
17 sorted, or grouped based on the assignment of a firearms code, provided a
18 customer's protected financial information refers to protected financial information
19 appearing in the financial records of a customer.

20 **Section 2. That a NEW SECTION be added to a new chapter-51A-17 in title 37:**

21 With the exception of records kept during the regular course of a criminal
22 investigation and prosecution, or as otherwise required by law, no governmental entity or
23 official, agent, or employee of a governmental entity or any person other than the owner
24 or owner's representative, may knowingly and willfully keep or cause to be kept any list,
25 record, or registry of privately owned firearms or the owners of those firearms.

26 **Section 3. That a NEW SECTION be added to a new chapter-51A-17 in title 37:**

27 Neither a financial institution nor an agent of a financial institution may require the
28 use of a firearms code in a way that distinguishes a firearms dealer physically located in
29 this state from a general merchandise retailer or a sporting goods retailer located in this
30 state.

31 **Section 4. That a NEW SECTION be added to a new chapter-51A-17 in title 37:**

1 A financial institution may not discriminate against a firearms dealer by:

- 2 (1) Declining a lawful payment card transaction based solely on the assignment or
3 non-assignment of a firearms code to the merchant or the transaction;
4 (2) Limiting or declining to do business with a customer, potential customer, or
5 merchant, based on the assignment or non-assignment of a firearms code to
6 previous lawful transactions involving the customer, potential customer, or
7 merchant;
8 (3) Charging a merchant a higher transaction or interchange fee for a lawful
9 transaction based on the assignment or non-assignment of a firearms code; or
10 (4) Taking any other action against a customer or merchant with the intent of
11 suppressing lawful commerce involving firearms, firearm accessories or
12 components, or ammunition, if the action is based solely or in part on the
13 customer's or merchant's business involving firearms, firearm accessories or
14 components, or ammunition.

15 **Section 5. That a NEW SECTION be added to a new chapter-51A-17 in title 37:**

16 The attorney general may investigate any alleged violation of this Act and shall
17 provide written notice to any individual or entity, public or private, believed to be in
18 violation. Written notice to any commercial entity must be made to the entity's registered
19 agent.

20 Upon receipt of a written notice from the attorney general, the alleged violator
21 must cease usage of the firearms code within thirty calendar days. The attorney general
22 may extend the period for up to an additional one hundred and twenty days.

23 **Section 6. That a NEW SECTION be added to a new chapter-51A-17 in title 37:**

24 The attorney general may be petitioned to investigate an alleged violation of this
25 Act by:

- 26 (1) A firearms dealer physically located in this state, if the dealer's business was the
27 subject of an alleged violation of this Act; or
28 (2) A customer who engaged in a transaction with a firearms dealer physically located
29 in this state, if the dealer's business was the subject of an alleged violation of this
30 Act.

31 If the attorney general does not commence an action within ninety days of
32 receiving a petition under this section, the firearms dealer or the customer may file an

1 action in a court of competent jurisdiction to enjoin the individual or entity from engaging
2 in a violation of this Act.

3 **Section 7. That a NEW SECTION be added to a new chapter-51A-17 in title 37:**

4 If an individual or entity, public or private, is found to be in violation of this Act
5 after the later of the expiration of thirty calendar days from the receipt of written notice
6 by the attorney general the expiration of any extension granted by the attorney general,
7 the attorney general must pursue an injunction against the individual or entity, in a court
8 of competent jurisdiction in the circuit court for the county where the alleged violation
9 occurred.

10 If a court finds that an individual or entity continues to be in violation of this Act
11 after the later of thirty calendar days from the receipt of written notice by the attorney
12 general or the expiration of any extension granted by the attorney general, or after a
13 finding of a violation of this Act by a court, the court must enjoin the individual or entity
14 from continuing to violate this Act.

15 If thirty days after the issuance of an injunction an individual or entity knowingly
16 and willfully fails to comply, as provided for in this section, the court must impose a civil
17 penalty in the amount of twenty-five thousand dollars or the amount of actual damages
18 for each violation occurring after the conclusion of the thirty-day period. In assessing the
19 penalty, the court may consider the financial resources of the violator and any harm or
20 risk of harm to an individual's rights under the U.S. Const. amend. II, resulting from the
21 violation. The court shall forward any civil penalty collected under this section to the state
22 treasurer, for deposit in the general fund.

23 In addition to the remedies provided for in this section, the attorney general or a
24 petitioner who prevails in an action under this Act shall recover costs and reasonable
25 attorney's fees.

26 **Section 8. That a NEW SECTION be added to a new chapter-51A-17 in title 37:**

27 It is not a defense to an action filed pursuant to this Act that information was
28 disclosed to a federal government entity, unless the disclosure or action was based on a
29 good faith conclusion that the disclosure or action was required by federal law or
30 regulation.