

By Senator Burgess

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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; authorizing the Department
10 of Agriculture and Consumer Services to investigate
11 certain alleged violations and bring administrative
12 actions; providing an exception to complaint
13 investigations by state attorneys; making technical
14 changes; providing an effective date.

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16 WHEREAS, the International Standards Organization, based in
17 Switzerland, recently approved a new merchant category code for
18 firearm and ammunition merchants, and

19 WHEREAS, firearm and ammunition merchants historically have
20 been classified as sporting goods retailers or general
21 merchandise retailers, which has been sufficient for credit card
22 companies' business needs, and

23 WHEREAS, according to advocates for the new merchant
24 category code, the new code will allow credit card companies to
25 flag "suspicious" transactions, ostensibly for the purpose of
26 predicting and preventing future gun violence, and

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

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30 WHEREAS, the use of either merchant category code cannot
31 distinguish the sale of a firearm from the sale of a gun safe by
32 a firearms and ammunition merchant, and

33 WHEREAS, the use of the new merchant category code to
34 detect suspicious activities predicting future unlawful activity
35 will likely discourage financial institutions from serving
36 lawful retailers of firearms and ammunition and chill the lawful
37 exercise of Second Amendment rights, and

38 WHEREAS, current law requires a firearm retailer to conduct
39 a criminal history records check on a potential purchaser before
40 delivering a firearm to the purchaser, and

41 WHEREAS, the new merchant category code may result in
42 credit card companies reporting law-abiding citizens to a law
43 enforcement agency based on overbroad definitions of suspicious
44 activity and the creation of a de facto gun registry and
45 watchlists of law-abiding citizens, and

46 WHEREAS, the use of the new merchant category code will
47 likely make the job of law enforcement officers more difficult,
48 as those purchasing a firearm from a firearm retailer for an
49 unlawful purpose will likely purchase firearms with cash,
50 cryptocurrency, or other means that are difficult or impossible
51 to trace, and

52 WHEREAS, developing appropriate regulations for the sale of
53 firearms and ammunition while protecting the right of self-
54 defense is the role of democratically elected officials, not the
55 role of unelected bankers and foreign organizations, NOW,
56 THEREFORE,

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

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

790.335 Prohibition of registration of firearms; electronic records.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds and declares that:

1. The right of individuals to keep and bear arms is guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.

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

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

4. 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,

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88 including a financial institution, without a substantial and
89 historical business need or a requirement imposed by law, may
90 frustrate the right to keep and bear arms and violate the
91 reasonable privacy rights of lawful purchasers of firearms or
92 ammunition.

93 5. Law-abiding firearm owners whose names have been
94 illegally recorded in a list, record, or registry are entitled
95 to redress.

96 (2) PROHIBITIONS.—

97 (a) A ~~Ne~~ state governmental agency or local government,
98 special district, or other political subdivision or official,
99 agent, or employee of the ~~such~~ state or other governmental
100 entity or any other person, public or private, may not ~~shall~~
101 knowingly and willfully keep or cause to be kept any list,
102 record, or registry of privately owned firearms or any list,
103 record, or registry of the owners of those firearms.

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

110 (4) PENALTIES.—

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

114 (b) Except as required by ~~the provisions of~~ s. 16, Art. I
115 of the State Constitution or the Sixth Amendment to the United
116 States Constitution, ~~no~~ public funds may not ~~shall~~ be used to

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117 defend the unlawful conduct of any person charged with a
118 violation of this section, unless the charges against the such
119 person are dismissed or the such person is determined to be not
120 guilty at trial. Notwithstanding this paragraph, public funds
121 may be expended to provide the services of the office of public
122 defender or court-appointed conflict counsel as provided by law.

123 (c) The governmental entity, or the designee of the such
124 governmental entity, in whose service or employ a list, record,
125 or registry was compiled in violation of paragraph (2) (a) ~~this~~
126 ~~section~~ may be assessed a fine of up to not more than \$5
127 million, if the court determines that the evidence shows that
128 the list, record, or registry was compiled or maintained with
129 the knowledge or complicity of the management of the
130 governmental entity. The Attorney General may bring a civil
131 cause of action to enforce the fines assessed under this
132 paragraph.

133 (d) The Department of Agriculture and Consumer Services may
134 investigate alleged violations of paragraph (2) (b) and, upon
135 finding a violation, bring an administrative action seeking to
136 impose an administrative fine pursuant to s. 570.971 in the
137 Class III category for each violation of paragraph (2) (b) for
138 each instance of an unlawfully classified retailer.

139 (e) The state attorney in the appropriate jurisdiction
140 shall investigate complaints of criminal violations of this
141 section, except for alleged violations of paragraph (2) (b), and
142 shall prosecute violators, where evidence indicates that a
143 violation may have occurred, ~~shall prosecute violators.~~

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