

By the Committee on Commerce and Tourism; and 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; 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

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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

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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; electronic  
72 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 or  
79 law-abiding firearm owners is not a law enforcement tool and can  
80 become an instrument for profiling, harassing, or abusing law-  
81 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 or  
87 law-abiding firearm owners is not a tool for fighting terrorism,

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88 but rather is an instrument that can be used as a means to  
89 profile innocent citizens and to harass and abuse American  
90 citizens based solely on their choice to own firearms and  
91 exercise their Second Amendment right to keep and bear arms as  
92 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. 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~~ A ~~Ne~~ 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 entity,  
113 or third party settlement organization as those terms are  
114 defined in s. 6050W of the Internal Revenue Code may not assign  
115 a merchant category code to or otherwise classify a merchant  
116 that is a seller of firearms or ammunition separately from

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117 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

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

159 (e) 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, where evidence  
163 indicates that a violation may have occurred, ~~shall prosecute~~  
164 ~~violators.~~

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