

2023214er

1
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

2023214er

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

2023214er

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,

2023214er

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 ~~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 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

2023214er

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

2023214er

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.