

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 221 Sales of Firearms and Ammunition

SPONSOR(S): Commerce Committee and Regulatory Reform & Economic Development Subcommittee, Snyder and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 214

FINAL HOUSE FLOOR ACTION: 83 Y's 32 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 221 passed the House on May 2, 2023, as CS/SB 214.

A Merchant Category Code (MCC) is a code used by credit card payment associations that categorizes where a credit card purchase is made without showing the specific items that were purchased. Payment organizations use the MCC codes to classify different merchants and businesses by goods or services so that they can track and restrict transactions, report taxes, interchange promotions, gather information on purchasing behaviors, file reports with the Internal Revenue Service (IRS), determine rewards, identify high-risk business models and prohibited business types, and track customer spending.

Historically, MCCs have allowed retailers who sell firearm and ammunition to be categorized under general retail or sporting goods stores. Recently, the International Organization for Standardization (ISO) updated the MCC and created a new MCC for firearm and ammunition retailers. Some argue that the information gathered from the use of this new code could be construed as a firearm registry maintained by private entities.

The bill:

- Prohibits payment settlement entities, merchant acquiring entities, or third-party settlement organizations from classifying merchants or assigning them with an MCC that identifies them as sellers of firearms or ammunition; and
- Authorizes the Department of Agriculture and Consumer Services (DACCS) to conduct investigations of alleged violations and bring an administrative action seeking to impose a Class III administrative fine for violations.

The fiscal impact to state government is indeterminate.

The bill was approved by the Governor on May 12, 2023, ch. 2023-79, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation of Merchant Category Codes When Purchasing Firearms

Merchant Category Codes

The International Organization for Standardization (ISO) is an independent, non-governmental organization that develops international standards. One of the standards that the ISO created are the Merchant Category Codes (MCC). The MCCs are used by Mastercard, Visa, Amex, and other major card payment organizations.¹ The MCCs are a 4-digit number that is assigned to a merchant by an acquiring bank in compliance with the card association. Once the business opens a merchant account with the MCC, the business is classified by that market segment and it allows the business to begin accepting credit cards as a form of payment.²

Payment organizations use the MCC codes to classify different merchants and businesses by the goods or services they offer so that they can track and restrict transactions, report taxes, interchange promotions, gather information on purchasing behaviors, file reports with the Internal Revenue Service (IRS), determine rewards, identify high-risk business models and prohibited business types, and track customer spending.³

Merchant Category Codes in Relation to Firearms

An MCC shows where the purchase is made, but it does not show the specific items that were purchased. Each credit card network has its own master list of MCCs. There are many codes that are being standardized based on the ISO standard, but some financial organizations, third party settlement organizations, or processors have their own MCC lists.⁴

Historically, retailers who sell firearms and ammunition have been assigned an MCC of general retail stores or sporting goods stores.⁵ On September 7, 2022, the ISO approved an application by a New York-based bank to adopt a new MCC for firearm retailers, which includes a gun code for “gun and ammunition shops.”⁶ MCCs adopted by the ISO are not required to be used, but card associations like Visa, MasterCard, and American Express, have all agreed to use the new MCC.⁷ However, Visa and MasterCard have not yet updated their lists to include the new MCC for firearm retailers.⁸

¹ The ISO, *About Us & Retail financial services – Merchant category codes*, <https://www.iso.org/about-us.html#:~:text=ISO%20is%20an%20independent%2C%20non-governmental%20international%20organization%20with,support%20innovation%20and%20provide%20solutions%20to%20global%20challenges> (last visited Feb. 28, 2023).

² Dwyer, B., *CardFellow, Merchant Category Code: Reporting & Rates (2020)*, Apr. 6, 2020, <https://www.cardfellow.com/blog/merchant-category-code-mcc/> (last visited Feb. 28, 2023).

³ Citi, *Merchant Category Codes*, Treasury and Trade Solutions, available at <https://www.citibank.com/tts/solutions/commercial-cards/assets/docs/govt/Merchant-Category-Codes.pdf> (last visited Feb. 28, 2023).

⁴ Motola, C., *Merchant Maverick, Merchant Category Codes (MCC): All You Need to Know*, May 26, 2021, <https://www.merchantmaverick.com/merchant-category-code-mcc/> (last visited Feb. 28, 2023).

⁵ Kerber, R., Reuters, *Global Standards Body Approves New Merchant code for Gun Sellers*, Sept. 9, 2022, <https://www.reuters.com/world/exclusive-global-standards-body-approves-new-merchant-code-gun-sellers-2022-09-09/> (last visited Feb. 28, 2023).

⁶ See *id* at The ISO.

⁷ Mion, L., Fox Business, *Visa, MasterCard, Amex, to Categorize Gun Store Sales Separately*, Sept. 11, 2022, <https://www.foxbusiness.com/economy/visa-mastercard-amex-categorize-gun-store-sales-separately> (last visited Mar. 1, 2023).

⁸ Visa MCC Manual; MasterCard, *Quick Reference Booklet – Merchant Edition*, Nov. 15, 2018, <https://www.mastercard.us/content/dam/mccom/en-us/documents/rules/quick-reference-booklet-merchant-edition.pdf> (last visited Feb. 17, 2023) (In Visa’s and MasterCard’s MCC lists, noting firearms under codes 5099 and 5999, for durable goods (not elsewhere classified) and miscellaneous and specialty retail shops, respectively).

Advocates in support of the new MCC note that this helps to identify and report suspicious activity, such as unusually large purchases of weapons or ammunition.⁹ Opponents of the new MCC, have concerns that the new MCC may be too close to a national registry for gun owners.¹⁰

On September 20, 2022, twenty-four attorneys general, including the Florida Attorney General, sent a letter to Visa, MasterCard, and American Express, expressing concerns about the possibility to misuse the new MCC by tracking data which could infringe upon consumers privacy. In addition, they stated it could result in “arbitrary disparate treatment” of firearm retailers and consumers because the new MCC would only capture firearm purchases from gun retailers but not from department stores.¹¹

Parties Involved with Transactions

Even the smallest credit or debit card transactions involve a host of parties that facilitate the exchange between the merchant and customer.

These parties include the cardholder, the merchant, the merchant bank, the payment processors, the issuing banks and the card associations.¹² In a typical transaction, a cardholder will purchase a good or service from a merchant through the use of a credit or debit card. At this time the merchant will send a payment authorization request to the merchant’s payment processor who in turn submits the transaction to the correct card association.¹³ The card association will then send this authorization request to the issuing bank where the transaction will either be approved or denied.¹⁴ The issuing bank’s response will then be sent back to the card association which sends the information to the merchant bank who sends the information to the merchant.¹⁵

The parties:

- The cardholder is the buyer in the transaction and has a line of credit or a checking account with an issuing bank.
- The merchant is the seller in the transaction and in choosing to accept debit card and credit card purchases will partner with a payment processor.
- A payment processor sends payment information to the customer’s card association.
- A card association acts as an intermediary between the issuing bank (customer’s bank) and the merchant bank as they relay both payment information to the issuing bank and the issuing bank’s response to the merchant bank.
- The issuing bank receives purchase information from the card association and either approves or denies the transaction. It will inform the card association of its determination. Upon determination from the issuing bank for a transaction the card association will inform the merchant bank.
- The merchant bank is the bank of the merchant and will inform the merchant of the issuing bank’s determination.¹⁶

⁹ CBS New York Team, CBS New York, *New York Leaders Call for Establishment of Merchant Category Code for Gun and Ammunition Stores*, Aug. 30, 2022, <https://www.cbsnews.com/newyork/news/new-york-gun-ammunition-store-merchant-category-code/#:~:text=August%2030%2C%202022%20%2F%207%3A44%20PM%20%2F%20CBS.merchant%20category%20code%20for%20gun%20and%20ammunition%20stores> (last visited Mar. 1, 2023).

¹⁰ Marek, L. Industry Dive. *Visa Raises Concerns on New Gun Code*, Sept. 14, 2022, <https://www.paymentsdive.com/news/visa-concerns-new-gun-code-payments-nra/631845/> (last visited Mar. 1, 2023).

¹¹ Skrmetti, J. and others, Letter from Attorneys General to Card Associations regarding MCCs, *Tennessee State Government*, International Organization for Standardization (ISO), <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-36-letter.pdf> (last visited Mar. 1, 2023).

¹² FIS Global, *How Credit Card Processing Works*, <https://www.fisglobal.com/en/insights/merchant-solutions-worldpay/article/how-credit-card-processing-works> (last visited Mar. 7, 2023).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

A credit card transaction is made up of three processes, the authorization process, the settlement process, and the funding process.¹⁷ The authorization process happens near instantaneously and can either end in approval or denial.¹⁸ The authorization process reflects the issuing bank's approval or denial of a transaction which is then relayed through the payment network to the merchant.

Current Situation of Credit Card Laws

Relevant Federal Credit Card Laws

Anti-money Laundering Laws

Anti-money Laundering Laws, aim to detect and prevent money laundering and deter financial criminal activity.¹⁹ One provision in these laws, authorizes the Secretary of the Treasury to require any financial institution or those related to financial institutions, to report any suspicious transactions.²⁰ Banks, federally and non-federally regulated, are required to establish anti-money laundering programs which must meet specified requirements.²¹ This includes ongoing monitoring to identify and report suspicious activity and transactions.²² The U.S. Department of Homeland Security website contains "Signs of Suspicious Activity" which displays images and a description of categories for signs of suspicious activities, one of which is firearm related.²³

Internal Revenue Code

Payment settlement entities are required to make an annual return to the Internal Revenue Service (IRS) which contains, the gross amount of the reportable payment transactions²⁴ for each participating payee.²⁵ The Secretary has the authority to determine the time, form, and manner in which the return must be made,²⁶ and is reported through Form 1099-K. The form contains a box to report the MCC assigned to the participating payee. The MCC may be excluded from the form if the filing entity uses an industry classification system other than or in addition to MCCs or is a third-party settlement organization.²⁷ Broadly speaking, the MCCs classify businesses based on what they predominately furnish, services or goods. Payments for services are reportable whereas payments for goods are not reportable.²⁸

Relevant Florida Credit Card Laws

Relevant Florida laws that relate to credit cards²⁹ are contained in the Financial Institutions Code and the Consumer Protection Act.³⁰ Florida's Credit Card Bank Act provides that a credit card account between a domestic lender or credit card bank and a borrower must be governed by the laws of Florida or federal law unless otherwise expressly agreed in writing by the parties but such writing may not supersede the interest rate provisions of s. 655.954, F.S.³¹ Florida consumer protection laws set out a

¹⁷ *Id.*

¹⁸ This process plays out in full when a debit or credit card is either accepted or rejected at a payment terminal.

¹⁹ 31 U.S.C. s. 5311(2) and (3).

²⁰ 31 U.S.C. s. 5318(g)(1).

²¹ 31 C.F.R. 1020.210.

²² 31 C.F.R. 1020.10(a)(2)(v)(B) and (b)(2)(v)(B).

²³ The United States Department of Homeland Security, *Recognize Suspicious Activity*, <https://www.dhs.gov/see-something-say-something/recognize-the-signs> (last visited Mar. 1, 2023).

²⁴ 26 U.S.C. s. 6050W(c), defines "reportable payment transaction" as any payment card or third-party network transaction.

²⁵ 26 U.S.C. s. 6050W(a).

²⁶ *Id.*

²⁷ IRS, *Instructions for Form 1099-K (01/2022)*, Jan. 2022, <https://www.irs.gov/pub/irs-pdf/i1099k.pdf> (last visited Mar. 1, 2023).

²⁸ *Id.*

²⁹ S. 658.995(2)(a), F.S.

³⁰ S. 655.005(1)(i), F.S.

³¹ S. 658.995(2)(d), F.S.

limited number of protections relating to credit cards, such as provisions relating to issuing credit cards, imposing a surcharge, or printing certain information on a merchant's receipt.³² No provisions were identified that explicitly restrict or address the use of MCCs.

Similar Pending Legislation in Other States Related to MCCs

Pending legislation that addresses similar issues:

Kentucky HB 221: Purchases from Licensed Gun Dealers (2023)	Creates a new section to prohibit credit card companies, financial institutions, or other persons from using an MCC or other method that categorizes purchases from licensed gun dealers separately from other retailers. ³³
Mississippi HB 1110: Second Amendment Financial Privacy Act (2023) - PASSED	Prohibits a financial institution or its agent from requiring or "assigning" a specific firearm or ammunition merchant code to any firearms business located in Mississippi. ³⁴
Texas HB 2041: Notice to Consumers Regarding Firearm or Ammunition Transactions (2023-2024)	Requires notice given to consumers when a financial institution generates or collects prohibited firearm or ammunition purchase information. ³⁵
West Virginia SB 555: Prohibiting Banks and Payment Networks from Tracking Firearm-related Data and Outlining Penalties (2023)	Prohibits banks and payment networks from tracking firearm-related data and outlines penalties regarding the state and local purchasing card contract if banks and payment networks track firearm-related data. ³⁶

Current Situation Firearms Records

Background

The Second Amendment states "a well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."³⁷ As with many amendments in the Constitution, the courts have had to evaluate how far the right extends. The Supreme Court has determined that the individual right to keep and bear arms is not unlimited.³⁸ Many cases have evaluated the right to bear arms, how far the right extends, and the records that can be kept regulating gun owners.³⁹

³² S. 658.995(3), F.S.

³³ KY HB 221.

³⁴ Mike Maharrey, *Mississippi House Passes Bill to Prohibit Using Credit Card Information to Track Firearms Purchases*, Tenth Amendment Center, Feb. 13, 2023, <https://blog.tenthamentendmentcenter.com/2023/02/mississippi-house-passes-bill-to-prohibit-using-credit-card-information-to-track-firearms-purchases/#:~:text=Titled%20the%20Second%20Amendment%20Financial%20Privacy%20Act%2C%20the,code%20to%20any%20firearms%20business%20located%20in%20Mississippi> (last visited Mar. 1, 2023).

³⁵ TX HB 2041.

³⁶ WV SB 555.

³⁷ U.S. Const. am. 2.

³⁸ *Heller v. District of Columbia*, 670 F. 3d 1244, 1254-55 (D.C.Cir.2011).

³⁹ *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 213 L. Ed. 2d 387, 142 S. Ct. 2111 (2022).

Federal Records Requirements

In 1938, the Federal Firearms Act⁴⁰ created a regulation for those selling certain firearms. Firearm sellers were required to obtain a Federal Firearms License to **maintain records** with the name and address of those who bought a firearm.⁴¹

Following the assassinations of President John F. Kennedy, Senator Robert Kennedy, and Dr. Martin Luther King, Jr., Congress passed the Gun Control Act of 1968 (GCA).⁴² The GCA required individuals engaged in the business of dealing in firearms to obtain a federal license, prohibited transfers of firearms to certain persons, restricted the interstate transportation, and regulated the importation not suitable for sporting purposes.

Persons engaged in the business of manufacturing, importing, or dealing in firearms - referred to as "federal firearms licensees" (FFLs) - must obtain a license from the Secretary of the Treasury. The license entitles the holder to ship, transport, and receive firearms in interstate or foreign commerce. The FFL **must maintain records** of all acquisitions and dispositions of firearms and comply with applicable state and local laws in transferring firearms. The **recordkeeping requirements** help allow some crime guns to be traced. Combined with other obligations and restrictions imposed on firearms dealers, manufacturers, and importers, these requirements help provide a basis for investigating illegal firearms trafficking.⁴³

In 1986, the Firearm Owners' Protection Act (FOPA)⁴⁴ passed which amended many provisions in the Gun Control Act of 1968.⁴⁵ Congress loosened several controls it had previously established in the GCA, **including records requirements**.⁴⁶

The provisions that **prohibit any rule or regulation** from requiring records to be kept related to firearms also prohibits those records from being recorded or **transferred to a facility owned, managed, or controlled by the United States, any State, or any political subdivision**. FOPA also directly prohibits any registration systems of firearms, firearm owners, or firearms transactions from being established. However, the Secretary can inquire into a firearm in the course of a criminal investigation.⁴⁷

The law requires a licensed importer, manufacturer, or dealer to **handle records** of firearms transactions and national instant criminal background checks in a certain manner.⁴⁸ In certain instances the criminal background check system **must destroy all records**.⁴⁹ In other instances, the dealer

⁴⁰ 15 U.S.C. s. 901-910.

⁴¹ Robert Longley, *Timeline of Gun Control in the United States*, ThoughtCo, Jan. 8, 2023, <https://www.thoughtco.com/us-gun-control-timeline-3963620> (last visited Mar. 1, 2023).

⁴² P.L. 90-351, OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, Senate Report (Judiciary Committee) No. 90-1097, Apr. 29, 1968.

⁴³ The Enforcement Branch of the Alcohol and Tobacco Tax Division of the Internal Revenue Service initially enforced the GCA. On July 1, 1972, the Bureau of Alcohol, Tobacco and Firearms (ATF) was created as an independent Bureau within the Treasury Department.

⁴⁴ 18 U.S.C. ch. 44 s. 921 et seq.

⁴⁵ 18 U.S.C. ch. 44 s. 921 (amended)

⁴⁶ *Id.* See Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy Appendix C, History Of Federal Firearms Laws In The United States, <https://www.justice.gov/archive/opd/AppendixC.htm#:~:text=Kennedy%2C%20Senator%20Robert%20Kennedy%2C%20and,the%20federal%20regulation%20of%20firearms>. (It also opened up certain loopholes allowing gun sales from people that are not dealers. Allowing FFLs to temporarily conduct business at gun shows; narrowing the scope of those who are required to be licensed: "no bby," or who "sell all or part of a personal collection;" reducing the criminal penalties for certain recordkeeping offenses; prohibiting ATF from computerizing firearms purchase records; permitting sales of ammunition without a license; allowing a convicted felon to obtain firearms where the convicting jurisdiction automatically restored the felons' civil rights.)

⁴⁷ 18 U.S.C. s. 926(a).

⁴⁸ 18 U.S.C. s. 922(t).

⁴⁹ 18 U.S.C. s. 922(t)(2).

through the attorney general must report certain information, such as the identity of the person, to the local law enforcement authority.⁵⁰

Florida Firearm Regulations

The Florida Constitution guarantees:

SECTION 8. Right to bear arms.—

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun.⁵¹

Generally, a person does not need a license to possess or use a firearm in Florida. However, a person is prohibited from openly carrying a firearm on or about his or her person unless the person is a law enforcement officer or engaged in certain activities, such as hunting, camping, or military service.^{52, 53}

Florida Records Related Requirements

The Department of Agriculture and Consumer Services (DACS) is in charge of issuing a concealed weapon or firearm license to a person who meets the specified qualifications under s. 790.06, F.S.⁵⁴ Personal identifying information for applicants or concealed weapons licensees are **confidential and exempt** from public records disclosure requirements under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the State Constitution.⁵⁵

Any records pertaining to a buyer or transferee who is not prohibited from receipt or transfer of a firearm under federal or Florida law and whose records are created by the Florida Department of Law Enforcement (FDLE) to conduct the criminal history record check are **confidential and exempt**. These records **may not be disclosed by the FDLE** to any person or to another agency. The FDLE must destroy these records after communicating the approval or non-approval numbers to the licensee and no later than 48 hours after responding to the licensee's request.⁵⁶ However, the FDLE may maintain records of National Crime Information Center transactions as required under federal law, and may keep:

- A log of dates of requests for criminal history records checks;⁵⁷
- Unique approval and non-approval numbers;
- License identification numbers; and
- Transaction numbers corresponding to such dates for a period of no longer than 2 years or as otherwise required by law.

These provisions may not be construed to allow the State of Florida to maintain records containing the names of purchasers or transferees who receive unique approval numbers or to keep records of firearm transactions.⁵⁸ Any current or former officer or employee of the FDLE or law enforcement agency who intentionally or maliciously violates these provisions is guilty of a third-degree felony.⁵⁹

⁵⁰ 18 U.S.C. s. 925B(a).

⁵¹ Art. I, s. 8(a), FLA. CONST.

⁵² S. 790.053(3), F.S.

⁵³ S. 790.053(1), F.S.

⁵⁴ S. 790.06(2), F.S.

⁵⁵ S. 790.0601(1), F.S.

⁵⁶ S. 790.065(4)(a), F.S.

⁵⁷ S. 790.065(4)(b), F.S.

⁵⁸ S. 790.065(4)(c), F.S.

⁵⁹ S. 790.065(4)(d), F.S.

Effect of the Bill

The bill includes legislative findings indicating that MCC codes, without a “substantial and historical business need” or requirement imposed by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms and ammunition.

The bill prohibits an entity involved in facilitating or processing payment card transactions, including but not limited to, a financial institution, an acquirer, a payment card network, or a payment card issuer from classifying a merchant of firearms or ammunition under the MCC for firearms or ammunition. A merchant of firearms or ammunition may be assigned or may use an MCC for general merchandise retailers or sporting goods retailers. A contractual provision contrary to these provisions is void as violating the public policy of this state.

The bill authorizes DACS to:

- Investigate alleged violations;
- Bring an administrative action seeking to impose a class III \$10,000 fine⁶⁰ for each violation; and
- Enforce violations.

The effective date of the bill July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The bill authorizes DACS to investigate and bring an administrative action and impose a Class III \$10,000 fine.

2. Expenditures:

Indeterminate. DACS would be granted statutory authority under this bill to investigate alleged violations of the MCC. DACS would also be empowered to bring an administrative action and impose a Class III administrative fine for each violation. The Office of Agricultural Law Enforcement Regulatory Investigation Section would be in charge of investigating the unlawfully classified retailer violations and the Office of General Counsel would initiate and litigate the administrative actions. Currently, DACS is unable to determine the fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁶⁰ S. 570.971(1)(c), F.S.

D. FISCAL COMMENTS:

None.