

CHAPTER 2023-79

Committee Substitute for Senate Bill No. 214

An act relating to sales of firearms and ammunition; amending s. 790.335, F.S.; providing legislative findings; prohibiting payment settlement entities, merchant acquiring entities, or third party settlement organizations from assigning merchant category codes or otherwise classifying merchants of firearms or ammunition separately from general merchandise or sporting goods retailers; prohibiting entities involved in facilitating or processing payment card transactions from assigning to or requiring a merchant to use certain merchant category codes; authorizing a merchant of firearms or ammunition to be assigned or to use certain merchant category codes; specifying that any agreement or contractual provision to the contrary is void and in violation of the public policy of this state; authorizing the Department of Agriculture and Consumer Services to investigate certain alleged violations and bring administrative actions; providing an exception to complaint investigations by state attorneys; making technical changes; providing an effective date.

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

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

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

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

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

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

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

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

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

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

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

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, including a financial institution, without a substantial and historical business need or a requirement imposed

by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms or ammunition.

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

(2) PROHIBITIONS.—

(a) ~~A~~ No state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of ~~the such~~ state or other governmental entity or any other person, public or private, may not ~~shall~~ knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

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

(c) An entity involved in facilitating or processing a payment card transaction, including, but not limited to, a financial institution, an acquirer, a payment card network, or a payment card issuer, may not assign to or require a merchant to use a merchant category code that classifies the merchant as a firearms or ammunition retailer or places the merchant in a similar classification. A merchant of firearms or ammunition may be assigned or may use a merchant category code for general merchandise retailers or sporting goods retailers. Any agreement or contractual provision to the contrary is void in violation of the public policy of this state.

(4) PENALTIES.—

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

(b) Except as required by ~~the provisions~~ of s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, ~~no~~ public funds may not ~~shall~~ be used to defend the unlawful conduct of any person charged with a violation of this section, unless the charges against ~~the such~~ person are dismissed or ~~the such~~ person is determined to be not guilty at trial. Notwithstanding this paragraph, public funds may be expended to provide the services of the office of public defender or court-appointed conflict counsel as provided by law.

(c) The governmental entity, or the designee of ~~the such~~ governmental entity, in whose service or employ a list, record, or registry was compiled in violation of paragraph (2)(a) ~~this section~~ may be assessed a fine of up to not more than \$5 million, if the court determines that the evidence shows that

the list, record, or registry was compiled or maintained with the knowledge or complicity of the management of the governmental entity. The Attorney General may bring a civil cause of action to enforce the fines assessed under this paragraph.

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

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

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

Approved by the Governor May 12, 2023.

Filed in Office Secretary of State May 12, 2023.