

HOUSE BILL No. 2722

By Committee on Financial Institutions and Pensions

Requested by Representative Bryce

2-6

1 AN ACT concerning financial institutions; enacting the second amendment
2 financial privacy act; prohibiting financial institutions from using a
3 firearms code to engage in certain discriminatory conduct and
4 surveilling, reporting or tracking the purchase of firearms and
5 ammunition; authorizing the attorney general to investigate and enforce
6 violations of such act; providing a civil penalty for violations of such
7 act.

8

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WHEREAS, The legislature hereby finds and declares that:

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(1) The second amendment to the constitution of the United States
11 guarantees the people the right to keep and bear arms;

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(2) section 4 of the bill of rights of the constitution of the state of
13 Kansas provides that "a person has the right to keep and bear arms for the
14 defense of self, family, home and state, for lawful hunting and recreational
15 use, and for any other lawful purpose";

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(3) in September of 2022, the international organization for
17 standardization, based in Switzerland, approved a new merchant category
18 code for firearm and ammunition merchants;

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(4) in the letter to payment card networks, federal lawmakers stated
20 that the new merchant category code for firearms retailers would be "...the
21 first step towards facilitating the collection of valuable financial data that
22 could help law enforcement in countering the financing of terrorism
23 efforts," expressing a clear government expectation that networks will
24 utilize the new merchant category code to conduct mass surveillance of
25 constitutionally protected firearms and ammunition purchases in
26 cooperation with law enforcement;

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(5) the new merchant category code will allow the banks, payment
28 card networks, acquirers and other entities involved in payment card
29 processing to identify and separately track lawful payment card purchases
30 at firearms retailers in the state of Kansas, paving the way for both
31 unprecedented surveillance of second amendment activity and
32 unprecedented information sharing between financial institutions and the
33 government;

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(6) this potential for cooperative surveillance and tracking of lawful
35 firearms and ammunition purchases will have a significant chilling effect

1 on citizens wishing to exercise their federal and state constitutional rights
2 to keep and bear arms in Kansas;

3 (7) while federal law requires some financial institutions to report
4 transactions that are highly indicative of money laundering or other
5 unlawful activities, there is no federal or state law authorizing financial
6 institutions to surveil and track lawful activities by customers in
7 cooperation with law enforcement;

8 (8) the creation or maintenance of records of purchase of firearms or
9 ammunition or the tracking of sales made by a retailer of firearms or
10 ammunition by a nongovernmental entity, including a financial institution,
11 without a substantial and historical business need or requirement imposed
12 by law, may frustrate the right to keep and bear arms and violate the
13 reasonable privacy rights of lawful purchasers of firearms or ammunition;
14 and

15 WHEREAS, based on the above stated findings, it is the intent of the
16 legislature to prohibit the misuse of payment card processing systems to
17 surveil, report or otherwise discourage constitutionally protected firearm
18 and ammunition purchases within the state of Kansas.

19 Now, therefore:

20 *Be it enacted by the Legislature of the State of Kansas:*

21 Section 1. The provisions of sections 1 through 4, and amendments
22 thereto, shall be known and may be cited as the second amendment
23 financial privacy act.

24 Sec. 2. As used in this act:

25 (a) "Act" means the second amendment financial privacy act.

26 (b) "Ammunition" means any item designed to be a projectile fired
27 from firearms.

28 (c) "Customer" means a person who uses, purchases or obtains an
29 account, extension of credit or product of a financial institution or for
30 whom a financial institution acts as a fiduciary, agent or custodian or in
31 another representative capacity.

32 (d) "Disclosure" means the transfer, publication or distribution of
33 protected financial information to another person or entity for any purpose
34 other than to process or facilitate a payment card transaction.

35 (e) "Financial institution" means a bank, credit union, savings and
36 loan association or trust company, whether chartered under the laws of this
37 state, another state, the United States or another country.

38 (f) "Financial record" means a record held by a financial institution
39 related to a payment card transaction that such financial institution has
40 processed or facilitated.

41 (g) "Firearms" means weapons designed or having the capacity to
42 propel a projectile by force of an explosion or combustion.

43 (h) "Firearms accessories" means items that are used in conjunction

1 with or mounted upon a firearm but are not essential to the basic function
2 of a firearm, including, but not limited to, telescopic or laser sights,
3 magazines, flash or sound suppressors, collapsible or adjustable stocks and
4 grips, pistol grips, thumbhole stocks, speedloaders, ammunition carriers
5 and lights for target illumination.

6 (i) "Firearms code" means the merchant category code 5723,
7 approved September 7, 2022, by the international organization for
8 standardization for firearms retailers.

9 (j) "Firearms components" means items specifically designed for
10 firearms that are essential to the basic function of firearms.

11 (k) "Governmental entity" means any:

12 (1) State agency as defined in K.S.A. 75-3701, and amendments
13 thereto; or

14 (2) county, municipality or other political subdivision of the state.

15 (l) "Payment card" means a credit card, debit card or any other card
16 that is issued to an authorized user and that allows the user to obtain,
17 purchase or receive goods, services, money or
18 anything else of value.

19 Sec. 3. (a) Except for records kept during the regular course of a
20 criminal investigation and prosecution or as otherwise required by law, no
21 governmental entity or person shall knowingly and intentionally keep or
22 cause to be kept any list, record or registry of privately owned firearms or
23 any list, record or registry of the owners of such firearms.

24 (b) A financial institution shall not require the usage of the firearms
25 code in a way that distinguishes a firearms retailer physically located in
26 the state of Kansas from general merchandise retailers or sporting goods
27 retailers in the state of Kansas.

28 (c) A financial institution shall not discriminate against a firearms
29 retailer by:

30 (1) Declining a lawful payment card transaction based solely on the
31 assignment or non-assignment of a firearms code to the merchant or
32 transaction;

33 (2) limiting or declining to do business with a customer, potential
34 customer or merchant based on the assignment or non-assignment of a
35 firearms code to previous lawful transactions involving such customer,
36 potential customer or merchant;

37 (3) charging a higher transaction or interchange fee to any merchant
38 or for a lawful transaction based on the assignment or non-assignment of a
39 firearms code; or

40 (4) taking any action against a customer or merchant that is intended
41 to suppress lawful commerce involving firearms, firearms accessories or
42 firearms components or ammunition based solely or in part on such
43 customer's or merchant's business involving firearms, firearms accessories

1 or firearms components or ammunition.

2 (d) Except as otherwise required by law, a financial institution shall
3 not disclose a financial record, including, but not limited to, a firearms
4 code that was collected in violation of this act.

5 Sec. 4. (a) The attorney general shall investigate alleged violations of
6 this act, and, upon finding a violation, shall provide written notice to any
7 individual or entity believed to be in violation of this act. Upon receipt of
8 such written notice, the individual or entity shall have 30 calendar days to
9 cease such violation.

10 (b) A firearms retailer physically located in Kansas whose business
11 was the subject of an alleged violation of this act or a customer who
12 transacted business at a firearms retailer physically located in Kansas
13 whose business was the subject of an alleged violation of this act may
14 petition the attorney general to investigate such alleged violation in
15 accordance with subsection (a).

16 (c) If the attorney general does not commence an action within 90
17 calendar days of receiving the petition pursuant to subsection (b), the
18 firearms retailer or customer may file an action in court to enjoin the
19 individual or entity from requiring the firearms code in violation of this
20 act.

21 (d) If an individual or entity is found to be requiring the use of a
22 firearms code by any merchant physically located in Kansas in violation of
23 this act and fails to cease such requirement after 30 calendar days from
24 receipt of written notice by the attorney general, the attorney general shall
25 pursue an injunction against any individual or entity alleged to be in
26 violation of this act. The attorney general shall pursue such injunction in
27 the judicial district where the alleged violation occurred.

28 (e) If the court finds that an individual or entity continues to be in
29 violation of this act after 30 calendar days from receipt of written notice by
30 the attorney general or from a finding by the court of a violation of this act
31 in an action commenced pursuant to subsection (c), the court shall enjoin
32 the individual or entity from continuing to require the use of the firearms
33 code.

34 (f) If a credit card company knowingly and willfully fails to comply
35 with an injunction pursuant to subsection (e) within 30 calendar days after
36 being served with such injunction, the court shall impose a civil penalty in
37 an amount not to exceed \$10,000 per violation of such injunction. In
38 assessing such civil penalty the court shall consider factors including, but
39 not limited to, the financial resources of the violator and the harm or risk
40 of harm to the second amendment rights resulting from such violation.
41 Any order assessing a civil penalty for a violation of this act shall be
42 stayed pending appeal of such order.

43 (g) In addition to the remedies provided in this section, the attorney

1 general or a petitioner who prevails in an action under this section shall
2 recover reasonable expenses incurred in filing such action, including, but
3 not limited to, court costs, reasonable attorney fees, investigative costs,
4 witness fees and deposition expenses.

5 (h) It shall not be a defense to an action filed pursuant to this act that
6 the disclosure of protected financial information was to a federal
7 governmental entity unless such disclosure was made based on a good
8 faith belief that such disclosure was required by federal law or regulation.

9 Sec. 5. This act shall take effect and be in force from and after its
10 publication in the statute book.