

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 814

By: Bergstrom

AS INTRODUCED

An Act relating to financial institutions; creating the Oklahoma Second Amendment Financial Privacy Act; providing short title; stating findings and intent; defining terms; prohibiting disclosure of certain financial information; prohibiting access of certain financial information; providing exceptions; providing for disclosure of financial information; providing requirements for disclosure of information in the event of a subpoena; prohibiting use of certain code to engage in discriminatory conduct; authorizing civil action for violations of act; providing for recoverable damages; requiring the award of attorney's fees upon court finding; providing for noncodification; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Oklahoma Second Amendment Financial Privacy Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-600 of Title 14A, unless there is created a duplication in numbering, reads as follows:

1 The Legislature finds that:

2 1. The Second Amendment to the United States Constitution
3 guarantees the people the right to keep and bear arms;

4 2. On September of 2022, the world's three largest payment card
5 networks publicly announced they would assign a unique merchant
6 category code to firearms retailers accepting payment cards for
7 purchases, after twenty-eight (28) members of Congress sent a public
8 letter to networks, pressuring them to adopt the new code;

9 3. In the letter to payment card networks, federal lawmakers
10 stated that the new merchant category code for firearms retailers
11 would be "the first step towards facilitating the collection of
12 valuable financial data that could help law enforcement in
13 countering the financing of terrorism efforts", expressing a clear
14 government expectation that networks will utilize the new merchant
15 category code to conduct mass surveillance of constitutionally
16 protected firearms and ammunition purchases in cooperation with law
17 enforcement;

18 4. The new merchant category code will allow the banks, payment
19 card networks, acquirers, and other entities involved in payment
20 card processing to identify and separately track lawful payment card
21 purchases at firearms retailers in this state, paving the way for
22 unprecedented surveillance of Second Amendment activity and
23 information sharing between financial institutions and the
24 government;

1 5. This potential for cooperative surveillance and tracking of
2 lawful firearms and ammunition purchases will have a significant
3 chilling effect on citizens wishing to exercise their federal and
4 state constitutional rights to keep and bear arms in this state;

5 6. While federal law requires some financial institutions to
6 report transactions that are highly indicative of money laundering
7 or other unlawful activities, there is no federal or state law
8 authorizing financial institutions to surveil and track lawful
9 activities by customers in cooperation with law enforcement; in
10 fact, the federal Right to Financial Privacy Act prohibits financial
11 institutions from disclosing a customer's financial records except
12 in limited circumstances;

13 7. This act shall be construed as a generally applicable
14 consumer financial protection law that does not prevent or
15 significantly interfere with the duly authorized powers of any bank,
16 nor does this article directly or indirectly discriminate against
17 any bank based on its charter or structure; and

18 8. Based on the above stated findings, it is the intent of the
19 Legislature to prohibit the misuse of payment card processing
20 systems to surveil, report, or otherwise discourage constitutionally
21 protected firearm and ammunition purchases and sales within this
22 state.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6-601 of Title 14A, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in this act:

5 1. "Assign" or "assignment" means a financial institution
6 policy, process, or practice that labels, links, or otherwise
7 associates a firearms code with a merchant or payment card
8 transaction in a manner that allows the financial institution or any
9 other entity facilitating or processing the payment card transaction
10 to identify whether a merchant is a firearms retailer or whether a
11 transaction involves the sale of firearms or ammunition;

12 2. "Customer" means any person who presents a payment card to a
13 merchant for the purchase of goods or services;

14 3. "Customer's protected financial information" refers to
15 protected financial information appearing in the financial records
16 of a customer;

17 4. "Disclosure" means the transfer, publication, or
18 distribution of protected financial information to another person
19 for any purpose other than to process or facilitate a payment card
20 transaction.

21 5. "Financial institution" means an entity other than a
22 merchant involved in facilitating or processing a payment card
23 transaction, including but not limited to a bank, acquirer, gateway,
24 payment card network, or payment card issuer;

1 6. "Financial record" means a financial record held by a
2 financial institution related to a payment card transaction that the
3 financial institution has processed or facilitated;

4 7. "Firearms retailer" means any person engaged in the lawful
5 business of selling or trading firearms or ammunition to be used in
6 firearms;

7 8. "Firearms code" means any code or other indicator a
8 financial institution assigns to a merchant or to a payment card
9 transaction that identifies whether a merchant is a firearms
10 retailer or whether the payment card transaction involves the
11 purchase of a firearm or ammunition. The term shall include but is
12 not limited to a merchant category code assigned to a retailer by a
13 payment card network or other financial institution;

14 9. "Government entity" means any state agency or political
15 subdivision or agency thereof, located in this state;

16 10. "Merchant" means a person or entity that accepts payment
17 cards from customers for the purchase of goods or services. The
18 term shall include a firearms retailer that accepts payment cards
19 for the lawful purchase of firearms or ammunition;

20 11. "Payment card" means a credit card, charge card, debit
21 card, or any other card that is issued to an authorized card user
22 and that allows the user to purchase goods or services from a
23 merchant; and

1 12. "Protected financial information" means any record of a
2 sale, purchase, return, or refund involving a payment card that is
3 retrieved, characterized, generated, labeled, sorted, or grouped
4 based on the assignment of a firearms code.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 6-602 of Title 14A, unless there
7 is created a duplication in numbering, reads as follows:

8 A. A financial institution shall be prohibited from disclosing
9 a customer's protected financial information and a governmental
10 entity is prohibited from accessing or obtaining the information
11 unless:

12 1. Otherwise required by law and the protected financial
13 information is not singled out, segregated, or disclosed based on
14 the assignment of a firearms code;

15 2. Disclosure is made pursuant to a valid warrant issued in a
16 criminal investigation, stating the grounds or probable cause for
17 its issuance;

18 3. The customer has provided written authorization for
19 disclosure, as provided in Section 5 of this act; or

20 4. Disclosure is made pursuant to a subpoena or to a grand jury
21 subpoena.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 6-603 of Title 14A, unless there
24 is created a duplication in numbering, reads as follows:

1 A. A financial institution may disclose a customer's protected
2 financial information if the customer provides the financial
3 institution with written authorization for the disclosure. The
4 written authorization described by this section must contain the
5 following:

6 1. A statement that the customer consents to the disclosure of
7 the protected financial information for a specific period;

8 2. A statement that the customer has the right to refuse to
9 consent to disclosure;

10 3. A statement that the customer understands his or her right
11 to revoke the consent at any time before the protected financial
12 information is disclosed;

13 4. A description of the financial records authorized to be
14 disclosed;

15 5. The purpose for which disclosure of the protected financial
16 information is authorized; and

17 6. The customer's signature.

18 B. The written authorization described in this section shall
19 not be required as a condition of doing business or transacting with
20 any financial institution.

21 C. The written authorization required by this section shall be
22 executed distinctly and separately from other agreements or
23 instruments entered into between the customer and financial
24 institution.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6-604 of Title 14A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. If a subpoena issued by a government entity requires
5 disclosure of a customer's protected financial information, a
6 financial institution shall only disclose the information if the
7 subpoena meets the following requirements:

- 8 1. The subpoena must state that protected financial information
9 is being sought;
- 10 2. A copy of the subpoena must be served to customer according
11 to the procedure provided in Section 5 of this act and the subpoena
12 must contain a certification that the service was executed.

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 6-605 of Title 14A, unless there
15 is created a duplication in numbering, reads as follows:

16 A. A financial institution shall not use a firearms code to
17 engage in the following discriminatory conduct:

- 18 1. Declining a lawful payment card transaction based on the
19 assignment of a firearms code to the merchant or transaction;
- 20 2. Limiting or declining to do business with a customer,
21 potential customer, or merchant based on the assignment of a
22 firearms code to previous lawful transactions involving the
23 customer, potential customer, or merchant;

1 3. Charge a higher transaction or interchange fee to any
2 merchant or for a lawful transaction, as compared to the fee charged
3 to a similarly situated merchant or for a similar transaction, based
4 on the assignment of a firearms code; or

5 4. Take any action against a customer or merchant that is
6 intended to suppress lawful commerce involving firearms or
7 ammunition.

8 SECTION 8. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 6-606 of Title 14A, unless there
10 is created a duplication in numbering, reads as follows:

11 A. A customer may bring a civil action for damages against any
12 financial institution or government entity that causes the
13 customer's protected financial information to be disclosed in
14 violation of this act. For each violation, the individual may
15 recover:

16 1. Against any person who negligently or recklessly violates
17 this act, damages of Ten Thousand Dollars (\$10,000.00) or actual
18 damages, whichever is greater; and

19 2. Against any person who intentionally violates this act,
20 damages of Twenty-five Thousand Dollars (\$25,000.00) or actual
21 damages, whichever is greater.

22 B. A customer or merchant aggrieved by a violation of Section 7
23 of this act may bring a civil action for damages. The person may
24

1 recover damages of Thirty Thousand Dollars (\$30,000.00) or actual
2 damages, whichever is greater.

3 C. If a court finds that a violation of this act has occurred
4 as the result of a civil action filed pursuant to subsection A or
5 subsection B of this section, the court shall award reasonable
6 attorney fees to the aggrieved party. A court may order other
7 relief, including an injunction, as the court considers appropriate.

8 SECTION 9. This act shall become effective November 1, 2023.

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