

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
94th General Assembly  
Regular Session, 2023

# A Bill

HOUSE BILL 1620

By: Representative Long

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING FINANCIAL INSTITUTIONS; TO CREATE THE SECOND AMENDMENT FINANCIAL PRIVACY ACT; TO PROHIBIT FINANCIAL INSTITUTIONS FROM USING CERTAIN FIREARM CODES TO ENGAGE IN DISCRIMINATION; TO PROVIDE FOR ENFORCEMENT FOR VIOLATIONS; AND FOR OTHER PURPOSES.

## Subtitle

TO CREATE THE SECOND AMENDMENT FINANCIAL PRIVACY ACT; TO PROHIBIT FINANCIAL INSTITUTIONS FROM USING CERTAIN DISCRIMINATORY PRACTICES; AND TO PROVIDE FOR ENFORCEMENT OF VIOLATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 23, Chapter 32, is amended to add an additional subchapter to read as follows:

Subchapter 6 – Second Amendment Financial Privacy Act

23-32-601. Title.

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

23-32-602. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The Second Amendment to the United States Constitution



guarantees the people the right to keep and bear arms;

(2) Article 2, § 5 of the Arkansas Constitution provides that "The citizens of this State shall have the right to keep and bear arms, for their common defense";

(3) In September 2022, the International Organization for Standardization, headquartered in Switzerland, approved a new merchant category code for firearm and ammunition merchants;

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

(5) The new merchant category code will allow the financial institutions, payment card networks, acquirers, and other entities involved in payment card processing to identify and separately track lawful payment card purchases at firearms retailers in this state, paving the way for both unprecedented surveillance of Second Amendment activity and unprecedented information sharing between financial institutions and the government;

(6) This potential for cooperative surveillance and tracking of lawful firearms and ammunition purchases will have a significant chilling effect on citizens wishing to exercise their federal and state constitutional rights to keep and bear arms in this state;

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

(8) The creation or maintenance of records of purchases of firearms or ammunition or the tracking of sales made by a firearms retailer or ammunition retailers 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.

(b) It is the intent of the General Assembly, based on the findings in subsection (a) of this section, to prohibit the misuse by financial institutions of payment card processing systems to surveil, report, or otherwise discourage constitutionally protected firearm and ammunition purchases within this state.

23-32-603. Definitions.

As used in this subchapter:

(1) "Assign" means a financial institution policy, process, or practice that labels, links, or otherwise associates a firearms code with a merchant or payment card transaction in a manner that allows the financial institution or any other entity facilitating or processing the payment card transaction to identify whether a merchant is a firearms retailer or whether a transaction involves the sale of firearms or ammunition;

(2) "Customer" means any person engaged in a payment card transaction that a financial institution facilitates or processes;

(3) "Depository institution" means:

(A) A depository institution as defined in 12 U.S.C. § 1813(c)(1), as it existed on January 1, 2023; or

(B) An insured credit union as defined in 12 U.S.C. § 1752(7), as it existed on January 1, 2023;

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

(5)(A) "Financial institution" means an entity involved in facilitating or processing a payment card transaction.

(B) "Financial institution" includes:

(i) An acquirer;

(ii) A payment card network;

(iii) A payment card issuer;

(iv) A depository institution;

(v) A trust company;

(vi) A savings bank;

(vii) A person subject to the jurisdiction of the:

(a) United States Securities and Exchange Commission;

(b) Bank Commissioner under the Arkansas Banking Code of 1997, chapters 45-50 of this title;

(c) Securities Commissioner under the Arkansas Securities Act, § 23-42-101 et seq.; or

(d) Insurance Commissioner under the Arkansas Insurance Code; or

(viii) Any other institution that:

(a) Holds and receives deposits, savings, or share accounts;

(b) Issues certificates of deposit;

(c) Provides to its customers any deposit accounts subject to withdrawal by check, instrument, order, or electronic means to effect third-party payments;

(d) Provides insurance services; or

(e) Provides investment services;

(6) "Financial record" means a record held by a financial institution related to a payment card transaction that the financial institution has processed or facilitated;

(7)(A) "Firearms code" means a code or other indicator that a financial institution assigns to a merchant or to a payment card transaction that identifies whether or not:

(i) A merchant is a firearms retailer; or

(ii) The payment card transaction involves the purchase of a firearm or ammunition.

(B) "Firearms code" includes without limitation a merchant category code assigned to a retailer by a payment card network or other financial institution;

(8) "Firearms retailer" means a person or entity engaged in the lawful business of selling or trading firearms or ammunition to be used in firearms;

(9) "Protected financial information" means any record of a sale, purchase, return, or refund involving a payment card that is retrieved, characterized, generated, labeled, sorted, or grouped based on the assignment of a firearms code;

(10) "Savings bank" means a savings association or federal savings association as defined in 12 U.S.C. § 1462, as it existed on January 1, 2023; and

(11) "Trust company" means:

(A) A national bank engaged in activities in a fiduciary capacity under 12 U.S.C. § 92a and 12 C.F.R. Part 9;

(B) A trust company as defined in § 23-51-102; or

(C) An interstate bank that is authorized under the Arkansas Banking Code of 1997, chapters 45-50 of this title, to exercise the powers of a trust company in this state.

23-32-604. Financial privacy – Firearm rights.

(a) A financial institution shall not knowingly keep or cause to be kept a list, record, or registry of:

(1) Privately owned firearms; or

(2) Owners of privately owned firearms.

(b) A financial institution or an agent of the financial institution shall not require for financial records the usage of or assign a firearms code or ammunition merchant category code to a merchant located in Arkansas that is a seller of firearms or ammunition separately from general merchandise retailers or sporting goods retailers to customers.

23-32-605. Enforcement.

(a)(1) The Attorney General may investigate alleged violations of this subchapter and, upon finding a violation, shall provide written notice to a financial institution believed to be in violation of this subchapter.

(2) Upon receipt of the written notice under subdivision (a)(1) of this section, the financial institution shall have thirty (30) calendar days to cease the usage of a firearms code or ammunition merchant code for a merchant located in Arkansas.

(b) If the financial institution fails to cease the usage of a firearms code or ammunition merchant code for a merchant located in Arkansas under subdivision (a)(2) of this section, the Attorney General may request an injunction against the financial institution alleged to be in violation of this subchapter, which a court may order, in addition to any other available relief, as the court may consider appropriate.

(c)(1) A person that is harmed by a violation of this subchapter may file a civil action to enjoin a violation of this subchapter.

(2) It is not a defense to a civil action filed under subdivision (c)(1) of this section that the information was disclosed to a United States Government entity, unless the disclosure or action is required by federal law or federal regulation.

SECTION 2. DO NOT CODIFY. EFFECTIVE DATE. This act is effective on and after September 1, 2023.