

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 295

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO FIREARMS; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE
2 ADDITION OF A NEW SECTION 18-3326, IDAHO CODE, TO PROVIDE LEGISLATIVE
3 INTENT; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION
4 OF A NEW SECTION 18-3326A, IDAHO CODE, TO DEFINE TERMS, TO ESTABLISH
5 PROVISIONS PROHIBITING CERTAIN RECORDS AND REGISTRIES, TO ESTABLISH
6 PROVISIONS PROHIBITING CERTAIN DISCRIMINATORY ACTS BY PAYMENT NETWORKS
7 ~~FINANCIAL INSTI-~~
87 ~~TUTIONS~~, TO AUTHORIZE THE ATTORNEY GENERAL TO TAKE CERTAIN ACTIONS, AND
98 TO PROVIDE FOR REMEDIES AND PENALTIES; AND DECLARING AN EMERGENCY AND
109 PROVIDING AN EFFECTIVE DATE.

1110 Be It Enacted by the Legislature of the State of Idaho:

1211 SECTION 1. That Chapter 33, Title 18, Idaho Code, be, and the same is
1312 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
1413 igned as Section 18-3326, Idaho Code, and to read as follows:

1514 18-3326. SECOND AMENDMENT FINANCIAL PRIVACY ACT -- LEGISLATIVE IN-
1615 TENT. (1) The legislature finds that:
1716 (a) The second amendment to the United States constitution guarantees
1817 the people the right to keep and bear arms;
1918 (b) Section 11, article I of the constitution of the state of Idaho pro-
2019 vides that the "people have the right to keep and bear arms, which right
2120 shall not be abridged; ... No law shall impose licensure, registration
2221 or special taxation on the ownership or possession of firearms or ammu-
2322 nition";
2423 (c) In September 2022, the world's three (3) largest payment card net-
2524 works publicly announced they would assign a unique merchant category
2625 code to firearm retailers accepting payment cards for purchases, after
2726 twenty-eight (28) members of congress sent a public letter to networks,
2827 pressuring them to adopt the new code;
2928 (d) In the letter to payment card networks, federal lawmakers stated
3029 that the new merchant category code for firearms retailers would be
3130 "the first step towards facilitating the collection of valuable finan-
3231 cial data that could help law enforcement in countering the financing
3332 of terrorism efforts," expressing a clear government expectation that
3433 networks will utilize the new merchant category code to conduct mass
3534 surveillance of constitutionally protected firearms and ammunition
3635 purchases in cooperation with law enforcement;
3736 (e) The new merchant category code will allow ~~banks,~~ payment card
3837 networks, acquirers, and other entities involved in payment card pro-
3938 cessing to identify and separately track lawful payment card purchases
4039 at firearms retailers in Idaho, paving the way for both unprecedented
4140 surveillance of second amendment activity and unprecedented informa-
42 tion sharing between ~~financial institutions~~ payment card networks and

Attachment 2

1 (f) This potential for cooperative surveillance and tracking of lawful
 2 firearm and ammunition purchases will have a significant chilling ef-
 3 fect on citizens wishing to exercise their federal and state constitu-
 4 tional rights to keep and bear arms in Idaho; and

~~5 (g) While federal law requires some financial institutions to report
 6 transactions that are highly indicative of money laundering or other
 7 unlawful activities, there is no federal or state law authorizing
 8 financial institutions to surveil and track lawful activities by cus-
 94 tomers in cooperation with law enforcement.~~

405 (2) Based on the findings described in subsection (1) of this sec-
 446 tion, it is the intent of the legislature to prohibit the misuse of payment
 427 card processing systems to surveil, report, or otherwise discourage con-
 438 stitutionally protected firearm, firearm accessories or components, and
 449 ammunition purchases and sales within Idaho's jurisdiction.

4510 (3) This section and section 18-3326A, Idaho Code, shall be construed
 4611 as generally applicable consumer financial protection law and shall not pre-
 4712 vent or significantly interfere with the duly authorized powers of any bank
 4813 or directly or indirectly discriminate against any bank based on its charter
 4914 or structure. This section and section 18-3326A, Idaho Code, shall not
 apply to any Financial Institution, as defined in section 18-3326A, or
 any person, company, entity or organization regulated by the Idaho
 Department of Finance or otherwise subject to the jurisdiction, rules or
 regulations of the Federal Deposit Insurance Corporation.

2015 SECTION 2. That Chapter 33, Title 18, Idaho Code, be, and the same is
 2116 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 2217 igned as Section 18-3326A, Idaho Code, and to read as follows:

2318 18-3326A. SECOND AMENDMENT FINANCIAL PRIVACY ACT. (1) For purposes of
 2419 this section:

2520 (a) "Ammunition" means ammunition or cartridge cases, primers, bul-
 2621 lets, or propellant powder designed for use in any firearm;

2722 (b) "Assign" or "assignment" means a ~~financial institution's~~ Payment
 Network's policy,

2823 process, or practice that labels, links, or otherwise associates a
 2924 firearms code with a merchant or payment card transaction in a manner
 3025 that allows the ~~financial institution~~ Payment Network or any other
 entity facilitating

3126 or processing the payment card transaction to identify whether a mer-
 3227 chant is a firearms retailer or whether a transaction involves the sale
 3328 of firearms or ammunition;

3429 (c) "Customer" means any person engaged in a payment card transaction
 3530 that a financial institution facilitates or processes and any person or
 3631 the person's duly authorized representative who has transacted busi-
 3732 ness with or has used the services of a financial institution or for whom
 3833 a financial institution has acted as a fiduciary in relation to an ac-
 3934 count maintained in such person's name;

4035 (d) "Disclosure" means the transfer, publication, or distribution of
 4136 protected financial information to another person for any purpose other
 4237 than to process or facilitate a payment card transaction;

4338 (e) "Financial institution" means:

4439 (i) A bank, savings and loan association, trust company, or
 4540 credit union chartered pursuant to any state or federal law, a
 4641 regulated consumer lender, a money service business, payment card
 4742 issuer, or other institutions that are by law under the jurisdic-

48 ————— tion and supervision of the department of finance or the Federal
Deposit Insurance Corporation; and

1 (ii) An entity involved in facilitating or processing a payment
2 card transaction, including but not limited to a bank, acquirer,
3 gateway, payment card network, or payment card issuer;

4 (f) "Financial record" means:

5 (i) The original or a copy of any record or document held by a
6 ~~financial institution~~ Payment Network pertaining to a customer of
~~the a Financial Institution utilizing the Payment~~
~~Network~~ financial
76 institution, including any record of a transaction conducted by
87 means of a customer bank communication terminal or other elec-
98 tronic device;

109 (ii) A financial record held by a ~~financial institution~~ Payment
Network related
1110 to a payment card transaction that the financial institution has
1211 processed or facilitated; and

1312 (iii) Any information derived from such records or documents;

1413 (g) "Firearm" means any weapon that will, is designed to, or may readily
1514 be converted to expel a projectile by the action of an explosive;

1615 (h) "Firearm accessory or component" means:

1716 (i) Any device specifically adapted to enable the wearing or car-
1817 rying about one's person or the storage or mounting in or on any
1918 conveyance of a firearm and any attachment or device specifically
2019 adapted to be inserted into or affixed onto any firearm to enable,
2120 alter, or improve the functioning or capabilities of the firearm;

2221 (ii) Any item that is used in conjunction with or mounted upon a
2322 firearm, including but not limited to telescopic or laser sights,
2423 magazines, flash or sound suppressors, folding or aftermarket
2524 stocks and grips, speedloaders, braces, ammunition carriers, and
2625 lights for target illumination; and

2726 (iii) Any component for making ammunition, reloading materials
2827 and equipment, machinery, and tools for manufacturing ammunition;

29 (i) "Firearms code" means any code or other indicator a Payment
~~Network~~ financial in-
3028 stitution assigns to a merchant or to a payment card transaction that
3129 identifies whether a merchant is a firearms retailer or whether the pay-
3230 ment card transaction involves the purchase of a firearm, firearm ac-
3331 cessories or components, or ammunition. The term includes but is not
3432 limited to a merchant category code assigned to a retailer by a ~~p~~ Payment
3533 card nNetwork ~~or other financial institution~~;

3634 (j) "Firearms dealer" means any person engaged in the lawful business
3735 of selling or trading firearms or antique firearms, as those terms are
3836 defined in 18 U.S.C. 921, or ammunition to be used in firearms or antique
3937 firearms;

4038 (k) "Government entity" means any state or local government agency or
4139 instrumentality thereof located in Idaho;

4240 (l) "Merchant" means a person or entity that accepts payment cards from
4341 customers for the purchase of goods or services. The term includes a
4442 firearms retailer that accepts payment cards for the lawful purchase of
4543 firearms, firearm accessories or components, or ammunition;

4644 (m) "Payment card" means a credit card, charge card, debit card, or any
4745 other card that is issued to an authorized card user and that allows the
48 user to purchase goods or services from a merchant;

48 (n) "Payment Network" means a debit or credit network through
which funds may be transferred such as credit card associations,
EFT networks or other organization or association that issues or

sponsors a financial transaction device. A "Payment Network" does not include any Financial Institution as defined in this section.;
and

4947 (n) "Protected financial information" means any record of a sale, pur-
5048 chase, return, or refund involving a payment card that is retrieved,

1 characterized, generated, labeled, sorted, or grouped based on the as-
 2 signment of a firearms code. A customer's protected financial informa-
 3 tion refers to protected financial information appearing in the finan-
 4 cial records of a customer.

5 (2) Except for those records kept during the regular course of a crim-
 6 inal investigation and prosecution or as otherwise required by law, a state
 7 government entity or local government, special district, or other political
 8 subdivision or official, agent, or employee of the state or other govern-
 9 ment entity or any other person, public or private, other than the owner or
 10 owner's representative, may not knowingly and willfully keep or cause to be
 11 kept any list, record, or registry of privately owned firearms or any list,
 12 record, or registry of the owners of those firearms.

13 (3) A ~~financial institution~~ Payment Network or its agent may not
 require the usage of

14 a firearms code in a way that distinguishes a firearms retailer physically
 15 located in the state of Idaho from Idaho general merchandise retailers or
 16 sporting goods retailers.

17 (4) A ~~financial institution~~ Payment Network may not discriminate against
 a firearms re-

18 tailer by:

19 (a) Declining a lawful payment card transaction based solely on the as-
 20 signment or non-assignment of a firearms code to the merchant or trans-
 21 action;

22 (b) Limiting or declining to do business with a customer, potential
 23 customer, or merchant based on the assignment or non-assignment of a
 24 firearms code to previous lawful transactions involving the customer,
 25 potential customer, or merchant;

26 (c) Charging a higher transaction or interchange fee to any merchant or
 27 for a lawful transaction based on the assignment or non-assignment of a
 28 firearms code; or

29 (d) Otherwise taking any action against a customer or merchant that is
 30 intended to suppress lawful commerce involving firearms, firearm ac-
 31 cessories or components, or ammunition, which action is based solely
 32 or in part on the customer's or merchant's business involving firearms,
 33 firearm accessories or components, or ammunition.

34 (5) Except as otherwise required by law, a ~~financial-~~
~~institution~~ Payment Network may
 35 not disclose a financial record, including a firearms code that was col-
 36 lected in violation of this section.

37 (6) The attorney general may investigate alleged violations of this
 38 section and, upon finding a violation, shall provide written notice to any
 39 individual or entity, public or private, believed to be in violation of
 40 this section. Written notice to any commercial entity shall be made to the
 41 entity's registered agent. Upon receipt of such written notice from the
 42 attorney general, the entity shall have thirty (30) calendar days to cease
 43 the requirement for usage of the firearms code. At the attorney general's
 44 discretion, an entity may be granted up to an additional one hundred twenty
 45 (120) days to cease the requirement for usage of the firearms code.

46 (7) (a) Either a firearms retailer physically located within Idaho
 47 whose business was the subject of an alleged violation of this section
 48 or a customer who transacted at a firearms retailer physically located
 49 in Idaho whose business was the subject of an alleged violation of this

1 section may petition the attorney general to investigate the alleged
2 violation.

3 (b) If the attorney general does not commence an action within ninety
4 (90) days of receiving the petition pursuant to this subsection, then
5 the firearms retailer or customer may file an action in a court of compe-
6 tent jurisdiction to enjoin the individual or entity from requiring the
7 firearms code in violation of this section.

8 (8) If an individual or entity is found to be requiring the usage of a
9 firearms code by any merchant physically located in Idaho in violation of
10 this section and fails to cease the requirement for usage of the firearms
11 code by any firearms retailer physically located in Idaho after the expira-
12 tion of thirty (30) calendar days from the receipt of written notice by the
13 attorney general's office, the attorney general shall pursue an injunction
14 against any individual or entity, public or private, alleged to be in viola-
15 tion of this section. The attorney general shall pursue an injunction pur-
16 suant to this section in a court of competent jurisdiction in the judicial
17 district where the alleged violation occurred against the individual or en-
18 tity in alleged violation of this section.

19 (a) If a court finds that an individual or entity continues to be in vi-
20 olation of this section after thirty (30) calendar days from receiving
21 written notice from the attorney general or from a finding by the court
22 of a violation of this section, then the court shall enjoin the individ-
23 ual or entity from continuing to require the usage of the firearms code.

24 (b) If an individual or entity knowingly and willfully fails to com-
25 ply with an injunction as provided in this section within thirty (30)
26 days after being served with the injunction, then the court shall impose
27 a civil penalty in a sum not to exceed ten thousand dollars (\$10,000)
28 per violation of an injunction issued pursuant to this section, commit-
29 ted after the expiration of the thirty (30) calendar day period after
30 the entity or individual, public or private, was served with the injunc-
31 tion. In assessing such a penalty, the court shall consider factors in-
32 cluding the financial resources of the violator and the harm or risk of
33 harm to second amendment rights resulting from the violation. Any order
34 assessing a penalty for violation of this section shall be stayed pend-
35 ing appeal of the order.

36 (c) In addition to the remedies provided in this section, the attor-
37 ney general or a petitioner who prevails in an action under this section
38 shall recover costs, reasonable attorney's fees, and any other remedy
39 the court deems appropriate.

40 (9) It shall not be a defense to an action filed pursuant to this section
41 that such information was disclosed to a federal government entity, unless
42 such disclosure or action was made based on a good faith conclusion that the
43 disclosure or action was required by federal law or regulation.

44 SECTION 3. An emergency existing therefor, which emergency is hereby
45 declared to exist, this act shall be in full force and effect on and after
46 July 1, 2023.