

HB389 INTRODUCED



1 HB389

2 GRD9CC2-1

3 By Representatives Stringer, Lipscomb, Robertson, Harrison,

4 Rigsby, Colvin, Moore (P), Estes, Kirkland, Woods, Smith,

5 Marques, Rehm, Sorrells, Hammett, Paramore, Yarbrough, Ingram,

6 Underwood, Shedd, Stadthagen, Kiel, Wilcox, Pettus, Paschal,

7 Oliver, Crawford, Bolton, Starnes, Fincher, Carns, Standridge,

8 Shirey, Lamb, Gidley, Brown, Whorton, Treadaway, Ellis, Wood

9 (R), Mooney, Fidler, Hulsey, Easterbrook

10 RFD: Public Safety and Homeland Security

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SYNOPSIS:

This bill would prohibit a financial institution from requiring merchants to use a merchant category code (MCC) to distinguish a firearms retailer from a general merchandise retailer or a sporting goods retailer during a firearms transaction amounting to financial surveillance and from disclosing financial information regarding the transaction.

This bill would provide for definitions.

This bill would prohibit a state agency or other political subdivision of the state, or any other person, public or private, from keeping any record of privately owned firearms or registry of the owner of those firearms.

This bill would prohibit a financial institution from using a firearms code to engage in certain discriminatory conduct in the state.

This bill would also authorize the Attorney General to investigate alleged violations of this act, to enforce this act by bringing an action to recover civil penalties, and to restrain and enjoin an individual or entity from violating this act.

A BILL



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29 TO BE ENTITLED

30 AN ACT

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32 Relating to financial institutions; to provide
33 definitions; to prohibit a financial institution from using a
34 merchant category code to compile and disclose data tracking
35 firearms transactions; and to authorize the Attorney General
36 to enforce this act.

37 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

38 Section 1. This act may be cited as the Second
39 Amendment Financial Privacy Act.

40 Section 2. For the purposes of this act, the following
41 words have the following meaning:

42 (1) CUSTOMER. Any resident of this state engaged in a
43 payment card transaction that a financial institution
44 facilitates or processes.

45 (2) DISCLOSURE. The transfer, publication, or
46 distribution of protected financial information to another
47 person or entity for any purpose other than:

48 a. To process or facilitate a payment card transaction.

49 b. To take any actions related to dispute processing,
50 fraud management, or protection of transaction integrity from
51 concerns related to illegal activities, breach, or cyber
52 risks.

53 (3) FINANCIAL INSTITUTION. An entity involved in
54 facilitating or processing a payment card transaction,
55 including, but not limited to, a bank, savings institution, or
56 credit union authorized to do business in this state under



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57 federal or state law.

58 (4) FINANCIAL RECORD. A record held by a financial
59 institution related to a payment card transaction that the
60 financial institution has processed or facilitated.

61 (5) FIREARMS CODE. Any code or other indicator a
62 financial institution assigns to a merchant or to a payment
63 card transaction that identifies whether a merchant is a
64 firearms retailer or whether the payment card transaction
65 involves the purchase of a firearm, firearm accessories or
66 components, or ammunition. The term includes, but is not
67 limited to, a merchant category code assigned to a retailer by
68 a payment card network or other financial institution.

69 (6) FIREARMS RETAILER. Any person or entity engaged in
70 the lawful sale or transfer of a firearm, firearm accessories
71 or components, or ammunition.

72 (7) PAYMENT CARD. A credit card, debit card, check
73 card, or other card that is issued to an authorized user to
74 purchase or obtain goods, services, money, or any other thing
75 of value.

76 (8) PAYMENT CARD NETWORK. An entity that directly or
77 through a licensed member, processor, or agent provides the
78 proprietary services, infrastructure, and software that route
79 information and data to conduct debit card or credit card
80 transaction authorization, clearance, and settlement, and
81 which an entity uses in order to accept as a form of payment a
82 brand of debit card, credit card, or other device that may be
83 used to carry out debit or credit transactions.

84 (9) PROTECTED FINANCIAL INFORMATION. Any record of



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85 sale, purchase, return, or refund involving a payment card
86 that is retrieved, characterized, generated, labeled, sorted,
87 or grouped based on the assignment of a firearms code.

88 Section 3. (a) An individual or entity involved in
89 facilitating or processing an electronic payment transaction
90 and licensed to do business in this state, including, but not
91 limited to, a financial institution, payment card issuer, or
92 payment card network, shall not assign to a merchant or
93 require a merchant to use a firearms code in a way that
94 distinguishes a firearms retailer physically located in the
95 State of Alabama from general merchandise retailers or
96 sporting goods retailers.

97 (b) (1) For the purposes of the sale or transfer of
98 firearms, ammunition for use in firearms, and firearm
99 accessories, a firearms retailer shall not provide a firearms
100 code to a payment card issuer or payment network and may only
101 use or be assigned a merchant category code for general
102 merchandise retailers or sporting goods retailers.

103 (2) A financial institution shall not discriminate
104 against a firearms retailer by declining a lawful payment card
105 transaction based solely on the assignment or non-assignment
106 of a firearms code; provided, that a financial entity may
107 decline or otherwise refuse to process the transaction on the
108 basis of the firearms code only if necessary to comply with
109 this section or if requested by the customer or due to fraud
110 controls or merchant category exclusions offered by a
111 financial entity for the purpose of expenditure control or
112 corporate card control.



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113 (c) Except for those records kept during the regular
114 course of a criminal investigation and prosecution or as
115 otherwise required by law, a state governmental agency or
116 local government, special district or other political
117 subdivision, or any official, agent, or employee of the state
118 or other governmental entity, or any other individual, public
119 or private, other than the owner or owner's representative,
120 shall not knowingly and willingly keep or cause to be kept any
121 list, record, or registry of privately owned firearms or any
122 list, record, or registry of the owners of those firearms.

123 (d) Except for those records kept in the regular course
124 of business required by order of the civil court issued during
125 civil court proceedings, a financial institution shall not
126 disclose a financial record, including a firearms code that
127 was collected in violation of this act.

128 (e) Except as otherwise required by law or rule, or
129 pursuant to the Attorney General's power to examine witnesses
130 and documents for the purpose of enforcing the provisions of
131 this chapter, a financial institution shall not disclose a
132 financial record, including a firearms code that was collected
133 in violation of this act, unless the disclosure of the
134 financial record or firearms code was based on a good-faith
135 conclusion that the entity's action was required by applicable
136 law or rule, or pursuant to the Attorney General's power to
137 examine witnesses and documents.

138 (f) Nothing in this section shall limit the ability of
139 a financial institution to negotiate with responsible parties
140 or otherwise impair the financial institution's actions



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141 related to dispute processing, fraud management, protection of
142 transaction integrity from concerns related to illegal
143 activities, breach, or cyber risks.

144 Section 4. (a) If the Attorney General has reasonable
145 cause to believe that an individual or entity has engaged in
146 or is about to engage in a violation of this chapter, the
147 Attorney General may examine witnesses and documents for the
148 purpose of enforcing the provisions of this chapter.

149 (b) Either a firearms retailer physically located in
150 the State of Alabama whose business was the subject of an
151 alleged violation of this act or a customer who transacted at
152 a firearms retailer physically located in Alabama whose
153 business was the subject of an alleged violation of this act,
154 may petition the Attorney General to investigate the alleged
155 violation.

156 (c) If the Attorney General believes an individual or
157 entity under investigation for violation of this act may have
158 information or be in possession, custody, or control of any
159 document or other tangible object relevant to the
160 investigation, before the institution of any court proceeding,
161 the Attorney General may serve upon the individual or entity a
162 written demand in the form of a subpoena, or subpoena duces
163 tecum, to appear and be examined under oath and to produce the
164 documents or objects for inspection and copying.

165 (1) Upon a finding by the Attorney General that there
166 has been a violation of this act, the Attorney General shall
167 give written notice to the individual or entity identifying
168 the specifics of the provisions of this act which were



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169 violated.

170 (2) The Attorney General may not bring an action
171 against the individual or entity if the individual or entity
172 does all of the following:

173 a. Cures the identified violation within 30 days or
174 establishes to the Attorney General's satisfaction that a
175 suspected violation never occurred.

176 b. Provides the Attorney General a written statement
177 affirming that the individual or entity has:

178 1. Provided supporting documentation to show how the
179 violation was cured or establishes to the Attorney General's
180 satisfaction that a suspected violation never occurred.

181 2. Made changes to internal policies to prevent the
182 recurrence of any similar violation in the future.

183 (3) The Attorney General has exclusive authority to
184 enforce this act if the individual or entity fails to cure the
185 violation or breaches a written statement provided to the
186 Attorney General under this section.

187 (4) An individual or entity shall be liable for a civil
188 penalty in the amount of ten thousand dollars (\$10,000) for
189 each violation.

190 (5) The Attorney General may bring an action to:

191 a. Recover a civil penalty under this section.

192 b. Restrain or enjoin a person or entity from violating
193 this chapter.

194 c. Request an order directing a financial institution,
195 individual, or entity to destroy all illegal registry records
196 and all copies.



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197 d. Request that the court enter any other orders the
198 court deems appropriate.

199 (6) The Attorney General may recover reasonable
200 attorney fees and other reasonable expenses incurred in
201 investigating and bringing an action under this section.

202 Section 5. The remedies set forth in this act shall be
203 exclusive remedies for violation of this act.

204 Section 6. It shall be a defense to a proceeding
205 initiated pursuant to this act that the firearms code was
206 required to be used based on a good-faith conclusion that the
207 individual or entity's disclosure or action was required by
208 applicable law or regulation.

209 Section 7. This act shall become effective on October
210 1, 2024.