

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 295, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO FIREARMS; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE AD-
2 DITION OF A NEW SECTION 18-3326, IDAHO CODE, TO PROVIDE LEGISLATIVE IN-
3 TENT; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION OF A
4 NEW SECTION 18-3326A, IDAHO CODE, TO DEFINE TERMS, TO ESTABLISH PROVI-
5 SIONS PROHIBITING CERTAIN RECORDS AND REGISTRIES, TO ESTABLISH PROVI-
6 SIONS PROHIBITING CERTAIN DISCRIMINATORY ACTS BY PAYMENT NETWORKS, TO
7 AUTHORIZE THE ATTORNEY GENERAL TO TAKE CERTAIN ACTIONS, AND TO PROVIDE
8 FOR REMEDIES AND PENALTIES; AND DECLARING AN EMERGENCY AND PROVIDING AN
9 EFFECTIVE DATE.
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11 Be It Enacted by the Legislature of the State of Idaho:

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

15 18-3326. SECOND AMENDMENT FINANCIAL PRIVACY ACT -- LEGISLATIVE IN-
16 TENT. (1) The legislature finds that:

17 (a) The second amendment to the United States constitution guarantees
18 the people the right to keep and bear arms;

19 (b) Section 11, article I of the constitution of the state of Idaho pro-
20 vides that the "people have the right to keep and bear arms, which right
21 shall not be abridged; ... No law shall impose licensure, registration
22 or special taxation on the ownership or possession of firearms or ammu-
23 nition";

24 (c) In September 2022, the world's three (3) largest payment card net-
25 works publicly announced they would assign a unique merchant category
26 code to firearm retailers accepting payment cards for purchases, after
27 twenty-eight (28) members of congress sent a public letter to networks,
28 pressuring them to adopt the new code;

29 (d) In the letter to payment card networks, federal lawmakers stated
30 that the new merchant category code for firearms retailers would be
31 "the first step towards facilitating the collection of valuable finan-
32 cial data that could help law enforcement in countering the financing
33 of terrorism efforts," expressing a clear government expectation that
34 networks will utilize the new merchant category code to conduct mass
35 surveillance of constitutionally protected firearms and ammunition
36 purchases in cooperation with law enforcement;

37 (e) The new merchant category code will allow payment card networks,
38 acquirers, and other entities involved in payment card processing to
39 identify and separately track lawful payment card purchases at firearms
40 retailers in Idaho, paving the way for both unprecedented surveillance
41 of second amendment activity and unprecedented information sharing be-
42 tween payment networks and the government; and

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.

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

10 (3) This section and section 18-3326A, Idaho Code, shall be construed
 11 as generally applicable consumer financial protection law and shall not pre-
 12 vent or significantly interfere with the duly authorized powers of any bank
 13 or directly or indirectly discriminate against any bank based on its charter
 14 or structure. This section and section 18-3326A, Idaho Code, shall not apply
 15 to any financial institution as defined in section 18-3326A, Idaho Code, or
 16 any person, company, entity, or organization regulated by the Idaho depart-
 17 ment of finance or otherwise subject to the jurisdiction, rules, or regula-
 18 tions of the federal deposit insurance corporation.

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

22 18-3326A. SECOND AMENDMENT FINANCIAL PRIVACY ACT. (1) For purposes of
 23 this section:

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

26 (b) "Assign" or "assignment" means a payment network's policy,
 27 process, or practice that labels, links, or otherwise associates a
 28 firearms code with a merchant or payment card transaction in a manner
 29 that allows the payment network or any other entity facilitating or
 30 processing the payment card transaction to identify whether a merchant
 31 is a firearms retailer or whether a transaction involves the sale of
 32 firearms or ammunition;

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

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

42 (e) "Financial institution" means:

43 (i) A bank, savings and loan association, trust company, or
 44 credit union chartered pursuant to any state or federal law, a
 45 regulated consumer lender, a money service business, payment card
 46 issuer, or other institutions that are by law under the jurisdic-
 47 tion and supervision of the department of finance or the federal
 48 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 pay-
6 ment network pertaining to a customer of a financial institution
7 utilizing the payment network, including any record of a transac-
8 tion conducted by means of a customer bank communication terminal
9 or other electronic device;
- 10 (ii) A financial record held by a payment network related to a
11 payment card transaction that the financial institution has pro-
12 cessed or facilitated; and
- 13 (iii) Any information derived from such records or documents;
- 14 (g) "Firearm" means any weapon that will, is designed to, or may readily
15 be converted to expel a projectile by the action of an explosive;
- 16 (h) "Firearm accessory or component" means:
- 17 (i) Any device specifically adapted to enable the wearing or carry-
18 ing about one's person or the storage or mounting in or on any
19 conveyance of a firearm and any attachment or device specifically
20 adapted to be inserted into or affixed onto any firearm to enable,
21 alter, or improve the functioning or capabilities of the firearm;
- 22 (ii) Any item that is used in conjunction with or mounted upon a
23 firearm, including but not limited to telescopic or laser sights,
24 magazines, flash or sound suppressors, folding or aftermarket
25 stocks and grips, speedloaders, braces, ammunition carriers, and
26 lights for target illumination; and
- 27 (iii) Any component for making ammunition, reloading materials
28 and equipment, machinery, and tools for manufacturing ammunition;
- 29 (i) "Firearms code" means any code or other indicator a payment network
30 assigns to a merchant or to a payment card transaction that identifies
31 whether a merchant is a firearms retailer or whether the payment card
32 transaction involves the purchase of a firearm, firearm accessories or
33 components, or ammunition. The term includes but is not limited to a
34 merchant category code assigned to a retailer by a payment card network
35 or other financial institution;
- 36 (j) "Firearms dealer" means any person engaged in the lawful business
37 of selling or trading firearms or antique firearms, as those terms are
38 defined in 18 U.S.C. 921, or ammunition to be used in firearms or antique
39 firearms;
- 40 (k) "Government entity" means any state or local government agency or
41 instrumentality thereof located in Idaho;
- 42 (l) "Merchant" means a person or entity that accepts payment cards from
43 customers for the purchase of goods or services. The term includes a
44 firearms retailer that accepts payment cards for the lawful purchase of
45 firearms, firearm accessories or components, or ammunition;
- 46 (m) "Payment card" means a credit card, charge card, debit card, or any
47 other card that is issued to an authorized card user and that allows the
48 user to purchase goods or services from a merchant;
- 49 (n) "Payment network" means a debit or credit network through which
50 funds may be transferred, such as credit card associations, electronic

1 funds transfer networks, or other organizations, or associations, that
2 issue or sponsor a financial transaction device. A payment network does
3 not include any financial institution as defined in this section; and

4 (o) "Protected financial information" means any record of a sale, pur-
5 chase, return, or refund involving a payment card that is retrieved,
6 characterized, generated, labeled, sorted, or grouped based on the as-
7 signment of a firearms code. A customer's protected financial informa-
8 tion refers to protected financial information appearing in the finan-
9 cial records of a customer.

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

18 (3) A payment network or its agent may not require the usage of a
19 firearms code in a way that distinguishes a firearms retailer physically
20 located in the state of Idaho from Idaho general merchandise retailers or
21 sporting goods retailers.

22 (4) A payment network may not discriminate against a firearms retailer
23 by:

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

27 (b) Limiting or declining to do business with a customer, potential
28 customer, or merchant based on the assignment or non-assignment of a
29 firearms code to previous lawful transactions involving the customer,
30 potential customer, or merchant;

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

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

39 (5) Except as otherwise required by law, a payment network may not dis-
40 close a financial record, including a firearms code that was collected in vi-
41 olation of this section.

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

1 (7) (a) Either a firearms retailer physically located within Idaho
2 whose business was the subject of an alleged violation of this section
3 or a customer who transacted at a firearms retailer physically located
4 in Idaho whose business was the subject of an alleged violation of this
5 section may petition the attorney general to investigate the alleged
6 violation.

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

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

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

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

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

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

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