

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 FINANCIAL INSTI-  
7 TUTIONS, TO AUTHORIZE THE ATTORNEY GENERAL TO TAKE CERTAIN ACTIONS, AND  
8 TO PROVIDE FOR REMEDIES AND PENALTIES; AND DECLARING AN EMERGENCY AND  
9 PROVIDING AN EFFECTIVE DATE.  
10

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 banks, payment card  
38 networks, acquirers, and other entities involved in payment card pro-  
39 cessing to identify and separately track lawful payment card purchases  
40 at firearms retailers in Idaho, paving the way for both unprecedented  
41 surveillance of second amendment activity and unprecedented informa-  
42 tion sharing between financial institutions and the government;

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-  
 9 tomers in cooperation with law enforcement.

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

15 (3) This section and section 18-3326A, Idaho Code, shall be construed  
 16 as generally applicable consumer financial protection law and shall not pre-  
 17 vent or significantly interfere with the duly authorized powers of any bank  
 18 or directly or indirectly discriminate against any bank based on its charter  
 19 or structure.

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

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

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

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

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

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

43 (e) "Financial institution" means:

44 (i) A bank, savings and loan association, trust company, or  
 45 credit union chartered pursuant to any state or federal law, a  
 46 regulated consumer lender, a money service business, payment card  
 47 issuer, or other institutions that are by law under the jurisdic-  
 48 tion and supervision of the department of finance; 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 pertaining to a customer of the financial  
7           institution, including any record of a transaction conducted by  
8           means of a customer bank communication terminal or other elec-  
9           tronic device;
- 10           (ii) A financial record held by a financial institution related  
11           to a payment card transaction that the financial institution has  
12           processed 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 financial in-  
30       stitution assigns to a merchant or to a payment card transaction that  
31       identifies whether a merchant is a firearms retailer or whether the pay-  
32       ment card transaction involves the purchase of a firearm, firearm ac-  
33       cessories or components, or ammunition. The term includes but is not  
34       limited to a merchant category code assigned to a retailer by a payment  
35       card network 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; and
- 49       (n) "Protected financial information" means any record of a sale, pur-  
50       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 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 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 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.