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Sixty-eighth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1487

Introduced by

Representatives Koppelman, Hauck, Heinert, Kasper, Louser, Novak, Tveit

Senators Larsen, Magrum, Wobbema

A BILL for an Act to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to financial entities use of merchant codes to track firearm and ammunition-related purchases; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 6 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Customer" means any person engaged in a payment card transaction facilitated or processed by a financial entity.
2. "Disclosure" means the transfer, publication, or distribution of protected financial information to another person for any purpose other than the processing or facilitating of a payment card transaction, or other than taking any actions related to dispute processing, fraud management, or protecting transaction integrity from concerns related to illegal activities, breach, or cyber risks.
3. "Financial entity" means a person involved in facilitating or processing a payment card transaction, including a bank, acquirer, payment card network, or payment card issuer.
4. "Firearms code" means a merchant category code approved by the international ~~standards~~ organization for standardization for firearms retailers.
5. "Firearms retailer" means any person physically located in this state engaged in the lawful business of selling or trading firearms or ammunition to be used in firearms.
6. "Government entity" means any state board, commission, agency, bureau, or department, or any political subdivision of the state.

~~6.~~7. "Protected financial information" means any record of sale, purchase, return, or refund involving a payment card which is retrieved, characterized, generated, labeled, sorted, or grouped based on the assignments of a firearms code.

Merchant codes - Limitations.

1. Except for those records kept during the regular course of a criminal investigation and prosecution or merchant marketing campaigns, a government entity or any official, agent, or employee of the state, or any other person, may not willfully keep or cause to be kept any list, record, or registry of privately owned firearms or firearm owners.
2. A financial entity or its agent may not require ~~any merchant located in this state to use a firearm or ammunition merchant category code or any code that differentiates the sale of firearms or ammunition from other sporting goods or general merchandise~~the use of a firearms code in a manner that distinguishes a firearms retailer located in this state from a general merchandise retailer or a sporting goods retailer.
3. A financial entity may not ~~use a firearms code to~~ engage in the following discriminatory conduct:
   a. Declining a lawful payment card transaction based solely on the assignment of a firearms code; or
   b. Taking any action against a customer which is intended to suppress or track lawful commerce involving firearms or ammunition.
4. Nothing in this section may impair the financial entity's actions related to dispute processing, fraud management, protecting transaction integrity from concerns related to illegal activities, breach, cyber risks, or to comply with state or federal law.

Investigation of financial entities.

1. The attorney general shall process claims of alleged violations of this chapter, may investigate alleged violations under this chapter, and shall provide a written notice to any person in violation. A person that has received a written notice from the attorney general must cease the use of a firearms code within thirty calendar days.
2. The attorney general may pursue, and a court may order, an injunction against any person if the person fails to cease the use of a firearms code after the expiration of thirty days from receipt of written notice.

3. If a court issues an injunction under this section, the court shall award the attorney general reasonable expenses, including reasonable attorney's fees and costs.

4. If the attorney general finds a financial entity willfully violated this chapter, the attorney general shall assess a fee of ~~five~~ten thousand dollars ~~for the first violation and ten thousand dollars for each additional violation~~. Fees collected under this section must be deposited into the merchant code violation fund. A financial entity desiring to appeal the attorney general's finding of a violation under this chapter may appeal the finding in accordance with chapter 28-32.

~~4.~~5. Information disclosed to a federal government entity is not a defense to any civil action filed under this section, unless the disclosure or action is required by federal law or regulation.

Merchant code violation fund - Continuing appropriation.

There is created in the state treasury the merchant code violation fund. The fund consists of all money deposited in the fund under this chapter. Moneys in the fund are appropriated to the attorney general on a continuing basis for disbursement to individuals harmed by a violation of this chapter, subject to approval by the attorney general, and administrative expenses. An individual harmed by a violation under this chapter may submit a request to the attorney general for a disbursement of five thousand dollars from the fund, and the attorney general shall review all requests for disbursement submitted under this chapter. The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter.