

Rep. Ben Koppelman

HB 1487

Requested amendment to Senate Appropriations Committee

Page 2, Line 21, after 1. insert: Any person may allege violations under this chapter to the attorney general.

Page 2, Line 21 remove: shall process claims of alleged violations of this chapter,

Page 2, Line 31 after dollars insert: per transaction



## **HB 1487**

### **Rep. Ben Koppelman- Testimony**

Mr. Chairman and Members of the Committee,

Thank You for the opportunity to introduce HB1487 to you today.

I introduced this bill with the intent of stopping credit card companies and their affiliates from tracking purchases from gun retailers with a unique Merchant Category Code (MCC).

In early September, the AG's of California and New York sent a letter to Visa, Mastercard, and American Express suggesting that the three credit card giants should begin tracking gun sales and flagging suspicious purchases to law enforcement. The two AGs wrote:

“If tracking MCC's could stop just one mass shooting or derail one gun trafficker aiming to flood the streets with guns, the change would be justified.”

The International Organization for Standardization (ISO) indicated that they intended to create a unique MCC code for gun retailers which would provide a mechanism to single out and track purchases at gun retailers. Although individual items purchased at a gun retailer would not be singled out, the size and frequency of purchases from such a store would be analyzed to try and predict the likelihood of gun violence or illegal behavior.

After the ISO decision to create the unique MCC code, all three of the credit card giants said that they planned to implement the international standards.

Twenty- Four state attorneys general signed a letter to the big three credit card companies in protest of the proposed changes, questioning the legality of such a breach of the right of privacy.

Recently, Visa CEO, Al Kelly said in an interview that the new merchant codes aren't needed and won't be useful in flagging suspicious purchases as anti-gun activists claimed. He said:

"I don't think the code was necessary, but it doesn't matter; the code is in place. It's now an international standard and we adopt international standards."

When asked about the letter from two dozen attorneys general, he went on to say:

"I've heard from everybody. I don't think there's a senator or member of the house or attorney general in the United States that I haven't heard from. I'm telling them that we will follow the law."

Thus, several states are now considering laws to prohibit such behavior by credit card companies, their affiliated financial institutions, and retailers, with more efforts expected to come. Now is the time to pass a law in North Dakota to prohibit such an invasion of privacy and an assault on the Second Amendment.

In fact, recently, bills like this are having an impact on the decisions of the large national credit card giants. Earlier this month, they announced a delay in implementation of the use of the codes that would be assigned to firearms retailers, proving that we need bills like this to make that pause permanent.

Since shortly after the hearing in the House, I have been working with individuals that represent the banking and credit card industry as well as representatives from the National Rifle Association to strike a

balance in the provisions of this bill as well as ensure that the language of this bill is workable.

After the bill passed the House, I noticed that the AG had prepared a fiscal note for the House version of the bill. After reviewing the fiscal note of nearly a million dollars, I understood that the AG was assuming that there would be many claims of wrongdoing on the part of financial entities, and thus predicted that they would need two additional investigators as well as one additional attorney.

After speaking with the individuals representing the financial institutions as well as the NRA, they all concluded that once this bill becomes law, that there would be very few claims of such violations, especially once everyone becomes aware of it. I agree with the assessment that claims would likely be rare, and after speaking with the AG and his fiscal analyst, I think that they now understand those assumptions. The meeting also gave me ideas of how I could make changes to the bill language to ensure it is revenue neutral.

I have handed out an amendment that I would respectfully ask the committee to adopt. It has the most recent additions to the bill language which I believe strikes the balance that everyone can live with. I think it also addresses some of the concerns of the AG. I will explain the amendment section by section.

Mr. Chairman and members of the committee, I request that you attach the amendment to this bill and then give this bill a Do-Pass recommendation. I would be happy to attempt to answer any questions that you may have.



## Financial Surveillance Used to Build Gun Owner Registry

### Background

On September 9, the [International Organization for Standardization](#) (ISO) approved a Merchant Category Code (MCC) for firearm retailers. The ISO is a Geneva-based non-governmental organization that consists of a network of “standards bodies” from around the globe that create consensus across various countries and industries.

The move altered standard 18245:2003, which, “defines code values used to enable the classification of merchants into specific categories based on the type of business, trade or services supplied.” These four-digit MCCs are then used to categorize transactions by payment processors and other financial services companies. MCCs enable payment processors and banks to categorize, monitor, and collect data on various types of transactions. Before the ISO decision, firearm retailers fell under the MCC for sporting goods stores or miscellaneous retail.

The ISO’s Registration and Maintenance Management Group (RMMG) considers applications for new MCC codes. At the behest of gun control advocates, Amalgamated Bank applied to the RMMG to create an MCC for firearm retailers.

On September 9, Visa wrote a letter to anti-gun members of Congress that had advocated for the firearm retailer MCC code in which the payment processing giant opposed using the ISO for this political purpose. Visa explained,

*We believe that the Visa payment system is for everyone, and we strive to make our services available to all people in all places, for uses consistent with local and national laws. If a transaction is legal, Visa’s policy is to remain neutral and process the transaction. We believe that asking payment networks to serve as a moral authority by deciding which legal goods can or cannot be purchased sets a dangerous precedent. We understood Amalgamated Bank’s request to be justified, at least in part, by an interest in blocking transactions that would fall under such a new category, and Visa’s rules expressly prohibit blocking of legal transactions under an MCC.*

Moreover, Visa noted that it was their belief that Amalgamated Bank’s petition to ISO for a firearm retailer MCC could not be reviewed by the RMMG at the time, because it was previously rejected.

However, communications involving the ISO reveal that when the RMMG was unable to reach a decision on Amalgamated Bank's application, the petition was advanced to a higher decision-making body within the ISO. This body, [ISO technical subcommittee ISO/TC 68/SC9](#) or "[Information exchange for financial services](#)," quickly approved the new MCC.

Following the ISO adopting the firearm retailer MCC, market-leading payment processors Visa, Mastercard, and American Express announced that they would implement the new code.

After adopting the new code, Visa reiterated its opposition touting its payment network to enact a political agenda. In a [September 13 statement](#) the company noted,

*We do not believe private companies should serve as moral arbiters. Asking private companies to decide what legal products or services can or cannot be bought and from what store sets a dangerous precedent. Further, it would be an invasion of consumers' privacy for banks and payment networks to know each of our most personal purchasing habits. Visa is firmly against this.*

However, the industry-leading payment processor also stated that it would be moving forward with adopting the new firearm retailer surveillance MCC.

Gun owners should be aware of the dangerous impact that gun control activists teamed with international bureaucrats can have on their rights. The ISO/TC 68/SC9 Secretariat is held by Association française de normalization (AFNOR), the standardization organization representing France. According to the ISO, [ISO/TC 68/SC9](#) participating members include organizations representing China and Russia.

As for Amalgamated Bank, the "bank" is as much a left-wing political project as it is a financial institution. The outfit's website declares that they are "proud to support candidates, political parties, political action committees, and political organizations as they seek to build power for progressive change." A [firearm specific statement](#) on their website reads,

*Banks are important advocates for gun violence prevention. Amalgamated Bank is proud to partner with many organizations creating a safer society and we are using our voice to set the industry standard so that all financial institutions can*



*help keep their communities safe from gun violence. As our CEO Priscilla Sims Brown recently said on CBS News: "This is our responsibility."*

Further, the "bank" touts its support for the criminalization of private firearm transfers, gun confiscation orders, and other portions of Everytown for Gun Safety's gun control agenda.

### **Express Goals of Firearm Retailer MCC Proponents**

Backers of the firearm retailer MCC have made clear that their goal is to use the code to enact further gun control through a public-private partnership.

Amalgamated Bank has noted that they intend to create a software algorithm that will use the MCC "to report suspicious activity and illegal gun sales to authorities." The contours of what would be deemed "suspicious activity" have not been articulated. As those purchasing firearms from retail establishments already undergo an FBI National Instant Criminal Background Check System (NICS) check, such "suspicious activity" would be aimed at otherwise lawful gun sales.

Describing how the gun control scheme would interface with the federal government, the New York Times explained, "Banks could then either allow [the flagged] transactions, or block them and file suspicious activity reports with the Treasury Department's Financial Crimes Enforcement Network, which would ideally also create a system to quickly forward that information to local law enforcement and the F.B.I."

High-profile backers of the MCC proposal include: Everytown for Gun Safety, Giffords, Guns Down America, [Sen. Elizabeth Warren \(D-Mass.\)](#), New York Gov. Kathy Hochul (D), New York Attorney General Letitia James (D), New York City Mayor Eric Adams (D), and California Attorney General Rob Bonta(D).

### **Impact on gun owners**

#### **Gun Registration**

Collection of firearm retailer financial transaction data amounts to surveillance and registration of law-abiding gun owners. Those promoting this scheme are proponents of firearm and gun owner registration and advocate against firearm owner privacy. Therefore, it should be assumed that the goal of this program is to share all collected firearm retailer MCC data with government authorities and potentially private third parties that may include gun control organizations and anti-gun researchers.

Federal law contains multiple restrictions on the creation of a national firearms registry. This move should be perceived as an attempt to circumvent those restrictions by [deputizing private companies](#) to surveil law-abiding gun owners in manner that the federal government is prohibited from doing by law and that Americans have repeatedly rejected through their elected representatives.

### **Political Abuse**

This scheme offers a means by which to restrict and surveil those who exercise their First Amendment rights in a manner gun control advocates or the federal government disapprove. [Everytown for Gun Safety President John Feinblatt explained](#), “Banks should report dangerous warning signs to law enforcement when extremists are quickly building up massive stockpiles of guns.”

There is an [ongoing effort](#) by some prominent Democrats, including those in charge of federal law enforcement, to define anyone who deviates from their political program as “extremists.” On September 1, President Joe Biden defined “extremism” to include “Donald Trump and the MAGA Republicans.” On September 13, [U.S. Senate candidate Rep. Tim Ryan \(D-Ohio\) told MSNBC](#) that it was time to “kill and confront” the “extremist” Republican movement. In late 2021, in response to a memorandum from Attorney General Merrick Garland, [FBI’s Counterterrorism Division created a “threat tag” targeting concerned parents who attend school board meetings](#).

### **Targets for Crime**

Governments and private companies are under constant threat of having their data stolen or inadvertently leaked. Not collecting certain sensitive data is the most effective means of ensuring it does not fall into the wrong hands. If collected firearm retailer MCC data were to be made public, gun owners could become targets for thieves and other criminals.

Sensitive gun owner data leaks literally span the globe, with [New Zealand gun owners suffering a security breach in 2019](#). Most recently, the names, home addresses, and dates of birth of California carry permit holders were [exposed by the California Department of Justice](#).

### **Pro-Gun Response**

NRA-ILA is working with pro-gun federal and state officials on measures to address this threat to gun owner privacy and blatant attempt to circumvent federal law.

On September 14, [Rep. Elise Stefanik \(D-N.Y.\)](#) led 100 of her colleagues in [a letter](#) to Visa, Mastercard, and American Express concerning the firearm retailer MCC. The letter explained to the companies,

*there is no accepted, consistent, scientific, or legitimate way to determine from this data what is and what is not a "suspicious" purchase. A gun control advocate could view any desire to own or obtain a firearm as per se suspicious. Instead, this is a transparent attempt to chill the exercise of constitutionally protected rights and to circumvent existing legal restrictions on the creation of firearm registries by the government.*

Moreover, the forceful letter demanded answers as to how the payment companies intend to implement and utilize the firearm retailer MCC.

HB 1487 pushes back against the forgoing inappropriate practices.

Thank you,

Brian Gosch  
North Dakota State Director

