



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3840

Introduced 2/17/2023, by Rep. Brad Halbrook

SYNOPSIS AS INTRODUCED:

New Act

Creates the Second Amendment Privacy Act. Provides that a financial institution is prohibited from disclosing a customer's protected financial information when purchasing a firearm or ammunition unless specified conditions apply. Provides that a financial institution may disclose a customer's protected financial information if the customer provides the financial institution with written authorization for the disclosure. Provides that if a subpoena issued by a government entity requires disclosure of a customer's protected financial information, a financial institution may only disclose the information if the subpoena meets specified requirements. Provides that a financial institution may not use a firearms code to engage in discriminatory conduct. Provides that a customer may bring a civil action for damages against any financial institution or government entity that causes the customer's protected financial information to be disclosed in violation of the Act.

LRB103 26222 SPS 52581 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Second
5 Amendment Privacy Act.

6 Section 5. Definitions. As used in this Act:

7 "Assign" or "assignment" means a financial institution
8 policy, process, or practice that labels, links, or otherwise
9 associates a firearms code with a merchant or payment card
10 transaction in a manner that allows the financial institution
11 or any other entity facilitating or processing the payment
12 card transaction to identify whether a merchant is a firearms
13 retailer or whether a transaction involves the sale of
14 firearms or ammunition.

15 "Customer" means any person engaged in a payment card
16 transaction that a financial institution facilitates or
17 processes.

18 "Disclosure" means the transfer, publication, or
19 distribution of protected financial information to another
20 person for any purpose other than to process or facilitate a
21 payment card transaction.

22 "Financial institution" means an entity involved in
23 facilitating or processing a payment card transaction,

1 including, but not limited to, a bank, acquirer, gateway,
2 payment card network, or payment card issuer.

3 "Financial record" means a financial record held by a
4 financial institution related to a payment card transaction
5 that the financial institution has processed or facilitated.

6 "Firearms retailer" means any person engaged in the lawful
7 business of selling or trading firearms or antique firearms or
8 ammunition to be used in firearms or antique firearms.

9 "Firearms code" means any code or other indicator a
10 financial institution assigns to a merchant or to a payment
11 card transaction that identifies whether a merchant is a
12 firearms retailer or whether the payment card transaction
13 involves the purchase of a firearm or ammunition. "Firearms
14 code" includes, but is not limited to, a merchant category
15 code assigned to a retailer by a payment card network or other
16 financial institution.

17 "Government entity" means any State or local government
18 agency or instrumentality.

19 "Protected financial information" means any record of a
20 sale, purchase, return, or refund involving a payment card
21 that is retrieved, characterized, generated, labeled, sorted,
22 or grouped based on the assignment of a firearms code.
23 "Protected financial information" includes information
24 appearing in the financial records of a customer.

25 Section 10. Protected financial information. A financial

1 institution is prohibited from disclosing a customer's
2 protected financial information when purchasing a firearm or
3 ammunition unless:

4 (1) disclosure is expressly permitted by law and the
5 protected financial information is not singled out,
6 segregated, or disclosed based on the assignment of a
7 firearms code;

8 (2) disclosure is made pursuant to a valid warrant
9 issued in a criminal investigation, stating the grounds or
10 probable cause for its issuance;

11 (3) the customer has consented to disclosure under
12 Section 15; or

13 (4) disclosure is made in response to a subpoena
14 meeting the requirements of this Act.

15 Section 15. Written authorization for disclosure.

16 (a) Notwithstanding Section 10, a financial institution
17 may disclose a customer's protected financial information if
18 the customer provides the financial institution with written
19 authorization for the disclosure. The written authorization
20 described by this Section must contain the following:

21 (1) a statement that the customer consents to the
22 disclosure of the protected financial information for a
23 specific period;

24 (2) a statement that the customer has the right to
25 refuse to consent to disclosure;

1 (3) a statement that the customer understands his or
2 her right to revoke consent at any time before the
3 protected financial information is disclosed;

4 (4) a description of the financial records authorized
5 to be disclosed; and

6 (5) the purpose for which disclosure of the protected
7 financial information is authorized.

8 (b) The written authorization described in this Section
9 may not be required as a condition of doing business or
10 transacting with any financial institution.

11 Section 20. Requirements for subpoenas.

12 (a) If a subpoena issued by a government entity requires
13 disclosure of a customer's protected financial information, a
14 financial institution may only disclose the information if the
15 subpoena meets the requirements this of Section.

16 (b) A subpoena issued by a government entity that
17 specifically requires disclosure of protected financial
18 information shall meet the following requirements:

19 (1) the subpoena must state that protected financial
20 information is being sought; and

21 (2) a copy of the subpoena must be served upon the
22 customer as provided by law and the subpoena must contain
23 a certification that the service was executed.

24 Section 25. Use of protected financial information for

1 discriminatory purpose. A financial institution may not use a
2 firearms code to engage in the following discriminatory
3 conduct:

4 (1) declining a lawful payment card transaction based
5 on the assignment of a firearms code to the merchant or
6 transaction;

7 (2) limiting or declining to do business with a
8 customer or potential customer based on the assignment of
9 a firearms code to previous lawful transactions involving
10 the customer or potential customer;

11 (3) charging a higher transaction or interchange fee
12 to any merchant or for a lawful transaction, as compared
13 to the fee charged to a similarly situated merchant or for
14 a similar transaction, based on the assignment of a
15 firearms code; or

16 (4) otherwise taking any action against a customer or
17 merchant that is intended to suppress lawful commerce
18 involving firearms or ammunition.

19 Section 30. Civil remedies.

20 (a) A customer may bring a civil action for damages
21 against any financial institution or government entity that
22 causes the customer's protected financial information to be
23 disclosed in violation of this Act. For each violation, the
24 individual may recover against any person who violates this
25 Act liquidated damages of \$30,000.

1 (b) Any person aggrieved by a violation of Section 25 may
2 bring a civil action for damages. The person may recover
3 liquidated damages of \$30,000 or actual damages, whichever is
4 greater.

5 (c) If a court finds that a violation of this Act has
6 occurred as the result of a civil action filed pursuant to
7 subsection (a) or subsection (b), the court shall award
8 reasonable attorney's fees to the aggrieved party. A court may
9 order such other relief, including an injunction, as the court
10 may consider appropriate.

11 (d) It shall not be a defense to a civil action filed under
12 this Act that the information was disclosed to a federal
13 government entity if the disclosure is neither required nor
14 authorized by a federal law or regulation.

15 (e) Any action under this Act is barred unless the action
16 is commenced within 5 years after the violation occurs.

17 (f) The remedies provided in this Act are the exclusive
18 remedies for violations of this Act.

19 Section 35. Contractual authority of the State. In
20 selecting a financial institution to provide a financial
21 service or product to this State related to payment card
22 processing, the State Treasurer may disqualify a financial
23 institution from the competitive bidding process or from any
24 other official selection process if:

25 (1) during the past 5 years a court of competent

1 jurisdiction has entered an order or opinion finding that
2 the financial institution violated this Act;

3 (2) during the past 5 years the financial institution
4 has admitted to violating this Act in the records of a
5 court or other official proceeding; or

6 (3) the financial institution has publicly stated that
7 it has adopted or intends to adopt policies or practices
8 that violate this Act.

9 Section 40. Scope. Nothing in this Act may be construed or
10 applied in a manner that violates or conflicts with
11 superseding federal law.

12 Section 45. Severability. The provisions of this Act are
13 severable under Section 1.31 of the Statute on Statutes.