

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1487

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1487
2/1/2023

Relating to financial institutions use of merchant codes to track firearm and ammunition-related purchases; and to provide a penalty.

Chairman Louser called to order 8:53 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Information reporting
- Tracking purchases
- Federal IRS definitions
- Consumer information

In favor:

Representative Ben Koppelman, District 16, Primary bill sponsor, #18525

Opposed:

Barry Haugen, President, Independent Community Banks of ND (no written testimony)
Rick Clayburgh, President CEO, ND Bankers Association (no written testimony)
Lise Kruse, Director, ND Department of Financial Institutions (no written testimony)

Chairman Louser adjourned the meeting 9:28 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1487
2/15/2023

Relating to financial institutions use of merchant codes to track firearm and ammunition-related purchases; and to provide a penalty.

Chairman Louser called to order at 10:05 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Warrey.

Member Absent: Representative Wagner

Discussion Topics:

- Violations
- Search history
- Special fund
- Merchant codes

Representative Koppelman proposed amendment LC #23.0968.02005 with further amendments #20905, LC 23.0968.02007.

Rep Schauer moved to adopt the amendment 23.0968.02007
Representative Kasper seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	N
Representative Josh Christy	Y
Representative Hamida Dakane	N
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	AB
Representative Jonathan Warrey	Y

Motion passed 11-2-1

Representative Tveit moved a do pass as amended.

Representative Schauer seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	N
Representative Josh Christy	Y
Representative Hamida Dakane	N
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	AB
Representative Jonathan Warrey	Y

Motion passed 11-2-1

Representative Koppelman will carry the bill.

Chairman Louser adjourned the meeting 10:49 AM

Diane Lillis, Committee Clerk

February 15, 2023

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2-15-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1487

Page 1, line 1, after "A BILL" replace the remainder of the bill with "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.
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.
5. "Government entity" means any state board, commission, agency, bureau, or department, or any political subdivision of the state.
6. "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

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2-15-23

that differentiates the sale of firearms or ammunition from other sporting goods or general merchandise.

- 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.

Investigation of financial entities.

- 1. The attorney general shall 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 the attorney general finds a financial entity willfully violated this chapter, the attorney general shall assess a fee of five 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. 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. 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."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1487: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1487 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "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:

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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.
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.
5. "Government entity" means any state board, commission, agency, bureau, or department, or any political subdivision of the state.
6. "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.
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.

Investigation of financial entities.

1. The attorney general shall 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 the attorney general finds a financial entity willfully violated this chapter, the attorney general shall assess a fee of five 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. 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. 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."

Renumber accordingly

2023 SENATE JUDICIARY

HB 1487

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1487
3/22/2023

A bill 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.

10:29 AM Chairman Larson opened the meeting.
Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson, and Braunberger were present.

Discussion Topics:

- Tracking purchases
- Gun retailers
- Credit card codes

10:29 AM Representative Ben Koppelman introduced the bill and provided written testimony #26339, 26340, 26341.

10:54 AM Levi Andrist, Lobbyist, North Dakota Bankers Association and American Express, spoke neutral on the bill.

11:00 AM Barry Haugen, President, Independent Community Banks of North Dakota spoke neutral on the bill.

11:04 AM Becky Keller, Finance Director, North Dakota Attorney General's Office, spoke neutral on the bill.

11:05 AM Chairman Larson closed the public hearing.

11:07 AM Senator Luick moved to adopt amendment LC 23.0968.04001 and make language changes suggested by Representative Koppelman. Motion seconded by Senator Luick.

11:07 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

11:08 AM Chairman Larson closed the meeting.
Rick Schuchard, Committee Clerk

DR
182
3-22-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1487

Page 1, line 13, after "transaction" insert ", 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"

Page 1, line 17, remove "standards"

Page 1, line 17, after "organization" insert "for standardization for firearms retailers"

Page 1, line 18, after "5." insert """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."

Page 1, line 20, replace "6." with "7."

Page 2, line 6, remove "any merchant located in this state to use"

Page 2, remove line 7

Page 2, line 8, replace "sale of firearms or ammunition from other sporting goods or general merchandise" with "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"

Page 2, line 9, remove "use a firearms code to"

Page 2, after line 14, insert:

"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."

Page 2, line 16, after the first "shall" insert "process claims of alleged violations of this chapter, may"

Page 2, line 16, after "chapter" insert an underscored comma

Page 2, line 23, after "3." insert "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."

Page 2, line 24, replace "five" with "ten"

Page 2, line 24, remove "for the first violation and ten"

Page 2, line 25, remove "thousand dollars for each additional violation"

Page 2, line 29, replace "4." with "5."

Page 3, line 5, after "chapter" insert an underscored comma

Page 3, line 5, after "general" insert ", and administrative expenses"

Page 3, line 8, after the underscored period insert "The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter."

Renumber accordingly

DR
272
3-22-23

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1487
3/22/2023

A bill 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.

3:18 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger were present.

Discussion Topics:

- Committee action

3:19 PM, Claire Ness, Deputy Attorney General, North Dakota Attorney General's Office, spoke about the fiscal note for the bill.

3:30 PM Senator Myrdal moved to Do Pass as Amended LC 23.0968.04002 and Rerefer to the Appropriations Committee.

Motion seconded by Senator Luick.

3:34 PM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Paulson will carry the bill.

This bill does not affect workforce development.

3:40 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1487, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1487 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 13, after "transaction" insert ", 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"

Page 1, line 17, remove "standards"

Page 1, line 17, after "organization" insert "for standardization for firearms retailers"

Page 1, line 18, after "5." insert "\"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."

Page 1, line 20, replace "6." with "7."

Page 2, line 6, remove "any merchant located in this state to use"

Page 2, remove line 7

Page 2, line 8, replace "sale of firearms or ammunition from other sporting goods or general merchandise" with "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"

Page 2, line 9, remove "use a firearms code to"

Page 2, after line 14, insert:

"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."

Page 2, line 16, after the first "shall" insert "process claims of alleged violations of this chapter, may"

Page 2, line 16, after "chapter" insert an underscored comma

Page 2, line 23, after "3." insert "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."

Page 2, line 24, replace "five" with "ten"

Page 2, line 24, remove "for the first violation and ten"

Page 2, line 25, remove "thousand dollars for each additional violation"

Page 2, line 29, replace "4." with "5."

Page 3, line 5, after "chapter" insert an underscored comma

Page 3, line 5, after "general" insert ". and administrative expenses"

Page 3, line 8, after the underscored period insert "The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter."

Renumber accordingly

2023 SENATE APPROPRIATIONS

HB 1487

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Red River Room, State Capitol

HB 1487
3/28/2023

A bill 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.

10:05 AM Chairman Wanzek called the meeting to order.
Senators Wanzek, Erbele, Roers, Dwyer, and Vedaa were present.

Discussion Topics:

- Merchant Category Code (MCC)
- Code implementation - ISO
- Fiscal note and mitigation
- Amendments
- Retailer use of MCC
- Data management intermediaries
- Attorney General Office legal opinion

10:05 AM ND House Representative Ben Koppleman, District 16, testified. Testimony #26840

10:24 AM Becky Keller, Finance Director for Attorney General, testified. (No written testimony)

10:28 Chairman Wanzek closed the meeting.

Carol Thompson, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Red River Room, State Capitol

HB 1487
3/30/2023

A bill 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.

10:32 AM Chairman Wanzek opened the meeting.
Senators Wanzek, Dwyer, J. Roers, Vedaa, and Erbele were present.

Discussion Topics:

- Amendments
- Fiscal note

10:40 AM Senator Vedaa moved an amendment, which is the language of Senate Bill 2217 (23.0579.02000) and the Policy Committee's language be added to Representative Koppleman's Amendment to HB 1487. Testimony #21746, #27154
Senator Dwyer seconded the motion.

Senators	Vote
Senator Terry M. Wanzek	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Jim P. Roers	Y
Senator Shawn Vedaa	Y

Motion carried 5-0-0

10:48 AM Senator Vedaa moved a Do Pass as Amended recommendation for HB 1487.
Senator Erbele seconded the motion.

Senators	Vote
Senator Terry M. Wanzek	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Jim P. Roers	Y
Senator Shawn Vedaa	Y

Motion passed 5-0-0

Senator Vedaa will carry the bill.

10:50 AM Chairman Wanzek closed the meeting.

Carol Thompson, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

HB 1487
4/4/2023

A BILL for an Act 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.

10:33 AM Chairman Bekkedahl opened the hearing on HB 1487.

Members present: Senators Bekkedahl, Krebsbach, Burckhard, Davison, Dever, Dwyer, Erbele, Kreun, Meyer, Roers, Schaible, Sorvaag, Vedaa, Wanzek, Rust, and Mathern.

Discussion Topics:

- Firearm sales
- No tracking of sales
- Committee action

10:33 AM Senator Vedaa introduced amendment LC 23.0968.04004, testimony #27277.

10:39 AM Senator Vedaa moved to adopt AMENDMENT 23.0968.04004.
Senator Erbele seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Jim P. Roers	Y
Senator David S. Rust	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	Y

Motion passed 16-0-0.

10:43 AM Senator Vedaa moved DO PASS AS AMENDED.
Senator Erbele seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	N
Senator Scott Meyer	Y
Senator Jim P. Roers	Y
Senator David S. Rust	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	Y

Motion passed 15-1-0.

Senator Paulson will carry the bill.

10:48 AM Chairman Bekkedahl closed the hearing.

Kathleen Hall, Committee Clerk

JA
2-4-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1487

In lieu of the amendments adopted by the Senate as printed on pages 1116 and 1117 of the Senate Journal, Engrossed House Bill No. 1487 is amended as follows:

Page 1, line 3, remove "and"

Page 1, line 3, after "appropriation" insert "; and to provide for a legislative management study"

Page 1, line 13, after "transaction" insert ", or taking any actions related to dispute processing, fraud management, or protecting transaction integrity from concerns related to illegal activities, breach, or cyber risks"

Page 1, line 17, remove "standards"

Page 1, line 17, after "organization" insert "for standardization for firearms retailers"

Page 1, line 18, after "5." insert "\"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."

Page 1, line 20, replace "6." with "7."

Page 2, line 6, remove "any merchant located in this state to use"

Page 2, remove line 7

Page 2, line 8, replace "sale of firearms or ammunition from other sporting goods or general merchandise" with "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"

Page 2, line 9, remove "use a firearms code to"

Page 2, after line 14, insert:

"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."

Page 2, line 16, after "1." insert "Any person may allege violations under this chapter to the attorney general."

Page 2, line 16, replace the first "shall" with "may"

Page 2, line 23, after "3." insert "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."

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44-23

Page 2, line 24, replace "five" with "ten"

Page 2, line 24, remove "for the first violation and ten"

Page 2, line 25, replace "thousand dollars for each additional violation" with "per transaction"

Page 2, line 29, replace "4." with "5."

Page 3, line 5, after "chapter" insert an underscored comma

Page 3, line 5, after "general" insert ", and administrative expenses"

Page 3, line 8, after the underscored period insert "The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter."

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - ELECTRONIC PAYMENT TRANSACTION INTERCHANGE FEES. During the 2023-24 interim, the legislative management shall consider studying interchange fees charged on electronic payment transactions and the effect on merchants or sellers of applying interchange fees on electronic payment transactions to state and local taxes imposed at the point of sale. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1487, as engrossed and amended: Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1487, as amended, was placed on the Sixth order on the calendar. This bill does not affect workforce development.

In lieu of the amendments adopted by the Senate as printed on pages 1116 and 1117 of the Senate Journal, Engrossed House Bill No. 1487 is amended as follows:

Page 1, line 3, remove "and"

Page 1, line 3, after "appropriation" insert "; and to provide for a legislative management study"

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Page 3, line 5, after "general" insert ", and administrative expenses"

Page 3, line 8, after the underscored period insert "The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter."

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - ELECTRONIC PAYMENT TRANSACTION INTERCHANGE FEES. During the 2023-24 interim, the legislative management shall consider studying interchange fees charged on electronic payment transactions and the effect on merchants or sellers of applying interchange fees on electronic payment transactions to state and local taxes imposed at the point of sale. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

2023 CONFERENCE COMMITTEE

HB 1487

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1487
4/17/2023
Conference Committee

Relating to financial institutions use of merchant codes to track firearm and ammunition-related purchases; and to provide a penalty.

Chairman Koppelman called to order at 3:07 PM

Members Present: Chairman Koppelman, Representatives Johnson, Dakane, Senators, Paulson, Myrdal, Larson

Discussion Topics:

- Committee work

Senator Paulson moved the Senate recede from Senate amendments and further amend by adding study language, #27643
Senator Larson seconded.

Motion passed 6-0-0

House carrier Representative Koppelman.
Senate carrier Senator Paulson.

Chairman Koppelman adjourned the meeting 3:17 PM

Diane Lillis, Committee Clerk

PK
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4-18-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1487

That the Senate recede from its amendments as printed on pages 1681 and 1682 of the House Journal and pages 1433 and 1434 of the Senate Journal and that Engrossed House Bill No. 1487 be amended as follows:

Page 1, line 3, remove "and"

Page 1, line 3, after "appropriation" insert "; and to provide for a legislative management study"

Page 1, line 13, after "transaction" insert ", or taking any actions related to dispute processing, fraud management, or protecting transaction integrity from concerns related to illegal activities, breach, or cyber risks"

Page 1, line 17, remove "standards"

Page 1, line 17, after "organization" insert "for standardization for firearms retailers"

Page 1, line 18, after "5." insert "\"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."

Page 1, line 20, replace "6." with "7."

Page 2, line 6, remove "any merchant located in this state to use"

Page 2, remove line 7

Page 2, line 8, replace "sale of firearms or ammunition from other sporting goods or general merchandise" with "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"

Page 2, line 9, remove "use a firearms code to"

Page 2, after line 14, insert:

"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."

Page 2, line 16, after "1." insert "Any person may allege violations under this chapter to the attorney general."

Page 2, line 16, replace the first "shall" with "may"

Page 2, line 23, after "3." insert "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."

Page 2, line 24, replace "five" with "ten"

Page 2, line 24, remove "for the first violation and ten"

Page 2, line 25, replace "thousand dollars for each additional violation" with "per transaction"

Page 2, line 29, replace "4." with "5."

Page 3, line 5, after "chapter" insert an underscored comma

Page 3, line 5, after "general" insert ", and administrative expenses"

Page 3, line 8, after the underscored period insert "The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter."

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - RETAILER
ADMINISTRATION OF COLLECTING AND REMITTING SALES TAX.** During the 2023-24 interim, the legislative management shall consider studying the cost to North Dakota retailers for the collection, remittance, and filing of North Dakota sales and use tax. The study shall categorize North Dakota merchants into no less than three classes by sales volume and describe any differences in costs related to sales volume. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

DR
282
4-18-23

**2023 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1487 as (re) engrossed

House IB&L Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Paulson Seconded by: Larson

Representatives	4-17		Yes	No		Senators	4-17		Yes	No
Chairman Koppelman, Ben	X		X			Paulson, Bob	X		X	
Johnson, Jorin	X		X			Myrdal, Janne	X		X	
Dakane, Hamida	X		X			Larson, Diane	X		X	
Total Rep. Vote						Total Senate Vote				

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Koppelman Senate Carrier Paulson

LC Number 23.0968 . 04005 of amendment

LC Number 23.0968 . 07000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment: to add a study.

REPORT OF CONFERENCE COMMITTEE

HB 1487, as engrossed: Your conference committee (Sens. Paulson, Myrdal, Larson and Reps. Koppelman, J. Johnson, Dakane) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1681-1682, adopt amendments as follows, and place HB 1487 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1681 and 1682 of the House Journal and pages 1433 and 1434 of the Senate Journal and that Engrossed House Bill No. 1487 be amended as follows:

Page 1, line 3, remove "and"

Page 1, line 3, after "appropriation" insert "; and to provide for a legislative management study"

Page 1, line 13, after "transaction" insert ", or taking any actions related to dispute processing, fraud management, or protecting transaction integrity from concerns related to illegal activities, breach, or cyber risks"

Page 1, line 17, remove "standards"

Page 1, line 17, after "organization" insert "for standardization for firearms retailers"

Page 1, line 18, after "5." insert "\"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.

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Page 2, line 9, remove "use a firearms code to"

Page 2, after line 14, insert:

"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."

Page 2, line 16, after "1." insert "Any person may allege violations under this chapter to the attorney general."

Page 2, line 16, replace the first "shall" with "may"

Page 2, line 23, after "3." insert "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.

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Page 2, line 25, replace "thousand dollars for each additional violation" with "per transaction"

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Page 3, line 5, after "chapter" insert an underscored comma

Page 3, line 5, after "general" insert ", and administrative expenses"

Page 3, line 8, after the underscored period insert "The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter."

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - RETAILER ADMINISTRATION OF COLLECTING AND REMITTING SALES TAX. During the 2023-24 interim, the legislative management shall consider studying the cost to North Dakota retailers for the collection, remittance, and filing of North Dakota sales and use tax. The study shall categorize North Dakota merchants into no less than three classes by sales volume and describe any differences in costs related to sales volume. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

Engrossed HB 1487 was placed on the Seventh order of business on the calendar.

TESTIMONY

HB 1487

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 AG's 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.

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:

23.0968.02007
Title.04000

Prepared by the Legislative Council staff for
House Industry, Business and Labor
Committee

February 15, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1487

Page 1, line 1, after "A BILL" replace the remainder of the bill with "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.
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.
5. "Government entity" means any state board, commission, agency, bureau, or department, or any political subdivision of the state.
6. "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.

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 or merchant which is intended to suppress or track lawful commerce involving firearms or ammunition.

Investigation of financial entities.

1. The attorney general shall 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 the attorney general finds a financial entity willfully violated this chapter, the attorney general shall assess a fee of five 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 to the attorney general's finding of a violation under this chapter may appeal the finding in accordance with chapter 28-32.
4. 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. 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."

Renumber accordingly

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 tousing 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

23.0968.04001

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1487

Introduced by

Representatives Koppelman, Hauck, Heinert, Kasper, Louser, Novak, Tveit
Senators Larsen, Magrum, Wobbema

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

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **Definitions.**

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

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

1 ~~6.7.~~ "Protected financial information" means any record of sale, purchase, return, or refund
2 involving a payment card which is retrieved, characterized, generated, labeled, sorted,
3 or grouped based on the assignments of a firearms code.

4 **Merchant codes - Limitations.**

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

23 **Investigation of financial entities.**

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

- 1 3. If a court issues an injunction under this section, the court shall award the attorney
2 general reasonable expenses, including reasonable attorney fees and costs.
- 3 4. If the attorney general finds a financial entity willfully violated this chapter, the attorney
4 general shall assess a fee of ~~fiveten~~ thousand dollars ~~for the first violation and ten~~
5 ~~thousand dollars for each additional violation~~. Fees collected under this section must
6 be deposited into the merchant code violation fund. A financial entity desiring to appeal
7 the attorney general's finding of a violation under this chapter may appeal the finding
8 in accordance with chapter 28-32.
- 9 4.5. Information disclosed to a federal government entity is not a defense to any civil action
10 filed under this section, unless the disclosure or action is required by federal law or
11 regulation.

12 **Merchant code violation fund - Continuing appropriation.**

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

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1487

Page 1, line 13, after "transaction" insert ", or taking any actions related to dispute processing, fraud management, or protecting transaction integrity from concerns related to illegal activities, breach, or cyber risks"

Page 1, line 17, remove "standards"

Page 1, line 17, after "organization" insert "for standardization for firearms retailers"

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Page 2, after line 14, insert:

"4. Nothing in this section may impair the financial entity's actions related to dispute processing, fraud management, or protecting transaction integrity from concerns related to illegal activities, breach, or cyber risks."

Page 2, line 16, after the first "shall" insert "process claims of alleged violations of this chapter, may"

Page 2, line 16, after "chapter" insert an underscored comma

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4."

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Page 2, line 24, remove "for the first violation and ten"

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Page 2, line 29, replace "4." with "5."

Page 3, line 5, after "chapter" insert an underscored comma

Page 3, line 5, after "general" insert ", and administrative expenses"

Page 3, line 8, after the underscored period insert "The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter."

Renumber accordingly

HB 1487

Rep. Ben Koppelman- Testimony

Madame 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.

Madame 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.

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 tousing 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

23.0579.02000

Sixty-eighth
Legislative Assembly
of North Dakota

**SENATE BILL NO. 2217
with House Amendments
SENATE BILL NO. 2217**

Introduced by

Senators Vedaa, Hogue, Kannianen

Representatives Bosch, Dockter, Lefor

1 A BILL for an Act to provide for a legislative management study of interchange fees charged to
2 merchants or sellers for electronic payment transactions.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ELECTRONIC PAYMENT**
5 **TRANSACTION INTERCHANGE FEES.** During the 2023-24 interim, the legislative
6 management shall consider studying interchange fees charged on electronic payment
7 transactions and the effect on merchants or sellers of applying interchange fees on electronic
8 payment transactions to state and local taxes imposed at the point of sale. The legislative
9 management shall report its findings and recommendations, together with any legislation
10 required to implement the recommendations, to the sixty-ninth legislative assembly.

03/28/23

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

23.0968.04004
Title.

Prepared by the Legislative Council staff for
the Senate Appropriations - Government
Operations Division Committee
March 31, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1487

In lieu of the amendments adopted by the Senate as printed on pages 1116 and 1117 of the Senate Journal, Engrossed House Bill No. 1487 is amended as follows:

Page 1, line 3, remove "and"

Page 1, line 3, after "appropriation" insert "; and to provide for a legislative management study"

Page 1, line 13, after "transaction" insert ", 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"

Page 1, line 17, remove "standards"

Page 1, line 17, after "organization" insert "for standardization for firearms retailers"

Page 1, line 18, after "5." insert "\"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."

Page 1, line 20, replace "6." with "7."

Page 2, line 6, remove "any merchant located in this state to use"

Page 2, remove line 7

Page 2, line 8, replace "sale of firearms or ammunition from other sporting goods or general merchandise" with "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"

Page 2, line 9, remove "use a firearms code to"

Page 2, after line 14, insert:

"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."

Page 2, line 16, after "1." insert "Any person may allege violations under this chapter to the attorney general."

Page 2, line 16, replace the first "shall" with "may"

Page 2, line 23, after "3." insert "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."

Page 2, line 24, replace "five" with "ten"

Page 2, line 24, remove "for the first violation and ten"

Page 2, line 25, replace "thousand dollars for each additional violation" with "per transaction"

Page 2, line 29, replace "4." with "5."

Page 3, line 5, after "chapter" insert an underscored comma

Page 3, line 5, after "general" insert ", and administrative expenses"

Page 3, line 8, after the underscored period insert "The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter."

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - ELECTRONIC PAYMENT TRANSACTION INTERCHANGE FEES. During the 2023-24 interim, the legislative management shall consider studying interchange fees charged on electronic payment transactions and the effect on merchants or sellers of applying interchange fees on electronic payment transactions to state and local taxes imposed at the point of sale. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - RETAILER ADMINISTRATION OF COLLECTING AND REMITTING SALES TAX. During the 2023-24 interim, the legislative management shall consider studying the cost to North Dakota Retailers for the collection, remittance, and filing of North Dakota sales and use tax. The study shall categorize North Dakota merchants into no less than three classes by sales volume and describe any differences in costs related to sales volume. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.