

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 214

INTRODUCER: Senator Burgess

SUBJECT: Sales of Firearms and Ammunition

DATE: March 3, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

Senate Bill 214 revises Florida gun registry laws to prohibit certain entities from using an identifying code for purchases from firearm or ammunition retailers. The information gathered from the use of such codes could be construed as a firearm registry maintained by private entities, which current law prohibits. The bill:

- Makes Legislative findings with respect to maintaining records or tracking by nongovernmental entities of the purchase of firearms and ammunition, specifying that such records and tracking may frustrate the right to keep and bear arms and violates the reasonable privacy rights of lawful purchasers of firearms or ammunition;
- Prohibits payment settlement entities, merchant acquiring entities, or third party settlement organizations from classifying merchants or assigning them with a merchant category code (“MCC”) that identifies them as sellers of firearms or ammunition;
- Amends the penalties under current law in s. 790.335, F.S., to only apply to the law prohibiting any person, public or private, from keeping a registry of privately owned firearms; and
- Authorizes the Department of Agriculture and Consumer Services (DACS) to conduct investigations of alleged violations of the new provision on MCCs, and to bring an administrative action seeking to impose penalties for such violations.

See Section V. Fiscal Impact Statement.

The bill takes effect on July 1, 2023.

## II. Present Situation:

### The Right to Bear Arms & Firearms Regulation

The Second Amendment states: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment conferred an individual right to keep and bear arms. However, the right is not unlimited.<sup>1</sup>

#### *Federal Regulation of Firearms*

In applying *Heller*, a United States Court of Appeals held that a requirement to register a handgun<sup>2</sup> is constitutional.<sup>3</sup> However, the Firearm Owners’ Protection Act of 1986 (FOPA) expressly prohibits any rule or regulation from requiring any records that must be maintained under the Act from being recorded or transferred to a United States or any State owned or controlled facility, or any firearm registration system from being established.<sup>4</sup>

A licensed importer, manufacturer, or dealer must not transfer a firearm to any other person who is not licensed unless a national instant criminal background check is completed and the system provides the licensee with a unique identification number, or 3 days have elapsed without receiving notification that such person is ineligible to receive such firearm or that the receipt of such firearm would violate federal, state, local, or tribal law.<sup>5</sup> If the background check reveals that receipt or transfer of a firearm by a person would not result in a violation of applicable laws, the national instant criminal background check system must destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.<sup>6</sup> If receipt or transfer of a firearm would result in a violation of applicable laws, the Attorney General must report to local law enforcement authority certain information, such as the identity of the person.<sup>7</sup>

#### *Florida Firearms Laws*

The Florida Constitution guarantees “the right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state...except that the manner of bearing arms may be regulated by law.”<sup>8</sup> Generally, a person does not need a license to possess or use a firearm<sup>9</sup> in

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<sup>1</sup> *District of Columbia v. Heller*, 554 U.S. 570, 595-626 (2008). 18 U.S.C. s. 922 provides that certain persons are ineligible to purchase or possess a firearm including, for instance, specified convicted criminals, fugitives from justice, illegal aliens, and persons who are adjudicated mentally defective or involuntarily committed to treatment. However, 18 U.S.C. s. 922(g)(3), relating to a person who is an unlawful user of or addicted to any controlled substance, was recently held unconstitutional. See *United States v. Harrison*, 2023 WL 1771138 (2023).

<sup>2</sup> 18 U.S.C. s. 921(30) defines “handgun” as (A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and (B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

<sup>3</sup> *Heller v. District of Columbia*, 670 F.3d 1244, 1254-55 (D.C.Cir.2011).

<sup>4</sup> 18 U.S.C. s. 926(a).

<sup>5</sup> 18 U.S.C. s. 922(t).

<sup>6</sup> 18 U.S.C. s. 922(t)(2).

<sup>7</sup> 18 U.S.C. s. 925B(a).

<sup>8</sup> Art. I, s. 8(a), Fla. Const.

<sup>9</sup> Section 790.01(6), F.S., defines “firearm” as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm

Florida. However, a person is prohibited from openly carrying a firearm on or about his or her person<sup>10</sup> unless the person is a law enforcement officer or engaged in one of the activities listed in s. 790.25(3), F.S., such as hunting, camping, or military service. A violation of this prohibition is punishable as a second degree misdemeanor.<sup>11</sup> The open carry prohibition does not apply to a person who holds a concealed weapons license and who briefly and openly displays a firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner.<sup>12</sup>

Except in certain circumstances while in the act of evacuating<sup>13</sup> during a state of emergency, a person who carries a concealed weapon on or about his or her person without a license commits a third degree felony.<sup>14</sup> The Department of Agriculture and Consumer Services (DACS) must issue a concealed weapon or firearm<sup>15</sup> license to a person who meets the specified qualifications under s. 790.06, F.S.<sup>16</sup> Personal identifying information of an applicant or an individual who has received a concealed weapons license held by the Division of License of the DACS is confidential and exempt from public records disclosure requirements under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the State Constitution.<sup>17</sup>

A person must be 21 years or older to purchase a firearm.<sup>18</sup> Further, except for certain exclusions,<sup>19</sup> there is a mandatory waiting period between the purchase<sup>20</sup> and delivery of a firearm. The purchaser must wait 3 days,<sup>21</sup> or for the completion of the records checks required

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muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.

<sup>10</sup> Section 790.053(1), F.S.

<sup>11</sup> Section 790.053(3), F.S. A second degree misdemeanor is punishable by up to 60 days in jail, a \$500 fine, or both. Sections 775.082 and 775.083, F.S.

<sup>12</sup> Section 790.053(1), F.S. The open carry prohibition does not apply to necessary self-defense.

<sup>13</sup> Section 790.053(3)(a), F.S., defines “in the act of evaluating” as the immediate and urgent movement of a person away from the evacuation zone within 48 hours after a mandatory evacuation is ordered.

<sup>14</sup> Section 790.01(2) and (3)(a), F.S. A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or both. Sections 775.082 and 775.083, F.S.

<sup>15</sup> For purposes of Section 790.06, F.S., “concealed weapons” or “concealed firearms” are defined to include a “handgun, electronic weapon or device...but not a machine gun...” Section 790.001(9), F.S., defines “machine gun” as any firearm, as defined herein, which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger.

<sup>16</sup> Section 790.06(2), F.S. provides for the criteria which must be met to be eligible for a license, including, but not limited to: 1) Be a resident and citizen of the United States, permanent resident alien of the United States, or consular security official that meets certain criteria; 2) Is 21 years of age or older; 3) Does not suffer from a physical infirmity which prevents the safe handling of a firearm; 4) Is not ineligible to possess a firearm due to a felony conviction; 5) Has not been found guilty or had adjudication withheld for committing certain crimes; 6) Does not chronically and habitually use alcoholic beverages or other substances; and 7) Demonstrates competence with a firearm by, for instance, completing a specified course.

<sup>17</sup> Section 790.0601(1), F.S.

<sup>18</sup> Section 790.065(13), F.S. A licensed importer, manufacturer, or dealer who sells or transfers or facilitates such a sale or transfer of a firearm to a person younger than 21 years of age commits a third degree felony punishable under s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

<sup>19</sup> Section 790.0655(2), F.S., provides that the exclusions include when a firearm is being purchased by a person who holds a concealed weapons permit, a trade-in of another firearm, to purchase a rifle or shotgun in certain circumstances.

<sup>20</sup> Section 790.0655(1), F.S., defines “purchase” as the transfer of money or other valuable consideration to the retailer, and “retailer” means and includes a licensed importer, manufacturer, or dealer engaged in the business of making firearm sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state.

<sup>21</sup> Excluding weekends and legal holidays.

under s. 790.065, F.S., whichever occurs later.<sup>22</sup> Firearm sales records must be made available for inspection by any law enforcement agency.<sup>23</sup>

### ***Florida Law – Records of Firearms Owners***

Any records containing the information set out in s. 790.065(1), F.S., pertaining to a buyer or transferee who is not prohibited from receipt or transfer of a firearm under federal or Florida law, are deemed confidential and exempt from public disclosure pursuant to s. 119.07(1), F.S., and may not be disclosed by the Florida Department of Law Enforcement (FDLE) to any person or to another agency.<sup>24</sup> The FDLE must destroy any such records after communicating the approval or nonapproval numbers to the licensee and, in any event, no later than 48 hours after the day of the response to the licensee's request.<sup>25</sup> However, the FDLE may maintain records of National Crime Information Center transactions as required under federal law, and may keep:

- A log of dates of requests for criminal history records checks;
- Unique approval and nonapproval numbers;
- License identification numbers; and
- Transaction numbers corresponding to such dates for a period of two years or less or as otherwise required by law.<sup>26</sup>

The provisions in ch. 790, F.S., do not allow Florida to maintain records containing the names of purchasers or transferees who receive unique approval numbers or to keep records of firearm transactions.<sup>27</sup> Any current or former officer or employee of the FDLE or law enforcement agency who intentionally or maliciously violates these provisions is guilty of a third degree felony.<sup>28</sup>

The Florida Legislature has made findings that a list, record, or registry of lawfully owned firearms or law-abiding firearm owners is not a law enforcement tool or tool for fighting terrorism, but may be used as a “shopping list for thieves,” or as an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to exercise a constitutionally protected right to keep and bear arms. Florida law prohibits certain governmental entities, such as state agencies or local governments, or their officials, agents, or employees, or any other person from knowingly and willfully keeping any list, record, or registry of privately owned firearms or the owners of such firearms.<sup>29</sup> Any governmental entity or its designee that violates this provision commits a third degree felony,<sup>30</sup> which must be investigated and prosecuted by the

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<sup>22</sup> Section 790.0655(1), F.S.

<sup>23</sup> *Id.* See also s. 934.02, F.S., defines “law enforcement agency” as an agency of the State of Florida or a political subdivision thereof or of the United States if the primary responsibility of the agency is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state and if its agents and officers are empowered by law to conduct criminal investigations and to make arrests.

<sup>24</sup> Section 790.065(4)(a), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 790.065(4)(b), F.S.

<sup>27</sup> Section 790.065(4)(c), F.S.

<sup>28</sup> Section 790.065(4)(d), F.S.

<sup>29</sup> Section 790.335(2)(a), F.S.

<sup>30</sup> Section 790.335(4)(a), F.S. Except as provided under the U.S. and Florida Constitutions, public funds may not be used to defend the unlawful conduct of a person who is charged with such a violation unless the charges are dismissed or the person is found not guilty after a trial. Public funds, however, may be used to provide services of the office of the public defender or court-appointed conflict counsel as provided by law. Section 779.335(4)(b), F.S.

state attorney in the appropriate jurisdiction.<sup>31</sup> Such entity or person may be assessed a fine of up to \$5 million if the court finds that the list, record, or registry was compiled or maintained with the management's knowledge or complicity.<sup>32</sup> The Attorney General has authority to bring a civil cause of action to enforce such fines.<sup>33</sup>

## Use of Merchant Category Codes When Purchasing Firearms

### *Key Players in Credit Card Transactions*

There are several key players that are involved in authorization and payment settlement of credit card transactions, as follows:

- “Participating payee” means (i) in the case of a payment card transaction,<sup>34</sup> any person who accepts a payment card<sup>35</sup> as payment; and (ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.<sup>36</sup> A participating payee may be, for instance, a merchant in a credit card transaction.<sup>37</sup>
- “Payment settlement entity” means: (A) in the case of a payment card transaction, the merchant acquiring entity; and (B) in the case of a third party network transaction, the third party settlement organization.<sup>38</sup> Such entities generally include banks or other organizations that process credit card transactions on behalf of a merchant and make an interbank transfer of funds to the merchant from a customer.<sup>39</sup>
- “Merchant acquiring entity” means the bank or other organization which has the contractual obligation to make payment to participating payees in settlement of payment card transactions.<sup>40</sup> A merchant acquiring entity is typically called acquiring bank or merchant bank, and is the bank or other organization that process credit card transactions on behalf of a merchant and ultimately transfers the funds received from the customer's bank (called an “issuing bank”<sup>41</sup>) to the merchant's account.<sup>42</sup>

<sup>31</sup> Section 790.335(4)(d), F.S.

<sup>32</sup> Section 779.335(4)(c), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> 26 U.S.C. s. 6050W(c)(2) defines “payment card transaction” as any transaction in which a payment card is accepted as payment.

<sup>35</sup> 26 U.S.C. s. 6050W(d)(2) defines “payment card” as any card which is issued pursuant to an agreement or arrangement which provides for (A) one or more issuers of such cards, (B) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards of payment, and (C) standards and mechanisms for settling the transactions between merchant acquiring entities and the persons who agree to accept such cards as payment. The acceptance as payment of any account number or other indicia associated with a payment card shall be treated for purposes of this section in the same manner as accepting such payment card as payment.

<sup>36</sup> 26 U.S.C. s. 6050W(d)(1)(A).

<sup>37</sup> IRS, *IRC Section 6050W Frequently Asked Questions*, available at: [Frequently Asked Questions \(irs.gov\)](https://www.irs.gov/faq/6050w) (last visited March 3, 2023).

<sup>38</sup> 26 U.S.C. s. 6050W(b)(1).

<sup>39</sup> Bonner, P., *Journal of Accountancy, New, Lower Form 1099-K Threshold Prompts Cautions, Criticisms*, Mar. 10, 2022, available at: [New, lower Form 1099-K threshold prompts cautions, criticisms - Journal of Accountancy](https://www.journalofaccountancy.com/article/new-lower-form-1099-k-threshold-prompts-cautions-criticisms) (hereinafter cited as “Journal of Accountancy Article”) (last visited March 3, 2023).

<sup>40</sup> 26 U.S.C. s. 6050W(b)(2).

<sup>41</sup> An issuing bank is also often referred to as “card issuer. 15 U.S.C. 1602(o) defines “card issuer” as any person who issues a credit card, or the agent of such person with respect to such card.

<sup>42</sup> IRS FAQ, *supra* note 37.

- “Third party settlement organization” means the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.<sup>43,44</sup> The most common example of a third-party settlement organization is an online auction-payment facilitator, which operates merely as an intermediary between buyer and seller by transferring funds between accounts in settlement of an auction/purchase.<sup>45</sup>

### ***Merchant Category Codes***

The International Organization for Standardization (ISO), a non-governmental organization that develops international standards, has established a standard which contains a list of merchant category codes (“MCC”), titled ISO 18245:2023 Retail Financial Services – Merchant Category Codes (the “ISO 2023 Standard”).<sup>46</sup> A MCC is a four-digit number assigned to a merchant by an acquiring bank (or processor) in compliance with card association or network rules<sup>47</sup> when the business opens a merchant account to classify the business by specific market segment and to allow the business to begin accepting credit cards as a form of payment.<sup>48</sup> Visa’s general rules for assignment of MCCs include, in summary:

- Select the MCC that most accurately describes the merchant’s primary type of business. If the merchant has more than one line of business, the merchant must either:
  - Use the MCC that describes the business with the highest sales volume to process all Visa sales; or
  - Use different MCCs for each line of business.
- Use “miscellaneous” MCCs only if there is no MCC specific to the merchant’s business.
- Merchants with multiple outlets must choose the appropriate MCC for each outlet.
- If there are different businesses operating on the same premises, each business must be assigned its own MCC if certain criteria applies.
- When applicable, use the unique merchant-specific MCC that are designated for major travel and entertainment.<sup>49</sup>

MCCs are used for a several reasons, including to: file reports with the Internal Revenue Service (IRS), determine rewards, identify high-risk business models and prohibited business types, track

<sup>43</sup> 26 U.S.C. s. 6050W(c)(3) defines “third party network transaction” as any transaction described in subsection (d)(3)(A)(iii) which is settled through a third party payment network. 26 U.S.C. s. 6050W(d)(3) defines “third party payment network” as any agreement or arrangement (A) which involves the establishment of accounts with a central organization by a substantial number of persons who (i) are unrelated to such organization, (ii) provide goods or services, and (iii) have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement, (B) which provides for the standards and mechanisms for settling such transactions, and (C) which guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services. Such term shall not include any agreement or arrangement which provides for the issuance of payment cards.

<sup>44</sup> 26 U.S.C. s. 6050W(b)(3).

<sup>45</sup> IRS, *IRC Section 6050W Frequently Asked Questions*, available at: [Frequently Asked Questions \(irs.gov\)](https://www.irs.gov/faq) (last visited March 3, 2023). Third party settlement organizations include PayPal, Venmo, and CashApp.

<sup>46</sup> The ISO, *About Us*, available at: [ISO - About us](https://www.iso.org/iso-18245-2023-retail-financial-services-merchant-category-codes) (last visited March 3, 2023); ISO, *ISO 18245:2003 Retail financial services – Merchant category codes*, available at: [ISO - ISO 18245:2023 - Retail financial services — Merchant category codes](https://www.iso.org/iso-18245-2023-retail-financial-services-merchant-category-codes) (all sites last visited March 3, 2023).

<sup>47</sup> See Visa, *Visa Merchant Data Standards Manual: Visa Supplemental Requirements*, Nov. 2021, [visa-merchant-data-standards-manual.pdf](https://www.visa.com/merchant-data-standards-manual.pdf) (hereinafter cited as “Visa’s MCC Manual”) (last visited March 3, 2023).

<sup>48</sup> Dwyer, B., CardFellow, *Merchant Category Code: Reporting & Rates*, Apr. 6, 2020, available at: [What are Merchant Category Codes and Why Do They Matter? \(cardfellow.com\)](https://www.cardfellow.com/what-are-merchant-category-codes-and-why-do-they-matter/) (last visited March 3, 2023).

<sup>49</sup> See Visa’s MCC Manual.

customer spending, and establish merchant interchange rates.<sup>50</sup> Businesses with “high-risk” MCCs generally pay higher fees.<sup>51</sup> A MCC is the code of the merchant where the purchase is made but it does not specify the items that were purchased.<sup>52</sup>

Each credit card network has its own master list of MCCs with many of the codes being standardized and based on the ISO Standard.<sup>53</sup> Some financial organizations, third party settlement organizations, or processors also have their own MCC lists.<sup>54</sup> Historically, retailers who sell firearms and ammunition have been assigned a merchant category code of miscellaneous retail stores or sporting goods stores.<sup>55</sup> On September 7, 2022, the ISO approved an application by a New York-based bank to adopt a new MCC for firearm retailers.<sup>56</sup> The ISO has updated the ISO 2003 Standard for MCCs in 2023, which includes a gun code of 5723 for “gun and ammunition shops.”<sup>57</sup> MCCs adopted by the ISO are not required to be used,<sup>58</sup> but Visa Inc. (Visa), MasterCard Inc. (MasterCard), and American Express, Inc. (together, the “Card Associations”) have all agreed to use the new MCC.<sup>59</sup> However, Visa and MasterCard have not yet updated their lists to include a new MCC for firearm retailers.<sup>60</sup>

Advocates for the new MCC for firearm retailers support the measure as a means for financial institutions to identify and report suspicious activity, such as unusually large purchases of weapons or ammunition.<sup>61</sup> Critics raise concerns about the new MCC being tantamount to creating a national registry of gun owners.<sup>62</sup> On September 20, 2022, twenty-four attorneys

<sup>50</sup> See Citi, *Merchant Category Codes*, available at: [Merchant-Category-Codes.pdf \(citibank.com\) \(hereinafter cited as “Citi MCC Guide”\)](#) (last visited March 3, 2023).

<sup>51</sup> TD Ameritrade, *Fee Changes for Merchants in High Brand Risk Categories*, available at: [Fee Changes for Merchants in High Brand Risk Categories \(td.com\)](#) (last visited March 3, 2023).

<sup>52</sup>; Maruf, R. CNN Business. *Credit Card Companies Will Adopt New Sales Code for Gun Transactions*, Sept. 11, 2022, available at: [Credit card companies will adopt new sales code for gun transactions | CNN Business](#) (hereinafter cited as “The CNN Article”) (all sites last visited March 3, 2023).

<sup>53</sup> Motola, C., Merchant Maverick, *Merchant Category Codes (MCC): All You Need to Know*, May 26, 2021, available at: [The Complete Guide to Merchant Category Codes \(MCCs\) \(merchantmaverick.com\)](#) (last visited March 3, 2023).

<sup>54</sup>. Citi MCC Guide; Irby, L., *The Balance, If I Use My Credit Card Through PayPal, Can I Still Earn Bonus Points?*, Apr. 6, 2021, available at: [If I Use My Credit Card Through PayPal, Can I Still Earn Bonus Points? \(thebalancemoney.com\)](#) (last visited March 3, 2023).

<sup>55</sup> The CNN Article.

<sup>56</sup> Kerber, R., Reuters, *Global Standards Body Approves New Merchant code for Gun Sellers*, Sept. 9, 2022, available at: [Global standards body approves new merchant code for gun sellers | Reuters](#) (last visited March 3, 2023).

<sup>57</sup> ISO, *ISO 18245:2023(en) Retail Financial Services – Merchant Category Codes*, available at: [ISO 18245:2023\(en\), Retail financial services — Merchant category codes](#) (hereinafter cited as “ISO 2023 MCC Standard”) (last visited March 3, 2023); ISO, Electronic mail from Audrey Himmer, ISO/TC68/SC9 Committee Manager, *Re: New Merchant Category Code for Firearm Retailers*, February 20, 2023 (on file with the Senate Committee on Banking and Insurance) (attaching MerchantCategoryCodes 14092022).

<sup>58</sup> *Id.*

<sup>59</sup> Mion, L., Fox Business, *Visa, MasterCard, Amex, to Categorize Gun Store Sales Separately*, Sept. 11, 2022, available at: [Visa, Mastercard, AmEx to categorize gun store sales separately | Fox Business](#) (last visited March 3, 2023).

<sup>60</sup> Visa MCC Manual; MasterCard, *Quick Reference Booklet – Merchant Edition*, Nov. 15, 2008, available at: [Quick Reference Booklet—Merchant Edition \(mastercard.us\)](#) (last visited March 3, 2023) (In Visa’s and MasterCard’s MCC lists, noting firearms under codes 5099 and 5999, for durable goods (not elsewhere classified) and miscellaneous and specialty retail shops, respectively).

<sup>61</sup> CBS New York Team, CBS New York, *New York Leaders Call for Establishment of Merchant Category Code for Gun and Ammunition Stores*, Aug. 30, 2022, available at: [New York leaders call for establishment of merchant category code for gun and ammunition stores - CBS New York \(cbsnews.com\)](#) (last visited March 3, 2023).

<sup>62</sup> The CNN Article.

general, including Florida, sent a letter to the Card Associations expressing concerns about the potential to misuse the new MCC by tracking data that could infringe upon consumers' privacy. Additionally, they asserted that isolating merchants who sell firearms may inhibit such purchases or result in "arbitrary disparate treatment" of firearm retailers and consumers.<sup>63</sup>

### Federal Credit Laws

The Truth in Lending Act (TILA), also known as the Consumer Protection Act, was established to ensure that consumers receive adequate disclosure of credit terms, and to "protect the consumer against inaccurate and unfair billing and credit card<sup>64</sup> practices."<sup>65</sup> The TILA includes provisions on credit card accounts that restrict: (a) penalty fees or charges that a card issuer, or issuing bank, may impose,<sup>66</sup> (b) modifications to the annual percentage rate,<sup>67,68</sup> (c) a card issuer's discretion to open or increase any credit limit unless the card issuer considers certain information,<sup>69</sup> and (d) the content of advertisements in relation to specified information.<sup>70</sup> Before opening a credit card account, a creditor,<sup>71</sup> which may be an issuing bank in a credit card

<sup>63</sup> Skrmetti, J. and others, Letter from Attorneys General to Card Associations regarding MCCs, *Tennessee State Government, International Organization for Standardization (ISO)*

(<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-36-letter.pdf>) (last visited Feb. 20, 2023). The following five states have pending legislation that is similar to or addresses the issues identified in SB 214: Purchases from Licensed Gun Dealers, KY HB221, 2023 Regular Session, ch. 367 (2023); Second Amendment Financial Privacy Act, MS HB1110, 2023 Regular Session (2023); Notice to Consumers Regarding Firearm or Ammunition Transactions, TX HB2041, 2023-2024 88<sup>th</sup> Legislature Session (2023); Prohibiting Banks and Payment Networks from Tracking Firearm-related Data and Outlining Penalties, WV SB555, 2023 Regular Session (2023); and Banks, Banking and Finance, WY SF0171, 2023 General Session (2023). There is one state, Oklahoma, which had a Senate bill filed that is similar to SB 214 but it has failed. Oklahoma Second Amendment Financial Privacy Act, OK SB 814, 59<sup>th</sup> Legislature (2023).

<sup>64</sup> 15 U.S.C. s. 1602(l) defines "credit card" as any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

<sup>65</sup> 15 U.S.C. s. 1601(a). The TILA does not apply to certain categories of credit, such as transactions primarily for business, commercial, or agricultural purposes, or to governmental agencies. 15 U.S.C. s. 1603(1); 12 C.F.R. s. 1026.3.

<sup>66</sup> 15 U.S.C. s. 1665d(a).

<sup>67</sup> 15 U.S.C. s. 1606(a) (stating that the "annual percentage rate" as applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Bureau of Consumer Financial Protection (the "Bureau"), ... (2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year). 12 C.F.R. s. 1026.14(a) states that the "annual percentage rate" is a measure of the cost of credit, expressed as a yearly rate. 12 C.F.R. s. 1026.4 defines "finance charge" as the cost of consumer credit as a dollar amount and 15 U.S.C. s. 1605(a) lists examples of charges which are included in the finance charge such as interest, service or carrying charge, loan fee, finder's fee, fee for an investigation or credit report, or charge for any guarantee or insurance protecting the creditor against the obligor's default.

<sup>68</sup> 15 U.S.C. s. 1665c.

<sup>69</sup> 15 U.S.C. s. 1665e.

<sup>70</sup> 15 U.S.C. ss. 1662 and 1663; 12 C.F.R. s. 1026.16.

<sup>71</sup> 15 U.S.C. s. 1602(g) defines "creditor" to mean only a person who both (1) regularly extends, whether in connection with loans, sales property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under part D of ss. 1637(a)(5) – (7), 1637(b)(1)-(3), 1637(b)(8), and 1637(b)(10) of Title 15, the term "creditor" shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Bureau shall, by



transaction, must disclose to the person to whom credit is to be extended specified information relating to, in part, finance charges and terms of the credit,<sup>72</sup> and certain information relating to applications, solicitations, and opening of accounts.<sup>73</sup>

Further, a creditor is also required to provide a statement for each billing cycle with specified information, such as the outstanding balance and the amount and date of each extension of credit.<sup>74</sup> There are special rules that apply to credit card accounts offered to college students that require a card issuer to disclose a range of balances to which each periodic rate applies for a “category of transactions”.<sup>75</sup> The Fair Credit Billing Act prohibits a card issuer from requiring a merchant to open an account with or procure any other service from a credit card issuer as a condition to participating in a credit card plan,<sup>76</sup> and limits the circumstances under which a creditor may increase specified rates, fees, and charges.<sup>77</sup> No provisions were identified under these acts that impose any requirements, protections, or restrictions with respect to MCCs.

### **Anti-money Laundering Laws**

Anti-money Laundering Laws aim to detect and prevent money laundering and deter financial criminal activity.<sup>78</sup> One provision authorizes the Secretary of the Treasury to require any financial institution<sup>79</sup> or certain individuals related to financial institutions to report any suspicious transaction relevant to a possible violation of law or regulation.<sup>80</sup> The federal rules require banks, federally and non-federally regulated, to establish anti-money laundering programs which must meet specified requirements.<sup>81</sup> One such requirement is to conduct ongoing monitoring to identify and report suspicious transactions.<sup>82</sup> The term “suspicious

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regulation, apply these requirements to such a card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.

<sup>72</sup> 15 U.S.C. s. 1637(a).

<sup>73</sup> *Id.* at (c); 12 C.F.R. s. 1026.6.

<sup>74</sup> 15 U.S.C. s. 1637 (b).

<sup>75</sup> 12 C.F.R. s. 1026.60(b)(1).

<sup>76</sup> 15 U.S.C. s. 1666g.

<sup>77</sup> 15 U.S.C. s. 1666i-1(a) and (b).

<sup>78</sup> 31 U.S.C. s. 5311(2) and (3).

<sup>79</sup> 31 U.S.C. s. 5312(a)(2) defines “financial institution” as an insured bank; a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; any credit union; a thrift institution; a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); a broker or dealer in securities or commodities; an investment banker or investment company; a currency exchange, or a business engaged in the exchange of currency, funds, or value that substitutes for currency of funds; an issuer, redeemer, or cashier of travelers’ checks, checks, money orders, or similar instruments; an operator of a credit card system; an insurance company; a dealer in precious metals, stones or jewels; a pawnbroker; a loan or finance company; a travel agency; a licensed sender of money or any other person who engages as a business in the transmission of currency, funds, or value that substitutes for currency; a telegraph company; a business engaged in vehicle sales, including automobile, airplane, and boat sales; persons involved in real estate closings and settlements; the United States Postal Service; an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph; a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than \$1 million; any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation to be an activity which is similar to, or related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

<sup>80</sup> 31 U.S.C. s. 5318(g)(1).

<sup>81</sup> 31 C.F.R. 1020.210.

<sup>82</sup> 31 C.F.R. 1020.10(a)(2)(v)(B) and (b)(2)(v)(B).

activity” means “any observed behavior that may indicate pre-operational planning associated with terrorism or terrorism-related crime.”<sup>83</sup> The U.S. Department of Homeland Security website contains “Signs of Suspicious Activity,” which displays images and a description of categories for signs of suspicious activities. One such sign illustrates a firearm and suggests that weapons collection or storage of unusual amounts of weapons is suspicious activity.<sup>84</sup>

### **Internal Revenue Code**

Payment settlement entities are required to make an annual return to the Internal Revenue Service (IRS) which contains, amongst other information, the gross amount of the reportable payment transactions<sup>85</sup> with respect to each participating payee.<sup>86</sup> The Secretary of the Treasury by regulations has the authority to determine the time, form, and manner in which the return must be made,<sup>87</sup> and has designated Form 1099-K as the form to use to report such information. The form contains a box to report the MCC assigned to the participating payee for which the form is being completed. The MCC may be excluded from the form if the filing entity uses an industry classification system other than or in addition to MCCs or is a third party settlement organization.<sup>88</sup> Broadly speaking, the MCCs classify businesses based on whether they predominately furnish services or goods. Payments for services are reportable, but payments for goods are not reportable.<sup>89</sup>

### **Florida Credit Card Laws**

Relevant Florida laws that relate to credit cards<sup>90</sup> are contained in the Financial Institutions Code and the Consumer Protection Act. A financial institution<sup>91</sup> is authorized to make an extension of credit to any person on a credit card and to charge interest on the outstanding amount at a certain rate.<sup>92</sup> Florida’s Credit Card Bank Act provides that a credit card account between a domestic

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<sup>83</sup> The United States Department of Homeland Security, *Recognize Suspicious Activity*, available at: [Recognize Suspicious Activity | Homeland Security \(dhs.gov\)](#) (last visited March 3, 2023).

<sup>84</sup> *Id.*

<sup>85</sup> 26 U.S.C. s. 6050W(c) defines “reportable payment transaction” as any payment card transaction and any third party network transaction.

<sup>86</sup> 26 U.S.C. s. 6050W(a).

<sup>87</sup> *Id.*

<sup>88</sup> IRS, *Instructions for Form 1099-K (01/2022)*, Jan. 2022, available at: [Instructions for Form 1099-K \(01/2022\) | Internal Revenue Service \(irs.gov\)](#) (last visited March 3, 2023).

<sup>89</sup> IRS, *Rev. Proc. 2004-43*, Aug. 2, 2004, available at: [Internal Revenue Bulletin: 2004-31 | Internal Revenue Service \(irs.gov\)](#) (last visited March 3, 2023).

<sup>90</sup> Section 658.995(2)(a), F.S., defines “credit card” as any type of arrangement or loan agreement pursuant to which a domestic lender or credit card bank gives a borrower the privilege of using the credit card or other credit confirmation or device of any type in transactions out of which debt arises, including: by the domestic lender or credit card bank honoring a draft or similar order for the payment of money created, authorized, issued, or accepted by the borrower; or by the domestic lender or credit card bank paying or agreeing to pay the borrower’s obligation.

<sup>91</sup> Section 655.005(1)(i), F.S., defines “financial institution” as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

<sup>92</sup> Section 655.954(1), F.S.

lender<sup>93</sup> or credit card bank<sup>94</sup> and a borrower must be governed by the laws of Florida or federal law unless otherwise expressly agreed in writing by the parties.<sup>95</sup> Florida consumer protection laws set out a limited number of protections relating to credit cards,<sup>96</sup> such as provisions relating to issuing credit cards,<sup>97</sup> imposing a surcharge,<sup>98</sup> or printing certain information on a merchant's receipt.<sup>99</sup> No provisions were identified that explicitly restrict or address the use of MCCs.

### III. Effect of Proposed Changes:

The bill contains several "whereas" clauses as an introduction to the bill that explains its background.

The bill amends s. 790.335(1)(a), F.S., to include an additional Legislative finding which states:

The creation or maintenance of records of purchases of firearms or ammunition or the tracking of sales made by a retailer of firearms or ammunition by a nongovernmental entity, including a financial institution, without a substantial and historical business need or a requirement imposed by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms or ammunition.

The bill prohibits a payment settlement entity,<sup>100</sup> merchant acquiring entity,<sup>101</sup> or third party settlement organization<sup>102</sup> from assigning a merchant category code to or otherwise classifying a merchant that sells firearms or ammunition separately from general merchandise or sporting goods retailers.

The bill provides that the current penalties under s. 790.335, F.S.,<sup>103</sup> only apply to paragraph (2)(a), which prohibits any governmental agency or local government, special district, or other political subdivision or official, agent, or employee of Florida or other governmental entity or any other person, public or private from keeping a registry of privately owned firearms.

The bill authorizes the Department of Agriculture and Consumer Services to investigate alleged violations of s. 790.335(2)(b), F.S., relating to MCCs, and upon finding a violation, to bring an

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<sup>93</sup> Section 658.995(2)(d), F.S., defines "domestic lender" as any bank, savings and loan association, credit union, or other business organization organized or chartered under the laws of Florida or of the United States, which in any event is authorized by law to accept deposits and make loans and has its principal place of business in Florida.

<sup>94</sup> See s. 658.995(3), F.S., for the terms and conditions under which certain entities may own or control a credit card bank.

<sup>95</sup> Section 658.995(4), F.S. However, such writing may not supersede the interest rate provisions of s. 655.954, F.S.

<sup>96</sup> Ch. 501, F.S.

<sup>97</sup> Section 501.011(3), F.S.

<sup>98</sup> Section 501.0117(1), F.S., defines "surcharge" as any additional amount imposed at the time of a sale or lease transaction by the seller or lessor that increases the charge to the buyer or lessee for the privilege of using a credit card to make payment.

<sup>99</sup> Section 501.0118(2), F.S.

<sup>100</sup> 26 U.S.C. s. 6050W(d)(1)(A). The merchant acquiring entity or third party settlement organization.

<sup>101</sup> 26 U.S.C. s. 6050W(b)(2). The bank or other entity that has the contractual obligation to pay merchants in settlement of credit card transactions.

<sup>102</sup> 26 U.S.C. s. 6050W(b)(3). The organization which has the contractual obligation to pay merchants of third party network transactions, such as PayPal, Venmo, or CashApp.

<sup>103</sup> The penalty is a third degree felony. A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or both. Sections 775.082 and 775.083, F.S.

administrative action seeking to impose an administrative fine for each violation of an unlawfully classified retailer. Such administrative fine imposed in the Class III category may not exceed \$10,000 for each violation.<sup>104</sup>

The bill takes effect July 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that any payment settlement entities, merchant acquiring entities, or third party settlement organizations violate the provisions in the bill or contest any administrative fines imposed by the DACS for such violations, the bill may result in an indeterminate fiscal impact on them.

C. Government Sector Impact:

To the extent that violators contest any administrative fines through the formal administrative hearing process, the bill may result in an indeterminate fiscal impact on the DACS and the state court system.

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<sup>104</sup> See s. 570.971(1)(c), F.S.

The DACS is unable to estimate any fiscal impact the proposed bill may have on the agency.<sup>105</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 790.335 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>105</sup> The DACS, *Agency Analysis for SB 214*, p. 4, January 31, 2023, (on file with the Senate Committee on Banking and Insurance).