

Date of Hearing: September 13, 2023

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 1587 (Ting) – As Amended August 14, 2023

SUBJECT: Financial transactions: firearms merchants: merchant category code

SUMMARY: Requires financial institutions that facilitate payment card transactions to implement a merchant category code for firearms merchants.

Specifically, **this bill:**

- 1) Makes the following definitions:
 - a) “Firearms merchant” means a business licensed in California as a firearms dealer or ammunition vendor for which the highest sales value is, or is expected to be, from the combined sale in California of firearms, firearm accessories, or ammunition, as stated by the business to its merchant acquirer in the ordinary course of business.
 - b) “Merchant acquirer” means an entity that establishes a relationship with a merchant for the purposes of processing credit, debit, or prepaid transactions.
 - c) “Payment card network” means an entity that provides services that route transactions between bank participants to conduct debit, credit, or prepaid transactions for the purpose of authorization, clearance, or settlement.
- 2) Requires, by July 1, 2024, a payment card network to make the merchant category code for firearms and ammunition businesses available for merchant acquirers that provide payment services for firearms merchants.
- 3) Requires, beginning May 1, 2025, that a merchant acquirer shall assign to a firearms merchant the merchant category code for firearms and ammunition businesses.
- 4) Provides exclusive authority to the Attorney General (AG) to enforce the provisions of this bill.
 - a) Requires the AG to provide written notice, at least 30 days prior to bringing an action, to the person or entity identifying the specific laws that are or were being violated.
 - b) Prohibits the AG from bringing an action if the person or entity cures the identified violation within 30 days of receiving the notice and provides the AG with a written statement confirming that the person or entity has cured the violation.
 - c) In a civil action brought by the AG, requires the court to award all of the following relief if the court determines that a person or entity has violated the law:
 - i. A civil penalty of \$10,000 for each violation.
 - ii. Injunctive relief sufficient to prevent the person or entity from further violations.

- iii. Reasonable attorney's fees and costs incurred in investigating and bringing the action.

EXISTING LAW:

- 1) Defines "ammunition" as:
 - a) For most purposes, one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles, but excluding blanks. (Pen. Code, § 16150(a).)
 - b) For purposes of persons prohibited from owning a firearm, including, but not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, ammunition feeding device, or projectile capable of being fired from a firearm with deadly consequences, but excluding blanks. (Pen. Code, § 16150(b).)
- 2) Defines "firearm" as:
 - a) For purposes of part 6 of the Penal Code, a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by force of an explosion or other form of combustion. (Pen. Code, § 16520(a).)
 - b) For purposes of various provisions relating to protective orders and firearms transactions, to include the frame or receiver of the weapon, including both a completed frame or receiver, or a firearm precursor part. (Pen. Code, § 16520(b).)
- 3) Requires firearms to be centrally registered at the time of transfer or sale by way of transfer forms centrally compiled by the California Department of Justice (DOJ); DOJ must keep a registry of information relating to the firearm owner, the source of the firearm, and the transaction, as specified. (Pen. Code, §§ 11106.)
- 4) Requires DOJ, upon receiving the required information regarding a firearms purchase, to examine its records to determine whether the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm under existing law. (Pen. Code, § 28220.)
- 5) Requires the DOJ to electronically approve the purchase or transfer of ammunition pursuant to an eligibility check based on information provided at the time of purchase or transfer. (Pen. Code, §§ 30352, 30370.)

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

- 1) Purpose.

According to the author:

AB 1587 requires banks and credit card companies to implement the newly developed merchant category code (MCC) by the International Organization for Standardization (ISO) to California businesses that have, or are expected to have, the highest sales

volume of firearms, firearms accessories, or ammunition. The bill is in line with the State's goal to prioritize gun violence prevention by providing financial entities with a tool that can help identify suspicious behavior such as gun trafficking.

2) Background on MCCs

AB 1587 introduces new requirements for companies involved with debit and credit card payments. The American card payment system involves four parties working together to process the transaction: the customer making the payment, the merchant accepting the payment, the customer's bank, and the merchant acquiring bank that processes transactions on behalf of the merchant. The companies that organize these four parties and operate the payment systems are known as card networks, such as Visa and MasterCard.

An MCC is a code used to designate the type of goods or services a merchant sells. These merchant-level codes are used for a variety of purposes, including to help with tax compliance, to establish the interchange rate, or to pay rewards to cardholders for certain types of expenditures. An MCC is not a product-level code (called a SKU). The International Organization for Standardization (ISO) approves any new MCC, and after a new code is approved then that MCC is incorporated by card networks. MCCs range from general to highly specific — for example, while electric razor stores, tent stores, and leather goods stores all currently have unique codes, there is no unique code for brick and mortar gun stores: gun and ammunition retail outlets are instead classified as “miscellaneous” or “sporting goods.”

In September 2022, ISO adopted a new MCC for gun and ammunition stores. The effort to request the creation of an MCC for gun merchants was led by Amalgamated Bank and a coalition of gun safety advocates, elected officials, pension funds, and others interested in gun safety. The coalition believes that the new MCC will improve banks' abilities to detect and report suspicious activities associated with gun trafficking and mass shootings. The push for a new MCC followed a number of media investigations into the role credit cards play in mass shootings. For example, a 2018 New York Times investigation found that in the mass shooting events reviewed, a majority of those attacks were funded using credit cards. As the New York Times writes, “The financial industry is uniquely positioned to see, if it chose to do so, a potential killer's behavior in a way that retailers, law enforcement officials, concerned family members or mental health professionals cannot.”¹

The ISO's adoption of a new MCC resulted in significant backlash in conservative states. Attorneys general in 24 states wrote a letter to banking industry leaders stating that the new MCC “unfairly singles out law-abiding merchants and consumers.” The letter also warned CEOs that the attorneys general would “marshal the full scope of our lawful authority to protect our citizens and consumers from unlawful attempts to undermine their constitutional rights.” States like Florida passed legislation to ban the use of an MCC that classifies firearms and ammunition, and major payment networks have since paused their plans to implement the new firearms MCC.

3) What this bill does.

¹ <https://www.nytimes.com/interactive/2018/12/24/business/dealbook/mass-shootings-credit-cards.html>

AB 1587 requires financial institutions that facilitate payment card transactions to implement an MCC for firearms merchants. Under AB 1587, there would be two phases of implementation:

- a) By July 1, 2024, payment card networks must make the MCC available for merchant acquirers that provide payment services.
- b) By May 1, 2025, those merchant acquirers must assign the MCC to firearms merchants in California.

Importantly, AB 1587 does not require any further action from financial institutions. While supporters argue the new MCC will allow financial institution to report to law enforcement possible illegal firearms trafficking, AB 1587 imposes no requirements on institutions to do so.

4) More from the author

The author's office has provided the committee with the following about AB 1587's potential positive impact for communities of color:

Additionally, this code could allow financial institutions to identify and report to law enforcement spending patterns that suggest unlawful straw purchasing and gun trafficking. Doing so would equip law enforcement to stop trafficking rings from flooding communities with firearms for profit. Far too many Californians, especially Black and Brown ones, bear the consequences of gun trafficking rings: either directly, through chronic gun violence, or indirectly through increased suspicion and surveillance from law enforcement, stigma, and trauma. The effect of access to trafficked weapons in these communities, primarily black and brown communities, cannot be understated. Based on data from the Centers for Disease Control: In California, Black men make up less than 4 percent of the state's population, yet they represent over 30 percent of gun homicide victims, and Black men between the ages of 18 and 24 are more than 18 times as likely as white men of the same age to be murdered with a gun, in California. Also, black children and teens are seven times as likely as white children to be fatally shot in California. In the face of such devastating gun violence, not only from civilians but also from law enforcement, Black and Brown communities have demanded a new approach to public safety that stops violence before it starts and relies on holistic community rather than brute force. The MCC code could be a part of that change. The MCC code would not only help prevent violence before it happens but also equip law enforcement to change tactics. Rather than casting entire communities and neighborhoods with suspicion, the MCC code would allow law enforcement to better pinpoint which stores and which trafficking rings are facilitating and profiting from gun violence.

5) Arguments in Support.

According to Brady California, a sponsor of the bill:

This bill is simple. It would mandate that banks and credit card companies utilize this life saving tool and attach the MCC code to California businesses that have,

or are expected to have the highest sales volume, of firearms, firearms accessories, or ammunition. This is consistent with how other MCC codes are used for all other businesses in California, all over the country and all around the world. This will allow financial institutions to identify and report to law enforcement known patterns that are highly suggestive of illegal firearms trafficking — such as repetitive purchases at the same gun store or purchases at multiple gun stores with corresponding cash deposits supplying them with a critical tool to interrupt trafficking rings that flood our communities with guns and violence. This is how we can stop gun violence BEFORE it happens.

6) Arguments in Opposition

According to the California Rifle & Pistol Association (CRPA):

DOJ will gain no new data that it does not already possess in the status quo through firearms and ammunition purchases. Given the fact that MCCs will not provide any additional information to solve crimes, it appears that the intent is focused on placing law-abiding citizens in harm's way. Imagine a parent supporting their child by making a purchase of shotgun ammunition for competitive shooting at the range and having a completely unwarranted visitation by DOJ agents for doing nothing illegal.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California
Brady Campaign
Giffords
Everytown for Gun Safety Action Fund
Women for American Values and Ethics Action Fund

Opposition

California Rifle and Pistol Association, Inc.
Gun Owners of California, Inc.
National Rifle Associations

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