WEST VIRGINIA CODE: §31A-2B-2

§31A-2B-2. Findings and intent.

(a) The Legislature finds that:

(1) The Second Amendment to the United States Constitution guarantees the people the right to keep and bear arms;

(2) Section 22, Article III of the West Virginia Constitution provides that "[a] person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use";

(3) In September of 2022, the International Organization for Standardization, based in Switzerland, approved a unique Merchant Category Code for firearm and ammunition retailers;

(4) Later in September of 2022, the world's three largest payment card networks publicly announced they would assign the new Merchant Category Code to firearms retailers accepting payment cards for purchases, after 28 members of Congress sent a public letter to networks, pressuring them to adopt the new code;

(5) In the letter to payment card networks, federal lawmakers stated that the new Merchant Category Code for firearms retailers would be "[. . .] the first step towards facilitating the collection of valuable financial data that could help law enforcement in countering the financing of terrorism efforts", expressing a clear government expectation that networks will utilize the new Merchant Category Code to conduct mass surveillance of constitutionally protected firearms, firearm accessories or components, and ammunition purchases in cooperation with law enforcement;

(6) The new Merchant Category Code will allow the banks, payment card networks, acquirers, and other entities involved in payment card processing to identify and separately track lawful payment card purchases at firearms retailers in West Virginia, paving the way for both unprecedented surveillance of Second Amendment activity and unprecedented information sharing between financial institutions and the government;

(7) This potential for cooperative surveillance and tracking of lawful firearms, firearm accessories or components, and ammunition purchases will have a significant chilling effect on citizens wishing to exercise their federal and state constitutional rights to keep and bear arms in West Virginia;

(8) While federal law requires some financial institutions to report transactions that are highly indicative of money laundering or other unlawful activities, there is no federal or state law authorizing financial institutions to surveil and track lawful activities by customers in

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cooperation with law enforcement; in fact, both the federal Right to Financial Privacy Act and West Virginia's Maxwell Governmental Access to Financial Records Act prohibit financial institutions from disclosing a customer's financial records except in limited circumstances; and

(9) This article should be construed as a generally applicable consumer financial protection law that does not prevent or significantly interfere with the duly authorized powers of any bank, nor does this article directly or indirectly discriminate against any bank based on its charter or structure.

(b) Based on the above-stated findings, it is the intent of the Legislature to prohibit the misuse of payment card processing systems to surveil, report, or otherwise discourage constitutionally protected firearm, firearm accessories or components, and ammunition purchases and sales within West Virginia's jurisdiction.

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