



To: Hon. Nily Rozic
Chair, Assembly Consumer Affairs and Protection Committee
Legislative Office Building, Room 941
Albany, NY 12247

Re: Assembly Bill 9862 – Merchant Category Codes for Firearms Dealers

Position: Oppose

Date: 4/29/2024

Chair Rozic and Honorable Members of the Assembly Consumer Affairs and Protection Committee,

As the Senior Coordinator, Mid-Atlantic States for the Congressional Sportsmen’s Foundation (CSF), I respectfully urge you to oppose Assembly Bill 9862 (AB 9862) as it will likely paint a target for discrimination on the backs of thousands of law-abiding sportsmen and women in the Empire State. The passage of this bill will require firearms and ammunition dealers to utilize a special merchant code so financial institutions can track the purchase of firearms and ammunition by law-abiding citizens.

Founded in 1989, CSF is the informed authority across outdoor issues and serves as the primary conduit for influencing public policy. Working with the Congressional Sportsmen's Caucus (CSC), the Governors Sportsmen's Caucus (GSC), and the National Assembly of Sportsmen's Caucuses (NASC), CSF gives a voice to hunters, anglers, recreational shooters, and trappers on Capitol Hill and throughout state capitols advocating on vital outdoor issues that are the backbone of our nation's conservation legacy.

Sportsmen and women of the Empire State are the primary funders for the New York Department of Environmental Conservation (DEC) providing over \$54M in conservation funding in 2023 alone. As the primary funders of state-level conservation efforts in New York, sportsmen and women provide funding for projects that benefit all New Yorker’s. For example, in 1937, the Pittman-Robertson Act redirected previously existing excise taxes on firearms and ammunition to be dedicated to a fund to be used specifically for wildlife conservation purposes. Once collected, the taxes are deposited into the Wildlife Restoration Account, which is administered by the United States Fish and Wildlife Service (USFWS), who then apportions funds to all state fish and wildlife

agencies for conservation purposes. Under the Pittman-Robertson Act and per the Firearms and Ammunition Excise Tax, firearms and ammunition are subjected to a 10-11% excise tax. Ultimately, it was the sporting industry who decided to avail themselves to this excise tax – a choice prompted in sole consideration of the interest and betterment of the nation’s fish and wildlife, and the habitats that they rely on.

Protecting the personal information of sportsmen and women is paramount to the continued success of the time-honored outdoor traditions that have long been enjoyed by New Yorkers. The passage of AB 9862 allows financial institutions to distinguish firearm retailers from other retailers, as well as allows the existence of a list or registry of privately owned firearms in the State and has the potential for lawful purchases of sporting equipment to be discriminated against. The use of firearms and ammunition is necessary to partake in many of the outdoor traditions that have stood as societal pillars in New York for generations, and simultaneously provide the funds necessary for the DEC to carry out its mission. Stunted sales due to concerns over being added to a firearms registry will result in the unintended, but foreseeable diminishment of vital sportsmen-generated conservation dollars.

The requirement for businesses to utilize the specific merchant category code (MCC) is problematic as the code lacks the specificity to determine the exact item that someone is purchasing. An example is someone purchasing a cast-iron skillet and a camping tent from Cabela’s, Bass Pro Shops, or similarly themed local retailers. Under this legislation, this purchase would be flagged, and that person would be added to the preexisting registry, simply because they purchased an item from a retailer that also sells firearms and/or ammunition; regardless of whether they purchased a firearm or ammunition during that transaction.

To further emphasize the issues with this legislation, during the 2023-2024 California Legislative Session, a similar bill was introduced and heard before the Senate Committee on Banking and Financial Institutions. The following is an excerpt from the Committee’s bill analysis, which can be found attached to this letter:

“Proponents believe similar monitoring and detecting techniques could be deployed to identify potential straw purchases of firearms, where one person purchases a gun on behalf of another person, and gun trafficking generally. In addition to detecting potential straw purchases and gun trafficking, proponents argue that banks could use the new MCC to identify persons who intend to commit mass shootings. ***This argument seems specious.*** Given that gun and ammunition purchases are already approved and recorded in a database administered by DOJ, the additional value of transactions coded with the gun MCC is unclear. First and foremost, MCCs cannot reveal the actual items purchased at a given merchant, only the category of goods or services sold by that merchant.”¹

In closing, it is vital to protect consumer information, which includes hunters and recreational shooters in New York. The passage of this bill would subject law-abiding sportsmen and women to discriminate by financial or anti-sportsmen organizations, which would likely deter participation and decrease critical conservation funding. For these reasons, I respectfully request that the members

of this Committee oppose the passage of Assembly Bill 9862 to protect the privacy of New York's sportsmen and women.

Sincerely,



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**SENATE COMMITTEE ON
BANKING AND FINANCIAL INSTITUTIONS**
Senator Monique Limón, Chair
2023 - 2024 Regular

Bill No: AB 1587 **Hearing Date:** July 5, 2023
Author: Ting
Version: June 13, 2023 Amended
Urgency: No **Fiscal:** Yes
Consultant: Michael Burdick

Subject: Financial transactions: firearms merchants: merchant category code

SUMMARY

This bill requires financial institutions that facilitate payment card transactions to implement a merchant category code for firearms merchants.

EXISTING LAW

- 1) 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). The DOJ is required to keep a registry from data sent to the DOJ indicating who owns what firearm by make, model, and serial number and the date thereof. (Penal Code Section 11106)
- 2) Requires that, upon receipt of the purchaser's information, the DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health, in order to determine if the purchaser is prohibited from purchasing a firearm because of a prior felony conviction or because they had previously purchased a handgun within the last 30 days, or because they had received inpatient treatment for a mental health disorder, as specified. (Penal Code Section 28220)
- 3) Requires a person seeking to purchase or transfer ammunition to undergo an eligibility check and be approved by the DOJ prior to such purchase or transfer, as specified, and requires the DOJ to retain the information specified in the eligibility check in a database that may be accessed only for law enforcement purposes. (Penal Code Sections 30352 and 30370)

THIS BILL

- 1) Defines the following terms, among others:
 - a) “Financial institution” means any institution the business of which is engaging in financial activities as described in Section 1843(k) of Title 12 of the United States Code.
 - b) “Firearms merchant” means a retailer doing business in California for which the highest sales value is, or is expected to result from, the sale of firearms, firearms accessories, or ammunition in aggregate.
 - c) “Payment card” means a credit card, debit card, check card, or other card that is issued for the purpose of purchasing or obtaining goods, services, money, or any other thing of value.

- d) “Payment card network” means an entity that, directly or through a licensed member, processor, or agent, provides services that do either of the following:
 - i) Route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement.
 - ii) Allow an entity to accept as a form of payment a debit card or a credit card.
 - e) “Payment card transaction” means a transaction in which a person uses a payment card or other payment code or device issued or approved through a payment card network to debit a deposit account or use a line of credit.
- 2) Requires an entity that facilitates or processes a payment card transaction to assign to a firearms merchant, or require a firearms merchant to use, the merchant category code for firearms and ammunition businesses established by the International Organization for Standardization on September 9, 2022.
 - 3) Prohibits an entity involved in facilitating or processing a payment card transaction from assigning to a firearms merchant, or requiring a firearms merchant to use, a merchant category code that classifies the firearms merchant as a general merchandise retailer or sporting goods retailer.
 - 4) Provides exclusive authority to the Attorney General (AG) to enforce the provisions of the 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 attorneys’ fees and costs incurred in investigating and bringing the action.

COMMENTS

1) PURPOSE

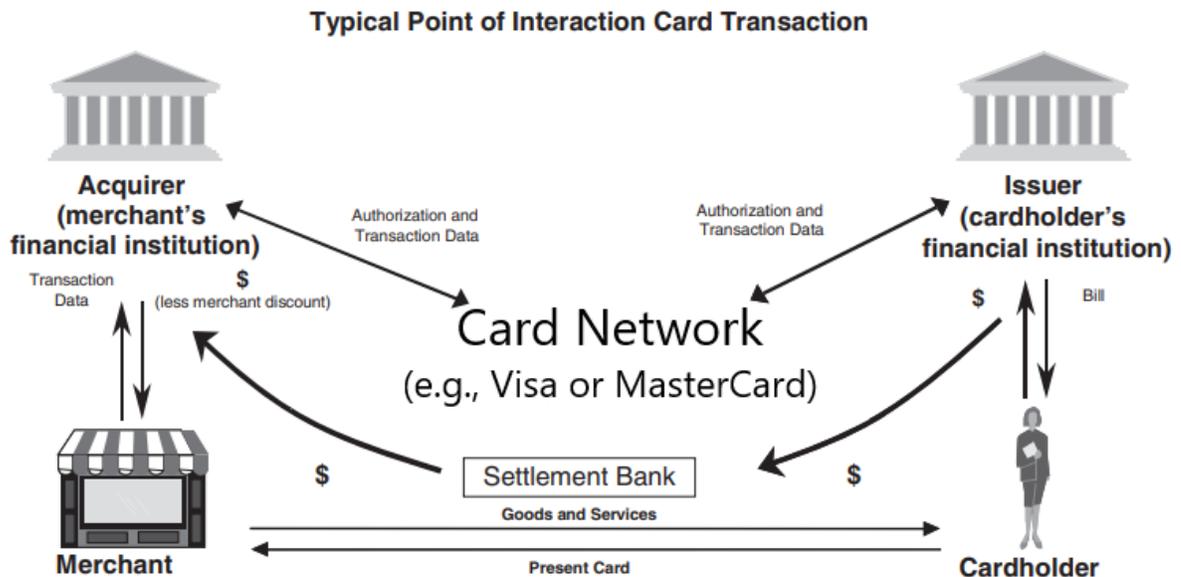
According to the author:

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. This will allow financial institutions to identify and report to law enforcement

suspicious activity by identifying patterns that are suggestive of illegal firearm trafficking. AB 1587 creates a tool that currently does not exist given firearm sellers and manufacturers are typically categorized as either “sporting goods” or “other.” This bill is a critical step forward to aid in preventing gun violence.

2) BACKGROUND

This bill would place obligations on certain entities involved with debit and credit card payments. Debit and credit card payments are typically facilitated via a four-party system. As depicted in the diagram below, the four parties referenced are the cardholder (i.e., the person making the payment), the merchant (i.e., the business accepting the payment), the cardholder’s bank (aka “issuer”), and the merchant’s bank (aka “acquirer”).¹ The entities that organize these four parties and operate the payment systems are known as card networks. Popular card networks that operate four-party systems include Visa and MasterCard. Discover and American Express are also card networks, though unlike Visa and MasterCard, Discover and American Express issue their own cards in addition to operating a card network.



The diagram above and the “four party” moniker belie the complexity and variation in processing card payments. In addition to the four parties depicted in the model, there is an ecosystem of data processors, payment gateway providers, and merchant service providers that serve as connective tissue between the four parties. In many cases, there are intermediaries between the merchant and acquirer who carry out various activities related to accepting card payments. Additionally, processes vary depending on the type of card (i.e., debit, credit, or prepaid), the specific network over which the transaction is processed, and whether the card is physically present at the point of sale. In each of these cases, rules set by the card networks help to coordinate the activities of the actors within the payment system.

¹ The diagram is adapted from an image included in MasterCard’s 2011 annual report filed on Form 10-K with the federal Securities and Exchange Commission.

This bill, as proposed to be amended, would place obligations on two categories of entities – the card networks and acquirers – for a narrow, specific set of activities related to merchant category codes (MCCs). An MCC is a four-digit code assigned to a merchant based on the type of goods or services the merchant sells. As illustrative examples, there are MCCs for aquariums, cosmetic stores, and towing services. Payment system participants use MCCs for a variety of reasons, including setting the fees that merchants pay to accept card payments, identifying high-risk merchants, determining tax reporting obligations, and paying rewards to cardholders.

MCCs are set by the International Organization for Standardization (ISO), after which they are incorporated by card networks through IT updates and revisions to network rules. Acquirers, who have business relationships with merchants, assign a merchant one or more MCC based on the nature of the merchant’s business and according to rules or guidance promulgated by the card network. The adoption of new MCCs by ISO and their implementation by card networks and acquirers is typically a noncontroversial and routine set of activities.

3) MCC FOR GUN STORES AND ASSOCIATED POLITICS AND POLICY

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.

In response to the decision from ISO, a group of 24 Republican state attorneys general wrote a letter to card network CEOs, arguing against the use of the MCC and communicating thinly veiled threats of litigation if the card networks implement the code.² According to the author’s office, seven states have passed legislation prohibiting the use of the MCC, while no states have yet passed a law requiring the use of the MCC, as proposed by this bill. Due to the political backlash in red states, the card networks announced in March 2023 that they were pausing their implementation of the new code, which was slated to be made available to network participants in April 2023.³

Setting the contentious politics aside, the committee may ask whether this MCC can be used to prevent gun violence, and if so, how? Proponents argue that banks will be able to use transactions coded with the new MCC as a new set of data that, combined with other information the banks possess, can be analyzed to detect potential illegal activities related to gun purchases. As a relevant example, proponents point to banks’ use of algorithms that use data related to card transactions at hotels, fast food restaurants, and clothing stores, the geographic area and timing of such transactions, and coinciding cash deposits to detect potential human trafficking activities. Proponents believe similar monitoring and detecting techniques could be deployed to identify potential straw purchases of firearms, where one person purchases a gun on behalf of another person, and gun trafficking generally.

In addition to detecting potential straw purchases and gun trafficking, proponents argue that banks could use the new MCC to identify persons who intend to commit mass shootings.

² <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-36-letter.pdf>

³ <https://www.reuters.com/business/finance/mastercard-pause-work-new-payments-code-firearms-sellers-2023-03-09/>

This argument seems specious. Given that gun and ammunitions purchases are already approved and recorded in a database administered by DOJ, the additional value of transactions coded with the gun MCC is unclear. First and foremost, MCCs cannot reveal the actual items purchased at a given merchant, only the category of goods or services sold by that merchant. This means that the transaction patterns of a person methodically building an arsenal to commit a mass shooting may be indecipherable from the transaction patterns of a gun enthusiast who regularly purchases guns, ammunition, and related products for the purposes of target shooting, hunting, or other legal purposes. Unlike the trafficking example, there would be no associated cash deposits in these cases to aid banks in detecting suspicious activity. Additionally, a person intent on committing a mass shooting could easily evade detection derived from MCC data by using cash or check as payment, by purchasing guns and ammunition from retailers who do not derive a majority of their sales from guns (e.g., Walmart or Dick's Sporting Goods) and thus have different MCCs, or by purchasing guns and ammunition from retailers physically located in other states who ship the products to a licensed location in California for pick-up.

4) THIS BILL PROVIDES REASONABLE PATHWAYS FOR COMPLIANCE

As proposed to be amended, this bill provides reasonable opportunity for payments system participants to comply with the bill. The author is proposing staggered implementation dates so that card networks will need to make available the new MCC by July 1, 2024, and then merchant acquirers would have until March 1, 2025, to assign the new code to any gun merchants that they have as customers. To avoid potential conflict with laws in other states that prohibit the use of this MCC, the bill narrows the scope of gun merchants to whom the code must be assigned to those merchants who are licensed in California and who derive a majority of their sales from transactions in this state. Thus, if there are any chain gun stores that operate in multiple states, including those that have passed contrary laws, this bill is unlikely to require a merchant acquirer to assign the gun-specific MCC. Lastly and importantly, the bill provides a cure provision that gives a card network the ability to make available the MCC or a merchant acquirer to correctly assign the MCC within 30 days of being notified by the CA DOJ about a potential violation. Taken together, these provisions show the intent of the author to provide reasonable pathways to comply with the law and that the law is not intended to penalize payments system entities for unintentional mistakes.

5) ARGUMENTS IN SUPPORT

Brady and Brady California, gun safety organizations, write in support, as sponsors:

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

The National Rifle Association writes in opposition:

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... This in turn has the potential to create a chilling effect on the exercise of constitutionally protected rights.

7) AMENDMENTS

Since this bill was gut-and-amended on June 13, 2023, the author's office, sponsor, and committee staff have worked with companies and trade associations in the payments industry to identify amendments that better align the language of the bill with the structure of payments systems, clarify the author's intent, and allow more time for the industry to comply with the bill. The product of those conversations are reflected below in amendments proposed by the author's office and recommended by committee staff.

- a) Define "firearm accessory" to have the same meaning as existing law in Civil Code Section 3273.50.

Add subdivision (d) to proposed Section 110000 of the Financial Code to read:

"Firearm accessory" means an attachment or device designed or adapted to be inserted into, affixed onto, or used in conjunction with a firearm that is designed, intended, or functions to alter or enhance the firing capabilities of a firearm, the lethality of the firearm, or a shooter's ability to hold and use a firearm.

- b) Amend the definition of "firearms merchant" to narrow the scope to businesses licensed in California for which the highest sales value of covered products is generated in the state. The revised definition in Financial Code Section 110000 reads:

"Firearms merchant" means a ~~retailer doing business in California~~ business licensed in California as a firearms dealer or ammunition vendor for which the highest sales value is, or is expected to result from, the sale in California of firearms, ~~firearms~~ firearm accessories, or ammunition in aggregate, as stated by the business to its merchant acquirer in the ordinary course of business.

- c) Delete the definitions of "financial institution," "payment card," "payment card issuer," and "payment card transaction" from the bill. As drafted and used in the current version of the bill, these terms confuse, rather than clarify, the intent of the bill.

- d) Add the following definition for "merchant acquirer" to Financial Code Section 110000:

"Merchant acquirer" means an entity that establishes a relationship with a merchant for the purposes of processing credit, debit, or prepaid transactions."

- e) Amend the definition of "payment card network" as follows:

“Payment card network” means an entity ~~that, directly or through a licensed member, processor, or agent,~~ **that** provides services that ~~do either of the following:~~ **route transactions between bank participants to conduct debit, credit, or prepaid transactions for the purpose of authorization, clearance, or settlement.**

- ~~(1) Route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement.~~
- ~~(2) Allow an entity to accept as a form of payment a debit card or credit card.~~
- f) Clarify the obligations of payment card networks related to the new gun MCC.

Amend subdivision (a) of Financial Code Section 110001 to read:

~~An entity, including, but not limited to, a financial institution, an acquirer, a payment card network, and a payment card issuer, that facilitates or processes a payment card transaction shall assign to a firearms merchant, or require a firearms merchant to use,~~ **By July 1, 2024, a payment card network shall make** the merchant category code for firearms and ammunition businesses established by the International Organization for Standardization on September 9, 2022, **available for merchant acquirers that provide payment services for firearms merchants.**

- g) Clarify the obligations of merchant acquirers related to the new gun MCC.

Replace subdivision (b) of Financial Code Section 110001 with the following language:

Beginning March 1, 2025, a merchant acquirer shall assign to a firearms merchant the merchant category code for firearms and ammunition businesses established by the International Organization for Standardization on September 9, 2022.

8) DOUBLE REFERRAL

This bill is double-referred to the Judiciary Committee.

LIST OF REGISTERED SUPPORT/OPPOSITION

Support

Brady California
 Brady Campaign
 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 Association - Institute for Legislative Action

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