

Written testimony on SB24-066

Colorado Senate Business, Labor, & Technology Committee

Feb. 8, 2024

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Colorado SB24-066 has no plausible utility in its purported purpose of preventing gun crime before the fact. Instead, the bill’s only utility is in service of gun confiscation. As Mrs. Gabrielle Giffords put it: “No More Guns. Gone.”¹

Background

A merchant category code (MCC) is used by payment networks such as Visa, MasterCard, or American Express, to identify some types of merchants. At present, firearms merchants and payment networks use the “general merchandise” code for their transactions.

Some MCCs are used for businesses that are at high risk of fraudulent transactions—either by an unscrupulous business or by a customer using a stolen credit card. Examples include Betting, Casino, and Gambling; Dating and Escort Services; Bicycle Shops—Sales and Service; and Non-Financial Institutions—Foreign Currency, Travelers Cheques, and Money Orders.²

The following States have banned or discouraged MCCs for stores that sell firearms:

- West Virginia – HB2004, 3/11/2023
- Idaho – HB295, 4/5/2023
- Mississippi – HB1110, 4/13/2023
- North Dakota – HB1487, 4/29/2023
- Florida – SB214, 5/12/2023
- Montana – SB359, 5/19/2023

¹ Philip Elliott, *No More Guns. Gone’: Why Gabby Giffords Isn’t Giving Up*, Time, Apr. 26, 2023, <https://time.com/6274979/gabby-giffords-gun-control/>.

² Host Merchant Services, *Common High-Risk MCC Codes*, <https://www.hostmerchantservices.com/articles/high-risk-mcc-codes/>.

- Texas – HB2837, 6/10/2023

One State has enacted legislation mandating MCCs for stores that sell firearms. California’s AB1587, enacted 9/26/23, goes into effect 5/1/25.

Arguments by proponents

Spurred by an article in the *New York Times*, gun control advocates and gun prohibition advocates point out that some of the firearms used in mass shootings over the past two decades were purchased using credit cards.³

Proponents say that MCC specific to firearms dealers will help track suspicious purchases, so that authorities can intervene. The government will know exactly who is buying firearms and how frequently. Proponents stated in a letter to the U.S. Treasury Department and Department of Justice:

“We believe that implementation of the new MCC code for gun stores could enable financial institutions to identify and report potentially illegal gun sales to law enforcement—helping reduce gun trafficking, straw purchases, and transactions structured to evade the mandatory multiple sale reports required by firearm retailers.”⁴

Proponents point out that the high-risk MCCs in other businesses are used to identify potential criminal offenders. They claim that the same method could be applied to combat mass shootings, violent crime, and arms trafficking.⁵

³ Andrew Ross Sorkin, *How Banks Unwittingly Finance Mass Shootings*, The New York Times, Dec. 24, 2018, <https://www.nytimes.com/interactive/2018/12/24/business/dealbook/mass-shootings-credit-cards.html>

⁴ *Letter to Treasury and DOJ on MCC Code for Gun and Ammunition Stores*, Mar.15, 2023, [https://www.menendez.senate.gov/imo/media/doc/letter to treasury and doj on mcc code for gun and ammunition stores.pdf](https://www.menendez.senate.gov/imo/media/doc/letter%20to%20treasury%20and%20doj%20on%20mcc%20code%20for%20gun%20and%20ammunition%20stores.pdf)

⁵ Press Release, CA District 19 Assemblymember Phil Ting, *Governor Signs Ting Bill That Helps Flag Suspicious Gun & Ammunition Sales In CA*, Sept. 26, 2023, <https://a19.asmdc.org/press-releases/20230926-governor-signs-ting-bill-helps-flag-suspicious-gun-ammunition-sales-ca>

The theory is that banks already have legal obligations to report to the government possible criminal activity by their customers. If there were a separate MCC for firearms stores, then banks would have an obligation to report to the government consumer transactions with those stores.

Analysis

Specific MCCs have been used for certain anti-crime purposes, but these purposes have nothing to do with gun stores. Before a firearms sale takes place, a store must first examine a government-issued picture identification card, and the would-be buyer must fill out a detailed four-page Federal Form 4473, answering dozens of questions. This is one reason why the use of stolen credit cards at gun stores has never been claimed to be a significant problem.

Some merchants may engage in crimes such as money laundering or receipt of stolen property. Again, no one has claimed that there is such a widespread problem of gun stores doing so.

The assertion that flagging large transactions at sporting goods stores or at specialty firearms dealers will identify incipient mass shooters is implausible. MCCs cannot determine what exactly is being bought in a transaction, because the payment networks do not know the product-level data of the transactions.⁶ A consumer may buy a firearm, a safe, or a T-shirt from a firearms dealer.

Consider stores such as Cabela's or Sportsman's Warehouse, which sell a wide variety of expensive merchandise, including firearms. If they are forced to use a firearms MCC, a customer could be flagged for buying a \$15,000 boat or ATV, a \$3,000 high-end hunting rifle, or \$2000 worth of clothing and camping gear. It is quite common for a lawful, peaceable individuals to spend several thousand dollars in a single transaction involving one or two firearms, associated gear such as holsters, slings, scopes, and cleaning equipment, plus a good supply for ammunition for months or years of practice.

Competitive shooters practice frequently, especially the most successful ones. They can easily use thousands of rounds of ammunition per month.

⁶ Visa, *Protecting Legal Commerce*, Sept. 13, 2022, <https://usa.visa.com/visa-everywhere/blog/bdp/2022/09/13/protecting-legal-commerce-1663103155809.html>

The notion that any purchase above a given amount from a firearms store is an indication of criminal activity has no empirical support. Involving law enforcement in following up on these transactions would be an enormous waste of resources, following up on a huge number of false positives.

As for persons intent on crime, any trigger amount of minimum purchases would be easy to evade. A criminal could buy a lower quality-rifle, a handgun, and lots of ammunition for under \$750. Or an incipient criminal could simply avoid any MCC altogether by paying by cash or check, or by making smaller separate purchases over a period of time.

Although not plausibly valuable for crime prevention, the proposed MCC bill *would* be a handy tool for the ultimate objectives of the gun confiscation lobbies. In their dream world of house-to-house confiscation, the customer lists from sporting goods stores would identify the first persons to target.

Of course, such confiscation would not be possible under current legal doctrine, but the confiscation lobbies and their political allies are also strong advocates of packing the Supreme Court to nullify the right to arms. With the right election results, the Court-packing could be accomplished in the next session of Congress, or soon thereafter.

We have already seen how authoritarian government officials misuse MCCs against civil rights. In the January 6, 2021, attack on the U.S. Capitol, none of the perpetrators carried firearms. And of course, the two thousand people who entered the Capitol on January 6 were a minuscule fraction of the many tens of millions of people who hold conservative political, cultural, or religious views, or who voted for Donald Trump.

Yet after the January 6 crimes, the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) distributed materials to financial institutions outlining MCCs and key search words used in identifying "red flags" to report to the federal government. These MCCs included codes for small arms, sporting and recreational goods and supplies, and religious texts (including the Bible). The key words included things like "Trump", "MAGA", "Cabela's", and "Dick's Sporting Goods."

Ohio Rep. Jim Jordan, who obtained this information from the FBI and FinCEN, stated:

“Despite these transactions having no apparent criminal nexus — and, in fact, relate to Americans exercising their Second Amendment rights — FinCEN seems to have adopted a characterization of these Americans as potential threat actors... This kind of pervasive financial surveillance, carried out in coordination with and at the request of federal law enforcement, into Americans’ private transactions is alarming and raises serious doubts about FinCEN’s respect for fundamental civil liberties.”⁷

Using financial institutions to track spending habits and peer into the financial privacy of US citizens sets a dangerous precedent. If the financial industry can be weaponized to track citizens, especially those who may be deemed a threat based on what they are buying and where they are spending, other industries may be pushed to assume similar surveillance roles on the population as well.

A common conceit of legislators is imagining that the government will always be under the control of people who think like them. Yet as shown by the history of every State in the Union, partisan control that seems impregnable at a given time never persists. Eventually, the shoe always ends up on the other foot.

If SB24-066 is enacted, there should be no doubt that its policy of weaponization of credit card laws against persons who exercise Second Amendment rights will one day be weaponized against the favored groups of some of the bill’s proponents, including anti-police protesters, Marxists, unlawful aliens, and the various organizations and their donors that support both such types of persons.

⁷ House of Representatives Judiciary Committee Press Release, *Federal Government Flagged Transactions Using Terms like "MAGA" and "TRUMP" for Financial Institutions*, Jan. 17, 2024, <https://judiciary.house.gov/media/press-releases/federal-government-flagged-transactions-using-terms-maga-and-trump-financial>