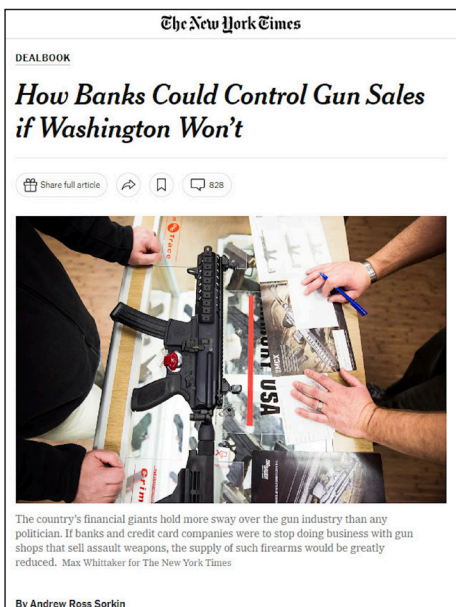


SECOND AMENDMENT PRIVACY ACT

BACKGROUND

Merchant Category Codes (MCCs) are 4-digit codes used by payment processing networks (American Express, Visa, Mastercard, etc.) to categorize merchants. There are thousands of merchant category codes, and they have never been politicized until now. The concept of creating a new MCC for smaller gun stores was first suggested by anti-gun columnist Andrew Ross Sorkin in a 2018 New York Times column entitled “How Banks Could Control Gun Sales if Washington Won’t.” Sorkin had the idea: “What if the finance industry — credit card companies like Visa, Mastercard and American Express; credit card processors like First Data; and banks like JPMorgan Chase and Wells Fargo — were to effectively set new rules for the sales of guns in America?”¹

Beginning in 2018, Amalgamated Bank, a union-founded bank that prides itself as “America’s Socially Responsible Bank,”² petitioned the



Geneva, Switzerland-based International Organization of Standardization (ISO) several times to adopt a new MCC for gun stores. In 2022, the MCC specific to firearm retailers was ultimately approved (without consensus) and set in motion. The

- MCCs have never been politicized until now with Amalgamated Bank’s push to violate law-abiding Americans’ privacy.
- This new MCC would not identify what product(s) a consumer is purchasing using their credit card, e.g., it cannot distinguish between a firearm and a hunting jacket.
- This MCC is an “initial step” towards a private gun registry.
- Several states (FL, IA, ID, IN, KY, MS, MT, ND, TX, UT, WV, WY) have enacted laws protecting consumers against this new MCC. California, however, has mandated the use of the MCC. Federal legislation is needed to protect the Second Amendment and consumer privacy.

Chief Executive of Amalgamated Bank, Priscilla Sims Brown, said the code will not impede legal sales of firearms and will help financial institutions catch red flags and file “Suspicious Activity Reports (SAR)”³ with the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) for suspicious firearm purchases. In reality, however, the code gives no visibility as to what a person purchased.

The ISO sets voluntary international standards including for the payment processing industry which payment processing networks (American Express, Visa, MasterCard and Discover) can adopt. Banks operating on those networks must agree to the network’s rules of service, which is how ISO standards including MCCs are implemented in the marketplace. ISO has no authority, however, to mandate the use of MCCs. Codes are assigned to merchants by the bank the merchant chooses to do business with (the “acquiring bank”). In the case of firearm and ammunition merchants, depending on the nature of their business, the applicable MCCs are: Sporting Goods Store (e.g., Academy Sports), Durable Goods, or General Merchandise (e.g., Walmart). In the case of small gun stores, prior to the ISO adoption of a MCC specific to them, they were assigned the Specialty Retailer MCC. If the new MCC were to be adopted by the payment processing networks, these small gun stores would

be assigned this new code. Other retailers would still be assigned the MCC that properly categorized their business, e.g., Academy would still be assigned the MCC for Sporting Goods Store.

FALSE PROMISES, HALTING IMPLEMENTATION

Leading payment processing networks (credit card companies) were caught in the middle as the new codes became highly politicized and initially said they’d implement the code; however, they have since announced they were “pausing” implementation of the code.

Despite a barrage of misinformation from gun control groups, anti-gun politicians and Amalgamated Bank, the credit card networks know a MCC simply categorizes the nature of the merchant’s business. It does not tell the banks or credit card companies anything about what the consumer is purchasing when using their credit card. “Mastercard’s [Seth] Eisen noted the code would not allow banks to track specific items purchased by consumers.”⁴

This new MCC would not help banks identify and report suspicious firearm transactions because it does not distinguish what is in the customer’s basket at the checkout counter. The MCC does not distin-

guish between a box of ammunition or camping gear.

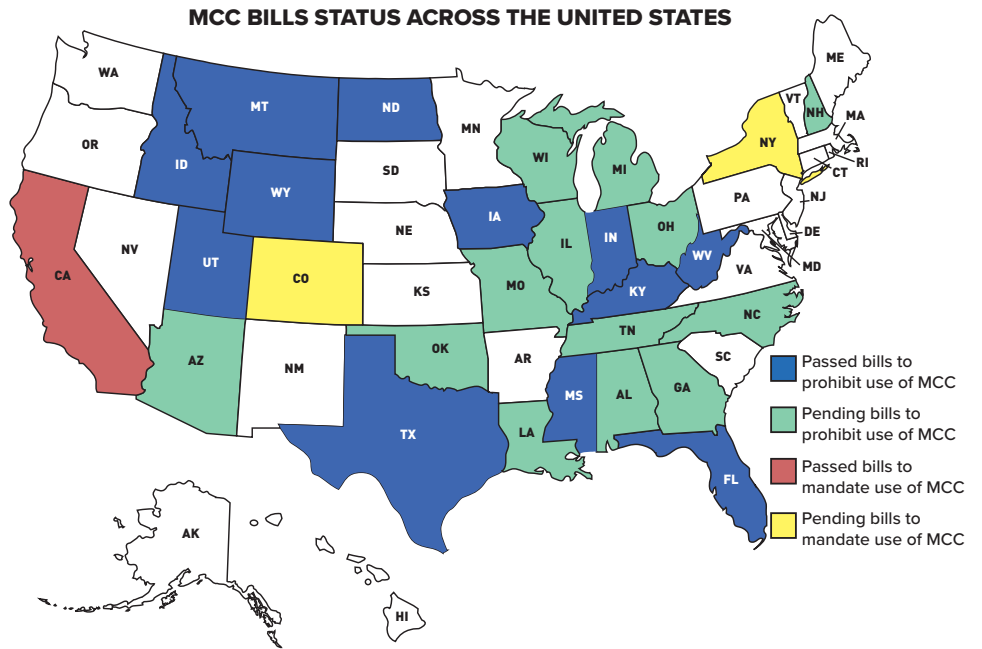
PROTECTING AGAINST A GUN REGISTRY

NSSF’s concern is that the adoption of the new MCC will subject law-abiding Americans who used their credit card at a gun store to investigation and questioning by law enforcement based on ill-founded and baseless Suspicious Activity Reports (SARs). Special agents or law enforcement could show up at your door asking intrusive questions about what you purchased using your credit card, or worse, execute search warrants issued with a lack of probable cause.

NSSF believes this new MCC is just the first step. If the MCC is implemented gun control advocates and anti-gun politicians will then demand to know what the consumer is purchasing so that transactions can be tracked and denied. Credit card processors or banks could deny transactions and file SARs because “it’s the wrong kind of firearm” or “it’s too many firearms” or “it’s too much ammunition.” Consumers’ bank accounts and credit cards could be closed and cancelled because they exercised their constitutional rights. The MCC could very well be abused to create a private registry of gun owners.

THE SECOND AMENDMENT PRIVACY ACT

In response to Second Amendment and privacy concerns resulting from the use of this new MCC, several



states (FL⁵, IA⁶, ID⁷, IN⁸, KY⁹, MS¹⁰, MT¹¹, ND¹², TX¹³, UT¹⁴, WV¹⁵, WY¹⁶) have passed the NSSF-supported Second Amendment Privacy Act to prohibit the use of this MCC to track purchases at firearm retailers. Conversely, California passed a law to mandate the use of this MCC (A.B. 1587)¹⁷. Other anti-gun states can be expected to follow California’s lead and introduce similar legislation.

Because of this, NSSF believes federal legislation is essential to put an end to the MCC and to ensure that FFLs and consumers are not unfairly targeted and lawful sales are not impeded. Federal legislation can also protect the payment processing networks from having to operate two parallel payment systems for small firearm retailers. While efforts are underway, federally, including

the NSSF-supported Protecting the Second Amendment in Financial Services Act (H.R.3021)¹⁸ and Merchant Category Code Neutrality Act (S.898)¹⁹, more attention is needed.

CONCLUSION

Utilization of the new MCC to target legal firearm-related commerce will not provide the protections and insights envisioned by anti-gun groups and politicians supporting the adoption of the code. The new MCC would, however, lead to an invasion of financial privacy and harassment of gun owners and, ultimately, to a private registry of gun owners. Andrew Sorokin is simply wrong. It is not the role of banks and credit card companies to “set new rules for the sales of guns in America,” but rather the legislatures.

¹ Andrew Ross Sorokin, “How Banks Could Control Gun Sales if Washington Won’t,” The New York Times, February 20, 2018, <https://www.nytimes.com/2018/02/19/business/banks-gun-sales.html>.

² <https://amalgamatedbank.com/our-story#:~:text=Founded%20on%20the%20tenets%20of%20the%20World%20We%20live%20in.>

³ <https://amalgamatedbank.com/news/amalgamated-bank-petition-new-code-gun-and-ammunition-stores-has-been-approved-international>

⁴ <https://www.reuters.com/business/finance/mastercard-pause-work-new-payments-code-firearms-sellers-2023-03-09/>

⁵ S.B. Res. 214, Sess. of 2023 (FL.2023), <https://www.flenate.gov/Session/Bill/2023/214>.

⁶ H.S.B Res.671, Sess. of 2024 (IA.2024), <https://www.legis.iowa.gov/legislation/BillBook?ba=HSB671&qa=90>

⁷ H.B. Res. 241, Sess. of 2023 (ID.2023), <https://legislature.idaho.gov/sessioninfo/2023/legislation/H0241>.

⁸ H.B. Res. 1084, Sess. of 2024 (IN.2024), <https://iga.in.gov/legislative/2024/bills/house/1084/details>

⁹ H.B. Res. 357, Sess. of 2024 (KY 20-24), <https://apps.legislature.ky.gov/record/24RS/hb357.html>.

¹⁰ H.B. Res. 1110, Sess. of 2023 (MS.2023), <https://billstatus.ls.state.ms.us/documents/2023/html/HB/1100-1199/HB1100SG.htm>.

¹¹ S.B. Res. 359, Sess. of 2023 (MT.2023), <https://leg.mt.gov/bills/2023/billhtml/SB0359.htm>.

¹² H.B. Res. 1487, Sess. of 2023 (ND.2023), <https://sos.nd.gov/legislative-bills-and-information/bills-and-resolutions-adopted-2023-68th-legislative-assembly/files/legislation/1487.pdf>.

¹³ H.B. Res. 2837, Sess. of 2023 (TX.2023),

https://www.wvlegislature.gov/Bill_Status/Bills_history.cfm?input=2004&year=2023&sessiontype=RS&btype=bill

¹⁴ H.B. Res. 406, Sess. of 2024 (UT.2024), <https://le.utah.gov/~2024/bills/static/HB0406.html>.

¹⁵ https://www.wvlegislature.gov/Bill_Status/Bills_history.cfm?input=2004&year=2023&sessiontype=RS&btype=bill

¹⁶ S.F. Res. 0105, Sess. of 2024 (WY 2024), <https://wyoleg.gov/Legislation/2024/SF0105>

¹⁷ A.B. Res. 1587, Sess. of 2023 (CA.2023), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202302040AB1587.

¹⁸ Protecting the Second Amendment in Financial Services Act, H.R. 3021, 118th Congress (2023) <https://www.congress.gov/bill/118th-congress/house-bill/3021?r=1&q=%7B%22search%22%3A%22>

¹⁹ Merchant Category Code Neutrality Act, S.898, 118th Congress (2023) <https://www.congress.gov/bill/118th-congress/senate-bill/898?q=%7B%22search%22%3A%22Merchant+Category+Code+Neutrality+Act%28S.898%29%22%7D&s=3&r=>

NSSF
The Firearm Industry
Trade Association