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Office

S.B. 148
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Sen. Johnson

Local Impact Statement Procedure Required: No

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Highlights

- The bill empowers the Attorney General's Consumer Protection Section to investigate and enforce the Second Amendment Financial Privacy Act.
- If violations are successfully prosecuted, civil penalties would likely be deposited into the Consumer Protection Enforcement Fund (Fund 6310) which may offset related costs for the Attorney General. The timing and magnitude of this revenue is expected to be infrequent and relatively small, given civil penalties would only be imposed on violators who fail to comply following a written notice and subsequent court injunction.
- The state and political subdivisions generally are expected to comply, and, as a result, would not often face the bill's civil penalty (up to \$10,000 per violation plus investigation and attorney's fees).

Detailed Analysis

The bill, to be known as the Second Amendment Financial Privacy Act, prohibits agents and employees of governmental entities from knowingly keeping or cause to be kept any list, record, or registry of privately owned firearms or the owners of those firearms, except for records kept during the regular course of a criminal investigation and prosecution or as otherwise required by law.

The bill also prohibits "financial institutions" such as a bank, acquirer, or payment card network, from certain actions that could be used to track or regulate the sale of lawful firearms and ammunition purchases (e.g., assigning a unique merchant category code to firearms retailers

that sell weapons and ammunition in the state). Under the bill, a payment card includes credit cards or a credit card number, debit cards, and store-value cards or gift cards.¹

Fiscal impact

The bill empowers the Attorney General's Office to investigate and enforce the Second Amendment Financial Privacy Act. Typically, such investigations are handled by the Office's Consumer Protection Section.

It is difficult to reliably estimate the number of complaints that would be reported to the Attorney General. While the number of investigations is uncertain, there undoubtedly will be some violations discovered, investigated, and then enforced. Upon finding a violation, the Attorney General must issue a written notice to the governmental entity or financial institution in violation, who must come into compliance with the law within 30 calendar days or the Attorney General will seek an injunction.

Presumably, most financial institutions and governmental entities will comply with the prohibition. For those that fail to comply, the Attorney General is required to petition a court to impose an injunction to comply, and if that fails, then a civil fine of up to \$10,000 per violation, plus investigation costs and attorney's fees. The bill will create a minimal operating increase for courts of common pleas where injunctions are subsequently sought by the Attorney General. There is no private cause of action.

The civil penalties, if awarded, would likely be deposited into the Consumer Protection Enforcement Fund (Fund 6310) and may, to some degree, offset the Attorney General's costs to enforce the bill's provisions and investigate alleged violations.

The state and political subdivisions generally are expected to comply with the bill's firearm recordkeeping restrictions, and, as a result, would presumably cure any violation before facing a civil penalty following a written notice and/or injunction.

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¹ In September 2022, the International Organization for Standardization approved a new merchant code identifying purchases at firearm retailers. This merchant code would allow credit card companies and other financial institutions to track firearm purchases across the country.