

STATE OF NEW YORK

5757

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Economic Development

AN ACT to amend the alcoholic beverage control law and the public health law, in relation to the use of biometric identity verification devices for the purchase of alcoholic beverages and tobacco products

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 65-b of the alcoholic beverage
2 control law is amended by adding a new paragraph (d) to read as follows:

3 (d) "Biometric identity verification device" means a commercial device
4 that instantly verifies the identity and age of a person by an electron-
5 ic scan of a biometric of such person, via a fingerprint, iris image,
6 facial image, or other biometric, or any combination thereof, which is
7 referenced against any record described in paragraph (b) of subdivision
8 two of this section, where (i) the authenticity of the record was previ-
9 ously verified by an electronic authentication process, (ii) the identi-
10 ty of the record holder was previously verified through a commercially
11 available knowledge based electronic authentication process and (iii)
12 the authenticated record was securely linked to biometrics contemporane-
13 ously collected from the verified record holder.

14 § 2. Subdivision 2 of section 65-b of the alcoholic beverage control
15 law is amended by adding a new paragraph (d) to read as follows:

16 (d) In lieu of or in addition to accepting written evidence of age as
17 set forth in paragraph (b) of this subdivision, a licensee, its agent or
18 employee may determine a person's age by use of a biometric identity
19 verification device. In any instance where the use of the device indi-
20 cates that the person is under the age of twenty-one years, the
21 attempted purchase of the alcoholic beverage shall be denied.

22 § 3. Subdivision 7 of section 65-b of the alcoholic beverage control
23 law, as added by chapter 519 of the laws of 1999, is amended to read as
24 follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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7. (a) In any proceeding pursuant to subdivision one of section sixty-five of this article, it shall be an affirmative defense that: (i) the licensee, its agent or employee had determined such person's age by means of a biometric identity verification device or that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed the transaction scan, and (ii) that the alcoholic beverage had been sold, delivered or given to such person in reasonable reliance upon either such biometric identity verification device or such identification and transaction scan. In evaluating the applicability of such affirmative defense, the liquor authority shall take into consideration any written policy adopted and implemented by the seller to carry out the provisions of this chapter. Use of a transaction scan or biometric identity verification device shall not excuse any licensee under this chapter, or agent or employee of such licensee, from the exercise of reasonable diligence otherwise required by this section. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any other civil or criminal proceeding, or in any other forum.

(b) A licensee or agent or employee of a licensee may electronically or mechanically record and maintain only the information obtained from using a transaction scan or biometric identity verification device necessary to effectuate the purposes of this section. Such information shall be limited to the following: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date. The liquor authority and the state commissioner of motor vehicles shall jointly promulgate any regulation necessary to govern the recording and maintenance of these records by a licensee under this chapter. The liquor authority and the commissioner of health shall jointly promulgate any regulations necessary to ensure quality control in the use of transaction scan devices or biometric identity verification devices.

§ 4. Subdivision 5 of section 1399-bb of the public health law, as amended by chapter 4 of the laws of 2018, is amended to read as follows:

5. The distribution of tobacco products or herbal cigarettes pursuant to subdivision two of this section or the distribution without charge of electronic cigarettes shall be made only to an individual who demonstrates, through the use of a biometric identity verification device pursuant to section thirteen hundred ninety-nine-cc of this article, through a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product, electronic cigarette or herbal cigarette or the distribution without charge of electronic cigarettes to an individual.

§ 5. Subdivision 1 of section 1399-cc of the public health law is amended by adding a new paragraph (f) to read as follows:

(f) "Biometric identity verification device" means a commercial device that instantly verifies the identity and age of a person by an electronic scan of a biometric of such person, via a fingerprint, iris image, facial image, or other biometric, or any combination thereof, which is referenced against any record described subdivision three of this section, where (i) the authenticity of the record was previously verified by electronic authentication process, (ii) the identity of the record holder was previously verified through a commercially available

1 knowledge based electronic authentication process and (iii) the authen-
2 ticated record was securely linked to biometrics contemporaneously
3 collected from the verified record holder.

4 § 6. Subdivision 3 of section 1399-cc of the public health law, as
5 amended by chapter 542 of the laws of 2014, is amended to read as
6 follows:

7 3. Sale of tobacco products, herbal cigarettes, liquid nicotine,
8 shisha or electronic cigarettes in such places, other than by a vending
9 machine, shall be made only to an individual who demonstrates, through
10 (a) a valid driver's license or non-driver's identification card issued
11 by the commissioner of motor vehicles, the federal government, any
12 United States territory, commonwealth or possession, the District of
13 Columbia, a state government within the United States or a provincial
14 government of the dominion of Canada, ~~[ex]~~ (b) a valid passport issued
15 by the United States government or any other country, ~~[ex]~~ (c) an iden-
16 tification card issued by the armed forces of the United States, or (d)
17 use of a biometric identity verification device, indicating that the
18 individual is at least eighteen years of age. Such identification need
19 not be required of any individual who reasonably appears to be at least
20 twenty-five years of age, provided, however, that such appearance shall
21 not constitute a defense in any proceeding alleging the sale of a tobac-
22 co product, herbal cigarettes, liquid nicotine, shisha or electronic
23 cigarettes to an individual under eighteen years of age.

24 § 7. Subdivisions 4, 5, and 6 of section 1399-cc of the public health
25 law, as amended by chapter 542 of the laws of 2014, are amended to read
26 as follows:

27 4. (a) Any person operating a place of business wherein tobacco
28 products, herbal cigarettes, liquid nicotine, shisha or electronic ciga-
29 rettes are sold or offered for sale may perform a transaction scan as a
30 precondition for such purchases, or use a biometric identity verifica-
31 tion device.

32 (b) In any instance where the information deciphered by the trans-
33 action scan fails to match the information printed on the driver's
34 license or non-driver identification card, ~~[ex]~~ if the transaction scan
35 indicates that the information is false or fraudulent, or where the use
36 of a biometric identity verification device indicates that the person is
37 under the age of eighteen years of age, the attempted transaction shall
38 be denied.

39 (c) In any proceeding pursuant to section thirteen hundred ninety-
40 nine-ee of this article, it shall be an affirmative defense that the
41 licensee, or agent or employee of a licensee under this chapter had
42 determined such person's age by means of a biometric identity verifica-
43 tion device or that such person had produced a driver's license or non-
44 driver identification card apparently issued by a governmental entity,
45 successfully completed that transaction scan, and that the tobacco prod-
46 uct, herbal cigarettes or liquid nicotine had been sold, delivered or
47 given to such person in reasonable reliance upon such identification and
48 transaction scan. In evaluating the applicability of such affirmative
49 defense the commissioner shall take into consideration any written poli-
50 cy adopted and implemented by the seller to effectuate the provisions of
51 this chapter. Use of a transaction scan or biometric identity verifica-
52 tion device shall not excuse any person operating a place of business
53 wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or
54 electronic cigarettes are sold, or the agent or employee of such person,
55 from the exercise of reasonable diligence otherwise required by this
56 chapter. Notwithstanding the above provisions, any such affirmative

1 defense shall not be applicable in any civil or criminal proceeding, or
2 in any other forum.

3 5. A licensee or agent or employee of such licensee shall only use a
4 device capable of deciphering any electronically readable format or a
5 biometric identity verification device, and shall only use the informa-
6 tion recorded and maintained through the use of such devices, for the
7 purposes contained in subdivision four of this section. No licensee or
8 agent or employee of a licensee shall resell or disseminate the informa-
9 tion recorded or obtained during such a scan or through the use of a
10 biometric identity verification device to any third person. Such prohib-
11 ited resale or dissemination includes but is not limited to any adver-
12 tising, marketing or promotional activities. Notwithstanding the
13 restrictions imposed by this subdivision, such records may be released
14 pursuant to a court ordered subpoena or pursuant to any other statute
15 that specifically authorizes the release of such information. Each
16 violation of this subdivision shall be punishable by a civil penalty of
17 not more than one thousand dollars.

18 6. A licensee or agent or employee of such a licensee may electron-
19 ically or mechanically record and maintain only the information from a
20 transaction scan or use of a biometric identity verification device
21 necessary to effectuate this section. Such information shall be limited
22 to the following: (a) name, (b) date of birth, (c) driver's license or
23 non-driver identification number, and (d) expiration date. The commis-
24 sioner and state commissioner of motor vehicles shall jointly promulgate
25 any regulations necessary to govern the recording and maintenance of
26 these records produced from a transaction scan by a licensee under this
27 chapter. The commissioner and the state liquor authority shall jointly
28 promulgate any regulation necessary to ensure quality control in the use
29 of the transaction scan devices under this chapter and article five of
30 the alcoholic beverage control law.

31 § 8. This act shall take effect on the ninetieth day after it shall
32 have become a law. Effective immediately the addition, amendment and/or
33 repeal of any rule or regulation necessary for the implementation of
34 this act on its effective date are authorized to be made and completed
35 on or before such effective date.