

# STATE OF NEW YORK

6007--A

2019-2020 Regular Sessions

## IN SENATE

May 16, 2019

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 and is stored in a  
14 centralized, highly secured, encrypted biometric database.

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

17 (d) In lieu of or in addition to accepting written evidence of age as  
18 set forth in paragraph (b) of this subdivision, a licensee, its agent or  
19 employee may determine a person's age by use of a biometric identity  
20 verification device. In any instance where the use of the device indi-

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

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1 cates that the person is under the age of twenty-one years, the  
2 attempted purchase of the alcoholic beverage shall be denied.

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

6 7. (a) In any proceeding pursuant to subdivision one of section  
7 sixty-five of this article, it shall be an affirmative defense that: (i)  
8 the licensee, its agent or employee had determined such person's age by  
9 means of a biometric identity verification device or that such person  
10 had produced a driver's license or non-driver identification card appar-  
11 ently issued by a governmental entity, successfully completed the trans-  
12 action scan, and (ii) that the alcoholic beverage had been sold, deliv-  
13 ered or given to such person in reasonable reliance upon either such  
14 biometric identity verification device or such identification and trans-  
15 action scan. In evaluating the applicability of such affirmative  
16 defense, the liquor authority shall take into consideration any written  
17 policy adopted and implemented by the seller to carry out the provisions  
18 of this chapter. Use of a transaction scan or biometric identity verifi-  
19 cation device shall not excuse any licensee under this chapter, or agent  
20 or employee of such licensee, from the exercise of reasonable diligence  
21 otherwise required by this section. Notwithstanding the above  
22 provisions, any such affirmative defense shall not be applicable in any  
23 other civil or criminal proceeding, or in any other forum.

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

37 § 4. Subdivision 5 of section 1399-bb of the public health law, as  
38 amended by chapter 100 of the laws of 2019, is amended to read as  
39 follows:

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

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

55 (f) "Biometric identity verification device" means a commercial device  
56 that instantly verifies the identity and age of a person by an electron-

1 ic scan of a biometric of such person, via a fingerprint, iris image,  
2 facial image, or other biometric, or any combination thereof, which is  
3 referenced against any record described subdivision three of this  
4 section, where (i) the authenticity of the record was previously veri-  
5 fied by electronic authentication process, (ii) the identity of the  
6 record holder was previously verified through a commercially available  
7 knowledge based electronic authentication process and (iii) the authen-  
8 ticated record was securely linked to biometrics contemporaneously  
9 collected from the verified record holder and is stored in a central-  
10 ized, highly secured, encrypted biometric database.

11 § 6. Subdivision 3 of section 1399-cc of the public health law, as  
12 amended by chapter 100 of the laws of 2019, is amended to read as  
13 follows:

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

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

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

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

46 (c) In any proceeding pursuant to section thirteen hundred ninety-  
47 nine-ee of this article, it shall be an affirmative defense that the  
48 licensee, or agent or employee of a licensee under this chapter had  
49 determined such person's age by means of a biometric identity verifica-  
50 tion device or that such person had produced a driver's license or non-  
51 driver identification card apparently issued by a governmental entity,  
52 successfully completed that transaction scan, and that the tobacco prod-  
53 uct, herbal cigarettes or liquid nicotine had been sold, delivered or  
54 given to such person in reasonable reliance upon such identification and  
55 transaction scan. In evaluating the applicability of such affirmative  
56 defense the commissioner shall take into consideration any written poli-

1 cy adopted and implemented by the seller to effectuate the provisions of  
2 this chapter. Use of a transaction scan or biometric identity verifica-  
3 tion device shall not excuse any person operating a place of business  
4 wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or  
5 electronic cigarettes are sold, or the agent or employee of such person,  
6 from the exercise of reasonable diligence otherwise required by this  
7 chapter. Notwithstanding the above provisions, any such affirmative  
8 defense shall not be applicable in any civil or criminal proceeding, or  
9 in any other forum.

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

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

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