STATE OF NEW YORK

5983

2021-2022 Regular Sessions

IN ASSEMBLY

March 4, 2021

Introduced by M. of A. WALKER -- 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:

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

(d) "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 in paragraph (b) of subdivision two of this section, where (i) the authenticity of the record was previously verified by an electronic authentication process, (ii) the identity of the record holder was previously verified through a commercially available knowledge based electronic authentication process and (iii) the authenticated record was securely linked to biometrics contemporaneously collected from the verified record holder.

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

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

§ 3. Subdivision 7 of section 65-b of the alcoholic beverage control law, as added by chapter 519 of the laws of 1999, is amended to read as 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 section 4 of part EE of chapter 56 of the laws of 2020, is amended to read as follows:

5. The distribution of tobacco products, electronic cigarettes, vapor products intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarettes pursuant to subdivision two of this section or the distribution without charge of electronic cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine, 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) a driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth, or possession, the District of Columbia, a state government within the United States, or a provincial government of the dominion of Canada, (b) a valid passport issued by the United States government or the government of any other country, or (c) an identification card issued by the armed forces of the United States, indicating that the individual is at least twenty-one 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, vapor product intended or reasonably expected to be used with or for the consumption of nicotine, or herbal cigarette or the

distribution without charge of electronic cigarettes, or vapor products intended or reasonably expected to be used with or for the consumption of nicotine 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 knowledge based electronic authentication process and (iii) the authenticated record was securely linked to biometrics contemporaneously collected from the verified record holder.

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

3. Sale of tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes in such places, other than by a vending machine, shall be made only to an individual who demonstrates, through (a) a valid driver's license or non-driver's identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, [~~or~~] (b) a valid passport issued by the United States government or any other country, [~~or~~] (c) an identification card issued by the armed forces of the United States, **or (d) use of a biometric identity verification device,** indicating that the individual is at least twenty-one 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, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes to an individual under twenty-one years of age.

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

4. (a) Any person operating a place of business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes are sold or offered for sale may perform a transaction scan as a precondition for such purchases**, or use a biometric identity verification device**.

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

(c) In any proceeding pursuant to section thirteen hundred ninety-nine-ee of this article, it shall be an affirmative defense that **the licensee, or agent or employee of a licensee under this chapter 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 that transaction scan, and that the tobacco product, herbal cigarettes or liquid nicotine had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the commissioner shall take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this chapter. Use of a transaction scan **or biometric identity verification device** shall not excuse any person operating a place of business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes are sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this chapter. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

5. A licensee or agent or employee of such licensee shall only use a device capable of deciphering any electronically readable format **or a biometric identity verification device**, and shall only use the information recorded and maintained through the use of such devices, for the purposes contained in subdivision four of this section. No licensee or agent or employee of a licensee shall resell or disseminate the information recorded **or obtained** during such a scan **or through the use of a biometric identity verification device** to any third person. Such prohibited resale or dissemination includes but is not limited to any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this subdivision, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this subdivision shall be punishable by a civil penalty of not more than one thousand dollars.

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

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