

STATE OF NEW YORK

1817

2021-2022 Regular Sessions

IN SENATE

January 16, 2021

Introduced by Sens. SKOUFIS, BENJAMIN, KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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

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

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

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

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

35 § 4. Subdivision 5 of section 1399-bb of the public health law, as
36 amended by section 4 of part EE of chapter 56 of the laws of 2020, is
37 amended to read as follows:

38 5. The distribution of tobacco products, electronic cigarettes, vapor
39 products intended or reasonably expected to be used with or for the
40 consumption of nicotine, or herbal cigarettes pursuant to subdivision
41 two of this section or the distribution without charge of electronic
42 cigarettes, or vapor products intended or reasonably expected to be used
43 with or for the consumption of nicotine, shall be made only to an indi-
44 vidual who demonstrates, through (a) a driver's license or non-driver
45 identification card issued by the commissioner of motor vehicles, the
46 federal government, any United States territory, commonwealth, or
47 possession, the District of Columbia, a state government within the
48 United States, or a provincial government of the dominion of Canada, (b)
49 a valid passport issued by the United States government or the govern-
50 ment of any other country, ~~(c)~~ (c) an identification card issued by the
51 armed forces of the United States, or (d) through the use of a biometric
52 identity verification device pursuant to section thirteen hundred nine-
53 ty-nine-cc of this article, indicating that the individual is at least
54 twenty-one years of age. Such identification need not be required of any
55 individual who reasonably appears to be at least twenty-five years of
56 age; provided, however, that such appearance shall not constitute a

1 defense in any proceeding alleging the sale of a tobacco product, elec-
2 tronic cigarette, vapor product intended or reasonably expected to be
3 used with or for the consumption of nicotine, or herbal cigarette or the
4 distribution without charge of electronic cigarettes, or vapor products
5 intended or reasonably expected to be used with or for the consumption
6 of nicotine to an individual.

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

9 (f) "Biometric identity verification device" means a commercial device
10 that instantly verifies the identity and age of a person by an electron-
11 ic scan of a biometric of such person, via a fingerprint, iris image,
12 facial image, or other biometric, or any combination thereof, which is
13 referenced against any record described subdivision three of this
14 section, where (i) the authenticity of the record was previously veri-
15 fied by electronic authentication process, (ii) the identity of the
16 record holder was previously verified through a commercially available
17 knowledge based electronic authentication process and (iii) the authen-
18 ticated record was securely linked to biometrics contemporaneously
19 collected from the verified record holder and is stored in a central-
20 ized, highly secured, encrypted biometric database.

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

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

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

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

49 (b) In any instance where the information deciphered by the trans-
50 action scan fails to match the information printed on the driver's
51 license or non-driver identification card, ~~[ex]~~ if the transaction scan
52 indicates that the information is false or fraudulent, or where the use
53 of a biometric identity verification device indicates that the person is
54 under the age of twenty-one years of age, the attempted transaction
55 shall be denied.

1 (c) In any proceeding pursuant to section thirteen hundred ninety-
2 nine-ee of this article, it shall be an affirmative defense that the
3 licensee, or agent or employee of a licensee under this chapter had
4 determined such person's age by means of a biometric identity verifica-
5 tion device or that such person had produced a driver's license or non-
6 driver identification card apparently issued by a governmental entity,
7 successfully completed that transaction scan, and that the tobacco prod-
8 uct, herbal cigarettes or liquid nicotine had been sold, delivered or
9 given to such person in reasonable reliance upon such identification and
10 transaction scan. In evaluating the applicability of such affirmative
11 defense the commissioner shall take into consideration any written poli-
12 cy adopted and implemented by the seller to effectuate the provisions of
13 this chapter. Use of a transaction scan or biometric identity verifica-
14 tion device shall not excuse any person operating a place of business
15 wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or
16 electronic cigarettes are sold, or the agent or employee of such person,
17 from the exercise of reasonable diligence otherwise required by this
18 chapter. Notwithstanding the above provisions, any such affirmative
19 defense shall not be applicable in any civil or criminal proceeding, or
20 in any other forum.

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

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

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