

# STATE OF NEW YORK

2621

2023-2024 Regular Sessions

## IN ASSEMBLY

January 26, 2023

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:

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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§ 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:

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 (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, or (d) through the use of a biometric identity verification device pursuant to section thirteen hundred ninety-nine-cc of this article, 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

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.

(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.