

BILL ANALYSIS

H.B. 3253
By: Ritter
Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Legislature voted in 2001 to amend the Texas Alcoholic Beverage Commission Code to allow the use of electronic age verification devices to verify the age and identity of persons seeking to buy alcoholic beverages. Even after this measure, in its most recent review, the Texas Sunset Advisory Commission faulted the Texas Alcoholic Beverage Commission (TABC) for not keeping pace with changes in the industry it regulates. As of December 2002, several states have already provided businesses that use electronic age verification devices with an affirmative defense if used correctly (CT, NY, OH), effectively creating a financial incentive for retailers to use these devices.

HB 3253 further encourages retailers to utilize “transaction scan devices” in order to reduce the number of illegal alcohol and tobacco sales to minors. HB 3253 also takes the burden of proof for ID verification off of the retailer and places it on the individual, as well as provides an affirmative defense to prosecution for retailers who properly use transaction scan devices for age verification.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Subchapter H, Chapter 161, Health and Safety Code, by adding Section 161.0825 to read as follows:

Sec. 161.0825. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION.

- (a) Defines “transaction scan device”.
- (b) States that a person may access electronically readable information on a driver’s license, commercial driver’s license, or identification certificate for the purpose of complying with Section 161.082.
- (c) Prohibits a person from retaining an electronic database of information accessed under this section.
- (d) Prohibits information accessed under this section from being marketed in any manner.
- (e) States that a person who violates this section commits a Class A misdemeanor.
- (f) States that it is an affirmative defense to prosecution under Section 161.082 that:
 - (1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and acted in good faith.
 - (2) if the defendant is the owner of a store in which tobacco products are sold, the offense under Section 161.082 occurs in connection with a sale by an employee or the owner, and the owner had provided the employee with:

- (A) a transaction scan device in working condition; and
- (B) adequate training in the use of the transaction scan device.

SECTION 2. Amends Section 521.126(d), Transportation Code, to read as follows:

(d-5) Provides that the prohibition provided by Subsection (b) does not apply to a person acting as authorized by Section 161.0825, Health and Safety Code.

SECTION 3. Amends Section 106.03, Alcoholic Beverage Code, by adding Subsection (d) to read as follows;

(d) States that Subsection (b) does not apply to a person who accesses electronically readable information under Section 109.61 that identifies a driver's license or identification certificate as invalid.

SECTION 4. Amends Section 109.61, Alcoholic Beverage Code, by amending Subsection (b) and adding Subsection (e), to read as follows;

(b) States that the commission may not require information accessed to be retained in an electronic database.

(e) States that it is an affirmative defense to prosecution for an offense having as an element the age of the person, that:

- (1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and relied on the results in good faith; or
- (2) if the defendant is the owner of a store in which alcoholic beverages are sold, the offense under Section 161.082, Health and Safety Code, occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

- (A) a transaction scan device in working condition; and
- (B) adequate training in the use of the transaction scan device.

SECTION 5. (a) States that the change in law made by this Act only applies to offenses made on or after the effective date of this Act.

(b) States that an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 6. Effective date.

EFFECTIVE DATE

September 1, 2005.