

By: Averitt

S.B. No. 1252

A BILL TO BE ENTITLED

AN ACT

relating to an electronic fingerprint verification system used by a seller to confirm the age of a purchaser of certain products; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.501 to read as follows:

Sec. 35.501. AGE VERIFICATION THROUGH ELECTRONIC FINGERPRINT ANALYSIS. (a) In this section, "electronic fingerprint verification system" means an electronic system capable of verifying the age of a purchaser by scanning the purchaser's fingerprint at the location of the sale.

(b) A seller who is required by law to verify the age of a purchaser of a good or service before making a sale may satisfy the age verification requirement by using an electronic fingerprint verification system as provided by this section.

(c) A seller, a seller's agent, or a third party that a seller or a seller's agent contracts with for this purpose may enroll purchasers in an electronic fingerprint verification system. To become enrolled in the system, the purchaser must provide the person enrolling the purchaser with a government-issued identification document that indicates the purchaser's age and includes an electronic image of the person's fingerprint.

(d) After a purchaser is enrolled in the electronic

1 fingerprint verification system as provided by Subsection (c), a  
2 seller may use the system to verify a purchaser's age before making  
3 a sale. The seller is not required to ask for the purchaser's  
4 government-issued identification document in the course of the  
5 sale.

6 (e) Multiple sellers may share a single electronic  
7 fingerprint verification system. A seller may rely on the  
8 enrollment services of another seller, another seller's agent, or a  
9 third party with whom another seller contracts, if both sellers use  
10 the same electronic fingerprint verification system.

11 (f) If an electronic fingerprint verification system  
12 malfunctions, the operator of the system shall:

13 (1) cause the part of the system that malfunctions to  
14 cease operation; and

15 (2) notify, not later than the third business day  
16 after the date of the malfunction, the Texas Alcoholic Beverage  
17 Commission and the comptroller about the date, time, and duration  
18 of the malfunction and cessation of operation.

19 (g) The operator of an electronic fingerprint verification  
20 system that malfunctions may return the system to full service when  
21 the malfunction is corrected.

22 (h) A person commits an offense if the person with criminal  
23 negligence enters an incorrect age for a purchaser into an  
24 electronic fingerprint verification system in the course of  
25 enrolling the purchaser in the system. An offense under this  
26 subsection is a Class A misdemeanor.

27 (i) It is an exception to the application of Subsection (h)

1 that the purchaser falsely claimed to be the age indicated in the  
2 electronic fingerprint verification system by displaying an  
3 apparently valid government-issued identification document  
4 containing a physical description consistent with the purchaser's  
5 appearance for the purpose of inducing the person to enter an  
6 incorrect age into the system.

7 SECTION 2. Subsection (a), Section 106.13, Alcoholic  
8 Beverage Code, is amended to read as follows:

9 (a) Except as provided in Subsections (b) and (c) of this  
10 section, the commission or administrator may cancel or suspend for  
11 not more than 90 days a retail license or permit or a private club  
12 registration permit if it is found, on notice and hearing, that:

13 (1) the licensee or permittee with criminal negligence  
14 sold, served, dispensed, or delivered an alcoholic beverage to a  
15 minor or with criminal negligence permitted a minor to violate  
16 Section 106.04 or 106.05 of this code on the licensed premises; or

17 (2) the licensee or permittee, or an employee of the  
18 licensee or permittee, with criminal negligence failed to properly  
19 verify the age of a purchaser in the course of enrolling the  
20 purchaser in an electronic fingerprint verification system under  
21 Section 35.501, Business & Commerce Code, and entered into the  
22 system an incorrect age of at least 21 years of age for a purchaser  
23 who was under 21 years of age.

24 SECTION 3. Subchapter D, Chapter 109, Alcoholic Beverage  
25 Code, is amended by adding Section 109.62 to read as follows:

26 Sec. 109.62. USE OF ELECTRONIC FINGERPRINT ANALYSIS FOR AGE  
27 VERIFICATION. (a) A person may use an electronic fingerprint

1 verification system as provided by Section 35.501, Business &  
2 Commerce Code, for the purpose of complying with this code or a rule  
3 of the commission, including for the purpose of preventing the  
4 person from committing an offense under this code.

5 (b) It is an affirmative defense to prosecution under this  
6 code, for an offense having as an element the age of a person, that:

7 (1) an electronic fingerprint verification system  
8 identified a person as of age and the defendant accessed the  
9 information and relied on the results in good faith; or

10 (2) if the defendant is the owner of a store in which  
11 alcoholic beverages are sold at retail, the offense occurs in  
12 connection with a sale by an employee of the owner, and the owner  
13 had provided the employee with:

14 (A) an electronic fingerprint verification  
15 system in working condition; and

16 (B) adequate training in the use of the system.

17 SECTION 4. Subchapter H, Chapter 161, Health and Safety  
18 Code, is amended by adding Section 161.0826 to read as follows:

19 Sec. 161.0826. USE OF ELECTRONIC FINGERPRINT ANALYSIS FOR  
20 AGE VERIFICATION. (a) A person may use an electronic fingerprint  
21 verification system as provided by Section 35.501, Business &  
22 Commerce Code, for the purpose of complying with Section 161.082.

23 (b) It is an affirmative defense to prosecution under  
24 Section 161.082 that:

25 (1) an electronic fingerprint verification system  
26 identified a person as of age and the defendant accessed the  
27 information and relied on the results in good faith; or

1           (2) if the defendant is the owner of a store in which  
2 cigarettes or tobacco products are sold at retail, the offense  
3 under Section 161.082 occurs in connection with a sale by an  
4 employee of the owner, and the owner had provided the employee with:

5                   (A) an electronic fingerprint verification  
6 system in working condition; and

7                   (B) adequate training in the use of the system.

8           SECTION 5. Section 521.126, Transportation Code, is amended  
9 by amending Subsection (b) and adding Subsections (b-1), (b-2), and  
10 (b-3) to read as follows:

11           (b) Except as provided by Subsections (d), (e), and (g), a  
12 person commits an offense if the person:

13                   (1) accesses or uses electronically readable  
14 information derived from a driver's license, commercial driver's  
15 license, or personal identification certificate without the  
16 consent of the license or certificate holder; or

17                   (2) compiles or maintains a database of electronically  
18 readable information derived from driver's licenses, commercial  
19 driver's licenses, or personal identification certificates without  
20 the consent of each license or certificate holder whose information  
21 is compiled or maintained.

22           (b-1) For the purposes of Subsection (b), a license or  
23 certificate holder provides consent only by signing a separate  
24 document or using an electronic signature, as defined by Section  
25 43.002, Business & Commerce Code, on an electronic record that  
26 states:

27           "I consent to allow (insert name of person) to access or

1 include information from my driver's license or personal  
2 identification certificate in a compilation or database."

3 (b-2) A license or certificate holder may only provide  
4 consent to one person on each document or electronic record  
5 described by Subsection (b-1).

6 (b-3) A person may not sell or otherwise disclose  
7 electronically readable information accessed, compiled, or  
8 described by Subsection (b) to another person or an affiliate of the  
9 person. This subsection does not apply to a financial institution  
10 described by Subsection (e).

11 SECTION 6. (a) The change in law made to Section 521.126,  
12 Transportation Code, as amended by this Act, applies only to an  
13 offense committed on or after the effective date of this Act. For  
14 the purposes of this section, an offense is committed before the  
15 effective date of this Act if any element of the offense occurs  
16 before that date.

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

20 SECTION 7. This Act takes effect September 1, 2007.