

By: Averitt S.B. No. 1252  
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COMMITTEE SUBSTITUTE FOR S.B. No. 1252 By: Carona

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

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

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

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

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

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

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

(i) It is an exception to the application of Subsection (h) that the purchaser falsely claimed to be the age indicated in the electronic fingerprint verification system by displaying an apparently valid government-issued identification document containing a physical description consistent with the purchaser's

appearance for the purpose of inducing the person to enter an incorrect age into the system.

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

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

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

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

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

Sec. 109.62. USE OF ELECTRONIC FINGERPRINT ANALYSIS FOR AGE VERIFICATION. (a) A person may use an electronic fingerprint verification system as provided by Section 35.501, Business & Commerce Code, for the purpose of complying with this code or a rule of the commission, including for the purpose of preventing the person from committing an offense under this code.

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

(1) an electronic fingerprint verification system identified a person as of age 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 at retail, the offense occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

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

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

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

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

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

(1) an electronic fingerprint verification system identified a person as of age 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 cigarettes or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

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

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

SECTION 5. Section 521.126, Transportation Code, is amended by amending Subsection (b) and adding Subsection (e-1) to read as follows:

(b) Except as provided by Subsections (d), (e), (e-1), and (g), a person commits an offense if the person:

(1) accesses or uses electronically readable information derived from a driver's license, commercial driver's license, or personal identification certificate; or

(2) compiles or maintains a database of electronically readable information derived from driver's licenses, commercial driver's licenses, or personal identification certificates.

(e-1) The prohibition provided by Subsection (b) does not

3-1 apply to a person who accesses or uses electronically readable  
3-2 information or compiles or maintains a database of electronically  
3-3 readable information to enroll purchasers in an electronic  
3-4 fingerprint verification system or to verify the age of a purchaser  
3-5 before making a sale, as authorized by Section 35.501, Business &  
3-6 Commerce Code, if the purchaser consents to the use of the  
3-7 purchaser's electronically readable information in that manner.

3-8 SECTION 6. This Act takes effect September 1, 2007.

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