

By: Goldman

H.B. No. 2399

A BILL TO BE ENTITLED

AN ACT

relating to the use of a biometric identity verification device to
comply with certain alcohol related laws.

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

SECTION 1. Section 1.04, Alcoholic Beverage Code, is
amended by adding subsection 29 to read as follows:

(29) "Biometric Identity Verification Device" means a
commercial device that instantly verifies the identity and age of a
person by an electronic scan of a biometric of such person, via a
fingerprint, iris image, facial image, or other biometric, or any
combination thereof, which is referenced against identification
issued by a governmental entity, where:

(A) the authenticity of the record was previously
verified by electronic authentication process;

(B) the identity of and information about the
record holder was previously verified through a secondary,
electronic, authentication process or processes, utilizing
commercially available data, such as a public records query or a
knowledge based authentication quiz; and

(C) the authenticated record was securely linked
to biometrics contemporaneously collected from the verified record
holder and is stored in a centralized, highly secured, encrypted,
biometric database.

SECTION 2. Section 106.03, Alcoholic Beverage Code, is

1 amended to read as follows:

2 Sec. 106.03. SALE TO MINORS. (a) A person commits an
3 offense if with criminal negligence he sells an alcoholic beverage
4 to a minor.

5 (b) A person who sells a minor an alcoholic beverage does
6 not commit an offense under this section, or any other section of
7 this Code, if the minor falsely represents himself to be 21 years
8 old or older by displaying an apparently valid proof of
9 identification that contains a physical description and photograph
10 consistent with the minor's appearance, purports to establish that
11 the minor is 21 years of age or older, and was issued by a
12 governmental agency, or if the person relied on a biometric
13 identity verification device as proof of identification. The proof
14 of identification may include a driver's license or identification
15 card issued by the Department of Public Safety, a passport, or a
16 military identification card, or a biometric identity verification
17 device.

18 (c) An offense under this section is a Class A misdemeanor.

19 (d) Subsection (b) does not apply to a person who accesses
20 electronically readable information under Section [109.61](#) or a
21 biometric identity verification device, that identifies a driver's
22 license or identification certificate, as invalid.

23 SECTION 3. Section [106.13](#), Alcoholic Beverage Code, is
24 amended to read as follows:

25 Sec. 106.13. SANCTIONS AGAINST RETAILER. (a) Except as
26 provided in Subsections (b) and (c) of this section, the commission
27 or administrator may cancel or suspend for not more than 90 days a

1 retail license or permit or a private club registration permit if it
2 is found, on notice and hearing, that the licensee or permittee with
3 criminal negligence sold, served, dispensed, or delivered an
4 alcoholic beverage to a minor or with criminal negligence permitted
5 a minor to violate Section 106.04 or 106.05 of this code on the
6 licensed premises.

7 (b) For a second offense the commission or administrator may
8 cancel the license or permit or suspend it for not more than six
9 months. For a third offense within a period of 36 consecutive months
10 the commission or administrator may cancel the permit or suspend it
11 for not more than 12 months.

12 (c) The commission or administrator may relax the
13 provisions of this section concerning suspension and cancellation
14 and assess a sanction the commission or administrator finds just
15 under the circumstances if, at a hearing, the licensee or permittee
16 establishes to the satisfaction of the commission or administrator:

17 (1) that the violation could not reasonably have been
18 prevented by the permittee or licensee by the exercise of due
19 diligence;

20 (2) that the permittee or licensee was entrapped; or

21 (3) that an agent, servant, or employee of the
22 permittee or licensee violated this code without the knowledge of
23 the permittee or licensee;

24 (4) or, if the permittee of its agent, servant, or
25 employee relied on a biometric identity verification device to
26 verify the customer's age.

27 SECTION 4. Section 109.61, Alcoholic Beverage Code, is

1 amended to read as follows:

2 Sec. 109.61. USE OF CERTAIN ELECTRONICALLY READABLE
3 INFORMATION. (a) A person may access electronically readable
4 information on a driver's license, commercial driver's license, or
5 identification certificate, or biometric identity verification
6 device for the purpose of complying with this code or a rule of the
7 commission, including for the purpose of preventing the person from
8 committing an offense under this code.

9 (b) A person may not retain information accessed under this
10 section unless the commission by rule requires the information to
11 be retained. The person may not retain the information longer than
12 the commission requires.

13 (b-1) Information retained may be printed to hard copy with
14 a time and date confirmation from the transaction scan device or
15 transferred to an electronic encrypted data storage or electronic
16 record. After printing or transferring data, the transaction scan
17 device may clear the scanned information from the device or any
18 memory in the device. The commission by rule may set further
19 requirements for the retention of information under this
20 subsection.

21 (c) Information accessed under this section may not be
22 marketed in any manner.

23 (d) A person who violates this section commits an offense.
24 An offense under this section is a Class A misdemeanor.

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

27 (1) a transaction scan device or biometric identity

1 verification device identified the license or certificate of the
2 purchaser as valid and that the person is over 21, and the defendant
3 accessed the information and relied on the results in good faith; or

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

8 (A) a transaction scan device or biometric
9 identity verification device in working condition;

10 (B) adequate training in the use of the
11 transaction scan device or biometric identity verification device;
12 and

13 (C) the defendant did not directly or indirectly
14 encourage the employee to violate the law.

15 (f) The defense offered in Subsection (e) does not apply
16 applies in actions to cancel, deny, or suspend the license or
17 permit, except as provided by rules adopted by the commission under
18 Section 5.31.

19 (g) In this section, "transaction scan device" includes an
20 electronic age verification system authorized by commission rule
21 operated in conjunction with a point of sale terminal that scans the
22 purchaser's driver's license or identification certificate upon
23 enrollment, associates the purchaser's personal identifying
24 information, as defined by Section 521.002(1)(C), Business &
25 Commerce Code, with the purchaser's license or identification
26 certificate information, and is capable of allowing a seller to
27 verify a purchaser's age solely by accessing the data and

1 information.

2 SECTION 5. This Act takes effect September 1, 2019.