

BIOMETRIC SCANNING DEVICE TO VERIFY AGE

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Senate Bill 543 (H-2) as reported from House committee

Sponsor: Sen. Curtis S. VanderWall

1st House Committee: Regulatory Reform

2nd House Committee: Ways and Means

Senate Committee: Regulatory Reform

Complete to 3-4-20

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 78 of 2020)

BRIEF SUMMARY: Senate Bill 543 would allow the diligent inquiry to determine the age of an individual before selling or furnishing alcohol to him or her to include the use of a biometric scanning device.

FISCAL IMPACT: Senate Bill 543 would not have a fiscal impact on any unit of state or local government.

THE APPARENT PROBLEM:

Uses of biometric scanning devices, which can identify a person by his or her fingerprints, face, or eye (iris scan), are expanding beyond just restricting entry into secure areas of a military installation, research facility, or business entity. Over 30 U.S. airports now allow air travelers to use biometric devices, operated by CLEAR (a biometric security system), at security checkpoints to confirm their identities instead of a government-issued picture ID. In addition, sports stadiums and other venues are allowing use biometric devices in lieu of presenting a paper or electronic ticket.

It is believed that biometrics technology can be expanded into others areas and could, by increasing efficiency, reduce certain costs to businesses and benefit consumers. For instance, Comerica Park, home of the Detroit Tigers, already allows the approximately 200,000 members of CLEAR in this state to link their CLEAR accounts to the account used to purchase baseball tickets and then use the biometric scanners at stadium in lieu of the tickets. It has been suggested that using the scanners to verify the age of fans seeking to purchase alcoholic beverages could not only save concessioners time in checking physical picture IDs, but could also decrease inadvertent sales to minors using fake IDs. To do so, however, would require amending the liquor law.

THE CONTENT OF THE BILL:

Senate Bill 543 would amend the Michigan Liquor Control Code to expand the definition of *diligent inquiry* in determining the age of a person seeking to obtain alcohol.

The code provides that a person who knowingly sells or furnishes alcoholic liquor to a minor (an individual who is under 21 years of age), or who fails to make diligent inquiry as to whether the individual is a minor, is guilty of a misdemeanor (with additional penalties in certain circumstances). A retail licensee may also be subject to administrative actions for a violation.

Currently, *diligent inquiry* means a diligent good faith effort to determine the age of an individual, which includes an examination of a relevant picture identification card (specified in statute as an official Michigan driver license or personal ID card, military ID card, or any other bona fide picture ID that establishes the identity and age of the individual).

The bill would add that, if all of the following conditions were met, the effort to determine the age of an individual could instead include the use of a *secure identity verification device*:

- The electronic scan of a biometric of the individual is referenced against any form of qualifying picture ID.
- The authenticity of the picture ID was previously verified by an electronic authentication process.
- The identity of the individual was previously verified through a commercially available knowledge-based electronic authentication process.
- The authenticated picture ID was securely linked to biometrics collected from the individual at the same time.

Secure identity verification device would mean a commercial device that instantly verifies the identity and age of the person by an electronic scan of a biometric of the person.

The bill would specify that use of a security identity verification device to determine the age of an individual does not impose a duty or obligation on the secretary of state that is not otherwise required by law.

The bill would also add a definition to the act for the term “retail licensee,” to mean a person licensed to sell alcoholic liquor at retail for consumption on or off the licensed premises.

MCL 436.1701

HOUSE COMMITTEE ACTION:

The House Committee on Regulatory Reform adopted a conflict substitute to comport with changes to section 701 made by 2019 PA 131. In addition, the H-1 substitute would define “retail licensee.” The House Committee on Ways and Means reported an H-2 substitute that, in addition to the changes made by the H-1 substitute, would also provide that use of a security identity verification device to determine the age of an individual does not impose a duty or obligation on the secretary of state that is not otherwise required by law.

ARGUMENTS:

For:

It is not uncommon for laws to need updating to incorporate or respond to advances in technology. Recently, the field of biometrics has evolved regarding applications for the use of biometric technology to confirm a person’s identity. For example, CLEAR, a biometrics system that pairs a person’s biometrics (e.g., fingerprints or iris) with an identity document such as a driver license or passport, is used at over 30 airports to validate and authenticate a member’s identity without the need to present the identity document. Not only can the use of biometrics information confirm a person’s identity quickly, it can do so accurately. For

security, the biometric information is stored in a system certified under the federal Safety Act by the Department of Homeland Security.

CLEAR has recently partnered with sports and entertainment venues, enabling their four million members to link their CLEAR accounts with other accounts (e.g., Major League Baseball, airline frequent flier programs, and credit cards) to enter over 20 major sports stadiums by using their fingerprints or an iris scan in place of presenting a paper or electronic ticket.

CLEAR is seeking the ability of concessionaires and other retail liquor licensees to use biometric devices to verify a person's age for alcohol sales. An advantage is that in often-crowded concession areas with long lines and fans eager to get back to their seats, a biometric scan is faster than presenting a physical ID. It also eliminates the chance that the ID may be lost, accurately verifies an individual's age, and presents only the information the vendor needs to complete the purchase—verification of age. Proponents say that using biometrics to verify age instead of presenting an official ID gives consumers more control over their personal information, rather than exposing their address or encoded information.

The bill would not require individuals or businesses to enroll in CLEAR or other biometric systems or require biometrics to replace the use of physical IDs or tickets. Although CLEAR is the only biometric system currently using biometrics for proving identity at airports and commercial venues, the bill would apply to emerging companies as well.

POSITIONS:

A representative of CLEAR testified in support of the bill. (1-14-20)

The following entities indicated support for the bill:

- Michigan Licensed Beverage Association (1-14-20)
- Mackinac Center for Public Policy (1-21-20)

The following entities indicated a neutral position on the bill (1-14-20):

- Michigan Liquor Control Commission
- Michigan Beer and Wine Wholesalers Association

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.