
Regulated Substances & Gaming Committee

ESSB 6179

Brief Description: Concerning the use of biometric age verification by liquor licensees.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators MacEwen, Keiser and Nguyen).

Brief Summary of Engrossed Substitute Bill

- Authorizes liquor licensees to rely upon a biometric age verification system as evidence of legal age of a person buying liquor, subject to requirements.
- Authorizes the Liquor and Cannabis Board to consider use of a biometric age verification system as a mitigating circumstance when imposing penalties.
- Requires a notice about the right to use a card of identification to purchase liquor.
- Prohibits collection of a person's biometric identifiers without their consent, requires disclosure of the categories of data collected, how data will be used, and how a person may withdraw consent and request deletion of the data.
- Prohibits use of the data for any purpose other than for age verification for the purchase of liquor; specifies that a violation of the bill is a violation of the Consumer Protection Act to be enforced solely by the Attorney General; and adds definitions to liquor statutes.

Hearing Date: 2/19/24

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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Background:

Identification Cards for Liquor Purchases.

Liquor licensees are responsible for ensuring they sell alcohol only to adults age 21 and over. A card of identification (ID card) may be accepted for the purpose of procuring liquor by any liquor licensee and as evidence of legal age of the person presenting the ID card, if the licensee complies with the conditions and procedures of the law and rules of Liquor and Cannabis Board (LCB).

An ID card must be presented by the holder upon request of any licensee, peace officer, or LCB enforcement officer for the purpose of aiding the licensee, peace officer, or enforcement officer to determine whether or not the person is of legal age to purchase liquor when the person wishes to purchase liquor from a licensed establishment.

The LCB's rules provide that acceptable forms of identification to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol must include:

- the identification holder's photo;
- the identification holder's date of birth; and
- the identification holder's signature, except on federally issued identification where a visible signature is not required.

The LCB's rules provide that acceptable forms of identification include:

- a driver's license, instruction permit, or identification card of any state, province of Canada, United States territory, or the District of Columbia, or an "identocard" issued by the Department of Licensing;
- a United States Armed Forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents;
- a passport, passport card, or NEXUS card;
- a Merchant Marine identification card issued by the United States Coast Guard; or
- an enrollment card issued by the governing authority of a federally recognized Indian tribe, if the enrollment card incorporates reasonable security features sufficient to deter counterfeiting, and is approved by the LCB's enforcement division prior to use as an acceptable form of identification.

Identification with an expiration date cannot be used to verify age after the expiration date.

A licensee who is still in doubt about the true age of the holder after being presented an ID card must require the person to sign a certification card and record an accurate description and serial number of the ID card. Certification cards must be filed alphabetically by the licensee and are subject to examination by any peace officer, agent, or employee of the LCB at all times. No licensee, agent, or employee of the licensee may be prosecuted criminally or be sued in any civil action for serving liquor to a person under legal age to purchase liquor if the person presented an

ID card and signed a certification card.

Penalties for Selling Alcohol to a Person Under Age 21.

Violations of selling or providing alcohol to a person under age 21 can be subject to administrative penalties for the licensee or for an employee required to hold an alcohol server permit, and selling, giving, or otherwise supplying a person under age 21 with liquor is punishable as a gross misdemeanor.

The LCB's administrative penalties specify that for all liquor licensees except for sports entertainment facilities, violations for sale or service of alcohol to a person under age 21 are punishable as follows:

- a first violation is a five-day suspension or \$500 monetary option;
- a second violation in a two-year window is a seven-day suspension;
- a third violation in a two-year window is a 30-day suspension; and
- a fourth violation in a two-year window is punishable by cancellation of a license.

Sports entertainment facilities are generally subject to the following penalties for violations of sale or service of alcohol to a person under age 21:

- a first violation is punishable with a monetary penalty calculated at \$0.10 per ticket sold, with a mandatory minimum fine of \$2,500;
- a second violation in a two-year window is calculated at \$0.50 per ticket sold, with a mandatory minimum fine of \$7,000;
- a third violation in a two-year window is calculated at \$1.25 per ticket sold, with a mandatory minimum fine of \$45,000; and
- a fourth and subsequent violation in a two-year window is a penalty determined by the LCB including possible license cancellation.

If documented ticket sales for an event at a sports entertainment facility are unavailable, the facility maximum occupancy will be used for the penalty assessment. Additionally, a different penalty formula applies during LCB youth access compliance checks at sports entertainment facilities, which factors in the number of points of sale at the facility and the total cumulative incidents of sales to underage persons during the compliance check.

Biometric Identifiers.

Pursuant to a 2017 Washington law, a person may not enroll a biometric identifier in a database for a commercial purpose, without providing notice, obtaining consent, or providing a mechanism to prevent subsequent use. A biometric identifier enrolled or obtained for a commercial purpose may not be used or disclosed in a manner that is materially inconsistent with the original terms under which it was provided, unless new consent is obtained.

The sale, lease, or disclosure of a biometric identifier for a commercial purpose, without the individual's consent, is prohibited unless it is:

- consistent with the enrollment, protection, and retention requirements;
- necessary in providing a product or service sought by the individual;

- necessary in a financial transaction that the individual requested or authorized;
- required or expressly authorized under a federal or state statute or court order;
- made to a third party with specified restrictions; or
- made to prepare for litigation or for the purpose of judicial process.

A person who knowingly possesses a biometric identifier of an individual that has been enrolled for a commercial purpose must take reasonable care to guard against unauthorized access to and acquisition of biometric identifiers that are in the possession or under the control of the person and adhere to retention limitations. The limitations on disclosure and retention do not apply if the biometric identifiers have been unenrolled. Violations may be enforced solely by the Attorney General under the Consumer Protection Act.

For the purposes of the 2017 law, the term "biometric identifier" is defined as data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, voiceprint, eye retinas, irises, or other unique biological patterns or characteristics that is used to identify a specific individual. However, "biometric identifier" does not include a physical or digital photograph, video or audio recording or data generated therefrom, or information collected, used, or stored for healthcare treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act. Additionally, the term "biometric system" is defined as an automated identification system capable of capturing, processing, and storing a biometric identifier, comparing the biometric identifier to one or more references, and matching the biometric identifier to a specific individual.

Summary of Bill:

A biometric age verification system may, for the purpose of procuring liquor, be relied upon by a liquor licensee as evidence of legal age of the person using the biometric age verification system, provided the licensee complies with the conditions and procedures in the bill and rules that the LCB may adopt.

A biometric age verification system must:

- use a biometric system, an electronic authorization process, and other processes to verify the validity of an ID card and the identity of the holder of the ID card;
- verify the person enrolling in the biometric system is the same as the ID card holder and securely store the data captured from the ID card in the biometric system;
- provide an indication that the ID card holder meets the age eligibility requirement upon future scans of the biometric characteristic used in the biometric system; and
- maintain records as established by the LCB.

The LCB may consider the use of a biometric age verification system as a mitigating circumstance to impose a different penalty than the standard penalties established by the LCB.

The use of a biometric age verification system is optional for a licensee and a person procuring liquor. Any licensee that relies on a biometric age verification system must post near its entrance

a notice visible to the public that an ID card may be presented as evidence of legal age of a person instead of participation in the biometric age verification system. When a purchase of liquor occurs separate from a physical point of sale location, the notice must be provided wherever consumers are directed to a biometric age verification system.

A licensee may not collect a person's biometric identifiers to be used in a biometric age verification system except with consent from the person. The consent required must be obtained before enrolling in the biometric system. Consumers must be informed of the categories of data that will be collected, including the specific ways in which it will be used, and how a consumer may withdraw consent and request deletion of the data collected.

No person may use data collected for a biometric age verification system for any purpose other than for age verification for the purchase of liquor. A transaction may include the purchase of other products and services concurrently with the purchase of liquor.

A violation by a biometric age verification system provider is considered a violation of the Consumer Protection Act to be enforced solely by the Attorney General.

The following definitions are added to liquor statutes:

- "Biometric identifier" is defined as data that is generated from the measurement or technological processing of an individual's biological characteristics and that identifies a consumer including, but not limited to, retina or iris scans, scans of face geometry, fingerprint or palmprint mapping, and voiceprints that are used to identify a specific individual. "Biometric identifier" does not include a physical or digital photograph, video or audio recording or data generated therefrom, or information collected, used, or stored for healthcare treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act.
- "Biometric system" is defined as an automated identification system used to capture, process, and store a biometric identifier, compare the biometric identifier to one or more references, and match the biometric identifier to a specific individual.
- "Card of identification" is defined as identification issued by any United States state, United States territory, or the District of Columbia, tribal or federal government, as well as any physical identification document issued by a foreign government that contains the holder's photos, date of birth, and signature except on United States federally issued identification where a visible signature is not required.
- "Consent" is defined as a clear affirmative act that signifies a consumer's freely given, specific, informed, voluntary, and unambiguous agreement, which may include written consent provided by electronic means. "Consent" may not be obtained by: (1) A consumer's acceptance of a general or broad terms of use agreement or a similar document that contains descriptions of personal data processing along with other unrelated information; or (2) a consumer's agreement obtained through the use of deceptive designs.
- "Deceptive designs" is defined as a user interface designed or manipulated with the effect of subverting or impairing user autonomy, decision making, or choice.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 16, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.