

SUBJECT: Defense for alcohol and tobacco retailers that use scanning devices

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Krusee, Phillips, Callegari, Casteel, Deshotel, Hill, West
0 nays
2 absent — Flores, Hamric

SENATE VOTE: On final passage, April 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: In 2001, the 77th Legislature enacted HB 3016 by Haggerty to allow retailers of alcoholic beverages to use scanning devices to access electronically readable information from the magnetic strip and/or barcode on a driver's license to ensure that an individual is legally purchasing alcohol with a valid license.

Health and Safety Code, sec. 161.082 makes selling, giving, or causing to sell or give tobacco products to a minor a class C misdemeanor, punishable by a maximum fine of \$500. Alcoholic Beverage Code, sec. 106.03 makes negligently selling alcohol to a minor a class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000. Transportation Code, sec. 521.126 makes unauthorized access to electronic information on a driver's license or other state-issued identification a class A misdemeanor.

DIGEST: SB 1465 would amend the Health and Safety Code, Transportation Code, and Alcoholic Beverage Code to provide that if a retailer was charged with selling alcohol or tobacco to a minor, that retailer would have an affirmative defense to prosecution if it properly used a transaction scan device and relied in good faith on the results. An affirmative defense also would be available to a retail store owner whose employee was accused of selling alcohol or tobacco to a minor if the owner had provided the employee with a properly working transaction scan device and adequate training in the use of that device. The bill would define a “transaction scan

device” as a device capable of deciphering electronically readable information on a driver’s license, commercial driver’s license, or identification certificate.

The bill explicitly would allow retailers of tobacco and alcoholic beverages to access and scan electronically readable information on driver’s licenses for purposes of preventing the illegal purchase of tobacco or alcoholic beverages by minors.

The bill also would prohibit anyone from compiling personal information obtained from the driver’s license. Any person who retained the information in an electronic database or used it for any marketing purposes would commit a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The bill would take effect September 1, 2005, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

SB 1465 would increase retailers’ use of scanning devices and the state’s ability to reduce underage drinking and tobacco use. It would give an incentive to retailers to use license scanning devices by providing them with an affirmative defense to prosecution for unknowingly selling alcohol or tobacco products to minors. Although retailers already have the authority to use a scanning device to verify the age and identity of person seeking to purchase alcohol or tobacco, very few currently choose to do so. By removing the burden of proof from the retailer and placing it on the purchaser, the bill would encourage more retailers to use available technology and, in turn, discourage illegal purchases, thereby reducing the number of tobacco and alcohol sales to minors.

Although many states have authorized the use of devices to scan a license to calculate and display whether the cardholder is old enough to purchase tobacco or alcohol products, some states have enacted affirmative defense legislation to protect the merchant who correctly utilizes a device. These states include Connecticut, New York, Ohio, Oregon, and West Virginia. States that have provided retailers with an affirmative defense have demonstrated more success in preventing the illegal sale of tobacco and alcohol to minors than exists in Texas.

Electronically reading information from the magnetic strip of a driver’s license would not give retail stores any additional information, because

under current law the magnetic strip can include nothing but what is printed on the license and a physical description of the licensee. Because the retailer would not be allowed to compile or maintain this information, the bill would pose no threat to public safety or personal security. The public service in helping alcohol and tobacco sellers to identify fraudulent identification and limit illegal sales to minors would outweigh any potential privacy concerns.

OPPONENTS
SAY:

Despite the prohibitions in the bill, there would be no effective way to keep merchants from compiling databases of the information generated by license scanners. An increased use of scanner devices would result in more prohibited uses of the information on driver's licenses and identification cards.

OTHER
OPPONENTS
SAY:

Many of the states that provide an affirmative defense still require the exercise of reasonable diligence by merchants. SB 1465 should specify that the proper use of a scanner would not excuse a retailer from exercising reasonable diligence in determining whether the customer appeared old enough to purchase the goods and whether the description and picture on the license matched the purchaser.

NOTES:

HB 3253 by Ritter, the House companion bill, passed the House on May 11 and has been referred to the Senate Transportation and Homeland Security Committee.