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Bill Analysis
Legislative Service Commission

S.B. 200

123rd General Assembly
(As Passed by the Senate)

**Sens. Armbruster, Drake, Spada, Wachtmann, Oelslager, Brady, Latell,
Gardner, DiDonato, Watts, Hagan, Mumper**

BILL SUMMARY

- Permits sellers of tobacco products or liquor permit holders to raise an affirmative defense against a charge of selling tobacco products or liquor, beer, or low-alcohol beverages to an underage person, that a transaction scan of the person's license or identification card was performed, the scan indicated its validity, and the scan was reasonably relied upon.
- Restricts the use of information obtained through a transaction scan.
- Requires the Registrar of Motor Vehicles to adopt rules regarding the use of a transaction scan device and the recording and maintenance of information obtained from a scan.
- Grants a tax credit against corporation franchise or personal income tax liability for the purchase or lease of a transaction scan device, of up to \$300 per device.

CONTENT AND OPERATION

Overview

Under continuing law (sec. 2927.02--not in the bill), it is illegal to give, sell, or otherwise distribute cigarettes or other tobacco products to any person under age 18. Similarly, it is illegal to engage in transactions involving alcohol and underage persons, including selling beer or intoxicating liquor to any person under age 21 (secs. 4301.22 and 4301.69), or selling or furnishing any low-alcohol beverage to a person under age 18 (sec. 4301.631).

Generally, the bill permits a seller of cigarettes or other tobacco products, or an agent or employee of that seller, to raise an affirmative defense against a

charge of an illegal distribution of cigarettes or other tobacco products if a transaction scan of the purchaser's driver's or commercial driver's license or identification card was performed, the scan indicated its validity, and the scan was reasonably relied upon. Likewise, a liquor permit holder or an agent or employee of the holder is allowed to raise an affirmative defense against a charge of a violation of the Liquor Control Law or Liquor Control Commission rules in which the age of a purchaser of beer, intoxicating liquor, or low-alcohol beverages is an element of the alleged violation, that the permit holder, agent, or employee performed a transaction scan of the purchaser's license or identification card, the scan indicated its validity, and the scan was reasonably relied upon.¹

The bill also grants a tax credit against corporation franchise or personal income tax liability for the purchase or lease of a transaction scan device.

Use of transaction scan devices to check the age of a card holder

Definitions

Under the bill's provision pertaining to cigarettes or other tobacco products, a "transaction scan" is the process by which a seller checks, by means of a "transaction scan device," the validity of a driver's or commercial driver's license or of an identification card (issued by the Registrar of Motor Vehicles or a deputy registrar) that is presented as a condition for purchasing, receiving a gift of, or otherwise being distributed cigarettes or other tobacco products (sec. 2927.021(A)(4)).²

The bill's provision pertaining to alcohol defines a "transaction scan" in a similar manner, but a permit holder checks the validity of a license or identification card that is presented to do either of the following (sec. 4301.61(A)(4)):³

- (1) Purchase any beer, intoxicating liquor, or low-alcohol beverage;

¹ Hereinafter, references in this analysis to a seller or permit holder include agents and employees of a seller or permit holder, unless otherwise indicated.

² Under the bill, a "seller" means a seller of cigarettes or other tobacco products and includes any person whose gift of or other distribution of cigarettes or other tobacco products is subject to the law regarding the illegal distribution of those substances (sec. 2927.02).

³ A "permit holder" is a holder of a permit issued by the Division of Liquor Control under the Liquor Permit Law (R.C. Chapter 4303.).

(2) Gain admission to a premises that has been issued a liquor permit authorizing the sale of beer or intoxicating liquor for consumption on the premises where sold and where admission is restricted to persons age 21 or older.

Both the cigarette or other tobacco product and alcohol provisions of the bill define a "transaction scan device" as any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card (secs. 2927.021(A)(5) and 4301.61(A)(5)).

Who may perform transaction scans

The bill authorizes a seller or permit holder to perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a "card holder" (1) as a condition for selling, giving away, or otherwise distributing cigarettes or other tobacco products to the card holder or (2) for the purposes of purchasing any beer, intoxicating liquor, or low-alcohol beverage, or gaining admission to a liquor permit premises where admission is restricted to persons age 21 or older (secs. 2927.021(B)(1) and 4301.61(A)(4) and (B)(1)). A "card holder" is defined as any person who presents a driver's or commercial driver's license or identification card to a seller or permit holder as a condition mentioned in (1) above or for a purpose mentioned in (2) above (secs. 2927.021(A)(1) and 4301.61(A)(1)).

If the information deciphered by a transaction scan fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, the seller or permit holder is not permitted to sell, give away, or otherwise distribute any cigarettes or other tobacco products, or sell any beer, intoxicating liquor, or low-alcohol beverage, to the card holder (secs. 2927.021(B)(1) and 4301.61(B)(1)).

The bill does not preclude a seller or permit holder from using a scanning device to check the validity of a document other than a driver's or commercial driver's license or an identification card, if the document includes a bar code or magnetic strip that may be scanned by the scanning device, as a condition for selling, giving away, or otherwise distributing cigarettes or other tobacco products to the person presenting the document, or as a condition of a sale of beer, intoxicating liquor, or a low-alcohol beverage or of granting admission to a liquor permit premises (secs. 2927.021(B)(2) and 4301.61(B)(2)).

Affirmative defenses

A seller or permit holder may not be found guilty of a violation of the Cigarette or Other Tobacco Product Illegal Distribution Law, or a violation of the Liquor Control Law or Liquor Control Commission rules, in which the age of the purchaser or other recipient of cigarettes or other tobacco products, or of any beer, intoxicating liquor, or low-alcohol beverage, is an element of the alleged violation, if the seller or permit holder raises and proves as an affirmative defense that all of the following occurred (secs. 2927.022(A), 4301.611(A), and 4301.639(C)):

(1) A card holder attempting to make a purchase of, receive a gift of, or otherwise be distributed cigarettes or other tobacco products, or a purchase of any beer, intoxicating liquor, or low-alcohol beverage, presented a driver's or commercial driver's license or an identification card.

(2) A transaction scan of the license or card indicated that it was valid.

(3) The cigarettes or other tobacco products were sold, given away, or otherwise distributed, or the beer, intoxicating liquor, or low-alcohol beverage was sold, to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

In determining whether a seller or permit holder has *proven this affirmative defense*, the trier of fact in an action for an alleged violation of the Cigarette or Other Tobacco Product Illegal Distribution Law, or the Liquor Control Commission or trier of fact in a court of record in relation to an alleged violation of the Liquor Control Law or the Commission's rules, must consider any *written policy* that the seller or permit holder (not an agent or employee) has adopted and implemented and that is intended to prevent violations of the Cigarette or Other Tobacco Product Illegal Distribution Law or the laws regarding restrictions on the sale of beer or liquor (sec. 4301.22), prohibitions on underage persons purchasing or consuming intoxicating liquor, beer, or low-alcohol beverages or using misrepresentations to obtain those substances (secs. 4301.63 to 4301.634), furnishing fake licenses or identification cards (sec. 4301.636), and other offenses involving underage persons (secs. 4301.69 and 4301.691). Additionally, the trier of fact (or Commission, where appropriate) must consider that *reasonable reliance on the identification presented* and the completed transaction scan *may require* a seller or permit holder to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse them from exercising reasonable diligence to determine (1) whether a person to whom the seller sells, gives away, or otherwise distributes cigarettes or other tobacco products is age 18 or older or the person to whom the permit holder sells any beer or intoxicating liquor is age 21 or older or sells any low-alcohol beverage is age 18 or older and (2) whether

the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder. (Secs. 2927.022(B) and 4301.611(B).)

The affirmative defenses created by the bill do *not apply* in any civil action or in any criminal action other than one involving an alleged violation of the Cigarette or Other Tobacco Product Illegal Distribution Law, or one involving an alleged violation of the Liquor Control Law or rules of the Liquor Control Commission, in which the age of a purchaser or other recipient is an element of the alleged violation (secs. 2927.022(C) and 4301.611(C)(2)). The affirmative defense to an alleged violation of the Liquor Control Law or the Commission's rules is *in addition to* the defense provided by the existing Liquor Control Law where a permit holder was presented a valid license or identification card, a bona fide effort was made to ascertain the buyer's age, and there was reason to believe that the buyer was of legal age (secs. 4301.611(C)(1) and 4301.639(A)).

The bill provides that in any criminal action or in any hearing before the Liquor Control Commission in which the affirmative defenses are raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card must be permitted to submit certified copies of the records of that issuance in lieu of the testimony of Bureau of Motor Vehicles personnel (secs. 2927.022(D) and 4301.611(D)).

Prohibitions; rule-making by the Registrar of Motor Vehicles

No sale prohibitions. The bill prohibits a seller or permit holder from selling, giving away, or otherwise distributing any cigarettes or other tobacco products, or selling any beer, intoxicating liquor, or other low-alcohol beverages, to a card holder after a transaction scan indicates false or fraudulent information was presented by the card holder (secs. 2927.021(B)(1)(b) and 4301.61(B)(1)(b)).

Recording-maintenance of information prohibitions. The bill prohibits a seller or permit holder from electronically or mechanically recording or maintaining any information derived from a transaction scan, except the name and birth date of the person listed on the driver's or commercial driver's license or identification card presented by a card holder (secs. 2927.021(D)(1) and 4301.61(D)(1)), and the expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder (secs. 2927.021(D)(1) and 4301.61(D)(1)).

Relatedly, the Registrar of Motor Vehicles, with the approval of the Liquor Control Commission, must adopt and may amend or rescind under the Administrative Procedure Act rules that govern the recording and maintenance of

this transaction scan information and ensure quality control in the use of transaction scan devices under the bill (secs. 2927.021(C) and 4301.61(C)).

Use of information and devices prohibitions. No seller or permit holder may use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under the bill, except for the purpose of using it in raising and proving the affirmative defenses discussed under "**Affirmative defenses**," above. Further, no seller or permit holder may use a transaction scan device for a purpose other than to check the validity of a license or identification card presented by a card holder (1) as a condition of selling, giving away, or otherwise distributing cigarettes or other tobacco products to the card holder or (2) to purchase any beer, intoxicating liquor, or low-alcohol beverage or gain admission to a premises where such substances are sold and where admission is restricted to persons age 21 or older. (Secs. 2927.021(D)(2) and (3) and 4301.61(D)(2).)

Sales of information prohibitions. The bill generally prohibits a seller or permit holder from selling or otherwise disseminating the information derived from a transaction scan to any third party, including selling or otherwise disseminating that information for any marketing, advertising, or promotional activities. But a seller or permit holder may release that information pursuant to a court order or as specifically authorized under the bill's affirmative defense provisions or under another provision of the Revised Code (secs. 2927.021(D)(4) and 4301.61(D)(4)).

Penalties. A seller or permit holder who violates any of these prohibitions is guilty of engaging in illegal tobacco-related transaction scan activity or illegal liquor-related transaction scan activity, respectively, and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The clerk of the court must pay each collected civil penalty to the county treasurer for deposit into the county treasury. (Secs. 2927.021(E) and 4301.61(E).)

Tax credit

The bill establishes a nonrefundable tax credit against corporation franchise or personal income tax liability for a taxpayer that, for taxable year 2000 or thereafter, purchases or leases a transaction scan device that the taxpayer locates and uses in Ohio to perform transaction scans. The amount of the credit equals the amount paid by the taxpayer during the taxable year to purchase or lease a transaction scan device, not to exceed \$300 for each device. The credit may be claimed only for the taxable year in which a transaction scan device is purchased or first leased. (Secs. 5733.50(B) and 5747.38(B).)

A taxpayer must claim the tax credit in the order required by existing corporation franchise tax or personal income tax law (secs. 5733.50(B), 5733.98(A)(8), 5747.38(B), and 5747.98(A)(17)).

The Tax Commissioner may require a taxpayer to furnish any information necessary to support a claim for the tax credit, and no credit will be allowed unless that information is provided (secs. 5733.50(C) and 5747.38(C)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-02-99	pp. 1133-1134
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