



ADVISORY #2024-2

Subject: Use of New York State Mobile ID [MiD] for the sale of alcoholic beverages or as a precondition for admission to a licensed premises.

The purpose of this advisory is to provide guidance regarding the use of New York State Mobile ID [MiD] for the sale of alcoholic beverages or as a precondition for admission to an establishment licensed for the on-premises sale of alcohol pursuant to New York State Alcoholic Beverage Control Law § 65-b, including stating minimum data sharing requirements.

New York State Mobile ID [MiD]

New York State Mobile ID [MiD] is a form of digital identification that was launched by the New York State Department of Motor Vehicles [DMV] on June 11, 2024, the content and authenticity of which is verifiable. Anyone who has a valid New York State issued driver license, learner permit, or non-driver identification card can download the MiD app and create a digital MiD. All identity data, such as age, date of birth, and expiration date, on an individual's physical identification will be available on their digital ID in the MiD app. Any of those identity data points can be shared with a verifier whenever a New York MiD holder agrees to share their personal information, through their MiD application, to the verifier's verification tool.

The use and acceptance of MiD is voluntary for both the user and the verifier, which includes SLA license holders. MiD is intended for use as a companion to a physical identification and given that not all businesses or other stakeholders will accept MiD, New Yorkers should continue to always carry their physical identification. Additionally, licensees may not require MiD and must still accept permissible physical identification if presented, even where the licensee has opted to implement the use of MiD at their establishment.

New York State MiD verification tools, utilized to confirm identity, are developed and distributed by third party software vendors. All valid MiD verification tools must have a NYS DMV "key" embedded within them. This "key" is the only option that offers real-time verified and authenticated NYS DMV identity data. Any of these third-party applications or software programs that do not have this NYS DMV embedded key will not be able to access NYS MiD data. Consequently, licensees must exercise a high degree of diligence when selecting a MiD verification tool to ensure they utilize proper transaction scan verification technology.

When an interaction requiring identification takes place between a MiD holder and a licensee, a QR code is generated so that the MiD holder and the licensee can share information. The licensee can then request certain identity data, and the MiD holder may accept the request or deny the request. The licensee request lists the specific identity data sought for verification, such as age, date of birth, and expiration date.

If the MiD holder accepts the licensee's request, then the desired identity data will be shared. If the MiD holder denies the request, then the licensee cannot rely upon the MiD to complete the sale.

New York State MiD is a permissible form of identification for use by licensees in the sale of alcohol and as a precondition for admission to a licensed establishment.

Pursuant to ABC Law § 65-b(2)(b), “no licensee, or agent, or employee of such licensee shall accept as written evidence of age by any such person for the purchase of any alcoholic beverage, any documentation other than: a valid driver license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or a valid passport issued by the United States government or of any other country, or an identification card issued by the armed forces of the United States.”

NYS Vehicle and Traffic Law (VTL) § 498(1)(a) defines a driver license as “[a] license issued by the Department of Motor Vehicles pursuant to Article 19 of the Vehicle and Traffic Law”, or by a similar regulatory agency of another state. Similarly, pursuant to NYS Vehicle and Traffic Law (VTL) § 490, an “identification card” refers to a non-driver identification card issued pursuant to the provisions of Article 19 of the Vehicle and Traffic Law.

Article 19 § 504 (1)(a) of the NYS VTL discusses the form of the license or card and indicates that it shall be “in such form as the [DMV] commissioner shall determine.” Each form of identification legally authorized for acceptance has two things in common: it is issued by a recognized governmental entity, and it is verifiable. MiD was launched by New York State DMV as a verifiable virtual version of the State issued identification. As such, it may be accepted as written evidence of age for the purchase or sale of any alcoholic beverage and as a precondition for admission to a licensed premises. Licensees must continue to exercise a high degree of diligence in the examination of the MiD presented, as they would with any other identification.

ABCL §65-b(7) The Affirmative Defense

Section 65-b(7) of the Alcoholic Beverage Control Law provides an affirmative defense for licensees who sell alcohol to individuals who present identification apparently issued by a governmental entity. There are several elements that must be met for the licensee to avail themselves of this defense, which remain available to the licensee in transactions involving MiD:

- A driver license or non-driver identification is presented, apparently issued by a governmental entity, to include a New York State MiD.
- The sale, delivery, or provision of the alcoholic beverage is made in reasonable reliance upon such identification. Reasonable reliance requires the exercise of reasonable diligence, such as a visual inspection of the identification, identity data, and the person presenting it. If the person depicted on the identification does not appear to be the person presenting it, the licensee cannot reasonably rely upon it. Likewise, if the identification is expired or otherwise appears altered or false, it cannot be reasonably relied upon.
- The identification must successfully complete a transaction scan, and the alcoholic beverage must be sold, delivered, or given to such person in reasonable reliance upon such identification and transaction scan.

Specifically for MiD the required identity data must be requested by the licensee utilizing verified software embedded with the DMV “key” allowing for real time verification of the identification. The identity data must be released by the MiD holder, and the identity data must be inspected for completeness and authenticity by the licensee. Licensees must exercise a high degree of diligence when visually examining any identification,

including MiD, to ensure that the person presenting identification, in whatever form it takes, is in fact the person before them. In the event the MiD does not sufficiently confirm the identity of the presenter, the licensee may request to view their physical identification, or must decline the sale.

Recording and maintaining records for the affirmative defense

For purposes of the affirmative defense, and only that limited circumstance, a licensee is permitted to retain a record of specified information collected when performing a transaction scan or when making a mechanical record of identity data.

Specifically, pursuant to ABC Law § 65-b(7)(b), “a licensee or agent or employee of a licensee may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate the purposes of this section.” The information that may be recorded and maintained is limited to:

- Name
- Date of birth
- Driver license or non-driver identification number
- Expiration date

Licensees or agents or employees of such licensee may not utilize the information recorded and stored for any purpose other than the affirmative defense listed in ABCL § 65-b. No licensee or agent or employee of a licensee may sell or disseminate the information recorded during such a scan to any third person. Such prohibited sale or dissemination includes, but is not limited to, any advertising, marketing, or promotional activities.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on October 30, 2024 before Chair Lily Fan, Commissioner Edgar De Leon, and Commissioner John Maya. The above written advisory was approved by Chair Fan on behalf of the Members of the Authority on October 30, 2024.

Dated: 10/31/24


Donald Roper
Secretary to the Authority