

State of Arkansas      *As Engrossed: H3/14/13 S4/2/13 S4/11/13*  
89th General Assembly  
Regular Session, 2013

# A Bill

HOUSE BILL 1398

By: Representative Leding

## For An Act To Be Entitled

AN ACT TO PROHIBIT THE GIVING, BARTERING, OR SELLING  
OF E-CIGARETTES AND OTHER NICOTINE PRODUCTS TO  
MINORS; TO PROHIBIT MINORS FROM POSSESSING OR  
PURCHASING E-CIGARETTES; AND FOR OTHER PURPOSES.

### Subtitle

TO PROHIBIT THE TRANSFER OF E-CIGARETTES  
AND OTHER NICOTINE PRODUCTS TO MINORS;  
AND TO PROHIBIT MINORS FROM POSSESSING OR  
BUYING E-CIGARETTES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

5-27-233. Providing minors with e-cigarettes and e-cigarette products prohibited -- Purchase, use, or possession prohibited -- Self-service displays and vending machines prohibited.

(a) As used in this section:

(1) "E-cigarette" means an electronic oral device that provides a vapor of nicotine or another substance that, when used or inhaled simulates smoking, including without limitation a device that:

(A) Is composed of a heating element, battery, electronic circuit, or a combination of heating element, battery, or electronic circuit;

(B) Works in combination with a liquid nicotine delivery device composed either, in whole or in part, of pure nicotine and manufactured for use with e-cigarettes; and

(C) Is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor;



and

(2) "Self-service display or vending machine" means a display or vending machine:

(A) That contains e-cigarettes or e-cigarette products;

(B) That is located in an area where customers are permitted; and

(C) In which e-cigarettes or e-cigarette products are readily accessible to a customer without the assistance of a salesperson.

(b)(1) It is unlawful for a person or business to give, barter, or sell to a minor:

(A) An e-cigarette; or

(B) An e-cigarette product.

(2) A business owner who pleads guilty or nolo contendere to or is found guilty of violating subdivision (b)(1) of this section is guilty of a violation and is subject to a fine not to exceed one hundred dollars (\$100) per violation.

(3) An employee of a business who violates subdivision (b)(1) of this section is subject to a fine not to exceed one hundred dollars (\$100) per violation.

(c)(1) It is unlawful for a minor to:

(A) Use or possess or to purchase, or attempt to purchase:

(i) An E-cigarette; or

(ii) An E-cigarette product; or

(B) For the purpose of obtaining or attempting to obtain e-cigarettes or e-cigarette products, falsely represent himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the minor's age.

(2) An e-cigarette or e-cigarette product found in the possession of a minor may be confiscated and destroyed by a law enforcement officer.

(d) It is not an offense under subsection (c) of this section if the minor was acting as an agent of a business within the scope of employment.

(e) A person or business that sells e-cigarettes or e-cigarette products has the right to deny the sale of e-cigarettes or e-cigarette products to any person.

(f) It is unlawful for a business to fail to display in a conspicuous

place or on each vending machine a sign indicating that the sale of e-cigarettes or e-cigarette products to or purchase or possession of e-cigarettes or e-cigarette products by a minor is prohibited by law.

(g) It is unlawful for a manufacturer to distribute a free sample of an e-cigarette or e-cigarette product or a coupon that entitles the holder of the coupon to a free sample of an e-cigarette or e-cigarette product:

(1) In or on a public street or sidewalk within five hundred feet (500') of a playground, public school, or other facility when the playground, public school, or other facility is being used primarily by minors for recreational, educational, or other purposes; or

(2) To a minor.

(h)(1) It is unlawful for a person or business to sell or distribute e-cigarettes or e-cigarette products through a self-service display or vending machine that is accessible to minors.

(i) A court shall consider the following factors when reviewing a possible violation of this section:

(1) The business has adopted and enforced a written policy against selling e-cigarettes or e-cigarette products to minors;

(2) The business has informed its employees of the applicable laws regarding the sale of e-cigarettes or e-cigarette products to minors;

(3) The business has required employees to verify the age of an e-cigarette or e-cigarette products customer by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) That the appearance of the purchaser of the e-cigarettes or e-cigarette products was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

/s/Leding

**APPROVED: 04/22/2013**