

1 State of Arkansas As Engrossed: H3/14/13 S4/2/13 S4/11/13

2 89th General Assembly

# A Bill

3 Regular Session, 2013

HOUSE BILL 1398

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5 By: Representative Leding

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## For An Act To Be Entitled

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

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## Subtitle

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

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

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23 5-27-233. Providing minors with e-cigarettes and e-cigarette products  
24 prohibited -- Purchase, use, or possession prohibited -- Self-service  
25 displays and vending machines prohibited.

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(a) As used in this section:

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

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

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

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



1 and

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

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

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

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

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

11 (A) An e-cigarette; or

12 (B) An e-cigarette product.

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

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

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

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

22 (i) An E-cigarette; or

23 (ii) An E-cigarette product; or

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

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

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

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

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

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

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

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

11 (2) To a minor.

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

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

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

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

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

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

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

29  
30 /s/Leding

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33 **APPROVED: 04/22/2013**