

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1398

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

14 TO PROHIBIT THE TRANSFER OF E-CIGARETTES
15 AND OTHER NICOTINE PRODUCTS TO MINORS;
16 AND TO PROHIBIT MINORS FROM POSSESSING OR
17 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 SECTION 1. Arkansas Code § 5-27-227(a)-(d), concerning providing
24 minors with tobacco products, is amended to read as follows:

25 (a)(1) It is unlawful for any person to give, barter, or sell to a
26 minor:

27 (A) Tobacco in any form; ~~or~~

28 (B) A cigarette paper; or

29 (C) An e-cigarette product.

30 (2) As used in this section, "e-cigarette" means an electronic
31 oral device that provides a vapor of nicotine or another substance that, when
32 used or inhaled simulates smoking, including without limitation a device
33 that:

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

36 (B) Works in combination with a liquid nicotine delivery



1 device composed either in whole or in part of pure nicotine and propylene
 2 glycol and manufactured for use with e-cigarettes; and

3 (B) Is manufactured, distributed, marketed, or sold as an
 4 e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

5 ~~(2)~~(3) A person who pleads guilty or nolo contendere to or is
 6 found guilty of violating subdivision (a)(1) of this section is guilty of a
 7 violation and is subject to a fine not to exceed one hundred dollars (\$100)
 8 per violation.

9 ~~(3)~~(4) An employee of an Arkansas Retail Cigarette and Tobacco
 10 permit holder who violates subdivision (a)(1) of this section is subject to a
 11 fine not to exceed one hundred dollars (\$100) per violation.

12 (b)(1) It is unlawful for a minor to:

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

14 (i) Tobacco in any form; ~~or~~

15 (ii) Cigarette papers; or

16 (iii) An e-cigarette product; or

17 (B) For the purpose of obtaining or attempting to obtain
 18 tobacco in any form, ~~or~~ cigarette papers, or an e-cigarette product, falsely
 19 represent himself or herself to be eighteen (18) years of age or older by
 20 displaying proof of age that is false, fraudulent, or not actually proof of
 21 the minor's age.

22 (2) Any cigarettes, tobacco products, ~~or~~ cigarette papers, or an
 23 e-cigarette product, found in the possession of a minor may be confiscated
 24 and destroyed by a law enforcement officer.

25 (c)(1) It is not an offense under subsection (b) of this section if:

26 (A) The minor was acting at the direction of an authorized
 27 agent of the Arkansas Tobacco Control Board to enforce or ensure compliance
 28 with laws relating to the prohibition of the sale of tobacco in any form, ~~or~~
 29 cigarette papers, or an e-cigarette product to minors;

30 (B) The minor was acting at the direction of an authorized
 31 agent of the Office of Alcohol and Drug Abuse Prevention to compile
 32 statistical data relating to the sale of tobacco in any form, ~~or~~ cigarette
 33 papers, or an e-cigarette product to minors;

34 (C) The minor was acting at the request of an Arkansas
 35 Retail Cigarette and Tobacco permit holder to assist the permit holder by
 36 performing a check on the permit holder's own retail business to see if the

1 permit holder's employees would sell tobacco, ~~or~~ cigarette papers, or an e-
 2 cigarette product to the minor; or

3 (D) The minor was acting as an agent of a retail permit
 4 holder within the scope of employment.

5 (2) A minor performing activities under subdivision (c)(1) of
 6 this section shall:

7 (A) Display the appearance of a minor;

8 (B) Have the written consent of the minor's parent or
 9 guardian to perform the activity on file with the agency utilizing the minor;
 10 and

11 (C)(i) Present a true and correct identification if asked.

12 (ii) Any failure on the part of a minor to provide
 13 true and correct identification upon request is a defense to any action under
 14 this section or a civil action under § 26-57-256.

15 (d) Any person who sells tobacco in any form, ~~or~~ a cigarette paper, or
 16 an e-cigarette product has the right to deny the sale of any tobacco in any
 17 form, ~~or~~ a cigarette paper, or an e-cigarette product to any person.

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 19 SECTION 2. Arkansas Code § 5-27-227(k), concerning court actions
 20 involving minors with tobacco products, is amended to read as follows:

21 (k) Notwithstanding the provisions of subsection (i) of this section,
 22 the court shall consider the following factors when reviewing a possible
 23 violation:

24 (1) The business has adopted and enforced a written policy
 25 against selling cigarettes or tobacco products to minors;

26 (2) The business has informed its employees of the applicable
 27 laws regarding the sale of cigarettes and tobacco products to minors;

28 (3) The business has required employees to verify the age of a
 29 cigarette or tobacco product customer by way of photographic identification;

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

32 (5) That the appearance of the purchaser of the tobacco in any
 33 form, ~~or~~ cigarette papers, or an e-cigarette product was such that an
 34 ordinary prudent person would believe him or her to be of legal age to make
 35 the purchase.

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