

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

As Engrossed: H3/14/13 S4/2/13

A Bill

HOUSE BILL 1398

5 By: Representative Leding
6

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)-(g), 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 manufactured
2 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~~ Arkansas Tobacco Control to
28 ~~enforce or ensure compliance~~ with laws relating to the prohibition of the
29 sale of tobacco in any form, ~~or~~ cigarette papers, or an e-cigarette product
30 to minors;

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

35 (C) The minor was acting at the request of an Arkansas
36 Retail Cigarette and Tobacco permit holder to assist the permit holder by

1 performing a check on the permit holder's own retail business to see if the
2 permit holder's employees would sell tobacco, ~~or~~ cigarette papers, or an e-
3 cigarette product to the minor; or

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

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

8 (A) Display the appearance of a minor;

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

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

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

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

19 (e) *It is unlawful for any person who has been issued a permit or a*
20 *license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et*
21 *seq., to fail to display in a conspicuous place or on each vending machine a*
22 *sign indicating that the sale of tobacco products to or purchase or*
23 *possession of tobacco products by a minor is prohibited by law.*

24 (f) *It is unlawful for any manufacturer whose tobacco or e-cigarette*
25 *product is distributed in this state and any person who has been issued a*
26 *permit or license under the Arkansas Tobacco Products Tax Act of 1977, § 26-*
27 *57-201 et seq., to distribute a free sample of any tobacco or e-cigarette*
28 *product or coupon that entitles the holder of the coupon to any free sample*
29 *of any tobacco or e-cigarette product:*

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

34 (2) *To any minor.*

35 (g)(1)(A) *It is unlawful for any person that has been issued a permit*
36 *or license under the Arkansas Tobacco Products Act of 1977, § 26-57-201 et*

1 *seq., to sell or distribute a cigarette or e-cigarette product through a*
2 *self-service display.*

3 *(B) Subdivision (g)(1)(A) of this section does not apply*
4 *to a:*

5 *(i) Vending machine that complies with subdivision*
6 *(h)(1)(A) of this section; or*

7 *(ii) Retail tobacco store.*

8 *(2) As used in subdivision (g)(1) of this section:*

9 *(A) "Retail tobacco store" means a retail store utilized*
10 *primarily for the sale of tobacco products and accessories and in which the*
11 *sale of other products is merely incidental; and*

12 *(B) "Self-service display" means a display:*

13 *(i) That contains a cigarette product;*

14 *(ii) That is located in an area where customers are*
15 *permitted; and*

16 *(iii) In which the cigarette product is readily*
17 *accessible to a customer without the assistance of a salesperson.*

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19 *SECTION 2. Arkansas Code § 5-27-227(i), concerning providing minors*
20 *with tobacco products and cigarette papers, is amended to read as follows:*

21 *(i) Any retail permit holder, ~~or~~ license holder, or an owner of a*
22 *nonpermitted retail location who violates any provision in this section or*
23 *who employs a person who violates a provision of this section is deemed*
24 *guilty of a violation and subject to the jurisdiction and penalties under §*
25 *26-57-256.*

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27 *SECTION 3. Arkansas Code § 5-27-227(k), concerning court actions*
28 *involving minors with tobacco products, is amended to read as follows:*

29 *(k) Notwithstanding the provisions of subsection (i) of this section,*
30 *the court shall consider the following factors when reviewing a possible*
31 *violation:*

32 *(1) The business has adopted and enforced a written policy*
33 *against selling cigarettes, ~~or~~ tobacco products, or e-cigarette products to*
34 *minors;*

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

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

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

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

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/s/Leding