

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 1602

By: Johnson (Rob)

4
5
6 AS INTRODUCED

7 An Act relating to tobacco products; amending 37 O.S.
8 2011, Section 600.2, which relates to definitions;
9 amending 37 O.S. 2011, Section 600.3, which relates
10 to furnishing of tobacco products; amending 37 O.S.
11 2011, Section 600.4, as renumbered by Section 28,
12 Chapter 404, O.S.L. 2013 (10A O.S. Supp. 2013,
13 Section 2-8-224), which relates to purchase and
14 receipt of tobacco products; amending 37 O.S. 2011,
15 Section 600.5, which relates to signs in retail
16 establishments; amending 37 O.S. 2011, Section 600.6,
17 which relates to notice to retail employees; amending
18 37 O.S. 2011, Section 600.7, which relates to
19 restrictions on vending machine sales; amending 37
20 O.S. 2011, Section 600.8, which relates to
21 distribution of tobacco product samples; amending 37
22 O.S. 2011, Section 600.10, which relates to
23 regulation by political subdivisions; amending 37
24 O.S. 2011, Section 600.10A, which relates to display
or sale of tobacco products; amending 37 O.S. 2011,
Section 600.11, which relates to enforcement of
certain acts; amending 37 O.S. 2011, Section 600.13,
which relates to prohibition of certain product
transfers; adding tobacco-derived products and vapor
products to certain laws relating to tobacco
products; permitting suspension of sales tax license
for certain violations; and providing an effective
date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 37 O.S. 2011, Section 600.2, is
2 amended to read as follows:

3 Section 600.2. As used in the Prevention of Youth Access to
4 Tobacco Act:

5 1. "Person" means any individual, firm, fiduciary, partnership,
6 corporation, trust, or association, however formed;

7 2. "Proof of age" means a driver license, license for
8 identification only, or other generally accepted means of
9 identification that describes the individual as eighteen (18) years
10 of age or older and contains a photograph or other likeness of the
11 individual and appears on its face to be valid;

12 3. "Sample" means a tobacco product, tobacco-derived product,
13 or vapor product distributed to members of the public at no cost for
14 the purpose of promoting the product;

15 4. "Sampling" means the distribution of samples to members of
16 the public in a public place;

17 5. "Tobacco-derived product" means any noncombustible product
18 derived from tobacco that contains nicotine and is intended for
19 human consumption, whether chewed, absorbed, dissolved, or ingested
20 by any other means, but does not include a vapor product or any
21 product regulated by the United States Food and Drug Administration
22 under Chapter V of the federal Food, Drug, and Cosmetic Act;

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1 6. "Tobacco product" means any product that contains tobacco
2 and is intended for human consumption, but does not include vapor
3 products;

4 ~~6.~~ 7. "Transaction scan" means the process by which a seller
5 checks, by means of a transaction scan device, the validity of a
6 driver license or other government-issued photo identification; ~~and~~

7 ~~7.~~ 8. "Transaction scan device" means any commercial device or
8 combination of devices used at a point of sale or entry that is
9 capable of deciphering in an electronically readable format the
10 information encoded on the magnetic strip or bar code of a driver
11 license or other government-issued photo identification; and

12 9. "Vapor product" means a noncombustible, tobacco-derived
13 product containing nicotine, such as an electronic cigarette,
14 electronic cigar, electronic cigarillos and electronic pipe, that
15 employs a mechanical heating element, battery, or electronic
16 circuit, regardless of shape or size, that can be used to heat a
17 liquid nicotine solution contained in a vapor cartridge as well as
18 any vapor cartridge containing liquid nicotine solution that can be
19 used with or in a vapor product. "Vapor product" does not include
20 any product regulated by the United States Food and Drug
21 Administration under Chapter V of the Food, Drug, and Cosmetic Act,
22 P.L. 75-717.

23 SECTION 2. AMENDATORY 37 O.S. 2011, Section 600.3, is
24 amended to read as follows:

1 Section 600.3. A. It is unlawful for any person to sell, give
2 or furnish in any manner any tobacco product, tobacco-derived
3 product or vapor product to another person who is under eighteen
4 (18) years of age, or to purchase in any manner a tobacco product,
5 tobacco-derived product or vapor product on behalf of any such
6 person. It shall not be unlawful for an employee under eighteen
7 (18) years of age to handle tobacco products, tobacco-derived
8 products or vapor products when required in the performance of the
9 employee's duties.

10 B. A person engaged in the sale or distribution of tobacco
11 products, tobacco-derived products or vapor products shall demand
12 proof of age from a prospective purchaser or recipient if an
13 ordinary person would conclude on the basis of appearance that the
14 prospective purchaser may be under eighteen (18) years of age.

15 If an individual engaged in the sale or distribution of tobacco
16 products, tobacco-derived products or vapor products has demanded
17 proof of age from a prospective purchaser or recipient who is not
18 under eighteen (18) years of age, the failure to subsequently
19 require proof of age shall not constitute a violation of ~~subsection~~
20 ~~B of this section~~ this subsection.

21 C. 1. When a person violates subsection A or B of this
22 section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission
23 shall impose an administrative fine of:
24

- 1 a. not more than One Hundred Dollars (\$100.00) for the
2 first offense,
- 3 b. not more than Two Hundred Dollars (\$200.00) for the
4 second offense within a two-year period following the
5 first offense,
- 6 c. not more than Three Hundred Dollars (\$300.00) for a
7 third offense within a two-year period following the
8 first offense. In addition to any other penalty, the
9 store's license to sell tobacco products or the
10 store's sales tax permit in cases of offenses relating
11 to tobacco-derived products or vapor products may be
12 suspended for a period not exceeding thirty (30) days,
13 or
- 14 d. not more than Three Hundred Dollars (\$300.00) for a
15 fourth or subsequent offense within a two-year period
16 following the first offense. In addition to any other
17 penalty, the store's license to sell tobacco products
18 or the store's sales tax permit in the cases of
19 offenses relating to tobacco-derived products or vapor
20 products may be suspended for a period not exceeding
21 sixty (60) days.

22 2. When it has been determined that a penalty shall include a
23 license or sales tax permit suspension, the ABLE Commission shall
24 notify the Oklahoma Tax Commission, and the Tax Commission shall

1 suspend the store's license to sell tobacco products or the store's
2 sales tax permit in cases of offenses relating to tobacco-derived
3 products or vapor products at the location where the offense
4 occurred for the period of time prescribed by the ABLE Commission.

5 3. Proof that the defendant demanded, was shown, and reasonably
6 relied upon proof of age shall be a defense to any action brought
7 pursuant to this section. A person cited for violating this section
8 shall be deemed to have reasonably relied upon proof of age, and
9 such person shall not be found guilty of ~~such~~ the violation if such
10 person proves that:

11 a. the individual who purchased or received the tobacco
12 product, tobacco-derived product or vapor product
13 presented a driver license or other government-issued
14 photo identification purporting to establish that such
15 individual was eighteen (18) years of age or older,
16 and

17 b. the person cited for the violation confirmed the
18 validity of the driver license or other government-
19 issued photo identification presented by such
20 individual by performing a transaction scan by means
21 of a transaction scan device.

22 Provided, that this defense shall not relieve from liability any
23 person cited for a violation of this section if ~~such~~ the person
24 failed to exercise reasonable diligence to determine whether the

1 physical description and picture appearing on the driver license or
2 other government-issued photo identification was that of the
3 individual who presented it. The availability of the defense
4 described in this subsection does not affect the availability of any
5 other defense under any other provision of law.

6 D. If the sale is made by an employee of the owner of a store
7 at which tobacco products, tobacco-derived products or vapor
8 products are sold at retail, the employee shall be guilty of the
9 violation and shall be subject to the fine. Each violation by any
10 employee of an owner of a store licensed to sell tobacco products,
11 tobacco-derived products or vapor products shall be deemed a
12 violation against the owner for purposes of a license suspension
13 pursuant to subsection C of this section. Each violation by an
14 employee of a store engaged in the sale of tobacco-derived products
15 or vapor products shall be deemed a violation against the owner for
16 purposes of a sales tax permit suspension pursuant to the provisions
17 of subsection C of this section. An owner of a store licensed to
18 sell tobacco products, tobacco-derived products or vapor products
19 shall not be deemed in violation of the provisions of the Prevention
20 of Youth Access to Tobacco Act for any acts constituting a violation
21 by any person, when the violation occurs prior to actual employment
22 of the person by the store owner or the violation occurs at a
23 location other than the owner's retail store. For purposes of
24 determining the liability of a person controlling franchises or

1 business operations in multiple locations, for any violations of
2 subsection A or B of this section, each individual franchise or
3 business location shall be deemed a separate entity.

4 E. On or before December 15, 1997, the ABLE Commission shall
5 adopt rules establishing a method of notification of storeowners
6 when one of their employees has been determined to be in violation
7 of this section by the ABLE Commission or convicted of a violation
8 by a municipality.

9 F. 1. Upon failure of the employee to pay the administrative
10 fine within ninety (90) days of the day of the assessment of such
11 fine, the ABLE Commission shall notify the Department of Public
12 Safety and the Department shall suspend or not issue a driver
13 license to the employee until proof of payment has been furnished to
14 the Department of Public Safety.

15 2. Upon failure of a storeowner to pay the administrative fine
16 within ninety (90) days of the assessment of the fine, the ABLE
17 Commission shall notify the Tax Commission and the Tax Commission
18 shall suspend the store's license to sell tobacco products or the
19 store's sales tax permit in cases of offenses relating to tobacco-
20 derived products or vapor products until proof of payment has been
21 furnished to the Oklahoma Tax Commission.

22 G. Cities and towns may enact and municipal police officers may
23 enforce ordinances prohibiting and penalizing conduct under
24 provisions of this section, but the provisions of municipal

1 ordinances shall be the same as provided for in this section, and
2 the penalty provisions under such ordinances shall not be more
3 stringent than those of this section.

4 H. County sheriffs may enforce the provisions of the Prevention
5 of Youth Access to Tobacco Act.

6 SECTION 3. AMENDATORY 37 O.S. 2011, Section 600.4, as
7 renumbered by Section 28, Chapter 404, O.S.L. 2013 (10A O.S. Supp.
8 2013, Section 2-8-224), is amended to read as follows:

9 Section 2-8-224. A. It is unlawful for a person who is under
10 eighteen (18) years of age to purchase, receive, or have in their
11 possession a tobacco product, tobacco-derived product or vapor
12 product, or to present or offer to any person any purported proof of
13 age which is false or fraudulent, for the purpose of purchasing or
14 receiving any tobacco product, tobacco-derived product or vapor
15 product. It shall not be unlawful for an employee under eighteen
16 (18) years of age to handle tobacco products, tobacco-derived
17 products or vapor products when required in the performance of the
18 employee's duties.

19 B. When a person violates subsection A of this section, the
20 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
21 an administrative fine of:

22 1. Not to exceed One Hundred Dollars (\$100.00) for a first
23 offense; and

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1 2. Not to exceed Two Hundred Dollars (\$200.00) for a second or
2 subsequent offense within a one-year period following the first
3 offense.

4 Upon failure of the individual to pay the administrative fine
5 within ninety (90) days of the day of the fine, the ABLE Commission
6 shall notify the Department of Public Safety and the Department
7 shall suspend or not issue a driver license to the individual until
8 proof of payment has been furnished to the Department of Public
9 Safety.

10 C. The ABLE Commission shall establish rules to provide for
11 notification to a parent or guardian of any minor cited for a
12 violation of this section.

13 D. Cities and towns may enact and municipal police officers may
14 enforce ordinances prohibiting and penalizing conduct under
15 provisions of this section, but the provisions of such ordinances
16 shall be the same as provided for in this section, and the
17 enforcement provisions under such ordinances shall not be more
18 stringent than those of this section.

19 SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.5, is
20 amended to read as follows:

21 Section 600.5. A. Every person who sells or displays tobacco
22 products, tobacco-derived products or vapor products at retail shall
23 post conspicuously and keep so posted at the place of business a
24 sign, as specified by the Alcoholic Beverage Laws Enforcement (ABLE)

1 Commission, stating the following: "IT'S THE LAW. WE DO NOT SELL
2 TOBACCO PRODUCTS, TOBACCO-DERIVED PRODUCTS OR VAPOR PRODUCTS TO
3 PERSONS UNDER 18 YEARS OF AGE". The sign shall also provide the
4 toll-free number operated by the Alcoholic Beverage Laws Enforcement
5 (ABLE) Commission for the purpose of reporting violations of the
6 Prevention of Youth Access to Tobacco Act.

7 B. When a person violates subsection A of this section, the
8 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
9 an administrative fine of not more than Fifty Dollars (\$50.00) for
10 each day a violation occurs. Each day a violation is continuing
11 shall constitute a separate offense. The notice required by
12 subsection A of this section shall be the only notice required to be
13 posted or maintained in any store that sells tobacco products,
14 tobacco-derived products or vapor products at retail.

15 SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.6, is
16 amended to read as follows:

17 Section 600.6. A. Every person engaged in the business of
18 selling tobacco products, tobacco-derived products or vapor products
19 at retail shall notify each individual employed by that person as a
20 retail sales clerk that state law:

21 1. Prohibits the sale or distribution of tobacco products,
22 tobacco-derived products or vapor products to any person under
23 eighteen (18) years of age and the purchase or receipt of tobacco
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1 products, tobacco-derived products or vapor products by any person
2 under eighteen (18) years of age; and

3 2. Requires that proof of age be demanded from a prospective
4 purchaser or recipient if an ordinary person would conclude on the
5 basis of appearance that the prospective purchaser or recipient may
6 be under eighteen (18) years of age.

7 B. This notice shall be provided before the individual
8 commences work as a retail sales clerk. The individual shall
9 signify that he or she has received the notice required by this
10 section by signing a form stating as follows:

11 "I understand that state law prohibits the sale or distribution of
12 tobacco products, tobacco-derived products or vapor products to
13 persons under eighteen (18) years of age and out-of-package sales,
14 and requires proof of age of purchaser or recipient if an ordinary
15 person would conclude on the basis of appearance that the
16 prospective purchaser or recipient may be under eighteen (18) years
17 of age. I promise, as a condition of my employment, to obey the
18 law. I understand that violations by me may be punishable by fines,
19 suspension or nonissuance of my driver license. In addition, I
20 understand that violations by me may subject the storeowner to fines
21 or license suspension."

22 SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.7, is
23 amended to read as follows:

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1 Section 600.7. It shall be unlawful for any person to sell
2 tobacco products, tobacco-derived products or vapor products through
3 a vending machine unless the vending machine is located:

4 1. In areas of factories, businesses, offices or other places
5 that are not open to the public; and

6 2. In places that are open to the public, but to which persons
7 under eighteen (18) years of age are not admitted.

8 SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.8, is
9 amended to read as follows:

10 Section 600.8. A. It shall be unlawful for any person or
11 retailer to distribute tobacco products, tobacco-derived products,
12 vapor products or product samples to any person under eighteen (18)
13 years of age.

14 B. No person shall distribute tobacco products, tobacco-derived
15 products, vapor products or product samples in or on any public
16 street, sidewalk, or park that is within three hundred (300) feet of
17 any playground, school, or other facility when the facility is being
18 used primarily by persons under eighteen (18) years of age.

19 C. When a person violates any provision of subsection A or B of
20 this section, the Alcoholic Beverage Laws Enforcement (ABLE)
21 Commission shall impose an administrative fine of:

22 1. Not more than One Hundred Dollars (\$100.00) for the first
23 offense;

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1 2. Not more than Two Hundred Dollars (\$200.00) for the second
2 offense; and

3 3. Not more than Three Hundred Dollars (\$300.00) for a third or
4 subsequent offense.

5 D. Upon failure of any person to pay an administrative fine
6 within ninety (90) days of the assessment of the fine, the ABLE
7 Commission shall notify the Department of Public Safety, and the
8 Department shall suspend or not issue a driver license to the person
9 until proof of payment has been furnished to the Department of
10 Public Safety.

11 E. Cities and towns may enact and municipal police officers may
12 enforce ordinances prohibiting and penalizing conduct under
13 provisions of this section, but the provisions of municipal
14 ordinances shall be the same as provided for in this section, and
15 the penalty provisions under such ordinances shall not be more
16 stringent than those of this section.

17 SECTION 8. AMENDATORY 37 O.S. 2011, Section 600.10, is
18 amended to read as follows:

19 Section 600.10. No agency or other political subdivision of the
20 state, including, but not limited to, municipalities, counties or
21 any agency thereof, may adopt any order, ordinance, rule or
22 regulation concerning the sale, purchase, distribution, advertising,
23 sampling, promotion, display, possession, licensing, or taxation of
24 tobacco products, tobacco-derived products or vapor products, except

1 as provided in Section 1511 of Title 68 of the Oklahoma Statutes,
2 Section 1-1521 et seq. of Title 63 of the Oklahoma Statutes and
3 Section 1247 of Title 21 of the Oklahoma Statutes. Provided,
4 however, nothing in this section shall preclude or preempt any
5 agency or political subdivision from exercising its lawful authority
6 to regulate zoning or land use or to enforce a fire code regulation
7 regulating smoking or tobacco products, tobacco-derived products or
8 vapor products to the extent that such regulation is substantially
9 similar to nationally recognized standard fire codes.

10 SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.10A, is
11 amended to read as follows:

12 Section 600.10A. A. It is unlawful for any person or retail
13 store to display or offer for sale tobacco products, tobacco-derived
14 products or vapor products in any manner that allows public access
15 to the tobacco product, tobacco-derived product or vapor product
16 without assistance from the person displaying the tobacco product,
17 tobacco-derived products or vapor products or an employee or the
18 owner of the store. The provisions of this subsection shall not
19 apply to retail stores which do not admit into the store persons
20 under eighteen (18) years of age.

21 B. When a person violates subsection A of this section, the
22 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
23 an administrative fine of not more than Two Hundred Dollars
24 (\$200.00) for each offense.

1 C. Cities and towns may enact and municipal police officers may
2 enforce ordinances prohibiting and penalizing conduct under
3 provisions of this section, but the provisions of municipal
4 ordinances shall be the same as provided for in this section and the
5 penalty provisions under such ordinances shall not be more stringent
6 than those of this section.

7 SECTION 10. AMENDATORY 37 O.S. 2011, Section 600.11, is
8 amended to read as follows:

9 Section 600.11. A. The Alcoholic Beverage Laws Enforcement
10 (ABLE) Commission is authorized and empowered to enforce the
11 provisions of Sections 600.1 et seq. of this title. The ABLE
12 Commission shall enforce those provisions in a manner that can
13 reasonably be expected to reduce the extent to which tobacco
14 products, tobacco-derived products or vapor products are sold or
15 distributed to persons under eighteen (18) years of age.

16 B. The ABLE Commission may consider mitigating or aggravating
17 circumstances involved with the violation of the Prevention of Youth
18 Access to Tobacco Act when assessing penalties.

19 C. Any conviction for a violation of a municipal ordinance
20 authorized by the Prevention of Youth Access to Tobacco Act and any
21 compliance checks by a municipal police officer or a county sheriff
22 pursuant to subsection E of this section shall be reported in
23 writing to the ABLE Commission within thirty (30) days of such
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1 conviction or compliance check. Such reports shall be compiled in
2 the manner prescribed by the ABLE Commission.

3 D. For the purpose of determining second or subsequent
4 violations, both the offenses penalized by the ABLE Commission as
5 administrative fines and the offenses penalized by municipalities
6 and towns and reported to the ABLE Commission, shall be considered
7 together in such determination.

8 E. Persons under eighteen (18) years of age may be enlisted by
9 the ABLE Commission, a municipality or town, or a county to assist
10 in compliance checks and enforcement; provided, such persons may be
11 used to test compliance only if written parental consent has been
12 provided and the testing is conducted under the direct supervision
13 of the ABLE Commission or conducted by another law enforcement
14 agency if such agency has given written notice to the ABLE
15 Commission in the manner prescribed by the ABLE Commission.
16 Municipalities which have enacted municipal ordinances in accordance
17 with the Prevention of Youth Access to Tobacco Act may conduct,
18 pursuant to rules of the ABLE Commission, compliance checks without
19 prior notification to the ABLE Commission and shall be exempt from
20 the written notice requirement in this subsection. This subsection
21 shall not apply to the use of persons under eighteen (18) years of
22 age to test compliance if the compliance test is being conducted by
23 or on behalf of a retailer of cigarettes, as defined in Section 301
24 of Title 68 of the Oklahoma Statutes, at any location the retailer

1 of cigarettes is authorized to sell cigarettes. Any other use of
2 persons under eighteen (18) years of age to test compliance shall be
3 unlawful and punishable by the ABLE Commission by assessment of an
4 administrative fine of One Hundred Dollars (\$100.00).

5 F. At the beginning of each month, the Oklahoma Tax Commission,
6 pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall
7 provide to the ABLE Commission and to each municipality which has
8 ordinances concerning the Prevention of Youth Access to Tobacco Act,
9 the location, name, and address of each licensee licensed to sell
10 tobacco products, tobacco-derived products or vapor products at
11 retail or otherwise furnish tobacco products, tobacco-derived
12 products or vapor products. Upon violation of an employee at a
13 location, the ABLE Commission shall notify the storeowner for that
14 location of the latest and all previous violations when one of their
15 employees has been determined to be in violation of the Prevention
16 of Youth Access to Tobacco Act by the ABLE Commission or convicted
17 of a violation by a municipality. If the ABLE Commission fails to
18 notify the licensee or sales tax permit holder of a violation by an
19 employee, that violation shall not apply against the licensee or
20 sales tax permit holder for the purpose of determining a license or
21 sales tax permit suspension pursuant to Section 600.3 of this title.
22 For purposes of this subsection, notification shall be deemed given
23 if the ABLE Commission mails, by mail with delivery confirmation,
24 the notification to the address which is on file with the Oklahoma

1 Tax Commission of the licensee or sales tax permit holder of the
2 location at which the violation occurred and the ABLE Commission
3 receives delivery confirmation from the U.S. Postal Service.

4 G. Upon request of a storeowner or a municipality which has
5 enacted ordinances in accordance with the Prevention of Youth Access
6 to Tobacco Act, the ABLE Commission is hereby authorized to provide
7 information on any Prevention of Youth Access to Tobacco Act offense
8 of any applicant for employment or employee of the storeowner.

9 H. The ABLE Commission shall prepare for submission annually to
10 the Secretary of the United States Department of Health and Human
11 Services, the report required by Section 1926 of the federal Public
12 Health Service Act (42 U.S.C. 300-26), and otherwise shall be
13 responsible for ensuring the state's compliance with that provision
14 of federal law and any implementing of regulations promulgated by
15 the United States Department of Health and Human Services.

16 SECTION 11. AMENDATORY 37 O.S. 2011, Section 600.13, is
17 amended to read as follows:

18 Section 600.13. A. It is unlawful for any person to sell, give
19 or furnish in any manner to another person who is under eighteen
20 (18) years of age any material or device used in the smoking,
21 chewing, or other method of consumption of tobacco, tobacco-derived
22 products or vapor products, including cigarette papers, pipes,
23 holders of smoking materials of all types, and other items designed
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1 primarily for the smoking or ingestion of tobacco products, tobacco-
2 derived products or vapor products.

3 B. When a person violates subsection A of this section, the
4 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
5 an administrative fine of not more than One Hundred Dollars
6 (\$100.00) for each offense.

7 SECTION 12. This act shall become effective November 1, 2014.

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