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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1569

Session of  
1999

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INTRODUCED BY FARGO, LaGROTTA, ARGALL, BARLEY, BEBKO-JONES,  
BUNT, CHADWICK, CIVERA, COY, DeLUCA, DEMPSEY, DERMODY,  
GODSHALL, KENNEY, LEH, McCALL, NICKOL, ROBERTS, ROONEY, ROSS,  
STABACK, TANGRETTI, TRELLO, ARMSTRONG, J. TAYLOR, SAINATO,  
PISTELLA, McILHINNEY, SEYFERT, DALLY, L. I. COHEN AND  
COLAFELLA, JUNE 3, 1999

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AS AMENDED ON THIRD CONSIDERATION, IN SENATE, DECEMBER 7, 1999

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AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled,  
2 as amended, "An act relating to the finances of the State  
3 government; providing for the settlement, assessment,  
4 collection, and lien of taxes, bonus, and all other accounts  
5 due the Commonwealth, the collection and recovery of fees and  
6 other money or property due or belonging to the Commonwealth,  
7 or any agency thereof, including escheated property and the  
8 proceeds of its sale, the custody and disbursement or other  
9 disposition of funds and securities belonging to or in the  
10 possession of the Commonwealth, and the settlement of claims  
11 against the Commonwealth, the resettlement of accounts and  
12 appeals to the courts, refunds of moneys erroneously paid to  
13 the Commonwealth, auditing the accounts of the Commonwealth  
14 and all agencies thereof, of all public officers collecting  
15 moneys payable to the Commonwealth, or any agency thereof,  
16 and all receipts of appropriations from the Commonwealth,  
17 authorizing the Commonwealth to issue tax anticipation notes  
18 to defray current expenses, implementing the provisions of  
19 section 7(a) of Article VIII of the Constitution of  
20 Pennsylvania authorizing and restricting the incurring of  
21 certain debt and imposing penalties; affecting every  
22 department, board, commission, and officer of the State  
23 government, every political subdivision of the State, and  
24 certain officers of such subdivisions, every person,  
25 association, and corporation required to pay, assess, or  
26 collect taxes, or to make returns or reports under the laws  
27 imposing taxes for State purposes, or to pay license fees or  
28 other moneys to the Commonwealth, or any agency thereof,

1 every State depository and every debtor or creditor of the  
2 Commonwealth," adding provisions relating to labeling and  
3 packaging; and further providing for penalties for certain  
4 sales or transfers of cigarettes AND FOR REPORT OF PROPERTY  
5 SUBJECT TO CUSTODY AND CONTROL OF THE COMMONWEALTH. <—

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. The act of April 9, 1929 (P.L.343, No.176), known  
9 as The Fiscal Code, is amended by adding a section to read:

10 Section 217.1-A. Labeling and Packaging.--(a) It shall be  
11 unlawful to knowingly affix a tax stamp or meter impression to,  
12 or to knowingly sell, give, transfer or deliver to any person,  
13 any cigarette package:

14 (1) that bears a label or notice set forth in Federal law or  
15 regulation or used to identify cigarettes that are exempt from  
16 tax under the Internal Revenue Code of 1986 (Public Law 99-514,  
17 26 U.S.C. § 5704(b));

18 (2) that is not labeled in conformity with the Federal  
19 Cigarette Labeling and Advertising Act (Public Law 89-92, 15  
20 U.S.C. § 1331 et seq.), or any other Federal requirement for the  
21 placement of labels, warnings and other information applicable  
22 to cigarette packages intended for domestic consumption; or

23 (3) the packaging of which has been modified or altered by a  
24 person other than the original manufacturer. Modification or  
25 alteration shall include the placement of a sticker, writing or  
26 mark to cover information on the packages. For purposes of this  
27 paragraph, a cigarette package shall not be construed to have  
28 been modified or altered by a person other than the manufacturer  
29 if the most recent modification or alteration was made by the  
30 manufacturer or person authorized by the manufacturer and  
31 approved by the department.

32 (b) The department is authorized to exchange information

1 with the United States Customs Service for purposes of enforcing  
2 this act.

3 Section 2. Section 229-A heading of the act is amended and  
4 the section is amended by adding subsections to read:

5 Section 229-A. Violations and Penalties.--\* \* \*

6 (c.1) A person who violates section 217.1-A shall be subject  
7 to a civil penalty equal to two hundred per centum of the value  
8 of the cigarettes or two thousand five hundred dollars (\$2,500),  
9 whichever is greater. The cigarettes, vending machine,  
10 machinery, equipment or vehicles involved in a violation of  
11 section 217.1-A shall be confiscated by the department and  
12 forfeited to the Commonwealth in accordance with section 1285 of  
13 the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform  
14 Code of 1971." Upon a second or subsequent violation of section  
15 217.1-A, the department may revoke the license of the person.  
16 The licensee, and any other person with an equitable interest in  
17 the license, may be prohibited from holding an interest in any  
18 license issued pursuant to this act for a period of up to two  
19 years.

20 \* \* \*

21 (e) A IN ADDITION TO THE PENALTIES PROVIDED IN SUBSECTION  
22 (C.1), A person who violates section 217.1-A commits the  
23 following:

24 (1) A summary offense for a first offense involving twenty  
25 or fewer cartons of cigarettes. Upon conviction, the person  
26 shall be subject to imprisonment and to a fine of not less than  
27 two hundred fifty dollars (\$250) nor more than one thousand  
28 dollars (\$1,000) and shall pay the costs of prosecution.

29 (2) A misdemeanor of the first degree for a second offense,  
30 or first offense involving more than twenty and fewer than three

1 hundred cartons of cigarettes. Upon conviction, the person shall  
2 be subject to imprisonment and to a fine of not less than one  
3 thousand dollars (\$1,000) nor more than fifteen thousand dollars  
4 (\$15,000) and shall pay the costs of prosecution.

5 (3) A felony of the third degree for a third or subsequent  
6 offense, or first or second offense involving more than three  
7 hundred cartons of cigarettes. Upon conviction, the person shall  
8 be subject to imprisonment and to a fine of not less than two  
9 thousand dollars (\$2,000) nor more than twenty thousand dollars  
10 (\$20,000) and shall pay the costs of prosecution.

11 (f) Receipt of a percentage of a franchisee's gross profits  
12 by a franchisor shall not be deemed an equitable interest in the  
13 retail license of a franchisee.

14 SECTION 3. SECTION 1301.11(F) AND (H) OF THE ACT, ADDED <—  
15 DECEMBER 12, 1994 (P.L.1015, NO.138), ARE AMENDED TO READ:

16 SECTION 1301.11. REPORT OF PROPERTY SUBJECT TO CUSTODY AND  
17 CONTROL OF THE COMMONWEALTH UNDER THIS ARTICLE.--\* \* \*

18 (F) SUBSEQUENT TO THE FILING OF THE REPORTS REQUIRED BY THIS  
19 SECTION, THE STATE TREASURER SHALL COMPILE A LIST OF THE  
20 ABANDONED AND UNCLAIMED PROPERTY CONTAINED IN THE REPORTS. THE  
21 LISTING SHALL CONTAIN [ONLY] THE NAMES, AMOUNT OF VALUE AND LAST  
22 KNOWN ADDRESSES, IF ANY, OF THE OWNERS LISTED IN THE REPORTS.  
23 THE LISTING SHALL NOT BE AVAILABLE TO ANY PERSON FOR  
24 EXAMINATION, INSPECTION OR COPYING PRIOR TO TWENTY-FOUR (24)  
25 MONTHS AFTER THE REPORTS HAVE BEEN FILED WITH OR PAYMENT OR  
26 DELIVERY OF THE PROPERTY HAS BEEN MADE TO THE STATE TREASURER.  
27 AFTER THE TWENTY-FOUR-MONTH PERIOD PROVIDED FOR IN THIS SECTION,  
28 THE STATE TREASURER SHALL MAKE THE LISTING AVAILABLE FOR  
29 EXAMINATION, INSPECTION OR COPYING AT FEES TO BE DETERMINED BY  
30 THE STATE TREASURER.

1       \* \* \*

2       (H) ALL SUCH AGREEMENTS ENTERED INTO AFTER THE TWENTY-FOUR-  
3 MONTH PERIOD SHALL BE VALID AND ENFORCEABLE ONLY IF THE  
4 AGREEMENTS:

5       1. ARE IN WRITING AND DULY SIGNED AND ACKNOWLEDGED BY THE  
6 OWNER;

7       2. CLEARLY STATE THE FEE OR COMPENSATION TO BE PAID, WHICH  
8 SHALL NOT EXCEED [TEN] FIFTEEN PER CENTUM OF THE VALUE OF THE  
9 ABANDONED AND UNCLAIMED PROPERTY;

10      3. DISCLOSE THE NATURE AND VALUE OF THE PROPERTY; AND

11      4. DISCLOSE THE NAME AND ADDRESS OF THE HOLDER AND, IF  
12 KNOWN, WHETHER THE ABANDONED AND UNCLAIMED PROPERTY HAS BEEN  
13 PAID OR DELIVERED TO THE STATE TREASURER.

14      \* \* \*

15      SECTION 4. SECTION 1301.12(A) OF THE ACT, AMENDED MAY 16,  
16 1986 (P.L.197, NO.60), IS AMENDED TO READ:

17      SECTION 1301.12. NOTICE AND PUBLICATION OF LISTS OF PROPERTY  
18 SUBJECT TO CUSTODY AND CONTROL OF THE COMMONWEALTH UNDER THIS  
19 ARTICLE.--(A) WITHIN NINE (9) MONTHS FROM THE FILING OF THE  
20 REPORT REQUIRED BY SECTION 1301.11, THE SECRETARY SHALL CAUSE  
21 NOTICE TO BE PUBLISHED AT LEAST ONCE EACH WEEK FOR TWO (2)  
22 SUCCESSIVE WEEKS IN AN ENGLISH LANGUAGE NEWSPAPER OF GENERAL  
23 CIRCULATION IN THE COUNTY IN WHICH THE [HOLDER] OWNER OF THE  
24 PROPERTY [HAS HIS PRINCIPAL PLACE OF BUSINESS IN THE  
25 COMMONWEALTH OR, IF THERE IS NO SUCH PLACE] HAD A LAST KNOWN  
26 ADDRESS APPEARING FROM THE VERIFIED REPORT FILED BY THE HOLDER  
27 OR, IF THERE IS NO NAME OR ADDRESS, OR THE OWNER IS NOT A  
28 PENNSYLVANIA RESIDENT, THEN AT LEAST ONE TIME IN THE  
29 PENNSYLVANIA BULLETIN.

30      \* \* \*

~~Section 3 5. This act shall take effect in 60 days.~~

SECTION 5. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

(1) THE AMENDMENT OF SECTION 1301.12(A) OF THE ACT SHALL TAKE EFFECT IMMEDIATELY.

(2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

(3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60 DAYS.