

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2757 Session of
2006INTRODUCED BY GANNON, BUNT, BIANCUCCI, DeLUCA, FICHTER, KOTIK,
LaGROTTA, RAMALEY, J. TAYLOR AND FEESE, JUNE 13, 2006AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JULY 1, 2006

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,
29 every State depository and every debtor or creditor of the
30 Commonwealth," providing for legislative intent; further
31 providing for definitions and for licensing of cigarette
32 dealers; providing for prohibited activities; further
33 ~~providing for license fees, for disposition of license fees,~~

<—

1 for retention of records and for examination of records,
2 equipment and premises; providing for property rights;
3 further providing for labeling and packaging and for
4 administration powers and duties; providing for enforcement
5 powers and duties; ~~and~~ further providing for violations and <—
6 penalties; AND MAKING A TRANSFER OF AN APPROPRIATION. <—

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

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

11 Section 201.1-A. Legislative Intent.--It is hereby declared
12 to be in the public interest of this Commonwealth:

13 (1) To prohibit advertising or offering cigarettes for sale
14 below cost if the intent is to increase the incidence of
15 cigarette usage or to injure, destroy or substantially lessen
16 competition.

17 (2) To declare such practice to be unfair, deceptive and
18 adverse to the collection of taxes from the sale of cigarettes.

19 (3) To license cigarette dealers to effect the orderly
20 collection of taxes, to prevent fraudulent sales and to control
21 the marketing of cigarettes.

22 (4) To promote fair competition.

23 (5) To lessen the incidence of sales to minors.

24 ~~Section 2. The definition of "cost of the Retailer" in <—~~
25 ~~section 202 A of the act, added July 2, 1993 (P.L.250, No.46),~~
26 ~~is amended and the section is amended by adding definitions to~~
27 ~~read:~~

28 SECTION 2. SECTION 202-A OF THE ACT, ADDED JULY 2, 1993 <—
29 (P.L.250, NO.46), IS AMENDED BY ADDING DEFINITIONS TO READ:

30 Section 202-A. Definitions.--As used in this article--

31 * * *

32 ~~"Cost of the Retailer" shall mean the basic cost of <—~~

1 ~~cigarettes to the retailer plus the cost of doing business by~~
2 ~~the retailer in excess of the basic cost of cigarettes,~~
3 ~~expressed as a percentage and applied to the basic cost of~~
4 ~~cigarettes. In the absence of filing of satisfactory proof of a~~
5 ~~lesser or higher cost of doing business by the retailer making~~
6 ~~the sale, the cost of doing business by the retailer shall be~~
7 ~~presumed to be [six] ten per centum of the basic cost of~~
8 ~~cigarettes to the retailer. When a retailer establishes a lesser~~
9 ~~cost of doing business than the presumptive [six] ten per centum~~
10 ~~cost of doing business, such lesser cost of doing business may~~
11 ~~be used to compute the cost of the retailer for a period of time~~
12 ~~no greater than twelve months, at the end of which time the cost~~
13 ~~to the retailer shall be computed using the presumptive [six]~~
14 ~~ten per centum cost of doing business, unless the retailer again~~
15 ~~establishes a lesser cost of doing business. Any fractional part~~
16 ~~of a cent in such cost per carton shall be rounded off to the~~
17 ~~next higher cent. In the case of any person who purchases~~
18 ~~cigarettes for sale at retail from any manufacturer of~~
19 ~~cigarettes without resort to a wholesaler as such, such person~~
20 ~~shall be deemed, for the purposes of this article, to be engaged~~
21 ~~in the sale of cigarettes as a stamping agent, wholesaler and~~
22 ~~retailer and as such shall be subject to all mark up provisions~~
23 ~~of this article in the order named.~~

24 * * *

25 "Importer" shall mean any person, whether located within or
26 outside of this Commonwealth, who imports into the United
27 States, either directly or indirectly, a finished cigarette for
28 sale or distribution.

29 "Manufacturer" shall mean any person, whether located within
30 or outside of this Commonwealth, who manufactures, fabricates,

1 assembles, processes or labels a finished cigarette.

2 "Office" shall mean the Cigarette Sales and Licensing
3 Enforcement Office in the Office of Attorney General.

4 * * *

5 Section 3. Section 203-A of the act, added July 2, 1993
6 (P.L.250, No.46), is amended to read:

7 Section 203-A. Licensing of Cigarette Manufacturers,
8 Importers and Dealers.--(a) [No person, unless all of his sales
9 of cigarettes are exempt from Pennsylvania cigarette tax, shall
10 sell, transfer or deliver any cigarettes within this
11 Commonwealth without first obtaining the proper license pursuant
12 to the provisions of this article.] No person shall do any of
13 the following without first obtaining the proper license under
14 the provisions of this article:

15 (1) Manufacture cigarettes for sale in this Commonwealth.

16 (2) Import cigarettes into this Commonwealth.

17 (3) Sell, transfer or deliver any cigarettes within this
18 Commonwealth.

19 (b) Every applicant for a manufacturer's, importer's or
20 dealer's license shall complete and file an application with the
21 department. The application shall be in such form and contain
22 such information as the department by regulation shall prescribe
23 and shall set forth truthfully and accurately the information
24 desired by the department. The application shall at a minimum
25 include the name and address of the applicant, the address of
26 the applicant's principal place of business and each place of
27 business where the applicant's business will be conducted. If
28 the applicant is a firm, partnership, limited liability
29 partnership, limited liability company, or association, the
30 application shall state the name and address of each of its

1 members. If the applicant is a corporation, the application
2 shall state the name and address of each of its officers and any
3 person who owns directly or indirectly in the aggregate, more
4 than ten per centum of the ownership interests in the
5 corporation. If the application is approved, the department
6 shall license the [dealer] applicant for a period of one year
7 and the license may be renewed annually thereafter.

8 (c) In addition to the requirements under subsection (b), no
9 cigarette stamping agent or wholesaler license may be issued or
10 renewed unless the applicant personally appears before an agent
11 of the office and states in writing subject to the penalties of
12 18 Pa.C.S. § 4902 (relating to perjury) that the applicant:

13 (1) has received a copy of this article; and

14 (2) has not engaged in illegal rebating prohibited under
15 this article.

16 (d) Each place of business in this Commonwealth shall be
17 separately licensed. If a license applicant does not have a
18 place of business in this Commonwealth, the license shall be
19 issued for the applicant's principal place of business, wherever
20 located. A licensee shall notify the department within thirty
21 days of changing its principal place of business.

22 (e) The ~~department~~ OFFICE shall create and maintain a <—
23 website listing the identity of all licensed persons under this
24 article, itemized by type of license, and shall update the
25 website monthly.

26 (f) No new cigarette stamping by agent or wholesaler
27 licenses may be issued until the department by regulation, deems
28 new licenses necessary.

29 Section 4. The act is amended by adding a section to read:

30 Section 203.1-A. Prohibited Activities.--No license may be

granted, maintained or renewed under this article if the applicant, or any combination of persons owning directly or indirectly, in the aggregate, more than ten per centum of the ownership interests in the applicant:

(1) Owes five hundred dollars (\$500) or more in delinquent cigarette taxes.

(2) Had a cigarette manufacturer, importer or dealer license revoked by the department within the past two years.

(3) Has been convicted of a crime relating to stolen or counterfeit cigarettes.

(4) Is a cigarette manufacturer or importer that fails to comply with either section 4(a)(1) or (2) of the act of June 22, 2000 (P.L.394, No.54), known as the "Tobacco Settlement Agreement Act."

(5) Has imported or caused to be imported into the United States for sale or distribution any cigarette in violation of section 1681a of the Tariff Act of 1930 (46 Stat. 590, 19 U.S.C. § 1681a).

(6) Has imported or caused to be imported into the United States for sale or distribution, or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act (Public Law 89-92, 15 U.S.C. § 1331 et seq.).

Section 5. Sections 208-A, 210-A, 214-A and 216-A of the act, added July 2, 1993 (P.L.250, No.46), are amended to read:

Section 208-A. License Fees; Issuance and Posting of License.--(a) At the time of making any application, an applicant for a wholesale cigarette dealer's license shall pay to the department a license fee of five hundred dollars (\$500), an applicant for a retail cigarette dealer's license shall pay

1 to the department a license fee of twenty-five dollars (\$25), an
2 applicant for a vending machine license shall pay to the
3 department a license fee of twenty-five dollars (\$25) and an
4 applicant for a cigarette stamping agency, cigarette
5 manufacturer or cigarette importer license shall pay to the
6 department a fee of one thousand dollars (\$1,000). Fees shall
7 not be pro-rated.

8 (b) Upon approval of the application and payment of the
9 fees, the department shall issue the proper license which must
10 be conspicuously displayed at the place for which issued.

11 Section 210-A. Disposition of License Fees.--One-half of all
12 fees received by the department under this article shall be
13 restricted for implementation of the [enforcement]
14 administration and audit provisions of this article and the
15 Cigarette Tax Act and the remainder shall be paid into the
16 General Fund.

17 Section 214-A. [Retention of] Required Records.--(a) Every
18 licensed dealer shall keep and maintain for a period of four
19 years such records in such form as the department shall by
20 regulation prescribe. The records shall be maintained at the
21 location for which the license is issued.

22 (b) A contract of sale complying with the provisions of this
23 article shall be signed by the parties to a sale of cigarettes
24 and shall be kept on file by each party at the location for
25 which the license is issued.

26 Section 216-A. Examination of Records, Equipment and
27 Premises.--(a) The department [is] and the office are hereby
28 authorized to examine the books and records, the inventory of
29 cigarettes and the premises and equipment of any dealer in order
30 to determine compliance with the provisions of this article and

1 to verify the accuracy of the payment of the tax imposed by the
2 Cigarette Tax Act. Every such person is hereby directed and
3 required to give to the department [or its duly authorized
4 representative] and the office or their duly authorized
5 representatives the means, facilities and opportunity for such
6 examinations.

7 (b) Any person who prevents or hinders the department or the
8 office or any designated agent thereof from making a full
9 inspection of the premises where cigarettes are sold or stored
10 or prevents or hinders the inspection of invoices, books,
11 records, equipment, inventory or papers required to be kept
12 shall be guilty of a violation of this article and subject to
13 the penalties provided herein.

14 (c) All filings with the department or the office relating
15 to petitions for below cost sales and relating to any violation
16 of this article shall be subject to the act of June 21, 1957
17 (P.L.390, No.212), referred to as the Right-to-Know Law.

18 Section 6. The act is amended by adding a section to read:

19 Section 216.1-A. Property Rights.--A purchasing dealer shall
20 not have any property rights in any cigarette package to which a
21 tax stamp is affixed until the purchasing dealer pays in full
22 for the package.

23 Section 7. Section 217.1-A of the act, added December 15,
24 1999 (P.L.942, No.66), is amended to read:

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

29 (1) that bears a label or notice set forth in Federal law or
30 regulation or used to identify cigarettes that are exempt from

1 tax under the Internal Revenue Code of 1986 (Public Law 99-514,
2 26 U.S.C. § 5704(b));

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

8 (3) the packaging of which has been modified or altered by a
9 person other than the original manufacturer. Modification or
10 alteration shall include the placement of a sticker, writing or
11 mark to cover information on the packages. For purposes of this
12 paragraph, a cigarette package shall not be construed to have
13 been modified or altered by a person other than the manufacturer
14 if the most recent modification or alteration was made by the
15 manufacturer or person authorized by the manufacturer and
16 approved by the department.

17 (b) The [department] office is authorized to exchange
18 information with the United States Customs Service for purposes
19 of enforcing this act.

20 Section 8. Section 227-A of the act, added July 2, 1993
21 (P.L.250, No.46), is amended to read:

22 Section 227-A. Administration Powers and Duties.--(a) The
23 administration of this article is hereby vested in the
24 department. The department shall adopt rules and regulations for
25 the [enforcement] administration of this article and may from
26 time to time make or cause to be made one or more cost surveys
27 to establish the lowest cost of the cigarette stamping agent,
28 the lowest cost of the retailer and the lowest cost of the
29 wholesaler, as defined in this article for the Commonwealth or
30 such trading area or areas therein as it shall define. Any such

1 survey made or caused to be made by the department may be used
2 for the purposes specified in this article. If the survey is
3 conducted in connection with a cigarette dealer's request to
4 sell at a price different from the presumptive minimum, the
5 cigarette dealer shall pay for the survey. Regulations shall
6 provide a procedure for dealers to prove a cost different from
7 the State presumptive costs, including proof of lower costs,
8 filing of petitions, cost allocation, data to be submitted and
9 guidelines necessary to implement this article. Authorization to
10 sell below the presumptive minimum prices shall be in writing
11 published in the Pennsylvania Bulletin and otherwise in
12 conformance with the requirements of this article and shall
13 contain a statement that the authorization is effective forty-
14 five days after the issuance of the writing and is valid for
15 twelve months therefrom. Authorization by the department for a
16 dealer to sell cigarettes below the established presumptive
17 minimum prices shall be stated as a percentage and be applied to
18 all levels of cigarette prices in the percentage allowed, and
19 this percentage shall also be applied to any new presumptive
20 minimum prices established by the department during the
21 effective period of the dealer's authorization. The department
22 may impose such fees as may be necessary to cover the costs
23 incurred in administering this section, including review and
24 audit of petitioning dealer's audited financial statement. On
25 the effective date of this article and until such time as a
26 dealer receives authorization from the department, in accordance
27 with its regulations, to sell cigarettes at a price different
28 from the presumptive minimum prices established pursuant to this
29 article, the last dealer request to have been authorized by the
30 department shall continue in effect.

(b) The department is authorized to jointly administer this article with the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," including joint reporting of information, forms, returns, statements, documents or other information submitted to the department.

Section 9. The act is amended by adding a section to read:

Section 227.1-A. Enforcement Powers and Duties.--(a) A Cigarette Sales and Licensing Enforcement Office is hereby established in the Office of Attorney General. The enforcement of this article is vested in the office.

~~(b) A fee of seven (7¢) cents is hereby imposed on each carton of cigarettes sold by a cigarette stamping agent. The fee shall be remitted monthly by each cigarette stamping agent with the monthly tax stamp report, and shall be directed to the office for the purpose of funding the enforcement of this article.~~

~~(c) (B) The Office of Attorney General shall promulgate regulations necessary to carry out the duties provided for in this article.~~

Section 10. Section 229-A(c.1) of the act, added December 15, 1999 (P.L.942, No.66), is amended and the section is amended by adding a subsection to read:

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

(c.1) A person who violates section 217.1-A shall be subject to a civil penalty equal to two hundred per centum of the value of the cigarettes or two thousand five hundred dollars (\$2,500), whichever is greater. The cigarettes, vending machine, machinery, equipment or vehicles involved in a violation of section 217.1-A shall be confiscated by the [department] office and forfeited to the Commonwealth in accordance with section

1 1285 of the act of March 4, 1971 (P.L.6, No.2), known as the
2 "Tax Reform Code of 1971." Upon a second or subsequent violation
3 of section 217.1-A, the department may revoke the license of the
4 person. The licensee and any other person with an equitable
5 interest in the license may be prohibited from holding an
6 interest in any license issued pursuant to this act for a period
7 of up to two years.

8 * * *

9 (g) Any licensee who fails to pay for cigarettes in full
10 upon delivery or according to the contract of sale, but in no
11 event not more than fourteen (14) days after delivery, violates
12 this article and the licensee's license shall be suspended until
13 payment is made in full. The licensee and any other person with
14 an equitable interest in the license shall be prohibited from
15 holding an interest in any other license issued pursuant to this
16 article. Payment on delivery by a check that is dishonored
17 constitutes a failure to pay in full upon delivery.

18 SECTION 11. APPROPRIATIONS WHICH ARE TO BE USED IN <—
19 CONNECTION WITH THE DUTIES, POWERS OR FUNCTIONS OF THE
20 DEPARTMENT OF REVENUE RELATING TO ENFORCEMENT OF ARTICLE II-A OF
21 THE ACT DURING THE 2006-2007 FISCAL YEAR ARE HEREBY TRANSFERRED
22 TO THE CIGARETTE SALES AND LICENSING ENFORCEMENT OFFICE IN THE
23 OFFICE OF ATTORNEY GENERAL WITH THE SAME FORCE AND EFFECT AS IF
24 THE APPROPRIATIONS HAD BEEN MADE TO THE CIGARETTE SALES AND
25 LICENSING ENFORCEMENT OFFICE IN THE OFFICE OF ATTORNEY GENERAL
26 IN THE FIRST INSTANCE.

27 Section ~~11~~ 12. This act shall take effect immediately. <—