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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2879 Session of  
2022

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INTRODUCED BY RABB, MADDEN, HOHENSTEIN, HILL-EVANS, SANCHEZ AND  
KIM, OCTOBER 20, 2022

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REFERRED TO COMMITTEE ON COMMERCE, OCTOBER 20, 2022

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AN ACT

1 Amending Title 54 (Names) of the Pennsylvania Consolidated  
2 Statutes, in trademarks, further providing for definitions,  
3 providing for Native American trademarks, establishing the  
4 Native American Trademarks Fund and providing for  
5 administration of Native American trademarks and cancellation  
6 of certain trademarks.

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

9 Section 1. Section 1102 of Title 54 of the Pennsylvania  
10 Consolidated Statutes is amended by adding a definition to read:

11 § 1102. Definitions.

12 The following words and phrases when used in this chapter  
13 shall have, unless the context clearly indicates otherwise, the  
14 meanings given to them in this section:

15 \* \* \*

16 "Senior user." The oldest or original user of a mark,  
17 trademark, trade name or service mark.

18 \* \* \*

19 Section 2. Title 54 is amended by adding sections to read:

20 § 1127. Native American trademarks.

1 (a) General rule.--Native American names and use of  
2 likenesses shall be considered subject to trademark and  
3 registered by the department as trademarks. These shall include:

4 (1) Names of Native American nations, tribes, clans,  
5 bands and other collective names for groups of Native  
6 Americans, including the anglicized and original names in the  
7 group's native language.

8 (2) Identifiers for Native American groups, such as  
9 tribal insignias, flags, emblems or tribal-identifying fabric  
10 patterns.

11 (3) Symbols, mascots, logos or other depictions of  
12 Native American culture for which Native Americans have  
13 established and traditionally used, including ritual pipes,  
14 weapons, headdresses, clothing, medicine and other cultural  
15 signifiers.

16 (b) Ownership.--Ownership of the trademarks described in  
17 subsection (a) shall be as follows:

18 (1) For identifiers associated with a specific nation,  
19 tribe or other collective Native American group, trademark  
20 rights shall be reserved to and considered the exclusive  
21 property of the federally recognized organization  
22 representing that Native American group. The department shall  
23 contact the specific nation, tribe or other collective Native  
24 American group to inform them of the ownership of trademarks  
25 and their rights in this Commonwealth.

26 (2) For identifiers not associated with a specific  
27 nation, tribe or other collective Native American group,  
28 trademark rights shall be reserved in trust by the department  
29 to and considered the exclusive property of the department,  
30 on behalf of the Commonwealth.

1           (3) Identifiers that have not previously been associated  
2 or claimed by a specific nation, tribe or other collective  
3 Native American group, but which are later claimed by a  
4 specific nation, tribe or other collective Native American  
5 group shall be reviewed by the department, upon the request  
6 of any person or the specific nation, tribe or other  
7 collective Native American group. If the claim is approved by  
8 the department, the department shall award the trademark to  
9 the person or the specific nation, tribe or other collective  
10 Native American group.

11       (c) Restriction on commercial use.--The commercial use of a  
12 Native American trademark shall be restricted to the owner of  
13 the registered trademark or person that obtains the owner's  
14 consent for its commercial use. Failure to obtain consent for  
15 the use of the trademark shall be considered improper use of the  
16 trademark and may be remedied by an action authorized in this  
17 chapter.

18       (d) Senior users under common law trademarks.--In a case in  
19 which a Native American symbol or other identifier in use has  
20 been recognized as a common law trademark, the Native American  
21 group shall be considered the senior user of the trademark  
22 unless the department determines that the name or other  
23 identifier was not in use by members of the Native American  
24 group before August 27, 1935.

25       (e) Nature of trademark recognized by department.--A Native  
26 American trademark recognized by the department as registered or  
27 common law trademarks shall not be considered abandoned, diluted  
28 or generic.

29       (f) Department authorized to enter into agreements relating  
30 to commercial use.--The department may enter into agreements for

1 the commercial use of Native American trademarks, including the  
2 use of likenesses, for trademarks it holds in trust and that are  
3 not subject to ownership assessment under this chapter.

4 (g) Fees authorized.--The department shall charge a fee to  
5 non-Native American commercial users for their use of Native  
6 American trademarks held in trust by the department, on behalf  
7 of the Commonwealth under this chapter. The department shall by  
8 rule or regulation prescribe the amount of the fee.

9 § 1128. Native American Trademarks Fund.

10 (a) Establishment.--The Native American Trademarks Fund is  
11 established in the State Treasury.

12 (b) Deposit.--The department shall deposit into the fund any  
13 fee or other financial benefit received by the Commonwealth from  
14 Native American trademarks held in trust under this chapter.

15 (c) Use of fund.--The money of the fund is appropriated to  
16 the department on a continuing basis and shall be used for the  
17 purpose of supporting cultural and educational initiatives that  
18 benefit Native American communities in this Commonwealth.

19 § 1129. Administrative powers and duties relating to Native  
20 American trademarks.

21 (a) Department.--The department shall have the following  
22 powers and duties to administer the provisions of section 1127  
23 (relating to Native American trademarks):

24 (1) Assess all applications by Native American nations,  
25 tribes and other collective Native American groups for  
26 ownership of trademarks qualifying under this chapter.

27 (2) Make available a process by which Native American  
28 groups may lay claim to, contest or otherwise assert  
29 ownership over trademarks held in trust by the department on  
30 behalf of the Commonwealth.

1           (3) Arbitrate any disagreement or dispute over the  
2 ownership of Native American trademarks, including those held  
3 in trust under section 1127.

4           (4) Reject any trademark application that depicts or  
5 relates to a derogatory Native American stereotype, including  
6 name, logo or symbol.

7           (b) Attorney General.--The Office of the Attorney General  
8 may seek remedies as described in section 1125 (relating to  
9 remedies) on behalf of unclaimed or unattributed Native American  
10 common law trademarks recognized under section 1126 (relating to  
11 common law rights). Any damages recovered shall be deposited  
12 into the Native American Trademarks Fund.

13           (c) Judicial consideration.--The courts of this Commonwealth  
14 shall give Native American groups due consideration as the  
15 senior user of common law trademarks depicting names, logos,  
16 symbols or other cultural artifacts associated with their  
17 respective group.

18 § 1130. Cancellation of marks.

19           (a) Duty of department.--The department shall cancel all  
20 trademarks described under section 1127(a) (relating to Native  
21 American trademarks) that exist prior to the effective date of  
22 this section unless the trademarks are held by or registered to  
23 a group formally representing a Native American group. Current  
24 trademark owners shall be given not more than one year to  
25 negotiate the continued commercial use of Native American  
26 trademarks with the department.

27           (b) Notice.--The department shall issue a formal notice of  
28 cancellation to the registered owners of trademarks canceled  
29 under this section.

30           Section 3. This act shall take effect in 60 days.