

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1569 Session of
1999

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

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES,
AS AMENDED, SEPTEMBER 27, 1999

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

Commonwealth," ADDING PROVISIONS RELATING TO LABELING AND
PACKAGING; AND further providing for penalties for certain
sales or transfers of cigarettes.

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

~~Section 1. Section 229 A of the act of April 9, 1929~~
~~(P.L.343, No.176), known as The Fiscal Code, is amended by~~
~~adding subsections to read:~~

~~Section 229 A. Violations. * * *~~

~~(c) Any stamping agent who affixes any stamp or meter~~
~~impression to or upon any package of cigarettes or any~~
~~wholesaler or retailer who sells, gives, transfers or delivers~~
~~to any person any package of cigarettes:~~

~~(1) that bears any label or notice prescribed by the United~~
~~States Department of Treasury to identify cigarettes exempt from~~
~~tax by the United States pursuant to the Internal Revenue Code~~
~~(Public Law 105-33, 26 U.S.C. § 5704(b)) (concerning cigarettes~~
~~intended for shipment to a foreign country, Puerto Rico, the~~
~~Virgin Islands, or a possession of the United States, or for~~
~~consumption beyond the jurisdiction of the Internal Revenue laws~~
~~of the United States), including any notice or label described~~
~~in 27 CFR § 290.185;~~

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

~~(3) the packaging of which has been modified or altered by a~~
~~person other than the manufacturer, including by the placement~~
~~of a sticker to cover information on the package, for purposes~~

~~of this subsection, a cigarette package shall not be construed to have been modified or altered by a person other than the manufacturer if the most recent modification to, or alteration of, the package was by the manufacturer or by a person authorized by the manufacturer;~~
~~shall be subject to a civil penalty in the amount of two hundred per cent (200%) of the cost of the dealer according to this law and shall forfeit all of said packages of cigarettes and, upon a second finding of a violation of this subsection, the department shall revoke said license. The licensee, and anyone having an equitable interest in the license, shall have no interest in any license issued pursuant to this act for a period of two years.~~

~~(f) The department is authorized to obtain and exchange information with the United States Customs Service for the purposes of enforcing this act.~~

SECTION 1. THE ACT OF APRIL 9, 1929 (P.L.343, NO.176), KNOWN AS THE FISCAL CODE, IS AMENDED BY ADDING A SECTION TO READ: <—

SECTION 217.1-A. LABELING AND PACKAGING.--(A) IT SHALL BE UNLAWFUL TO AFFIX A TAX STAMP OR METER IMPRESSION TO, OR TO SELL, GIVE, TRANSFER OR DELIVER TO ANY PERSON, ANY CIGARETTE PACKAGE:

(1) THAT BEARS A LABEL OR NOTICE SET FORTH IN 27 CFR § 290.185 (RELATING TO LABEL OR NOTICE) OR USED TO IDENTIFY CIGARETTES THAT ARE EXEMPT FROM TAX UNDER THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 5704(B));

(2) THAT IS NOT LABELED IN CONFORMITY WITH THE FEDERAL CIGARETTE LABELING AND ADVERTISING ACT (PUBLIC LAW 89-92, 15 U.S.C. § 1331 ET SEQ.), OR ANY OTHER FEDERAL REQUIREMENT FOR THE PLACEMENT OF LABELS, WARNINGS AND OTHER INFORMATION APPLICABLE TO CIGARETTE PACKAGES INTENDED FOR DOMESTIC CONSUMPTION; OR

1 (3) THE PACKAGING OF WHICH HAS BEEN MODIFIED OR ALTERED BY A
2 PERSON OTHER THAN THE ORIGINAL MANUFACTURER. MODIFICATION OR
3 ALTERATION SHALL INCLUDE THE PLACEMENT OF A STICKER, WRITING OR
4 MARK TO COVER INFORMATION ON THE PACKAGES. FOR PURPOSES OF THIS
5 PARAGRAPH, A CIGARETTE PACKAGE SHALL NOT BE CONSTRUED TO HAVE
6 BEEN MODIFIED OR ALTERED BY A PERSON OTHER THAN THE MANUFACTURER
7 IF THE MOST RECENT MODIFICATION OR ALTERATION WAS MADE BY THE
8 MANUFACTURER OR PERSON AUTHORIZED BY THE MANUFACTURER AND
9 APPROVED BY THE DEPARTMENT.

10 (B) THE DEPARTMENT IS AUTHORIZED TO EXCHANGE INFORMATION
11 WITH THE UNITED STATES CUSTOMS SERVICE FOR PURPOSES OF ENFORCING
12 THIS ACT.

13 SECTION 2. SECTION 229-A HEADING OF THE ACT IS AMENDED AND
14 THE SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:

15 SECTION 229-A. VIOLATIONS AND PENALTIES.--* * *

16 (C.1) A PERSON WHO VIOLATES SECTION 217.1-A SHALL BE SUBJECT
17 TO A CIVIL PENALTY EQUAL TO TWO HUNDRED PER CENTUM OF THE VALUE
18 OF THE CIGARETTES OR TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500),
19 WHICHEVER IS GREATER. THE CIGARETTES, VENDING MACHINE,
20 MACHINERY, EQUIPMENT OR VEHICLES INVOLVED IN A VIOLATION OF
21 SECTION 217.1-A SHALL BE CONFISCATED BY THE DEPARTMENT AND
22 FORFEITED TO THE COMMONWEALTH IN ACCORDANCE WITH SECTION 1285 OF
23 THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE "TAX REFORM
24 CODE OF 1971." UPON A SECOND OR SUBSEQUENT VIOLATION OF SECTION
25 217.1-A, THE DEPARTMENT SHALL REVOKE THE LICENSE OF THE PERSON.
26 THE LICENSEE, AND ANY OTHER PERSON WITH AN EQUITABLE INTEREST IN
27 THE LICENSE, SHALL BE PROHIBITED FROM HOLDING AN INTEREST IN ANY
28 LICENSE ISSUED PURSUANT TO THIS ACT FOR A PERIOD OF TWO YEARS.

29 * * *

30 (E) A PERSON WHO VIOLATES SECTION 217.1-A COMMITS THE

1 FOLLOWING:

2 (1) A SUMMARY OFFENSE FOR A FIRST OFFENSE INVOLVING TWENTY
3 OR FEWER CARTONS OF CIGARETTES. UPON CONVICTION, THE PERSON
4 SHALL BE SUBJECT TO IMPRISONMENT AND TO A FINE OF NOT LESS THAN
5 TWO HUNDRED FIFTY DOLLARS (\$250) NOR MORE THAN ONE THOUSAND
6 DOLLARS (\$1,000) AND SHALL PAY THE COSTS OF PROSECUTION.

7 (2) A MISDEMEANOR OF THE FIRST DEGREE FOR A SECOND OFFENSE,
8 OR FIRST OFFENSE INVOLVING MORE THAN TWENTY AND FEWER THAN THREE
9 HUNDRED CARTONS OF CIGARETTES. UPON CONVICTION, THE PERSON SHALL
10 BE SUBJECT TO IMPRISONMENT AND TO A FINE OF NOT LESS THAN ONE
11 THOUSAND DOLLARS (\$1,000) NOR MORE THAN FIFTEEN THOUSAND DOLLARS
12 (\$15,000) AND SHALL PAY THE COSTS OF PROSECUTION.

13 (3) A FELONY OF THE THIRD DEGREE FOR A THIRD OR SUBSEQUENT
14 OFFENSE, OR FIRST OR SECOND OFFENSE INVOLVING MORE THAN THREE
15 HUNDRED CARTONS OF CIGARETTES. UPON CONVICTION, THE PERSON SHALL
16 BE SUBJECT TO IMPRISONMENT AND TO A FINE OF NOT LESS THAN TWO
17 THOUSAND DOLLARS (\$2,000) NOR MORE THAN TWENTY THOUSAND DOLLARS
18 (\$20,000) AND SHALL PAY THE COSTS OF PROSECUTION.

19 Section 2 3. This act shall take effect in 60 days.

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