

No. 1999-66

AN ACT

HB 1569

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

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

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 knowingly affix a tax stamp or meter impression to, or to knowingly sell, give, transfer or deliver to any person, any cigarette package:*

(1) *that bears a label or notice set forth in Federal law or regulation 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*

(3) *the packaging of which has been modified or altered by a person other than the original manufacturer. Modification or alteration shall*

include the placement of a sticker, writing or mark to cover information on the packages. For purposes of this paragraph, 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 or alteration was made by the manufacturer or person authorized by the manufacturer and approved by the department.

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

Section 2. Section 229-A heading of the act, added July 2, 1993 (P.L.250, No.46), is amended and the section is amended by adding subsections 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 and forfeited to the Commonwealth in accordance with section 1285 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971." Upon a second or subsequent violation of section 217.1-A, the department may revoke the license of the person. The licensee and any other person with an equitable interest in the license may be prohibited from holding an interest in any license issued pursuant to this act for a period of up to two years.

* * *

(e) In addition to the penalties provided in subsection (c.1), a person who violates section 217.1-A commits the following:

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

(2) A misdemeanor of the first degree for a second offense, or first offense involving more than twenty and fewer than three hundred cartons of cigarettes. Upon conviction, the person shall be subject to imprisonment and to a fine of not less than one thousand dollars (\$1,000) nor more than fifteen thousand dollars (\$15,000) and shall pay the costs of prosecution.

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

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

Section 3. Section 1301.11(f) and (h) of the act, added December 12, 1994 (P.L.1015, No.138), are amended to read:

Section 1301.11. Report of Property Subject to Custody and Control of the Commonwealth under this Article.—* * *

(f) Subsequent to the filing of the reports required by this section, the State Treasurer shall compile a list of the abandoned and unclaimed property contained in the reports. The listing shall contain [only] the names, *amount of value* and last known addresses, if any, of the owners listed in the reports. The listing shall not be available to any person for examination, inspection or copying prior to twenty-four (24) months after the reports have been filed with or payment or delivery of the property has been made to the State Treasurer. After the twenty-four-month period provided for in this section, the State Treasurer shall make the listing available for examination, inspection or copying at fees to be determined by the State Treasurer.

* * *

(h) All such agreements entered into after the twenty-four-month period shall be valid and enforceable only if the agreements:

1. are in writing and duly signed and acknowledged by the owner;
2. clearly state the fee or compensation to be paid, which shall not exceed [ten] *fifteen* per centum of the value of the abandoned and unclaimed property;
3. disclose the nature and value of the property; and
4. disclose the name and address of the holder and, if known, whether the abandoned and unclaimed property has been paid or delivered to the State Treasurer.

* * *

Section 4. Section 1301.12(a) of the act, amended May 16, 1986 (P.L.197, No.60), is amended to read:

Section 1301.12. Notice and Publication of Lists of Property Subject to Custody and Control of the Commonwealth under this Article.—(a) Within nine (9) months from the filing of the report required by section 1301.11, the secretary shall cause notice to be published at least once each week for two (2) successive weeks in an English language newspaper of general circulation in the county in which the [holder] *owner* of the property [has his principal place of business in the Commonwealth or, if there is no such place] *had a last known address appearing from the verified report filed by the holder or, if there is no name or address or the owner is not a Pennsylvania resident*, then at least one time in the Pennsylvania Bulletin.

* * *

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.

APPROVED—The 15th day of December, A.D. 1999.

THOMAS J. RIDGE