# City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

## Legislation Details (With Text)

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|---|---|---|---|---|---|
| **File #:** | 120775-AA | **Version:** | 3 | **Name:** | |
| **Type:** | Bill | | | **Status:** | ENACTED |
| **File created:** | 10/4/2012 | | | **In control:** | Committee on Licenses and Inspections |
| **On agenda:** | | | | **Final action:** | 5/16/2013 |

**Title:** Amending Title 19 of The Philadelphia Code, entitled "Finance, Taxes and Collections," to provide for a private right of action to enforce certain tax laws, including penalties for nonpayment, all under certain terms and conditions.

**Sponsors:** Councilmember Henon, Council President Clarke, Councilmember Kenney

**Indexes:** TAXES

**Code sections:** Title 19 - FINANCE, TAXES AND COLLECTIONS

**Attachments:** 1. CertifiedCopy120775-AA03.pdf

| Date | Ver. | Action By | Action | Result | Tally |
|---|---|---|---|---|---|
| 6/5/2013 | 3 | MAYOR | SIGNED | | |
| 5/16/2013 | 3 | CITY COUNCIL | READ AND PASSED | Pass | 17:0 |
| 5/9/2013 | 2 | CITY COUNCIL | RECONSIDERED | Pass | 17:0 |
| 5/9/2013 | 2 | CITY COUNCIL | READ | | |
| 5/9/2013 | 3 | CITY COUNCIL | AMENDED | | |
| 5/9/2013 | 3 | CITY COUNCIL | ORDERED PLACED ON FINAL PASSAGE CALENDAR FOR NEXT MEETING. | | |
| 4/25/2013 | 2 | CITY COUNCIL | READ AND PASSED | Pass | 17:0 |
| 4/18/2013 | 2 | CITY COUNCIL | AMENDED | | |
| 4/18/2013 | 2 | CITY COUNCIL | ORDERED PLACED ON FINAL PASSAGE CALENDAR FOR NEXT MEETING. | | |
| 4/18/2013 | 1 | CITY COUNCIL | READ | | |
| 4/11/2013 | 1 | CITY COUNCIL | ORDERED PLACED ON THIS DAY`S FIRST READING CALENDAR | | |
| 4/11/2013 | 1 | CITY COUNCIL | SUSPEND THE RULES OF THE COUNCIL | Pass | |
| 4/11/2013 | 1 | CITY COUNCIL | ORDERED PLACED ON NEXT WEEK`S SECOND READING CALENDAR | | |
| 4/5/2013 | 0 | Committee on Licenses and Inspections | HEARING NOTICES SENT | | |
| 4/5/2013 | 0 | Committee on Licenses and Inspections | HEARING HELD | | |
| 4/5/2013 | 0 | Committee on Licenses and Inspections | AMENDED | | |
| 4/5/2013 | 1 | Committee on Licenses and Inspections | REPORTED FAVORABLY, RULE SUSPENSION REQUESTED | | |
| 12/4/2012 | 0 | Committee on Licenses and Inspections | HEARING NOTICES SENT | | |



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| | | | | |
|---|---|---|---|---|
| 12/4/2012 | 0 | Committee on Licenses and Inspections | RECESSED | |
| 10/4/2012 | 0 | CITY COUNCIL | Introduced and Referred | Pass |

Amending Title 19 of The Philadelphia Code, entitled "Finance, Taxes and Collections," to provide for a private right of action to enforce certain tax laws, including penalties for nonpayment, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Chapter 19-1500 of The Philadelphia Code is hereby amended to add a new Section 19-1509, as follows:

TITLE 19. FINANCE, TAXES AND COLLECTIONS

* * *

CHAPTER 19-1500. WAGE AND NET PROFITS TAX

* * *

*§ 19-1509. Civil Actions for Tax Violations.*

*(1) Definitions.*

*Damages. The amount of principal, interest, and penalty due and unpaid on a Philadelphia Wage Tax Violation or a Philadelphia Net Profits Tax Violation.*

*Philadelphia Wage Tax Violation. The failure of any business, employer, or person liable therefor to timely and fully remit Philadelphia Wage Taxes in violation of this Chapter or Chapter 19-2800.*

*Philadelphia Net Profits Tax Violation. The failure of any business, employer, or person liable therefor to timely and fully pay the Philadelphia Net Profits Tax in violation of this Chapter or Chapter 19-2800.*

*Knowing and Knowingly. Acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.*

*Proceeds. The Damages (including any multiplier) and fines as provided in this Section, but not attorneys' fees and costs.*

*(2) Prohibited Conduct.*

*(a) Any business, employer, or person who commits any of the following acts shall be liable to the City for three (3) times the amount of Damages which the City sustains because of the act of that business, employer, or person; shall have committed a Class III offense; and shall be liable for attorneys' fees and costs for any civil action brought to recover such Damages and fines:*

*(.1) Knowingly commits a Philadelphia Wage Tax Violation.*

*(.2) Knowingly commits a Philadelphia Net Profit Tax Violation.*



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*(.3) Conspires with another to violate Section 9-1509(2)(a)(.1) or (a)(.2).*

*(.4) Knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or remit Philadelphia Wage Tax or Philadelphia Net Profit Tax.*

*(b) The court may assess less than three (3) times the amount of Damages_sustained because of the act of such business, employer, or person, but no less than two (2) times the amount of Damages sustained because of the act of such business, employer, or person, if the court determines that the business, employer, or person fully cooperated with any investigation of such violation.*

*(3) Civil Actions.*

*(a) Actions by the City Solicitor. If the City Solicitor determines that a business, employer, or person violated or is violating the provisions of this Section, he or she may institute a civil action against that business, employer, or person in a court of competent jurisdiction.*

*(b) Actions by Private Persons. Any person may submit a proposed civil complaint, alleging violations of this Section, to the City Solicitor or to such other officer of the City whom the Mayor designates to investigate such complaints.*

*(c) Investigations of Proposed Private Actions. The City Solicitor or an officer designated by the Mayor under this Section to investigate complaints is authorized to investigate the allegations in the proposed civil complaint and may request any additional information from the person who submitted the proposed civil complaint in order to investigate the allegations set forth therein. After the investigation has been completed, the City Solicitor may:*

*(.1) Bring a civil action, based upon the facts alleged in the complaint, against one or more of the defendants named therein; or*

*(.2) Enter into an agreement with the person who submitted the proposed complaint, or the person's attorney, to file a civil action for the person and the City, in the name of the City, based upon the facts alleged in the complaint, against one or more of the defendants named therein. An agreement pursuant to this subsection (.2) shall not be subject to the provisions of Chapter 17-1400 (relating to Non-Competitively Bid Contracts).*

*(.3) Decline to commence a civil action under this Section and decline to designate the person who submitted the proposed complaint to commence a civil action under this Section; or*

*(.4) Proceed in any other manner the City Solicitor deems appropriate.*

*(d) Certain Actions Barred. Subsections (3)(c)(.1) (relating to claims brought in the name of the City) and (3)(i) (relating to awards from proceeds) shall not apply to claims, records, or statements made pursuant to any proposed civil complaint:*

*(.1) Based upon allegations or transactions which are, or have been, the subject of any criminal, civil, or administrative action or proceeding;*

*(.2) Derived from public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation or from allegations or transactions disclosed by the news media and likely to be seen by the City officials responsible for addressing such claims, unless the private party who submitted the civil complaint is the primary source of the information;*



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*(.3) Based upon information discovered by an employee of the City, state or federal government in the course of his or her employment; or*

*(.4) Based upon information discovered by a contractor engaged by the City to collect taxes, except as such Contractor may be expressly authorized by the City to proceed under this Section; or*

*(.5) Against the Federal government, the Commonwealth of Pennsylvania, the City or any officer or employee of those governmental entities acting within the scope of his or her employment; or*

*(.6) Solely concerning any filing or payment that is not yet at least one year overdue.*

*(e) Nothing in this Section shall be construed as authorizing anyone, other than the City Solicitor or a person or attorney designated by the City Solicitor pursuant to this Section, to commence a civil action to represent the City under this Section.*

*(f) Related Actions. Regardless of whether the City Solicitor has commenced a civil action or another party has been designated to do so, the City Solicitor may elect to pursue any alternative action with respect to the presentation of the claims alleged in the civil complaint.*

*(g) Rights of the Parties.*

*(.1) If the City Solicitor elects to commence a civil action, then the City Solicitor shall have sole authority for prosecuting and settling the action and may move to dismiss or may settle the action, notwithstanding the objections of any person who submitted the proposed civil complaint upon which such civil action is based.*

*(.2) If the City Solicitor authorizes a private person or his attorney pursuant to subsection (3)(c)(.2) of this Section, then the private person or his attorney may conduct the action in the name of the City, upon such terms as the City Solicitor may impose, including, but not limited to, any requirement that the Department of Revenue first issue an assessment for the tax liability sought to be collected under this Section, and that the private person cooperate in supplying any information material to such assessment. Such person may seek to collect the applicable City Taxes imposed under Section 19-1502 of The Philadelphia Code, as well as treble Damages and attorneys' fees and costs. However, the City Solicitor may move to dismiss the action, notwithstanding the objection of such person, provided such person has an opportunity to be heard. The City Solicitor may settle the action with the defendant notwithstanding the objections of the person initiating the action, if after providing such person with an opportunity to be heard, the court approves the settlement.*

*(.3) The court may issue an order restricting the participation of a person designated to commence a civil action under this Section, notwithstanding the objections of such person, if the court determines, after providing such person an opportunity to be heard, that such person's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case or would be repetitious or irrelevant, or upon a showing by the defendant or the City that such person's unrestricted participation, during the course of the litigation, would be for purposes of harassment or would cause the defendant undue burden.*

*(.4) The court may issue a stay of any civil action brought under this Section if the action will interfere with any investigation or prosecution of a criminal matter arising out of the same facts, or for any other reason the court deems appropriate.*

*(.5) The City Solicitor may, in his or her discretion, file a complaint under seal and maintain its confidentiality, and may require any private person filing a complaint to file such complaint under seal and*


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*maintain its confidentiality, for such period of time deemed necessary by the Solicitor and permitted by the court.*

*(h) Under no circumstances shall the City be bound by an act of a person designated to commence a civil action under this Section.*

*(i) Award from Proceeds.*

*(.1) If the City Solicitor either elects to commence a civil action based on a private person's proposed civil complaint, or settles the case substantially based on a private person's proposed civil complaint, then the person or persons who submitted the complaint collectively shall be entitled to receive fifteen (15) percent of the proceeds recovered by the City in the civil action or in settlement.*

*(.2) If the City Solicitor elects not to proceed with a civil action and enters into an agreement with a private person or his attorney pursuant to subsection (3)(c)(.2) of this Section, then the private person or persons collectively shall be entitled to receive twenty-five (25) percent of the proceeds recovered by the City in the civil action or in settlement of such action.*

*(.3) In determining the share of the proceeds to which a person submitting a proposed civil complaint is entitled, the court may consider the following factors:*

*(A) The extent to which such person contributed to the prosecution of the action, either in time, effort or finances;*

*(B) Any unreasonable delay by such person in submitting the proposed civil complaint;*

*(C) Whether the person has been charged with criminal conduct arising from his or her role in the alleged violation of this Chapter, in which case such person shall not receive any share of the proceeds of the action if convicted on the charges; and*

*(D) Fundamental fairness and any other factors the court deems appropriate.*

*(.4) In no case shall any private person be entitled to any share of the proceeds recovered by the City pursuant to a judgment or settlement if (A) the evidence and allegations presented by such person in connection with the civil action prove unfounded, substantially duplicate information already possessed by the City (unless the City authorizes such private person to proceed to litigate an action based on such information), or do not materially contribute to obtaining the judgment or settlement; or (B) such private person does not fully cooperate with the City in pursuing a claim under this Section or in providing any information material to imposition of an assessment for the tax liability sought to be collected under this Section.*

*(j) Attorneys' Fees and Costs.*

*(.1) In the event the City or a private person bringing an action in the name of the City prevails in a civil action commenced pursuant to this Section, the court shall award reasonable attorneys' fees and court costs.*

*(.2) The City shall not be liable for any expenses, attorneys' fees or costs that a person or a person's attorney incurs in connection with a civil action pursuant to this Section.*

*(4) Retaliatory Action Prohibited.*

*(a) No employer shall discharge, demote, suspend, threaten, harass or in any other manner discriminate against an employee in the terms and condition of employment because of lawful acts done by the*



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*employee in furtherance of an action under this Section, including investigation for, initiation of, testimony for, or other assistance in an action filed or to be filed under this Section.*

*(b) Any employee who is found to have suffered retaliatory action as defined in this subsection (4) shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, up to two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.*

*(5) Regulations.*

*The Law Department and the Department of Revenue are each authorized to promulgate such regulations as are necessary and appropriate to implement the provisions of this Section.*

*(6) Court Rules.*

*Any rules adopted by the court that differ from the procedures set forth in this Section shall supersede the procedures set forth herein.*

*(7) Applicability of this Section.*

*Nothing in this Section limits the rights of an injured person to recover damages under any other applicable law or legal theory.*

**Explanation:**

[Brackets] indicate matter deleted.
*Italics* indicate new matter added.


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