



# City of Philadelphia

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

**BILL NO. 120775**

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**Introduced October 4, 2012**

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**Councilmember Henon, Council President Clarke and Councilmember Kenney**

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**Referred to the  
Committee on Licenses and Inspections**

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## **AN ORDINANCE**

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**

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**CHAPTER 19-1500. WAGE AND NET PROFITS TAX**

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

*(1) Definitions.*

*(a) Business. An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, co-partnership, association, governmental body or unit or agency, or any other entity.*

*(b) Employee. Any person who renders services to another for a consideration or its equivalent, under an express or implied contract, and who is under*

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*the control and direction of the latter, including temporary, provisional, casual or part-time employment.*

(c) *Employer.* An individual, co-partnership, association, corporation, governmental body or unit or agency, or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

(d) *Philadelphia Wage Tax Violation.* The failure of a business entity or employer to withhold and remit Philadelphia Wage Taxes on behalf of its employees in violation of Section 19-1504 of The Philadelphia Code.

(e) *Philadelphia Net Profit Tax Violation.* The failure of a business entity or employer to pay the Philadelphia Net Profit Tax in violation of Section 19-1505 of The Philadelphia Code.

(f) *Investigation.* An inquiry conducted for the purpose of ascertaining whether any person is or has been engaged in a violation of this Section.

(g) *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.

(h) *Proceeds.* The treble damages and fines as provided in this Section, but not attorneys' fees and costs.

## (2) *Prohibited Conduct.*

(a) *Any employer 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 person; shall have committed a Class III offense and be subject to the fines set forth in Section 1-109(3) of this Code; and shall be liable for attorneys' fees and costs for any civil action brought to recover such damages and penalties:*

(.1) *Knowingly fails to pay the Philadelphia Wage Tax on behalf of its employees, thereby committing a Philadelphia Wage Tax Violation as defined by subsection 9-1509(1)(d).*

(.2) *Knowingly fails to pay the Philadelphia Net Profit Tax, thereby committing a Philadelphia Net Profit Tax Violation as defined by subsection 9-1509(1)(e).*

(.3) *Conspires to defraud the City by knowingly assisting another employer, as defined by 9-1509(1)(c), that violates 9-1509(2)(a)(.1) or (a)(.2).*

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(.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 Philadelphia Wage Taxes and the Philadelphia Net Profit Tax.*

(b) *The court may assess no less than two (2) times the amount of damages sustained because of the Act of such person if the court determines that:*

(.1) *The person furnished the City of Philadelphia officials responsible for investigating tax violations with all information known to such person about the violation within 30 days after the date on which said person first obtained the information;*

(.2) *The person fully cooperated with any investigation of such violation;*  
*and*

(.3) *The person did not have actual knowledge of the existence of an investigation into such violation.*

(3) *Civil Actions.*

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

(b) *Actions by Private Persons. Any person may institute a civil action alleging violations of this Section by filing a civil complaint in a court of competent jurisdiction. The complaint shall be brought in the name of the City of Philadelphia. The filing party shall submit copies of the civil complaint and all material evidence and information possessed by such person in support of the allegations in the civil complaint to the City Solicitor. The court shall seal the civil complaint and not serve the complaint on the defendant until an investigation is conducted in accordance with subsection (3)(c) of this Section. The court may dismiss the action only if the complainant and City Solicitor give written consent to the dismissal and their reasons for consenting.*

(c) *Investigations of 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 civil complaint and may request any additional information from the person who instituted the civil action in order to investigate the allegations set forth therein. The City Solicitor has sixty (60) days to investigate the allegations in the civil complaint. Before the expiration of the sixty (60) day period, the City Solicitor shall:*

(.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 instituted the civil action or the person's attorney to file a civil action for the person and the City, in the name of*

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*the City, based upon the facts alleged in the complaint, against one or more of the defendants named therein.*

*(d) Actions Under This Section. When a person brings an action under this Section, no person other than the City Solicitor or an officer designated by the Mayor under this Section may intervene or bring a related action based on the facts underlying the pending action.*

*(e) Certain Actions Barred. This Section shall not apply to claims, records, or statements made pursuant to any civil complaint:*

*(.1) Based upon allegations or transactions which are the subject of any pending criminal, civil, or administrative action or proceeding in which the City is already a party;*

*(.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 upon 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 filed the civil complaint is the primary source of the information;*

*(.3) Based upon information discovered by an employee of the City, state, or federal government in the course of his or her employment unless such employee first reported the information to the City and the City failed to act on the information within six months of its receipt of the information; or*

*(.4) 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.*

*(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 proceeds with a civil action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the private person bringing the action.*

*(.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 his attorney may conduct the action in the*

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*name of the City. Such person may seek to impose the applicable City Taxes under § 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 and would be repetitious or irrelevant, or upon a showing by the defendant that such person's unrestricted participation, during the course of the litigation, would be for purposes of harassment and 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.*

*(h) Award from Proceeds.*

*(.1) If the City Solicitor elects to commence a civil action based on a private person's civil complaint, then the person or persons who submitted the complaint collectively shall be entitled to receive at least fifteen (15) and no more than twenty-five (25) percent of the proceeds recovered by the City in the civil action or in settlement of such action.*

*(.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 shall be entitled to receive at least twenty-five (25) and no more than thirty (30) 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;*

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(C) *The extent to which the allegations involve a significant safety issue; and*

(D) *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.*

(i) *Powers of the Court. The court shall grant the following relief as appropriate:*

(.1) *City Taxes payable to the City pursuant to Philadelphia Code § 19-1502; or*

(.2) *Injunctive or other equitable relief.*

(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 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 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, 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 may promulgate such regulations it deems necessary and appropriate to implement the provisions of this Section.*

(6) *Court Rules.*

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*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.*

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**Explanation:**

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

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