

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1885 Session of 2015

INTRODUCED BY WHITE, METCALFE, KNOWLES, READSHAW, D. COSTA, BLOOM, IRVIN, GREINER, TOEPEL, TOPPER, MILLARD, BARRAR, SANKEY, STAATS, TAYLOR, KAUFFMAN, DIAMOND, METZGAR, WARNER, ZIMMERMAN, GROVE, SAYLOR, SANTORA, GILLEN, SACCONI, RADER, ROTHMAN, EVERETT, EMRICK, GABLER, GINGRICH, PYLE, CUTLER, KLUNK, ROAE, MOUL, RAPP, MACKENZIE, LAWRENCE, SIMMONS, BENNINGHOFF, PHILLIPS-HILL, NESBIT, DUSH, WHEELAND, JOZWIAK AND NELSON, APRIL 5, 2016

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, OCTOBER 24, 2016

AN ACT

1 ~~Amending Titles 42 (Judiciary and Judicial Procedure) and 53~~ <--  
2 ~~(Municipalities Generally) of the Pennsylvania Consolidated~~  
3 ~~Statutes, in matters affecting government units, providing~~  
4 ~~for exceptions to governmental immunity related to~~  
5 ~~unauthorized aliens; and, in preemptions, providing for~~  
6 ~~restriction on municipal regulation of official and employee~~  
7 ~~communications relating to immigration status.~~

8 AMENDING TITLES 42 (JUDICIARY AND JUDICIAL PROCEDURE) AND 53 <--  
9 (MUNICIPALITIES GENERALLY) OF THE PENNSYLVANIA CONSOLIDATED  
10 STATUTES, PROVIDING FOR LIABILITY IMPOSED ON AND ELIGIBILITY  
11 FOR PUBLIC BENEFITS OF A MUNICIPALITY OF REFUGE.

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

14 ~~Section 1. Title 42 of the Pennsylvania Consolidated~~ <--  
15 ~~Statutes is amended by adding a section to read:~~

16 ~~§ 8543. Exceptions to governmental immunity related to~~  
17 ~~unauthorized aliens.~~

18 ~~(a) Liability imposed. A sanctuary municipality shall be~~  
19 ~~liable for damages on account of an injury to a person or~~

1 ~~property as a result of criminal activity by an unauthorized~~  
2 ~~alien if all of the following conditions are satisfied:~~

3 ~~(1) Federal immigration officials have determined that~~  
4 ~~the person who engaged in the criminal activity is an~~  
5 ~~unauthorized alien.~~

6 ~~(2) The unauthorized alien is a resident of the~~  
7 ~~sanctuary municipality.~~

8 ~~(3) The unauthorized alien is convicted of the crime~~  
9 ~~that caused the injury.~~

10 ~~(4) The criminal activity is a proximate cause of the~~  
11 ~~injury.~~

12 ~~(b) Definitions. As used in this section, the following~~  
13 ~~words and phrases shall have the meanings given to them in this~~  
14 ~~subsection:~~

15 ~~"Municipality." A municipality as defined under 1 Pa.C.S. §~~  
16 ~~1991 (relating to definitions).~~

17 ~~"Sanctuary municipality." Any municipality that prohibits or~~  
18 ~~in any way restricts an official or employee of the municipality~~  
19 ~~from:~~

20 ~~(1) sending to or receiving from Federal immigration~~  
21 ~~officials information regarding the citizenship or~~  
22 ~~immigration status, lawful or unlawful, of an individual;~~

23 ~~(2) doing any of the following with respect to~~  
24 ~~information regarding the immigration status, lawful or~~  
25 ~~unlawful, of an individual:~~

26 ~~(i) sending the information to or requesting the~~  
27 ~~information from Federal immigration officials;~~

28 ~~(ii) maintaining the information; or~~

29 ~~(iii) exchanging the information with other Federal~~  
30 ~~agencies, State agencies or municipalities;~~

1 ~~(3) inquiring about an individual's name, date and place~~  
2 ~~of birth and immigration status while enforcing or conducting~~  
3 ~~an official investigation into a violation of any law of this~~  
4 ~~Commonwealth; or~~

5 ~~(4) requesting an applicant who applies for a State or~~  
6 ~~local public benefit as defined by section 411(c) of the~~  
7 ~~Personal Responsibility and Work Opportunity Reconciliation~~  
8 ~~Act of 1996 (Public Law 104 193, 8 U.S.C. § 1621(c)) to~~  
9 ~~provide proof of eligibility to receive the State or local~~  
10 ~~public benefit.~~

11 ~~"Unauthorized alien." An alien who is not lawfully present~~  
12 ~~within the United States as determined by Federal immigration~~  
13 ~~officials.~~

14 Section 2. Title 53 is amended by adding a section to read:  
15 ~~§ 305. Restriction on municipal regulation of official and~~  
16 ~~employee communications relating to immigration~~  
17 ~~status.~~

18 ~~(a) General rule. The governing body of a municipality may~~  
19 ~~not adopt an ordinance, regulation or plan or take any other~~  
20 ~~action that limits or prohibits a public official, employee or~~  
21 ~~law enforcement officer of the municipality from communicating~~  
22 ~~or cooperating with an appropriate public official, employee or~~  
23 ~~law enforcement officer of the Federal government concerning the~~  
24 ~~immigration status of an individual in this Commonwealth.~~

25 ~~(b) Notice to public officials, employees and law~~  
26 ~~enforcement officers. The governing body of a municipality~~  
27 ~~shall provide written notice to each public official, employee~~  
28 ~~and law enforcement officer of the municipality of his duty to~~  
29 ~~communicate and cooperate with an appropriate public official,~~  
30 ~~employee or law enforcement officer of the Federal government~~

1 ~~concerning enforcement of any Federal or State immigration law.~~

2 ~~(c) Compliance report to Commonwealth.~~

3 ~~(1) Within 90 days of the effective date of this~~  
4 ~~section, the governing body of a municipality shall submit a~~  
5 ~~written report to the Department of Community and Economic~~  
6 ~~Development that the municipality is in compliance with the~~  
7 ~~requirements of subsection (a).~~

8 ~~(2) If the department fails to receive a timely report~~  
9 ~~from a municipality under this subsection, the department~~  
10 ~~shall provide the name of the municipality to the State~~  
11 ~~Treasurer.~~

12 ~~(d) Duty of law enforcement officers. A law enforcement~~  
13 ~~officer of a municipality who has reasonable cause to believe~~  
14 ~~that an individual under arrest is not legally present in the~~  
15 ~~United States shall immediately report the individual to the~~  
16 ~~appropriate United States Immigration and Customs Enforcement~~  
17 ~~Office within the Department of Homeland Security.~~

18 ~~(e) Annual report to Commonwealth.~~

19 ~~(1) On or before March 1 of each year, the governing~~  
20 ~~body of a municipality shall report to the Department of~~  
21 ~~Community and Economic Development the number of reports made~~  
22 ~~by law enforcement officers of the municipality under~~  
23 ~~subsection (d).~~

24 ~~(2) If the department fails to receive a timely report~~  
25 ~~from a municipality under this subsection, the department~~  
26 ~~shall provide the name of the municipality to the State~~  
27 ~~Treasurer.~~

28 ~~(3) On or before April 1 of each year, the department~~  
29 ~~shall compile the reports received under this subsection and~~  
30 ~~submit a cumulative report thereof to the General Assembly.~~

1 ~~(f) Penalty for noncompliance. Notwithstanding any other~~  
2 ~~provision of law to the contrary, the State Treasurer shall~~  
3 ~~withhold the payment of Commonwealth funds to any municipality~~  
4 ~~whose name is reported by the department to the State Treasurer~~  
5 ~~under this section until such time as the municipality complies~~  
6 ~~with this section and the department so notifies the State~~  
7 ~~Treasurer.~~

8 ~~Section 3. This act shall take effect in 60 days.~~

9 SECTION 1. SECTION 8542 OF TITLE 42 OF THE PENNSYLVANIA <--  
10 CONSOLIDATED STATUTES IS AMENDED BY ADDING A SUBSECTION TO READ:  
11 § 8542. EXCEPTIONS TO GOVERNMENTAL IMMUNITY.

12 \* \* \*

13 (A.1) LIABILITY IMPOSED ON MUNICIPALITY OF REFUGE.--  
14 NOTWITHSTANDING SUBSECTION (A), A MUNICIPALITY OF REFUGE SHALL  
15 BE LIABLE FOR DAMAGES ON ACCOUNT OF AN INJURY TO A PERSON OR  
16 PROPERTY WITHIN THE LIMITS SET FORTH IN THIS SUBCHAPTER IF THE  
17 INJURY WAS CAUSED BY THE ACT OF AN INDIVIDUAL THAT WAS IN THE  
18 CUSTODY OF THE LAW ENFORCEMENT AGENCY OF THE MUNICIPALITY OF  
19 REFUGE AND WAS RELEASED, NOTWITHSTANDING THE EXISTENCE OF A  
20 UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT CIVIL  
21 IMMIGRATION DETAINER REQUEST FOR THE INDIVIDUAL. AS USED IN THIS  
22 SUBSECTION, THE TERM "MUNICIPALITY OF REFUGE" SHALL HAVE THE  
23 SAME MEANING AS GIVEN TO THE TERM IN 53 PA.C.S. § 305 (RELATING  
24 TO MUNICIPALITY OF REFUGE).

25 \* \* \*

26 SECTION 2. TITLE 53 IS AMENDED BY ADDING A SECTION TO READ:  
27 § 305. MUNICIPALITY OF REFUGE.

28 (A) ENFORCEMENT.--THE FOLLOWING MAY ASSIST IN THE  
29 ENFORCEMENT OF EACH LAW, MANDATE, REQUEST AND ORDER OF THE  
30 FEDERAL GOVERNMENT RELATING TO IMMIGRATION, IF THE LAW, MANDATE,

1 REQUEST OR ORDER DOES NOT CONFLICT WITH THE RIGHTS GUARANTEED  
2 UNDER THE PENNSYLVANIA CONSTITUTION OR THE UNITED STATES  
3 CONSTITUTION:

4 (1) THE GOVERNING BODY OF ANY MUNICIPALITY.

5 (2) AN OFFICER OR EMPLOYEE OF ANY MUNICIPALITY.

6 (3) A LAW ENFORCEMENT OFFICIAL OR A LAW ENFORCEMENT  
7 AGENCY.

8 (4) A DISTRICT ATTORNEY.

9 (B) IMMIGRATION.--THE GOVERNING BODY OF ANY MUNICIPALITY MAY  
10 NOT ADOPT A RULE, ORDER, ORDINANCE OR POLICY WHICH PROHIBITS THE  
11 ENFORCEMENT OF A FEDERAL LAW OR THE LAWS OF THIS COMMONWEALTH,  
12 PERTAINING TO AN IMMIGRANT OR IMMIGRATIONS.

13 (C) ELIGIBILITY.--A MUNICIPALITY OF REFUGE SHALL NOT BE  
14 ELIGIBLE:

15 (1) FOR ANY STATE LAW ENFORCEMENT GRANT; OR

16 (2) TO PARTICIPATE IN THE SALE OF STATE SURPLUS  
17 PROPERTY.

18 (D) REINSTATEMENT.--A MUNICIPALITY THAT HAS LOST ELIGIBILITY  
19 UNDER SUBSECTION (C) MAY BE REINSTATED FOR ELIGIBILITY BY  
20 PROVIDING PROOF TO THE APPROPRIATE STATE AGENCY THAT IT IS  
21 CURRENTLY ENFORCING IMMIGRATION ORDERS AND THAT IT HAS RESCINDED  
22 ANY RULE, ORDER, ORDINANCE OR POLICY DESCRIBED UNDER SUBSECTION  
23 (B).

24 (E) APPLICABILITY.--THIS SECTION SHALL NOT APPLY TO AN  
25 INDIVIDUAL OR ENTITY UNDER SUBSECTION (A) THAT HAS MADE AN  
26 ATTEMPT TO COORDINATE WITH A FEDERAL AGENCY PURSUANT TO AN  
27 IMMIGRATION ORDER TO TRANSFER THE CUSTODY OF A SUSPECT IN  
28 QUESTION BUT WAS UNABLE TO DO SO.

29 (F) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
30 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS

1 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

2 "MUNICIPALITY." ANY COUNTY, CITY, BOROUGH, INCORPORATED  
3 TOWN, TOWNSHIP, HOME RULE MUNICIPALITY, OPTIONAL PLAN  
4 MUNICIPALITY, OPTIONAL CHARTER MUNICIPALITY OR ANY SIMILAR  
5 GENERAL PURPOSE UNIT OF GOVERNMENT WHICH MAY BE CREATED OR  
6 AUTHORIZED BY STATUTE.

7 "MUNICIPALITY OF REFUGE." A MUNICIPALITY THAT ADOPTS A RULE,  
8 ORDER, ORDINANCE OR POLICY WHICH DOES EITHER OF THE FOLLOWING:

9 (1) PROHIBITS THE ENFORCEMENT OF A FEDERAL LAW OR THE  
10 LAWS OF THIS COMMONWEALTH PERTAINING TO AN IMMIGRANT OR  
11 IMMIGRATIONS: OR

12 (2) PERMITS THE RELEASE OF AN INDIVIDUAL IN THE CUSTODY  
13 OF THE LAW ENFORCEMENT AGENCY OF THE MUNICIPALITY  
14 NOTWITHSTANDING THE EXISTENCE OF A UNITED STATES IMMIGRATION  
15 AND CUSTOMS ENFORCEMENT CIVIL IMMIGRATION DETAINER REQUEST  
16 FOR THE INDIVIDUAL.

17 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.