

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1298 Session of 2011

INTRODUCED BY KAUFFMAN, BOBACK, BENNINGHOFF, BRENNAN, BROOKS, CALTAGIRONE, CLYMER, D. COSTA, COX, CREIGHTON, FLECK, GILLEN, GINGRICH, GODSHALL, HEFFLEY, HESS, HICKERNELL, HORNAMAN, KILLION, KIRKLAND, KORTZ, MAJOR, MARSICO, MILLARD, READSHAW, REICHLEY, ROCK, SACCONI, SCHRODER, STABACK, SWANGER, VULAKOVICH AND YOUNGBLOOD, APRIL 6, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, APRIL 6, 2011

AN ACT

1 Amending the act of July 7, 2006 (P.L.608, No.93), entitled "An  
2 act providing for the display of the American flag,  
3 Commonwealth flag or military flag by residents in a unit  
4 owners association, homeowners association or master  
5 association," providing for the Honor and Remember Flag.

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

8 Section 1. Sections 2 and 3 of the act of July 7, 2006  
9 (P.L.608, No.93), known as the American, Commonwealth and  
10 Military Flag Act, are amended to read:

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall  
13 have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "American flag." The flag of the United States, as defined  
16 in 4 U.S.C. § 1 (relating to flag; stripes and stars on) and the  
17 Executive Orders entered in connection with that section, made

1 of fabric, cloth or paper displayed from a staff or flagpole or  
2 in a window. The term does not include a depiction or emblem of  
3 the American flag made of lights, paint, roofing, siding, paving  
4 materials, flora or balloons, or any other similar building,  
5 landscaping or decorative component.

6 "Association." Any unit owners association in a common  
7 interest community.

8 "Cemetery." A place for the disposal or burial of deceased  
9 human beings by cremation or in a grave, mausoleum, vault,  
10 columbarium or other receptacle, but the term does not include a  
11 private family cemetery.

12 "Cemetery entity." Any person or entity, including a  
13 cemetery company or association, who either:

14 (1) offers or sells to the public the ownership or the  
15 right to use any cemetery lot; or

16 (2) maintains lots within a cemetery.

17 "Common interest community." Includes a cooperative, a  
18 condominium and a planned community where an individual by  
19 virtue of an ownership interest in any portion of real estate is  
20 or may become obligated by covenant, easement or agreement  
21 imposed upon the owner's interest to pay any amount for real  
22 property taxes, insurance, maintenance, repair, improvement,  
23 management, administration or regulation of any part of the real  
24 estate other than the portion or interest owned solely by the  
25 individual.

26 "Commonwealth flag." The flag of the Commonwealth as  
27 described in section 1 of the act of June 13, 1907 (P.L.560,  
28 No.373), entitled "An act designating the official flag of the  
29 Commonwealth of Pennsylvania, and describing the same; providing  
30 for the carrying of such flag by the regiments of the National

1 Guard of Pennsylvania; authorizing the Secretary of the  
2 Commonwealth to provide, and have deposited in the office of  
3 Secretary of the Commonwealth, a model of said flag, and making  
4 an appropriation therefor." The term does not include a  
5 depiction or emblem of the flag of the Commonwealth made of  
6 lights, paint, roofing, siding, paving materials, flora or  
7 balloons, or any other similar building, landscaping or  
8 decorative component.

9 "Executive board." The body, regardless of name, designated  
10 in the declaration to act on behalf of the association.

11 "Honor and Remember Flag." The Honor and Remember Flag  
12 created by Honor and Remember, Inc.

13 "Lot" or "lots." Includes a lot, plot or part of a cemetery.

14 "Military flag." A flag of any branch of the United States  
15 Armed Forces or the Pennsylvania National Guard and POW/MIA  
16 flags made of fabric, cloth or paper displayed from a staff or  
17 flagpole or in a window. The term does not include a depiction  
18 or emblem of a military flag made of lights, paint, roofing,  
19 siding, paving materials, flora or balloons, or any other  
20 similar building, landscaping or decorative component.

21 "Unit owner." Any unit owner in a common interest community.  
22 The term shall include any proprietary lessee in a cooperative  
23 as defined in 68 Pa.C.S. § 4103 (relating to definitions) or in  
24 any successor statute.

25 Section 3. Display of American flag, Commonwealth flag and  
26 military flag.

27 (a) General rule.--Notwithstanding any provision in the  
28 association's declaration, covenants, bylaws, rules, regulations  
29 or other instruments or any construction of any of those  
30 instruments by an association's executive board, an association

1 may not prohibit the outdoor display of one American flag,  
2 Commonwealth flag [and], military flag or Honor and Remember  
3 Flag by a unit owner on that unit owner's property or property  
4 within the exclusive control of a unit owner or that portion of  
5 an exterior wall directly attached to the unit if the American  
6 flag is displayed in a manner consistent with 4 U.S.C. §§ 4  
7 (relating to pledge of allegiance to the flag; manner of  
8 delivery) through 10 (relating to modification of rules and  
9 customs by President) and a Commonwealth flag [or], military  
10 flag or Honor and Remember Flag is displayed in accordance with  
11 any rules and regulations adopted by the association. An  
12 association may adopt rules and regulations, consistent with 4  
13 U.S.C. §§ 4 through 10, regarding the placement and manner of  
14 display of the American flag, and an association may adopt rules  
15 and regulations regarding the placement and manner of display of  
16 a Commonwealth flag [or], military flag or Honor and Remember  
17 Flag. An association may adopt rules and regulations regarding  
18 the location, size and use of a flagpole but cannot prohibit the  
19 use of wall brackets to display the American flag, Commonwealth  
20 flag [and], military flag or Honor and Remember Flag. The size  
21 of the American flag, Commonwealth flag [and], military flag or  
22 Honor and Remember Flag to be flown shall not be larger than  
23 five feet by three feet. In addition, any rules and regulations  
24 adopted by the association regarding the display of a military  
25 flag or Honor and Remember Flag must permit the flying of such  
26 flags, in a respectful way, on President's Day, Iwo Jima Flag  
27 Raising Day, Vietnam Veterans Day, V-E Day, Armed Forces Day,  
28 Memorial Day, Flag Day, Independence Day, Korean War Veterans  
29 Armistice Day, V-J Day, Patriot's Day, POW/MIA Recognition Day,  
30 Veterans Day, Pearl Harbor Day and the birthday of each branch

1 of the United States Armed Forces.

2 (b) Cemetery entity.--A cemetery entity may not prohibit the  
3 outdoor display of one American flag, Commonwealth flag [and],  
4 military flag or Honor and Remember Flag on lots if the American  
5 flag is displayed in a manner consistent with 4 U.S.C. §§ 4  
6 through 10 and a Commonwealth flag [or], military flag or Honor  
7 and Remember Flag is displayed in accordance with any rules and  
8 regulations adopted by the cemetery entity. A cemetery entity  
9 may adopt rules and regulations, consistent with 4 U.S.C. §§ 4  
10 through 10, regarding the placement and manner of display of the  
11 American flag, and a cemetery entity may adopt rules and  
12 regulations regarding the placement and manner of display of a  
13 Commonwealth flag [or], military flag or Honor and Remember  
14 Flag. A cemetery entity may adopt rules and regulations  
15 regarding the size and location of flags on lots, but such rules  
16 or regulations shall not be used as subterfuge to defeat the  
17 purposes of this act. A cemetery entity must permit the flying  
18 of military flags or Honor and Remember Flags, in a respectful  
19 way, on President's Day, Iwo Jima Flag Raising Day, Vietnam  
20 Veteran's Day, V-E Day, Armed Forces Day, Memorial Day, Flag  
21 Day, Independence Day, Korean War Veterans Armistice Day, V-J  
22 Day, Patriot's Day, POW/MIA Recognition Day, Veterans Day, Pearl  
23 Harbor Day and the birthday of each branch of the United States  
24 Armed Forces. Nothing in this act shall preclude a lot owner or  
25 his heirs or assigns from limiting or prohibiting the display of  
26 an American flag, Commonwealth flag [or], military flag or Honor  
27 and Remember Flag on a lot.

28 Section 2. This act shall take effect in 60 days.