

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 10 Session of 2017

INTRODUCED BY RESCHENTHALER, ALLOWAY, VULAKOVICH, FOLMER, REGAN, SCARNATI, ARGALL, MCGARRIGLE, VOGEL, BARTOLOTTA, EICHELBERGER, AUMENT, WARD, WHITE, RAFFERTY, MARTIN, WAGNER, DISANTO, HUTCHINSON, CORMAN, STEFANO AND YAW, JANUARY 20, 2017

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 10, 2018

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, further~~
4 ~~providing for exceptions to governmental immunity; and, in~~
5 ~~preemptions, providing for municipality of refuge.~~

6 AMENDING TITLE 29 (FEDERAL RELATIONS) OF THE PENNSYLVANIA <--
7 CONSOLIDATED STATUTES, PROVIDING FOR IMMIGRATION PREEMPTION
8 AND COOPERATION.

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

11 ~~Section 1. Section 8542 of Title 42 of the Pennsylvania~~ <--
12 ~~Consolidated Statutes is amended by adding a subsection to read:~~
13 ~~§ 8542. Exceptions to governmental immunity.~~

14 * * *

15 ~~(a.1) Liability imposed on municipality of refuge.~~
16 ~~Notwithstanding subsection (a), a municipality of refuge~~
17 ~~shall be liable for damages on account of an injury to a~~
18 ~~person or property within the limits set forth in this~~

1 ~~subchapter if the injury was caused by the act of an~~
2 ~~individual that was in the custody, pursuant to a lawful~~
3 ~~arrest, of the law enforcement agency of the municipality of~~
4 ~~refuge and was released, notwithstanding the existence of a~~
5 ~~United States Immigration and Customs Enforcement civil~~
6 ~~immigration detainer request for the individual.~~

7 ~~(2) As used in this subsection, the term "municipality~~
8 ~~of refuge" shall have the same meaning as given to the term~~
9 ~~in 53 Pa.C.S. § 305 (relating to municipality of refuge).~~

10 * * *

11 Section 2. Title 53 is amended by adding a section to read:
12 ~~§ 305. Municipality of refuge.~~

13 ~~(a) Immigration. The governing body of any municipality may~~
14 ~~not adopt a rule, order, ordinance or policy which prohibits the~~
15 ~~enforcement of a Federal law or the laws of this Commonwealth,~~
16 ~~pertaining to an immigrant or immigrations.~~

17 ~~(b) Eligibility.~~

18 ~~(1) A law enforcement agency or municipality that~~
19 ~~refuses to enforce an immigration order shall not be~~
20 ~~eligible:~~

21 ~~(i) for any State grant; or~~

22 ~~(ii) to participate in the sale of State surplus~~
23 ~~property.~~

24 ~~(2) This subsection shall not apply to a law enforcement~~
25 ~~agency or municipality that has made an attempt to coordinate~~
26 ~~with a Federal agency pursuant to an immigration order to~~
27 ~~transfer the custody of a suspect in question but was unable~~
28 ~~to do so within the time frame requested by Federal~~
29 ~~immigration officials up to a maximum of 48 hours, excluding~~
30 ~~weekends and holidays, of extended custody.~~

1 ~~(c) Reinstatement. A law enforcement agency or municipality~~
2 ~~that has lost eligibility under subsection (b) may be reinstated~~
3 ~~for eligibility by providing proof to the appropriate State~~
4 ~~agency that it is currently enforcing immigration orders and~~
5 ~~that it has rescinded any rule, order, ordinance or policy~~
6 ~~described under subsection (a).~~

7 ~~(d) Enforcement. Each State agency and executive department~~
8 ~~offering State grants or overseeing the sale of State surplus~~
9 ~~property to municipalities shall require each municipality to~~
10 ~~verify under penalty of perjury that the municipality is not a~~
11 ~~municipality of refuge and is in compliance with subsection (a).~~

12 ~~(e) Definitions. As used in this section, the following~~
13 ~~words and phrases shall have the meanings given to them in this~~
14 ~~subsection unless the context clearly indicates otherwise:~~

15 ~~"Municipality." Any county, city, borough, incorporated~~
16 ~~town, township, home rule municipality, optional plan~~
17 ~~municipality, optional charter municipality or any similar~~
18 ~~general purpose unit of government which may be created or~~
19 ~~authorized by statute.~~

20 ~~"Municipality of refuge." A municipality that permits,~~
21 ~~requires or requests the release of an individual in the custody~~
22 ~~of the law enforcement agency of the municipality~~
23 ~~notwithstanding the existence of a United States Immigration and~~
24 ~~Customs Enforcement civil immigration detainer request for the~~
25 ~~individual.~~

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

27 SECTION 1. TITLE 29 OF THE PENNSYLVANIA CONSOLIDATED
28 STATUTES IS AMENDED BY ADDING PARTS TO READ:

29 PART I
30 PRELIMINARY PROVISIONS

<--

1 (RESERVED)

2 PART II

3 IMMIGRATION

4 CHAPTER

5 21. PREEMPTION AND COOPERATION

6 CHAPTER 21

7 PREEMPTION AND COOPERATION

8 SEC.

9 2101. SCOPE OF CHAPTER.

10 2102. DEFINITIONS.

11 2103. PREEMPTION.

12 2104. COOPERATION.

13 § 2101. SCOPE OF CHAPTER.

14 THIS CHAPTER APPLIES TO THE PREEMPTION OF MUNICIPAL
15 IMMIGRATION POLICIES AND COOPERATION OF FEDERAL AND STATE
16 AGENCIES RELATING TO IMMIGRATION.

17 § 2102. DEFINITIONS.

18 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
19 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
20 CONTEXT CLEARLY INDICATES OTHERWISE:

21 "COMMISSION." THE PENNSYLVANIA COMMISSION ON CRIME AND
22 DELINQUENCY.

23 "CORRECTIONS OFFICER." AS DEFINED IN 61 PA.C.S. § 102
24 (RELATING TO DEFINITIONS).

25 "COUNTY CORRECTIONAL INSTITUTION." AS DEFINED IN 61 PA.C.S.
26 § 102.

27 "IMMIGRATION DETAINER REQUEST." A REQUEST BY A FEDERAL
28 AGENCY TO MAINTAIN TEMPORARY CUSTODY OF AN ALIEN, INCLUDING A
29 UNITED STATES HOMELAND SECURITY FORM I-247 DOCUMENT OR A SIMILAR
30 OR SUCCESSOR FORM.

1 "IMMIGRATION COOPERATION FUND" OR "FUND." THE IMMIGRATION
2 COOPERATION FUND ESTABLISHED UNDER SECTION 2103(E) (RELATING TO
3 PREEMPTION).

4 "IMMIGRATION LAWS." FEDERAL LAWS, REGULATIONS AND POLICY
5 MEMORANDA RELATING TO ALIENS, IMMIGRANTS OR IMMIGRATION,
6 INCLUDING THE IMMIGRATION AND NATIONALITY ACT (66 STAT. 163, 8
7 U.S.C. § 1101 ET SEQ.) AND 8 CFR (RELATING TO ALIENS AND
8 NATIONALITY).

9 "INDIVIDUAL ADVERSELY AFFECTED." ANY OF THE FOLLOWING:

10 (1) A RESIDENT OF A MUNICIPALITY ALLEGED TO BE IN
11 VIOLATION OF SECTION 2103(A).

12 (2) AN INDIVIDUAL WHO OTHERWISE HAS STANDING UNDER THE
13 LAWS OF THIS COMMONWEALTH TO BRING AN ACTION UNDER SECTION
14 2103(B).

15 "JUDICIAL OFFICER." AS DEFINED IN 42 PA.C.S. § 102 (RELATING
16 TO DEFINITIONS).

17 "JUDICIAL STAFF." ADMINISTRATIVE STAFF, AS THAT TERM IS
18 DEFINED IN 42 PA.C.S. § 102.

19 "LAW ENFORCEMENT AGENCY." THE OFFICE OF ATTORNEY GENERAL, A
20 DISTRICT ATTORNEY'S OFFICE OR AN AGENCY THAT EMPLOYS A LAW
21 ENFORCEMENT OFFICER.

22 "LAW ENFORCEMENT OFFICER." AN OFFICER OF THE UNITED STATES,
23 ANOTHER STATE OR POLITICAL SUBDIVISION THEREOF, OR OF THE
24 COMMONWEALTH OR POLITICAL SUBDIVISION THEREOF, WHO IS EMPOWERED
25 BY LAW TO CONDUCT INVESTIGATIONS OF OR TO MAKE ARRESTS FOR
26 OFFENSES ENUMERATED IN 18 PA.C.S. (RELATING TO CRIMES AND
27 OFFENSES) OR AN EQUIVALENT CRIME IN ANOTHER JURISDICTION AND ANY
28 ATTORNEY AUTHORIZED BY LAW TO PROSECUTE OR PARTICIPATE IN THE
29 PROSECUTION OF AN OFFENSE.

30 "MUNICIPALITY." ANY COUNTY, CITY, BOROUGH, INCORPORATED

1 TOWN, TOWNSHIP, HOME RULE MUNICIPALITY, OPTIONAL PLAN
2 MUNICIPALITY, OPTIONAL CHARTER MUNICIPALITY OR ANY SIMILAR
3 GENERAL PURPOSE UNIT OF GOVERNMENT CREATED OR AUTHORIZED BY
4 STATUTE.

5 "PAROLE OFFICER." A STATE PAROLE AGENT APPOINTED BY THE
6 PENNSYLVANIA BOARD OF PROBATION AND PAROLE OR A COUNTY PROBATION
7 OR PAROLE OFFICER OF THE COMMONWEALTH.

8 "POLICY." AN ORDINANCE, A RESOLUTION, REGULATION, RULE,
9 PRACTICE OR ANY OTHER ACTION, WHETHER FORMAL OR INFORMAL,
10 PROMULGATED OR ENFORCED BY A MUNICIPALITY.

11 "REASONABLE EXPENSES." ATTORNEY FEES, EXPERT WITNESS FEES
12 AND COURT COSTS.

13 § 2103. PREEMPTION.

14 (A) IMMIGRATION POLICIES PREEMPTED.--A MUNICIPALITY MAY NOT
15 ADOPT OR ENFORCE A POLICY WHICH PROHIBITS OR MATERIALLY LIMITS A
16 LAW ENFORCEMENT AGENCY, LAW ENFORCEMENT OFFICER, CORRECTIONS
17 OFFICER, PAROLE OFFICER, JUDICIAL OFFICER OR JUDICIAL STAFF FROM
18 ENFORCING IMMIGRATION LAWS, INCLUDING THE FOLLOWING:

19 (1) COMPLIANCE WITH SECTION 2104 (RELATING TO
20 COOPERATION).

21 (2) ASSISTING OR COOPERATING WITH AN OFFICER FROM UNITED
22 STATES CITIZENSHIP AND IMMIGRATION SERVICES, UNITED STATES
23 IMMIGRATION AND CUSTOMS ENFORCEMENT OR ANOTHER FEDERAL AGENCY
24 REGARDING IMMIGRATION LAWS, INCLUDING PROVIDING ENFORCEMENT
25 ASSISTANCE.

26 (3) PERMITTING AN OFFICER FROM UNITED STATES CITIZENSHIP
27 AND IMMIGRATION SERVICES, UNITED STATES IMMIGRATION AND
28 CUSTOMS ENFORCEMENT OR ANOTHER FEDERAL AGENCY TO ENTER A
29 COUNTY CORRECTIONAL INSTITUTION, INCLUDING FOR THE PURPOSE OF
30 INTERVIEWING AN INDIVIDUAL IN CUSTODY AT THE INSTITUTION OR

1 ENFORCING IMMIGRATION LAWS.

2 (4) INQUIRING INTO THE IMMIGRATION STATUS OF AN
3 INDIVIDUAL IN CUSTODY.

4 (5) WITH RESPECT TO INFORMATION RELATING TO THE RELEASE
5 DATE OR IMMIGRATION STATUS OF AN INDIVIDUAL IN CUSTODY,
6 INCLUDING INFORMATION RELATING TO NAME, DATE AND PLACE OF
7 BIRTH:

8 (I) SENDING THE INFORMATION TO OR REQUESTING OR
9 RECEIVING THE INFORMATION FROM UNITED STATES CITIZENSHIP
10 AND IMMIGRATION SERVICES, UNITED STATES IMMIGRATION AND
11 CUSTOMS ENFORCEMENT OR ANOTHER FEDERAL AGENCY.

12 (II) MAINTAINING THE INFORMATION.

13 (III) EXCHANGING THE INFORMATION WITH ANOTHER
14 MUNICIPALITY OR FEDERAL OR STATE AGENCY.

15 (B) RELIEF.--AN INDIVIDUAL ADVERSELY AFFECTED BY A POLICY
16 PROHIBITED UNDER SUBSECTION (A) MAY FILE AN ACTION FOR
17 DECLARATORY OR INJUNCTIVE RELIEF. ORIGINAL JURISDICTION FOR AN
18 ACTION UNDER THIS SUBSECTION SHALL BE IN COMMONWEALTH COURT OR
19 ANY OTHER COURT WITH APPROPRIATE JURISDICTION.

20 (C) PREVAILING PARTY.--IF AN INDIVIDUAL ADVERSELY AFFECTED
21 PROVIDES WRITTEN NOTICE OF THE INDIVIDUAL'S INTENTION TO FILE AN
22 ACTION PURSUANT TO SUBSECTION (B) TO THE DEFENDANT 60 DAYS PRIOR
23 TO FILING THE ACTION, THE INDIVIDUAL ADVERSELY AFFECTED SHALL BE
24 DECLARED THE PREVAILING PARTY IF:

25 (1) A FINAL DETERMINATION BY THE COURT IS GRANTED, IN
26 WHOLE OR IN PART, IN FAVOR OF THE INDIVIDUAL ADVERSELY
27 AFFECTED; OR

28 (2) THE POLICY IN QUESTION IS RESCINDED, REPEALED OR
29 OTHERWISE ABROGATED AFTER SUIT HAS BEEN FILED UNDER
30 SUBSECTION (B) BUT BEFORE THE FINAL DETERMINATION BY THE

1 COURT.

2 (D) REASONABLE EXPENSES AND DAMAGES.--IF AN INDIVIDUAL
3 ADVERSELY AFFECTED IS DECLARED A PREVAILING PARTY, THE COURT
4 SHALL AWARD ALL OF THE FOLLOWING TO THE INDIVIDUAL ADVERSELY
5 AFFECTED:

6 (1) REASONABLE EXPENSES.

7 (2) ACTUAL DAMAGES.

8 (3) LIQUIDATED DAMAGES OF \$100,000 FOR EACH DAY THAT THE
9 POLICY PROHIBITED UNDER SUBSECTION (A) HAS BEEN IN EFFECT OR
10 \$1,000,000, WHICHEVER IS GREATER, TO BE PAID INTO THE
11 IMMIGRATION COOPERATION FUND.

12 (E) FUND ESTABLISHED.--THE IMMIGRATION COOPERATION FUND IS
13 ESTABLISHED AS A RESTRICTED ACCOUNT IN THE GENERAL FUND. THE
14 FUND SHALL INCLUDE REVENUES FROM DAMAGES PAID UNDER SUBSECTION
15 (D) AND OTHER MONEY AS MAY BE APPROPRIATED INTO THE FUND. MONEY
16 IN THE FUND IS APPROPRIATED TO THE COMMISSION ON A CONTINUING
17 BASIS FOR THE PURPOSE OF PROVIDING GRANTS TO LAW ENFORCEMENT
18 AGENCIES TO COOPERATE WITH FEDERAL AGENCIES REGARDING THE
19 ENFORCEMENT OF IMMIGRATION LAWS.

20 § 2104. COOPERATION.

21 (A) DUTY TO COOPERATE WITH FEDERAL IMMIGRATION REQUESTS.--

22 (1) A LAW ENFORCEMENT AGENCY OR MUNICIPALITY THAT HAS
23 CUSTODY OF AN INDIVIDUAL SUBJECT TO AN IMMIGRATION DETAINER
24 REQUEST ISSUED BY UNITED STATES IMMIGRATION AND CUSTOMS
25 ENFORCEMENT SHALL:

26 (I) COMPLY WITH, HONOR AND FULFILL ANY REQUEST MADE
27 IN THE DETAINER REQUEST.

28 (II) INFORM THE INDIVIDUAL THAT THE INDIVIDUAL IS
29 BEING HELD PURSUANT TO AN IMMIGRATION DETAINER REQUEST
30 ISSUED BY THE FEDERAL GOVERNMENT.

1 (2) A LAW ENFORCEMENT AGENCY OR MUNICIPALITY SHALL
2 PROVIDE ANY INFORMATION REQUESTED BY UNITED STATES
3 CITIZENSHIP AND IMMIGRATION SERVICES, UNITED STATES
4 IMMIGRATION AND CUSTOMS ENFORCEMENT OR ANOTHER FEDERAL AGENCY
5 RELATING TO THE RELEASE DATE OR IMMIGRATION STATUS OF ANY
6 INDIVIDUAL IN ITS CUSTODY, INCLUDING INFORMATION RELATING TO
7 NAME, DATE AND PLACE OF BIRTH.

8 (B) EXCEPTION.--SUBSECTION (A) SHALL NOT APPLY IF AN
9 INDIVIDUAL PROVIDES PROOF THAT THE INDIVIDUAL IS A CITIZEN OF
10 THE UNITED STATES OR HAS LAWFUL IMMIGRATION STATUS IN THE UNITED
11 STATES.

12 (C) UNCONSTITUTIONAL ACTIONS AND DISCRIMINATION
13 PROHIBITED.--TO THE EXTENT PROHIBITED BY THE CONSTITUTION OF THE
14 UNITED STATES AND THE CONSTITUTION OF PENNSYLVANIA, A LAW
15 ENFORCEMENT AGENCY OR MUNICIPALITY MAY NOT CONSIDER THE RACE,
16 COLOR, RELIGION, LANGUAGE OR NATIONAL ORIGIN OF AN INDIVIDUAL
17 WHILE COOPERATING WITH FEDERAL AGENCIES FOR THE PURPOSE OF
18 ENFORCING IMMIGRATION LAWS.

19 (D) DEFENSE OF LAW ENFORCEMENT AGENCIES AND
20 MUNICIPALITIES.--

21 (1) THE ATTORNEY GENERAL OF THE COMMONWEALTH SHALL
22 DEFEND A LAW ENFORCEMENT AGENCY OR MUNICIPALITY FROM A CIVIL
23 ACTION IF ALL OF THE FOLLOWING APPLY:

24 (I) THE LAW ENFORCEMENT AGENCY OR MUNICIPALITY
25 REQUESTS THE ATTORNEY GENERAL'S DEFENSE.

26 (II) THE ATTORNEY GENERAL DETERMINES THAT THE CIVIL
27 ACTION ARISES OUT OF, IN WHOLE OR IN PART, GOOD FAITH
28 COMPLIANCE WITH THIS SECTION.

29 (2) IF THE ATTORNEY GENERAL DEFENDS A LAW ENFORCEMENT
30 AGENCY OR MUNICIPALITY UNDER THIS SECTION, THE ATTORNEY

1 GENERAL SHALL BE REQUIRED TO PAY FOR THE EXPENSES AND COSTS
2 OF THE CIVIL ACTION AND THE COMMONWEALTH SHALL BE LIABLE FOR
3 ANY JUDGMENT OR SETTLEMENT OF THE ACTION. THE LAW ENFORCEMENT
4 AGENCY OR MUNICIPALITY SHALL NOT BE REQUIRED TO PAY FOR THE
5 EXPENSES, COSTS, JUDGMENT OR SETTLEMENT OF THE CIVIL ACTION.

6 SECTION 2. IF ANY PROVISION OF THIS ACT OR ITS APPLICATION
7 TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY
8 SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ACT
9 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR
10 APPLICABILITY.

11 SECTION 3. THIS ACT SHALL TAKE EFFECT JANUARY 1, 2019.