

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 28** Session of
2017

INTRODUCED BY WHITE, READSHAW, PICKETT, A. HARRIS, ROAE,
M. K. KELLER, MACKENZIE, DIAMOND, DUSH, TOEPEL, SIMMONS, FEE,
RAPP, TAYLOR, BLOOM, EVERETT, WARD, WARNER, GREINER, EMRICK,
DUNBAR, MILLARD, TALLMAN, BARRAR, BAKER, SACCONI, RYAN,
KEEFER, HICKERNELL, SANKEY, ROTHMAN, DAY, GABLER, GROVE,
METCALFE, TOPPER, KAUFFMAN, ORTITAY, IRVIN, O'NEILL, STAATS,
SAYLOR, FARRY, CHARLTON, B. MILLER, BERNSTINE, WHEELAND,
RADER, ZIMMERMAN, KNOWLES, METZGAR, PYLE, BENNINGHOFF, NELSON
AND MOUL, APRIL 3, 2017

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 13, 2017

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

10 Section 1. Title 42 of the Pennsylvania Consolidated
11 Statutes is amended by adding a section to read:

12 § 8543. Exceptions to governmental immunity related to
13 unauthorized aliens.

14 (a) Liability imposed.--A sanctuary municipality shall be
15 liable for damages on account of an injury to a person or
16 property as a result of criminal activity by an unauthorized

1 alien if all of the following conditions are satisfied:

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

5 (2) The UNAUTHORIZED ALIEN IS KNOWINGLY RELEASED FROM <--
6 CUSTODY BY THE LAW ENFORCEMENT AGENCY OF THE SANCTUARY
7 MUNICIPALITY IN DISREGARD OF A LAWFUL UNITED STATES
8 IMMIGRATION AND CUSTOMS ENFORCEMENT DETAINER REQUEST FOR THE
9 UNAUTHORIZED ALIEN OR THE criminal activity that caused the
10 injury was committed in the sanctuary municipality.

11 (3) The unauthorized alien is convicted of the criminal
12 activity that caused the injury.

13 (4) The criminal activity is a proximate cause of the
14 injury.

15 (b) Definitions.--As used in this section, the following
16 words and phrases shall have the meanings given to them in this
17 subsection:

18 "Municipality." A municipality as defined under 1 Pa.C.S. §
19 1991 (relating to definitions).

20 "Sanctuary municipality." A municipality that prohibits or
21 in any way restricts an official or employee of the municipality
22 from doing any of the following:

23 (1) sending to or receiving from Federal immigration
24 officials information regarding the citizenship or
25 immigration status, lawful or unlawful, of an individual;

26 (2) doing any of the following with respect to
27 information regarding the immigration status, lawful or
28 unlawful, of an individual:

29 (i) sending the information to or requesting the
30 information from Federal immigration officials;

1 (ii) maintaining the information; or

2 (iii) exchanging the information with other Federal
3 agencies, State agencies or municipalities;

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

8 (4) requesting an applicant who applies for a State or
9 local public benefit as defined by section 411(c) of the
10 Personal Responsibility and Work Opportunity Reconciliation
11 Act of 1996 (Public Law 104-193, 110 Stat. 2105) to provide
12 proof of eligibility to receive the State or local public
13 benefit.

14 "Unauthorized alien." An alien who is not lawfully present
15 within the United States as determined by Federal immigration
16 officials.

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

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

28 (b) Notice to public officials, employees and law
29 enforcement officers.--The governing body of a municipality
30 shall provide written notice to each public official, employee

1 and law enforcement officer of the municipality of his duty to
2 communicate and cooperate with an appropriate public official,
3 employee or law enforcement officer of the Federal government
4 concerning the immigration status of an individual in this
5 Commonwealth.

6 (c) Compliance report to Commonwealth.--

7 (1) Within 90 days of the effective date of this
8 section, the governing body of a municipality shall submit a
9 written report to the Department of Community and Economic
10 Development that the municipality is in compliance with the
11 requirements of subsection (a) SUBSECTIONS (A) AND (B). <--

12 (2) If the department fails to receive a timely report
13 from a municipality under this subsection, the department
14 shall provide the name of the municipality to the State
15 Treasurer.

16 (d) Duty of law enforcement officers. A law enforcement <--
17 officer of a municipality who has reasonable suspicion to
18 believe that an individual under arrest is not legally present
19 in the United States shall immediately report the individual to
20 the appropriate United States Immigration and Customs
21 Enforcement Office within the Department of Homeland Security.

22 (e) (D) Annual report to Commonwealth.-- <--

23 (1) On or before March 1 of each year, the governing
24 body of a municipality shall report to the Department of
25 Community and Economic Development the number of reports made <--
26 by law enforcement officers of the municipality under
27 subsection (d). THAT THE MUNICIPALITY IS IN COMPLIANCE WITH <--
28 THE REQUIREMENTS OF SUBSECTIONS (A) AND (B). THE DEPARTMENT
29 OF COMMUNITY AND ECONOMIC DEVELOPMENT SHALL CONDUCT AT LEAST
30 ONE RANDOM CHECK OF THE MUNICIPALITIES TO VERIFY THEY HAVE

1 REMAINED IN COMPLIANCE.

2 (2) If the department fails to receive a timely report
3 from a municipality under this subsection, the department
4 shall provide the name of the municipality to the State
5 Treasurer.

6 (3) On or before April 1 of each year, the department
7 shall compile the reports received under this subsection and
8 submit a cumulative report to the General Assembly.

9 ~~(f)~~ (E) Penalty for noncompliance.-- <--

10 (1) Notwithstanding any other provision of law to the
11 contrary, the State Treasurer shall withhold the payment of
12 Commonwealth funds to a municipality whose name is reported
13 by the Department of Community and Economic Development to
14 the State Treasurer under this section until such time as the
15 municipality complies with this section and the department
16 notifies the State Treasurer.

17 (2) Paragraph (1) shall not apply to a payment of
18 Federal funds or a payment that is constitutionally mandated.

19 ~~(g)~~ (F) Reinstatement.--The eligibility of a municipality to <--
20 receive Commonwealth funds may be restored if the municipality
21 demonstrates compliance with the requirements of this section. A
22 municipality determined to be in violation must provide proof
23 satisfactory to the Department of Community and Economic
24 Development that the municipality is in compliance.

25 ~~(h)~~ (G) Duties of Department of Community and Economic <--
26 Development.--The Department of Community and Economic
27 Development shall:

28 (1) Develop procedures for reporting violations of this
29 section.

30 (2) Maintain records of all reports of alleged

1 violations and the actions taken to resolve the alleged
2 violations.

3 (3) Report municipalities in violation to the State
4 Treasurer UNDER SUBSECTION (D) for the purpose of withholding <--
5 payment under subsection ~~(f)~~ (E). <--

6 Section 3. 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 4. This act shall take effect in 60 days.