

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1651 Session of 2017

INTRODUCED BY SANKEY, DIAMOND AND ZIMMERMAN, JULY 8, 2017

REFERRED TO COMMITTEE ON EDUCATION, JULY 8, 2017

AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled  
 2 "An act relating to the finances of the State government;  
 3 providing for the settlement, assessment, collection, and  
 4 lien of taxes, bonus, and all other accounts due the  
 5 Commonwealth, the collection and recovery of fees and other  
 6 money or property due or belonging to the Commonwealth, or  
 7 any agency thereof, including escheated property and the  
 8 proceeds of its sale, the custody and disbursement or other  
 9 disposition of funds and securities belonging to or in the  
 10 possession of the Commonwealth, and the settlement of claims  
 11 against the Commonwealth, the resettlement of accounts and  
 12 appeals to the courts, refunds of moneys erroneously paid to  
 13 the Commonwealth, auditing the accounts of the Commonwealth  
 14 and all agencies thereof, of all public officers collecting  
 15 moneys payable to the Commonwealth, or any agency thereof,  
 16 and all receipts of appropriations from the Commonwealth,  
 17 authorizing the Commonwealth to issue tax anticipation notes  
 18 to defray current expenses, implementing the provisions of  
 19 section 7(a) of Article VIII of the Constitution of  
 20 Pennsylvania authorizing and restricting the incurring of  
 21 certain debt and imposing penalties; affecting every  
 22 department, board, commission, and officer of the State  
 23 government, every political subdivision of the State, and  
 24 certain officers of such subdivisions, every person,  
 25 association, and corporation required to pay, assess, or  
 26 collect taxes, or to make returns or reports under the laws  
 27 imposing taxes for State purposes, or to pay license fees or  
 28 other moneys to the Commonwealth, or any agency thereof,  
 29 every State depository and every debtor or creditor of the  
 30 Commonwealth," in procedure for disbursement of money from  
 31 the State Treasury, providing for withholding payments to  
 32 certain institutions of higher education.

33 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. The act of April 9, 1929 (P.L.343, No.176), known  
3 as The Fiscal Code, is amended by adding a section to read:

4 Section 1509. Withholding Payments to Certain Institutions  
5 of Higher Education.--(a) Notwithstanding any other provision  
6 of law to the contrary, the State Treasurer may not issue a  
7 warrant for payment to an institution of higher education for  
8 which the State Treasurer has received a determination from the  
9 Secretary of Education under subsection (b)(3), unless and until  
10 the Secretary of Education submits notification under subsection  
11 (b)(4) to the State Treasurer.

12 (b) (1) A person who believes that an institution of higher  
13 education is hindering the person's exercise of rights  
14 guaranteed by the First Amendment to the United States  
15 Constitution may file a written complaint with the Secretary of  
16 Education.

17 (2) The Secretary of Education shall investigate a complaint  
18 filed by a person under paragraph (1) and, after providing the  
19 institution of higher education with an opportunity to respond  
20 to the complaint, determine whether the institution of higher  
21 education is hindering the person's exercise of rights  
22 guaranteed by the First Amendment to the United States  
23 Constitution.

24 (3) If the Secretary of Education determines that the  
25 institution of higher education is hindering the person's  
26 exercise of rights guaranteed by the First Amendment to the  
27 United States Constitution, the Secretary of Education shall  
28 submit a certified copy of its determination to the State  
29 Treasurer.

30 (4) If, after submitting the determination to the State

1 Treasurer under paragraph (3), the Secretary of Education  
2 becomes satisfied, upon further investigation, that the  
3 institution of higher education no longer hinders the exercise  
4 of rights guaranteed by the First Amendment to the United States  
5 Constitution, the Secretary of Education shall provide written  
6 notification to the institution of higher education and State  
7 Treasurer.

8 (c) For purposes of this section:

9 (1) The term "institution of higher education" means a  
10 State-related university, a university within the State System  
11 of Higher Education, a community college operating in this  
12 Commonwealth and a private college or university entitled to  
13 award academic degrees in this Commonwealth in accordance with  
14 law.

15 (2) The term "rights guaranteed by the First Amendment to  
16 the United States Constitution" means the rights to freedom of  
17 speech, expression and the press. The term does not include a  
18 form of expression that:

19 (i) is determined as obscene in accordance with the *Miller*  
20 Test, as developed by the Supreme Court of the United States in  
21 *Miller v. California*, 414 U.S. 881 (1973);

22 (ii) does comprise an act of sedition, as defined by 18  
23 U.S.C. Ch. 115 (relating to treason, sedition, and subversive  
24 activities); and

25 (iii) does constitute libel or slander in accordance with  
26 the decisions of the Supreme Court of the United States in *New*  
27 *York Times Co. v. Sullivan*, 376 U.S. 254 (1964), *Gertz v. Robert*  
28 *Welch, Inc.*, 418 U.S. 323 (1974), and *Dun & Bradstreet, Inc. v.*  
29 *Greenmoss Builders'* 472 U.S. 749 (1985) and *TXO Production Corp.*  
30 *v. Alliance Resources Corp.*, 509 U.S. 443 (1993).

1       Section 2. An agreement entered into on or after the  
2 effective date of this section that conflicts with or is  
3 intended to exclude the application of section 1509 of the act  
4 shall be void and unenforceable.

5       Section 3. This act shall take effect as follows:

6           (1) The addition of section 1509 of the act shall take  
7 effect July 1, 2020.

8           (2) The remainder of this act shall take effect  
9 immediately.