

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1840 Session of
2023

INTRODUCED BY WARNER, R. MACKENZIE, SCIALABBA, GREINER,
M. MACKENZIE, METZGAR, KEEFER, HAMM, TOPPER, STAATS,
KAUFFMAN, JOZWIAK, GLEIM, MOUL, ROWE, GILLEN, LEADBETER,
ZIMMERMAN AND BERNSTINE, NOVEMBER 13, 2023

REFERRED TO COMMITTEE ON JUDICIARY, NOVEMBER 13, 2023

AN ACT

1 Amending Title 29 (Federal Relations) of the Pennsylvania
2 Consolidated Statutes, providing for immigration preemption
3 and cooperation.

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

6 Section 1. Title 29 of the Pennsylvania Consolidated
7 Statutes is amended by adding parts to read:

8 PART I

9 PRELIMINARY PROVISIONS

10 (Reserved)

11 PART II

12 IMMIGRATION

13 Chapter

14 21. Preemption and Cooperation

15 CHAPTER 21

16 PREEMPTION AND COOPERATION

17 Sec.

1 2101. Scope of chapter.

2 2102. Definitions.

3 2103. Preemption.

4 2104. Cooperation.

5 § 2101. Scope of chapter.

6 This chapter applies to the preemption of municipal
7 immigration policies and cooperation of Federal and State
8 agencies relating to immigration.

9 § 2102. Definitions.

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

13 "Commission." The Pennsylvania Commission on Crime and
14 Delinquency.

15 "Corrections officer." As defined in 61 Pa.C.S. § 102
16 (relating to definitions).

17 "County correctional institution." As defined in 61 Pa.C.S.
18 § 102.

19 "Immigration Cooperation Fund" or "fund." The Immigration
20 Cooperation Fund established under section 2103(e) (relating to
21 preemption).

22 "Immigration detainer request." A request by a Federal
23 agency to maintain temporary custody of an alien, including a
24 United States Homeland Security Form I-247 document or a similar
25 or successor form.

26 "Immigration laws." Federal laws, regulations and policy
27 memoranda relating to aliens, immigrants or immigration,
28 including 8 U.S.C. Ch. 12 (relating to immigration and
29 nationality) and 8 CFR (relating to aliens and nationality).

30 "Individual adversely affected." Any of the following:

1 (1) A resident of a municipality alleged to be in
2 violation of section 2103(a).

3 (2) A municipal police officer as defined in 42 Pa.C.S.
4 § 8951 (relating to definitions) who is employed by a
5 municipality alleged to be in violation of section 2103(a),
6 regardless of whether the municipal police officer is a
7 resident of the municipality.

8 (3) An individual who otherwise has standing under the
9 laws of this Commonwealth to bring an action under section
10 2103(b).

11 "Judicial officer." As defined in 42 Pa.C.S. § 102 (relating
12 to definitions).

13 "Judicial staff." Administrative staff, as that term is
14 defined in 42 Pa.C.S. § 102.

15 "Law enforcement agency." The Office of Attorney General, a
16 district attorney's office or an agency that employs a law
17 enforcement officer.

18 "Law enforcement officer." An officer of the United States,
19 another state or political subdivision thereof, or of the
20 Commonwealth or political subdivision thereof, who is empowered
21 by law to conduct investigations of or to make arrests for
22 offenses enumerated in 18 Pa.C.S. (relating to crimes and
23 offenses) or an equivalent crime in another jurisdiction and any
24 attorney authorized by law to prosecute or participate in the
25 prosecution of an offense.

26 "Municipality." Any county, city, borough, incorporated
27 town, township, home rule municipality, optional plan
28 municipality, optional charter municipality or any similar
29 general purpose unit of government created or authorized by
30 statute.

1 "Parole officer." A State parole agent appointed by the
2 Pennsylvania Parole Board or a county probation or parole
3 officer of the Commonwealth.

4 "Policy." An ordinance, a resolution, regulation, rule,
5 practice or any other action, whether formal or informal,
6 promulgated or enforced by a municipality.

7 "Reasonable expenses." Attorney fees, expert witness fees
8 and court costs.

9 § 2103. Preemption.

10 (a) Immigration policies preempted.--A municipality may not
11 adopt or enforce a policy which prohibits or materially limits a
12 law enforcement agency, law enforcement officer, corrections
13 officer, parole officer, judicial officer or judicial staff from
14 enforcing immigration laws, including the following:

15 (1) Compliance with section 2104 (relating to
16 cooperation).

17 (2) Assisting or cooperating with an officer from United
18 States Citizenship and Immigration Services, United States
19 Immigration and Customs Enforcement or another Federal agency
20 regarding immigration laws, including providing enforcement
21 assistance.

22 (3) Permitting an officer from United States Citizenship
23 and Immigration Services, United States Immigration and
24 Customs Enforcement or another Federal agency to enter a
25 county correctional institution, including for the purpose of
26 interviewing an individual in custody at the institution or
27 enforcing immigration laws.

28 (4) Inquiring into the immigration status of an
29 individual in custody.

30 (5) With respect to information relating to the release

1 date or immigration status of an individual in custody,
2 including information relating to name, date and place of
3 birth:

4 (i) Sending the information to or requesting or
5 receiving the information from United States Citizenship
6 and Immigration Services, United States Immigration and
7 Customs Enforcement or another Federal agency.

8 (ii) Maintaining the information.

9 (iii) Exchanging the information with another
10 municipality or Federal or state agency.

11 (b) Relief.--An individual adversely affected by a policy
12 prohibited under subsection (a) may file an action for
13 declaratory or injunctive relief. Original jurisdiction for an
14 action under this subsection shall be in Commonwealth Court or
15 any other court with appropriate jurisdiction.

16 (c) Prevailing party.--If an individual adversely affected
17 provides written notice of the individual's intention to file an
18 action in accordance with subsection (b) to the defendant 60
19 days prior to filing the action, the individual adversely
20 affected shall be declared the prevailing party if:

21 (1) a final determination by the court is granted, in
22 whole or in part, in favor of the individual adversely
23 affected; or

24 (2) the policy in question is rescinded, repealed or
25 otherwise abrogated after suit has been filed under
26 subsection (b) but before the final determination by the
27 court.

28 (d) Reasonable expenses and damages.--If an individual
29 adversely affected is declared a prevailing party, the court
30 shall award all of the following to the individual adversely

1 affected:

2 (1) Reasonable expenses.

3 (2) Actual damages.

4 (3) Liquidated damages of \$100,000 for each day that the
5 policy prohibited under subsection (a) has been in effect or
6 \$1,000,000, whichever is greater, to be paid into the
7 Immigration Cooperation Fund.

8 (e) Fund established.--The Immigration Cooperation Fund is
9 established as a restricted account in the General Fund. The
10 fund shall include revenues from damages paid under subsection
11 (d) and other money as may be appropriated into the fund. Money
12 in the fund is appropriated to the commission on a continuing
13 basis for the purpose of providing grants to law enforcement
14 agencies to cooperate with Federal agencies regarding the
15 enforcement of immigration laws.

16 § 2104. Cooperation.

17 (a) Duty to cooperate with Federal immigration requests.--

18 (1) A law enforcement agency or municipality that has
19 custody of an individual subject to an immigration detainer
20 request issued by United States Immigration and Customs
21 Enforcement shall:

22 (i) Comply with, honor and fulfill any request made
23 in the detainer request.

24 (ii) Inform the individual that the individual is
25 being held pursuant to an immigration detainer request
26 issued by the Federal Government.

27 (2) A law enforcement agency or municipality shall
28 provide any information requested by United States
29 Citizenship and Immigration Services, United States
30 Immigration and Customs Enforcement or other Federal agency

1 relating to the release date or immigration status of any
2 individual in its custody, including information relating to
3 name, date and place of birth.

4 (b) Exception.--Subsection (a) shall not apply if an
5 individual provides proof that the individual is a citizen of
6 the United States or has lawful immigration status in the United
7 States.

8 (c) Unconstitutional actions and discrimination
9 prohibited.--To the extent prohibited by the Constitution of the
10 United States and the Constitution of Pennsylvania, a law
11 enforcement agency or municipality may not consider the race,
12 color, religion, language or national origin of an individual
13 while cooperating with Federal agencies for the purpose of
14 enforcing immigration laws.

15 (d) Defense of law enforcement agencies and
16 municipalities.--

17 (1) The Attorney General shall defend a law enforcement
18 agency or municipality from a civil action if all of the
19 following apply:

20 (i) The law enforcement agency or municipality
21 requests the Attorney General's defense.

22 (ii) The Attorney General determines that the civil
23 action arises out of, in whole or in part, good faith
24 compliance with this section.

25 (2) If the Attorney General defends a law enforcement
26 agency or municipality under this section, the Attorney
27 General shall be required to pay for the expenses and costs
28 of the civil action and the Commonwealth shall be liable for
29 any judgment or settlement of the action. The law enforcement
30 agency or municipality shall not be required to pay for the

1 expenses, costs, judgment or settlement of the civil action.

2 Section 2. If any provision of this act or its application
3 to any person or circumstance is held invalid, the invalidity
4 shall not affect other provisions or applications of this act
5 which can be given effect without the invalid provision or
6 applicability.

7 Section 3. This act shall take effect January 1, 2024.