

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 778 Session of 2019

INTRODUCED BY SANKEY, DUSH, KEEFER AND RYAN, MARCH 11, 2019

REFERRED TO COMMITTEE ON EDUCATION, MARCH 11, 2019

AN ACT

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

1 from the State Treasury, providing for withholding payments
2 to certain institutions of higher education.

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

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

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

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

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

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

1 Treasurer.

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

10 (c) For purposes of this section:

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

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

21 (i) is determined as obscene in accordance with the *Miller*
22 Test, as developed by the Supreme Court of the United States in
23 *Miller v. California*, 413 U.S. 15 (1973);

24 (ii) comprises an act of sedition, as defined by 18 U.S.C.
25 Ch. 115 (relating to treason, sedition, and subversive
26 activities); and

27 (iii) constitutes libel or slander in accordance with the
28 decisions of the Supreme Court of the United States in *New York*
29 *Times Company v. Sullivan*, 376 U.S. 254 (1964), *Gertz v. Robert*
30 *Welch, Inc.*, 418 U.S. 323 (1974), and *Dun & Bradstreet, Inc. v.*

1 Greenmoss Builders', Inc., 472 U.S. 749 (1985) and TXO
2 Production Corp. v. Alliance Resources Corp., 509 U.S. 443
3 (1993).

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

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

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

11 (2) The remainder of this act shall take effect
12 immediately.