

## AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, providing for sanction-free procurement.

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

5 Section 1. Title 62 of the Pennsylvania Consolidated  
6 Statutes is amended by adding a chapter to read:

7 CHAPTER 35A

8 SANCTION-FREE PROCUREMENT

9 Sec.

10 35A01. Definitions.

11 35A02. Engaging in investment activities.

12 35A03. List of persons engaged in investment activities.

13 35A04. Certification.

14 35A05. Penalties for false certification.

15 35A06. Exceptions.

16 § 35A01. Definitions.

17 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Department." The Department of General Services of the  
4 Commonwealth.

5 "Financial institution." The term as defined in section 14  
6 of the Iran Sanctions Act of 1996 (Public Law 104-172, 50 U.S.C.  
7 § 1701).

8 "Person." An individual, organization, financial  
9 institution, sole proprietorship, association, corporation,  
10 partnership, joint venture, limited partnership, limited  
11 liability partnership, limited liability company or other entity  
12 or business association that exists for the purpose of making a  
13 profit, or government entity that includes a multilateral  
14 development institution as defined in section 1701 of the  
15 International Financial Institutions Act (Public Law 95-118, 22  
16 U.S.C. § 262r).

17 "Prohibited state." A nation state, a government or an  
18 agency or instrumentality of a nation state that appears on the  
19 United States list of State Sponsors of Terrorism or the United  
20 States Economic Sanctions Programs list.

21 § 35A02. Engaging in investment activities.

22 A person or financial institution engages in an investment  
23 activity by doing any of the following:

24 (1) Providing goods or services worth \$20,000,000 to a  
25 prohibited state.

26 (2) Extending at least \$20,000,000 in credit to a person  
27 for 45 days or more if all of the following apply:

28 (i) The person uses the credit to provide goods or  
29 services to a prohibited state.

30 (ii) The person is, at the time the financial

1 institution or person extends credit, identified on a  
2 list created under section 35A03 (relating to list of  
3 persons engaged in investment activities).

4 § 35A03. List of persons engaged in investment activities.

5 (a) List.--The department shall develop a list of persons  
6 that the department determines are engaged in investment  
7 activities in a prohibited state as described under section  
8 35A02 (relating to engaging in investment activities). The  
9 department shall make its determination based on publicly  
10 available, credible information. The department shall update the  
11 list every 180 days. Ninety days prior to adding a person to the  
12 list, the department shall do all of the following:

13 (1) Provide notice to the person of the department's  
14 intention to add the person to the list. The notice shall  
15 inform the person that inclusion on the list makes the person  
16 ineligible to enter into a contract with a Commonwealth  
17 entity for goods or services worth at least \$1,000,000. The  
18 notice shall specify that if the person ceases to engage in  
19 investment activities in a prohibited state, the person may  
20 regain eligibility upon removal from the list.

21 (2) Provide the person an opportunity to comment in  
22 writing to the department. The person shall maintain  
23 eligibility if the person demonstrates no engagement in  
24 investment activities in a prohibited state.

25 (b) Ineligibility of persons on list.--A person identified  
26 on a list under subsection (a) shall be ineligible to enter into  
27 a contract with a Commonwealth entity to provide for goods or  
28 services worth at least \$1,000,000.

29 (c) Provision of list.--The department shall post the list  
30 on its publicly accessible Internet website. Upon request, the

1 department shall provide the list free of charge to the General  
2 Assembly or a public entity.

3 (d) Investment service contracts.--Service contracts entered  
4 into by Commonwealth entities for the management and investment  
5 of a fund for which there is a fiduciary responsibility and for  
6 which compliance with the act of July 2, 2010 (P.L.266, No.44),  
7 known as the Protecting Pennsylvania's Investments Act, is  
8 required shall be exempt from the provisions of this chapter.

9 (e) Exception.--On a case-by-case basis, the department may  
10 permit a person engaging in investment activities in a  
11 prohibited state to enter into a contract with a Commonwealth  
12 entity for goods or services worth at least \$1,000,000 if any of  
13 the following apply:

14 (1) The investment activities in the prohibited state  
15 were made before and were not expanded after July 1, 2015.

16 (2) The person refrains from entering into new  
17 agreements to engage in any future investment activities in a  
18 prohibited state.

19 (3) The department determines that the Commonwealth  
20 entity has no other cost-effective method of obtaining the  
21 goods or services than entering into a contract with the  
22 person.

23 § 35A04. Certification.

24 (a) General rule.--The department shall make available a  
25 certification form indicating that a person is not on the list  
26 under section 35A03(a) (relating to list of persons engaged in  
27 investment activities) and is eligible under this chapter to  
28 contract with the Commonwealth. Prior to entering into a  
29 contract with a Commonwealth entity, a person shall provide a  
30 certification form to the Commonwealth entity unless the person

1 is exempt under section 35A03(e).

2 (b) Right to cure.--The following shall apply:

3 (1) If the department determines, using credible  
4 information available to the public, that a person has  
5 submitted a false certification under subsection (a), the  
6 person shall be provided with written notice and an  
7 opportunity to demonstrate to the department that the person  
8 has ceased its engagement in investment activities in a  
9 prohibited state within 90 days of the notice.

10 (2) A person that reasonably demonstrates to the  
11 department that the person has ceased its engagement in  
12 investment activities in a prohibited state within 90 days  
13 after the written notice shall not be subject to the  
14 penalties under section 35A05 (relating to penalties for  
15 false certification).

16 § 35A05. Penalties for false certification.

17 (a) Penalties.--Subject to the provisions of section  
18 35A04(b) (relating to certification), if the department  
19 determines that a person has provided a false certification form  
20 to a Commonwealth entity under section 35A04, the person shall  
21 be subject to the following:

22 (1) A civil penalty in the amount of \$250,000, or twice  
23 the amount of the contract, whichever is greater. Only one  
24 civil penalty may be imposed upon a person per investment.

25 (2) Suspension of the existing contract with the  
26 Commonwealth entity for a period of three years from the date  
27 of the determination that the person submitted the false  
28 certification. Following the three-year suspension period,  
29 the Commonwealth entity or the department may terminate the  
30 contract.

1     (b) Report of false certification.--The department shall  
2 report to the Attorney General the name of the person that  
3 submitted the false certification and the pertinent information  
4 that led to the department's determination. No later than three  
5 years after the department makes a determination under  
6 subsection (a), the Attorney General shall determine whether to  
7 bring a civil action against the person to collect the penalty  
8 described in subsection (a). If a court determines the person  
9 submitted a false certification, the person shall pay all  
10 reasonable costs and fees incurred in the civil action.  
11 Reasonable costs shall include the reasonable costs incurred by  
12 the Commonwealth entity in investigating the authenticity of the  
13 certification. Only one civil action against the person may be  
14 brought for a false certification on a contract.

15     (c) No private right of action.--Nothing in this section may  
16 be construed to create or authorize a private right of action.  
17 § 35A06. Exceptions.

18     The department shall have no obligations under this chapter  
19 with respect to a person engaged in investment activities in a  
20 prohibited state upon the occurrence of any of the following:

21         (1) The prohibited state does not appear on the United  
22 States list of State Sponsors of Terrorism.

23         (2) The prohibited state does not appear on the United  
24 States Economic Sanctions Programs list.

25         (3) The President or Congress of the United States,  
26 through legislation or executive order, declares that  
27 mandatory divestment of the type provided for in this chapter  
28 interferes with the conduct of United States foreign policy.

29     Section 2. This act shall take effect in 60 days.