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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1969 Session of  
2017

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INTRODUCED BY MICCARELLI, BOYLE, BAKER, BERNSTINE, DRISCOLL,  
DAY, SCHLOSSBERG, MILLARD, HELM, BARBIN, WHEELAND AND WATSON,  
DECEMBER 13, 2017

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, DECEMBER 13, 2017

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AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, prohibiting Commonwealth agencies from entering  
3 into contracts with persons who engage in boycotts against or  
4 divestment from Israel.

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

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

9 CHAPTER 38

10 PERSONS ENGAGED IN BOYCOTTS AGAINST OR

11 DIVESTMENT FROM ISRAEL

12 Sec.

13 3801. Definitions.

14 3802. Engaging in a boycott against or divestment from Israel.

15 3803. List of persons engaged in a boycott against or

16 divestment from Israel.

17 3804. Certification.

18 3805. Penalties for false certification.

1 § 3801. Definitions.

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

5 "Boycott against or divestment from Israel." Actions that  
6 are politically motivated and are intended to penalize Israel or  
7 otherwise limit commercial activities.

8 "Commercial activities." Owning or controlling property or  
9 assets located in, having employees or facilities located in,  
10 providing goods or services to, having distribution agreements  
11 with, issuing credit or loans to, purchasing bonds or commercial  
12 paper issued by, investing in or having equity ties to or with  
13 Israel or any company or person domiciled in Israel.

14 "Company." Any sole proprietorship, organization,  
15 association, corporation, partnership, joint venture, limited  
16 partnership, limited liability partnership, limited liability  
17 company or other entity or business association.

18 "Department." The Department of General Services of the  
19 Commonwealth.

20 "Israel." The State of Israel.

21 "List." The list maintained by the Department of General  
22 Services under section 3803(a) (relating to list of persons  
23 engaged in a boycott against or divestment from Israel).

24 "Person." An individual, organization, financial  
25 institution, sole proprietorship, association, corporation,  
26 partnership, joint venture, limited partnership, limited  
27 liability partnership, limited liability company or other entity  
28 or business association that exists for the purpose of making a  
29 profit or a government entity that includes a multilateral  
30 development institution as defined in section 1701 of the

1 International Financial Institutions Act (Public Law 95-118, 22  
2 U.S.C. § 262r).  
3 § 3802. Engaging in a boycott against or divestment from  
4 Israel.

5 A person engages in a boycott against or divestment from  
6 Israel if the person has publicly announced or otherwise engages  
7 in a boycott against or divestment from Israel.

8 § 3803. List of persons engaged in a boycott against or  
9 divestment from Israel.

10 (a) Duty of department.--The department shall develop a list  
11 of persons who the department determines are engaged in a  
12 boycott against or divestment from Israel as described in  
13 section 3802 (relating to engaging in a boycott against or  
14 divestment from Israel). The department shall make its  
15 determination based on publicly available, credible information.  
16 The department shall update the list every 180 days. Ninety days  
17 prior to adding a person to the list, the department shall do  
18 all of the following:

19 (1) Provide notice to the person of the department's  
20 intention to add the person to the list. The notice shall  
21 inform the person that the person's inclusion on the list  
22 makes the person ineligible to enter into a contract with a  
23 Commonwealth agency for goods or services. The notice shall  
24 specify that if the department's determination as to the  
25 person is erroneous or any of the exceptions enumerated in  
26 subsection (d) apply, the person may regain eligibility upon  
27 removal from the list.

28 (2) Provide the person an opportunity to comment in  
29 writing to the department. The person shall maintain  
30 eligibility if the person demonstrates that the department's

1 determination is erroneous or any of the exceptions  
2 enumerated in subsection (d) apply.

3 (b) Ineligibility of persons on list.--A person identified  
4 on the list shall be ineligible to enter into a contract with a  
5 Commonwealth agency to provide for goods or services.

6 (c) List.--The department shall post the list on its  
7 publicly accessible Internet website. Upon request, the  
8 department shall provide a hard copy of the list free of charge  
9 to the General Assembly or a public entity.

10 (d) Exception.--On a case-by-case basis, the department may  
11 permit a person on the list to enter a contract with a  
12 Commonwealth entity for goods or services if any of the  
13 following apply:

14 (1) The person's boycott against or divestment from  
15 Israel occurred before and was not expanded after the  
16 effective date of this section.

17 (2) The person refrains from entering into new  
18 agreements to engage in any future boycott against or  
19 divestment from Israel.

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

24 (4) The person has retracted the person's public  
25 announcement of engaging in, or otherwise demonstrates that  
26 the person is no longer engaged in, a boycott against or  
27 divestment from Israel.

28 § 3804. Certification.

29 (a) Availability and use of form.--

30 (1) The department shall make available a certification

1 form indicating that a person is not on the list and is  
2 eligible under this chapter to contract with a Commonwealth  
3 agency.

4 (2) Prior to entering into a contract with a  
5 Commonwealth agency, a person shall provide a certification  
6 form to the Commonwealth agency unless an exception applies  
7 under section 3803(d) (relating to list of persons engaged in  
8 a boycott against or divestment from Israel).

9 (b) Right to cure.--

10 (1) If the department determines, using credible  
11 information available to the public, that a person has  
12 submitted a false certification under subsection (a), the  
13 person shall be provided with written notice and an  
14 opportunity to demonstrate to the department that the  
15 department's determination is erroneous or that the person  
16 has ceased to be engaged in a boycott against or divestment  
17 from Israel within 90 days of the notice.

18 (2) A person who reasonably demonstrates to the  
19 department that the department's determination is erroneous  
20 or the person has ceased to be engaged in a boycott against  
21 or divestment from Israel within 90 days after the written  
22 notice shall not be subject to the penalties under section  
23 3805 (relating to penalties for false certification).

24 § 3805. Penalties for false certification.

25 (a) Penalties.--Subject to the provisions of section 3804(b)  
26 (relating to certification), if the department determines that a  
27 person has provided a false certification form to a Commonwealth  
28 entity under section 3804, the person shall be subject to the  
29 following:

30 (1) A civil penalty in the amount of \$250,000 or twice

1 the amount of the contract, whichever is greater.

2 (2) Suspension of the existing contract with the  
3 Commonwealth agency for a period of three years from the date  
4 of the determination that the person submitted the false  
5 certification. Following the three-year suspension period, if  
6 the term of the contract has not expired, the Commonwealth  
7 entity or the department may terminate the contract.

8 (b) Report of false certification.--

9 (1) The department shall report to the Attorney General  
10 the name of any person who submits a false certification  
11 under this chapter and the pertinent information that led to  
12 the department's determination.

13 (2) No later than three years after the department makes  
14 a determination under subsection (a), the Attorney General  
15 shall determine whether to bring a civil action against the  
16 person to collect the civil penalty described in subsection  
17 (a) (1).

18 (3) If a court determines the person submitted a false  
19 certification, the person shall pay all reasonable costs and  
20 fees incurred in the civil action. Reasonable costs shall  
21 include the reasonable costs incurred by the department in  
22 investigating the veracity of the certification.

23 (4) Not more than one civil action may be brought  
24 against a person for a false certification on the same  
25 contract.

26 (c) No private right of action.--Nothing in this section may  
27 be construed to create or authorize a private right of action.

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