

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2481 Session of 2022

INTRODUCED BY GROVE, STAMBAUGH, KAUFFMAN, MILLARD, RYAN, PICKETT, HAMM, SMITH, SAYLOR, COX, MOUL, OWLETT, JAMES, KEEFER, JOZWIAK, DeLUCA, ROWE AND SCHLEGEL CULVER, APRIL 4, 2022

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 22, 2022

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.

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

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

6 "Financial institution." The term as defined in section 14
7 of the Iran Sanctions Act of 1996 (Public Law 104-172, 50 U.S.C.
8 § 1701).

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

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

22 "SOCIAL DEVELOPMENT COMPANY." A COMPANY WHOSE PRIMARY
23 PURPOSE IN A PROHIBITED STATE IS TO PROVIDE HUMANITARIAN GOODS
24 OR SERVICES, INCLUDING:

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25 (1) MEDICINE OR MEDICAL EQUIPMENT.

26 (2) AGRICULTURAL SUPPLIES OR INFRASTRUCTURE.

27 (3) EDUCATIONAL OPPORTUNITIES.

28 (4) JOURNALISM-RELATED ACTIVITIES.

29 (5) INFORMATION OR INFORMATION MATERIALS.

30 (6) SPIRITUAL-RELATED ACTIVITIES.

1 (7) SERVICES OF A PURELY CLERICAL OR REPORTING NATURE.

2 (8) FOOD, CLOTHING OR GENERAL CONSUMER GOODS.

3 § 35A02. Engaging in investment activities.

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

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

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

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

12 (ii) The person is, at the time the financial
13 institution or person extends credit, identified on a
14 list created under section 35A03 (relating to list of
15 persons engaged in investment activities).

16 § 35A03. List of persons engaged in investment activities.

17 (a) List.--The department shall develop a list of persons
18 that the department determines are engaged in investment
19 activities in a prohibited state as described under section
20 35A02 (relating to engaging in investment activities). The
21 department shall make its determination based on publicly
22 available, credible information. The department shall update the
23 list every 180 days. Ninety days prior to adding a person to the
24 list, the department shall do all of the following:

25 (1) Provide notice to the person of the department's
26 intention to add the person to the list. The notice shall
27 inform the person that inclusion on the list makes the person
28 ineligible to enter into a contract with a Commonwealth
29 entity for goods or services worth at least \$1,000,000. The
30 notice shall specify that if the person ceases to engage in

1 investment activities in a prohibited state, the person may
2 regain eligibility upon removal from the list.

3 (2) Provide the person an opportunity to comment in
4 writing to the department. The person shall maintain
5 eligibility if the person demonstrates no engagement in
6 investment activities in a prohibited state.

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

11 (c) Provision of list.--The department shall post the list
12 on its publicly accessible Internet website. Upon request, the
13 department shall provide the list free of charge to the General
14 Assembly or a public entity.

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

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

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

28 (2) The person refrains from entering into new
29 agreements to engage in any future investment activities in a
30 prohibited state.

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

5 § 35A04. Certification.

6 (a) General rule.--The department shall make available a
7 certification form indicating that a person is not on the list
8 under section 35A03(a) (relating to list of persons engaged in
9 investment activities) and is eligible under this chapter to
10 contract with the Commonwealth. Prior to entering into a
11 contract with a Commonwealth entity, a person shall provide a
12 certification form to the Commonwealth entity unless the person
13 is exempt under section 35A03(e).

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

15 (1) If the department determines, using credible
16 information available to the public, that a person has
17 submitted a false certification under subsection (a), the
18 person shall be provided with written notice and an
19 opportunity to demonstrate to the department that the person
20 has ceased its engagement in investment activities in a
21 prohibited state within 90 days of the notice.

22 (2) A person that reasonably demonstrates to the
23 department that the person has ceased its engagement in
24 investment activities in a prohibited state within 90 days
25 after the written notice shall not be subject to the
26 penalties under section 35A05 (relating to penalties for
27 false certification).

28 § 35A05. Penalties for false certification.

29 (a) Penalties.--Subject to the provisions of section
30 35A04(b) (relating to certification), if the department

1 determines that a person has provided a false certification form
2 to a Commonwealth entity under section 35A04, the person shall
3 be subject to the following:

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

7 (2) Suspension of the existing contract with the
8 Commonwealth entity for a period of three years from the date
9 of the determination that the person submitted the false
10 certification. Following the three-year suspension period,
11 the Commonwealth entity or the department may terminate the
12 contract.

13 (b) Report of false certification.--The department shall
14 report to the Attorney General the name of the person that
15 submitted the false certification and the pertinent information
16 that led to the department's determination. No later than three
17 years after the department makes a determination under
18 subsection (a), the Attorney General shall determine whether to
19 bring a civil action against the person to collect the penalty
20 described in subsection (a). If a court determines the person
21 submitted a false certification, the person shall pay all
22 reasonable costs and fees incurred in the civil action.

23 Reasonable costs shall include the reasonable costs incurred by
24 the Commonwealth entity in investigating the authenticity of the
25 certification. Only one civil action against the person may be
26 brought for a false certification on a contract.

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

29 § 35A06. Exceptions.

30 The department shall have no obligations under this chapter

1 with respect to a person engaged in investment activities in a
2 prohibited state upon the occurrence of any of the following:

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

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

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

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