

No. 226

AN ACT

SB 1352

Equalizing trade practices in public works procurement; authorizing the purchase by the Commonwealth, its political subdivisions, and all public agencies, of aluminum and steel products produced in a foreign country, provided the foreign country does not prohibit or discriminate against the importation to, sale or use in the foreign country of supplies, material or equipment manufactured in this Commonwealth; establishing procedures for determining whether foreign countries discriminate against supplies, materials or equipment manufactured in this Commonwealth; and imposing penalties and providing for relief for violation of this act.

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

Section 1. It is hereby determined by the General Assembly of Pennsylvania and declared as a matter of legislative findings that:

(1) It has long been the policy of the Commonwealth not to purchase any supplies, equipment, or materials manufactured in any foreign country which prohibits the specification for or use of supplies, equipment, or materials manufactured in Pennsylvania.

(2) Many world trading countries, directly or indirectly by statute, regulation, policy, procedure, or practice, grant or bestow a preference for supplies, equipment or materials manufactured in their country, thereby discriminating against the use of supplies, equipment or materials manufactured in the Commonwealth.

The Pennsylvania General Assembly therefore declares it to be the policy of the Commonwealth that aluminum and steel products made in the United States should be purchased by all public agencies in preference to aluminum and steel products made in foreign countries which discriminate against supplies, equipment or materials manufactured in Pennsylvania.

Section 2. As used in this act:

(1) The word "discriminates" means any act, regulation, or policy of a foreign country which, directly or indirectly

(i) prevents the importation, sale or use of any supplies, materials or equipment manufactured in this Commonwealth;

(ii) grants or bestows a preference, discount or other competitive advantage to supplies, materials or equipment manufactured in the foreign country, the effect whereof is to place similar supplies, materials or equipment manufactured in this Commonwealth at a competitive disadvantage;

(iii) restricts the opportunities for persons having a business situs in this Commonwealth to bid on or compete for government contracts, including but not limited to a preference for residents of the foreign country;

¹ "the" not in original.

(iv) solicits for, awards or negotiates public works contracts on a selective tender basis;

(v) imposes discriminatory duties, tariffs, or border taxes on the importation of supplies, materials, or equipment not produced in the foreign country, the effect whereof is to place supplies, materials, or equipment manufactured in this Commonwealth at a competitive disadvantage with like goods manufactured in any foreign country;

(vi) adopts or condones any other unfair method of competition in international trade, including but not limited to, the exportation of aluminum or steel products made in the foreign country through cartels or the subsidization of said products.

(2) The word "person" means natural persons, corporations, partnerships, business units, and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, or the laws of any state.

(3) The words "public agency" mean:

(i) counties, cities, boroughs, townships, school districts, and any other governmental unit or district;

(ii) the General State Authority, the State Public School Building Authority, the State Highway and Bridge Authority, and any other authority now in existence or hereafter created or organized by the Commonwealth;

(iii) all municipal or school or other authorities now in existence or hereafter created or organized by any county, city, borough, township or school district or combination thereof; and

(iv) any and all other public bodies, authorities, officers, agencies or instrumentalities, whether exercising a governmental or proprietary function.

(4) The words "public works" mean any structure, building, highway, waterway, street, bridge, pier, transit car or system, airport or other betterment, work or improvement whether of a permanent or temporary nature and whether for governmental or proprietary use contracted for by any public agency or financed in whole or in part by any public agency.

(5) The words "aluminum or steel products made in a foreign country" mean aluminum or steel products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from aluminum or steel not made in the United States.

(6) The word "court" means the Court of Common Pleas of Dauphin County.

(7) The word "importer" means any person registered in the Commonwealth and doing business in the Commonwealth who engages in the receiving, storing, distributing, or other processing of aluminum or steel products made in a foreign country; or who engages in the solicitation or acceptance of orders or contracts for the furnishing of or supplying of aluminum or steel products made in a foreign country.

Section 3. It shall be unlawful for any public agency to specify, purchase, or permit to be furnished or used, in any public works, aluminum or steel products made in a foreign country which has been determined as discriminating by the Court of Common Pleas of Dauphin County. It shall be unlawful for any importer to sell or offer for sale to any person for use in any public works, aluminum or steel products made in a foreign country which has been determined as discriminating by the Court of Common Pleas of Dauphin County.

Section 4. If all considerations in or affecting a bid or a bidder are equal, each public agency shall give preference to aluminum and steel products made in the United States.

Section 5. Every public agency shall include in all its invitations for bids, schedules, forms of proposal, or purchase orders issued for public works after the effective date of this act a listing of the foreign countries which have been found by the Court of Common Pleas of Dauphin County to discriminate.

Section 6. (a) Any public agency, importer, or taxpayer of this Commonwealth may file a petition with the Court of Common Pleas of Dauphin County, specifically setting forth alleged discrimination, as herein defined, by a foreign country and praying for a determination thereof. A copy of the petition to the Court of Common Pleas and notice of the time of hearing set by the court shall be served by registered mail, return receipt requested, on the consular officer, if any, of the said country having an office in Pennsylvania, and upon a person in charge of the embassy of the foreign country in Washington, D. C.

(b) Upon presentation of a petition filed pursuant to subsection (a) of section 6, the court shall make an order fixing a time for hearing, which hearing shall be fixed on a day not later than forty-five days after the filing of the petition. The representative of the foreign country and any other interested person may appear and present testimony at such hearing.

Section 7. In any hearing pursuant to this act, the court shall consider the statutes, regulations, policies, procedures and practices of the foreign country specified in the petition.

Section 8. If after a hearing the court determines that the foreign country discriminates, it shall direct the Prothonotary of the Court of Common Pleas of Dauphin County to enter the foreign country's name in the docket maintained in his office to be entitled foreign registry docket.

Section 9. Any foreign country determined to be practicing discrimination may petition the Court of Common Pleas of Dauphin County to have its name stricken from the foreign registry docket. The court shall grant the prayer of the said petition if, after hearing, it determines that said foreign country has discontinued and not engaged in discrimination, as herein defined, for a period of at least three hundred sixty-five days prior to the filing of the petition. No-

tice of the filing of said petition shall be served upon the original petitioner and all other parties to the original petition.

Section 10. It shall be unlawful for any person, in the performance of his public works contract, subcontract or purchase order to furnish aluminum or steel products made in a foreign country, which country is listed on the foreign registry docket, and such person shall not be eligible, nor shall any organization, corporation, partnership, business unit, association, or joint venture in which said person has a substantial interest be eligible, to bid on or be awarded any contract or subcontract, or be issued a purchase order, for public works for a period of three years. Notwithstanding the preceding sentence, a person shall not be held to have violated this act if he has not received notification of the listing as provided in section 5, or solely because his subcontractor or supplier of materials violates this act, provided said person had no knowledge of said violation.

Section 11. This act is intended as remedial legislation designed to promote the general welfare and stimulate the economy of the Commonwealth and its people and each and every provision hereof is intended to receive a liberal construction such as will best effectuate the purpose and no provision is intended to receive a strict or limited construction.

Section 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 13. This act shall take effect August 1, 1968, but shall not apply to any contract awarded pursuant to an invitation for bids issued on or before said date.

APPROVED—The 23rd day of July, A. D. 1968.

RAYMOND P. SHAFER.

No. 227

AN ACT

HB 771

Amending the act of June 24, 1939 (P. L. 872), entitled "An act to consolidate, amend and revise the penal laws of the Commonwealth," prescribing minimum penalties when crimes of violence are committed by persons having deadly weapons in their possession.

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

Section 1. Section 416, act of June 24, 1939 (P. L. 872), known as