

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 46
HOUSE BILL 2617

AN ACT

AMENDING TITLE 35, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9;
RELATING TO PUBLIC CONTRACTS AND INVESTMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 35, chapter 2, Arizona Revised Statutes, is amended
3 by adding article 9, to read:

4 ARTICLE 9. ISRAEL BOYCOTT DIVESTMENTS

5 35-393. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "BOYCOTT" MEANS ENGAGING IN A REFUSAL TO DEAL, TERMINATING BUSINESS
8 ACTIVITIES OR PERFORMING OTHER ACTIONS THAT ARE INTENDED TO LIMIT COMMERCIAL
9 RELATIONS WITH ISRAEL OR WITH PERSONS OR ENTITIES DOING BUSINESS IN ISRAEL OR
10 IN TERRITORIES CONTROLLED BY ISRAEL, IF THOSE ACTIONS ARE TAKEN EITHER:

11 (a) IN COMPLIANCE WITH OR ADHERENCE TO CALLS FOR A BOYCOTT OF ISRAEL
12 OTHER THAN THOSE BOYCOTTS TO WHICH 50 UNITED STATES CODE SECTION 4607(c)
13 APPLIES.

14 (b) IN A MANNER THAT DISCRIMINATES ON THE BASIS OF NATIONALITY,
15 NATIONAL ORIGIN OR RELIGION AND THAT IS NOT BASED ON A VALID BUSINESS REASON.

16 2. "COMPANY" MEANS A SOLE PROPRIETORSHIP, ORGANIZATION, ASSOCIATION,
17 CORPORATION, PARTNERSHIP, JOINT VENTURE, LIMITED PARTNERSHIP, LIMITED
18 LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY OR OTHER ENTITY OR BUSINESS
19 ASSOCIATION, AND INCLUDES A WHOLLY OWNED SUBSIDIARY, MAJORITY-OWNED
20 SUBSIDIARY, PARENT COMPANY OR AFFILIATE.

21 3. "DIRECT HOLDINGS" MEANS ALL PUBLICLY TRADED SECURITIES OF A COMPANY
22 THAT ARE HELD DIRECTLY BY THE STATE TREASURER OR A RETIREMENT SYSTEM IN AN
23 ACTIVELY MANAGED ACCOUNT OR FUND IN WHICH THE RETIREMENT SYSTEM OWNS ALL
24 SHARES OR INTERESTS.

25 4. "INDIRECT HOLDINGS" MEANS ALL SECURITIES OF A COMPANY THAT ARE HELD
26 IN AN ACCOUNT OR FUND, INCLUDING A MUTUAL FUND, THAT IS MANAGED BY ONE OR
27 MORE PERSONS WHO ARE NOT EMPLOYED BY THE STATE TREASURER OR A RETIREMENT
28 SYSTEM, IF THE STATE TREASURER OR RETIREMENT SYSTEM OWNS SHARES OR INTERESTS
29 EITHER:

30 (a) TOGETHER WITH OTHER INVESTORS THAT ARE NOT SUBJECT TO THIS
31 SECTION.

32 (b) THAT ARE HELD IN AN INDEX FUND.

33 5. "PUBLIC ENTITY" MEANS THIS STATE, A POLITICAL SUBDIVISION OF THIS
34 STATE OR AN AGENCY, BOARD, COMMISSION OR DEPARTMENT OF THIS STATE OR A
35 POLITICAL SUBDIVISION OF THIS STATE.

36 6. "PUBLIC FUND" MEANS THE STATE TREASURER OR A RETIREMENT SYSTEM.

37 7. "RESTRICTED COMPANIES" MEANS COMPANIES THAT BOYCOTT ISRAEL.

38 8. "RETIREMENT SYSTEM" MEANS A RETIREMENT PLAN OR SYSTEM THAT IS
39 ESTABLISHED BY OR PURSUANT TO TITLE 38.

40 35-393.01. Contracting; procurement; investment; prohibitions

41 A. A PUBLIC ENTITY MAY NOT ENTER INTO A CONTRACT WITH A COMPANY TO
42 ACQUIRE OR DISPOSE OF SERVICES, SUPPLIES, INFORMATION TECHNOLOGY OR
43 CONSTRUCTION UNLESS THE CONTRACT INCLUDES A WRITTEN CERTIFICATION THAT THE
44 COMPANY IS NOT CURRENTLY ENGAGED IN, AND AGREES FOR THE DURATION OF THE
45 CONTRACT TO NOT ENGAGE IN, A BOYCOTT OF ISRAEL.

1 B. A PUBLIC ENTITY MAY NOT ADOPT A PROCUREMENT, INVESTMENT OR OTHER
2 POLICY THAT HAS THE EFFECT OF INDUCING OR REQUIRING A PERSON OR COMPANY TO
3 BOYCOTT ISRAEL.

4 35-393.02. Investment; restricted companies list; notice;
5 immunity; exception

6 A. ON OR BEFORE APRIL 1 OF EACH YEAR, EACH PUBLIC FUND SHALL PREPARE A
7 LIST OF RESTRICTED COMPANIES AND SHALL PROVIDE A COPY OF THE LIST ON REQUEST.

8 B. IN PREPARING THE LIST OF RESTRICTED COMPANIES, THE PUBLIC FUND MAY
9 CONSIDER AT LEAST THE FOLLOWING:

10 1. PUBLICLY AVAILABLE INFORMATION, INCLUDING INFORMATION PROVIDED BY
11 NONPROFIT ORGANIZATIONS, RESEARCH FIRMS AND GOVERNMENT ENTITIES.

12 2. INFORMATION PREPARED BY AN INDEPENDENT RESEARCH FIRM RETAINED BY
13 THE PUBLIC FUND.

14 3. A STATEMENT BY A COMPANY THAT IT IS PARTICIPATING IN A BOYCOTT OF
15 ISRAEL OR THAT IT HAS TAKEN A BOYCOTT ACTION AT THE REQUEST OF, IN COMPLIANCE
16 WITH OR IN FURTHERANCE OF CALLS FOR A BOYCOTT OF ISRAEL.

17 C. THE PUBLIC FUND SHALL NOTIFY EACH COMPANY THAT IS INCLUDED ON THE
18 LIST OF RESTRICTED COMPANIES THAT THE COMPANY IS SUBJECT TO DIVESTMENT BY THE
19 STATE TREASURER AND THE RETIREMENT SYSTEMS.

20 D. IF A COMPANY THAT RECEIVES NOTICE PURSUANT TO SUBSECTION C OF THIS
21 SECTION SUBMITS A WRITTEN CERTIFICATION TO THE PUBLIC FUND THAT IT HAS CEASED
22 ITS BOYCOTT OF ISRAEL AND WILL NOT ENGAGE IN A BOYCOTT OF ISRAEL FOR THE
23 PERIOD OF TIME THAT THE STATE TREASURER OR A RETIREMENT SYSTEM INVESTS IN THE
24 COMPANY, THE PUBLIC FUND SHALL REMOVE THE COMPANY FROM THE RESTRICTED LIST.

25 E. EACH PUBLIC FUND SHALL:

26 1. SELL, REDEEM, DIVEST OR WITHDRAW ALL DIRECT HOLDINGS OF A
27 RESTRICTED COMPANY FROM THE ASSETS UNDER ITS MANAGEMENT IN AN ORDERLY AND
28 FIDUCIALLY RESPONSIBLE MANNER WITHIN THREE MONTHS AFTER PREPARING THE LIST OF
29 RESTRICTED COMPANIES PURSUANT TO SUBSECTION A OF THIS SECTION. ON OR BEFORE
30 AUGUST 1 OF EACH YEAR, THE STATE TREASURER AND EACH RETIREMENT SYSTEM SHALL
31 POST ON THEIR WEBSITES A LIST OF INVESTMENTS THAT ARE SOLD, REDEEMED,
32 DIVESTED OR WITHDRAWN PURSUANT TO THIS PARAGRAPH.

33 2. NOT ACQUIRE SECURITIES OF A RESTRICTED COMPANY AS PART OF ITS
34 DIRECT HOLDINGS.

35 3. REQUEST THAT MANAGERS OF ITS INDIRECT HOLDINGS CONSIDER SELLING,
36 REDEEMING, DIVESTING OR WITHDRAWING HOLDINGS OF A RESTRICTED COMPANY FROM THE
37 ASSETS UNDER ITS MANAGEMENT.

38 F. WITH RESPECT TO ANY ACTION PERFORMED PURSUANT TO THIS SECTION, THE
39 STATE TREASURER, EACH RETIREMENT SYSTEM AND ANY PERSON ACTING ON BEHALF OF
40 THE STATE TREASURER OR THE RETIREMENT SYSTEM:

41 1. ARE EXEMPT FROM ANY CONFLICTING STATUTORY OR COMMON LAW OBLIGATION
42 OR FIDUCIARY DUTIES WITH RESPECT TO CHOICE OF ASSET MANAGERS, INVESTMENT
43 FUNDS OR INVESTMENTS.

44 2. ARE SUBJECT TO TITLE 12, CHAPTER 7, ARTICLE 2 REGARDING IMMUNITY
45 FOR ACTS AND OMISSIONS.

1 3. ARE INDEMNIFIED AND HELD HARMLESS BY THIS STATE FROM CLAIMS,
2 DEMANDS, SUITS, ACTIONS, DAMAGES, JUDGMENTS, COSTS, CHARGES AND EXPENSES,
3 INCLUDING ATTORNEY FEES, AND AGAINST ALL LIABILITY, LOSSES AND DAMAGES
4 BECAUSE OF A DECISION TO SELL, REDEEM, DIVEST OR WITHDRAW HOLDINGS OF A
5 RESTRICTED COMPANY MADE PURSUANT TO THIS SECTION.

6 G. THIS SECTION DOES NOT APPLY TO INVESTMENTS THAT ARE MADE BY THE
7 STATE TREASURER PURSUANT TO SECTION 35-314.01.

8 35-393.03. Severability

9 IF ANY PROVISION OF THIS ARTICLE OR ITS APPLICATION TO ANY PERSON OR
10 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT ANY OTHER
11 PROVISION OR APPLICATION OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT THE
12 INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
13 ARTICLE ARE SEVERABLE.

14 Sec. 2. Legislative findings

15 A. Boycotts and related tactics have become a tool of economic warfare
16 that threaten the sovereignty and security of key allies and trade partners
17 of the United States.

18 B. The state of Israel is the most prominent target of such boycott
19 activity, beginning with the Arab League Boycott adopted in 1945, even before
20 Israel's declaration of independence as the reestablished national state of
21 the Jewish people.

22 C. Companies that refuse to deal with United States trade partners
23 such as Israel, or entities that do business with or in such countries, make
24 discriminatory decisions on the basis of national origin that impair those
25 companies' commercial soundness.

26 D. It is the public policy of the United States, as enshrined in
27 several federal acts, including 50 United States Code section 4607, to oppose
28 such boycotts, and Congress has concluded as a matter of national trade
29 policy that cooperation with Israel materially benefits United States
30 companies and improves American competitiveness.

31 E. Israel in particular is known for its dynamic and innovative
32 approach in many business sectors, and a company's decision to discriminate
33 against Israel, Israeli entities or entities that do business with Israel or
34 in Israel is an unsound business practice making the company an unduly risky
35 contracting partner or vehicle for investment.

36 F. This state seeks to implement Congress's announced policy of
37 "examining a company's promotion or compliance with unsanctioned boycotts,
38 divestment from, or sanctions against Israel as part of its consideration in
39 awarding grants and contracts and supports the divestment of State assets
40 from companies that support or promote actions to boycott, divest from, or
41 sanction Israel."

APPROVED BY THE GOVERNOR MARCH 17, 2016.

H.B. 2617

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 18, 2016.

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 94

SENATE BILL 1167

AN ACT

AMENDING SECTIONS 35-393, 35-393.01 AND 35-393.03, ARIZONA REVISED STATUTES; RELATING TO ISRAEL BOYCOTT DIVESTMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 35-393, Arizona Revised Statutes, is amended to read:

35-393. Definitions

In this article, unless the context otherwise requires:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with ~~Israel or with persons or~~ entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:

(a) ~~In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.~~ **BASED IN PART ON THE FACT THAT THE ENTITY DOES BUSINESS IN ISRAEL OR IN TERRITORIES CONTROLLED BY ISRAEL.**

(b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.

2. "Company" means ~~a sole proprietorship,~~ **AN** organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, ~~and includes~~ **INCLUDING** a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, **THAT ENGAGES IN FOR-PROFIT ACTIVITY AND THAT HAS TEN OR MORE FULL-TIME EMPLOYEES.**

3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.

4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:

(a) Together with other investors that are not subject to this section.

(b) That are held in an index fund.

5. "Public entity" means this state, a political subdivision of this state or an agency, board, commission or department of this state or a political subdivision of this state.

6. "Public fund" means the state treasurer or a retirement system.

7. "Restricted companies" means companies that boycott Israel.

8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

Sec. 2. Section 35-393.01, Arizona Revised Statutes, is amended to read:

35-393.01. ~~Contracting; procurement; investment; prohibitions~~

A. A public entity may not enter into a contract **WITH A VALUE OF \$100,000 OR MORE** with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of **GOODS OR SERVICES FROM** Israel.

B. A public entity may not adopt a procurement, investment or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

Sec. 3. Section 35-393.03, Arizona Revised Statutes, is amended to read:

35-393.03. ~~Applicability; severability~~

A. THIS ARTICLE DOES NOT APPLY TO A BOYCOTT PROHIBITED BY 50 UNITED STATES CODE SECTION 4842 OR A REGULATION ISSUED PURSUANT TO THAT SECTION.

B. If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

APPROVED BY THE GOVERNOR APRIL 16, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2019.

Senate Engrossed

divestment; boycott; Israel; public entities

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 39
SENATE BILL 1250

AN ACT

AMENDING SECTIONS 35-393 AND 35-393.02, ARIZONA REVISED STATUTES; RELATING
TO DIVESTMENT OF PUBLIC MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 35-393, Arizona Revised Statutes, is amended to
3 read:

4 35-393. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Boycott" means engaging in a refusal to deal, terminating
7 business activities or performing other actions that are intended to limit
8 commercial relations with entities doing business in Israel or in
9 territories controlled by Israel, if those actions are taken either:

10 (a) Based in part on the fact that the entity does business in
11 Israel or in territories controlled by Israel.

12 (b) In a manner that discriminates on the basis of nationality,
13 national origin or religion and that is not based on a valid business
14 reason.

15 2. "Company" means an organization, association, corporation,
16 partnership, joint venture, limited partnership, limited liability
17 partnership, limited liability company or other entity or business
18 association, including a wholly owned subsidiary, majority-owned
19 subsidiary, parent company or affiliate, that engages in for-profit
20 activity and that has ten or more full-time employees.

21 3. "Direct holdings" means all publicly traded securities of a
22 company that are held directly by the state treasurer or a retirement
23 system in an actively managed account or fund in which the retirement
24 system owns all shares or interests.

25 4. "Indirect holdings" means all securities of a company that are
26 held in an account or fund, including a mutual fund, that is managed by
27 one or more persons who are not employed by the state treasurer or a
28 retirement system, if the state treasurer or retirement system owns shares
29 or interests either:

30 (a) Together with other investors that are not subject to this
31 section.

32 (b) That are held in an index fund.

33 5. "Public entity":

34 (a) Means this state, a political subdivision of this state or an
35 agency, board, commission or department of this state or a political
36 subdivision of this state.

37 (b) INCLUDES THE UNIVERSITIES UNDER THE JURISDICTION OF THE ARIZONA
38 BOARD OF REGENTS AND COMMUNITY COLLEGE DISTRICTS AS DEFINED IN SECTION
39 15-1401.

40 6. "Public fund" means the state treasurer or a retirement system.

41 7. "Restricted companies" means companies that boycott Israel.

42 8. "Retirement system" means a retirement plan or system that is
43 established by or pursuant to title 38.

1 Sec. 2. Section 35-393.02, Arizona Revised Statutes, is amended to
2 read:

3 35-393.02. Investment; restricted companies list; notice;
4 immunity; exception

5 A. On or before April 1 of each year, each public fund shall
6 prepare a list of restricted companies and shall provide a copy of the
7 list on request.

8 B. In preparing the list of restricted companies, the public fund
9 may consider at least the following:

10 1. Publicly available information, including information provided
11 by nonprofit organizations, research firms and government entities.

12 2. Information prepared by an independent research firm retained by
13 the public fund.

14 3. A statement by a company that it is participating in a boycott
15 of Israel or that it has taken a boycott action at the request of, in
16 compliance with or in furtherance of calls for a boycott of Israel.

17 C. The public fund shall notify each company that is included on
18 the list of restricted companies that the company is subject to divestment
19 by the state treasurer, ~~and~~ the retirement systems **AND EACH PUBLIC ENTITY**.

20 D. If a company that receives notice pursuant to subsection C of
21 this section submits a written certification to the public fund that it
22 has ceased its boycott of Israel and will not engage in a boycott of
23 Israel for the period of time that the state treasurer or a retirement
24 system invests in the company, the public fund shall remove the company
25 from the restricted list.

26 E. Each public fund **AND EACH PUBLIC ENTITY** shall:

27 1. Sell, redeem, divest or withdraw all direct holdings of a
28 restricted company from the assets under its management in an orderly and
29 fiducially responsible manner within three months after ~~preparing~~ the ~~list~~
30 **LISTS** of restricted companies **ARE PREPARED** pursuant to subsection A of
31 this section. On or before August 1 of each year, the state treasurer,
32 ~~and~~ each retirement system **AND EACH PUBLIC ENTITY** shall post on their
33 websites a list of investments that are sold, redeemed, divested or
34 withdrawn pursuant to this paragraph.

35 2. Not acquire securities of a restricted company as part of its
36 direct holdings.

37 3. Request that managers of its indirect holdings consider selling,
38 redeeming, divesting or withdrawing holdings of a restricted company from
39 the assets under its management.

40 F. With respect to any action performed pursuant to this section,
41 the state treasurer, each retirement system, **EACH PUBLIC ENTITY** and any
42 person acting on behalf of the state treasurer, ~~or~~ the retirement system
43 **OR THE PUBLIC ENTITY**:

1 1. Are exempt from any conflicting statutory or common law
2 obligation or fiduciary duties with respect to choice of asset managers,
3 investment funds or investments.

4 2. Are subject to title 12, chapter 7, article 2 regarding immunity
5 for acts and omissions.

6 3. Are indemnified and held harmless by this state from claims,
7 demands, suits, actions, damages, judgments, costs, charges and expenses,
8 including attorney fees, and against all liability, losses and damages
9 because of a decision to sell, redeem, divest or withdraw holdings of a
10 restricted company made pursuant to this section.

11 G. This section does not apply to investments that are made by the
12 state treasurer pursuant to section 35-314.01.

APPROVED BY THE GOVERNOR MARCH 23, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 23, 2022.