Senate Engrossed House Bill

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

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

ARTICLE 9. ISRAEL BOYCOTT DIVESTMENTS

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.
   (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, ORGANIZATION, ASSOCIATION, CORPORATION, PARTNERSHIP, JOINT VENTURE, LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY OR OTHER ENTITY OR BUSINESS ASSOCIATION, AND INCLUDES A WHOLLY OWNED SUBSIDIARY, MAJORITY-OWNED SUBSIDIARY, PARENT COMPANY OR AFFILIATE.

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.

35-393.01. Contracting; procurement; investment; prohibitions

A. A PUBLIC ENTITY MAY NOT ENTER INTO A CONTRACT 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 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.

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

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

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

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

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

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

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

D. IF A COMPANY THAT RECEIVES NOTICE PURSUANT TO SUBSECTION C OF THIS SECTION SUBMITS A WRITTEN CERTIFICATION TO THE PUBLIC FUND THAT IT HAS CEASED ITS BOYCOTT OF ISRAEL AND WILL NOT ENGAGE IN A BOYCOTT OF ISRAEL FOR THE PERIOD OF TIME THAT THE STATE TREASURER OR A RETIREMENT SYSTEMInvests in the company, the public fund shall remove the company from the restricted list.

E. EACH PUBLIC FUND SHALL:

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

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

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

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

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

2. ARE SUBJECT TO TITLE 12, CHAPTER 7, ARTICLE 2 REGARDING IMMUNITY FOR ACTS AND OMISSIONS.
3. ARE INDEMNIFIED AND HELD HARMLESS BY THIS STATE FROM CLAIMS, DEMANDS, SUITS, ACTIONS, DAMAGES, JUDGMENTS, COSTS, CHARGES AND EXPENSES, INCLUDING ATTORNEY FEES, AND AGAINST ALL LIABILITY, LOSSES AND DAMAGES BECAUSE OF A DECISION TO SELL, REDEEM, DIVEST OR WITHDRAW HOLDINGS OF A RESTRICTED COMPANY MADE PURSUANT TO THIS SECTION.

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

35-393.03. Severability

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.

Sec. 2. Legislative findings

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

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

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

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

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

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

APPROVED BY THE GOVERNOR MARCH 17, 2016.