

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4674

FISCAL
NOTE

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[Introduced February 04, 2020; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §5-30-1, §5-30-2, §5-30-3, §5-30-4, §5-30-5, and §5-30-6, all relating to
 3 creating the Act to Counter Boycotts, Divestments, and Sanctions of Israel; prohibiting
 4 public entities in the state from doing business with companies that engage in economic
 5 boycotts of Israel; requiring divestment; making findings; requiring reports; defining terms;
 6 and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. ACT TO COUNTER BOYCOTTS, DIVESTMENTS, AND SANCTIONS OF ISRAEL.

§5-30-1. Short title.

1 This article shall be known as the “Act to Counter Boycotts, Divestments and Sanctions of
 2 Israel.”

§5-30-2. Legislative findings.

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

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

6 (c) Companies that refuse to deal with United States trade partners such as Israel, or
 7 entities that do business with or in such countries, make discriminatory decisions on the basis of
 8 national origin that impair those companies’ commercial soundness.

9 (d) It is the public policy of the United States, as enshrined in several federal acts, including
 10 50 U.S.C. §4607, to oppose such boycotts, and Congress has concluded as a matter of national
 11 trade policy that cooperation with Israel materially benefits United States companies and improves
 12 American competitiveness.

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

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

§5-30-3. Definitions.

1 In this article, unless the context otherwise requires:

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

6 (A) In compliance with or adherence to calls for a boycott of Israel other than those
7 boycotts to which 50 U.S.C. §4607(c) applies; or

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

10 "Company" means a sole proprietorship, organization, association, corporation,
11 partnership, joint venture, limited partnership, limited liability partnership, limited liability company
12 or other entity or business association, and includes a wholly owned subsidiary, majority-owned
13 subsidiary, parent company or affiliate.

14 "Direct holdings" means all publicly traded securities of a company that are held directly
15 by the State Treasurer or a retirement system in an actively managed account or fund in which
16 the retirement system owns all shares or interests.

17 "Indirect holdings" means all securities of a company that are held in an account or fund,

18 including a mutual fund, that is managed by one or more persons who are not employed by the
 19 State Treasurer or a retirement system, if the State Treasurer or retirement system owns shares
 20 or interests either:

21 (A) Together with other investors that are not subject to this section; or

22 (B) That are held in an index fund.

23 “Public entity” means the State of West Virginia, a political subdivision of the state or any
 24 agency, board, commission, department or other political instrumentality of the state or of a
 25 political subdivision of the state.

26 “Public fund” means the State Treasurer or a retirement system.

27 “Restricted companies” means companies that boycott Israel.

28 “Retirement system” means any public retirement plan or system that is established by or
 29 pursuant to any provision of this code.

§5-30-4. Contracting; procurement; investment; prohibitions.

1 (a) A public entity may not enter into a contract with a company to acquire or dispose of
 2 services, supplies, information technology, or construction unless the contract includes a written
 3 certification that the company is not currently engaged in, and agrees for the duration of the
 4 contract to not engage in, a boycott of Israel.

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

§5-30-5. Investment; restricted companies list; notice; immunity; exception.

1 (a) On or before April 1, of each year, each public fund shall prepare a list of restricted
 2 companies and shall provide a copy of the list on request.

3 (b) In preparing the list of restricted companies, the public fund may consider at least the
 4 following:

5 (1) Publicly available information, including information provided by nonprofit
 6 organizations, research firms and government entities;

7 (2) Information prepared by an independent research firm and retained by the public fund;

8 or

9 (3) A statement by a company that it is participating in a boycott of Israel or that it has
10 taken a boycott action at the request of, in compliance with or in furtherance of calls for a boycott
11 of Israel.

12 (c) The public fund shall notify each company that is included on the list of restricted
13 companies that the company is subject to divestment by the State Treasurer and the retirement
14 systems.

15 (d) If a company that receives notice pursuant to subsection (c) of this section submits a
16 written certification to the public fund that it has ceased its boycott of Israel and will not engage in
17 a boycott of Israel for the period of time that the State Treasurer or a retirement system invests in
18 the company, the public fund shall remove the company from the restricted list.

19 (e) Each public fund shall:

20 (1) Sell, redeem, divest or withdraw all direct holdings of a restricted company from the
21 assets under its management in an orderly and fiducially responsible manner within three months
22 after preparing the list of restricted companies pursuant to subsection (a) of this section. On or
23 before August 1, of each year, the State Treasurer and each retirement system shall post on their
24 websites a list of investments that are sold, redeemed, divested, or withdrawn pursuant to the
25 provisions of this article.

26 (2) Not acquire securities of a restricted company as part of its direct holdings.

27 (3) Request that managers of its indirect holdings consider selling, redeeming, divesting,
28 or withdrawing holdings of a restricted company from the assets under its management.

29 (f) With respect to any action performed pursuant to this section, the State Treasurer, each
30 retirement system and any person acting on behalf of the State Treasurer or the retirement
31 system:

32 (1) Are exempt from any conflicting statutory or common law obligation or fiduciary duties

33 with respect to a choice of asset managers, investment funds or investments.

34 (2) Are subject to provisions of this code regarding immunity for acts and omissions.

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

§5-30-6. Severability.

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

NOTE: The purpose of this bill is to create the Act to Counter Boycotts, Divestments and Sanctions of Israel. The bill prohibits public entities in the state from doing business with companies that engage in economic boycotts of Israel. The bill requires divestment. The bill makes findings, require reports, defines terms and provides for severability.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.