

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
*Legislative Attorneys transforming ideas into legislation.*

---

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

---

**MEMORANDUM**

To: Chairperson Thompson  
Members of the Senate Committee on Federal and State Affairs

From: The Office of Revisor of Statutes

Date: March 7, 2023

Subject: SB 224 – Kansas Protection of Pensions and Businesses Against Ideological Interference Act.

Senate Bill No. 224 (SB 224) would create the Kansas Protection of Pensions and Businesses Against Ideological Interference Act (Act). The Act would generally prohibit investment by the State and its investment plan contractors in financial companies that participate in an ideological boycott. It would also prohibit financial services companies from discriminating against persons based on a social credit score.

Section 2 of SB 224 provides relevant definitions for terms used throughout the Act. The bill defines “financial company,” “financial institution,” “financial services company,” “direct holdings,” and “indirect holdings” to establish the scope of the companies and investments that are subject to the Act. Section 2 also defines “ideological boycott” as refusing to deal with, invest in, or limit commercial activities and relations with a company because such company lawfully engages in one of the following:

- Exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy without a pledge to meet certain environmental standards.
- Exploration, production, utilization, transportation, sale, or manufacturing of nuclear energy without a pledge to meet certain environmental standards.
- Exploration, production, utilization, transportation, sale or manufacturing of agriculture, timber, mining, or any other natural resource.
- Emission of greenhouse gases or failure to disclose or offset such emissions.
- Facilitation or support of the manufacture, import, distribution, marketing, advertising, sale, and use of firearms and firearm accessories and ammunition.

- Governance by a board of directors or officers that is not subject to any diversity criteria.
- Does not facilitate or assist employees in obtaining abortions, assisted suicide, or gender reassignment services.
- Facilitate, contract with, support, represent, or advocate for any company that engages in any of the above.

An “ideological boycott” does not include commercial activities for an “ordinary business purpose,” such as promoting financial stability and success, mitigating financial risk, complying with regulatory requirements, or limiting liability.

Sections 2 through 14 of SB 224 generally prohibit the KPERS Board of Trustees from investing in financial companies that are included on the restricted financial companies list. Section 7 requires the State Treasurer to prepare and maintain a list of financial companies that engage in an ideological boycott. In reviewing companies for inclusion on the list, the Treasurer may request written verification that the company does not engage in such boycotts. If the Treasurer determines that the company should be included on the list, then the company will receive notice 45 days prior to inclusion on the list. The company then has 30 days to demonstrate that it is not engaged in such boycotts. The restricted financial company list is to be updated at least annually and provided to KPERS, the President of the Senate, the Speaker of the House, and the Attorney General, as well as published on the Treasurer’s website.

The KPERS Board is required to notify any restricted financial companies for which KPERS owns direct or indirect holdings that the company is on the restricted list and may be subject to divestment by KPERS. Any company receiving such notice will then have 90 days to cease their ideological boycott to avoid divestment. If no action is taken by the restricted company, then KPERS must divest its holdings in such company according to the schedule provided under Section 10. KPERS may cease divestment if there is clear and convincing evidence that KPERS will suffer a 25% or greater loss in hypothetical value of all assets or if an individual portfolio that uses benchmark-aware strategy would have an aggregate expected deviation from its benchmark of more than 25% due to such divestment. Section 13 requires the KPERS Board to annually submit a report on its activities pursuant to the Act to the Treasurer, the President, the Speaker, and the Attorney General.

Sections 15 through 20 generally prohibit the deposit of state moneys in a restricted financial institution. The Treasurer will prepare and maintain a list of restricted financial

institutions similar to the list of restricted financial companies prepared under Section 7. Only those financial institutions with total assets of \$20 billion or more are subject to inclusion on the list.

Section 21 prohibits any governmental entity, including municipalities and political subdivisions from entering into contracts with a value of \$100,000 or more with a company that engages in an ideological boycott. The bill provides an exception if the governmental entity cannot otherwise obtain the goods or services or commercially reasonable terms or if the prohibition is inconsistent with the governmental entity's constitutional or statutory duties.

Sections 22 and 23 generally require the fiduciary contractor managing a governmental plan to only consider the financial interests of the plan's participants and beneficiaries and not to consider other nonpecuniary factors in administering the plan. A "governmental plan" is any plan, fund, or program established by a governmental entity to provide retirement benefits for employees, provide for deferred income investment, or to otherwise invest taxpayer money.

Sections 24 through 27 and Section 30 generally prohibit financial services companies, including insurance companies, from discriminating against a person based on such person's social credit score. A "social credit score" is any type of rating or scoring system or analysis that provides a negative assessment of a person because they engage in any of the activities described in the definition of "ideological boycott" above. Discriminatory actions include refusing to provide financial services, agreeing or conspiring with other companies to refuse to provide financial services, and denying financial services with the intent to disadvantage the person commercially. A violation of these statutes is a consumer protection act violation and a Class C nonperson misdemeanor for five or more violations.

Section 28 requires registered investment advisers to advise clients prior to investment of any proposed investment in a financial company or financial institution that is on a restricted list and that such investment may limit the client's return on investment. The adviser must obtain the client's prior written consent to the investment. Failure to do so is deemed an act of fraud in providing investment advice.

If enacted, SB 224 would become effective on July 1, 2023.