

House Substitute for SENATE BILL No. 37

By Committee on Financial Institutions and Pensions

3-14

1 AN ACT concerning state moneys; relating to state-managed funds and
2 state contracts; enacting the countries of concern divestment and
3 procurement protection act; requiring divestment from investments
4 with countries of concern and providing exceptions therefor;
5 prohibiting investments and deposits with any bank or company
6 domiciled in a country of concern; state agencies from procuring final
7 or finished goods or services from a foreign principal; indemnifying
8 state-managed funds with respect to actions taken in compliance with
9 such act; providing an expiration date for such act.

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11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. The provisions of sections 1 through 8, and amendments
13 thereto, shall be known and may be cited as the countries of concern
14 divestment and procurement protection act.

15 Sec. 2. As used in this act:

16 (a) "Act" means the countries of concern divestment and procurement
17 protection act.

18 (b) "Company" means any:

19 (1) For-profit corporation, partnership, limited partnership, limited
20 liability partnership, limited liability company, joint venture, trust,
21 association, sole proprietorship or other organization, including any:

22 (A) Subsidiary of such company, a majority ownership interest of
23 which is held by such company;

24 (B) parent company that holds a majority ownership of such
25 company; and

26 (C) other affiliate or business association of such company whose
27 primary purpose is to make a profit; or

28 (2) nonprofit organization.

29 (c) (1) "Country of concern" means the following:

30 (A) People's republic of China, including the Hong Kong special
31 administrative region;

32 (B) republic of Cuba;

33 (C) islamic republic of Iran;

34 (D) democratic people's republic of Korea;

35 (E) Russian federation; and

36 (F) Bolivarian republic of Venezuela.

- 1 (2) "Country of concern" does not include the republic of China
2 (Taiwan).
- 3 (d) "Covered transaction" means the same as defined in 31 C.F.R. §
4 800.213, as in effect on July 1, 2024.
- 5 (e) "Covered control transaction" means the same as defined in 31
6 C.F.R. § 800.210, as in effect on July 1, 2024.
- 7 (f) "Domicile" means the country where:
8 (1) A company is organized;
9 (2) a company completes a substantial portion of its business; or
10 (3) a majority of a company's ownership interest is held.
- 11 (g) "Foreign principal" means:
12 (1) The government or any official of the government of a country of
13 concern;
14 (2) any political party, subdivision thereof or any member of a
15 political party of a country of concern;
16 (3) any corporation, partnership, association, organization or other
17 combination of persons organized under the laws of or having its principal
18 place of business in a country of concern. "Foreign principal" includes any
19 subsidiary owned or wholly controlled by any such entity;
- 20 (4) any agent of or any entity otherwise under the control of a country
21 of concern;
- 22 (5) any individual whose residence is in a country of concern and
23 who is not a citizen or lawful permanent resident of the United States; or
24 (6) any individual, entity or combination thereof described in
25 paragraphs (1) through (5) that has a controlling interest in any company
26 formed for the purpose of holding any interest in real property.
- 27 (h) "Person" means an individual.
- 28 (i) "Person owned or controlled by or subject to the jurisdiction or
29 direction of a country of concern" means any:
30 (1) Person, wherever located, who is a citizen of a nation-state
31 controlled by a country of concern, unless such person is a lawful
32 permanent resident of the United States; or
33 (2) corporation, partnership, association or other organization
34 organized under the laws of a nation-state controlled by a country of
35 concern.
- 36 (j) "State agency" means any department, authority, bureau, division,
37 office or other governmental agency of this state.
- 38 (k) "State-managed fund" means:
39 (1) The Kansas public employees retirement fund managed by the
40 board of trustees of the Kansas public employees retirement system in
41 accordance with K.S.A. 74-4921, and amendments thereto;
42 (2) the pooled money investment portfolio managed by the pooled
43 money investment board in accordance with article 42 of chapter 75 of the

1 Kansas Statutes Annotated, and amendments thereto; and

2 (3) any other fund that is sponsored or managed by a state agency.

3 Sec. 3. (a) (1) Notwithstanding the provisions of K.S.A. 74-4921, and
4 amendments thereto, or any other statute to the contrary, and except as
5 provided in paragraph (2), a state-managed fund shall sell, redeem, divest
6 or withdraw all publicly traded securities of any country of concern or
7 person owned or controlled by or subject to the jurisdiction or direction of
8 a country of concern in accordance with the following schedule:

9 (A) At least 50% of such assets shall be removed from the state-
10 managed fund's assets under management not later than July 1, 2025, or
11 one year from the date section 2, and amendments thereto, is amended to
12 include such country of concern if amended after July 1, 2024, unless the
13 state-managed fund determines that a later date is more prudent based on a
14 good faith exercise of the state-managed fund's fiduciary discretion and
15 subject to subparagraph (B); and

16 (B) 100% of such assets shall be removed from the state-managed
17 fund's assets under management not later than January 1, 2026, or one year
18 from the date section 2, and amendments thereto, is amended to include
19 such country of concern if amended after July 1, 2024.

20 (2) If a country of concern takes action to prohibit or restrict the
21 selling, redeeming, divesting or withdrawing of publicly traded securities
22 of any country of concern or person owned or controlled by or subject to
23 the jurisdiction or direction of a country of concern beyond the scheduled
24 removal dates provided in paragraph (1), the state-managed fund shall
25 remove 100% of such assets from the state-managed fund's assets not later
26 than one year from the date that such action is ended by such country of
27 concern.

28 (b) A state-managed fund shall not knowingly acquire securities of
29 any country of concern or person owned or controlled by or subject to the
30 jurisdiction or direction of a country of concern.

31 (c) A state-managed fund shall not invest or make a deposit in any
32 bank that is domiciled in a country of concern.

33 Sec. 4. (a) Notwithstanding the provisions of K.S.A. 74-4921, and
34 amendments thereto, or any other statute to the contrary, a state-managed
35 fund shall divest from any indirect holdings in actively or passively
36 managed investment funds containing publicly traded securities of any
37 country of concern or person owned or controlled by or subject to the
38 jurisdiction or direction of a country of concern. Such state-managed fund
39 may submit letters to the managers of each investment fund containing
40 publicly traded securities of any country of concern or person owned or
41 controlled by or subject to the jurisdiction or direction of a country of
42 concern requesting that they remove such publicly traded securities from
43 the fund or create a similar actively or passively managed fund with

1 indirect holdings devoid of such publicly traded securities. If a manager
2 creates a similar fund with substantially the same management fees and
3 substantially the same level of investment risk and anticipated return, the
4 state-managed fund may replace all applicable investments with
5 investments in the similar fund in a time frame consistent with prudent
6 fiduciary standards but not later than the 450th day after the date the fund is
7 created. If a manager does not create such similar fund, the state-managed
8 fund shall divest from such indirect holdings in actively or passively
9 managed investment funds.

10 (b) (1) The provisions of this act shall not apply to any real estate or
11 private equity investment commitment made by a state-managed fund
12 prior to July 1, 2024, or to a real estate or private equity investment
13 commitment made by a state-managed fund prior to the date that section 2,
14 and amendments thereto, is amended to include a country of concern, if
15 amended after July 1, 2024.

16 (2) On and after July 1, 2024, a state-managed fund shall not make
17 any new real estate or private equity investment commitment in a person
18 owned or controlled by or subject to the jurisdiction of a country of
19 concern.

20 Sec. 5. Not later than the first day of the regular session of the
21 legislature, each year, each state-managed fund shall file a report with the
22 legislature and the Kansas public employees retirement system shall also
23 file such report with the joint committee on pensions, investments and
24 benefits that:

25 (a) Identifies all securities sold, redeemed, divested or withdrawn in
26 compliance with section 3(a), and amendments thereto;

27 (b) identifies amendments to section 2, and amendments thereto, that
28 add or remove a country of concern after the later of July 1, 2024, or the
29 last date such information was reported under this section; and

30 (c) summarizes any changes made under section 4, and amendments
31 thereto.

32 Sec. 6. (a) (1) Except as provided by paragraph (2), no state agency
33 shall enter into a contract or agreement to procure final or finished goods
34 or services from a foreign principal.

35 (2) A state agency may enter into a contract or agreement to procure
36 final or finished goods or services from a foreign principal if such foreign
37 principal:

38 (A) Previously received a determination that there are no unresolved
39 national security concerns and action under 50 U.S.C. § 4565, as in effect
40 on July 1, 2024, that has concluded with respect to a covered transaction,
41 if such foreign principal has not undergone a change in control constituting
42 a covered control transaction, since such determination to conclude action
43 was made; or

1 (B) has a national security agreement in effect on July 1, 2024, with
2 the committee on foreign investment in the United States, or the United
3 States department of defense, under 50 U.S.C. § 4565, as in effect on July
4 1, 2024, and maintains such national security agreement.

5 (b) The provisions of this section shall not apply to any contract or
6 agreement entered into prior to July 1, 2024.

7 Sec. 7. In a cause of action based on an action, inaction, decision,
8 divestment, investment, report or other determination made or taken in
9 compliance with this act, without regard to whether the person performed
10 services for compensation, the state shall indemnify and hold harmless for
11 actual damages, court costs and attorney fees adjudged against members of
12 a state-managed fund or any other officers of such state-managed fund
13 related to the act or omission on which the damages are based and defend
14 the state-managed fund and any of such state-managed fund's current and
15 former employees.

16 Sec. 8. (a) The provisions of this act shall expire on July 1, 2029.

17 (b) On or after July 1, 2028, but before July 15, 2028, the Kansas
18 public employees retirement system shall notify the speaker of the house
19 of representatives, the president of the senate and the chairperson of the
20 joint committee on pensions, investments and benefits that this act is
21 scheduled to expire on July 1, 2029.

22 Sec. 9. This act shall take effect and be in force from and after its
23 publication in the statute book.