

REFERENCE TITLE: Israel; boycotts; contracts; investments

State of Arizona
House of Representatives
Fifty-second Legislature
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2016

HB 2617

Introduced by

Representatives Gowan, Allen J, Barton, Borrelli, Bowers, Boyer, Cardenas, Cobb, Fann, Finchem, Gray, Kern, Livingston, Mitchell, Montenegro, Olson, Saldate, Stevens, Thorpe, Senators Barto, Begay, Dial, Driggs, Kavanagh:
Representatives Brophy McGee, Campbell, Carter, Coleman, Espinoza, Lawrence, Leach, Mesnard, Norgaard, Petersen, Rios, Rivero, Shope, Townsend, Weninger, Senators Donahue, Lesko, Shooter

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. "BOARD" MEANS THE STATE BOARD OF INVESTMENT ESTABLISHED BY SECTION
8 35-311.

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

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

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

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

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

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

32 (a) TOGETHER WITH OTHER INVESTORS THAT ARE NOT SUBJECT TO THIS
33 SECTION.

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

35 6. "PUBLIC ENTITY" MEANS THIS STATE, A POLITICAL SUBDIVISION OF THIS
36 STATE OR AN AGENCY, BOARD, COMMISSION OR DEPARTMENT OF THIS STATE OR A
37 POLITICAL SUBDIVISION OF THIS STATE.

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

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

41 35-393.01. Contracting; prohibition; exceptions

42 A. A PUBLIC ENTITY MAY NOT ENTER INTO A CONTRACT WITH A COMPANY TO
43 ACQUIRE OR DISPOSE OF SERVICES, SUPPLIES, INFORMATION TECHNOLOGY OR
44 CONSTRUCTION UNLESS THE CONTRACT INCLUDES A WRITTEN CERTIFICATION THAT THE

1 COMPANY IS NOT CURRENTLY ENGAGED IN, AND AGREES FOR THE DURATION OF THE
2 CONTRACT TO NOT ENGAGE IN, A BOYCOTT OF ISRAEL.

3 B. THIS SECTION DOES NOT APPLY IF EITHER:

4 1. THE COMPANY OFFERS TO PROVIDE THE SERVICES, SUPPLIES, INFORMATION
5 TECHNOLOGY OR CONSTRUCTION FOR AT LEAST TWENTY PERCENT LESS THAN EACH OTHER
6 QUALIFIED COMPANY.

7 2. THE CONTRACT HAS A TOTAL POTENTIAL VALUE OF LESS THAN ONE THOUSAND
8 DOLLARS.

9 35-393.02. Investment; restricted companies list; notice;
10 immunity

11 A. ON OR BEFORE APRIL 1 OF EACH YEAR, THE BOARD SHALL PREPARE A LIST
12 OF RESTRICTED COMPANIES AND SHALL DISTRIBUTE THE LIST TO THE STATE TREASURER
13 AND EACH RETIREMENT SYSTEM.

14 B. IN PREPARING THE LIST OF RESTRICTED COMPANIES, THE BOARD MAY
15 CONSIDER AT LEAST THE FOLLOWING:

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

18 2. INFORMATION PREPARED BY AN INDEPENDENT RESEARCH FIRM RETAINED BY
19 THE BOARD.

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

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

26 D. IF A COMPANY THAT RECEIVES NOTICE PURSUANT TO SUBSECTION C OF THIS
27 SECTION SUBMITS A WRITTEN CERTIFICATION TO THE BOARD THAT IT HAS CEASED ITS
28 BOYCOTT OF ISRAEL AND WILL NOT ENGAGE IN A BOYCOTT OF ISRAEL FOR THE PERIOD
29 OF TIME THAT THE STATE TREASURER OR A RETIREMENT SYSTEM INVESTS IN THE
30 COMPANY, THE BOARD SHALL:

31 1. REMOVE THE COMPANY FROM THE RESTRICTED LIST.

32 2. NOTIFY THE STATE TREASURER AND THE RETIREMENT SYSTEMS WITHIN TEN
33 BUSINESS DAYS AFTER RECEIPT OF THE WRITTEN CERTIFICATION OF THE REMOVAL.

34 E. THE STATE TREASURER AND EACH RETIREMENT SYSTEM SHALL:

35 1. SELL, REDEEM, DIVEST OR WITHDRAW ALL DIRECT HOLDINGS OF A
36 RESTRICTED COMPANY FROM THE ASSETS UNDER THEIR MANAGEMENT IN AN ORDERLY AND
37 FIDUCIALLY RESPONSIBLE MANNER WITHIN THREE MONTHS AFTER RECEIVING THE LIST OF
38 RESTRICTED COMPANIES PURSUANT TO SUBSECTION A OF THIS SECTION. ON OR BEFORE
39 AUGUST 1 OF EACH YEAR, THE STATE TREASURER AND EACH RETIREMENT SYSTEM SHALL
40 NOTIFY THE BOARD REGARDING INVESTMENTS THAT ARE SOLD, REDEEMED, DIVESTED OR
41 WITHDRAWN PURSUANT TO THIS PARAGRAPH.

42 2. NOT ACQUIRE SECURITIES OF A RESTRICTED COMPANY AS PART OF THEIR
43 DIRECT HOLDINGS.

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

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

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

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

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

17 35-393.03. Severability

18 IF ANY PROVISION OF THIS ARTICLE OR ITS APPLICATION TO ANY PERSON OR
19 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT ANY OTHER
20 PROVISION OR APPLICATION OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT THE
21 INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
22 ARTICLE ARE SEVERABLE.

23 Sec. 2. Legislative findings

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

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

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

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

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

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