

1-1 By: Kolkhorst S.B. No. 1158
 1-2 (In the Senate - Filed March 8, 2021; March 18, 2021, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 April 15, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 3; April 15, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13		X		
1-14	X			
1-15		X		
1-16	X			
1-17		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1158 By: Birdwell

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to state contracts with and investments in social media
 1-22 companies that censor political speech.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subtitle A, Title 8, Government Code, is amended
 1-25 by adding Chapter 809 to read as follows:

1-26 CHAPTER 809. PROHIBITION ON INVESTMENT IN SOCIAL MEDIA COMPANIES

1-27 THAT CENSOR POLITICAL SPEECH

1-28 SUBCHAPTER A. GENERAL PROVISIONS

1-29 Sec. 809.001. DEFINITIONS. In this chapter:

1-30 (1) "Company" means a for-profit sole proprietorship,
 1-31 organization, association, corporation, partnership, joint
 1-32 venture, limited partnership, limited liability partnership, or
 1-33 limited liability company, including a wholly owned subsidiary,
 1-34 majority-owned subsidiary, parent company, or affiliate of those
 1-35 entities or business associations, that exists to make a profit.

1-36 (2) "Direct holdings" means, with respect to a
 1-37 company, all securities of that company held directly by a state
 1-38 governmental entity in an account or fund in which a state
 1-39 governmental entity owns all shares or interests.

1-40 (3) "Indirect holdings" means, with respect to a
 1-41 company, all securities of that company held in an account or fund,
 1-42 such as a mutual fund, managed by one or more persons not employed
 1-43 by a state governmental entity, in which the state governmental
 1-44 entity owns shares or interests together with other investors not
 1-45 subject to the provisions of this chapter. The term does not
 1-46 include money invested under a plan described by Section 401(k) or
 1-47 457 of the Internal Revenue Code of 1986.

1-48 (4) "Listed company" means a company listed by the
 1-49 attorney general under Section 809.051.

1-50 (5) "Political speech" means speech relating to the
 1-51 state, government, public administration, government policymaking,
 1-52 including speech by a governmental entity or candidates for public
 1-53 office, and social issues.

1-54 (6) "Social media website" means an Internet website
 1-55 or application that is open to the public and enables users to
 1-56 communicate with each other by posting information, comments,
 1-57 messages, or images. The term does not include a website or
 1-58 application:

1-59 (A) with 75 million or fewer users;

1-60 (B) that has been affiliated with a religion or

2-1 political party;
2-2 (C) that is primarily used as an e-mail service;
2-3 or
2-4 (D) that consists primarily of content, such as
2-5 news, sports, or entertainment content, that:
2-6 (i) is curated by the owner or operator of
2-7 the website or application and is not user-generated; and
2-8 (ii) provides the basis for any chat,
2-9 comment, or interactive functionality on the website or
2-10 application.

2-11 (7) "State governmental entity" means:
2-12 (A) the Employees Retirement System of Texas,
2-13 including a retirement system administered by that system;
2-14 (B) the Teacher Retirement System of Texas;
2-15 (C) the Texas Municipal Retirement System;
2-16 (D) the Texas County and District Retirement
2-17 System;
2-18 (E) the Texas Emergency Services Retirement
2-19 System; and
2-20 (F) the permanent school fund.

2-21 (8) "User" means a person that posts, uploads,
2-22 transmits, or otherwise publishes content through a social media
2-23 website.

2-24 Sec. 809.002. OTHER LEGAL OBLIGATIONS. With respect to
2-25 actions taken in compliance with this chapter, including all good
2-26 faith determinations regarding companies as required by this
2-27 chapter, a state governmental entity and the comptroller are exempt
2-28 from any conflicting statutory or common law obligations, including
2-29 any obligations with respect to making investments, divesting from
2-30 any investment, preparing or maintaining any list of companies, or
2-31 choosing asset managers, investment funds, or investments for the
2-32 state governmental entity's securities portfolios.

2-33 Sec. 809.003. INDEMNIFICATION OF STATE GOVERNMENTAL
2-34 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an
2-35 action, inaction, decision, divestment, investment, company
2-36 communication, report, or other determination made or taken in
2-37 connection with this chapter, the state shall, without regard to
2-38 whether the person performed services for compensation, indemnify
2-39 and hold harmless for actual damages, court costs, and attorney's
2-40 fees adjudged against, and defend:

2-41 (1) an employee, a member of the governing body, or any
2-42 other officer of a state governmental entity;

2-43 (2) a contractor of a state governmental entity;

2-44 (3) a former employee, a former member of the
2-45 governing body, or any other former officer of a state governmental
2-46 entity who was an employee, member of the governing body, or other
2-47 officer when the act or omission on which the damages are based
2-48 occurred;

2-49 (4) a former contractor of a state governmental entity
2-50 who was a contractor when the act or omission on which the damages
2-51 are based occurred; and

2-52 (5) a state governmental entity.

2-53 Sec. 809.004. NO PRIVATE CAUSE OF ACTION. (a) A person,
2-54 including a member, retiree, or beneficiary of a retirement system
2-55 to which this chapter applies, an association, a research firm, a
2-56 company, or any other person may not sue or pursue a private cause
2-57 of action against the state, a state governmental entity, a current
2-58 or former employee, a member of the governing body, or any other
2-59 officer of a state governmental entity, or a contractor of a state
2-60 governmental entity for any claim or cause of action, including
2-61 breach of fiduciary duty, or for violation of any constitutional,
2-62 statutory, or regulatory requirement in connection with any action,
2-63 inaction, decision, divestment, investment, company communication,
2-64 report, or other determination made or taken in connection with
2-65 this chapter.

2-66 (b) A person who files suit against the state, a state
2-67 governmental entity, an employee, a member of the governing body,
2-68 or any other officer of a state governmental entity, or a contractor
2-69 of a state governmental entity is liable for paying the costs and

3-1 attorney's fees of a person sued in violation of this section.
3-2 Sec. 809.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT
3-3 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state
3-4 governmental entity is not subject to a requirement of this chapter
3-5 if the state governmental entity determines that the requirement
3-6 would be inconsistent with its fiduciary responsibility with
3-7 respect to the investment of entity assets or other duties imposed
3-8 by law relating to the investment of entity assets, including the
3-9 duty of care established under Section 67, Article XVI, Texas
3-10 Constitution.

3-11 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

3-12 Sec. 809.051. LISTED COMPANIES. (a) The attorney general
3-13 shall prepare and maintain, and provide to each state governmental
3-14 entity, a list of companies that own a social media website that
3-15 censors political speech by:

3-16 (1) removing, banning, or demonetizing a user on the
3-17 basis that the user posted, uploaded, transmitted, or published
3-18 political speech; or

3-19 (2) otherwise restricts a user's ability to post,
3-20 upload, transmit, or publish political speech.

3-21 (b) In maintaining the list, the attorney general may review
3-22 and rely, as appropriate in the attorney general's judgment, on
3-23 publicly available information regarding companies that own a
3-24 social media website, including information provided by the state,
3-25 nonprofit organizations, research firms, international
3-26 organizations, and governmental entities.

3-27 (c) The attorney general may not include an Internet service
3-28 provider on a list prepared under this section.

3-29 (d) The attorney general shall update the list annually or
3-30 more often as the attorney general considers necessary, but not
3-31 more often than quarterly, based on information from, among other
3-32 sources, those listed in Subsection (b).

3-33 (e) Not later than the 30th day after the date the list of
3-34 companies is first provided or updated, the attorney general shall
3-35 file the list with the presiding officer of each house of the
3-36 legislature and post the list on a publicly available website.

3-37 Sec. 809.052. IDENTIFICATION OF INVESTMENT IN LISTED
3-38 COMPANIES. Not later than the 30th day after the date a state
3-39 governmental entity receives the list provided under Section
3-40 809.051, the state governmental entity shall notify the attorney
3-41 general of the listed companies in which the state governmental
3-42 entity owns direct holdings or indirect holdings.

3-43 Sec. 809.053. ACTIONS RELATING TO LISTED COMPANY. (a) For
3-44 each listed company identified under Section 809.052, the state
3-45 governmental entity shall send a written notice:

3-46 (1) informing the company of its status as a listed
3-47 company;

3-48 (2) warning the company that it may become subject to
3-49 divestment by state governmental entities after the expiration of
3-50 the period described by Subsection (b); and

3-51 (3) offering the company the opportunity to clarify
3-52 its activities related to censorship of political speech.

3-53 (b) Not later than the 90th day after the date the company
3-54 receives notice under Subsection (a), the company must cease
3-55 censoring political speech in order to avoid qualifying for
3-56 divestment by state governmental entities.

3-57 (c) If, during the time provided by Subsection (b), the
3-58 company ceases censoring political speech, the attorney general
3-59 shall remove the company from the list maintained under Section
3-60 809.051 and this chapter will no longer apply to the company unless
3-61 it resumes censoring political speech.

3-62 (d) If, after the time provided by Subsection (b) expires,
3-63 the company continues to censor political speech, the state
3-64 governmental entity shall sell, redeem, divest, or withdraw all
3-65 publicly traded securities of the company, except securities
3-66 described by Section 809.055, according to the schedule provided by
3-67 Section 809.054.

3-68 Sec. 809.054. DIVESTMENT OF ASSETS. (a) A state
3-69 governmental entity required to sell, redeem, divest, or withdraw

4-1 all publicly traded securities of a listed company shall comply
 4-2 with the following schedule:

4-3 (1) at least 50 percent of those assets must be removed
 4-4 from the state governmental entity's assets under management not
 4-5 later than the 180th day after the date the company receives notice
 4-6 under Section 809.053 or Subsection (b) unless the state
 4-7 governmental entity determines, based on a good faith exercise of
 4-8 its fiduciary discretion and subject to Subdivision (2), that a
 4-9 later date is more prudent; and

4-10 (2) 100 percent of those assets must be removed from
 4-11 the state governmental entity's assets under management not later
 4-12 than the 360th day after the date the company receives notice under
 4-13 Section 809.053 or Subsection (b).

4-14 (b) If a company that ceased censoring political speech
 4-15 after receiving notice under Section 809.053 resumes censoring
 4-16 political speech, the state governmental entity shall send a
 4-17 written notice to the company informing it that the state
 4-18 governmental entity will sell, redeem, divest, or withdraw all
 4-19 publicly traded securities of the company according to the schedule
 4-20 in Subsection (a).

4-21 (c) Except as provided by Subsection (a), a state
 4-22 governmental entity may delay the schedule for divestment under
 4-23 that subsection only to the extent that the state governmental
 4-24 entity determines, in the state governmental entity's good faith
 4-25 judgment, and consistent with the entity's fiduciary duty, that
 4-26 divestment from listed companies will likely result in a loss in
 4-27 value or a benchmark deviation described by Section 809.056(a). If
 4-28 a state governmental entity delays the schedule for divestment, the
 4-29 state governmental entity shall submit a report to the presiding
 4-30 officer of each house of the legislature and the attorney general
 4-31 stating the reasons and justification for the state governmental
 4-32 entity's delay in divestment from listed companies. The report
 4-33 must include documentation supporting its determination that the
 4-34 divestment would result in a loss in value or a benchmark deviation
 4-35 described by Section 809.056(a), including objective numerical
 4-36 estimates. The state governmental entity shall update the report
 4-37 every six months.

4-38 Sec. 809.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
 4-39 state governmental entity is not required to divest from any
 4-40 indirect holdings in actively or passively managed investment funds
 4-41 or private equity funds. The state governmental entity shall
 4-42 submit letters to the managers of each investment fund containing
 4-43 listed companies requesting that they remove those companies from
 4-44 the fund or create a similar actively or passively managed fund with
 4-45 indirect holdings devoid of listed companies. If a manager creates
 4-46 a similar fund with substantially the same management fees and same
 4-47 level of investment risk and anticipated return, the state
 4-48 governmental entity may replace all applicable investments with
 4-49 investments in the similar fund in a time frame consistent with
 4-50 prudent fiduciary standards but not later than the 450th day after
 4-51 the date the fund is created.

4-52 Sec. 809.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.
 4-53 (a) A state governmental entity may cease divesting from one or
 4-54 more listed companies only if clear and convincing evidence shows
 4-55 that:

4-56 (1) the state governmental entity has suffered or will
 4-57 suffer a loss in the hypothetical value of all assets under
 4-58 management by the state governmental entity as a result of having to
 4-59 divest from listed companies under this chapter; or

4-60 (2) an individual portfolio that uses a
 4-61 benchmark-aware strategy would be subject to an aggregate expected
 4-62 deviation from its benchmark as a result of having to divest from
 4-63 listed companies under this chapter.

4-64 (b) A state governmental entity may cease divesting from a
 4-65 listed company as provided by this section only to the extent
 4-66 necessary to ensure that the state governmental entity does not
 4-67 suffer a loss in value or deviate from its benchmark as described by
 4-68 Subsection (a).

4-69 (c) Before a state governmental entity may cease divesting

5-1 from a listed company under this section, the state governmental
5-2 entity must provide a written report to the comptroller, the
5-3 presiding officer of each house of the legislature, and the
5-4 attorney general setting forth the reason and justification,
5-5 supported by clear and convincing evidence, for deciding to cease
5-6 divestment or to remain invested in a listed company.

5-7 (d) The state governmental entity shall update the report
5-8 required by Subsection (c) semiannually, as applicable.

5-9 (e) This section does not apply to reinvestment in a company
5-10 that is no longer a listed company.

5-11 Sec. 809.057. PROHIBITED INVESTMENTS. Except as provided
5-12 by Section 809.056, a state governmental entity may not acquire
5-13 securities of a listed company.

5-14 SUBCHAPTER C. REPORT; ENFORCEMENT

5-15 Sec. 809.101. REPORT. Not later than January 15 of each
5-16 year, each state governmental entity shall file a publicly
5-17 available report with the presiding officer of each house of the
5-18 legislature and the attorney general that:

5-19 (1) identifies all securities sold, redeemed,
5-20 divested, or withdrawn in compliance with Section 809.054;

5-21 (2) identifies all prohibited investments under
5-22 Section 809.057; and

5-23 (3) summarizes any changes made under Section 809.055.

5-24 Sec. 809.102. ENFORCEMENT. The attorney general may bring
5-25 any action necessary to enforce this chapter.

5-26 SECTION 2. This Act takes effect September 1, 2021.

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