

By: Kolkhorst, et al.

S.B. No. 1158

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

CHAPTER 809. PROHIBITION ON INVESTMENT IN SOCIAL MEDIA COMPANIES

THAT CENSOR POLITICAL SPEECH

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 809.001. DEFINITIONS. In this chapter:

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

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

(3) "Indirect holdings" means, with respect to a company, all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by a state governmental entity, in which the state governmental

1 entity owns shares or interests together with other investors not
2 subject to the provisions of this chapter. The term does not
3 include money invested under a plan described by Section 401(k) or
4 457 of the Internal Revenue Code of 1986.

5 (4) "Listed company" means a company listed by the
6 attorney general under Section 809.051.

7 (5) "Political speech" means speech relating to the
8 state, government, public administration, government policymaking,
9 including speech by a governmental entity or candidates for public
10 office, and social issues.

11 (6) "Social media website" means an Internet website
12 or application that is open to the public and enables users to
13 communicate with each other by posting information, comments,
14 messages, or images. The term does not include a website or
15 application:

16 (A) with 75 million or fewer users;

17 (B) that has been affiliated with a religion or
18 political party;

19 (C) that is primarily used as an e-mail service;

20 or

21 (D) that consists primarily of content, such as
22 news, sports, or entertainment content, that:

23 (i) is curated by the owner or operator of
24 the website or application and is not user-generated; and

25 (ii) provides the basis for any chat,
26 comment, or interactive functionality on the website or
27 application.

1 (7) "State governmental entity" means:

2 (A) the Employees Retirement System of Texas,
3 including a retirement system administered by that system;

4 (B) the Teacher Retirement System of Texas;

5 (C) the Texas Municipal Retirement System;

6 (D) the Texas County and District Retirement
7 System;

8 (E) the Texas Emergency Services Retirement
9 System; and

10 (F) the permanent school fund.

11 (8) "User" means a person that posts, uploads,
12 transmits, or otherwise publishes content through a social media
13 website.

14 Sec. 809.002. OTHER LEGAL OBLIGATIONS. With respect to
15 actions taken in compliance with this chapter, including all good
16 faith determinations regarding companies as required by this
17 chapter, a state governmental entity and the comptroller are exempt
18 from any conflicting statutory or common law obligations, including
19 any obligations with respect to making investments, divesting from
20 any investment, preparing or maintaining any list of companies, or
21 choosing asset managers, investment funds, or investments for the
22 state governmental entity's securities portfolios.

23 Sec. 809.003. INDEMNIFICATION OF STATE GOVERNMENTAL
24 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an
25 action, inaction, decision, divestment, investment, company
26 communication, report, or other determination made or taken in
27 connection with this chapter, the state shall, without regard to

1 whether the person performed services for compensation, indemnify
2 and hold harmless for actual damages, court costs, and attorney's
3 fees adjudged against, and defend:

4 (1) an employee, a member of the governing body, or any
5 other officer of a state governmental entity;

6 (2) a contractor of a state governmental entity;

7 (3) a former employee, a former member of the
8 governing body, or any other former officer of a state governmental
9 entity who was an employee, member of the governing body, or other
10 officer when the act or omission on which the damages are based
11 occurred;

12 (4) a former contractor of a state governmental entity
13 who was a contractor when the act or omission on which the damages
14 are based occurred; and

15 (5) a state governmental entity.

16 Sec. 809.004. NO PRIVATE CAUSE OF ACTION. (a) A person,
17 including a member, retiree, or beneficiary of a retirement system
18 to which this chapter applies, an association, a research firm, a
19 company, or any other person may not sue or pursue a private cause
20 of action against the state, a state governmental entity, a current
21 or former employee, a member of the governing body, or any other
22 officer of a state governmental entity, or a contractor of a state
23 governmental entity for any claim or cause of action, including
24 breach of fiduciary duty, or for violation of any constitutional,
25 statutory, or regulatory requirement in connection with any action,
26 inaction, decision, divestment, investment, company communication,
27 report, or other determination made or taken in connection with

1 this chapter.

2 (b) A person who files suit against the state, a state
3 governmental entity, an employee, a member of the governing body,
4 or any other officer of a state governmental entity, or a contractor
5 of a state governmental entity is liable for paying the costs and
6 attorney's fees of a person sued in violation of this section.

7 Sec. 809.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT
8 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state
9 governmental entity is not subject to a requirement of this chapter
10 if the state governmental entity determines that the requirement
11 would be inconsistent with its fiduciary responsibility with
12 respect to the investment of entity assets or other duties imposed
13 by law relating to the investment of entity assets, including the
14 duty of care established under Section 67, Article XVI, Texas
15 Constitution.

16 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

17 Sec. 809.051. LISTED COMPANIES. (a) The attorney general
18 shall prepare and maintain, and provide to each state governmental
19 entity, a list of companies that own a social media website that
20 censors political speech by:

21 (1) removing, banning, or demonetizing a user on the
22 basis that the user posted, uploaded, transmitted, or published
23 political speech; or

24 (2) otherwise restricts a user's ability to post,
25 upload, transmit, or publish political speech.

26 (b) In maintaining the list, the attorney general may review
27 and rely, as appropriate in the attorney general's judgment, on

1 publicly available information regarding companies that own a
2 social media website, including information provided by the state,
3 nonprofit organizations, research firms, international
4 organizations, and governmental entities.

5 (c) The attorney general may not include an Internet service
6 provider on a list prepared under this section.

7 (d) The attorney general shall update the list annually or
8 more often as the attorney general considers necessary, but not
9 more often than quarterly, based on information from, among other
10 sources, those listed in Subsection (b).

11 (e) Not later than the 30th day after the date the list of
12 companies is first provided or updated, the attorney general shall
13 file the list with the presiding officer of each house of the
14 legislature and post the list on a publicly available website.

15 Sec. 809.052. IDENTIFICATION OF INVESTMENT IN LISTED
16 COMPANIES. Not later than the 30th day after the date a state
17 governmental entity receives the list provided under Section
18 809.051, the state governmental entity shall notify the attorney
19 general of the listed companies in which the state governmental
20 entity owns direct holdings or indirect holdings.

21 Sec. 809.053. ACTIONS RELATING TO LISTED COMPANY. (a) For
22 each listed company identified under Section 809.052, the state
23 governmental entity shall send a written notice:

24 (1) informing the company of its status as a listed
25 company;

26 (2) warning the company that it may become subject to
27 divestment by state governmental entities after the expiration of

1 the period described by Subsection (b); and

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

4 (b) Not later than the 90th day after the date the company
5 receives notice under Subsection (a), the company must cease
6 censoring political speech in order to avoid qualifying for
7 divestment by state governmental entities.

8 (c) If, during the time provided by Subsection (b), the
9 company ceases censoring political speech, the attorney general
10 shall remove the company from the list maintained under Section
11 809.051 and this chapter will no longer apply to the company unless
12 it resumes censoring political speech.

13 (d) If, after the time provided by Subsection (b) expires,
14 the company continues to censor political speech, the state
15 governmental entity shall sell, redeem, divest, or withdraw all
16 publicly traded securities of the company, except securities
17 described by Section 809.055, according to the schedule provided by
18 Section 809.054.

19 Sec. 809.054. DIVESTMENT OF ASSETS. (a) A state
20 governmental entity required to sell, redeem, divest, or withdraw
21 all publicly traded securities of a listed company shall comply
22 with the following schedule:

23 (1) at least 50 percent of those assets must be removed
24 from the state governmental entity's assets under management not
25 later than the 180th day after the date the company receives notice
26 under Section 809.053 or Subsection (b) unless the state
27 governmental entity determines, based on a good faith exercise of

1 its fiduciary discretion and subject to Subdivision (2), that a
2 later date is more prudent; and

3 (2) 100 percent of those assets must be removed from
4 the state governmental entity's assets under management not later
5 than the 360th day after the date the company receives notice under
6 Section 809.053 or Subsection (b).

7 (b) If a company that ceased censoring political speech
8 after receiving notice under Section 809.053 resumes censoring
9 political speech, the state governmental entity shall send a
10 written notice to the company informing it that the state
11 governmental entity will sell, redeem, divest, or withdraw all
12 publicly traded securities of the company according to the schedule
13 in Subsection (a).

14 (c) Except as provided by Subsection (a), a state
15 governmental entity may delay the schedule for divestment under
16 that subsection only to the extent that the state governmental
17 entity determines, in the state governmental entity's good faith
18 judgment, and consistent with the entity's fiduciary duty, that
19 divestment from listed companies will likely result in a loss in
20 value or a benchmark deviation described by Section 809.056(a). If
21 a state governmental entity delays the schedule for divestment, the
22 state governmental entity shall submit a report to the presiding
23 officer of each house of the legislature and the attorney general
24 stating the reasons and justification for the state governmental
25 entity's delay in divestment from listed companies. The report
26 must include documentation supporting its determination that the
27 divestment would result in a loss in value or a benchmark deviation

1 described by Section 809.056(a), including objective numerical
2 estimates. The state governmental entity shall update the report
3 every six months.

4 Sec. 809.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
5 state governmental entity is not required to divest from any
6 indirect holdings in actively or passively managed investment funds
7 or private equity funds. The state governmental entity shall
8 submit letters to the managers of each investment fund containing
9 listed companies requesting that they remove those companies from
10 the fund or create a similar actively or passively managed fund with
11 indirect holdings devoid of listed companies. If a manager creates
12 a similar fund with substantially the same management fees and same
13 level of investment risk and anticipated return, the state
14 governmental entity may replace all applicable investments with
15 investments in the similar fund in a time frame consistent with
16 prudent fiduciary standards but not later than the 450th day after
17 the date the fund is created.

18 Sec. 809.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.
19 (a) A state governmental entity may cease divesting from one or
20 more listed companies only if clear and convincing evidence shows
21 that:

22 (1) the state governmental entity has suffered or will
23 suffer a loss in the hypothetical value of all assets under
24 management by the state governmental entity as a result of having to
25 divest from listed companies under this chapter; or

26 (2) an individual portfolio that uses a
27 benchmark-aware strategy would be subject to an aggregate expected

1 deviation from its benchmark as a result of having to divest from
2 listed companies under this chapter.

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

8 (c) Before a state governmental entity may cease divesting
9 from a listed company under this section, the state governmental
10 entity must provide a written report to the comptroller, the
11 presiding officer of each house of the legislature, and the
12 attorney general setting forth the reason and justification,
13 supported by clear and convincing evidence, for deciding to cease
14 divestment or to remain invested in a listed company.

15 (d) The state governmental entity shall update the report
16 required by Subsection (c) semiannually, as applicable.

17 (e) This section does not apply to reinvestment in a company
18 that is no longer a listed company.

19 Sec. 809.057. PROHIBITED INVESTMENTS. Except as provided
20 by Section 809.056, a state governmental entity may not acquire
21 securities of a listed company.

22 SUBCHAPTER C. REPORT; ENFORCEMENT

23 Sec. 809.101. REPORT. Not later than January 15 of each
24 year, each state governmental entity shall file a publicly
25 available report with the presiding officer of each house of the
26 legislature and the attorney general that:

27 (1) identifies all securities sold, redeemed,

1 divested, or withdrawn in compliance with Section 809.054;

2 (2) identifies all prohibited investments under
3 Section 809.057; and

4 (3) summarizes any changes made under Section 809.055.

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

7 SECTION 2. This Act takes effect September 1, 2021.