

By: Kolkhorst

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 comptroller 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:

13 (A) enables users to communicate with each other
14 by posting information, comments, messages, or images;

15 (B) is open to the public;

16 (C) has more than 75 million users; and

17 (D) has not been affiliated with a religion or
18 political party.

19 (7) "State governmental entity" means:

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

22 (B) the Teacher Retirement System of Texas;

23 (C) the Texas Municipal Retirement System;

24 (D) the Texas County and District Retirement
25 System;

26 (E) the Texas Emergency Services Retirement
27 System; and

1 (F) the permanent school fund.

2 (8) "User" means a person that posts, uploads,
3 transmits, or otherwise publishes content through a social media
4 website.

5 Sec. 809.002. OTHER LEGAL OBLIGATIONS. With respect to
6 actions taken in compliance with this chapter, including all good
7 faith determinations regarding companies as required by this
8 chapter, a state governmental entity and the comptroller are exempt
9 from any conflicting statutory or common law obligations, including
10 any obligations with respect to making investments, divesting from
11 any investment, preparing or maintaining any list of companies, or
12 choosing asset managers, investment funds, or investments for the
13 state governmental entity's securities portfolios.

14 Sec. 809.003. INDEMNIFICATION OF STATE GOVERNMENTAL
15 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an
16 action, inaction, decision, divestment, investment, company
17 communication, report, or other determination made or taken in
18 connection with this chapter, the state shall, without regard to
19 whether the person performed services for compensation, indemnify
20 and hold harmless for actual damages, court costs, and attorney's
21 fees adjudged against, and defend:

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

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

25 (3) a former employee, a former member of the
26 governing body, or any other former officer of a state governmental
27 entity who was an employee, member of the governing body, or other

1 officer when the act or omission on which the damages are based
2 occurred;

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

6 (5) a state governmental entity.

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

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

25 Sec. 809.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT
26 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state
27 governmental entity is not subject to a requirement of this chapter

1 if the state governmental entity determines that the requirement
2 would be inconsistent with its fiduciary responsibility with
3 respect to the investment of entity assets or other duties imposed
4 by law relating to the investment of entity assets, including the
5 duty of care established under Section 67, Article XVI, Texas
6 Constitution.

7 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

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

12 (1) removing, banning, or demonetizing a user on the
13 basis that the user posted, uploaded, transmitted, or published
14 political speech; or

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

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

23 (c) The attorney general shall update the list annually or
24 more often as the attorney general considers necessary, but not
25 more often than quarterly, based on information from, among other
26 sources, those listed in Subsection (b).

27 (d) Not later than the 30th day after the date the list of

1 companies is first provided or updated, the attorney general shall
2 file the list with the presiding officer of each house of the
3 legislature and post the list on a publicly available website.

4 Sec. 809.052. IDENTIFICATION OF INVESTMENT IN LISTED
5 COMPANIES. Not later than the 30th day after the date a state
6 governmental entity receives the list provided under Section
7 809.051, the state governmental entity shall notify the attorney
8 general of the listed companies in which the state governmental
9 entity owns direct holdings or indirect holdings.

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

13 (1) informing the company of its status as a listed
14 company;

15 (2) warning the company that it may become subject to
16 divestment by state governmental entities after the expiration of
17 the period described by Subsection (b); and

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

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

24 (c) If, during the time provided by Subsection (b), the
25 company ceases censoring political speech, the attorney general
26 shall remove the company from the list maintained under Section
27 809.051 and this chapter will no longer apply to the company unless

1 it resumes censoring political speech.

2 (d) If, after the time provided by Subsection (b) expires,
3 the company continues to censor political speech, the state
4 governmental entity shall sell, redeem, divest, or withdraw all
5 publicly traded securities of the company, except securities
6 described by Section 809.055, according to the schedule provided by
7 Section 809.054.

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

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

19 (2) 100 percent of those assets must be removed from
20 the state governmental entity's assets under management not later
21 than the 360th day after the date the company receives notice under
22 Section 809.053 or Subsection (b).

23 (b) If a company that ceased censoring political speech
24 after receiving notice under Section 809.053 resumes censoring
25 political speech, the state governmental entity shall send a
26 written notice to the company informing it that the state
27 governmental entity will sell, redeem, divest, or withdraw all

1 publicly traded securities of the company according to the schedule
2 in Subsection (a).

3 (c) Except as provided by Subsection (a), a state
4 governmental entity may delay the schedule for divestment under
5 that subsection only to the extent that the state governmental
6 entity determines, in the state governmental entity's good faith
7 judgment, and consistent with the entity's fiduciary duty, that
8 divestment from listed companies will likely result in a loss in
9 value or a benchmark deviation described by Section 809.056(a). If
10 a state governmental entity delays the schedule for divestment, the
11 state governmental entity shall submit a report to the presiding
12 officer of each house of the legislature and the attorney general
13 stating the reasons and justification for the state governmental
14 entity's delay in divestment from listed companies. The report
15 must include documentation supporting its determination that the
16 divestment would result in a loss in value or a benchmark deviation
17 described by Section 809.056(a), including objective numerical
18 estimates. The state governmental entity shall update the report
19 every six months.

20 Sec. 809.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
21 state governmental entity is not required to divest from any
22 indirect holdings in actively or passively managed investment funds
23 or private equity funds. The state governmental entity shall
24 submit letters to the managers of each investment fund containing
25 listed companies requesting that they remove those companies from
26 the fund or create a similar actively or passively managed fund with
27 indirect holdings devoid of listed companies. If a manager creates

1 a similar fund with substantially the same management fees and same
2 level of investment risk and anticipated return, the state
3 governmental entity may replace all applicable investments with
4 investments in the similar fund in a time frame consistent with
5 prudent fiduciary standards but not later than the 450th day after
6 the date the fund is created.

7 Sec. 809.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

8 (a) A state governmental entity may cease divesting from one or
9 more listed companies only if clear and convincing evidence shows
10 that:

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

15 (2) an individual portfolio that uses a
16 benchmark-aware strategy would be subject to an aggregate expected
17 deviation from its benchmark as a result of having to divest from
18 listed companies under this chapter.

19 (b) A state governmental entity may cease divesting from a
20 listed company as provided by this section only to the extent
21 necessary to ensure that the state governmental entity does not
22 suffer a loss in value or deviate from its benchmark as described by
23 Subsection (a).

24 (c) Before a state governmental entity may cease divesting
25 from a listed company under this section, the state governmental
26 entity must provide a written report to the comptroller, the
27 presiding officer of each house of the legislature, and the

1 attorney general setting forth the reason and justification,
2 supported by clear and convincing evidence, for deciding to cease
3 divestment or to remain invested in a listed company.

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

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

8 Sec. 809.057. PROHIBITED INVESTMENTS. Except as provided
9 by Section 809.056, a state governmental entity may not acquire
10 securities of a listed company.

11 SUBCHAPTER C. REPORT; ENFORCEMENT

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

16 (1) identifies all securities sold, redeemed,
17 divested, or withdrawn in compliance with Section 809.054;

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

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

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

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