

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2933

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HANSHAW (MR. SPEAKER), AND MAZZOCCHI

[Originating in the Committee on the Judiciary; reported March 18, 2021]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §5A-3-62, relating to creating the Anti-Discrimination Against Israel Act;
3 forbidding WV state agencies, political subdivisions, and pension plans from doing
4 business with, or, investing in, companies that boycott Israel; defining terms; providing for
5 rulemaking; and setting an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-62. Anti-Discrimination Against Israel Act.

1 (a) This section shall be known as the “Anti-Discrimination Against Israel Act”.

2 (b) A public entity may not enter into a contract with a company to acquire or dispose of
3 services, supplies, information technology, or construction unless the contract includes a written
4 certification that the company is not currently engaged in, and will not for the duration of the
5 contract, engage in a boycott of goods or services from Israel or territories under its control that
6 constitutes an integral part of business conducted or sought to be conducted within the state of
7 West Virginia. This section shall not apply to contracts with a total potential value of less than
8 \$100,000 or to contractors with less than 10 employees.

9 (c) As used in this section, the following terms shall mean:

10 (1) “Boycott Israel” and “boycott of the State of Israel”, mean engaging in refusals to deal
11 with, terminating business activities, or other actions that are intended to discriminate against,
12 inflict economic harm, or otherwise limit commercial relations specifically with the State of Israel
13 or territories under its control, or persons or entities doing business in the State of Israel or
14 territories under its control. A company’s statement that it is participating in boycotts of the State
15 of Israel or territories under its control, or that it has taken the boycott action at the request, in
16 compliance with, or in furtherance of calls for a boycott of the State of Israel or territories under
17 its control, shall be considered to be conclusive evidence that a company is participating in a
18 boycott of the State of Israel or territories under its control, provided however, that a company

19 that has made no such statement may still be considered to be participating in a boycott of the
20 State of Israel or territories under its control if other factors warrant such a conclusion. At no time
21 shall the “State of Israel” be construed to be inconsistent with any provision of federal law,
22 including, but not limited to 50 U.S.C. Sections 4602, 4605 or 4607, as amended;

23 (2) “Company”, any for-profit or not-for-profit organization, association, corporation,
24 partnership, joint venture, limited partnership, limited liability partnership, limited liability company,
25 or other entity or business association, including all wholly owned subsidiaries, majority-owned
26 subsidiaries, parent companies, or affiliates of those entities or business associations;

27 (3) “Direct holdings” in a company means all publicly traded securities of that company
28 that are held directly by the retirement system in an actively managed account or fund in which
29 the retirement system owns all shares or interests.

30 (4) “Indirect holdings” in a company means all securities of that company that are held in
31 an account or fund, such as a mutual fund, managed by one or more persons not employed by
32 the retirement system, in which the retirement system owns shares or interests together with other
33 investors not subject to the provisions of this Section or that are held in an index fund.

34 (5) “Participant plan” means a plan listed in §12-6-9a(a) of this Code; and

35 (6) “Public entity” means the state of West Virginia, or any political subdivision thereof,
36 including all boards, commissions, agencies, institutions, authorities, and bodies politic and
37 corporate of the state, created by or in accordance with state law or regulations; and

38 (d) Any contract which fails to comply with the provisions of this section shall be void
39 against public policy.

40 (e) (1) Notwithstanding any other provision of this Code, including, but not limited to, any
41 exemption granted by §12-6-4 of this Code, by July 1, 2022, a participant plan shall make its best
42 efforts to identify all companies that boycott Israel as determined by other states or the federal
43 government, and assemble those identified companies into a list of restricted companies. The

44 participant plan shall review the list of restricted companies on a quarterly basis based on evolving
45 information from other states and the federal government.

46 (2) The participant plan will adhere to the following procedures for companies on the list
47 of restricted companies:

48 (A) For each company newly identified in subdivision (1), the participant plan shall send a
49 written notice informing the company of its status and that it may become subject to divestment
50 by the participant plan.

51 (B) If, following the participant plan's engagement pursuant to this subsection with a
52 restricted company, that company ceases activity that designates the company to be a company
53 that boycotts Israel, that company shall be removed from the list of restricted companies and the
54 provisions of this section shall cease to apply to it unless it resumes such activities.

55 (C) The participant plan shall adhere to the following procedures for companies on the list
56 of restricted companies:

57 (i) The participant plan shall identify those companies on the list of restricted companies
58 in which the participant plan owns direct holdings and indirect holdings.

59 (ii) The participant plan shall instruct its investment advisors to sell, redeem, divest, or
60 withdraw all direct holdings of restricted companies from the participant plan's assets under
61 management in an orderly and fiduciarily responsible manner within 12 months after the
62 company's most recent appearance on the list of restricted companies.

63 (iii) The participant plan may not acquire securities of restricted companies.

64 (iv) The provisions of this subdivision do not apply to the participant plan's indirect holdings
65 or private market funds. The participant plan shall submit letters to the managers of those
66 investment funds containing restricted companies requesting that they consider removing the
67 companies from the fund or create a similar actively managed fund having indirect holdings devoid
68 of the companies. If the manager creates a similar fund, the participant plan shall replace all

69 applicable investments with investments in the similar fund in an expedited timeframe consistent
70 with prudent investing standards.

71 (f) Notwithstanding any other provision in this article to the contrary, the provisions of this
72 section shall apply to all spending units of state government including those otherwise excluded
73 from applicability under §5A-3-1 of this code.

74 (g) The director of the purchasing division or the designee thereof may promulgate rules
75 to implement the provisions of this act so long as they are consistent with this section and do not
76 create any exceptions to it.

77 (h) The provisions of this section shall become effective on July 1, 2022.

NOTE: The purpose of this bill is to create the Anti-Discrimination Against Israel Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.