

1 AN ACT relating to state dealings with companies that engage in politically
2 sensitive company boycotts.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 41.472 is amended to read as follows:

5 (1) As used in KRS 41.470 to 41.476:

6 (a) **"Agricultural commodities associated company" means a company that:**

7 **1. Engages in the legal production, processing, collection, manufacture,**
8 **or sale of any animal or animal products, including but not limited to**
9 **honey, dairy products, fish, and meat and does not commit or pledge to**
10 **meet environmental or regulatory standards beyond applicable federal**
11 **and state law;**

12 **2. Engages in the legal cultivation, production, processing, collection,**
13 **distillation, fermentation, or manufacture of any crop or agricultural**
14 **product, including but not limited to alcohol, tobacco, hemp, and**
15 **forestry products and does not commit or pledge to meet**
16 **environmental or regulatory standards beyond applicable federal and**
17 **state law; or**

18 **3. Does business with a company described in subparagraph 1. or 2. of**
19 **this paragraph;**

20 **(b)** "Company" means a for-profit sole proprietorship, organization, association,
21 corporation, partnership, joint venture, limited partnership, limited liability
22 partnership, limited liability company, or other entity or business association,
23 including a wholly owned subsidiary, majority-owned subsidiary, parent
24 company, or affiliate of those entities or business associations, that exists to
25 make a profit;

26 **(c)**~~**(b)**~~ "Direct holdings" means, with respect to a financial company, all
27 securities of that financial company held directly by a state governmental

1 entity in an account or fund in which a state governmental entity owns all
2 shares or interests;

3 ~~(d)(e)~~ "Energy services associated company~~[-boycott]~~" means~~[-without an~~
4 ~~ordinary business purpose, refusing to deal with, terminating business~~
5 ~~activities with, or otherwise taking any action that is intended to penalize,~~
6 ~~inflict economic harm on, or limit commercial relations with]~~ a company
7 that~~because the company~~:

8 1. Engages in the exploration, production, utilization, transportation, sale,
9 or manufacturing of fossil fuel-based energy and does not commit or
10 pledge to meet environmental standards beyond applicable federal and
11 state law; or

12 2. Does business with a company described in subparagraph 1. of this
13 paragraph;

14 ~~(e)(d)~~ "Financial company" means a publicly traded financial services,
15 banking, or investment company;

16 (f) "Firearms goods or services associated company" means a company that:

17 1. Engages in the legal manufacture, customization, distribution,
18 wholesale, supply, or retail sale of firearms, firearm accessories, or
19 ammunition, or which operates an area for the discharge or other use
20 of firearms for silhouette, skeet, trap, black powder, target, self-
21 defense, demonstration, education, or similar recreational shooting
22 purposes at which not fewer than twenty (20) different individuals
23 discharge firearms each calendar year and does not commit or pledge
24 to meet firearms regulatory standards beyond applicable federal and
25 state law; or

26 2. Does business with a company described in subparagraph 1. of this
27 paragraph;

1 ~~(g)~~~~(e)~~ "Indirect holdings" means, with respect to a financial company, all
2 securities of that financial company held in an account or fund, such as a
3 mutual fund, managed by one (1) or more persons not employed by a state
4 governmental entity, in which the state governmental entity owns shares or
5 interests together with other investors not subject to the provisions of this
6 chapter. The term does not include money invested under a plan described by
7 Section 401(k) or 457 of the Internal Revenue Code;

8 ~~(h)~~~~(f)~~ "Listed financial company" means a financial company listed by the
9 Treasurer;

10 (i) "Petrochemical commodities associated company" means a company that:

11 1. Engages in the legal exploration, production, utilization,
12 transportation, refinement, processing, manufacture, application, or
13 sale of petrochemicals and does not commit or pledge to meet
14 environmental or regulatory standards beyond applicable federal and
15 state law; or

16 2. Does business with a company described in subparagraph 1. of this
17 paragraph;

18 (j) "Politically sensitive company boycott" means, without an ordinary
19 business purpose, including compliance with federal, state, or local law or
20 regulation, refusing to trade goods or services with, terminating existing
21 business activities with, or otherwise taking any action that is intended to
22 penalize, inflict economic harm on, or limit commercial relations with any:

23 1. Agricultural commodities associated company;

24 2. Energy services associated company;

25 3. Firearms goods or services associated company;

26 4. Petrochemical commodities associated company;

27 5. Social media information or internet service provider associated

1 company; or

2 6. Other company, due to its third-party, legal business associations with
3 a company described by subparagraphs 1., 2., 3., 4., or 5. of this
4 paragraph;

5 (k) "Social media information or internet service provider associated
6 company" means a company that:

7 1. Engages in any legal digital information distribution, as protected
8 under 47 U.S.C. sec 230(c)1 or the First Amendment of the United
9 States Constitution, and which does not commit or pledge to meet
10 content moderation standards, with the exception of pornography and
11 pervasive vulgarity, beyond applicable federal and state law; or

12 2. Does business with a company described in subparagraph 1. of this
13 paragraph;

14 (l)(g)} "State governmental entity" means any state board, bureau, cabinet,
15 commission, department, authority, officer, or other entity in the executive
16 branch of state government that makes investments, deposits, or transactions
17 in excess of one million dollars (\$1,000,000) annually; and

18 (m)(h)} "Treasurer" means the State Treasurer.

19 (2) Notwithstanding any provision of law to the contrary, with respect to actions taken
20 in compliance with KRS 41.470 to 41.476, including all good-faith determinations
21 regarding financial companies as required by KRS 41.470 to 41.476, a state
22 governmental entity and the Treasurer are exempt from any conflicting statutory or
23 common law obligations, including any obligations with respect to making
24 investments, divesting from any investment, preparing or maintaining any list of
25 financial companies, or choosing asset managers, investment funds, or investments
26 for the state governmental entity's securities portfolios.

27 (3) A state governmental entity shall not be subject to the requirements of KRS 41.470

1 to 41.476 if the state governmental entity determines that the requirements would
2 be inconsistent with its fiduciary responsibility with respect to the investment of
3 entity assets or other duties imposed by law relating to the investment of entity
4 assets.

5 ➔Section 2. KRS 41.474 is amended to read as follows:

6 (1) (a) The Treasurer shall prepare and maintain, and provide to each state
7 governmental entity through publication on the Treasurer's official
8 website~~[Web site]~~, lists by category~~[a list]~~ of all financial companies that, to
9 the Treasurer's knowledge, have engaged in any politically sensitive~~[energy]~~
10 company boycotts. In maintaining the list, the Treasurer may:

- 11 1. Review and rely, as appropriate in the Treasurer's judgment, on all
12 available information regarding financial companies, including
13 information provided by the Commonwealth, nonprofit organizations,
14 research firms, international organizations, governmental entities, or
15 other organizations in the business of providing information relevant for
16 investments; and
- 17 2. Request written verification from a financial company that it does not
18 engage in any politically sensitive~~[energy]~~ company boycotts and rely
19 on, as appropriate in the Treasurer's judgment and without conducting
20 further investigation, research, or inquiry, a financial company's written
21 response to the request.

22 (b) A financial company that fails to provide to the Treasurer a written
23 verification under paragraph (a)2. of this subsection within sixty (60) days of
24 receiving the request from the Treasurer is presumed to be engaging in any
25 politically sensitive~~[energy]~~ company boycotts.

26 (c) The Treasurer shall update the list required in paragraph (a) of this subsection
27 annually or more often as the Treasurer considers necessary based on

1 information from, among other sources, those listed in paragraph (a) of this
2 subsection.

3 (d) Within thirty (30) days of the date the list of financial companies that engage
4 in any politically sensitive~~[energy]~~ company boycotts is first provided or
5 updated, the Treasurer shall file the list with the Legislative Research
6 Commission and the Attorney General and post the list on a publicly available
7 website~~[Internet Web site]~~.

8 (2) Within thirty (30) days of a state governmental entity receiving the list provided
9 under subsection (1)(a) of this section, the state governmental entity shall notify the
10 Treasurer of the listed financial companies in which the state governmental entity
11 owns direct or indirect holdings. Receipt of the list by the state governmental entity
12 shall be presumed upon the publication of the list on the Treasurer's official
13 website~~[Web site]~~.

14 (3) (a) For each listed financial company identified under subsection (2) of this
15 section, the state governmental entity shall send a written notice:

- 16 1. Informing the financial company of its status as a listed financial
17 company;
- 18 2. Warning the financial company that it may become subject to
19 divestment by state governmental entities after the expiration of the
20 period described by paragraph (b) of this subsection; and
- 21 3. Offering the financial company the opportunity to clarify its activities
22 related to companies that are engaged in any politically
23 sensitive~~[energy]~~ company boycotts.

24 (b) Within ninety (90) days of the financial company receiving notice under
25 paragraph (a) of this subsection, the financial company must cease engaging
26 in any politically sensitive~~[energy]~~ company boycotts in order to avoid
27 becoming subject to divestment by state governmental entities.

- 1 (c) If, during the time provided by paragraph (b) of this subsection, the financial
2 company ceases engaging in any politically sensitive~~[energy]~~ company
3 boycotts, and the Treasurer is made aware of the cessation, the Treasurer shall
4 remove the financial company from the list maintained under subsection
5 (1)(a) of this subsection, and this section and KRS 41.472 and 41.476 shall no
6 longer apply to the financial company unless it resumes engaging in any
7 politically sensitive~~[energy]~~ company boycotts.
- 8 (d) If, after the time provided by paragraph (b) of this subsection expires, the
9 financial company continues to engage in any politically sensitive~~[energy]~~
10 company boycotts, the state governmental entity shall sell, redeem, divest, or
11 withdraw all publicly traded securities of the financial company, except
12 securities described in subsection (5) of this section, according to the schedule
13 provided in subsection (4) of this section.
- 14 (4) (a) A state governmental entity shall sell, redeem, divest, or withdraw all publicly
15 traded securities of a listed financial company within one (1) year of the
16 expiration of the time period provided in subsection (3)(b) of this section.
- 17 (b) If a financial company that ceased engaging in any politically
18 sensitive~~[energy]~~ company boycotts after receiving notice under subsection
19 (3) of this section resumes its boycott, the state governmental entity shall send
20 a written notice to the financial company informing it that the state
21 governmental entity will sell, redeem, divest, or withdraw all publicly traded
22 securities of the financial company according to the schedule in paragraph (a)
23 of this subsection.
- 24 (c) A state governmental entity may delay the schedule for divestment under
25 paragraph (a) of this subsection only to the extent that the state governmental
26 entity determines, in the state governmental entity's good-faith judgment, and
27 consistent with the entity's fiduciary duty, that divestment from listed

1 financial companies will likely result in a loss in value or a benchmark
2 deviation described in subsection (6) of this section.

3 (d) If a state governmental entity delays the schedule for divestment under
4 paragraph (c) of this subsection, the state governmental entity shall submit a
5 report within thirty (30) days of the decision to the Treasurer, the Legislative
6 Research Commission, and the Attorney General stating the reasons and
7 justification for the state governmental entity's delay in divestment from listed
8 financial companies. The report shall include documentation, including
9 objective numerical estimates, supporting its determination that the
10 divestment would result in a loss in value or a benchmark deviation described
11 by subsection (6) of this section.

12 (5) A state governmental entity shall not be required to divest from any indirect
13 holdings in actively or passively managed investment funds or private equity funds.
14 The state governmental entity shall submit the list of all financial companies that
15 have engaged in any politically sensitive~~[energy]~~ company boycotts to each
16 investment fund manager and request that if any of those companies are present
17 within their funds, they remove those financial companies from the fund or create a
18 similar actively or passively managed fund with indirect holdings devoid of listed
19 financial companies. If a manager creates a similar fund with substantially the same
20 management fees and same level of investment risk and anticipated return, the state
21 governmental entity may replace all applicable investments with investments in the
22 similar fund in a time frame consistent with prudent fiduciary standards but not
23 later than the four hundred fifty (450) days after the date the fund is created.

24 (6) (a) A state governmental entity may cease divesting from one (1) or more listed
25 financial companies only if reasonable evidence shows that:

26 1. The state governmental entity has suffered or will suffer a material
27 financial loss as a result of having to divest from listed financial

1 companies under this section; or

2 2. An individual portfolio that uses a benchmark-aware strategy would be
3 subject to an aggregate expected deviation from its benchmark as a
4 result of having to divest from listed financial companies under this
5 section.

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

10 (c) Before a state governmental entity may cease divesting from a listed financial
11 company under this section, the state governmental entity shall provide a
12 written report to the Treasurer, the Legislative Research Commission, and the
13 Attorney General setting forth the reason and justification, supported by
14 reasonable evidence, for deciding to cease divestment or to remain invested in
15 a listed financial company.

16 (d) This section shall not apply to reinvestment in a financial company that is no
17 longer a listed financial company under subsection (1) of this section.

18 ➔Section 3. KRS 41.480 is amended to read as follows:

19 (1) As used in this section:

20 (a) **"Agricultural commodities associated company" has the same meaning as**
21 **in Section 1 of this Act;**

22 **(b)** "Company" has the same meaning as in KRS 41.472, except that it shall not
23 include a sole proprietorship;

24 **(c)(b)** "Energy **services associated** company~~[-boycott]~~" has the same meaning
25 as in KRS 41.472;~~[-and]~~

26 **(d) "Firearms goods or services associated company" has the same meaning as**
27 **in Section 1 of this Act;**

1 ~~(e)~~ "Governmental entity" means any state board, bureau, cabinet,
2 commission, department, authority, officer, or other entity in the executive
3 branch of state government;

4 (f) "Petrochemical commodities associated company" has the same meaning
5 as in Section 1 of this Act;

6 (g) "Politically sensitive company boycott" has the same meaning as in Section
7 1 of this Act; and

8 (h) "Social media information or internet service provider associated
9 company" has the same meaning as in Section 1 of this Act.

10 (2) This section applies only to a contract that:

11 (a) Is between a governmental entity and a company with ten (10) or more full-
12 time employees; and

13 (b) Has a value of one hundred thousand dollars (\$100,000) or more that is to be
14 paid wholly or partly from public funds of the governmental entity.

15 (3) Except as provided in subsection (4) or (5) of this section, a governmental entity
16 shall not enter into a contract with a company for goods or services unless the
17 contract contains a written verification from the company that it:

18 (a) Does not engage in any politically sensitive~~energy~~ companies boycotts; and

19 (b) Will not engage in any politically sensitive~~energy~~ company boycotts during
20 the term of the contract.

21 (4) The requirements of subsection (3) of this section shall not apply to a governmental
22 entity that determines that those requirements are inconsistent with the
23 governmental entity's constitutional, statutory, or fiduciary duties related to the
24 issuance, incurrence, or management of debt obligations or the deposit, custody,
25 management, borrowing, or investment of funds.

26 (5) If the requirements of subsection (3) of this section require any company to
27 violate religious beliefs explicitly stated in the company charter, the company

1 shall provide:

2 (a) Written documentation containing the relevant portion of the company's
3 charter;

4 (b) A written explanation of which type, or types, of politically sensitive
5 company the company has boycotted, does boycott, or will boycott over any
6 portion of the contract; and

7 (c) Written verification, consistent with subsection (3) of this section, that the
8 company does not, and will not, engage in any boycott of the remaining
9 types of companies during the term of the contract.

10 (6) Upon the Treasurer's verification of the information provided by a company
11 under subsection (5) of this section, the company shall not be advantaged or
12 disadvantaged in the contracting process for noncompliance with the provisions
13 of this section that violate its religious beliefs.