

CHAPTER 120**(SB 205)**

AN ACT relating to state dealings with companies that engage in energy company boycotts.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that:

- (1) *Fossil fuels currently supply more than eighty percent (80%) of the world's primary energy, and the United States Energy Information Administration still projects global consumption of fossil fuels to increase steadily at least through 2050;*
- (2) *Restricting the supply of fossil fuels, without an immediate substitute for those fuels, only serves to raise prices on energy consumers, profoundly impacting the poorest among us;*
- (3) *Denying financing to American and European fossil energy producers, who are among the most socially and environmentally responsible companies in the world, only serves to support hostile nations and less responsible producers;*
- (4) *Banks are increasingly denying financing to creditworthy fossil energy companies solely for the purpose of decarbonizing their lending portfolios and marketing their environmental credentials, to the detriment of potential returns for their shareholders;*
- (5) *Institutional investors are divesting from fossil energy companies and pressuring corporations to commit to the goal of the Paris Agreement to reduce greenhouse gas emissions to zero by 2050;*
- (6) *Large investment firms are colluding to force fossil energy companies to cannibalize their existing businesses and direct time and attention away from increasing shareholder returns;*
- (7) *Corporations are boycotting fossil energy companies by refusing to provide them with products or services; and*
- (8) *Energy-producing states, when financially prudent, should avoid doing business with companies that are attacking the industries that substantially contribute to their state budgets.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) *As used in Sections 1 to 4 of this Act:*

- (a) *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit;*
- (b) *"Direct holdings" means, with respect to a financial company, all securities of that financial company held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests;*
- (c) *"Energy company boycott" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:*
 1. *Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or*
 2. *Does business with a company described in subparagraph 1. of this paragraph;*
- (d) *"Financial company" means a publicly traded financial services, banking, or investment company;*
- (e) *"Indirect holdings" means, with respect to a financial company, all securities of that financial company held in an account or fund, such as a mutual fund, managed by one (1) or more persons*

not employed by a state governmental entity, in which the state governmental entity owns shares or interests together with other investors not subject to the provisions of this chapter. The term does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code;

- (f) *"Listed financial company" means a financial company listed by the Treasurer;*
 - (g) *"State governmental entity" means any state board, bureau, cabinet, commission, department, authority, officer, or other entity in the executive branch of state government that makes investments, deposits, or transactions in excess of one million dollars (\$1,000,000) annually; and*
 - (h) *"Treasurer" means the State Treasurer.*
- (2) *Notwithstanding any provision of law to the contrary, with respect to actions taken in compliance with Sections 1 to 4 of this Act, including all good faith determinations regarding financial companies as required by Sections 1 to 4 of this Act, a state governmental entity and the Treasurer are exempt from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of financial companies, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.*
- (3) *A state governmental entity shall not be subject to the requirements of Sections 1 to 4 of this Act if the state governmental entity determines that the requirements would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *The Treasurer shall prepare and maintain, and provide to each state governmental entity through publication on the Treasurer's official Web site, a list of all financial companies that, to the Treasurer's knowledge, have engaged in energy company boycotts. In maintaining the list, the Treasurer may:*
- 1. *Review and rely, as appropriate in the Treasurer's judgment, on all available information regarding financial companies, including information provided by the Commonwealth, nonprofit organizations, research firms, international organizations, governmental entities, or other organizations in the business of providing information relevant for investments; and*
 - 2. *Request written verification from a financial company that it does not engage in energy company boycotts and rely on, as appropriate in the Treasurer's judgment and without conducting further investigation, research, or inquiry, a financial company's written response to the request.*
- (b) *A financial company that fails to provide to the Treasurer a written verification under paragraph (a)2. of this subsection within sixty (60) days of receiving the request from the Treasurer is presumed to be engaging in energy company boycotts.*
- (c) *The Treasurer shall update the list required in paragraph (a) of this subsection annually or more often as the Treasurer considers necessary based on information from, among other sources, those listed in paragraph (a) of this subsection.*
- (d) *Within thirty (30) days of the date the list of financial companies that engage in energy company boycotts is first provided or updated, the Treasurer shall file the list with the Legislative Research Commission and the Attorney General and post the list on a publicly available Internet Web site.*
- (2) *Within thirty (30) days of a state governmental entity receiving the list provided under subsection (1)(a) of this section, the state governmental entity shall notify the Treasurer of the listed financial companies in which the state governmental entity owns direct or indirect holdings. Receipt of the list by the state governmental entity shall be presumed upon the publication of the list on the Treasurer's official Web site.*
- (3) (a) *For each listed financial company identified under subsection (2) of this section, the state governmental entity shall send a written notice:*
- 1. *Informing the financial company of its status as a listed financial company;*

2. *Warning the financial company that it may become subject to divestment by state governmental entities after the expiration of the period described by paragraph (b) of this subsection; and*
 3. *Offering the financial company the opportunity to clarify its activities related to companies that are engaged in energy company boycotts.*
- (b) *Within ninety (90) days of the financial company receiving notice under paragraph (a) of this subsection, the financial company must cease engaging in energy company boycotts in order to avoid becoming subject to divestment by state governmental entities.*
 - (c) *If, during the time provided by paragraph (b) of this subsection, the financial company ceases engaging in energy company boycotts, and the Treasurer is made aware of the cessation, the Treasurer shall remove the financial company from the list maintained under subsection (1)(a) of this subsection, and Sections 2, 3, and 4 of this Act shall no longer apply to the financial company unless it resumes engaging in energy company boycotts.*
 - (d) *If, after the time provided by paragraph (b) of this subsection expires, the financial company continues to engage in energy company boycotts, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the financial company, except securities described in subsection (5) of this section, according to the schedule provided in subsection (4) of this section.*
- (4) (a) *A state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of a listed financial company within one (1) year of the expiration of the time period provided in subsection (3)(b) of this section.*
 - (b) *If a financial company that ceased engaging in energy company boycotts after receiving notice under subsection (3) of this section resumes its boycott, the state governmental entity shall send a written notice to the financial company informing it that the state governmental entity will sell, redeem, divest, or withdraw all publicly traded securities of the financial company according to the schedule in paragraph (a) of this subsection.*
 - (c) *A state governmental entity may delay the schedule for divestment under paragraph (a) of this subsection only to the extent that the state governmental entity determines, in the state governmental entity's good faith judgment, and consistent with the entity's fiduciary duty, that divestment from listed financial companies will likely result in a loss in value or a benchmark deviation described in subsection (6) of this section.*
 - (d) *If a state governmental entity delays the schedule for divestment under paragraph (c) of this subsection, the state governmental entity shall submit a report within thirty (30) days of the decision to the Treasurer, the Legislative Research Commission, and the Attorney General stating the reasons and justification for the state governmental entity's delay in divestment from listed financial companies. The report shall include documentation, including objective numerical estimates, supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by subsection (6) of this section.*
- (5) *A state governmental entity shall not be required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state governmental entity shall submit the list of all financial companies that have engaged in energy company boycotts to each investment fund manager and request that if any of those companies are present within their funds, they remove those financial companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed financial companies. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but not later than the four hundred fifty (450) days after the date the fund is created.*
- (6) (a) *A state governmental entity may cease divesting from one (1) or more listed financial companies only if reasonable evidence shows that:*
 1. *The state governmental entity has suffered or will suffer a material financial loss as a result of having to divest from listed financial companies under this section; or*

2. *An individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed financial companies under this section.*
- (b) *A state governmental entity may cease divesting from a listed financial company as provided by this section only to the extent necessary to ensure that the state governmental entity does not suffer a loss in value or deviate from its benchmark as described by paragraph (a) of this subsection.*
- (c) *Before a state governmental entity may cease divesting from a listed financial company under this section, the state governmental entity shall provide a written report to the Treasurer, the Legislative Research Commission, and the Attorney General setting forth the reason and justification, supported by reasonable evidence, for deciding to cease divestment or to remain invested in a listed financial company.*
- (d) *This section shall not apply to reinvestment in a financial company that is no longer a listed financial company under subsection (1) of this section.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

- (1) *No later than December 1, 2023, and each December 1 thereafter, each state governmental entity shall file a publicly available report with the Treasurer, the Legislative Research Commission, and the Attorney General that:*
 - (a) *Identifies all securities sold, redeemed, divested, or withdrawn in compliance with subsection (4) of Section 3 of this Act; and*
 - (b) *Summarizes any changes made under subsection (5) of Section 3 of this Act.*
- (2) *The Attorney General or the Treasurer may bring any civil action necessary to enforce Sections 1 to 4 and 5 of this Act.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
 - (a) *"Company" has the same meaning as in Section 2 of this Act, except that it shall not include a sole proprietorship;*
 - (b) *"Energy company boycott" has the same meaning as in Section 2 of this Act; and*
 - (c) *"Governmental entity" means any state board, bureau, cabinet, commission, department, authority, officer, or other entity in the executive branch of state government.*
- (2) *This section applies only to a contract that:*
 - (a) *Is between a governmental entity and a company with ten (10) or more full-time employees; and*
 - (b) *Has a value of one hundred thousand dollars (\$100,000) or more that is to be paid wholly or partly from public funds of the governmental entity.*
- (3) *Except as provided in subsection (4) of this section, a governmental entity shall not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:*
 - (a) *Does not engage in energy companies boycotts; and*
 - (b) *Will not engage in energy company boycotts during the term of the contract.*
- (4) *The requirements of subsection (3) of this section shall not apply to a governmental entity that determines that those requirements are inconsistent with the governmental entity's constitutional, statutory, or fiduciary duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.*

➔Section 6. KRS 286.2-015 is amended to read as follows:

- (1) *Except as provided in Sections 1 to 4 and 5 of this Act, all political subdivisions of the Commonwealth shall be prohibited from enacting and from enforcing ordinances, resolutions, and regulations pertaining to the financial or lending activities of persons or entities which:*
 - (a) *Are subject to the jurisdiction of the department or the provisions of this chapter;*

- (b) Are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Farm Credit Administration, the Federal Deposit Insurance Corporation, or the United States Department of Housing and Urban Development; or
 - (c) Originate, purchase, sell, assign, securitize, assist, facilitate, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons or entities referred to in paragraph (a) or (b) of this subsection.
- (2) The requirements of this section shall apply to all ordinances, resolutions, or regulations pertaining to lending activities, including any ordinances, resolutions, or regulations which limit or disqualify persons or entities from doing business with a political subdivision based upon financial or lending activities or the imposition of additional reporting requirements or other obligations on such persons or entities seeking to do business with a political subdivision.
 - (3) Any provision of this chapter preempted by federal law with respect to a national bank or federal savings association shall not apply to the same extent to an operating subsidiary of a national bank or federal savings association.
 - (4) The provisions of this chapter shall be interpreted and applied to the fullest extent practicable in a manner consistent with applicable federal laws and regulations and with applicable policies and orders of federal regulatory agencies and shall not be deemed to constitute an attempt to override federal law.
 - (5) Nothing in this section shall be interpreted as preventing the enforcement of ordinances, regulations, or resolutions of political subdivisions of the Commonwealth pertaining to civil rights.

Signed by Governor April 8, 2022.