



2023 ASSEMBLY BILL 1090

February 16, 2024 - Introduced by Representatives DALLMAN, SCHUTT, BODDEN, BRANDTJEN, DITTRICH, DUCHOW, GUNDRUM, MAXEY, MOSES, MURPHY, NEDWESKI, O'CONNOR, PENTERMAN, RETTINGER, SCHMIDT and STEFFEN, cosponsored by Senators TESTIN, WANGGAARD and NASS. Referred to Committee on State Affairs.

1 **AN ACT** *to create* 20.933 of the statutes; **relating to:** prohibiting state
2 contracting with certain business entities and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits any state agency or other body in Wisconsin state government, including the legislature and the courts (state agency), from contracting with certain prohibited business entities. Specifically, the bill prohibits state agencies from contracting with any organization or enterprise operated for profit that is organized under the laws or rules of a country of concern or that is directly or indirectly owned or controlled by the government of a country of concern or by a business entity organized under the laws or rules of a country of concern. The bill defines “country of concern” to mean each of the following:

1. The People’s Republic of China.
2. Russia.
3. Cuba.
4. Iran.
5. North Korea.
6. Venezuela.

Additionally, the bill provides that no contract between any person and a state agency shall be valid, binding, and enforceable unless the person provides prior written certification to the state agency that the person is not a prohibited business entity and that the person has made every effort to ensure that the goods or services provided under the contract did not originate with a prohibited business entity. Moreover, if any person contracting with a state agency becomes a prohibited

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business entity, the person is for that reason considered to be in breach of contract, and the person must provide written notification of the breach to the state agency. The state agency may then terminate the contract and may pursue all appropriate legal remedies for the breach.

The bill charges the Department of Administration with receiving and investigating complaints of alleged violations of the bill's contracting requirements. If DOA determines that a person has violated the bill's requirements, all of the following apply:

1. The person is liable for a forfeiture equal to the greater of \$250,000, an amount equal to twice the amount of the value of the relevant contract, or an amount equal to the total amount of all pecuniary losses suffered by any state as a result of the violation.

2. The person is ineligible to contract with a state agency for five years following the date of the DOA's determination of a violation.

Finally, the bill authorizes the Attorney General to enforce the bill's requirements in court.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.933 of the statutes is created to read:

2 **20.933 Prohibiting state contracting with certain business entities. (1)**

3 DEFINITIONS. In this section:

4 (a) "Business entity" means any organization or enterprise engaged in
5 commerce, whether or not operated for profit, including all wholly owned
6 subsidiaries, majority-owned subsidiaries, parent companies, or affiliates.

7 (b) "Contract" means to become a party to any agreement for the acquisition
8 by purchase, lease, or barter of property, goods, or services for the direct benefit or
9 use of any of the parties.

10 (c) "Country of concern" means the People's Republic of China, including the
11 Hong Kong and Macau Special Administrative Regions, Russia, Cuba, Iran, North
12 Korea, or Venezuela.

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1 (d) “Department” means the department of administration.

2 (e) “Prohibited business entity” means a business entity that is organized
3 under the laws or rules of a country of concern or that is directly or indirectly owned
4 or controlled by the government of a country of concern or by a business entity
5 organized under the laws or rules of a country of concern.

6 (f) “State agency” means an association, authority, board, department,
7 commission, independent agency, institution, office, society, system, or other body in
8 state government created or authorized to be created by the constitution or any law,
9 including the legislature and the courts.

10 **(2) PROHIBITED CONTRACTS.** (a) No state agency may contract with a prohibited
11 business entity.

12 (b) No contract between any person and a state agency shall be valid, binding,
13 and enforceable unless the person provides prior written certification to the state
14 agency that the person is not a prohibited business entity and that the person has
15 made every effort to ensure that the goods or services being contracted for do not
16 originate from a prohibited business entity. A state agency may rely on such
17 certification without further investigation.

18 (c) If any person contracting with a state agency becomes a prohibited business
19 entity, the person shall be considered for that reason to have breached the contract,
20 and the person shall without delay provide written notification of the breach to the
21 state agency. The state agency may terminate the contract and may pursue all
22 appropriate legal remedies for the breach.

23 **(3) EXEMPTION.** Subsection (2) does not prohibit a contract to which all of the
24 following apply:

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1 (a) The goods or services offered under the contract are not obtainable by the
2 state agency by other reasonable means.

3 (b) The harm to the state in failing to execute the contract outweighs the public
4 interests served by the prohibition under sub. (2).

5 (c) The contract is approved by the department.

6 **(4) COMPLAINTS; FORFEITURES.** Any person may file a complaint with the
7 department alleging a violation of sub. (2) on a form prescribed by the department.
8 The department shall investigate each complaint. If upon investigation the
9 department determines a person has violated sub. (2), all of the following apply:

10 (a) The person shall be liable for a forfeiture equal to the greater of the
11 following, as determined by the department:

12 1. \$250,000.

13 2. An amount equal to twice the amount of the value of the contract on which
14 the person submitted a bid or proposal.

15 3. An amount equal to the total amount of all pecuniary losses suffered by any
16 state as a result of such violation.

17 (b) The person is ineligible to contract with a state agency for 5 years following
18 the date of the department's determination of a violation.

19 **(5) ENFORCEMENT.** The attorney general may bring an action in any court of
20 competent jurisdiction to enforce this section.

21 (END)