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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

To encourage State and local governments to prohibit certain investment activities in the People’s Republic of China, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of South Dakota introduced the following bill; which was referred to the Committee on _____

A BILL

To encourage State and local governments to prohibit certain investment activities in the People’s Republic of China, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “PRC Accountability
5 and Divestment Act of 2023”.

1 **SEC. 2. AUTHORITY OF STATE OR LOCAL GOVERNMENTS**
2 **TO DIVEST FROM CERTAIN ENTITIES THAT**
3 **INVEST IN CHINA.**

4 (a) SENSE OF CONGRESS.—It is the sense of Con-
5 gress that the United States should support the decision
6 of any State or local government that for moral, pruden-
7 tial, or reputational reasons divests from, or prohibits the
8 investment of assets of the State or local government in,
9 a person that engages in investment activities in the Peo-
10 ple’s Republic of China, as described in subsection (c).

11 (b) AUTHORITY TO DIVEST.—Notwithstanding any
12 other provision of law, a State or local government may
13 adopt and enforce measures that meet the requirements
14 of subsection (d) to divest the assets of the State or local
15 government from, or prohibit investment of the assets of
16 the State or local government in, any person that the
17 State or local government determines, using credible infor-
18 mation available to the public, engages in investment ac-
19 tivities in the People’s Republic of China described in sub-
20 section (c).

21 (c) INVESTMENT ACTIVITIES DESCRIBED.—A person
22 described in this subsection engages in investment activi-
23 ties in the People’s Republic of China if the person has
24 an investment in any of the following:

25 (1) A Chinese entity—

1 (A) designated by Executive Order 13959
2 (50 U.S.C. 1701 note; relating to addressing
3 the threat from securities investments that fi-
4 nance Communist Chinese military companies);

5 (B) designated by Executive Order 14105
6 (88 Fed. Reg. 54867; relating to addressing
7 United States investments in certain national
8 security technologies and products in countries
9 of concern); or

10 (C) included in the List of Specially Des-
11 ignated Nationals and Blocked Persons main-
12 tained by the Office of Foreign Assets Control.

13 (2) A Chinese entity—

14 (A) included on the Non-SDN Chinese
15 Military-Industrial Complex Companies List
16 (NS-CMIC List) maintained by the Office of
17 Foreign Assets Control of the Department of
18 the Treasury under Executive Order 14032;

19 (B) that is a Chinese military company or
20 a military-civil fusion contributor and included
21 on the list maintained by the Department of
22 Defense in accordance with section 1260H(b) of
23 the National Defense Authorization Act for Fis-
24 cal Year 2021 (10 U.S.C. 113 note);

1 (C) included on the list required under sec-
2 tion 1237 of the National Defense Authoriza-
3 tion Act for Fiscal Year 1999 (50 U.S.C. 1701
4 note);

5 (D) included on the Entity List set forth
6 in Supplement No. 4 to part 744 of the Export
7 Administration Regulations;

8 (E) included on the Denied Persons List
9 described in section 764.3(a)(2) of the Export
10 Administration Regulations;

11 (F) included on the Unverified List set
12 forth in Supplement No. 6 to part 744 of the
13 Export Administration Regulations;

14 (G) included on the Military End User
15 List set forth in Supplement No. 7 to part 744
16 of the Export Administration Regulations;

17 (H) that produces or provides communica-
18 tions equipment or service on the list published
19 by the Federal Communications Commission
20 under section 2(a) of the Secure and Trusted
21 Communications Networks Act of 2019 (47
22 U.S.C. 1601(a));

23 (I) included on the on the Uyghur Forced
24 Labor Prevention Act Entity List, maintained
25 by the Department of Homeland Security;

1 (J) included on the Withhold Release Or-
2 ders and Findings List maintained by the Com-
3 missioner of U.S. Customs and Border Protec-
4 tion pursuant to the Uyghur Forced Labor Pre-
5 vention Act (Public Law 117–78);

6 (K) included on the list of covered issuers
7 (as defined in section 104 of the Sarbanes-
8 Oxley Act of 2002 (15 U.S.C. 7214)) main-
9 tained by the Securities and Exchange Commis-
10 sion; or

11 (L) any other list maintained by the
12 United States Government that designates a
13 Chinese entities for a restriction relating to in-
14 vestment, contracting, or procurement.

15 (3) A Chinese entity otherwise subject to the
16 control of a Chinese entity listed in (1) or (2).

17 (4) Any agency or instrumentality of the Peo-
18 ple’s Republic of China.

19 (d) REQUIREMENTS.—Any measure taken by a State
20 or local government under subsection (b) shall meet the
21 following requirements:

22 (1) NOTICE.—The State or local government
23 shall provide written notice to each person to which
24 a measure is to be applied.

1 (2) TIMING.—The measure shall apply to a per-
2 son not earlier than the date that is 90 days after
3 the date on which written notice is provided to the
4 person under paragraph (1).

5 (3) OPPORTUNITY FOR HEARING.—The State
6 or local government shall provide an opportunity to
7 comment in writing to each person to which a meas-
8 ure is to be applied. If the person demonstrates to
9 the State or local government that the person does
10 not engage in investment activities in the People’s
11 Republic of China described in subsection (c), the
12 measure shall not apply to the person.

13 (4) SENSE OF CONGRESS ON AVOIDING ERRO-
14 NEOUS TARGETING.—It is the sense of Congress
15 that a State or local government should not adopt
16 a measure under subsection (b) with respect to a
17 person unless the State or local government has
18 made every effort to avoid erroneously targeting the
19 person and has verified that the person engages in
20 investment activities in the People’s Republic of
21 China described in subsection (c).

22 (e) NOTICE TO DEPARTMENT OF JUSTICE.—Not
23 later than 30 days after adopting a measure pursuant to
24 subsection (b), a State or local government shall submit

1 written notice to the Attorney General describing the
2 measure.

3 (f) RULE OF CONSTRUCTION.—A Federal law or reg-
4 ulation, including this Act, shall not preempt any measure
5 of a State or local government authorized under sub-
6 section (b).

7 (g) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2) or subsection (h), this section applies to
10 measures adopted by a State or local government be-
11 fore, on, or after the date of the enactment of this
12 Act.

13 (2) NOTICE REQUIREMENTS.—Except as pro-
14 vided in subsection (h), subsections (d) and (e) apply
15 to measures adopted by a State or local government
16 on or after the date of the enactment of this Act.

17 (h) AUTHORIZATION FOR PRIOR ENACTED MEAS-
18 URES.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of this section or any other provision of
21 law, a State or local government may enforce a
22 measure (without regard to the requirements of sub-
23 section (d), except as provided in paragraph (2))
24 adopted by the State or local government before the
25 date of the enactment of this Act that provides for

1 the divestment of assets of the State or local govern-
2 ment from, or prohibits the investment of the assets
3 of the State or local government in, any person that
4 the State or local government determines, using
5 credible information available to the public, engages
6 in investment activities in the People’s Republic of
7 China (determined without regard to subsection (c))
8 or other business activities in the People’s Republic
9 of China that are identified in the measure.

10 (2) APPLICATION OF NOTICE REQUIRE-
11 MENTS.—A measure described in paragraph (1)
12 shall be subject to the requirements of paragraphs
13 (1) and (2) and the first sentence of paragraph (3)
14 of subsection (d) on and after the date that is 2
15 years after the date of the enactment of this Act.

16 (i) DEFINITIONS.—In this section:

17 (1) ASSETS.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (B), the term “assets” refers to
20 public monies and includes any pension, retire-
21 ment, annuity, or endowment fund, or similar
22 instrument, that is controlled by a State or
23 local government.

24 (B) EXCEPTION.—The term “assets” does
25 not include employee benefit plans covered by

1 title I of the Employee Retirement Income Se-
2 curity Act of 1974 (29 U.S.C. 1001 et seq.).

3 (2) CHINESE ENTITY.—The term “Chinese en-
4 tity” means—

5 (A) a person that is incorporated in, has a
6 principal place of business in, or is organized
7 under the laws of the People’s Republic of
8 China;

9 (B) a person whose equity securities are
10 traded in the ordinary course of business on one
11 or more exchanges in the People’s Republic of
12 China; or

13 (C) a person who is controlled by a single
14 entity or individual, that is—

15 (i) a citizen, national, or resident of
16 the People’s Republic of China, other than
17 an individual who is—

18 (I) a citizen or lawful permanent
19 resident of the United States; or

20 (II) domiciled in Taiwan and pos-
21 sesses a valid identification card or
22 number issued by the government of
23 Taiwan;

24 (ii) an agent or instrumentality of the
25 People’s Republic of China; or

1 (iii) a person described in subpara-
2 graph (A) or (B).

3 (3) CONTROL.—The term “control” has the
4 meaning given that term in part 800.208 of title 31,
5 Code of Federal Regulations, or any successor regu-
6 lations.

7 (4) INVESTMENT.—The “investment” in-
8 cludes—

9 (A) a commitment or contribution of funds
10 or property;

11 (B) a loan or other extension of credit; and

12 (C) the entry into or renewal of a contract
13 for goods or services.

14 (5) MEASURE.—The term “measure” means a
15 law or regulation.

16 (6) PEOPLE’S REPUBLIC OF CHINA.—The term
17 “People’s Republic of China” includes any and all
18 Special Administrative Regions of China, including
19 Hong Kong and Macau but not including Taiwan.

20 (7) PERSON.—The term “person” means—

21 (A) a natural person, corporation, com-
22 pany, business association, partnership, society,
23 trust, or any other nongovernmental entity, or-
24 ganization, or group;

1 (B) any governmental entity or instrumen-
2 tality of a government, including a multilateral
3 development institution (as defined in section
4 1701(c)(3) of the International Financial Insti-
5 tutions Act (22 U.S.C. 262r(c)(3))); and

6 (C) any successor, subunit, parent entity,
7 or subsidiary of, or any entity under common
8 ownership or control with, any entity described
9 in subparagraph (A) or (B).

10 (8) STATE OR LOCAL GOVERNMENT.—The term
11 “State or local government” includes—

12 (A) any State and any agency or instru-
13 mentality thereof;

14 (B) any local government within a State,
15 and any agency or instrumentality thereof;

16 (C) any other governmental instrumen-
17 tality of a State or locality; and

18 (D) any public institution of higher edu-
19 cation within the meaning of the Higher Edu-
20 cation Act of 1965 (20 U.S.C. 1001 et seq.).

21 (9) STATE.—The term “State” means each of
22 the several States.

1 **SEC. 3. SAFE HARBOR FOR CHANGES OF INVESTMENT**
2 **POLICIES BY ASSET MANAGERS.**

3 (a) IN GENERAL.—Section 13(c)(1) of the Invest-
4 ment Company Act of 1940 (15 U.S.C. 80a–13(c)(1)) is
5 amended—

6 (1) in subparagraph (A), by striking “or” at
7 the end;

8 (2) in subparagraph (B), by striking the period
9 at the end and inserting “; or”; and

10 (3) by adding at the end the following:

11 “(C) engage in investment activities in the
12 People’s Republic of China described in section
13 2(c) of the PRC Accountability and Divestment
14 Act of 2023.”.

15 (b) REGULATIONS.—Not later than 120 days after
16 the date of the enactment of this Act, the Securities and
17 Exchange Commission shall issue any revisions the Com-
18 mission determines to be necessary to the regulations re-
19 quiring disclosure by each registered investment company
20 that divests itself of securities in accordance with section
21 13(c) of the Investment Company Act of 1940 to include
22 divestments of securities in accordance with paragraph
23 (1)(C) of such section, as added by subsection (a).

1 **SEC. 4. SENSE OF CONGRESS REGARDING CERTAIN ERISA**
2 **PLAN INVESTMENTS.**

3 It is the sense of Congress that a fiduciary of an em-
4 ployee benefit plan, as defined in section 3(3) of the Em-
5 ployee Retirement Income Security Act of 1974 (29
6 U.S.C. 1002(3)), may divest plan assets from, or avoid
7 investing plan assets in, any person the fiduciary deter-
8 mines engages in investment activities in the People's Re-
9 public of China described in section 2(c) of this Act, with-
10 out breaching the responsibilities, obligations, or duties
11 imposed upon the fiduciary by subparagraph (A) or (B)
12 of section 404(a)(1) of the Employee Retirement Income
13 Security Act of 1974 (29 U.S.C. 1104(a)(1)), if—

14 (1) the fiduciary makes such determination
15 using credible information that is available to the
16 public; and

17 (2) the fiduciary prudently determines that the
18 result of such divestment or avoidance of investment
19 would not be expected to provide the employee ben-
20 efit plan with—

21 (A) a lower rate of return than alternative
22 investments with commensurate degrees of risk;
23 or

24 (B) a higher degree of risk than alter-
25 native investments with commensurate rates of
26 return.