

An Act to Prohibit Procurement from Chinese State-Controlled Technology Manufacturers

Sec. 1. Legislative Findings.—

(a) The Chinese Communist Party's (CCP) authoritarian governance over the People's Republic of China (PRC) includes extensive and continuing efforts to destroy any meaningful distinction between the CCP, the PRC state, and commercial entities in the PRC.

(b) Dealings with PRC commercial entities tend to be less commercially sound because such entities are unusually likely to be acting on non-commercial motivations and carry increased political risk, including from United States federal sanctions authorities.

(c) While no PRC commercial entity is beyond the reach of the CCP, PRC state-owned entities present heightened concerns and threaten [this State's] security, including by making accessible to the CCP and PRC government information about the structure, operations, resources, and infrastructure of the government of [this State].

(d) Dealings with PRC commercial entities, and especially state-owned entities, threaten the privacy and security of residents of [this State], to the extent that they involve the personal information of such residents.

Sec. 2. Definitions.— In this Act:

(a) 'Company' means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exist for the purpose of making profit.

(b) 'Scrutinized company' means:

1. any company organized under the laws of the PRC or having its principal place of business in the PRC, and any subsidiary of any such company; or
2. any company owned or operated, in whole or in part, by the Government of the PRC, or an entity controlled by the Government of the PRC, and any subsidiary or parent of any such company.

(c) 'Owned or operated, in whole or in part':

For a publicly traded company, means the Government of the PRC has the ability to control the company, the ability appoint or discharge any board members, officers, or directors, or any other rights beyond those available to a retail investor holding an equivalent share of ownership; and

For a privately held company means the Government of the PRC holds any share of ownership.

(d) 'Control' means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity.

(e) "Public entity" means the state, or any department, agency, commission, or other body of state government, including publicly funded institutions of higher education, and any local government, political subdivision, or school district, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public entity.

(f) 'Information or communication technologies, components, networks, systems, or related services' means any hardware, software, or other product or service intended to fulfill or enable the functions of information or data processing, storage, retrieval, communication, transmission, or display by electronic means, including components of such products and services related to such products.

(g) 'People's Republic of China' or PRC means the People's Republic of China (including all provinces and autonomous regions), the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China but does not include Taiwan.

Sec. 3. Prohibitions.—

(a) A scrutinized company shall be ineligible to, and shall not bid on, submit a proposal for, or enter into, directly or indirectly through a third party, any contract or contract renewal with any public entity for any information or communications technologies, components, networks, systems, or related services.

(b) No public entity shall enter into any contract or contract renewal that would result in any state funds being transferred:

1. to a scrutinized company in connection with any information or communications technologies, components, networks, systems, or related services; or
2. to any company to acquire, to perform contract work using, or otherwise in connection with any information or communications technologies, components, networks, systems, or related services that originate with a scrutinized company.

Sec. 4. Certifications.— A public entity shall require a company that submits a bid or proposal with respect to a contract for goods or services or enters into any contract or contract renewal with any public entity for any information or communications technologies, components, networks, systems, or related services, to certify:

(a) that the company is not a scrutinized company;

(b) that the company shall not subcontract with any scrutinized company for any aspect of its performance of the contemplated contract; and

(c) that any products or services that are to be provided or used in the performance of the contract do not originate with a scrutinized company.

Sec. 5. Enforcement and Penalties.—

(a) Any contract determined by the state government to be in violation of this Act shall be considered as void.

(b) Any person who knowingly causes a violation of this Act commits a felony.

(c) A person or entity that violates this Act:

1. shall be liable for a civil penalty in an amount that is equal to the greater of \$[XXX].00, twice the amount of the contract for which a bid or proposal was submitted, or the amount of any losses suffered by the state as a result of such violation;
2. shall be ineligible to enter into any contract with any public entity in the state for a period of [YY] years."

(d) The Attorney General may bring an action in any court of competent jurisdiction against any person or entity that violates this Act.

(e) If a purchasing agency of any public entity intends to challenge a certification submitted under this section, the purchasing agency shall give the company notice of the challenge and the basis for the determination that the certification is in violation of this section. The company shall have [insert desired number] days to respond to the notice. The purchasing agency shall make a final determination within [insert desired number] of receipt of the response of the company.

Sec. 6. Waiver.— The purchasing agency of a public entity may waive the prohibition described in subsection (b) of section 3 with the concurrence of the Governor on a case-by-case basis with respect to a contract or contract renewal if:

(a) there is no available alternative to the information or communication technologies, components, networks, systems, or related services contemplated under the contract or contract renewal;

(b) the cost of alternatives to the information or communication technologies, components, networks, systems, or related services contemplated under the contract or contract renewal would be so disproportionately high that the exercise of such waiver would be overwhelmingly in [this State's] interests; or

(c) components or services originating with a scrutinized company constitute only a de minimis amount of the value of the information or communication technologies, components, networks, systems, or related services contemplated under the contract or contract renewal and pose no risk to [this State's] security.

Sec. 7. Severability.— If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.