AN ACT

ENTITLED, An Act to provide for divestiture of state investment funds in certain companies liable to sanctions under the Iran Sanctions Act of 1996.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean:

(1) "Active business operations," all business operations that are not inactive business operations;

(2) "Company," 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 exists for profit-making purposes;

(3) "Direct holdings," all publicly traded debt and equity securities of a company that are held directly by the State Investment Council or held in an account or fund in which the State Investment Council owns all shares or interests;

(4) "Government of Iran," the government of the Islamic Republic of Iran or its instrumentalities or political subdivisions and companies owned or controlled by the Islamic Republic of Iran;

(5) "Inactive business operations," the continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such a purpose;

(6) "Indirect holdings," all investments held in an account or fund, including a mutual fund, a real estate fund, a private equity fund, or a commingled fund, managed by one or more persons who are not employed by the State Investment Council, in which the public funds

own shares or interests together with other investors who are not subject to this Act;

(7) "Scrutinized company," any company engaging in scrutinized business operations;

(8) "Scrutinized business operations," all active business operations that are subject or liable to sanctions under Public Law 104-172, as amended, the Iran Sanctions Act of 1996, and that involve the maintenance of a company's existing assets or investments in Iran, or the deployment of new investments to Iran that meet or exceed the twenty million dollar threshold referred to in Public Law 104-172, as amended, the Iran Sanctions Act of 1996. The term does not include the retail sale of gasoline and related products;

(9) "Substantial action specific to Iran," adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations.

Section 2. Within ninety days following the effective date of this Act, the State Investment Council shall make its best efforts to identify all scrutinized companies in which it has direct holdings. These efforts shall include, as appropriate:

(1) Reviewing and relying, as appropriate, on publicly available information regarding companies with business operations in Iran, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) Contacting asset managers contracting with the State Investment Council who invest in companies with business operations in Iran; and

(3) Contacting other institutional investors that have divested from or engaged with companies with business operations in Iran.

Section 3. At the first meeting of the State Investment Council after it has completed the requirements of section 2 of this Act, the State Investment Council shall assemble a list of scrutinized companies in which it has direct holdings.

Section 4. The State Investment Council shall update the scrutinized companies list each quarter based on continuing information.

Section 5. The State Investment Council shall use the following procedures with respect to companies on the scrutinized companies list:

(1) For each company newly identified with scrutinized business operations, the State Investment Council shall, within ninety days following its assembly of the scrutinized companies list, send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the State Investment Council. The notice shall offer the company the opportunity to clarify its scrutinized business operations and shall encourage the company to cease, within ninety days of the date of the notice, its scrutinized business operations, or to convert them to inactive business operations in order to avoid divestment by the State Investment Council; and

(2) If, within ninety days following the State Investment Council's first engagement with a company, that company publicly announces its commitment to substantial action specific to Iran, that company shall be removed from the scrutinized companies list and the provisions of this Act cease to apply to it unless it resumes active business operations in Iran.

Section 6. If, after ninety days following the State Investment Council's first engagement with a company pursuant to section 5 of this Act, the company continues to have scrutinized business operations, and only while the company continues to have scrutinized business operations, the State Investment Council shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(1) At least fifty percent of the holdings in the company shall be removed from the State Investment Council's assets under management by nine months after the company's initial

appearance on the scrutinized companies list; and

(2) One hundred percent of the holdings in the company shall be removed from the State Investment Council's assets under management within fifteen months after the company's initial appearance on the scrutinized companies list.

If a company that ceased scrutinized business operations following engagement pursuant to section 5 of this Act, resumes such operations, this Act immediately applies to the company and the State Investment Council shall send a written notice to the company. The company shall also be immediately reintroduced onto the scrutinized companies list.

Section 7. The State Investment Council may not acquire securities of companies on the scrutinized companies list that have scrutinized business operations, except as provided in this Act.

Section 8. If the federal government excludes a company from its present or any future federal sanctions relating to Iran, that company is exempt from the divestment requirements and the investment prohibitions in this Act.

Section 9. The provisions of this Act do not apply to any of the following:

(1) Investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Iran;

(2) Investments in a company that is primarily engaged in promoting health, education, or journalistic, religious, or welfare activities in Iran; and

(3) Investments in a United States company that is authorized by the federal government to have active business operations in Iran.

Section 10. The provisions of this Act do not apply to indirect holdings in actively managed investment funds. The State Investment Council shall submit letters to the managers of investment funds containing companies with scrutinized active business operations requesting the managers to consider removing such companies from the fund or to create a similar actively managed fund with

indirect holdings that do not include the companies. If a manager creates a similar fund, the State Investment Council shall promptly replace all applicable investments with investments in the similar fund consistent with prudent investing standards.

Section 11. By January fifteenth of each calendar year, the State Investment Council shall submit a report to the Executive Board of the Legislative Research Council. The report shall include:

(1) A copy of the most recent list of scrutinized companies;

(2) A summary of correspondence with companies engaged by the State Investment Council pursuant to section 5 of this Act;

(3) A list of all investments sold, redeemed, divested, or withdrawn in compliance with section 6 of this Act;

(4) A list of all prohibited investments pursuant to section 7 of this Act; and

(5) A description of any progress made pursuant to section 10 of this Act.

Section 12. The provisions of this Act cease to be operative if either of the following occurs:

(1) Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide support for acts of international terrorism; or

(2) The President of the United States determines and certifies that state legislation similar to this Act interferes with the conduct of United States foreign policy.

Section 13. The State Investment Council is exempt from any statutory or common law obligations that conflict with actions taken in compliance with this Act, including all good faith determinations regarding companies as required by this Act, including any obligations regarding the choice of asset managers, investment funds, or investments for the State Investment Council's securities portfolios.

An Act to provide for divestiture of state investment funds in certain companies liable to sanctions under the Iran Sanctions Act of 1996.

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I certify that the attached Act originated in the

SENATE as Bill No. 134

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Secretary of the Senate

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President of the Senate

Attest:

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Secretary of the Senate

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Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. 134
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State