



Texas Association of School Boards

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Prohibiting Contracts with Companies Boycotting Israel

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Q. What is House Bill 89?

- A. Passed by the Legislature in 2017, House Bill 89, prohibits a governmental entity, including a school district, from entering into a contract for goods or services with a company unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. Tex. Gov't Code § 2270.002.

Q. What is a company?

- A. "Company" is broadly defined as meaning a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. Tex. Gov't Code § 808.001.

Q. Can an individual be a company?

- A. Yes, an individual is a company under House Bill 89 if he or she is a sole proprietor. Sole proprietorship is the simplest and most common form of business where a single individual engages in a business activity without the necessity of formal organization. That is, sole proprietors are generally not required to register as a business entity with the Texas Secretary of State. If a person reports income or loss to the IRS on Schedule C of Form 1040, he or she is likely a sole proprietor.

If an individual is performing services pursuant to a contract with a broader organization (such as an association, which is a "company," as defined above) and the organization's contract contains the required verification, the individual need not complete an additional verification.

Q. What is a written verification? Must it be notarized?

- A. When a Texas statute or rule requires a verification, an unsworn declaration may be used to comply with the requirement. Tex. Civ. Prac. & Rem. Code § 132.001. An unsworn declaration requires the person signing to declare under penalty of perjury that their declaration is true and correct, but is not required to be notarized.

Q. Does the verification need to be a separate addendum or can it be a provision in the contract?

A. School district contracts for goods and services should always be reviewed by the school district's attorney before being signed. The school district's attorney will determine how best to comply with the requirement under particular circumstances. That said, unless the entire contract is signed under penalty of perjury, as required by an unsworn declaration, a provision within a contract may not be sufficient to satisfy the requirement that the contract contain a written verification.

Q. What does Boycott Israel mean?

A. "Boycott Israel" means 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 specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Tex. Gov't Code § 808.001.

Q. When does this requirement begin?

A. The law took effect September 1, 2017. Any contract subject to the law entered into on or after September 1, 2017, must contain the required verification. A school district is not required to add the verification to existing contracts unless the contracts are renewed or amended.

Q. If the district purchases goods or services through a purchasing cooperative, will the cooperative require the verification? If so, does this satisfy the law?

A. This will depend on the purchasing cooperative. The law states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company. After the district selects a vendor from a cooperative, the law applies to the contract between the district and the vendor. If the cooperative requires vendors to complete the verification, and the verification then becomes part of the contract between the district and the vendor, the district complies with the requirements of House Bill 89.

Q. How is the law enforced?

A. No private cause of action, such as a lawsuit, can be brought to enforce this law. However, the attorney general may bring any action necessary to enforce the requirement. Tex. Gov't Code § 2270.103.

This document is continually updated, and references to online resources are hyperlinked, at <https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/prohibiting-contracts-with-companies-boycotting-is.pdf>. For more information on this and other school law topics, visit TASB School Law eSource at schollawesource.tasb.org.

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