

# MAINE STATE LEGISLATURE

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L.D. 877

Date: 3/29/24

(Filing No. S-621 )

MAJORITY

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE

SENATE

131ST LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 374, L.D. 877, "An Act to Prohibit State Contracts with Companies Owned or Operated by the Government of the People's Republic of China"

Amend the bill by striking out the title and substituting the following:

**'An Act to Increase Cybersecurity in Maine'**

Amend the bill by striking out everything after the enacting clause and inserting the following:

**'Sec. 1. 5 MRSA c. 164 is enacted to read:**

**CHAPTER 164**

**CYBERSECURITY AND PROTECTION OF CRITICAL INFRASTRUCTURE**

**§2021. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Chief Information Officer.** "Chief Information Officer" has the same meaning as in section 1972, subsection 2.

**2. Foreign adversary.** "Foreign adversary" means a foreign government or foreign nongovernment person whom the United States Secretary of Commerce has determined, pursuant to 15 Code of Federal Regulations, Section 7.4 (2024), has engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of United States persons.

**3. Foreign adversary business entity.** "Foreign adversary business entity" means any type of organization, entity or enterprise engaged in commerce, whether operated for profit, that is organized under the laws or rules of a foreign adversary, directly or indirectly

**COMMITTEE AMENDMENT**

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2 owned or controlled by a foreign adversary or domiciled within the geographic borders of  
3 a foreign adversary.

4 **4. Local governmental entity.** "Local governmental entity" means any local  
5 government, political subdivision or school district and any other public or private agency,  
6 person, partnership, corporation or business entity acting on behalf of any local  
7 governmental entity.

8 **5. State agency.** "State agency" means the State, or any department, agency, board,  
9 commission or other body of State Government, including publicly funded institutions of  
10 higher education.

11 **§2022. Chief Information Officer to establish lists**

12 The Chief Information Officer shall establish and maintain:

13 **1. List of prohibited companies.** A list of companies, including foreign adversary  
14 business entities, that pose a national security risk or a risk to the security and safety of  
15 persons of the United States. The list must include, but is not limited to, all companies  
16 identified by statute, regulation or official guidance from the United States Department of  
17 Commerce, the Federal Communications Commission, the United States Department of  
18 Homeland Security or any other appropriate federal agency as posing a national security  
19 risk or a risk to the security and safety of persons of the United States; and

20 **2. List of prohibited information and communications technology and services.**  
21 A list of information and communications technology and services that pose a national  
22 security risk or a risk to the security and safety of persons of the United States. The list  
23 must include, but is not limited to, all information and communications technology and  
24 services identified by statute, regulation or official guidance from the United States  
25 Department of Commerce, the Federal Communications Commission, the United States  
26 Department of Homeland Security or any other appropriate federal agency as posing a  
27 national security risk or a risk to the security and safety of persons of the United States.

28 The lists must be published on the publicly accessible website of the Department of  
29 Administrative and Financial Services, Office of Information Technology and updated at  
30 least annually.

31 **§2023. Prohibited contract, use or purchase by state agency**

32 Except as provided in sections 2027 and 2028, a state agency may not contract with a  
33 company included on the list of prohibited companies established and maintained by the  
34 Chief Information Officer pursuant to section 2022, subsection 1 or use, obtain or purchase  
35 any information or communications technology or services included on the list of  
36 prohibited information and communications technology and services established and  
37 maintained by the Chief Information Officer pursuant to section 2022, subsection 2.

38 **§2024. Prohibited contract, use or purchase by local governmental entity**

39 Except as provided in section 2027, a local governmental entity may not use state funds  
40 in a contract with a company included on the list of prohibited companies established and  
41 maintained by the Chief Information Officer pursuant to section 2022, subsection 1 or use,  
42 obtain or purchase any information or communications technology or services included on  
43 the list of prohibited information and communications technology and services established  
and maintained by the Chief Information Officer pursuant to section 2022, subsection 2.

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**§2025. Indirect transfer of state funds**

A local governmental entity, when purchasing information or communications technology or services or entering into a contract for goods or services, shall take all reasonable steps to ensure state funds are not indirectly transferred to a company on the list of prohibited companies maintained by the Chief Information Officer pursuant to section 2022, subsection 1.

**§2026. Prohibited contract, use or purchase by judicial branch and legislative branch**

Except as provided in sections 2027, 2029 and 2030, an office of the legislative branch or judicial branch may not contract with a company included on the list of prohibited companies established and maintained by the Chief Information Officer pursuant to section 2022, subsection 1 or use, obtain or purchase any information or communications technology or services included on the list of prohibited information and communications technology and services established and maintained by the Chief Information Officer pursuant to section 2022, subsection 2.

**§2027. Exemption; law enforcement**

The prohibitions in sections 2023 and 2024 do not apply to law enforcement entities, such as the State Police, a county sheriff's office and local law enforcement departments, to the extent the prohibitions restrict a law enforcement entity's ability to protect the public or investigate criminal activity.

**§2028. Waiver of prohibitions; executive branch**

Upon written request from a state agency, the Chief Information Officer may waive the prohibitions imposed in sections 2023 and 2024 as long as the waiver does not pose a national security risk or a risk to the security and safety of persons of the United States.

**§2029. Waiver of prohibitions; legislative branch**

The Legislative Council, established in Title 3, section 161, or its designee, may waive the prohibitions imposed in sections 2023 and 2024 as long as the waiver does not pose a national security risk or a risk to the security and safety of persons of the United States.

**§2030. Waiver of prohibitions; judicial branch**

The State Court Administrator under Title 4, section 15, or the State Court Administrator's designee, may waive the prohibitions imposed in sections 2023 and 2024 as long as the waiver does not pose a national security risk or a risk to the security and safety of persons of the United States.

**§2030-A. Certification required; civil violation**

A person that submits a bid or proposal for a contract with the State for goods or services shall certify that the person is not a foreign adversary business entity. A person that submits a false certification under this section commits a civil violation for which a fine may be adjudged in an amount that is twice the amount of the contract for which the bid or proposal was submitted or \$250,000, whichever is greater.

**§2030-B. Contracts void**

The following contracts entered into by a state agency on or after the effective date of this chapter are void:

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**1. Foreign adversary business entity.** A contract with a foreign adversary business entity;

**2. Prohibited company.** A contract with a company included on the list of prohibited companies established and maintained by the Chief Information Officer pursuant to section 2022, subsection 1 that was not granted a waiver under section 2028; and

**3. Prohibited information or communications technology or services.** A contract to purchase information or communications technology or services included on the list of prohibited information or communications technology or services established and maintained by the Chief Information Officer pursuant to section 2022, subsection 2 that was not granted a waiver under section 2028.

**§2030-C. Rules**

The department may adopt rules to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in chapter 375, subchapter 2-A.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment, which is the majority report of the committee, replaces the bill and changes the title. It requires the Chief Information Officer in the Department of Administrative and Financial Services to establish and maintain a list of companies that pose a national security risk or a risk to the security and safety of persons of the United States and a list of information and communications technology and services that pose a national security risk or a risk to the security and safety of persons of the United States, which must be published on the department's publicly accessible website and must be updated at least annually. The Chief Information Officer must include on the lists companies and information and communications technology and services identified as posing a national security risk or a risk to the security and safety of persons of the United States by statute, regulation or official guidance from appropriate federal agencies. With certain exceptions, state agencies, local governmental entities, the judicial branch and the legislative branch are prohibited from contracting with a company or using, obtaining or purchasing information and communications technology and services included on the lists. Law enforcement agencies are also exempt from the prohibitions in the law to the extent the prohibitions restrict law enforcement agencies' ability to protect the public or investigate criminal activity.

The amendment defines "foreign adversary" as a foreign government or foreign nongovernment person that the United States Secretary of Commerce has determined has engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of persons of the United States. The amendment also requires a person that submits a bid for a contract with the State for goods or services to certify that the person is not a foreign adversary. If a person submits a false certification, that person commits a civil violation for which a fine may be adjudged in an amount that is twice the amount of the contract or \$250,000, whichever is

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greater. The amendment also provides that a contract entered into on or after the effective date of this legislation is void if the contract violates the prohibitions in the amendment.

**FISCAL NOTE REQUIRED**

**(See attached)**

**COMMITTEE AMENDMENT**



# 131st MAINE LEGISLATURE

LD 877

LR 1814(02)

**An Act to Prohibit State Contracts with Companies Owned or Operated by the Government of the People's Republic of China**

**Fiscal Note for Bill as Amended by Committee Amendment "A" (S 621)**  
**Committee: State and Local Government**  
**Fiscal Note Required: Yes**

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## Fiscal Note

Potential current biennium cost increase - All funds  
Minor revenue increase - General Fund  
Minor revenue increase – Other Special Revenue Funds

### Correctional and Judicial Impact Statements

This bill establishes new civil violations and may increase the number of civil suits filed in the court system. The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional fines and filing fees will increase General Fund or other dedicated revenue by minor amounts.

### Fiscal Detail and Notes

Prohibiting government agencies from contracting with companies or using or purchasing information and communications technology and services that are identified by the Department of Administrative and Financial Services as posing a national security risk or a risk to security of persons in the United States could increase costs to the extent this prohibition limits access to lower cost goods, technology and services.

Additional costs to the Department of Administrative and Financial Services to establish and publish a list of prohibited companies and a list of prohibited information and communication technology and services that pose security risks are expected to be minor and can be absorbed within existing budgeted resources.