

STATE OF NEW YORK

10404

IN ASSEMBLY

April 19, 2018

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to enacting the "firearms and tobacco divestment act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "firearms
2 and tobacco divestment act".
3 § 2. Section 423 of the retirement and social security law, as amended
4 by chapter 770 of the laws of 1970, is amended to read as follows:
5 § 423. Investments. [~~a-~~] 1. On and after April first, nineteen
6 hundred sixty-seven, the comptroller shall invest the available monies
7 of the common retirement fund in any investments and securities author-
8 ized by law for each retirement system and shall hold such investments
9 in his name as trustee of such fund, notwithstanding any other provision
10 of this chapter. Participating interests in such investments shall be
11 credited to each retirement system in the manner and at the time speci-
12 fied in [~~paragraph~~] subdivision two of section four hundred twenty-two
13 of this article.
14 [~~b-~~] 2. (a) To assist in the management of the monies of the common
15 retirement fund, the comptroller shall appoint an investment advisory
16 committee consisting of not less than seven members who shall serve for
17 his term of office. A vacancy occurring from any cause other than expi-
18 ration of term shall be filled by the comptroller for the remainder of
19 the term. Each member of the committee shall be experienced in the field
20 of investments and shall have served, or shall be serving, as a senior
21 officer or member of the board of an insurance company, banking corpo-
22 ration or other financial or investment organization authorized to do
23 business in the state of New York. The committee shall advise the comp-
24 troller on investment policies relating to the monies of the common
25 retirement fund and shall review, from time to time, the investment
26 portfolio of the fund and make such recommendations as may be deemed
27 necessary.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

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1 **(b)** The comptroller shall appoint a separate mortgage advisory commit-
2 tee, with the advice and consent of the investment advisory committee,
3 to review proposed mortgage and real estate investments by the common
4 retirement fund. In making investments, as authorized by law, the comp-
5 troller shall be guided by policies established by each committee from
6 time to time; and, in the event the mortgage advisory committee disap-
7 proves a proposed mortgage or real estate investment, such shall not be
8 made.

9 **(c)** No officer or employee of any state department or agency shall be
10 eligible for membership on either committee. Each committee shall
11 convene periodically on call of the comptroller, or on call of the
12 chairman. The members of each committee shall be entitled to reimburse-
13 ment for their actual and necessary expenses but shall receive no
14 compensation for their services.

15 3. (a) Notwithstanding any provision of law to the contrary, the comp-
16 troller shall not have the power to invest the available monies of the
17 common retirement fund in any stocks, debt or other securities of any
18 corporation or company, or any subsidiary, affiliate or parent of any
19 corporation or company, engaged in the manufacture of firearms, as
20 defined in section 265.00 of the penal law. The comptroller shall, in
21 accordance with sound investment criteria and consistent with his or her
22 fiduciary obligations, divest any such stocks or other securities wheth-
23 er they are owned directly or held through separate accounts or any
24 commingled funds. Divestment pursuant to this subdivision must be
25 completed within five years of the effective date of this subdivision.

26 (b) The comptroller shall be permitted to cease divesting from compa-
27 nies under paragraph (a) of this subdivision, reinvest in companies from
28 which it divested under paragraph (a) of this subdivision, or continue
29 to invest in companies from which it has not yet divested upon clear and
30 convincing evidence showing that as a direct result of such divestment,
31 the total and aggregate value of all assets under management by, or on
32 behalf of, the common retirement fund becomes or shall become: (i) equal
33 to or less than ninety-nine and one-half percent; or (ii) one hundred
34 percent less fifty basis points of the hypothetical value of all assets
35 under management by, or on behalf of, the common retirement fund assum-
36 ing no divestment from any company had occurred under said paragraph (a)
37 of this subdivision. Cessation of divestment, reinvestment or any subse-
38 quent ongoing investment authorized by this section shall be strictly
39 limited to the minimum steps necessary to avoid the contingency set
40 forth in the preceding sentence. For any cessation of divestment, and in
41 advance of such cessation, authorized by this subdivision, the comp-
42 troller shall provide a written report to the attorney general, the
43 senate standing committee on civil service and pensions, and the assem-
44 bly standing committee on governmental employees, updated semi-annually
45 thereafter as applicable, setting forth the reasons and justification,
46 supported by clear and convincing evidence, for its decisions to cease
47 divestment, to reinvest or to remain invested in companies engaged in
48 the manufacture of firearms, as defined in section 265.00 of the penal
49 law.

50 (c) Within sixty days of the effective date of this subdivision, the
51 comptroller shall facilitate the identification of companies in compa-
52 nies engaged in the manufacture of firearms, as defined in section
53 265.00 of the penal law from which the common retirement fund is
54 required to divest under paragraph (a) of this subdivision, and file a
55 copy of this list with the attorney general, the senate standing commit-
56 tee on civil service and pensions, and the assembly standing committee

1 on governmental employees. Annually thereafter, the public fund shall
2 file a report with the attorney general, the senate standing committee
3 on civil service and pensions, and the assembly standing committee on
4 governmental employees that includes: (i) all investments sold,
5 redeemed, divested or withdrawn in compliance with paragraph (a) of this
6 subdivision; and (ii) all prohibited investments from which the common
7 retirement fund has not yet divested under paragraph (a) of this subdi-
8 vision.

9 4. (a) Notwithstanding any provision of law to the contrary, the comp-
10 troller shall not have the power to invest the available monies of the
11 common retirement fund in any stocks, debt or other securities of any
12 corporation or company, or any subsidiary, affiliate or parent of any
13 corporation or company, engaged in the manufacture of tobacco products
14 as defined in section thirteen hundred ninety-nine-aa of the public
15 health law. The comptroller shall, in accordance with sound investment
16 criteria and consistent with his or her fiduciary obligations, divest
17 any such stocks or other securities whether they are owned directly or
18 help through separate accounts or any commingled funds. Divestment
19 pursuant to this subdivision must be completed within five years of the
20 effective date of this subdivision.

21 (b) The comptroller shall be permitted to cease divesting from compa-
22 nies under paragraph (a) of this subdivision, reinvest in companies from
23 which it divested under paragraph (a) of this subdivision, or continue
24 to invest in companies from which it has not yet divested upon clear and
25 convincing evidence showing that as a direct result of such divestment,
26 the total and aggregate value of all assets under management by, or on
27 behalf of, the common retirement fund becomes or shall become: (i) equal
28 to or less than ninety-nine and one-half percent; or (ii) one hundred
29 percent less fifty basis points of the hypothetical value of all assets
30 under management by, or on behalf of, the common retirement fund assum-
31 ing no divestment from any company had occurred under said paragraph (a)
32 of this subdivision. Cessation of divestment, reinvestment or any subse-
33 quent ongoing investment authorized by this section shall be strictly
34 limited to the minimum steps necessary to avoid the contingency set
35 forth in the preceding sentence. For any cessation of divestment, and in
36 advance of such cessation, authorized by this subdivision, the comp-
37 troller shall provide a written report to the attorney general, the
38 senate standing committee on civil service and pensions, and the assem-
39 bly standing committee on governmental employees, updated semi-annually
40 thereafter as applicable, setting forth the reasons and justification,
41 supported by clear and convincing evidence, for its decisions to cease
42 divestment, to reinvest or to remain invested in companies engaged in
43 the manufacture of tobacco products as defined in section thirteen
44 hundred ninety-nine-aa of the public health law.

45 (c) Within sixty days of the effective date of this subdivision, the
46 comptroller shall facilitate the identification of companies in compa-
47 nies, engaged in the manufacture of tobacco products as defined in
48 section thirteen hundred ninety-nine-aa of the public health law from
49 which the common retirement fund is required to divest under paragraph
50 (a) of this subdivision, and file a copy of this list with the attorney
51 general, the senate standing committee on civil service and pensions,
52 and the assembly standing committee on governmental employees. Annually
53 thereafter, the public fund shall file a report with the attorney gener-
54 al, the senate standing committee on civil service and pensions, and the
55 assembly standing committee on governmental employees that includes: (i)
56 all investments sold, redeemed, divested or withdrawn in compliance with

1 paragraph (a) of this subdivision; and (ii) all prohibited investments
2 from which the common retirement fund has not yet divested under para-
3 graph (a) of this subdivision.
4 § 3. This act shall take effect immediately.