

STATE OF NEW YORK

2035

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

Introduced by M. of A. ORTIZ, JAFFEE, ARROYO, TAYLOR, COOK, D'URSO,
WRIGHT -- Multi-Sponsored by -- M. of A. SIMON -- 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 Assem-
bly, 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

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

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1 retirement fund and shall review, from time to time, the investment
2 portfolio of the fund and make such recommendations as may be deemed
3 necessary.

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

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

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

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

53 (c) Within sixty days of the effective date of this subdivision, the
54 comptroller shall facilitate the identification of companies in compa-
55 nies engaged in the manufacture of firearms, as defined in section
56 265.00 of the penal law from which the common retirement fund is

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

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

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

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

1 al, the senate standing committee on civil service and pensions, and the
2 assembly standing committee on governmental employees that includes: (i)
3 all investments sold, redeemed, divested or withdrawn in compliance with
4 paragraph (a) of this subdivision; and (ii) all prohibited investments
5 from which the common retirement fund has not yet divested under para-
6 graph (a) of this subdivision.

7 § 3. This act shall take effect immediately.