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 Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "firearms and tobacco divestment act".

§ 2. Section 423 of the retirement and social security law, as amended by chapter 770 of the laws of 1970, is amended to read as follows:

§ 423. Investments. [~~a.~~] **1.** On and after April first, nineteen hundred sixty-seven, the comptroller shall invest the available monies of the common retirement fund in any investments and securities authorized by law for each retirement system and shall hold such investments in his name as trustee of such fund, notwithstanding any other provision of this chapter. Participating interests in such investments shall be credited to each retirement system in the manner and at the time specified in [~~paragraph~~] **subdivision** two of section four hundred twenty-two of this article.

[~~b.~~] **2. (a)** To assist in the management of the monies of the common retirement fund, the comptroller shall appoint an investment advisory committee consisting of not less than seven members who shall serve for his term of office. A vacancy occurring from any cause other than expiration of term shall be filled by the comptroller for the remainder of the term. Each member of the committee shall be experienced in the field of investments and shall have served, or shall be serving, as a senior officer or member of the board of an insurance company, banking corporation or other financial or investment organization authorized to do business in the state of New York. The committee shall advise the comptroller 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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retirement fund and shall review, from time to time, the investment portfolio of the fund and make such recommendations as may be deemed necessary.

(b) The comptroller shall appoint a separate mortgage advisory committee, with the advice and consent of the investment advisory committee, to review proposed mortgage and real estate investments by the common retirement fund. In making investments, as authorized by law, the comptroller shall be guided by policies established by each committee from time to time; and, in the event the mortgage advisory committee disapproves a proposed mortgage or real estate investment, such shall not be made.

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

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

(b) The comptroller shall be permitted to cease divesting from companies under paragraph (a) of this subdivision, reinvest in companies from which it divested under paragraph (a) of this subdivision, or continue to invest in companies from which it has not yet divested upon clear and convincing evidence showing that as a direct result of such divestment, the total and aggregate value of all assets under management by, or on behalf of, the common retirement fund becomes or shall become: (i) equal to or less than ninety-nine and one-half percent; or (ii) one hundred percent less fifty basis points of the hypothetical value of all assets under management by, or on behalf of, the common retirement fund assuming no divestment from any company had occurred under said paragraph (a) of this subdivision. Cessation of divestment, reinvestment or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence. For any cessation of divestment, and in advance of such cessation, authorized by this subdivision, the comptroller shall provide a written report to the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees, updated semi-annually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, to reinvest or to remain invested in companies engaged in the manufacture of firearms, as defined in section 265.00 of the penal law.

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

required to divest under paragraph (a) of this subdivision, and file a copy of this list with the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees. Annually thereafter, the public fund shall file a report with the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees that includes: (i) all investments sold, redeemed, divested or withdrawn in compliance with paragraph (a) of this subdivision; and (ii) all prohibited investments from which the common retirement fund has not yet divested under paragraph (a) of this subdivision.

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

(b) The comptroller shall be permitted to cease divesting from companies under paragraph (a) of this subdivision, reinvest in companies from which it divested under paragraph (a) of this subdivision, or continue to invest in companies from which it has not yet divested upon clear and convincing evidence showing that as a direct result of such divestment, the total and aggregate value of all assets under management by, or on behalf of, the common retirement fund becomes or shall become: (i) equal to or less than ninety-nine and one-half percent; or (ii) one hundred percent less fifty basis points of the hypothetical value of all assets under management by, or on behalf of, the common retirement fund assuming no divestment from any company had occurred under said paragraph (a) of this subdivision. Cessation of divestment, reinvestment or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence. For any cessation of divestment, and in advance of such cessation, authorized by this subdivision, the comptroller shall provide a written report to the attorney general, the senate standing committee on civil service and pensions, and the assembly standing committee on governmental employees, updated semi-annually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, to reinvest or to remain invested in companies engaged in the manufacture of tobacco products as defined in section thirteen hundred ninety-nine-aa of the public health law.

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

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

§ 3. This act shall take effect immediately.