

STATE OF NEW YORK

6311

2023-2024 Regular Sessions

IN ASSEMBLY

April 3, 2023

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

AN ACT to amend the state finance law, in relation to purchasing restrictions on persons electing not to dispense mifepristone; and to amend the retirement and social security law, in relation to the investment of certain public funds in persons electing not to dispense mifepristone

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

1 Section 1. The state finance law is amended by adding a new section
2 165-b to read as follows:

3 § 165-b. Purchasing restrictions; persons that elect not to dispense
4 mifepristone. 1. As used in this section, the following definitions
5 shall apply:

6 (a) "elects not to dispense mifepristone" shall mean any person certi-
7 fied by the United States food and drug administration to dispense
8 mifepristone who is not constrained by any state or local laws or regu-
9 lations in the jurisdictions in which they operate to dispense mifepri-
10 stone, but who decides independently not to dispense mifepristone.

11 (b) "person" shall mean any natural person, corporation, limited
12 liability company, unincorporated association or any other nongovern-
13 mental entity, organization, or group, or any successor, subunit,
14 parent, or subsidiary of the same.

15 2. (a) Any person that is identified on a list created pursuant to
16 paragraph (b) of this subdivision as a person that elects not to
17 dispense mifepristone, as defined in paragraph (a) of subdivision one of
18 this section, shall not be deemed a responsive bidder or offerer, pursu-
19 ant to section one hundred sixty-three of this article.

20 (b) Not later than ninety days after the effective date of this
21 section, and then annually thereafter, the commissioner shall develop
22 and publish, using credible information available to the public, a list

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

LBD10135-01-3

1 of persons determined by the commissioner, that have elected not to
2 dispense mifepristone. Such list, when developed and published, shall be
3 posted on the website of the office of general services.

4 (c) In the event a person included by the commissioner on the list to
5 be developed and published in accordance with paragraph (b) of this
6 subdivision, demonstrates to the commissioner that such person has
7 elected to dispense mifepristone, or obtains a court order from a
8 supreme court that such person shall be removed from such list due to
9 the court's determination that such person has elected to dispense
10 mifepristone, then the commissioner shall remove such person from such
11 list so developed and published in accordance with paragraph (b) of this
12 subdivision.

13 (d) Prior to the final development and publication of the list
14 required to be produced pursuant to paragraph (b) of this subdivision,
15 the commissioner shall provide written notice of all persons to be
16 included on the list, of the commissioner's intent to so include such
17 person on such list, together with written notice informing such person
18 that inclusion on such list would make such person a non-responsive
19 bidder or offerer, and that such person may apply to the commissioner,
20 or to a supreme court, to be removed from such list pursuant to the
21 requirements of paragraph (c) of this subdivision.

22 (e) Notwithstanding paragraph (a) of this subdivision, a state agency
23 may permit a person electing not to dispense mifepristone to be deemed a
24 responsive bidder or offerer, on a case-by-case basis with a state agen-
25 cy if:

26 (i) the election not to dispense of mifepristone occurred prior to the
27 effective date of this section, such activities have not been expanded
28 or renewed after the effective date of this section, and the person has
29 adopted, publicized, and is implementing a formal plan to dispense
30 mifepristone; or

31 (ii) the state agency makes a formal, written determination that the
32 commodities or services offered by the person named on this list
33 produced by the commissioner pursuant to paragraph (b) of this subdivi-
34 sion, are necessary for the state agency to perform its functions and
35 that, absent such an exemption, the state agency would be unable to
36 obtain the commodities or services for which the contract is offered.

37 3. (a) A state agency shall require all persons that submit a bid or
38 offer in response to a notice of procurement, or that propose to renew
39 an existing procurement contract, or that propose to assume the respon-
40 sibility of a contractor pursuant to a procurement contract, or other-
41 wise propose to enter into a contract with a state agency with respect
42 to a contract for commodities or services to certify, at the time the
43 bid is submitted, or the contract is renewed or assigned, that the
44 person or the assignee is not identified on the list developed and
45 published pursuant to paragraph (b) of subdivision two of this section,
46 and all state agencies shall include such certification information in
47 the procurement record.

48 (b) All persons that submit a bid or offer in response to a notice of
49 procurement, or that propose to renew an existing procurement contract
50 with a state agency, or that propose to assume the responsibility of a
51 contractor pursuant to a procurement contract with a state agency, or
52 otherwise propose to enter into a contract with a state agency with
53 respect to a contract for commodities or services shall certify that
54 they have elected to dispense mifepristone, and that they are not iden-
55 tified on the list developed and published pursuant to paragraph (b) of
56 subdivision two of this section.

1 4. Upon receiving information that a person who has made the certifi-
2 cation required by subdivision three of this section, is, in fact, in
3 violation of such certification, the state agency shall review such
4 information, notify such person and offer them an opportunity to respond
5 to such information, within thirty days of such notice, and if such
6 person fails to demonstrate that they have ceased electing not to
7 dispense mifepristone, then, the state agency shall take such action as
8 may be appropriate and provided for by law, rule or contract, including,
9 but not limited to, notifying the commissioner of such person's election
10 not to dispense mifepristone, imposing sanctions, seeking compliance,
11 recovering damages, and/or declaring such person in default.

12 5. On or before December fifteenth, two thousand twenty-three, and
13 every year thereafter, the commissioner shall issue a report to the
14 governor, the comptroller, the temporary president of the senate, and
15 the speaker of the assembly, on all the actions taken, and all determi-
16 nations made, by the commissioner pursuant to this section, and any and
17 all rules or regulations adopted.

18 § 2. The retirement and social security law is amended by adding a new
19 section 423-d to read as follows:

20 § 423-d. Prohibition on investment of certain public funds in persons
21 that elect not to dispense mifepristone. 1. As used in this section, the
22 following definitions shall apply:

23 (a) "elects not to dispense mifepristone" shall mean any person certi-
24 fied by the United States food and drug administration to dispense
25 mifepristone who is not constrained by any state or local laws or regu-
26 lations in the jurisdictions in which they operate to dispense mifepri-
27 stone, but who decides independently not to dispense mifepristone.

28 (b) "person" shall mean any natural person, corporation, limited
29 liability company, unincorporated association or any other nongovern-
30 mental entity, organization, or group, or any successor, subunit,
31 parent, or subsidiary of the same.

32 2. (a) Any person that is identified on the list created pursuant to
33 paragraph (b) of subdivision two of section one hundred sixty-five-b of
34 the state finance law, as being a person that elects not to dispense
35 mifepristone, shall not be eligible to receive investment of any moneys
36 or assets of the common retirement fund in any stocks, securities or
37 other obligations of such person so identified on such list developed
38 and published by the commissioner of general services.

39 (b) Notwithstanding any provision of law to the contrary, no assets of
40 any pension or annuity fund under the jurisdiction of the comptroller,
41 shall further be invested in any bank or financial institution which
42 directly, or through a parent or subsidiary elects not to dispense
43 mifepristone and no such assets shall otherwise be invested in the
44 stocks, securities or other obligations of any person which directly, or
45 through a parent or subsidiary entity, elects not to dispense mifepri-
46 stone.

47 3. The comptroller shall take appropriate action to sell, redeem,
48 divest or withdraw any investment held in violation of the provisions of
49 this section. This section shall not be construed to require the prema-
50 ture or otherwise imprudent sale, redemption, divestment or withdrawal
51 of an investment, but such sale, divestment or withdrawal shall be
52 completed no later than three years following the effective date of this
53 section.

54 4. On or before December fifteenth, two thousand twenty-three, and
55 every year thereafter, the comptroller shall issue a report to the
56 governor, the commissioner of general services, the temporary president

1 of the senate, and the speaker of the assembly, on all the actions
2 taken, and all determinations made, by the comptroller, pursuant to this
3 section, and any and all rules or regulations adopted.

4 § 3. This act shall take effect immediately.