

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 11

5 By: Senator Hester
6 By: Representative Dotson
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For An Act To Be Entitled

9 AN ACT TO PROHIBIT CERTAIN TRANSACTIONS BY PUBLIC
10 EMPLOYEE RETIREMENT SYSTEMS; AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO PROHIBIT CERTAIN TRANSACTIONS BY
15 PUBLIC EMPLOYEE RETIREMENT SYSTEMS.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code Title 24, Chapter 2, Subchapter 2, is amended
21 to add a new section to read as follows:

22 24-2-208. Transactions prohibited – Restricted companies.

23 (a) As used in this section:

24 (1) "Boycott" means engaging in actions that are politically
25 motivated and are intended to penalize, inflict economic harm, or otherwise
26 limit commercial relations with the State of Israel or companies based in the
27 State of Israel or in territories controlled by the State of Israel;

28 (2) "Company" means a sole proprietorship, organization,
29 association, corporation, partnership, joint venture, limited partnership,
30 limited liability partnership, limited liability company, or other entity or
31 business association, including all wholly owned subsidiaries, majority-owned
32 subsidiaries, parent companies, or affiliates of those entities or business
33 associations, that exist for the purpose of making profit;

34 (3) "Direct holdings" means all publicly traded securities of a
35 company that are held directly by a public employee retirement system in an
36 actively managed account or fund in which the retirement system owns all



1 shares or interests;

2 (4) "Indirect holdings" means all securities of a company that
3 are held in an account or fund, such as a mutual fund, managed by one (1) or
4 more persons not employed by a public employee retirement system, in which
5 the public employee retirement system owns shares or interests together with
6 other investors not subject to this section or that are held in an index
7 fund;

8 (5) "Private market fund" means a private equity fund, private
9 equity funds of funds, venture capital fund, hedge fund, hedge fund of funds,
10 real estate fund, or other investment vehicle that is not publicly traded;
11 and

12 (6) "Restricted company" means a company that boycotts the State
13 of Israel, a company restricted by Iran, or a company restricted by Sudan.

14 (b)(1) The board of trustees of a public employee retirement system of
15 this state shall make its best efforts to identify all restricted companies
16 and assemble those identified companies into a list of restricted companies,
17 to be distributed to each public employee retirement system.

18 (2) These efforts shall include the following:

19 (A) Reviewing and relying on publicly available
20 information regarding restricted companies, including information provided by
21 nonprofit organizations, research firms, and government entities;

22 (B) Contacting asset managers contracted by the public
23 employee retirement systems that invest in restricted companies;

24 (C) Contacting other institutional investors that have
25 divested from or engaged with restricted companies; and

26 (D) Retaining an independent research firm to identify
27 restricted companies.

28 (3) The board of trustees of a public employee retirement system
29 of this state shall review the list of restricted companies on a quarterly
30 basis based on evolving information from, among other sources, those listed
31 in this subsection and distribute a updates to the list of restricted
32 companies to the public employee retirement systems.

33 (c) The board of trustees of a public employee retirement system of
34 this state shall adhere to the following procedures for companies on the list
35 of restricted companies:

36 (1) For each company newly identified in subsection (b) of this

1 section, the board of trustees of a public employee retirement system of this
2 state shall send a written notice informing the company of its status and
3 that it may become subject to divestment by the public employee retirement
4 systems; and

5 (2) If the company ceases activity that designates the company
6 to be a restricted company, the company shall be removed from the list of
7 restricted companies and this section shall cease to apply to the company
8 unless it resumes those activities.

9 (d)(1) The public employee retirement system shall adhere to the
10 following procedures for companies on the list of restricted companies:

11 (A) The public employee retirement system shall identify
12 those companies on the list of restricted companies in which the retirement
13 system owns direct holdings and indirect holdings;

14 (B) The public employee retirement system shall instruct
15 its investment advisors to sell, redeem, divest, or withdraw all direct
16 holdings of restricted companies from the retirement system's assets under
17 management in an orderly and fiduciarily responsible manner within twelve
18 (12) months after the company's most recent appearance on the list of
19 restricted companies; and

20 (C) The public employee retirement system may not acquire
21 securities of restricted companies.

22 (2)(A) This subsection does not apply to the indirect holdings
23 or private market funds of a public employee retirement system.

24 (B) The board of trustees of any public employee
25 retirement system of this state shall submit letters to the managers of those
26 investment funds containing restricted companies requesting that they
27 consider removing the companies from the fund or create a similar actively
28 managed fund having indirect holdings devoid of the companies.

29 (C) If the manager creates a similar fund, the public
30 employee retirement system shall replace all applicable investments with
31 investments in the similar fund in an expedited time frame consistent with
32 the prudent investor rule.

33 (e) Upon request and at least annually each public employee retirement
34 system shall provide the board of trustees of the public employee retirement
35 system of this state with information regarding investments sold, redeemed,
36 divested, or withdrawn under this section.

1 (f)(1) A public employee retirement system may cease divesting from
2 companies under subsection (d) of this section if clear and convincing
3 evidence shows that the value of investments in such companies becomes equal
4 to or less than five-tenths percent (0.5%) of the market value of all assets
5 under management by the public employee retirement system.

6 (2) For any cessation of divestment authorized by this
7 subsection, the public employee retirement system shall provide a written
8 notice to the board of trustees of the public employee retirement system in
9 advance of the cessation of divestment, setting forth the reasons and
10 justification, supported by clear and convincing evidence, for its decision
11 to cease divestment under this subsection.

12 (g) With respect to actions taken in compliance with this section,
13 including all good-faith determinations regarding companies as required by
14 this section, the public employee retirement system and board of trustees of
15 a public employee retirement system of this state are exempt from conflicting
16 statutory or common law obligations, including fiduciary duties and
17 obligations with respect to choice of asset managers, investment funds, or
18 investments for the public employee retirement system's securities
19 portfolios.

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