

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

SENATE BILL 11

By: Senator Hester  
By: Representative Dotson

## For An Act To Be Entitled

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

### Subtitle

TO PROHIBIT CERTAIN TRANSACTIONS BY  
PUBLIC EMPLOYEE RETIREMENT SYSTEMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 24, Chapter 2, Subchapter 2, is amended to add a new section to read as follows:

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

(a) As used in this section:

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

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

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



shares or interests;

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

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

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

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

(2) These efforts shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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