

CHAPTER 33

GOVERNMENT - STATE

HOUSE BILL 16-1284

BY REPRESENTATIVE(S) Nordberg and Moreno, Sias, Court, DelGrosso, Duran, Everett, Garnett, Kagan, Klingenschmitt, Kraft-Tharp, Lawrence, Lundeen, Pabon, Pettersen, Williams, Becker J., Brown, Carver, Conti, Humphrey, Joshi, Landgraf, Lebsack, Navarro, Neville P., Priola, Ransom, Roupe, Saine, Van Winkle, Vigil, Wilson, Windholz, Wist, Dore; also SENATOR(S) Hill and Garcia, Cadman, Scheffel, Crowder, Grantham, Holbert, Johnston, Sonnenberg, Neville T., Baumgardner, Cooke, Lambert, Lundberg, Marble, Martinez Humenik, Roberts, Scott, Tate, Woods.

AN ACT

CONCERNING DIVESTMENT BY THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION FROM COMPANIES THAT HAVE ECONOMIC PROHIBITIONS AGAINST THE STATE OF ISRAEL.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 2 to article 54.8 of title 24 as follows:

**PART 2
DIVESTMENT FROM COMPANIES THAT
HAVE ECONOMIC PROHIBITIONS AGAINST ISRAEL**

24-54.8-201. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMPANY" MEANS ANY ENTITY THAT HAS PUBLICLY TRADED SECURITIES AND IS AN 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, OR PARENT COMPANIES OF SUCH ENTITIES OR BUSINESS ASSOCIATIONS, THAT EXISTS FOR PROFIT-MAKING PURPOSES.

(2) "DIRECT HOLDINGS" MEANS ALL PUBLICLY TRADED SECURITIES OF A COMPANY HELD DIRECTLY BY THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION OR IN AN ACCOUNT OR FUND IN WHICH THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OWNS ALL SHARES OR INTERESTS.

(3) "ECONOMIC PROHIBITIONS AGAINST ISRAEL" MEANS ENGAGING IN ACTIONS THAT ARE POLITICALLY MOTIVATED AND ARE INTENDED TO PENALIZE, INFLICT ECONOMIC HARM ON, OR OTHERWISE LIMIT COMMERCIAL RELATIONS WITH THE STATE OF ISRAEL INCLUDING, BUT NOT LIMITED TO, THE BOYCOTT OF, DIVESTMENT FROM, OR IMPOSITION OF SANCTIONS ON THE STATE OF ISRAEL. ANY ACTIONS PERMITTED UNDER APPLICABLE FEDERAL ANTI-BOYCOTT LAWS SHALL NOT BE CONSIDERED ECONOMIC PROHIBITIONS AGAINST ISRAEL.

(4) "PUBLICLY TRADED SECURITIES" MEANS OWNERSHIP INTEREST OR DEBT INSTRUMENTS THAT ARE CURRENTLY TRADED ON A SECURITIES EXCHANGE THAT IS OFFICIALLY RECOGNIZED, SANCTIONED, OR SUPERVISED BY A GOVERNMENTAL AUTHORITY OF THE COUNTRY IN WHICH THE MARKET IS LOCATED OR CURRENTLY TRADED THROUGH AN OVER-THE-COUNTER MARKET THAT IS REFLECTED BY THE EXISTENCE OF AN INTERDEALER QUOTATION SYSTEM.

(5) "RESTRICTED COMPANIES" MEANS COMPANIES THAT HAVE ECONOMIC PROHIBITIONS AGAINST ISRAEL.

24-54.8-202. Transactions prohibited by the public employees' retirement association - companies that have economic prohibitions against Israel - restricted companies list. (1) BY JANUARY 1, 2017, THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION CREATED IN ARTICLE 51 OF THIS TITLE SHALL MAKE ITS BEST EFFORTS TO IDENTIFY ALL RESTRICTED COMPANIES IN WHICH THE ASSOCIATION HAS DIRECT HOLDINGS OR COULD POSSIBLY HAVE SUCH HOLDINGS IN THE FUTURE AND ASSEMBLE THOSE COMPANIES INTO A LIST OF RESTRICTED COMPANIES. THESE EFFORTS SHALL INCLUDE THE FOLLOWING, AS APPROPRIATE IN THE JUDGMENT OF THE ASSOCIATION:

(a) REVIEWING AND RELYING ON PUBLICLY AVAILABLE INFORMATION REGARDING COMPANIES THAT HAVE ECONOMIC PROHIBITIONS AGAINST ISRAEL, INCLUDING INFORMATION PROVIDED BY NONPROFIT ORGANIZATIONS, RESEARCH FIRMS, AND GOVERNMENT ENTITIES;

(b) CONTACTING ASSET MANAGERS CONTRACTED BY THE ASSOCIATION THAT INVEST IN COMPANIES THAT HAVE ECONOMIC PROHIBITIONS AGAINST ISRAEL;

(c) CONTACTING OTHER INSTITUTIONAL INVESTORS THAT HAVE DIVESTED FROM OR ENGAGED WITH COMPANIES THAT HAVE ECONOMIC PROHIBITIONS AGAINST ISRAEL; AND

(d) RETAINING AN INDEPENDENT RESEARCH FIRM OR ORGANIZATION TO IDENTIFY COMPANIES THAT HAVE ECONOMIC PROHIBITIONS AGAINST ISRAEL. IT SHALL BE REASONABLE AND SUFFICIENT FOR THE ASSOCIATION TO RELY ON INFORMATION AND WORK PRODUCT OBTAINED FROM SUCH RESEARCH FIRM OR ORGANIZATION; EXCEPT THAT THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION SHALL REVIEW AND APPROVE ANY COMPANIES IDENTIFIED BY AN INDEPENDENT RESEARCH FIRM BEFORE INCLUDING SUCH COMPANIES ON THE LIST OF RESTRICTED COMPANIES PURSUANT TO THIS SUBSECTION (1).

(2) THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION SHALL REVIEW THE LIST OF RESTRICTED COMPANIES ON A BIENNIAL BASIS BASED ON EVOLVING INFORMATION FROM, AMONG OTHER SOURCES, THOSE LISTED IN SUBSECTION (1) OF THIS SECTION.

(3) THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION SHALL ADHERE TO THE FOLLOWING PROCEDURES FOR COMPANIES ON THE LIST OF RESTRICTED COMPANIES:

(a) FOR EACH COMPANY NEWLY IDENTIFIED IN SUBSECTION (1) OF THIS SECTION, THE ASSOCIATION SHALL SEND A WRITTEN NOTICE INFORMING THE COMPANY OF ITS STATUS AND THAT IT MAY BECOME SUBJECT TO DIVESTMENT BY THE ASSOCIATION.

(b) IF, FOLLOWING THE ASSOCIATION'S ENGAGEMENT PURSUANT TO THIS SUBSECTION (3) WITH A RESTRICTED COMPANY, THAT COMPANY CEASES ACTIVITY THAT DESIGNATES IT AS A COMPANY THAT HAS ECONOMIC PROHIBITIONS AGAINST ISRAEL, THE COMPANY SHALL BE REMOVED FROM THE LIST OF RESTRICTED COMPANIES AND THE PROVISIONS OF THIS SECTION SHALL CEASE TO APPLY TO IT UNLESS IT RESUMES SUCH ACTIVITIES.

(c) IF, AFTER ONE HUNDRED EIGHTY DAYS FOLLOWING THE ASSOCIATION'S FIRST ENGAGEMENT WITH A COMPANY PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3), THE COMPANY REMAINS A RESTRICTED COMPANY, THE ASSOCIATION SHALL INSTRUCT ITS INVESTMENT ADVISORS TO SELL, REDEEM, DIVEST, OR WITHDRAW ALL DIRECT HOLDINGS OF RESTRICTED COMPANIES FROM THE ASSOCIATION'S ASSETS UNDER MANAGEMENT IN AN ORDERLY AND FIDUCIARILY RESPONSIBLE MANNER WITHIN TWELVE MONTHS AFTER THE COMPANY'S MOST RECENT APPEARANCE ON THE LIST OF RESTRICTED COMPANIES.

(d) IF, UPON THE COMMENCEMENT OF THE DATE OF DIVESTMENT, THE ASSOCIATION DOES NOT OWN DIRECT HOLDINGS IN A COMPANY ON THE LIST OF RESTRICTED COMPANIES, THE ASSOCIATION IS PROHIBITED FROM ACQUIRING DIRECT HOLDINGS IN ANY COMPANY ON THE LIST OF RESTRICTED COMPANIES DURING THE TIME THAT IT REMAINS ON THE LIST.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 2, THE HOLDINGS IN THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION'S DEFINED CONTRIBUTION PLANS ARE NOT SUBJECT TO THIS PART 2.

(5) UPON REQUEST, AND AT LEAST ANNUALLY, THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION SHALL MAKE AVAILABLE ON ITS WEBSITE INFORMATION REGARDING INVESTMENTS SOLD, REDEEMED, DIVESTED, OR WITHDRAWN IN COMPLIANCE WITH THIS SECTION.

(6) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION MAY CEASE DIVESTING FROM COMPANIES PURSUANT TO SUBSECTION (3) OF THIS SECTION IF CLEAR AND CONVINCING EVIDENCE SHOWS THAT THE VALUE FOR ALL ASSETS UNDER MANAGEMENT BY THE ASSOCIATION BECOMES EQUAL TO OR LESS THAN NINETY-NINE AND ONE-HALF PERCENT, OR FIFTY BASIS POINTS, OF THE HYPOTHETICAL VALUE OF ALL ASSETS UNDER MANAGEMENT BY THE ASSOCIATION ASSUMING NO DIVESTMENT FOR ANY COMPANY HAD OCCURRED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(7) WITH RESPECT TO ACTIONS TAKEN IN COMPLIANCE WITH THIS PART 2, INCLUDING ALL GOOD-FAITH DETERMINATIONS REGARDING COMPANIES AS REQUIRED BY THIS SECTION, THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION IS EXEMPT FROM ANY CONFLICTING STATUTORY OR COMMON LAW OBLIGATIONS, INCLUDING ANY FIDUCIARY DUTIES AND ANY OBLIGATIONS WITH RESPECT TO CHOICE OF ASSET MANAGERS, INVESTMENT FUNDS, OR INVESTMENTS FOR THE ASSOCIATION'S SECURITIES PORTFOLIOS.

(8) WITH RESPECT TO ALL ACTIONS TAKEN IN GOOD FAITH COMPLIANCE WITH THIS PART 2, THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION, ITS BOARD OF DIRECTORS, INDIVIDUAL BOARD MEMBERS, AGENTS, TRUSTEES, OFFICERS, EMPLOYEES, CUSTODIANS, AND FIDUCIARIES SHALL BE IMMUNE FROM ANY LIABILITY.

24-54.8-203. Legislative intent. BY ENACTING THIS PART 2, IT IS NOT THE INTENT OF THE GENERAL ASSEMBLY TO CAUSE DIVESTITURE FROM ANY COMPANY BASED IN THE UNITED STATES. THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION SHALL CONSIDER THIS INTENT WHEN DEVELOPING OR REVIEWING THE LIST OF RESTRICTED COMPANIES.

24-54.8-204. Severability. IF ANY PROVISION OF THIS PART 2 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS PART 2 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS PART 2 ARE DECLARED TO BE SEVERABLE.

SECTION 2. In Colorado Revised Statutes, 24-54.8-101, **amend** (1) (r), (2), and (3) as follows:

24-54.8-101. Legislative declaration - post-enactment review. (1) The general assembly hereby finds and declares that:

(r) It is the judgment of the general assembly that this ~~article~~ PART 1 should remain in effect only insofar as it continues to be consistent with, and does not unduly interfere with, the foreign policy of the United States as determined by the federal government.

(2) The general assembly further finds and declares that state and local entities that are not subject to the requirements of this ~~article~~ PART 1 are encouraged to take voluntary action to divest from the companies specified in this ~~article~~ PART 1.

(3) The general assembly further finds and declares that the desired result of this ~~article~~ PART 1 for the purpose of post-enactment review is that all public funds sell, redeem, divest, or withdraw investments in scrutinized companies with active business operations in Sudan and maintain communication with scrutinized companies with inactive business operations in Sudan, in accordance with the provisions of this ~~article~~ PART 1.

SECTION 3. In Colorado Revised Statutes, 24-54.8-102, **amend** introductory portion and (16) (c) as follows:

24-54.8-102. Definitions. As used in this ~~article~~ PART 1, unless the context

otherwise requires:

(16) "Scrutinized company" means a company that meets any of the following criteria:

(c) The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, such as through post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization. Notwithstanding any provision of this ~~article~~ PART 1 to the contrary, a social development company that is not complicit in the Darfur genocide shall not be considered a scrutinized company.

SECTION 4. In Colorado Revised Statutes, 24-54.8-104, **amend** (1) (b), (5), and (6) as follows:

24-54.8-104. Required actions. (1) **Engagement.** A public fund shall adhere to the following procedures for companies on the scrutinized companies list:

(b) For each company identified pursuant to paragraph (a) of this subsection (1) with only inactive business operations, the public fund shall send a written notice informing the company of this ~~article~~ PART 1 and encouraging it to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations. The public fund shall continue such correspondence on a semi-annual basis.

(5) **Excluded securities.** Notwithstanding any other provision of this ~~article~~ PART 1, subsections (2) and (3) of this section do not apply to indirect holdings in actively managed investment funds. A public fund shall, however, submit letters to the managers of such investment funds containing companies with scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund with indirect holdings devoid of such companies. If the manager creates a similar fund and if the public fund determines investment in the similar fund is consistent with prudent investment standards, the public fund shall replace all applicable investments with investments in the similar fund in an expedited time. In addition, notwithstanding any other provision of this ~~article~~ PART 1, for passively managed indirect holdings, if the manager does not remove such companies or create a similar fund consistent with prudent investment standards by October 1, 2008, or nine months after the date the public fund first requests the manager to act, whichever is later, then the scrutinized companies with active business operations shall be removed from the indirect passively managed assets of the public fund.

(6) **Defined contribution plans.** Notwithstanding any other provision of this ~~article~~ PART 1, public funds, when discharging their responsibility for operation of a defined contribution plan, shall engage the manager of the investment offerings in such plans requesting that they consider removing scrutinized companies from

the investment offerings or create an alternative investment offering devoid of scrutinized companies. If the manager creates an alternative investment offering and the offering is deemed consistent with prudent investor standards by the public fund, the public fund shall consider including such investment offering in the plan.

SECTION 5. In Colorado Revised Statutes, 24-54.8-106, **amend** (1) introductory portion and (1) (c) as follows:

24-54.8-106. Provisions for repeal. (1) This ~~article~~ PART 1 is repealed upon the occurrence of any one of the following:

(c) The congress or president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this ~~article~~ PART 1 interferes with the conduct of United States foreign policy.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 18, 2016