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By:  Anchia H.B. No. 1170

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the investment of certain state retirement system funds in companies that manufacture firearms or firearm ammunition.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subtitle A, Title 8, Government Code, is amended by adding Chapter 809 to read as follows:

CHAPTER 809. PROHIBITION ON INVESTMENT IN COMPANIES THAT MANUFACTURE FIREARMS OR FIREARM AMMUNITION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 809.001.  DEFINITIONS. In this chapter:

(1)  "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

(2)  "Direct holdings" means, with respect to a company, all securities of that company held directly by a state retirement system in an account or fund in which a state retirement system owns all shares or interests.

(3)  "Firearm" has the meaning assigned by Section 46.01, Penal Code.

(4)  "Firearm ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in a firearm.

(5)  "Indirect holdings" means, with respect to a company, all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by a state retirement system, in which the state retirement system owns shares or interests together with other investors not subject to the provisions of this chapter. The term does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code of 1986.

(6)  "Listed company" means a company listed by the comptroller under Section 809.051.

(7)  "State retirement system" means:

(A)  the Employees Retirement System of Texas, including a retirement system administered by that system;

(B)  the Teacher Retirement System of Texas;

(C)  the Texas Municipal Retirement System; and

(D)  the Texas County and District Retirement System.

Sec. 809.002.  OTHER LEGAL OBLIGATIONS. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies as required by this chapter, a state retirement system and the comptroller are exempt from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of companies, or choosing asset managers, investment funds, or investments for the state retirement system's securities portfolios.

Sec. 809.003.  INDEMNIFICATION OF STATE GOVERNMENTAL ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter, the state shall, without regard to whether the person performed services for compensation, indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend:

(1)  an employee, a member of the governing body, or any other officer of a state retirement system;

(2)  a contractor of a state retirement system;

(3)  a former employee, a former member of the governing body, or any other former officer of a state retirement system who was an employee, member of the governing body, or other officer when the act or omission on which the damages are based occurred;

(4)  a former contractor of a state retirement system who was a contractor when the act or omission on which the damages are based occurred; and

(5)  a state retirement system.

Sec. 809.004.  NO PRIVATE CAUSE OF ACTION. (a)  A person, including a member, retiree, or beneficiary of a state retirement system to which this chapter applies, an association, a research firm, a company, or any other person may not sue or pursue a private cause of action against the state, a state retirement system, a current or former employee, a member of the governing body, or any other officer of a state retirement system, or a contractor of a state retirement system, for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter.

(b)  A person who files suit against the state, a state retirement system, an employee, a member of the governing body, or any other officer of a state retirement system, or a contractor of a state retirement system, is liable for paying the costs and attorney's fees of a person sued in violation of this section.

Sec. 809.005.  INAPPLICABILITY OF REQUIREMENTS INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state retirement system is not subject to a requirement of this chapter if the state retirement system determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of system assets or other duties imposed by law relating to the investment of system assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

Sec. 809.006.  RELIANCE ON COMPANY RESPONSE. The comptroller and a state retirement system may rely on a company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry.

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

Sec. 809.051.  LISTED COMPANIES. (a)  The comptroller shall prepare and maintain, and provide to each state retirement system, a list of all companies that manufacture firearms or firearm ammunition. In maintaining the list, the comptroller may review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities.

(b)  The comptroller shall update the list annually or more often as the comptroller considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in Subsection (a).

(c)  Not later than the 30th day after the date the list of companies that manufacture firearms or firearm ammunition is first provided or updated, the comptroller shall file the list with the presiding officer of each house of the legislature and the attorney general and post the list on a publicly available website.

Sec. 809.052.  IDENTIFICATION OF INVESTMENT IN LISTED COMPANIES. Not later than the 30th day after the date a state retirement system receives the list provided under Section 809.051, the state retirement system shall notify the comptroller of the listed companies in which the state retirement system owns direct holdings or indirect holdings.

Sec. 809.053.  ACTIONS RELATING TO LISTED COMPANY. (a)  For each listed company identified under Section 809.052, the state retirement system shall send a written notice informing the company of its status as a listed company and warning the company that it may become subject to divestment by state retirement systems.

(b)  Not later than the 90th day after the date the company receives notice under Subsection (a), the company must cease manufacturing firearms or firearm ammunition, as applicable, in order to avoid qualifying for divestment by state retirement systems.

(c)  If, during the time provided by Subsection (b), the company ceases manufacturing firearms or firearm ammunition, as applicable, the comptroller shall remove the company from the list maintained under Section 809.051 and this chapter will no longer apply to the company unless it resumes manufacturing firearms or firearm ammunition, as applicable.

(d)  If, after the period provided by Subsection (b) expires, the company continues manufacturing firearms or firearm ammunition, as applicable, the state retirement system shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except securities described by Section 809.055, according to the schedule provided by Section 809.054.

Sec. 809.054.  DIVESTMENT OF ASSETS. (a) A state retirement system required to sell, redeem, divest, or withdraw all publicly traded securities of a listed company shall comply with the following schedule:

(1)  at least 50 percent of those assets must be removed from the state retirement system's assets under management not later than the 180th day after the date the company receives notice under Section 809.053 or Subsection (b) unless the state retirement system determines, based on a good faith exercise of its fiduciary discretion and subject to Subdivision (2), that a later date is more prudent; and

(2)  100 percent of those assets must be removed from the state retirement system's assets under management not later than the 360th day after the date the company receives notice under Section 809.053 or Subsection (b).

(b)  If a company that ceased manufacturing firearms or firearm ammunition, as applicable, after receiving notice under Section 809.053 resumes its manufacturing of firearms or firearm ammunition, as applicable, the state retirement system shall send a written notice to the company informing it that the state retirement system will sell, redeem, divest, or withdraw all publicly traded securities of the company according to the schedule in Subsection (a).

(c)  Except as provided by Subsection (a), a state retirement system may delay the schedule for divestment under that subsection only to the extent that the state retirement system determines, in the state retirement system's good faith judgment, and consistent with the system's fiduciary duty, that divestment from listed companies will likely result in a loss in value or a benchmark deviation described by Section 809.056(a). If a state retirement system delays the schedule for divestment, the state retirement system shall submit a report to the presiding officer of each house of the legislature and the attorney general stating the reasons and justification for the state retirement system's delay in divestment from listed companies. The report must include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by Section 809.056(a), including objective numerical estimates. The state retirement system shall update the report every six months.

Sec. 809.055.  INVESTMENTS EXEMPTED FROM DIVESTMENT. A state retirement system is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state retirement system shall submit letters to the managers of each investment fund containing listed companies requesting that they remove those companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed companies. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state retirement system may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but not later than the 450th day after the date the fund is created.

Sec. 809.056.  AUTHORIZED INVESTMENT IN LISTED COMPANIES. (a)  A state retirement system may cease divesting from one or more listed companies only if clear and convincing evidence shows that:

(1)  the state retirement system has suffered or will suffer a loss in the hypothetical value of all assets under management by the state retirement system as a result of having to divest from listed companies under this chapter; or

(2)  an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed companies under this chapter.

(b)  A state retirement system may cease divesting from a listed company as provided by this section only to the extent necessary to ensure that the state retirement system does not suffer a loss in value or deviate from its benchmark as described by Subsection (a).

(c)  Before a state retirement system may cease divesting from a listed company under this section, the state retirement system must provide a written report to the comptroller, the presiding officer of each house of the legislature, and the attorney general setting forth the reason and justification, supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed company.

(d)  The state retirement system shall update the report required by Subsection (c) semiannually, as applicable.

(e)  This section does not apply to reinvestment in a company that is no longer a listed company.

Sec. 809.057.  PROHIBITED INVESTMENTS. Except as provided by Section 809.056, a state retirement system may not acquire securities of a listed company.

SUBCHAPTER C. REPORT; ENFORCEMENT

Sec. 809.101.  REPORT. Not later than January 5 of each year, each state retirement system shall file a publicly available report with the presiding officer of each house of the legislature and the attorney general that:

(1)  identifies all securities sold, redeemed, divested, or withdrawn in compliance with Section 809.054;

(2)  identifies all prohibited investments under Section 809.057; and

(3)  summarizes any changes made under Section 809.055.

Sec. 809.102.  ENFORCEMENT. The attorney general may bring any action necessary to enforce this chapter.

SECTION 2.  This Act takes effect September 1, 2019.