

Chapter 343

(Senate Bill 1005)

AN ACT concerning

State Retirement and Pension System – Divestment From Russia

FOR the purpose of requiring the Board of Trustees for the State Retirement and Pension System to review certain investment holdings; requiring the Board of Trustees to take certain divestment actions with regard to certain Russian investments; prohibiting the Board of Trustees from making certain new investments; providing certain immunities from liability for certain persons; requiring the Board of Trustees to act in good faith in taking certain actions in a certain manner; requiring the Board of Trustees to make certain recommendations to the Joint Committee on Pensions; and generally relating to the investment of assets of the State Retirement and Pension System.

BY adding to

Article – State Personnel and Pensions

Section 21–123.3

Annotated Code of Maryland

(2015 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – State Personnel and Pensions**21–123.3.**

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “ACTIVELY MANAGED SEPARATE ACCOUNTS” MEANS THE ACCOUNTS OF THE SEVERAL SYSTEMS THAT ARE ACTIVELY MANAGED AT THE DIRECTION OF THE BOARD OF TRUSTEES AND HELD IN SEPARATE ACCOUNTS.

(II) “ACTIVELY MANAGED SEPARATE ACCOUNTS” DOES NOT MEAN INDEXED FUNDS, PRIVATE EQUITY FUNDS, REAL ESTATE FUNDS, OR OTHER COMMINGLED OR PASSIVELY MANAGED FUNDS.

(3) “COMPANY” MEANS ANY CORPORATION, UTILITY, PARTNERSHIP, JOINT VENTURE, FRANCHISOR, FRANCHISEE, TRUST, ENTITY INVESTMENT VEHICLE, FINANCIAL INSTITUTION, OR A WHOLLY OWNED SUBSIDIARY OF ANY OF

THESE ENTITIES.

(4) “DIVESTMENT ACTION” MEANS SELLING, REDEEMING, TRANSFERRING, EXCHANGING, OTHERWISE DISPOSING OF, AND REFRAINING FROM FURTHER INVESTMENT IN CERTAIN INVESTMENTS.

(5) “ELIGIBLE ACCOUNTS” MEANS ACTIVELY MANAGED SEPARATE ACCOUNTS CONTAINING FUNDS OF THE SEVERAL SYSTEMS.

(6) “INVESTMENT” MEANS THE COMMITMENT OF FUNDS OR OTHER ASSETS TO A COMPANY INCLUDING:

(I) THE OWNERSHIP OR CONTROL OF A SHARE OR INTEREST IN THE COMPANY; OR

(II) THE OWNERSHIP OR CONTROL OF A BOND OR OTHER DEBT INSTRUMENT OF A COMPANY.

(7) (I) “RUSSIA” MEANS THE GOVERNMENT OF RUSSIA OR THE GOVERNMENT OF THE RUSSIAN FEDERATION.

(II) “RUSSIA” INCLUDES ALL AGENCIES, INSTITUTIONS, INSTRUMENTALITIES, AND POLITICAL SUBDIVISIONS OF RUSSIA.

(8) “RUSSIA-RESTRICTED INVESTMENT” MEANS AN INVESTMENT IN A COMPANY:

(I) IDENTIFIED BY THE FEDERAL OFFICE OF FOREIGN ASSETS CONTROL AS A RUSSIAN ENTITY WITH WHICH TRANSACTIONS ARE PROHIBITED BY FEDERAL LAW;

(II) OWNED, IN WHOLE OR IN PART, BY RUSSIA;

(III) CONTROLLED BY A COMPANY THAT IS OWNED, IN WHOLE OR IN PART, BY RUSSIA;

(IV) INCORPORATED IN RUSSIA; OR

(V) WHOSE PRINCIPAL PLACE OF BUSINESS IS LOCATED WITHIN RUSSIA, TO THE EXTENT THIS DETERMINATION CAN BE MADE.

(B) THE BOARD OF TRUSTEES SHALL REVIEW THE INVESTMENT HOLDINGS IN ELIGIBLE ACCOUNTS FOR THE PURPOSE OF DETERMINING THE EXTENT TO WHICH

FUNDS IN ELIGIBLE ACCOUNTS ARE INVESTED IN RUSSIA-RESTRICTED INVESTMENTS.

(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE BOARD OF TRUSTEES:

(1) SHALL TAKE DIVESTMENT ACTION IN ELIGIBLE ACCOUNTS WITH REGARD TO CURRENT INVESTMENTS:

(I) IN ANY RUSSIA-RESTRICTED INVESTMENT; OR

(II) IN ANY SECURITY OR INSTRUMENT ISSUED BY RUSSIA; AND

(2) MAY NOT MAKE ANY NEW INVESTMENTS FROM NET NEW FUNDS IN AN ELIGIBLE ACCOUNT IN ANY RUSSIA-RESTRICTED INVESTMENT.

(D) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE BOARD OF TRUSTEES MAY EXCLUDE FROM THE PROVISIONS OF SUBSECTION (C) OF THIS SECTION A COMPANY:

(1) THAT THE UNITED STATES GOVERNMENT AFFIRMATIVELY DECLARES TO BE EXCLUDED FROM ITS FEDERAL SANCTIONS REGIME RELATING TO RUSSIA; AND

(2) WHOSE DIVESTMENT CANNOT BE EXECUTED FOR FAIR MARKET VALUE OR GREATER.

(E) ON OR BEFORE APRIL 1 AND OCTOBER 1 EACH YEAR, THE BOARD OF TRUSTEES SHALL SUBMIT A REPORT, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, TO THE SENATE BUDGET AND TAXATION COMMITTEE, THE HOUSE APPROPRIATIONS COMMITTEE, AND THE JOINT COMMITTEE ON PENSIONS THAT PROVIDES:

(1) ALL DIVESTMENT ACTIONS TAKEN BY THE BOARD OF TRUSTEES IN ACCORDANCE WITH THIS SECTION;

(2) A LIST OF INVESTMENTS THAT THE BOARD OF TRUSTEES HAS DETERMINED TO BE INELIGIBLE FOR INVESTMENTS OF NET NEW FUNDS UNDER SUBSECTION (C)(2) OF THIS SECTION; AND

(3) OTHER DEVELOPMENTS RELEVANT TO RUSSIA-RESTRICTED INVESTMENTS.

(F) THE BOARD OF TRUSTEES OR ANY OTHER FIDUCIARY OF THE SEVERAL SYSTEMS MAY NOT BE HELD LIABLE FOR ANY ACTIONS TAKEN OR DECISIONS MADE IN GOOD FAITH FOR THE PURPOSE OF COMPLYING WITH OR EXECUTING THE REQUIREMENTS OF ANY DIVESTMENT PROVISIONS UNDER THIS SECTION.

(G) THE BOARD OF TRUSTEES SHALL ACT IN GOOD FAITH TO CARRY OUT DIVESTMENT ACTION AS REQUIRED BY THIS SECTION IN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL LAW, INCLUDING RELEVANT JUDICIAL DECISIONS.

(H) NOTHING IN THIS SECTION SHALL REQUIRE THE BOARD OF TRUSTEES TO TAKE ACTION AS DESCRIBED IN THIS SECTION UNLESS THE BOARD OF TRUSTEES DETERMINES IN GOOD FAITH THAT THE ACTION IS CONSISTENT WITH THE FIDUCIARY RESPONSIBILITIES OF THE BOARD OF TRUSTEES AS DESCRIBED IN SUBTITLE 2 OF THIS TITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) Notwithstanding any other provision of this Act, Section 1 of this Act may not be applied to investments or divestment actions by the Board of Trustees for the State Retirement and Pension System in connection with a Russia–restricted investment if the United States government declares an end to financial sanctions against the Russian Federation related to its invasion of and violation of the sovereignty of Ukraine.

(b) Within 6 months after a declaration or other action described under subsection (a) of this section, the Board of Trustees shall recommend to the Joint Committee on Pensions legislation that would amend Section 1 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, May 12, 2022.