

Act No. 252
Public Act of 1988
Approved by the Governor
July 12, 1988
Filed by the Secretary of State
July 13, 1988

**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Senators DeGrow, Vaughn, Cherry, Arthurhultz, Conroy, Faust, J. Hart, Miller, Kelly, Ehlers and Pollack

ENROLLED SENATE BILL No. 171

AN ACT to amend the title of Act No. 314 of the Public Acts of 1965, entitled as amended "An act to authorize the investment of assets of public employee retirement systems or plans created and established by the state or any political subdivision; to provide for the payment of certain costs and investment expenses; to authorize investment in variable rate interest loans; to define and limit the investments which may be made by an investment fiduciary with the assets of a public employee retirement system; and to impose duties on an investment fiduciary," as amended, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws; and to add section 13c.

The People of the State of Michigan enact:

Section 1. The title of Act No. 314 of the Public Acts of 1965, as amended, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws, is amended and section 13c is added to read as follows:

TITLE

An act to authorize the investment of assets of public employee retirement systems or plans created and established by the state or any political subdivision; to provide for the payment of certain costs and investment expenses; to authorize investment in variable rate interest loans; to define and limit the investments which may be made by an investment fiduciary with the assets of a public employee retirement system; and to prescribe the powers and duties of investment fiduciaries and certain state departments and officers.

Sec. 13c. (1) As used in this section:

(a) "Company" means a union or association of persons for carrying on a commercial or industrial enterprise. Company includes, but is not limited to, a partnership, corporation, association, or joint stock company.

(b) "Franchise" means an agreement under which the franchisee undertakes to conduct a business or sell a product or service in accordance with methods and procedures prescribed by the franchisor, and under which the franchisor undertakes to assist the franchisee through advertising, promotion, and other advisory services.

(c) Notwithstanding section 12(e), "investment" means utilization of money in the expectation of future returns in the form of income or capital gain. Investment does not include the importation or exportation of goods.

(d) "Licensing agreement" means a contract with an individual or company for the sale or lease of a license that permits the use of a patent, trademark, or other technology by another individual or company.

(e) "Management agreement" means a contract in which an individual or company is chosen or appointed to manage, direct, or administer the affairs of another individual or company.

(f) "National corporation of South Africa" means a corporation, or a subsidiary or affiliate of a corporation, that is more than 50% owned or operated by the government of South Africa.

(g) "Retirement system" means the Michigan legislative retirement system created by the Michigan legislative retirement system act, Act No. 261 of the Public Acts of 1957, being sections 38.1001 to 38.1060 of the Michigan Compiled Laws, a fire and police department pension and retirement system created under Act No. 345 of the Public Acts of 1937, being sections 38.551 to 38.562 of the Michigan Compiled Laws, the state of Michigan judges' retirement system created by the judges' retirement act, Act No. 198 of the Public Acts of 1951, being sections 38.801 to 38.831 of the Michigan Compiled Laws, the state of Michigan probate judges retirement system created by the probate judges retirement act, Act No. 165 of the Public Acts of 1954, being sections 38.901 to 38.933 of the Michigan Compiled Laws, and the Michigan state police retirement system created by the state police retirement act of 1986, Act No. 182 of the Public Acts of 1986, being sections 38.1601 to 38.1648 of the Michigan Compiled Laws.

(h) "South Africa" includes the Republic of South Africa; any territory under the administration, legal or illegal, of the Republic of South Africa; and Bantustans or homelands to which South African blacks are assigned on the basis of ethnic origin.

(2) Notwithstanding any other provision of this act, an investment fiduciary for a retirement system shall not encourage or condone legally required discrimination against an individual on the basis of race or color by doing either of the following:

(a) Making a new investment of retirement system assets in stocks, securities, or other obligations of a national corporation of South Africa or of a United States company listed in the register described in subsection (4).

(b) Except as provided in subsection (3), failing to divest retirement system assets in stocks, securities, or other obligations of a national corporation of South Africa or of a United States company listed in the register described in subsection (4), as follows:

(i) Not less than 40% of the retirement system assets shall be divested not later than 2 years after the effective date of the amendatory act that added this section.

(ii) Not less than 60% of the retirement system assets shall be divested not later than 3 years after the effective date of the amendatory act that added this section.

(iii) Not less than 80% of the retirement system assets shall be divested not later than 4 years after the effective date of the amendatory act that added this section.

(iv) Not less than 100% of the retirement system assets shall be divested not later than 5 years after the effective date of the amendatory act that added this section.

(3) If the state treasurer determines that divestment would jeopardize the fiscal integrity of a retirement system, the state treasurer may extend for not more than 1 year the deadlines under subsection (2)(b) for divestment of the assets of that retirement system.

(4) The state treasurer shall develop and maintain a register of United States companies that have 1 or more of the following:

(a) An investment in South Africa.

(b) A franchise with an individual or company located in South Africa.

(c) A licensing agreement with an individual or company located in South Africa.

(d) A management agreement with an individual or company located in South Africa.

(5) The state treasurer shall provide the register described in subsection (4) to each board of a retirement system. The register shall be provided at least annually and whenever a change is made in the register. The state treasurer shall also notify a board of a system of those investments that the retirement system has in a company included in the register.

(6) Not less than 90 days before the register is provided to the boards of retirement systems as required by subsection (5), the state treasurer shall provide the chief executive officer of each United States company that is placed on the register and the legislature with all of the following information:

(a) Notice that the company is being placed on the register.

(b) The reason why the company is being placed on the register.

(c) The current value of system assets invested in the company.

(d) Any other information that the state treasurer considers necessary or appropriate.

(7) The state treasurer shall annually report to the legislature on divestment under this section. The report shall include, but is not limited to, all of the following information:

(a) The progress of systems in implementing the divestment of assets required by this section.

- (b) The register described in subsection (4).
- (c) The reason companies have been added to the register.
- (d) The names of companies that the state treasurer is considering adding to the register.
- (e) The amount of retirement system assets invested in companies included in the register.
- (f) The financial cost to the state of divestment under this section.
- (g) Any other information that the state treasurer considers necessary or appropriate.

(8) The investment fiduciary of each retirement system shall report annually to the governor and the legislature any gains or losses in the value of the investment portfolio of the retirement system and in the portfolio's investment performance attributable to the implementation of subsection (2).

(9) If there is any gain in the value of the investment portfolio of the retirement system or the portfolio's investment performance that is attributable to the implementation of subsection (2), then those gains shall be recorded annually and shall be used to compensate for any losses or diminution in value attributable to the implementation of subsection (2) in subsequent years.

(10) This section shall only apply until the state treasurer determines and notifies the investment fiduciaries of the retirement systems that both of the following conditions of fact exist:

(a) Full citizenship and equal political rights concerning all matters of national policy have been granted and are in effect for all South African people, regardless of race.

(b) Legal restrictions on the freedom of all South African people to live, travel, and work anywhere in their country have been removed and no longer exist.

(11) This section does not alter or diminish the existing fiduciary or statutory obligations and other terms, conditions, and limitations on the investment of retirement system assets for the exclusive interest and benefit of participants and beneficiaries of the retirement systems.

Section 2. This amendatory act shall take effect January 1, 1989.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.