

HOUSE BILL 1273

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P2

1998 Regular Session
8lr2197
CF 8lr1940

By: **Delegates R. Baker, Grosfeld, Hubbard, Pitkin, Bobo, Crumlin, Frush, Moe, Menes, Muse, Conroy, Marriott, Mandel, T. Murphy, Kagan, E. Burns, Patterson, Exum, Benson, Morgan, Turner, Heller, Fulton, B. Hughes, Pendergrass, Kach, Kittleman, Cryor, Jones, and Nathan-Pulliam**

Introduced and read first time: February 16, 1998
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **State Finance and Procurement - Sanctions Against Nigeria**

3 FOR the purpose of establishing certain State government sanctions and prohibitions
4 against Nigeria; prohibiting the State Treasurer from using certain financial
5 institutions for certain purposes unless the institution certifies that it does not
6 have certain loans with Nigeria; prohibiting State units from buying certain
7 supplies that are produced in Nigeria unless certain conditions are met for
8 procurements in excess of a certain amount and after a certain date; requiring
9 bidders and offerors to make certain certifications regarding not doing business
10 with Nigeria; providing for a waiver of this requirement under certain
11 circumstances; prohibiting bidders or offerors from making certain
12 misrepresentations; establishing certain penalties for violations of this Act;
13 defining certain terms; and generally relating to government sanctions and
14 prohibitions against Nigeria.

15 BY adding to
16 Article - State Finance and Procurement
17 Section 6-208; and 14-501 through 14-507 to be under the new subtitle
18 "Subtitle 5. Purchases from Nigeria"
19 Annotated Code of Maryland
20 (1995 Replacement Volume and 1997 Supplement)

21 Preamble

22 WHEREAS, The November 10, 1995, execution by hanging of Ken Saro-Wiwa
23 and eight other Ogoni environmental activists was carried out by the Government of
24 Nigeria after a trial that ignored the fundamental standards of legal process, and
25 despite the pleas for clemency by the African and international community, as well as
26 the United States Administration, and the Chairman of the Congressional Black
27 Caucus and the co-chairs of the Human Rights Caucus of the House of
28 Representatives; and

1 WHEREAS, The United Nations recommended in both March and April of
2 1996 that the Government of Nigeria release the bodies of the Ogoni Nine for proper
3 burial and paid compensation to the families of the deceased; and

4 WHEREAS, This heinous action followed an October 1, 1995, ambiguous
5 statement by Nigerian military leader General Sani Abacha, that the country would
6 be returned to civilian democratic rule in 3 years, and a lifting of the ban on political
7 parties while at the same time not repealing the Treasonable Offenses Decree which
8 allows the arrest of anyone speaking against the government; and

9 WHEREAS, General Abacha's announcement was pressured by the outrage of
10 the international community for his March 1995 arrest and conviction to long prison
11 terms by secret trial of some 43 persons for involvement in a so-called coup. Among
12 those convicted and still incarcerated are former President General Olusegun
13 Obasanjo, the only military leader in Nigeria to return power to democratic civilian
14 rule, General Shehu Musa Yar-Adua, deputy to the President in Abaasanjo's
15 Administration, and later, human rights activist Beko Ransome-Kuti; and

16 WHEREAS, The people of Nigeria and the international community had been
17 led to believe that the presidential election held in Nigeria on June 12, 1993, would
18 result in a return to full democratic civilian rule in Nigeria; and

19 WHEREAS, General Ibrahim Babangida, the head of Nigeria's military
20 government at the time of the June 12, 1993, election interrupted the release of the
21 election results on June 23, 1993, and later annulled the election, thereby preventing
22 a return to civilian rule; and

23 WHEREAS, The election process indicated that voters in Nigeria--a country
24 with a population of approximately 90,000,000 persons comprising 250 ethnic groups
25 and spread across 357,000 square miles--were expressing a spirit of national unity
26 that transcended ethnic, religious, and regional allegiances; and

27 WHEREAS, The reported returns suggested that Chief M.K.O. Abiola of the
28 Social Democratic Party was receiving a substantial majority of the votes cast,
29 leading the poll in 20 of the 30 States in Nigeria; and

30 WHEREAS, The annulment of the presidential elections resulted in various
31 forms of civil unrest, which in turn led to the deaths of more than 100 persons; and

32 WHEREAS, An interim government established by General Babangida on
33 August 27, 1993, and headed by Ernest Shonekan, failed to win the support of the
34 Nigerian people; and

35 WHEREAS, General Sani Abacha took power on November 17, 1993,
36 appointing an unelected Provisional Ruling Council to govern Nigeria; and

37 WHEREAS, Chief M.K.O. Abiola was imprisoned in solitary confinement for
38 over 1 year for pressing his claim as the elected democratic leader of Nigeria, and still
39 remains incarcerated today; and

1 WHEREAS, The political and economic conditions in Nigeria have continued
2 to deteriorate in the months since Abacha took control of the country; and

3 WHEREAS, The faith of the Nigerian people in the viability of the nation as a
4 unified whole must be preserved, and the balkanization of Nigeria guarded against;
5 and

6 WHEREAS, The people of Nigeria have not accepted the continuation of
7 military rule and have courageously spoken out in favor of the rapid return of
8 democratic and civilian rule; and

9 WHEREAS, On May 15, 1994, a broad coalition of Nigerian democrats formed
10 the National Democratic Coalition calling upon the military government to step down
11 in favor of the winner of the June 12, 1993, election; and

12 WHEREAS, The confidence of the Nigerian people and the international
13 community in the Provisional Ruling Council's commitment to the restoration of
14 democracy can only be established by a sustained demonstration of a commitment to
15 human rights, due process, and the return of civilian rule; and

16 WHEREAS, Maryland would prefer to have a relationship with Nigeria based
17 upon cooperation and mutual support but cannot, and will not, condone or overlook
18 the denial of democratic civilian rule, against the clear wishes of the Nigerian people,
19 by the Provisional Ruling Council or any other body in Nigeria; and

20 WHEREAS, The lack of support from the Nigerian authorities on drug
21 trafficking issues forced the United States for the last 2 years to place Nigeria on the
22 list of countries penalized for failure to seriously address the narcotics proliferation
23 issue, thus endangering vulnerable youth in our communities; and

24 WHEREAS, Continuing credible reports of widespread corruption and
25 questionable business practices in the Nigerian Government and "scams" in the
26 United States, and the lack of cooperation in addressing these problems by the
27 Nigerian Government, further undermines Nigeria's credibility in the international
28 community, and is a constant embarrassment to approximately 1,000,000
29 law-abiding Nigerian Americans; and

30 WHEREAS, Nigeria's leadership role on the African continent, especially in
31 the area of peacekeeping, will be severely compromised by its failure to rejoin the
32 world community of democratic nations; and

33 WHEREAS, Nigeria was recently suspended from the Commonwealth, a
34 forum linking Britain and former colonies, and African countries like South Africa
35 have already call for diplomatic, economic, and sports sanctions, since the limited
36 sanctions imposed by the United States Administration have had little effect in
37 safeguarding the lives of the people of Nigeria and moving Nigeria toward democracy;
38 and

39 WHEREAS, The State of Maryland continues to support the Nigerian people
40 in their commitment to unity and democracy as evidenced by their participation in

1 the June 12, 1993, presidential election in Nigeria, and in their subsequent insistence
2 on the return to full civilian and democratic rule and recognizes that more needs to be
3 accomplished to encourage the restoration of fully democratic and civilian rule in
4 Nigeria; and

5 WHEREAS, The State of Maryland declares that the sanctions against Nigeria
6 contained in this Act should be taken in concert with the international community
7 and the United Nations and the United States to the maximum extent possible; now,
8 therefore,

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

11 **Article - State Finance and Procurement**

12 6-208.

13 (A) THIS SECTION DOES NOT APPLY TO A LOAN THAT IS OUTSTANDING ON
14 SEPTEMBER 30, 1998.

15 (B) THE TREASURER MAY NOT USE A FINANCIAL INSTITUTION AS A
16 DEPOSITARY UNLESS THE FINANCIAL INSTITUTION CERTIFIES, IN WRITING, THAT IT
17 HAS NO DIRECT LOANS AND NO FOREKNOWLEDGE OF ANY INDIRECT LOANS
18 OUTSTANDING TO A GOVERNMENTAL UNIT OR NATIONAL CORPORATION OF
19 NIGERIA.

20 (C) IF DIRECT OR INDIRECT LOANS DESCRIBED IN SUBSECTION (B) OF THIS
21 SECTION ARE MADE BY A FOREIGN OR OUT-OF-STATE FINANCIAL INSTITUTION
22 WITHOUT THE PARTICIPATION OF A SUBSIDIARY OR AFFILIATED CORPORATION,
23 SUBSECTION (B) OF THIS SECTION DOES NOT APPLY TO THE SUBSIDIARY OR
24 AFFILIATED CORPORATION.

25 **SUBTITLE 5. PURCHASES FROM NIGERIA.**

26 14-501.

27 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
28 INDICATED.

29 (B) (1) "DOING BUSINESS WITH OR IN NIGERIA" MEANS:

30 (I) HAVING IN NIGERIA ANY OPERATIONS OR A MAJORITY OWNED
31 SUBSIDIARY THAT EMPLOYS MORE THAN 20 EMPLOYEES;

32 (II) PROVIDING FINANCIAL SERVICES TO THE GOVERNMENT OF
33 NIGERIA, INCLUDING PROVIDING DIRECT LOANS, UNDERWRITING GOVERNMENT
34 SECURITIES, OR PROMOTING THE SALE OF GOLD COINS FROM NIGERIA; OR

1 (III) PROVIDING ANY SUPPLIES OR SERVICES TO THE GOVERNMENT
2 OF NIGERIA EXCEPT SUPPLIES OR SERVICES PROVIDED FOR AN EDUCATIONAL,
3 MEDICAL, CHARITABLE, OR RELIGIOUS PURPOSE; AND

4 (2) "DOING BUSINESS WITH OR IN NIGERIA" DOES NOT INCLUDE
5 COMPLETING A LIMITED CONSULTING CONTRACT IN EXISTENCE ON OCTOBER 1, 1998
6 IN NIGERIA THAT WAS ENTERED INTO AS A RESULT OF THE COMPANY DIVESTING
7 ITSELF OF ALL BUSINESS PROPERTY AND OPERATIONS IN NIGERIA.

8 14-502.

9 A UNIT MAY NOT KNOWINGLY BUY FINISHED SUPPLIES THAT ARE PRODUCED
10 IN NIGERIA UNLESS:

11 (1) THE BIDDER OR OFFEROR PROVIDES THE CERTIFICATION REQUIRED
12 UNDER § 14-503 OF THIS SUBTITLE; OR

13 (2) THE HEAD OF THE UNIT DETERMINES THAT:

14 (I) THE PROCUREMENT IS ESSENTIAL; AND

15 (II) THE UNIT DOES NOT KNOW OF ANY OTHER AVAILABLE SOURCE
16 THAT WILL PROVIDE THE SUPPLIES AT A REASONABLE COST.

17 14-503.

18 FOR A PROCUREMENT SOLICITED ON OR AFTER OCTOBER 1, 1998 AND COSTING
19 MORE THAN \$10,000, THE BIDDER OR OFFEROR SHALL CERTIFY AT THE TIME THE
20 PROCUREMENT CONTRACT IS AWARDED THAT THE BIDDER OR OFFEROR IS NOT
21 DOING BUSINESS WITH OR IN NIGERIA OR KNOWINGLY SUBCONTRACTING WITH AN
22 ENTITY THAT DOES SO.

23 14-504.

24 IN ANY SOLICITATION, A UNIT SHALL PROVIDE NOTICE OF THE REQUIREMENTS
25 OF THIS SUBTITLE.

26 14-505.

27 THE BOARD MAY WAIVE THE REQUIREMENTS OF § 14-502, § 14-503, OR § 14-504
28 OF THIS SUBTITLE IF THE BOARD FINDS THAT:

29 (1) THE PROCUREMENT IS ESSENTIAL OR IN THE BEST INTERESTS OF
30 THE STATE; AND

31 (2) THERE IS NO OTHER KNOWN SOURCE FOR THE PROCUREMENT AT A
32 REASONABLE COST.

1 14-506.

2 A BIDDER OR OFFEROR MAY NOT MISREPRESENT ANY INFORMATION
3 CONTAINED IN THE CERTIFICATION REQUIRED UNDER THIS SUBTITLE.

4 14-507.

5 A BIDDER OR OFFEROR WHO WILLFULLY VIOLATES ANY PROVISION OF THIS
6 SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A
7 FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 3 MONTHS.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 1998.