

SENATE BILL 354

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P2

1998 Regular Session
8r1940
CF 8r2197

By: **Senators Kelley, Hoffman, and Madden**
Introduced and read first time: February 5, 1998
Assigned to: Economic and Environmental Affairs

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

29 WHEREAS, The United Nations recommended in both March and April of
30 1996 that the Government of Nigeria release the bodies of the Ogoni Nine for proper
31 burial and paid compensation to the families of the deceased; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 WHEREAS, The State of Maryland continues to support the Nigerian people
38 in their commitment to unity and democracy as evidenced by their participation in
39 the June 12, 1993, presidential election in Nigeria, and in their subsequent insistence
40 on the return to full civilian and democratic rule and recognizes that more needs to be

1 accomplished to encourage the restoration of fully democratic and civilian rule in
2 Nigeria; and

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

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

9 **Article - State Finance and Procurement**

10 6-208.

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

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

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

23 **SUBTITLE 5. PURCHASES FROM NIGERIA.**

24 14-501.

25 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
26 INDICATED.

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

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

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

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

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

5 14-502.

6 A UNIT MAY NOT KNOWINGLY BUY FINISHED SUPPLIES THAT ARE PRODUCED
7 IN NIGERIA UNLESS:

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

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

11 (I) THE PROCUREMENT IS ESSENTIAL; AND

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

14 14-503.

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

20 14-504.

21 IN ANY SOLICITATION, A UNIT SHALL PROVIDE NOTICE OF THE REQUIREMENTS
22 OF THIS SUBTITLE.

23 14-505.

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

26 (1) THE PROCUREMENT IS ESSENTIAL OR IN THE BEST INTERESTS OF
27 THE STATE; AND

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

30 14-506.

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

1 14-507.

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

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