

101ST CONGRESS  
1ST SESSION

H. R. 3458

IN THE HOUSE OF REPRESENTATIVES

Mr. FAUNTROY introduced the following bill; which was referred to the Committee on \_\_\_\_\_

A BILL

To amend the Comprehensive Anti-Apartheid Act of 1986 to prohibit United States depository institutions from providing certain financial services to South African depository institutions and the Government of South Africa, and for other purposes.

1        *Be it enacted by the Senate and House of Representatives*  
2        *of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the ``South African Financial  
3 Sanctions Act of 1989``.

4 SEC. 2. AMENDMENTS TO DEFINITIONS CONTAINED IN THE  
5 COMPREHENSIVE ANTI-APARTHEID ACT OF 1986.

6 (a) DEFINITION OF LOAN.--

7 (1) ADDITIONAL CONDITION FOR EXCLUSION OF RESCHEDULED  
8 LOANS FROM DEFINITION.--Section 3(3)(B)(iii) of the  
9 Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C.  
10 5001(3)(B)(iii)) is amended by inserting ``and not less  
11 than 20 percent of the principal of the loans which are  
12 outstanding at the time of such rescheduling is required,  
13 pursuant to the terms of such rescheduling, to be repaid  
14 in each 1-year period beginning after the rescheduling``  
15 before the semicolon at the end.

16 (2) CONVERSIONS OF CERTAIN SHORT-TERM LOANS INTO EXIT  
17 LOANS.--Section 3(3)(A) of the Comprehensive Anti-  
18 Apartheid Act of 1986 (22 U.S.C. 5001(3)(A)) is amended--

19 (A) by inserting after clause (vi) the following  
20 new clause:

21 `` (vii) a refinancing under which short- and  
22 medium-term loans are converted into exit loans,  
23 and``; and

24 (B) by striking ``and`` at the end of clause (v).

25 (3) TRADE FINANCING.--

1 (A) IN GENERAL.--Section 3(3)(A) of the  
2 Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C.  
3 5001(3)(A)) is amended--

4 (i) by inserting after clause (vii) (as added  
5 by paragraph (2) of this paragraph) the following  
6 new clause:

7 `` (viii) normal short-term trade financing,  
8 including letters of credit or similar trade  
9 credits, and ``; and

10 (ii) by striking ``and`` at the end of clause  
11 (vi).

12 (B) TECHNICAL AND CONFORMING AMENDMENT.--Section  
13 3(3)(B) of the Comprehensive Anti-Apartheid Act of  
14 1986 (22 U.S.C. 5001(3)(B)) is amended by striking  
15 clause (i) and redesignating clauses (ii) and (iii)  
16 as clauses (i) and (ii), respectively.

17 (C) EFFECTIVE DATE.--The amendments made by this  
18 paragraph shall take effect at the end of the 1-year  
19 period beginning on the date of the enactment of this  
20 Act.

21 (4) SALES ON OPEN ACCOUNTS.--

22 (A) IN GENERAL.--Section 3(3)(A) of the  
23 Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C.  
24 5001(3)(A)) is amended--

25 (i) by inserting after clause (vii) (as added

1 by paragraph (2) of this paragraph) the following  
2 new clause:

3 `` (ix) sales on open accounts in cases in  
4 which such sales are normal business practice,  
5 and``; and

6 (ii) by striking ``and`` at the end of clause  
7 (vii).

8 (B) TECHNICAL AND CONFORMING AMENDMENT.--Section  
9 3(3)(B) of the Comprehensive Anti-Apartheid Act of  
10 1986 (22 U.S.C. 5001(3)(B)) is amended to read as  
11 follows:

12 `` (B) does not include any rescheduling of  
13 existing loans if--

14 `` (i) no new funds or credits are extended to  
15 any South African entity or the Government of  
16 South Africa in connection with such  
17 rescheduling, and

18 `` (ii) not less than 20 percent of the  
19 principal of the loans which are outstanding at  
20 the time of such rescheduling is required,  
21 pursuant to the terms of such rescheduling, to be  
22 repaid in each 1-year period beginning after the  
23 rescheduling;``.

24 (C) EFFECTIVE DATE.--The amendments made by this  
25 paragraph shall take effect at the end of the 2-year

1 period beginning on the date of the enactment of this  
2 Act.

3 (b) DEFINITION OF UNITED STATES NATIONAL.--Section 3(5)  
4 of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C.  
5 5001(5)) is amended--

6 (1) by adding at the end thereof the following new  
7 subparagraph:

8 `` (C) any person which--

9 `` (i) is not described in subparagraph (B);  
10 and

11 `` (ii) is a subsidiary of any financial  
12 institution described in subparagraph (B),  
13 except that any such subsidiary shall not be treated  
14 as a national of the United States for purposes of  
15 any specific provision of this Act if compliance by  
16 the subsidiary with such provision would require the  
17 subsidiary to violate any provision of law of the  
18 country in which the subsidiary is incorporated.

19 (c) DEFINITION OF DEPOSITORY INSTITUTION.--

20 (1) IN GENERAL.--Section 308 of the Comprehensive  
21 Anti-Apartheid Act of 1986 (22 U.S.C. 5058) is amended--

22 (A) in subsection (a), by striking the 2d  
23 sentence;

24 (B) by redesignating subsection (b) as subsection  
25 (c); and

1 (C) by inserting after subsection (a) the  
2 following new subsection:

3 `` (b) DEPOSITORY INSTITUTION DEFINED.--For purposes of  
4 subsection (a), the term `depository institution`--

5 `` (1) has the meaning given to such term in section  
6 19(b)(1)(A) of the Federal Reserve Act; and

7 `` (2) includes--

8 `` (A) any agency or branch (as such terms are  
9 defined in paragraphs (1) and (3), respectively, of  
10 section 1(b) of the International Banking Act of  
11 1978); and

12 `` (B) any affiliate (as defined in section 2(k)  
13 of the Bank Holding Company Act of 1956) or branch  
14 (of any depository institution referred to in  
15 paragraph (1)) which engages in the business of  
16 banking in any foreign country (as defined in section  
17 1(b)(8) of the International Banking Act of 1978),  
18 except that any such affiliate or branch shall not be  
19 treated as a depository institution for purposes of  
20 any specific provision of this Act if compliance by  
21 the affiliate or branch with such provision would  
22 require the affiliate or branch to violate any  
23 provision of law of such foreign country.''.  
24

25 (2) EFFECTIVE DATE.--The amendment made by paragraph  
(1) shall take effect at the end of the 1-year period

1 beginning on the date of the enactment of this Act.

2 (d) DEFINITION OF EXIT LOAN.--Section 3 of the  
3 Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5001) is  
4 amended--

5 (1) by redesignating paragraph (9) as paragraph (10);

6 (2) by inserting after paragraph (8) the following  
7 new paragraph:

8 `` (9) the term `exit loan' means any loan which  
9 results from the conversion of any short- or medium-term  
10 loan to the Government of South Africa, or any  
11 corporation, partnership, or other organization which is  
12 owned or controlled by the Government of South Africa,  
13 into a long-term loan pursuant to the exercise, by any  
14 national of the United States, of any option to make such  
15 conversion pursuant to the terms of section 12 of the  
16 Second Interim Agreement between South Africa and  
17 creditor banks, or any similar provision in any similar  
18 agreement; and''; and

19 (3) in paragraph (8)(B), by striking ``and''.

20 SEC. 3. DIVESTITURE OF EXIT LOANS BY UNITED STATES NATIONALS  
21 REQUIRED.

22 (a) IN GENERAL.--Title III of the Comprehensive Anti-  
23 Apartheid Act of 1986 (22 U.S.C. 5036 et seq.) is amended by  
24 adding at the end thereof the following new section:

25 ``SEC. 324. DIVESTITURE OF EXIT LOANS.

1       ``No national of the United States may hold any exit loan  
2 after December 31, 1992.''.

3       (b) CLERICAL AMENDMENT.--Title III of the table of  
4 contents contained in section 2 of the Comprehensive Anti-  
5 Apartheid Act of 1986 is amended by inserting after the item  
6 relating to section 323 the following new item:

      ``Sec. 324. Divestiture of exit loans.''.

7       **SEC. 4. OPPOSITION OF UNITED STATES TO ANY INTERNATIONAL**  
8                               **MONETARY FUND FACILITY INVOLVING CREDITS TO**  
9                               **SOUTH AFRICA.**

10       Section 43(b) of the Bretton Woods Agreement Act (12  
11 U.S.C. 286aa(b)) is amended--

12               (1) in the 2d sentence, by inserting ``and vote  
13 against'' after ``actively oppose''; and

14               (2) by striking ``apartheid unless the Secretary''  
15 (where such term appears in the 2d sentence) and all that  
16 follows through the end of such section and inserting  
17 ``apartheid.''.

18       **SEC. 5. PROHIBITION ON PROVIDING CORRESPONDENT BANKING AND**  
19                               **DEPOSIT SERVICES TO SOUTH AFRICAN DEPOSITORY**  
20                               **INSTITUTIONS.**

21       (a) IN GENERAL.--Title III of the Comprehensive Anti-  
22 Apartheid Act of 1986 (22 U.S.C. 5036 et seq.) is amended by  
23 inserting after section 324 (as added by section 3 of this  
24 Act) the following new section:



1 ``SEC. 325. PROHIBITION ON PROVIDING CORRESPONDENT BANKING  
2 AND DEPOSIT SERVICES TO SOUTH AFRICAN  
3 DEPOSITORY INSTITUTIONS.

4 ``After the end of the 1-year period beginning on the  
5 date of the enactment of the South African Financial  
6 Sanctions Act of 1989, no United States depository  
7 institution (as defined in section 308(a) may--

8 ``(1) accept, receive, or hold any deposit account  
9 from any depository institution which is a South African  
10 entity; or

11 ``(2) provide correspondent banking services,  
12 including reimbursements, credit and credit-related  
13 services, noncredit and trade development services, and  
14 business referrals, to any depository institution which  
15 is a South African entity.'`.

16 (b) CLERICAL AMENDMENT.--Title III of the table of  
17 contents contained in section 2 of the Comprehensive Anti-  
18 Apartheid Act of 1986 is amended by inserting after the item  
19 relating to section 324 (as added by section 3 of this Act)  
20 the following new item:

``Sec. 325. Prohibition on providing correspondent banking  
and deposit services to South African depository  
institutions.``

21 SEC. 6. PROHIBITION ON USE BY UNITED STATES INSTRUMENTALITIES  
22 OF SERVICES OF DEPOSITORY INSTITUTIONS WHICH  
23 PROVIDE SERVICES TO SOUTH AFRICA OR SOUTH

1                   **AFRICAN ENTITIES.**

2           (a) IN GENERAL.--Title III of the Comprehensive Anti-  
3 Apartheid Act of 1986 (22 U.S.C. 5036 et seq.) is amended by  
4 inserting after section 325 (as added by section 5 of this  
5 Act) the following new section:

6    `SEC. 326. PROHIBITION ON USE BY UNITED STATES

7                   **INSTRUMENTALITIES OF SERVICES OF CERTAIN**

8                   **DEPOSITORY INSTITUTIONS.**

9           ` (a) PROHIBITION ON DESIGNATION OF CERTAIN DEPOSITORY  
10 INSTITUTIONS AS DEPOSITARIES.--Notwithstanding any other  
11 provision of law--

12                ` (1) no disqualified depository institution may be  
13 designated as a depository for or fiscal agent or  
14 custodian of any agency, department, or instrumentality  
15 of the United States after the end of the 6-month period  
16 beginning on the date of the enactment of the South  
17 African Financial Sanctions Act of 1989; and

18                ` (2) no such designation which was made before the  
19 end of such 6-month period shall be effective after the  
20 end of the period.

21           ` (b) PROHIBITION ON OTHER USES.--No agency, department,  
22 or instrumentality of the United States may obtain any  
23 service from or use any service of any disqualified  
24 depository institution after the end of the period described  
25 in subsection (a)(1).

1       ``(c) DISQUALIFIED DEPOSITORY INSTITUTION.--For purposes  
2 of this section, the term `disqualified depository  
3 institution' means any depository institution (as defined in  
4 section 308) which provides, or is an affiliate (as defined  
5 in section 2(k) of the Bank Holding Company Act of 1956) of  
6 any person which, after the date of the enactment of the  
7 South African Financial Sanctions Act of 1989, makes any loan  
8 or provides any other financial service to, or enters into  
9 any financial contract with, the Government of South Africa,  
10 any corporation, partnership, or other organization which is  
11 owned or controlled by the Government of South Africa, or any  
12 South African entity.'`.

13       (b) CLERICAL AMENDMENT.--Title III of the table of  
14 contents contained in section 2 of the Comprehensive Anti-  
15 Apartheid Act of 1986 is amended by inserting after the item  
16 relating to section 325 (as added by section 5 of this Act)  
17 the following new item:

    ``Sec. 326. Prohibition on use by United States  
                  instrumentalities of services of certain depository  
                  institutions.'`.

18       **SEC. 7. TERMINATION, SUSPENSION, OR MODIFICATION OF CERTAIN**  
19                               **PROVISIONS.**

20       (a) IN GENERAL.--Title III of the Comprehensive Anti-  
21 Apartheid Act of 1986 (22 U.S.C. 5036 et seq.) is amended by  
22 inserting after section 326 (as added by section 6 of this  
23 Act) the following new section:

1 ``SEC. 327. REPEAL, SUSPENSION, OR MODIFICATION OF CERTAIN  
2 PROVISIONS.

3 ``(a) CONDITIONS FOR THE REPEAL, SUSPENSION, OR AMENDMENT  
4 OF CERTAIN PROVISIONS.--The conditions for terminating,  
5 suspending, or amending sections 305, 308, 310, 324, 325, and  
6 326 of this title in accordance with this section are as  
7 follows:

8 ``(1) The Government of South Africa--

9 ``(A) ends the state of emergency in effect on  
10 the date of the enactment of the South African  
11 Financial Sanctions Act of 1989;

12 ``(B) ends all forms of political repression and  
13 does not establish any alternative form of state  
14 repression;

15 ``(C) withdraws all military personnel from all  
16 townships in which South African blacks reside; and

17 ``(D) does not establish any alternative form of  
18 such state of emergency or political repression.

19 ``(2) The Government of South Africa--

20 ``(A) frees all political prisoners  
21 unconditionally;

22 ``(B) permits exiles to return to South Africa;  
23 and

24 ``(C) permits such former prisoners and exiles to  
25 freely participate in political activities at local,

1 regional, and national levels without harassment or  
2 restriction of any kind.

3 `` (3) The Government of South Africa--

4 `` (A) removes or repeals any ban or other  
5 restriction on any political party or organization,  
6 including the African National Congress, the Pan-  
7 African Congress, and any affiliate of any such  
8 organization; and

9 `` (B) allows all political parties and  
10 organizations to function freely within South Africa.

11 `` (4) Upon the suspension of violence by the  
12 Government of South Africa, all political subdivisions of  
13 South Africa, and all political parties and organizations  
14 in South Africa (including any military or paramilitary  
15 organization affiliated with any political movement or  
16 organization opposed to the Government of South Africa)  
17 pursuant to a cease-fire agreement or the equivalent of  
18 such an agreement, the Government of South Africa--

19 `` (A) makes a commitment, to enter into a  
20 meaningful negotiating process with a view toward the  
21 establishment of a nonracial, democratic form of  
22 government; and

23 `` (B) demonstrates substantial progress toward  
24 achieving the establishment of a nonracial,  
25 democratic form of government.

1       ``(b) JOINT RESOLUTION TO REPEAL CERTAIN PROVISIONS.--IF  
2 the President determines that--

3           ``(1) the Government of South Africa has met the  
4 conditions described in paragraphs (1), (2), (3), and (4)  
5 of subsection (a); and

6           ``(2) a nonracial, democratic form of government has  
7 been established in South Africa,  
8 the President shall transmit a notice to the Congress of such  
9 determination together with a proposal for a joint resolution  
10 which provides for the repeal of the sections referred to in  
11 subsection (a).

12       ``(c) JOINT RESOLUTION TO REPEAL, SUSPEND, OR AMEND  
13 CERTAIN PROVISIONS.--If the President determines that the  
14 Government of South Africa--

15           ``(1) has met the conditions described in paragraphs  
16 (1), (2), and (3) of subsection (a); and

17           ``(2) is making good faith efforts to dismantle the  
18 system of apartheid and establish a nonracial, democratic  
19 form of government,

20 the President shall transmit a notice to the Congress of such  
21 determination together with a proposal for a joint resolution  
22 which provides for the repeal, suspension, or amendment of  
23 any section referred to in subsection (a) in such manner as  
24 the President considers appropriate.

25       ``(d) PROVISIONS APPLICABLE TO TREATMENT OF JOINT

## 1 RESOLUTION.--

2       ``(1) IN GENERAL.--If a joint resolution containing  
3       only the proposals of the President described in  
4       subsection (b) or (c) is introduced in the House of  
5       Representatives or in the Senate during the 45-day period  
6       beginning on the day the President notifies the Congress  
7       of the determination referred to in such subsection, the  
8       provisions of subsections (c), (d), (e), and (f) of  
9       section 208 of the Defense Authorization Amendments and  
10      Base Closure and Realignment Act shall apply (except as  
11      provided in paragraph (2)) to such joint resolution in  
12      the same manner and to the same extent as such  
13      subsections apply to a joint resolution described in  
14      subsection (a) of such section 208.

15      ``(2) DATE SUBSTITUTION.--For purposes of this  
16      paragraph, subsection (c) of section 208 of the Defense  
17      Authorization Amendments and Base Closure and Realignment  
18      Act shall be applied by substituting--

19           ``(A) `before the end of the 45-day period  
20           referred to in section 327(d)(1) of the Comprehensive  
21           Anti-Apartheid Act of 1986' for `before March 15,  
22           1989'; and

23           ``(B) `as of the end of the 45-day period  
24           referred to in section 327(d)(1) of the Comprehensive  
25           Anti-Apartheid Act of 1986' for `as of March 15,

1 1989'.

2 `` (e) DEFINITIONS.--For purposes of this section--

3 `` (1) ALTERNATIVE FORM OF STATE REPRESSION.--The term  
4 `alternative form of state repression' means the  
5 implementation of any measure under--

6 `` (A) any securities law in effect in South  
7 Africa before the promulgation, by the Government of  
8 South Africa, of the state of emergency in effect on  
9 the date of the enactment of the South African  
10 Financial Sanctions Act of 1989; or

11 `` (B) any other state of emergency that may be  
12 promulgated pursuant to the Public Safety Amendment  
13 Act of the Parliament of South Africa, as in effect  
14 on or after such date of enactment.

15 `` (2) HARASSMENT.--The term `harassment' means any  
16 provocative act or act of intimidation which--

17 `` (A) involves any security forces or  
18 intelligence agency of the Government of South Africa  
19 or any political subdivision of South Africa; and

20 `` (B) has the effect of inhibiting or undermining  
21 free political participation of any South African.

22 `` (3) MEANINGFUL NEGOTIATING PROCESS.--The term  
23 `meaningful negotiating process' means a process of  
24 dialogue or communication which is established between--

25 `` (A) the Government of South Africa (as



1           constituted on the date of the enactment of the South  
2           African Financial Sanctions Act of 1989), including  
3           local and regional government officials and party  
4           leaders; and

5           ``(B) recognized leaders of representative  
6           political organizations that oppose apartheid,  
7           with the aim and for the purpose of restructuring  
8           constitutional, administrative, and political  
9           relationships along nonracial, democratic lines at  
10          national, regional, and local levels.

11          ``(4) REPRESENTATIVE POLITICAL ORGANIZATIONS.--The  
12          term `representative political organizations' means any  
13          African political party, organization, or movement, such  
14          as the African National Congress and the Pan-African  
15          Congress, whether such party, organization, or movement  
16          is banned in South Africa as of the date of the enactment  
17          of the South African Financial Sanctions Act of 1989 or  
18          is a legal extra-parliamentary group as of such date.

19          ``(5) SUBSTANTIAL PROGRESS TOWARD ACHIEVING THE  
20          ESTABLISHMENT OF A NONRACIAL, DEMOCRATIC FORM OF  
21          GOVERNMENT.--The term `substantial progress toward  
22          achieving the establishment of a nonracial, democratic  
23          form of government' includes--

24                 ``(A) the repeal of all apartheid laws, including  
25                 the Group Areas Act, the Population Registration Act,

1 the Separate Amenities Act, the Labor Relations  
2 Amendment Act, and other Acts of the Parliament of  
3 South Africa, and other confidence-building steps of  
4 the Government of South Africa to dismantle  
5 apartheid; and

6 `` (B) progress toward a negotiated constitutional  
7 settlement establishing a nonracial, democratic form  
8 of government.``.

9 (b) TECHNICAL AND CONFORMING AMENDMENT.--Subsections (a)  
10 and (b) of section 311 of the Comprehensive Anti-Apartheid  
11 Act of 1986 (22 U.S.C. 5061) are each amended by inserting  
12 ``(other than sections 305, 308, 310, 324, 325, and 326)``  
13 after ``title``.

14 (c) CLERICAL AMENDMENT.--Title III of the table of  
15 contents contained in section 2 of the Comprehensive Anti-  
16 Apartheid Act of 1986 is amended by inserting after the item  
17 relating to section 326 (as added by section 6 of this Act)  
18 the following new item:

``Sec. 327. Repeal, suspension, or modification of certain  
provisions.``.