

99TH CONGRESS
2D SESSION

H. R. 4868

To prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 1986

Mr. GRAY of Pennsylvania (for himself, Mr. FAUNTROY, Mr. WOLPE, Mr. SOLARZ, Mr. ROEMER, Mr. CONTE, Mr. GRADISON, Mr. LEACH of Iowa, Mr. WEBER, Mrs. SCHNEIDER, Mr. FOLEY, Mr. FISH, Mrs. SCHROEDER, Mr. RODINO, Mr. WHEAT, Mr. ALEXANDER, Mr. GEPHARDT, Mr. COELHO, Mr. RANGEL, Mr. MCKINNEY, Mr. TOWNS, Mr. DYMALLY, Ms. OAKAR, Mr. GOODLING, Mr. BEEMAN, Mr. WEISS, Ms. SNOWE, Mr. GARCIA, Mr. ST GERMAIN, Mr. MILLER of Washington, and Mr. BARNES) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, Ways and Means, and Public Works and Transportation

A BILL

To prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Anti-Apartheid Act of
5 1986".

1 SEC. 2. PROHIBITIONS ON LOANS TO, NEW INVESTMENT IN,
2 AND OTHER ACTIVITIES INVOLVING SOUTH
3 AFRICA.

4 (a) PROHIBITIONS.—

5 (1) ON UNITED STATES PERSONS.—No United
6 States person may, directly or through another
7 person—

8 (A) make any loan or other extension of
9 credit to, or provide funds for the purpose of
10 making a loan or other extension of credit to, the
11 Government of South Africa or any corporation,
12 partnership, or other organization which is owned
13 or controlled by the Government of South Africa,
14 as determined under regulations which the Presi-
15 dent shall issue;

16 (B) otherwise make any investment in South
17 Africa;

18 (C) contribute technology or technological in-
19 formation, training, or services of any kind to the
20 exploration for, or the research, development, or
21 production of, new, or to the expansion of exist-
22 ing, energy sources in, for, or on behalf of South
23 Africa; or

24 (D) make any deposit in—

1 (i) a foreign bank which is organized
2 under the laws of South Africa or owned or
3 controlled by South African nationals; or

4 (ii) a branch of a bank or foreign bank if
5 that branch is located in South Africa.

6 (2) ON CERTAIN FOREIGN BANKS—(A) No for-
7 eign bank which is organized under the laws of South
8 Africa or owned or controlled by South African nation-
9 als may establish or operate any branch or agency in
10 the United States.

11 (b) EXCEPTIONS.—

12 (1) The prohibition contained in subsection
13 (a)(1)(A) shall not apply to any loan or extension of
14 credit for which an agreement is entered into before
15 May 21, 1986.

16 (2) The prohibition contained in subsection
17 (a)(1)(B) shall not apply to an investment which con-
18 sists of earnings derived from a business enterprise in
19 South Africa established before May 21, 1986, and
20 which is made in that business enterprise.

21 (3) The prohibition contained in subsection
22 (a)(1)(C) shall not apply with respect to a contract en-
23 tered into before May 21, 1986.

1 SEC. 3. BAN ON IMPORTATION OF URANIUM, COAL, AND
2 STEEL.

3 Notwithstanding any other provision of law, the follow-
4 ing products of South Africa may not be imported into the
5 United States: uranium ore, uranium oxide, coal, and steel.

6 SEC. 4. CONDITIONAL DIVESTITURE FROM COMPUTER
7 INDUSTRY.

8 (a) PROHIBITIONS.—Unless the conditions set forth in
9 subsection (b) are met within 12 months after the date of the
10 enactment of this Act, then—

11 (1) effective 6 months after the end of that 12-
12 month period, no United States person may, directly or
13 indirectly, make or hold any investment in South
14 Africa in a business enterprise that sells computers,
15 computer software, or goods or technology intended to
16 service computers; and

17 (2) no computers, computer software, or goods or
18 technology intended to service computers may be ex-
19 ported, directly or indirectly, to South Africa.

20 (b) CONDITIONS.—The conditions referred to in subsec-
21 tion (a) are the following:

22 (1) The President certifies to the Congress that
23 the Government of South Africa—

24 (A) has freed Nelson Mandela and all politi-
25 cal prisoners, and has entered into good faith ne-

1 negotiations with truly representative leaders of the
2 black majority for a new political system; or

3 (B) has totally dismantled the apartheid
4 system.

5 (2) A joint resolution is enacted approving the
6 President's certification.

7 (c) DEFINITION.—For purposes of subsection (a)(2), the
8 term "computer" includes any computer that is the direct
9 product of technology of United States origin.

10 (d) PROCEDURES FOR CONSIDERATION OF JOINT
11 RESOLUTIONS.—

12 (1) REFERRAL OF JOINT RESOLUTIONS.—All
13 joint resolutions introduced in the House of Represent-
14 atives and the Senate shall be referred immediately to
15 the appropriate committees.

16 (2) COMMITTEE DISCHARGE.—If the committee
17 of either House to which a joint resolution has been
18 referred has not reported it at the end of 30 days after
19 its introduction, the committee shall be discharged from
20 further consideration of the joint resolution or of any
21 other joint resolution introduced with respect to the
22 same matter.

23 (3) CONSIDERATION OF RESOLUTIONS.—A joint
24 resolution under this subsection shall be considered in
25 the Senate in accordance with the provisions of section

1 601(b)(4) of the International Security Assistance and
2 Arms Export Control Act of 1976. For the purpose of
3 expediting the consideration and passage of joint reso-
4 lutions reported or discharged pursuant to the provi-
5 sions of this subsection, it shall be in order for the
6 Committee on Rules of the House of Representatives
7 to present for consideration a resolution of the House
8 of Representatives providing procedures for the imme-
9 diate consideration of a joint resolution under this sub-
10 section which may be similar, if applicable, to the pro-
11 cedures set forth in section 601(b)(4) of the Interna-
12 tional Security Assistance and Arms Export Control
13 Act of 1976.

14 (4) RECEIPT OF RESOLUTIONS FROM THE OTHER
15 HOUSE.—If before the passage by one House of a joint
16 resolution of that House, that House receives a joint
17 resolution with respect to the same matter from the
18 other House, then—

19 (A) the procedure in that House shall be the
20 same as if no joint resolution had been received
21 from the other House; but

22 (B) the vote on final passage shall be on the
23 joint resolution of the other House.

24 (5) COMPUTATION OF LEGISLATIVE DAYS.—In
25 the computation of the period of 30 days referred to in

1 paragraph (2), there shall be excluded the days on
2 which either House of Congress is not in session be-
3 cause of an adjournment of more than 3 days to a day
4 certain or because of an adjournment of the Congress
5 sine die.

6 (6) **JOINT RESOLUTION DEFINED.**—For purposes
7 of this subsection, the term “joint resolution” means a
8 joint resolution the matter after the resolving clause of
9 which is as follows: “That the Congress, having re-
10 ceived on _____ a certification by the Presi-
11 dent under section 4(b)(1) of the Anti-Apartheid Act of
12 1986, approves the President’s certification.”, with the
13 date of the receipt of the certification inserted in the
14 blank.

15 **SEC. 5. ASSISTANCE FOR SOUTH AFRICA.**

16 (a) **AUTHORIZED ANNUAL AMOUNT OF ASSIST-**
17 **ANCE.**—In addition to any amount used for the Human
18 Rights Fund for South Africa, up to \$25,000,000 may be
19 used each fiscal year for assistance for South Africa under
20 the Foreign Assistance Act of 1961 and section 2(b) of the
21 Migration and Refugee Assistance Act of 1962.

22 (b) **USES OF ASSISTANCE.**—Of the assistance author-
23 ized by subsection (a)—

24 (1) \$4,000,000 shall be for refugee education as-
25 sistance programs; and

1 carrier owned, directly or indirectly, by the Government of
2 South Africa or by South African nationals.

3 (b) EXCEPTIONS FOR EMERGENCIES.—The Secretary
4 of Transportation may provide for such exceptions from the
5 prohibition set forth in subsection (a) as the Secretary consid-
6 ers necessary to provide for emergencies in which the safety
7 of an aircraft or its crew or passengers are threatened.

8 (c) DEFINITIONS.—For purposes of this section, the
9 terms “aircraft” and “air carrier” have the meanings given
10 those terms in section 101 of the Federal Aviation Act of
11 1958 (49 U.S.C. App. 1301).

12 **SEC. 7. REGULATORY AUTHORITY.**

13 The President shall issue such regulations, licenses, and
14 orders as are necessary to carry out this Act. The President
15 shall issue such regulations not later than 90 days after the
16 date of the enactment of this Act.

17 **SEC. 8. ENFORCEMENT AND PENALTIES.**

18 (a) AUTHORITY OF THE PRESIDENT.—Subject to sub-
19 section (b), the President shall take the necessary steps to
20 ensure compliance with this Act and any regulations, li-
21 censes, and orders issued to carry out this Act, including es-
22 tablishing mechanisms to monitor compliance with this Act
23 and such regulations, licenses, and orders. In ensuring such
24 compliance, the President may conduct investigations, hold
25 hearings, administer oaths, examine witnesses, receive evi-

1 dence, take depositions, and require by subpoena the attend-
2 ance and testimony of witnesses and the production of all
3 books, papers, and documents relating to any matter under
4 investigation.

5 (b) ENFORCEMENT OF PROHIBITION ON FOREIGN
6 BANKS.—The Comptroller of the Currency, in the case of a
7 Federal branch or agency, and the Board of Governors of the
8 Federal Reserve System, in the case of any other branch or
9 agency, shall take the necessary steps to ensure compliance
10 with section 2(a)(2), including revoking any existing authority
11 of any foreign bank subject to the prohibition in section
12 2(a)(2) to establish or operate a branch or agency in the
13 United States.

14 (c) PENALTIES.—

15 (1) FOR PERSONS OTHER THAN INDIVIDUALS.—
16 Any person, other than an individual, that knowingly
17 violates the provisions of this Act or any regulation, li-
18 cense, or order issued to carry out this Act shall be
19 fined not more than \$500,000.

20 (2) FOR INDIVIDUALS.—Any individual who
21 knowingly violates the provisions of this Act or any
22 regulation, license, or order issued to carry out this
23 Act shall be fined not more than \$250,000, or impris-
24 oned not more than 5 years, or both.

1 (d) ADDITIONAL PENALTIES FOR CERTAIN INDIVID-
2 UALS.—

3 (1) IN GENERAL.—Whenever a person commits a
4 violation under subsection (c)—

5 (A) any officer, director, or employee of such
6 person, or any natural person in control of such
7 person who willfully ordered, authorized, acqui-
8 esced in, or carried out the act or practice consti-
9 tuting the violation, and

10 (B) any agent of such person who willfully
11 carried out such act or practice,
12 shall be fined not more than \$250,000, or imprisoned
13 not more than 5 years, or both.

14 (2) RESTRICTION ON PAYMENT OF FINES.—A
15 fine imposed under paragraph (1) on an individual for
16 an act or practice constituting a violation may not be
17 paid, directly or indirectly, by the person committing
18 the violation itself.

19 (e) SEIZURE AND FORFEITURE OF AIRCRAFT.—Any
20 aircraft used in connection with a violation of section 6 or
21 any regulation, license, or order issued to carry out that sec-
22 tion shall be subject to seizure by and forfeiture to the United
23 States. All provisions of law relating to the seizure, forfeit-
24 ure, and condemnation of articles for violations of the cus-
25 toms laws, the disposition of such articles or the proceeds

1 from the sale thereof, and the remission or mitigation of such
2 forfeitures shall apply to the seizures and forfeitures incurred,
3 or alleged to have been incurred, under this subsection, inso-
4 far as such provisions of law are applicable and not inconsis-
5 ent with the provisions of this Act; except that all powers,
6 rights, and duties conferred or imposed by the customs laws
7 upon any officer or employee of the Department of the Treas-
8 ury shall, for purposes of this subsection, be exercised or per-
9 formed by the Secretary of Transportation or by such persons
10 as the Secretary may designate.

11 **SEC. 9. NEGOTIATIONS; REPORTS TO CONGRESS.**

12 The President shall, by means of both bilateral and mul-
13 tilateral negotiations, including through the United Nations,
14 attempt to persuade the governments of other countries to
15 adopt restrictions on activities with respect to South Africa
16 consistent with the provisions of this Act. The President shall
17 submit annual reports to the Congress on the status of nego-
18 tiations under this section. Each such report shall include a
19 description of—

20 (1) the extent to which other countries have
21 adopted restrictions consistent with the provisions of
22 this Act; and

23 (2) the extent to which nationals of those coun-
24 tries have complied with any such restrictions, or have

1 taken actions to diminish the impact on South Africa of
2 the provisions of this Act.

3 **SEC. 10. REPORT TO CONGRESS WITH RESPECT TO DIVESTI-**
4 **TURE; TERMINATION OF PROVISIONS OF ACT.**

5 (a) **REPORT BY THE PRESIDENT.**—The President shall,
6 after May 31, 1988, and before June 30, 1988, report to the
7 Congress on whether the Government of South Africa has
8 met the conditions set forth in subsection (d). If the President
9 determines that the conditions have not been met, the Presi-
10 dent shall include in the report his recommendations as to
11 whether United States persons should be required to divest
12 themselves of their investments in South Africa.

13 (b) **DETERMINATION OF MET CONDITIONS.**—If the
14 President determines, at any time after the report made
15 under subsection (a), that the conditions set forth in subsec-
16 tion (d) have been met, the President may submit that
17 determination, and the basis for the determination, to the
18 Congress.

19 (c) **CONGRESSIONAL ACTION TERMINATING PROVI-**
20 **SIONS OF THE ACT.**—Upon the enactment of a joint resolu-
21 tion approving a determination of the President under subsec-
22 tion (a) or (b) that the conditions set forth in subsection (d)
23 have been met, the provisions of this Act, and all regulations,
24 licenses, and orders issued to carry out this Act, shall
25 terminate.

1 (d) STATEMENT OF CONDITIONS.—The conditions re-
2 ferred to in subsections (a) and (b) are that the Government
3 of South Africa—

4 (1) has freed Nelson Mandela and all political
5 prisoners, and has entered into good faith negotiations
6 with truly representative leaders of the black majority
7 for a new political system; or

8 (2) has totally dismantled the apartheid system.

9 SEC. 11. DEFINITIONS.

10 (a) IN GENERAL.—Subject to subsection (b), for pur-
11 poses of this Act—

12 (1) UNITED STATES PERSON.—The term “United
13 States person” means any United States resident or
14 national and any partnership, corporation, or other
15 entity organized under the laws of the United States or
16 of any of the several States, of the District of Colum-
17 bia, or of any commonwealth, territory, or possession
18 of the United States.

19 (2) INVESTMENT IN SOUTH AFRICA.—The term
20 “investment in South Africa” means—

21 (A) a commitment of funds or other assets (in
22 order to earn a financial return) to a business en-
23 terprise located in South Africa or owned or con-
24 trolled by South African nationals, including—

1 (i) a loan or other extension of credit
2 made to such a business enterprise, or secu-
3 rity given for the debts of such a business
4 enterprise;

5 (ii) the beneficial ownership or control
6 of a share or interest in such a business en-
7 terprise, or of a bond or other debt instru-
8 ment issued by such a business enterprise; or

9 (iii) capital contributions in money or
10 other assets to such a business enterprise; or

11 (B) the control of a business enterprise locat-
12 ed in South Africa or owned or controlled by
13 South African nationals, in cases in which sub-
14 paragraph (A) does not apply.

15 (3) SOUTH AFRICA.—The term “South Africa”
16 includes—

17 (A) the Republic of South Africa;

18 (B) any territory under the administration,
19 legal or illegal, of South Africa; and

20 (C) the “bantustans” or “homelands”, to
21 which South African blacks are assigned on the
22 basis of ethnic origin, including the Transkei, Bo-
23 phuthatswana, Ciskei, and Venda.

24 (4) BUSINESS ENTERPRISE.—The term “business
25 enterprise” means any organization, association,

1 branch, or venture which exists for profitmaking pur-
2 poses or to otherwise secure economic advantage, and
3 any corporation, partnership, or other organization
4 which is owned or controlled by the Government of
5 South Africa, as determined under regulations which
6 the President shall issue.

7 (5) BRANCH.—The term “branch” means the op-
8 erations or activities conducted by a person in a differ-
9 ent location in its own name rather than through a
10 separate incorporated entity.

11 (6) SOUTH AFRICAN NATIONAL.—The term
12 “South African national” means—

13 (A) a citizen of South Africa; and

14 (B) any partnership, corporation, or other
15 entity organized under the laws of South Africa.

16 (7) CONTROL BY SOUTH AFRICAN NATIONALS.—
17 South African nationals shall be presumed to control a
18 business enterprise or foreign bank if—

19 (A) South African nationals beneficially own
20 or control (whether directly or indirectly) more
21 than 50 percent of the outstanding voting securi-
22 ties of the business enterprise or bank;

23 (B) South African nationals beneficially own
24 or control (whether directly or indirectly) 25 per-
25 cent or more of the voting securities of the busi-

1 ness enterprise or bank, if no other person owns
2 or controls (whether directly or indirectly) an
3 equal or larger percentage;

4 (C) the business enterprise or bank is operat-
5 ed by South African nationals pursuant to the
6 provisions of an exclusive management contract;

7 (D) a majority of the members of the board
8 of directors of the business enterprise or bank are
9 also members of the comparable governing body
10 of a South African national;

11 (E) South African nationals have the author-
12 ity to appoint a majority of the members of the
13 board of directors of the business enterprise or
14 bank; or

15 (F) South African nationals have the author-
16 ity to appoint the chief operating officer of the
17 business enterprise or bank.

18 (8) CONTROL BY UNITED STATES PERSONS.—A
19 United States person shall be presumed to control a
20 business enterprise in South Africa if—

21 (A) the business enterprise is operated by the
22 United States person pursuant to the provisions of
23 an exclusive management contract;

24 (B) a majority of the members of the board
25 of directors of the business enterprise are also

1 members of the comparable governing body of the
2 United States person;

3 (C) the United States person has the author-
4 ity to appoint a majority of the members of the
5 board of directors of the business enterprise; or

6 (D) the United States person has the author-
7 ity to appoint the chief operating officer of the
8 business enterprise.

9 (9) LOAN.—The term “loan” includes an exten-
10 sion of credit as defined in section 201(h) of the Credit
11 Control Act (12 U.S.C. 1901(h)).

12 (10) BANK.—The term “bank” means—

13 (A) any depository institution as defined in
14 section 19(b)(1)(A) of the Federal Reserve Act (12
15 U.S.C. 461(b)(1)(A));

16 (B) any corporation organized under section
17 25(a) of the Federal Reserve Act (12 U.S.C. 611
18 et seq.);

19 (C) any corporation having an agreement or
20 undertaking with the Federal Reserve Board
21 under section 25 of the Federal Reserve Act (12
22 U.S.C. 601 et seq.); and

23 (D) any bank holding company as defined in
24 section 2(a) of the Bank Holding Company Act of
25 1956 (12 U.S.C. 1843(a)).

1 (11) **POLITICAL PRISONER.**—The term “political
2 prisoner” means any person in South Africa who is in-
3 carcerated or persecuted on account of race, religion,
4 nationality, membership in a particular social group, or
5 political opinion, but the term “political prisoner” does
6 not include any person who ordered, incited, assisted,
7 or otherwise participated in the persecution of any
8 person on account of race, religion, nationality, mem-
9 bership in a particular social group, or political opinion.

10 (b) **ADDITIONAL DEFINITIONS.**—For purposes of—

11 (1) section 2(a)(1)(C)—

12 (A) the term “energy sources” includes both
13 mineral and nonmineral fuel resources, including
14 solar, geothermal, fossil, nuclear, electrical, and
15 synthetic fuel energy resources;

16 (B) the term “development” includes those
17 activities conducted to make energy sources avail-
18 able or usable, including drilling and the construc-
19 tion or other preparation of facilities or other
20 means for the removal or conversion to usable
21 form of any energy source;

22 (C) the term “production” includes those ac-
23 tivities conducted for the removal or conversion to
24 usable form of any energy source, including refin-

1 ing, milling, any other processing, generation,
2 transmission, and storage; and

3 (D) the term "services" includes construc-
4 tion, engineering, design, management, and main-
5 tenance services;

6 (2) sections 2(a)(1)(D), 2(a)(2), and 8(b), the term
7 "foreign bank" has the meaning given that term in
8 section 1(b) of the International Banking Act of 1978
9 (12 U.S.C. 1301(b)); and

10 (3) sections 2(a)(2) and 8(b), the terms "agency",
11 "branch", "Federal agency", and "Federal branch"
12 have the meanings given those terms in section 1(b) of
13 the International Banking Act of 1978.

14 **SEC. 12. APPLICABILITY TO EVASIONS OF ACT.**

15 This Act and the regulations issued to carry out this Act
16 shall apply to any person who undertakes or causes to be
17 undertaken any transaction or activity with the intent to
18 evade this Act or such regulations.

19 **SEC. 13. CONSTRUCTION OF ACT.**

20 Nothing in this Act shall be construed as constituting
21 any recognition by the United States of the homelands re-
22 ferred to in section 11(a)(3)(C).

○