



Sen. Jacqueline Y. Collins

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1 AMENDMENT TO HOUSE BILL 2708

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2708, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. "AN ACT concerning State government, which may  
6 be cited as the Act to End Atrocities and Terrorism in the  
7 Sudan", approved June 27, 2005, Public Act 94-79, is amended by  
8 adding Sections 1 and 95 as follows:

9 (P.A. 94-79, Sec. 1 new)

10 Sec. 1. Findings. The Government of the United States has  
11 determined that the Republic of Sudan is a nation that sponsors  
12 terrorism and genocide.

13 The General Assembly finds that investments in enterprises  
14 that engage in commercial activities in the Republic of Sudan  
15 are inherently risky.

16 The General Assembly further finds and affirms that the  
17 people of the State, acting through their representatives, do  
18 not want to be associated with enterprises that engage in  
19 commercial activities in the Republic of Sudan.

20 (P.A. 94-79, Sec. 95 new)

21 Sec. 95. Severability. The provisions of this Act are  
22 severable under Section 1.31 of the Statute on Statutes.

1 Section 10. The Deposit of State Moneys Act is amended by  
2 changing Section 22.6 as follows:

3 (15 ILCS 520/22.6)

4 (For force and effect of certain provisions, see Section 90  
5 of P.A. 94-79)

6 Sec. 22.6. Prohibited deposits.

7 (a) Notwithstanding any other provision of law, the State  
8 Treasurer shall not deposit any funds into or otherwise  
9 contract with any financial institution unless an expressly  
10 authorized officer of that financial institution annually  
11 certifies, in the manner and form established by the Treasurer,  
12 that the financial institution has implemented policies and  
13 practices that require loan recipients ~~applicants~~ to certify  
14 that they are not forbidden entities.

15 (b) For the purposes of this Section:

16 "Company" is any entity capable of affecting commerce,  
17 including but not limited to (i) a government, government  
18 agency, natural person, legal person, sole proprietorship,  
19 partnership, firm, corporation, subsidiary, affiliate,  
20 franchisor, franchisee, joint venture, trade association,  
21 financial institution, utility, public franchise, provider of  
22 financial services, trust, or enterprise; and (ii) any  
23 association thereof.

24 "Forbidden entity" means any of the following:

25 (1) The government of the Republic of the Sudan and any  
26 of its agencies, including but not limited to political  
27 units and subdivisions;

28 (2) Any company that is wholly or partially managed or  
29 controlled by the government of the Republic of the Sudan  
30 and any of its agencies, including but not limited to  
31 political units and subdivisions;

32 (3) Any company (i) that is established or organized  
33 under the laws of the Republic of the Sudan; or (ii) whose

1 principal place of business is in the Republic of the  
2 Sudan;

3 (4) Any company (i) identified by the Office of Foreign  
4 Assets Control in the United States Department of the  
5 Treasury as sponsoring terrorist activities; or (ii)  
6 fined, penalized, or sanctioned by the Office of Foreign  
7 Assets Control in the United States Department of the  
8 Treasury for any violation of any United States rules and  
9 restrictions relating to the Republic of the Sudan that  
10 occurred at any time following the effective date of this  
11 Act; and

12 (5) Any company who has failed to certify under oath  
13 that it does not own or control any property or asset  
14 located in, have employees or facilities located in,  
15 provide goods or services to, obtain goods or services  
16 from, have distribution agreements with, issue credits or  
17 loans to, purchase bonds or commercial paper issued by, or  
18 invest in (i) the Republic of the Sudan; or (ii) any  
19 company domiciled in the Republic of the Sudan.

20 Notwithstanding the foregoing, the term "forbidden entity"  
21 shall exclude companies that transact business in Sudan under  
22 the law, license, or permit of the United States, including a  
23 license from the United States Department of the Treasury, and  
24 companies, except agencies of the Republic of the Sudan, who  
25 are certified as Non-Government Organizations by the United  
26 Nations, or who engage solely in (i) the provision of goods and  
27 services intended to relieve human suffering or to promote  
28 welfare, health, religious and spiritual activities, and  
29 education for humanitarian purposes or otherwise; or (ii)  
30 journalistic activities.

31 (c) In addition to any other penalties and remedies  
32 available under the law of Illinois and the United States, any  
33 transaction between a financial institution and a company that  
34 violates the provisions of this Act shall be void or voidable,

1 at the joint discretion of the Treasurer and the financial  
2 institution.

3 (d) This Section does not apply to (a) linked deposits made  
4 by the Treasurer into financial institutions in return for that  
5 institution's commitment to provide, through loans or other  
6 financial support, agreed benefits in projects undertaken in  
7 the community; and (b) the purchase of depository, custodial,  
8 processing, and advisory services that are necessary to fulfill  
9 the Treasurer's obligations and responsibilities.

10 (e) If any provision of this Section or its application to  
11 any person or circumstance is held invalid, the invalidity of  
12 that provision or application does not affect other provisions  
13 or applications of this Section that can be given effect  
14 without the invalid provision or application.

15 (Source: P.A. 94-79, eff. 1-27-06; for force and effect of  
16 certain provisions, see Section 90 of P.A. 94-79.)

17 Section 15. The Illinois Pension Code is amended by  
18 changing Section 1-110.5 as follows:

19 (40 ILCS 5/1-110.5)

20 (For force and effect of certain provisions, see Section 90  
21 of P.A. 94-79)

22 Sec. 1-110.5. Certain prohibited transactions.

23 (a) A ~~fiduciary of a~~ retirement system or pension fund  
24 established under this Code shall not transfer or disburse  
25 funds to, deposit into, acquire any bonds or commercial paper  
26 from, or otherwise loan to or invest in any entity unless, as  
27 provided in this Section, a certifying company ~~the company~~  
28 ~~charged with managing the assets of the retirement system or~~  
29 ~~pension fund, at no additional cost to the fiduciary,~~ certifies  
30 twice a year to the retirement system or pension fund  
31 ~~fiduciary,~~ in the time, manner, and form established by the  
32 Treasurer, that, with respect to investments in a publicly

1 traded company, the certifying company has relied on  
2 information provided by an independent researching firm that  
3 specializes in global security risk and that:

4 (1) except for automatic dividend reinvestment, none  
5 of the retirement system or pension fund's assets for which  
6 the certifying company provides services or advice have  
7 been invested in a forbidden entity any time after January  
8 27, 2006 (the effective date of Public Act 94-79) ~~the fund~~  
9 ~~managing company has not loaned to, invested in, or~~  
10 ~~otherwise transferred any of the retirement system or~~  
11 ~~pension fund's assets to a forbidden entity any time after~~  
12 ~~the effective date of this Act;~~

13 (2) at least 60% of the retirement system or pension  
14 fund's assets for which the certifying company provides  
15 services or advice are not invested in forbidden entities  
16 at any time after January 27, 2007 (~~more than~~ twelve months  
17 after the effective date of Public Act 94-79) ~~this Act~~; and

18 (3) at least 100% of the retirement system or pension  
19 fund's assets for which the certifying company provides  
20 services or advice are not invested in forbidden entities  
21 at any time after July 27, 2007 (~~more than~~ eighteen months  
22 after the effective date of Public Act 94-79) ~~this Act~~.

23 (b) For purposes of this Section:

24 "Certifying company" means a company that (1) directly  
25 provides asset management services or advice to a retirement  
26 system or pension fund; (2) as directly authorized or requested  
27 by a retirement system or pension fund (A) identifies  
28 particular investment options for consideration or approval;  
29 (B) chooses particular investment options; or (C) allocates  
30 particular amounts to be invested; or (3) manages mutual funds  
31 or a similar mutual compilation of investment in publicly  
32 traded companies and is willing to fulfill the certification  
33 requirements established in subsection (a) of this Section. In  
34 the event that no company, except officers of a retirement

1 system or pension fund, meets the criteria set forth this  
2 paragraph, "certifying company" shall mean the retirement  
3 system or pension fund officer who, as designated by the board,  
4 executes the investment decisions made by the board, or, in the  
5 alternative, the company that the board authorizes to complete  
6 the certification as the agent of said officer.

7 "Company" is any entity capable of affecting commerce,  
8 including but not limited to (i) a government, government  
9 agency, natural person, legal person, sole proprietorship,  
10 partnership, firm, corporation, subsidiary, affiliate,  
11 franchisor, franchisee, joint venture, trade association,  
12 financial institution, utility, public franchise, provider of  
13 financial services, trust, or enterprise; and (ii) any  
14 association thereof.

15 "Forbidden entity" means any of the following:

16 (1) The government of the Republic of the Sudan and any  
17 of its agencies, including but not limited to political  
18 units and subdivisions;

19 (2) Any company that is wholly or partially managed or  
20 controlled by the government of the Republic of the Sudan  
21 and any of its agencies, including but not limited to  
22 political units and subdivisions;

23 (3) Any company (i) that is established or organized  
24 under the laws of the Republic of the Sudan; (ii) whose  
25 principal place of business is in the Republic of the  
26 Sudan;

27 (4) Any company (i) identified by the Office of Foreign  
28 Assets Control in the United States Department of the  
29 Treasury as sponsoring terrorist activities; or (ii)  
30 fined, penalized, or sanctioned by the Office of Foreign  
31 Assets Control in the United States Department of the  
32 Treasury for any violation of any United States rules and  
33 restrictions relating to the Republic of the Sudan that  
34 occurred at any time following the effective date of this

1 Act; and

2 (5) (i) Any publicly traded company ~~who has been~~  
3 identified by an independent researching firm that  
4 specializes in global security risk and that has been  
5 retained by a certifying company as provided in subsection  
6 (a) of this Section as being a company that owns or  
7 controls property or assets located in, has employees or  
8 facilities located in, provides goods or services to,  
9 obtain goods or services from, has distribution agreements  
10 with, issue credits or loans to, purchase bonds or  
11 commercial paper issued by, or invest in (A) ~~(i)~~ the  
12 Republic of the Sudan; or (B) ~~(ii)~~ any company domiciled in  
13 the Republic of the Sudan; and (ii) any mutual fund or  
14 similar mutual compilation of investment in publicly  
15 traded companies that, according to the most recent report  
16 published or filed by the mutual company at least 2 months  
17 before the certification date, contains a company  
18 identified by said independent researching firm as being a  
19 company defined in item (i) of this paragraph (5); and

20 (6) Any private fund that, at no additional cost to the  
21 retirement system or pension fund:

22 (i) fails to submit to the certifying company an  
23 affidavit sworn under oath in which an expressly  
24 authorized officer of the private fund avers that the  
25 private fund (A) does not own or control any property  
26 or asset located in the Republic of the Sudan and (B)  
27 did not transact commercial business in the Republic of  
28 the Sudan; or

29 (ii) fails to (A) submit to the certifying company  
30 a certificate in which an expressly authorized officer  
31 of the private fund certifies that the private fund,  
32 based on reasonable due diligence, has determined  
33 that, since January 27, 2006 (the effective date of  
34 Public Act 94-79), other than direct or indirect

1 investments in companies certified as Non-Government  
2 Organizations by the United Nations, the private fund  
3 has no direct or indirect investment in any company (I)  
4 organized under the laws of the Republic of Sudan; (II)  
5 whose principal place of business is in the Republic of  
6 Sudan; (III) that conducts operations in the Republic  
7 of Sudan; or (IV) that owns any interest in real estate  
8 in the Republic of Sudan; and (B) agree that the  
9 retirement system or pension fund, directly or through  
10 an agent, may from time to time review the private  
11 fund's certification process based on the periodic  
12 reports received by the private fund. Any non  
13 ~~publicly traded company that fails to submit to the~~  
14 ~~fund managing company an affidavit sworn under oath in~~  
15 ~~which an expressly authorized officer of the company~~  
16 ~~averts that the company (i) does not own or control any~~  
17 ~~property or asset located in the Republic of the Sudan;~~  
18 ~~and (ii) did not transact commercial business in the~~  
19 ~~Republic of the Sudan.~~

20 Notwithstanding the foregoing, the term "forbidden entity"  
21 shall exclude companies that transact business in Sudan under  
22 the law, license, or permit of the United States, including a  
23 license from the United States Department of the Treasury, and  
24 companies, except agencies of the Republic of the Sudan, who  
25 are certified as Non-Government Organizations by the United  
26 Nations, or who engage solely in (i) the provision of goods and  
27 services intended to relieve human suffering or to promote  
28 welfare, health, religious and spiritual activities, and  
29 education or humanitarian purposes ~~or otherwise~~; or (ii)  
30 journalistic activities.

31 "Private fund" means any private equity fund, private  
32 equity fund of funds, venture capital fund, hedge fund, hedge  
33 fund of funds, real estate fund, or other investment vehicle  
34 that is not publicly traded.



1 (c) In addition to any other penalties and remedies  
2 available under the law of Illinois and the United States, any  
3 transaction that violates the provisions of this Act shall be  
4 void or voidable, at the sole discretion of the fiduciary.

5 (d) If a private fund fails to provide the certification  
6 required in subparagraph (ii) of item (6) of the definition of  
7 "forbidden entity" in subsection (b) of this Section:

8 (1) the certifying company shall have 90 days to divest  
9 or attempt in good faith to divest its interest in the  
10 companies for which such certification has not been made,  
11 unless such divestment would be inconsistent with its  
12 fiduciary obligations to the other investors in the private  
13 fund; if the asset managing company charged with providing  
14 the certification required by subsection (a) of this  
15 Section fails to divest such interest within 90 days, it  
16 shall not unreasonably withhold its consent to a transfer  
17 of the retirement system or pension fund's interest in said  
18 private fund; and

19 (2) retirement systems and pension funds established  
20 under this Code shall be prohibited from directly or  
21 indirectly investing in that private fund for a period of 3  
22 years after the date upon which it failed to provide the  
23 required certification.

24 (e) The certification required under subsection (a) shall  
25 be provided at no additional cost to the retirement system or  
26 pension fund, unless the certifying company is the retirement  
27 system or pension fund officer who executes the investment  
28 decisions made by the board or the company that the board  
29 authorizes to complete the certification as the agent of the  
30 officer.

31 (f) The changes made to this Section by this amendatory Act  
32 of the 94th General Assembly shall have full force and effect  
33 until such time as the government of the United States, through  
34 Executive Order or otherwise, rescinds Executive Order 13067,

1 or until such time as these provisions are repealed or modified  
2 by the General Assembly. The changes made to this Section by  
3 this amendatory Act of the 94th General Assembly shall be  
4 construed under the laws of the State of Illinois and, where  
5 applicable, the laws of the United States.

6 (g) If any provision of this Section or its application to  
7 any person or circumstance is held invalid, the invalidity of  
8 that provision or application does not affect other provisions  
9 or applications of this Section that can be given effect  
10 without the invalid provision or application.

11 (Source: P.A. 94-79, eff. 1-27-06; for force and effect of  
12 certain provisions, see Section 90 of P.A. 94-79.)

13 Section 20. The State Lawsuit Immunity Act is amended by  
14 adding Section 1.7 as follows:

15 (745 ILCS 5/1.7 new)

16 Sec. 1.7. Limited capacity of bodies politic and corporate  
17 and other public bodies to bring actions against governmental  
18 officers, officials, and employees.

19 (a) Except as provided in the Illinois Public Labor  
20 Relations Act, the Court of Claims act, and State Officials and  
21 Employees Ethics Act, and Section 1.5 of this Act, no  
22 governmental entity, no quasi-governmental entity, no body  
23 politic and corporate, and no other body created by or under  
24 the authority of statute or executive order, and no officer,  
25 official, employee, or agent of such entity or body, had or has  
26 the authority to make any officer, official, or employee of the  
27 State in his or her official capacity as such an officer,  
28 official, or employee, a defendant or party in any court. This  
29 prohibition does not apply, however, if both the officer,  
30 official, or employee and the Illinois Attorney General consent  
31 in writing that the officer, official, or employee may be made  
32 a defendant or party in the Illinois courts. Such consent shall

1 be filed of record with the court, and shall be necessary for  
2 jurisdiction. Any consent, as a matter of law, shall be consent  
3 only to an action in the Illinois courts and shall not be  
4 consent to any action commenced in or transferred or removed to  
5 a federal court or a court of any other state jurisdiction.

6 (b) This Section applies to all pending actions and all  
7 actions commenced on or after the effective date of this  
8 amendatory Act of the 94th General Assembly.

9 (c) The regulation of the authority of bodies politic and  
10 corporate, and their officers, officials, employees, and  
11 agents, to make a governmental officer, official, or employee,  
12 in his or her capacity as such an officer, official, or  
13 employees, a defendant or party in any court is an exclusive  
14 power and function of the State. This Section is a denial and  
15 limitation of home rule powers and functions under subsection  
16 (h) of Section 6 of Article VII of the Illinois Constitution.

17 (d) If any provision of this Section or its application to  
18 any person or circumstance is held invalid, the invalidity of  
19 that provision or application does not affect other provisions  
20 or applications of this Section that can be given effect  
21 without the invalid provision or application.

22 Section 97. Severability. The provisions of this Act are  
23 severable under Section 1.31 of the Statute on Statutes.

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law."