

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2194

S.P. 783

In Senate, April 13, 1999

An Act Regarding Doing Business with Burma.

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CATHCART of Penobscot.

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA c. 226 is enacted to read:

CHAPTER 226

BUSINESS WITH BURMA

§1499-A. Legislative findings

1. Findings. The Legislature finds that:

A. The military junta ruling Burma has violated international standards of public morality, which include violations of human rights agreements that have been cited by the United States Department of State, the United States Department of Labor, the United Nations and the International Labor Organization. These institutions have found that the military junta of Burma has:

(1) Used its military power to engage in the systematic imposition of forced labor, forced relocation, torture, rape and persecution of ethnic minorities;

(2) Ignored the results of the 1990 elections in which many prodemocracy candidates were selected for seats in the government;

(3) Imprisoned, killed or exiled many of the candidates who were elected;

(4) Failed to convene a constitutional convention as promised in 1990; and

(5) Imposed martial law barring freedom of the press, gatherings of more than 5 people and labor and trade union organizing;

B. The rightfully elected leaders of Burma, exiled Prime Minister Sein Win and Aung San Suu Kyi, the leader of the National League for Democracy, have called upon the world community to impose economic and arms sanctions against the military regime;

C. That the system of oppression imposed by the military junta is illegal and contrary to international law, including the Abolition of Forced Labor Convention No. 105, the International Covenant on Civil and Political Rights and the Convention Against Torture, among other agreements;

2 D. Under Burmese law all foreign corporations hiring more
4 than 5 employees must hire only from a junta-supplied list,
6 and the International Labor Organization and the United
States Department of Labor have reported that forced labor
is used on foreign-backed projects; and

8 E. Sound investment policy requires consideration of the
10 political risk associated with investment of the State's
12 pension funds in companies that conduct business in
countries with oppressive, nondemocratic governments.

14 **§1499-B. Statement of purpose**

16 1. Purpose. It is the purpose of this chapter to:

18 A. Exercise the right of the State secured under the First
20 Amendment of the United States Constitution to express its
support for human rights and democracy in Burma;

22 B. Exercise the right that is secured under the First
24 Amendment and the Tenth Amendment of the United States
Constitution to apply standards of public morality in making
decisions regarding the expenditure and investment of public
funds;

26 C. Enact legislation that is consistent with and authorized
28 by foreign policy of the United States Congress with respect
30 to Burma specifically and with respect to implementation of
international human rights agreements that have been
ratified as treaties by the United States Senate; and

32 D. Reduce the risk associated with the investment of public
34 pension funds of the State in companies that conduct
business in countries with oppressive, nondemocratic regimes.

36 **§1499-C. Definitions**

38 As used in this chapter, unless the context otherwise
40 indicates, the following terms have the following meanings.

42 1. Commissioner. "Commissioner" means the Commissioner of
44 Administrative and Financial Services.

46 2. Company. "Company" means an individual or a
48 partnership, firm, association, corporation or other entity, or a
subsidiary of any of them.

50 3. Doing business with Burma. "Doing business with Burma"
means:

2 A. Having a principal place of business, place of
4 incorporation or corporate headquarters in Burma; having any
6 operation, lease, franchise, majority-owned subsidiary or
 distribution agreement in Burma; or being the majority-owned
 subsidiary, licensee or franchise of such person;

8 B. Providing financial services to the governing regime in
10 Burma, including providing direct loans, underwriting
12 government securities, providing any consulting advice or
 assistance, providing brokerage services or acting as a
 trustee or escrow agent;

14 C. Promoting the importation or sale of gems, timber, oil,
16 gas or other products, the commerce of which is largely
 controlled by the government of Burma; or

18 D. Providing any goods or services to the government of
20 Burma.

A company with operations in Burma for the sole purpose of
22 reporting news or providing goods or services for the provision
24 of international telecommunications is not considered to be doing
 business with Burma for the purpose of this subsection.

26 4. Distribution agreement. "Distribution agreement" means
28 an agreement to guarantee a contract for the supply of goods or
 services.

30 5. Franchise. "Franchise" means authorization by a company
 to sell its products.

32 6. Government of Burma. "Government of Burma" means any
34 public or quasi-public entity operating within Burma, including,
36 but not limited to, municipal, provincial, national or other
38 governmental and military bodies, including all departments and
 agencies of such bodies, public utilities, public facilities or
 any national corporation in which Burma has a financial interest
 or operational responsibility.

40 7. License. "License" means the permission granted by a
42 company to another company, or to the government of Burma, to
44 exercise a certain privilege or to carry on a particular business.

46 8. Majority-owned subsidiary. "Majority-owned subsidiary"
 means a company that is at least 51% owned by another company.

48 9. Purchasing agency. "Purchasing agency" means any
50 department, agency or instrumentality of the State.

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§1499-D. Burma list, disclosure and notice

1. List of companies. The commissioner shall establish and maintain a list containing the names of all companies doing business with Burma. In establishing the list, the commissioner shall consult United Nations reports, resources of the Investor Responsibility Research Center and the Associates to Develop Democratic Burma, Inc. and other reliable sources. The list must be updated at least once every 3 months.

2. Affidavit. Any company that is included on the list under this section may submit an affidavit that requests the commissioner to remove its name from the list. An officer of the company shall sign this statement and affirm under penalty of perjury that the company is not doing business with Burma.

3. Provision of list. The commissioner shall provide the list to the Maine State Retirement System, the Senate, the House of Representatives, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives and the Maine Congressional Delegation. The commissioner shall also provide notice of the list by publishing it at least every 3 months in newspapers of general circulation or by such other means as the commissioner considers appropriate.

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§1499-E. Selective investment

1. Prohibition. Except as provided in subsection 2, the Treasurer of State and the Board of Trustees of the Maine State Retirement System may not invest any public funds in the stocks, bonds, securities or other obligations of:

A. Any company identified under section 1499-D as doing business with Burma;

B. The government of Burma; or

C. Any company organized under the laws of Burma.

2. Exception. Notwithstanding subsection 1, if sound investment policy requires, the Board of Trustees of the Maine State Retirement System may vote to spread the sale of investments that are prohibited in subsection 1 over no more than 3 years so that no less than 1/3 the value of the investments is sold in any one year. So long as any funds remain invested in any company identified under section 1499-D, the Board of Trustees of the Maine State Retirement System shall file with the clerk of the Legislature a report listing all such investments

2 held by the fund and their book market value on the preceding
3 December 1st.

4 3. Divestment. When divesting any stocks, bonds,
5 securities or other obligations of companies identified under
6 section 1499-D, the Governor shall provide notice to that company
7 in a letter reciting the legislative findings contained in
8 section 1499-A and including the following: "Maine wishes to
9 express its grave concern regarding your company's economic ties
10 to Burma and its oppressive system. The serious moral issues and
11 the potential economic risk associated with investing in Burma
12 requires the State of Maine to seek alternative investment
13 opportunities."

14 4. Voting on shareholder resolutions. The Treasurer of
15 State and the Board of Trustees of the Maine State Retirement
16 System may and should vote in favor of a shareholder resolution
17 filed by shareholders of a company identified under section
18 1499-D when that resolution:

19 A. Requests that the company report on its activities in
20 Burma;

21 B. Requests that the company report on the full costs of
22 doing business with Burma; or

23 C. Addresses human rights conditions in Burma.

24 5. Filing shareholder resolutions. The Treasurer of State
25 and the Board of Trustees of the Maine State Retirement System
26 may cofile a shareholder resolution filed by shareholders of a
27 company listed under section 1499-D when that resolution:

28 A. Requests that the company report on its activities in
29 Burma;

30 B. Requests that the company report on the full costs of
31 doing business with Burma; or

32 C. Addresses human rights conditions in Burma.

33 6. Actions authorized. This section authorizes only those
34 actions that comply with the relevant rules of the federal
35 Securities and Exchange Commission.

36 **§1499-F. Selective purchasing**

37 1. Prohibition. Except as otherwise provided in this
38 section, a purchasing agency may not purchase goods or services
39 from any company identified under section 1499-D or that is
40 from any company identified under section 1499-D or that is

2 determined through affidavit or through other reliable methods to
3 meet the criteria for being identified under section 1499-D.

4 2. Certification. A purchasing agency may purchase goods
5 or services from a company identified under section 1499-D only
6 after certifying in writing to the commissioner that:

8 A. The purchase is necessary in order that the purchasing
9 agency may perform its mission and failure to proceed with
10 the purchase would cause irreparable harm to the purchasing
11 agency's ability to perform its responsibilities; and

12 B. Compliance with subsection 1 would eliminate the only
13 bid or offer or would result in inadequate competition.

16 3. Notice; statement. In any solicitation, a purchasing
17 agency shall provide notice of the requirements of this section.
18 Prior to reviewing responses to bid documents for any purchases,
19 or, if there are none, prior to making a contract, the purchasing
20 agency shall obtain from the company seeking a contract a
21 statement, under penalty of perjury, from an authorized
22 representative of the company that states the nature and extent
23 to which the company is engaging in activities that meet the
24 definition of "doing business with Burma."

26 4. Ten percent preference. In any purchase that includes
27 bidders or offerors who are identified as doing business with
28 Burma, the purchasing agency may award the contract to a company
29 that is identified under section 1499-D only if there is no
30 responsive and responsible bid or offer that is no more than 10%
31 greater than the lowest bid or offer submitted for goods or a
32 service by a company that is not identified under section 1499-D.

34 5. News organizations. A company with operations in Burma
35 for the sole purpose of reporting news or of providing goods or
36 services for the provision of international telecommunications is
37 not subject to this section.

38 6. Medical supplies. Notwithstanding subsection 1, a
39 purchasing agency may purchase medical supplies otherwise
40 restricted under this section intended to preserve or prolong
41 life or to cure, prevent or ameliorate diseases, including
42 hospital, nutritional, diagnostic, pharmaceutical and
43 nonprescription products specifically manufactured to satisfy
44 identified health care needs, or for which there is no medical
45 substitute. The determination of whether no medical substitute
46 exists must be made by the purchasing agency requiring the
47 supply, under general standards of good medical and professional
48 practice. To the extent that a company doing business with Burma

2 is providing only medical supplies to persons in Burma, then the
3 supply of goods or equipment to the State by that company is also
4 exempt from the preference requirements of this section. This
5 exemption from the preference requirements does not apply in any
6 case in which the nature of any company's business dealings in
7 Burma include both medical and nonmedical supplies.

8 8. Violation. Any contract entered into in violation of
9 this section is void.

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SUMMARY

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12 This bill requires publication of a list of companies doing
13 business with Burma, precludes investment of public funds in such
14 companies and limits the award of public contracts to such
15 companies.
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