



SENATE OF THE FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS-----

Thursday, 17th February, 2005

1. The Senate met at 10.30 a.m. The Senate President read Prayers.
2. **Votes and Proceedings:**
The Senate President announced that he had examined the Votes and Proceedings of Wednesday, 16th February, 2005 and approved same.

By unanimous consent, the Votes and Proceedings were adopted.
3. **Announcement:**
The Senate President read a letter from Senator Rufus I. Spiff as follows:



VICE CHAIRMAN,
Committee on Information, Drugs, Narcotics & Financial Crimes
-SENATE"
FEDERAL REPUBLIC OF NIGERIA

16 February, 2005

*The Senate President, National
Assembly Complex Abuja*

Your Excellency,

TRANSITION TO ETERNAL GLORY

With gratitude to God Almighty for a fulfilling Christian life, I wish to formally inform you of the peaceful passing away of my mother, Madam Jane Rufus Spiff to eternal glory on Thursday, 27th January, 2005 in her residence in Chicago, USA amongst friends and relations.

Her body was flown into the Country on Tuesday, 15th February and final burial arrangements will be communicated to you as soon as the family decides.

Madam Jane Spiff was 73 years old.

Yours faithfully,

(Signed) Senator Inatim Rufus Spiff

4. Presentation of Bills:

- (i) Budgetary Procedure Bill 2005 (SB. 35) — *Read the First Time.*
- (ii) Civil Process Bill (SB. 145) — *Read the First Time.*

5. Committee on Drugs, Narcotics and Financial Crimes:

Advance Fee Fraud Bill 2005 (SB. 70):

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report of the Committee on Drugs, Narcotics and Financial Crimes on the Advance Fee Fraud (Amendment) Bill 2005 (*Senator Lawal Shuaibu*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

A BILL FOR AN ACT TO CREATE OFFENCES PERTAINING TO ADVANCE FEE FRAUD AND OTHER FRAUD RELATED OFFENCES; TO PROVIDE FOR THE ARREST AND TRIAL OF PERSONS WHO COMMIT SUCH OFFENCES AND FOR MATTERS CONNECTED THERETO.

PART I

Clause 11: Restitution:

(1) In addition to any other penalty prescribed under this Act, the High Court shall order a person convicted of an offence under this Act to make restitution to the victim of the false pretence or fraud by directing that person —

- (a) where the property involved is money, to pay to the victim an amount equivalent to the loss sustained by the victim; in any other case —
 - (i) to return the property to the victim or to a person designated by him; or
 - (ii) to pay an amount equal to the value of the property, where the return of the property is impossible or impracticable.

(2) An order of restitution may be enforced by the victim or by the prosecutor on behalf of the victim in the same manner as judgment in a civil action.

Committees Recommendation:

Insert a new Part 1A as follows:

"PART I A - ELECTRONIC TELECOMMUNICATIONS OFFENCES, ETC.

Clause HA: Duty to Obtain Subscribers Names and Address:

(1) Any person or entity providing an electronic communication service or remote computing service either by e-mail or any other form shall be required to obtain from the customer or subscriber:

- (a) full names;
- (b) residential address, in the case of an individual; and
- (c) Corporate address, in the case of bodies corporate.

- (2) Any customer or subscriber who-
 - (a) fails to furnish the information specified in subsection (1) of this section; or
 - (b) With the intent to deceive, supplies false information conceals or disguises the information required under this section, commits an offence and shall be liable on conviction to imprisonment for a term of not less than one year or a fine of N 100,000.
- (3) Any person or entity providing the electronic communication service or remote computing service either by e-mail or any other form, who fails to comply with the provisions of subsection (1) of this section, commits an offence and shall be liable on conviction to a fine of N 100,000 and forfeiture of the equipment or facility used in providing the service.

Question that Clause 11A as amended stand part of the Bill put and agreed to.

Clause 11B: Duties of Telecommunications and Internet Service Providers and Internet Cafes 2004 No. 19:

- (1) Notwithstanding the provisions- of the Nigerian Communications Commission Act 2003 or the provisions of any other law or enactment, any person or entity who in the normal course of business provides telecommunications or internet services or is the owner or person in the management of any premises being used as a telephone or internet cafe or by whatever name called shall —

Amendment Proposed:

Leave out the words "Notwithstanding the provisions of the Nigerian Communications Commission Act 2003 or the provisions of any other law or enactment" (Senator Tokunbo Afikuyomi).

Question that the amendment be made put and agreed to.

- (a) be registered with the Economic and Financial Crimes Commission (hi this Act referred to as "the Commission");

Amendment Proposed:

Leave out the provisions in sub-clause 11B (1)(a) (Senator Daniel Saror).

Question that the amendment be made put and agreed to.

- (b) maintain a register of all fixed line customers which shall be liable to inspection by any authorised officer of the Commission; and
- (c) submit returns to the Commission on demand on the use of its facilities.
- (2) Any person whose normal course of business involves the provision of non-fixed line or Global System of Mobile Communications {GSM} or is in the management of any such services, shall submit on demand to the Commission such data and information as are necessary or expedient for giving full effect to the performance of the functions of the Commission under this Act.
- (3) Any person specified under subsections (1) and (2) of this section shall exercise the duty of care to ensure that his services and facilities are not utilised for lawful activities.
- (4) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees or agents or other specified persons for providing information or facilities to the Commission.

- (5) Any person or entity who by virtue of subsections (1) and (2) of this section knows or ought to know that he should —
 (a) be registered with the Commission; or

Amendment Proposed:

Leave out the provisions in sub-clause 11B (5)(a) (Senator Udoma Udo Udoma).

Question that the amendment be made put and agreed to.

- (b) furnish the Commission on demand, with returns on the use of his service and facilities; or
 (c) facilitate access to data and information by authorised employees or staff of the Commission,

and fails so to do with intent to conceal or disguise the nature of his activities or the use of his services and facilities, the proof of which shall lie on him, commits an offence and shall be liable on conviction to imprisonment for a term of not less than 5 years without an option of fine and in the case of a continuing offence, to a fine of N50.000 for each day the offence persists.

Amendment Proposed:

Immediately after the word "facilities" in line 2, *leave out* the words "the proof of which shall lie on him" (Senator Udoma Udo Udoma).

Question that the amendment be made put and agreed to.

Another Amendment Proposed:

Leave out the figure "5" in line 4 and insert the figure "1" (Senator Tokunbo Afikuyomi).

Question that the amendment be made put and agreed to.

- (6) Any person or entity convicted more than once under this Act shall have his operational licence revoked or cancelled.

Amendment Proposed:

Immediately after the word "cancelled" insert the words "by the Regulatory Authority" (Senator Udoma Udo Udoma).

Question that the amendment be made put and agreed to. Question that

Clause 11B as amended stand part of the Bill put and agreed to.

Clause 11C: Failure Exercise Due Diligence:

Section 7 of the principal Act is amended by inserting immediately after the existing subsection (2), the following new subsection (2A) —

"(2A) When, as a result of negligence, or serious oversight or a flaw in the internal control procedures, a financial institution or a bureau de change, fails to exercise due diligence as specified in the Banks and other Financial Institutions Act 1991, as amended or the Money Laundering (Prohibition) Act 2003 in relation to the conduct of financial transactions which in fact involve the proceeds of unlawful activity:

Amendment Proposed:

Immediately after the word "negligence" in line 1, *leave out* the words "or serious oversight or a flaw in the internal control procedures, a financial institution or a bureau de change, fails to exercise due diligence as specified in the Banks and other Financial Institutions Act 1991, as amended or the Money Laundering (Prohibition) Act 2003" (Senator Udoma Udo Udoma).

Question that the amendment be made put and agreed to.

1991 No. 25.

- (i) The financial institution or bureau de change commits an offence and shall be liable on conviction to refund the total amount involved in the financial transaction and sanction by the appropriate financial regulating authority;
- (ii) a Director, Secretary, employee or other staff of the financial institution or bureau de change who facilitates or contributes or otherwise is involved in the failure to exercise due diligence as stipulated under this section, commits an offence and is liable on conviction to imprisonment for II term not less than 5 years and may also be liable to be banned indefinitely or for a period of 5 years from exercising the profession which provided the opportunity for the offence to be committed.

Question that Clause 11C as amended stand part of the Bill put and agreed to.

PART II

JURISDICTION, ETC.

Clause 12: Jurisdiction to try offences, etc:

- (1) The High Court shall have exclusive jurisdiction to try offences under this Act.
- (2) The High Court shall have power to impose the penalties provided under this Act.

Committees Recommendation:

Leave out the provision in Clause 12 and insert a new Clause 12 as follows:

"12 Jurisdiction to Try Offences, etc:

- (1) The High Court of the State concerned or the Federal High Court shall have jurisdiction to try offences and impose penalties under this Act (*Senator Lawal Shuaibu*).

Amendment Proposed:

Leave out the words "High Court of the State concerned or" in line 1 (Senator Oserheimen Osunbor).

Question that the amendment be made put and agreed to.

- (2) Immediately after the words "High Court of the State concerned" wherever they appear in the Act add the words "or Federal High Court" (*Senator Lawal Shuaibu*).

Amendment Proposed:

Leave out the provision in sub-clause 12(2) (Senator Oserheimen Osunbor).

Question that the amendment be made put and agreed to.

Question that Clause 12 as amended stand part of the Bill put and agreed to.

Short title:

This Act may be cited as the Advance Fee Fraud and Other Fraud Related Offences (Amendment) Act 2005.

Committees Recommendation:

That the provision in Clause 18 be retained (Senator Lawal Shuaibu) — Agreed to.

Question that Clause 18 stand part of the Bill put and agreed to.

EXPLANATORY MEMORANDUM

The Bill seeks to further amend the Advance Fee Fraud and other Fraud Related Offences Act 1995 as amended to provide, among other things, for—

- (a) the registration of the Internet Service Providers, etc. with the Commission for the purpose of effective monitoring and supervision; and

Amendment Proposed:

Leave out all the words in item "(a)" under Explanatory Memorandum and insert the words "for the purpose of effective monitoring and supervision of Internet Service Providers by the Commission; and" (Senator Sule Yari Gandi).

Question that the amendment be made put and agreed to.

- (b) to prescribe penalties for non-compliance.

Question that "Explanatory Memorandum" as amended stand part of the Bill put and agreed to.

Chairman to report Bill.

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of Whole considered the Report of the Committee on Drugs, Narcotics and Financial Crimes on Advance Fee Fraud and Other Fraud Related Offences (Amendment) Bill 2005 and approved as follows:

Clause 1 and 2	—	As Recommended
Clause 11A	—	As Recommended
Clause 11B(1)	—	With Amendment
Clause HB(1)(a)	-	Deleted
Clause HB(b) and (c)	-	As Recommended
Clause 11B(2),(3) and (4)	—	As Recommended
Clause 11B(5) and (6)	—	With Amendments
Clause 11C(2A)	—	With Amendment
Clause 11C(2A)(1)	—	With Amendment
Clause 3 12(1)		With Amendment
Clause 4	—	With Amendment
Explanatory Memorandum-		With Amendment
Enactment Clause	—	As Recommended
Title	—	As Recommended

Question, that the Senate do approve the Report of the Committee of the Whole, resolved in the Affirmative.

Motion made and Question Proposed: That the Bill for an Act to Amend the Advance Fee Fraud and other Fraud Related Offences Act 1995 be read the Third Time (Senate Majority Leader).

Question put and agreed to.

Bill accordingly read Third Time and passed.

*Report on **the** National Institute for Hospitality and Tourism (SB.02);*

Motion made and Question Proposed: That the Senate do receive and consider the Report of the Committee on Culture and Tourism on National Institute for Hospitality and Tourism and approve the recommendations (Senator Effiong D. Bob).

Question put and agreed to.

Report presented and Laid.

Consideration of Report deferred till Wednesday, 23rd February, 2005.

7. Public Servant (Promotion and Entitlement) Bill 2005:

Bill, by leave of Senate, withdrawn.

8. Freedom of Information Bill 2005 (HB. 6): *(Debate Adjourned Wednesday, 16th February, 2005).*

Debate:

Further Debate adjourned till next legislative day.

9. Adjournment:

Motion made and Question Proposed: That the Senate do adjourn till Tuesday, 22nd February, 2005 at 10.00 a.m. (Senate Majority Leader).

Adjourned accordingly at 1.15p.m.

Adolf Wabara
President of the Senate