

House Substitute for SENATE BILL No. 172

AN ACT concerning real property; relating to certain lands and military installations; creating the Kansas land and military installation protection act; prohibiting foreign principals from countries of concern from holding any interest in certain real property in this state; authorizing the fusion center oversight board to adopt rules and regulations to add or remove federally designated foreign terrorist organizations from the definition of country of concern; prohibiting foreign principals from countries of concern from receiving any economic development program benefits; amending K.S.A. 2023 Supp. 60-4104 and 60-4106 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Sections 1 through 8, and amendments thereto, shall be known and may be cited as the Kansas land and military installation protection act.

(b) It is declared that the purpose of this act is to protect certain real property and military installations located in this state by prohibiting countries of concern and any agent thereof from acquiring any interest in such real property.

New Sec. 2. As used in sections 1 through 9, and amendments thereto:

(a) "Attorney general" means the attorney general of the state of Kansas.

(b) "Company" means any:

(1) For-profit corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, trust, association, sole proprietorship or other organization, including any:

(A) Subsidiary of such company, a majority ownership interest of which is held by such company;

(B) parent company that holds a majority ownership interest of such company; and

(C) other affiliate or business association of such company whose primary purpose is to make a profit; or

(2) nonprofit organization.

(c) (1) "Country of concern" means the following:

(A) Any foreign adversary, as such term is defined by 15 C.F.R. § 7.4, as in effect on April 1, 2024; and

(B) any organization that is designated as a foreign terrorist organization as of July 1, 2024, pursuant to 8 U.S.C. § 1189, as in effect on July 1, 2024, except as otherwise provided by rules and regulations adopted by the fusion center oversight board pursuant to section 7, and amendments thereto.

(2) "Country of concern" does not include the republic of China (Taiwan).

(d) "Covered control transaction" means the same as defined in 31 C.F.R. § 800.210, as in effect on July 1, 2024.

(e) "Covered transaction" means the same as defined in 31 C.F.R. § 800.213, as in effect on July 1, 2024.

(f) "De minimis interest" means any interest in real property that is:

(1) The result of ownership of registered securities in a publicly traded company; and

(2) such ownership is:

(A) Less than 10% of any class of registered securities or less than 10% of the aggregate registered securities of multiple classes of securities; or

(B) a noncontrolling interest in an entity that is controlled by a company that is registered with the United States securities and exchange commission as an investment adviser under the investment advisers act of 1940, P.L. 117-263 and is not a foreign entity.

(g) "Domicile" means the country where:

(1) A company is organized;

(2) a company completes a substantial portion of its business; or

- (3) a majority of a company's ownership interest is held.
- (h) "Economic development incentive program" means:
 - (1) Any economic development incentive program administered wholly or in part by the secretary of commerce;
 - (2) any tax credit program, except for social and domestic tax credits, regardless of the administering state agency;
 - (3) property that has been exempted from ad valorem taxation under the provisions of section 13 of article 11 of the constitution of the state of Kansas;
 - (4) property that has been purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under any authority granted in article 17 of chapter 12 of the Kansas Statutes Annotated, and amendments thereto;
 - (5) any economic development fund, including, but not limited to, the job creation program fund established by K.S.A. 74-50,224, and amendments thereto, and the economic development initiatives fund established by K.S.A. 79-4804, and amendments thereto; and
 - (6) any other economic development incentive program that provides any form of tax credit, abatement or exemption or financial assistance provided by or authorized by a governmental entity.
- (i) "Foreign entity" means any company whose domicile is any country other than the United States.
- (j) "Foreign principal" means:
 - (1) The government or any official of the government of a country of concern;
 - (2) any political party, subdivision thereof or any member of a political party of a country of concern;
 - (3) any corporation, partnership, association, organization or other combination of persons organized under the laws of or having its principal place of business in a country of concern. "Foreign principal" includes any subsidiary owned or wholly controlled by any such entity;
 - (4) any agent of or any entity otherwise under the control of a country of concern;
 - (5) any individual who is a citizen or resident of a country of concern and is not a citizen or lawful permanent resident of the United States; or
 - (6) any individual, entity or combination thereof described in paragraphs (1) through (5) that has a controlling interest in any company formed for the purpose of holding any interest in real property.
- (k) "Fusion center oversight board" means the fusion center oversight board established in K.S.A. 2023 Supp. 48-3705, and amendments thereto.
 - (l) "Interest in real property" means any:
 - (1) Ownership interest in any parcel of real property acquired by purchase, gift, grant, devise, bequest or other transfer of such interest;
 - (2) ownership or other interest in any easement or other right of egress onto or across any parcel of real property;
 - (3) ownership or other interest in any right to any oil, gas, minerals or water located on or under any parcel of real property; and
 - (4) any interest or right to possess or use any parcel of real property acquired by the execution of a lease, lease-purchase or any other form of rental agreement.
 - (m) "Military installation" means any land, buildings or other structures owned or controlled by any division of the United States department of defense, Kansas national guard or any other federal or state agency that is critical to the safety and security of Kansas or the United States.

(n) "Non-notified transaction" means any transaction involving foreign investment in the United States that is not voluntarily submitted to the committee on foreign investment in the United States for review pursuant to 50 U.S.C. § 4565.

(o) "Real property" means any real estate located in this state except residential real property.

(p) "Residential real property" means real property that is used exclusively as a place of residence for human habitation.

(q) "Social and domestic tax credits" means the adoption credit created pursuant to K.S.A. 79-32,202a, and amendments thereto, the earned income tax credit created pursuant to K.S.A. 79-32,205, and amendments thereto, the food sales tax credit created pursuant to K.S.A. 79-32,271, and amendments thereto, the child and dependent care tax credit created pursuant to K.S.A. 79-32,111c, and amendments thereto, and the homestead property tax refund created pursuant to K.S.A. 79-4501 et seq., and amendments thereto.

(r) "State agency" means any department, authority, bureau, division, office or other governmental agency of this state.

(s) "Tax credit program" means any credit allowed against the tax imposed by the Kansas income tax act, the premium or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 3. (a) Except as provided in subsections (d) and (e), no foreign principal shall directly or indirectly own or acquire any interest in any real property located within 100 miles of the boundary of any military installation located in this state or any adjacent state, except a de minimis interest in such real property.

(b) Any foreign principal that directly or indirectly owns or acquires any interest in real property as described in subsection (a) shall file registration of such interest with the attorney general in such form and manner as prescribed by the attorney general not later than 90 days after July 1, 2024, or the date such interest is acquired, whichever is later. Such filing shall include:

- (1) The name of the individual or entity holding such interest;
- (2) the date of acquisition;
- (3) the address and legal description of the real property; and
- (4) the number of acres comprising the real property.

(c) (1) Any foreign principal that directly or indirectly owns or acquires any interest in real property as described in subsection (a) shall divest such interest in such real property.

(2) A copy of all documentation evidencing such divestiture shall be submitted to the attorney general in such manner as prescribed by the attorney general not later than 30 days after the effective date of such divestiture.

(d) A foreign principal may acquire an interest in real property by devise or bequest, through the enforcement of any security interest or through the collection of a debt. Any such acquisition shall be subject to the provisions of subsections (b) and (c).

(e) A foreign principal may own, acquire or hold an interest in real property notwithstanding the provisions of this section if:

(1) The foreign principal registers such interest in real property in accordance with the provisions of subsection (b); and

(2) (A) any action concerning a covered transaction pursuant to 50 U.S.C. § 4565, as in effect on July 1, 2024, has concluded and such foreign principal received a determination that such covered transaction does not pose an unresolved national security concern, provided such foreign principal has not undergone a change in control that would

constitute a covered control transaction since such determination was made; or

(B) the foreign principal has a national security agreement in effect on July 1, 2024, with the committee on foreign investment in the United States or the United States department of defense pursuant to 50 U.S.C. § 4565, as in effect on July 1, 2024, and continues to maintain such national security agreement.

New Sec. 4. (a) The attorney general shall investigate any suspected violation of section 3, and amendments thereto.

(b) A foreign principal who is subject to the requirements of section 3, and amendments thereto, may enter into an agreement with the attorney general to divest such foreign principal's interest in real property not more than 360 days from entering into such agreement.

(c) The attorney general may commence an action in a court of competent jurisdiction to enforce the provisions of section 3, and amendments thereto. In any such action, the attorney general may seek:

- (1) A court order directing the defendant to divest such defendant's interest in such real property;
- (2) injunctive relief;
- (3) civil forfeiture of the defendant's interest in such real property pursuant to K.S.A. 60-4101 et seq., and amendments thereto; and
- (4) reasonable attorney fees and court costs.

(d) (1) Upon a determination by a court of competent jurisdiction that the defendant has violated the requirements of section 3, and amendments thereto, the defendant shall have not more than 180 days from the date of such determination to divest such defendant's interest in such real property or to otherwise come into compliance with the provisions of section 3, and amendments thereto.

(2) If such defendant is ordered by the court to divest such defendant's interest in the real property and such defendant had acquired such interest prior to July 1, 2024, such defendant may file a claim against the state pursuant to article 9 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto, for any difference in the sales price of the real property caused by such court-ordered divestiture.

New Sec. 5. No foreign principal shall receive any direct benefit related to any economic development program regardless of the form of such benefit.

New Sec. 6. (a) The attorney general shall establish policies and procedures for the reporting of information concerning non-notified transactions to the attorney general. Any person may report information concerning such transactions in such form and manner as prescribed by the attorney general.

(b) The attorney general shall prepare and submit a report on any identified non-notified transactions to the committee on foreign investment in the United States. A copy of such report shall be submitted to the governor, the adjutant general and the standing committees on federal and state affairs of the senate and the house of representatives.

(c) On or before February 1 of each year, the attorney general shall prepare and submit a report to the governor, the adjutant general, the standing committee on commerce, labor and economic development of the house of representatives, the standing committee on commerce of the senate, the standing committee on federal and state affairs of the house of representatives and the standing committee on federal and state affairs of the senate. Such report shall detail the implementation of the Kansas land and military installation protection act and include the attorney general's recommended amendments to the definition of country of concern, if any.

(d) The attorney general shall retain copies of any documents that are made a part of or otherwise submitted to the committee on foreign investment in the United States along with the report required under subsection (b).

(e) On or before January 1, 2025, the attorney general shall adopt rules and regulations to implement the provisions of this section.

New Sec. 7. (a) Upon any occasion when an organization is designated as a foreign terrorist organization or has such designation revoked pursuant to 8 U.S.C. § 1189, the fusion center oversight board may adopt rules and regulations to reflect such designation or revocation of such designation, but only after giving due consideration to the risks to state and national security and the economic costs and benefits of such action.

(b) In no case shall the fusion center oversight board adopt any rule or regulation pursuant to this section that would designate an organization as a foreign terrorist organization that is not designated as a foreign terrorist organization pursuant to 8 U.S.C. § 1189.

New Sec. 8. On or before March 1 of each year, Kansas state university shall use available data and resources to prepare and submit a report to the legislature and the attorney general detailing the status and trends of all foreign land holdings of real property within the state of Kansas.

New Sec. 9. Sections 1 through 8, and amendments thereto, are declared severable. Any provision of sections 1 through 8, and amendments thereto, or the application thereof to any person or circumstance that is held to be unconstitutional or invalid shall not affect the validity of any remaining provisions of sections 1 through 8, and amendments thereto, or the applicability of such provisions to any person or circumstance.

Sec. 10. K.S.A. 2023 Supp. 60-4104 is hereby amended to read as follows: 60-4104. Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

(a) All offenses which statutorily and specifically authorize forfeiture;

(b) violations involving controlled substances, as described in K.S.A. 21-5701 through 21-5717, and amendments thereto;

(c) theft, as defined in K.S.A. 21-5801, and amendments thereto;

(d) criminal discharge of a firearm, as defined in K.S.A. 21-6308(a)(1) and (a)(2), and amendments thereto;

(e) gambling, as defined in K.S.A. 21-6404, and amendments thereto, and commercial gambling, as defined in K.S.A. 21-6406(a)(1), and amendments thereto;

(f) counterfeiting, as defined in K.S.A. 21-5825, and amendments thereto;

(g) unlawful possession or use of a scanning device or reencoder, as described in K.S.A. 21-6108, and amendments thereto;

(h) medicaid fraud, as described in K.S.A. 21-5925 through 21-5934, and amendments thereto;

(i) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;

(j) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

(k) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or

conviction related to the act or omission;

(l) terrorism, as defined in K.S.A. 21-5421, and amendments thereto, illegal use of weapons of mass destruction, as defined in K.S.A. 21-5422, and amendments thereto, and furtherance of terrorism or illegal use of weapons of mass destruction, as described in K.S.A. 21-5423, and amendments thereto;

(m) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, as defined in K.S.A. 21-6414(a) and (b), and amendments thereto;

(n) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, as defined in K.S.A. 21-6417(a) and (b), and amendments thereto;

(o) selling sexual relations, as defined in K.S.A. 21-6419, and amendments thereto, promoting the sale of sexual relations, as defined in K.S.A. 21-6420, and amendments thereto, and buying sexual relations, as defined in K.S.A. 21-6421, and amendments thereto;

(p) human trafficking and aggravated human trafficking, as defined in K.S.A. 21-5426, and amendments thereto;

(q) violations of the banking code, as described in K.S.A. 9-2012, and amendments thereto;

(r) mistreatment of a dependent adult, as defined in K.S.A. 21-5417, and amendments thereto;

(s) giving a worthless check, as defined in K.S.A. 21-5821, and amendments thereto;

(t) forgery, as defined in K.S.A. 21-5823, and amendments thereto;

(u) making false information, as defined in K.S.A. 21-5824, and amendments thereto;

(v) criminal use of a financial card, as defined in K.S.A. 21-5828, and amendments thereto;

(w) unlawful acts concerning computers, as described in K.S.A. 21-5839, and amendments thereto;

(x) identity theft and identity fraud, as defined in K.S.A. 21-6107(a) and (b), and amendments thereto;

(y) electronic solicitation, as defined in K.S.A. 21-5509, and amendments thereto;

(z) felony violations of fleeing or attempting to elude a police officer, as described in K.S.A. 8-1568, and amendments thereto;

(aa) commercial sexual exploitation of a child, as defined in K.S.A. 21-6422, and amendments thereto;

(bb) violations of the Kansas racketeer influenced and corrupt organization act, as described in K.S.A. 21-6329, and amendments thereto;

(cc) indecent solicitation of a child and aggravated indecent solicitation of a child, as defined in K.S.A. 21-5508, and amendments thereto;

(dd) sexual exploitation of a child, as defined in K.S.A. 21-5510, and amendments thereto; ~~and~~

(ee) violation of a consumer protection order as defined in K.S.A. 21-6423, and amendments thereto; *and*

(ff) *violation of the Kansas land and military installation protection act as described in section 3, and amendments thereto.*

Sec. 11. K.S.A. 2023 Supp. 60-4106 is hereby amended to read as follows: 60-4106. (a) All property, including all interests in property, described in K.S.A. 60-4105, and amendments thereto, is subject to forfeiture subject to all mortgages, deeds of trust, financing statements or security agreements properly of record prior to the forfeiture held by an interest holder except that property specifically exempted hereunder:

(1) No real property or conveyance, or an interest therein, may be

forfeited under this act unless the offense or conduct giving rise to forfeiture constitutes a felony, *except as provided in the Kansas land and military installation protection act, section 1, et seq., and amendments thereto.*

(2) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this act unless the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act.

(3) No property is subject to forfeiture under this act if the owner or interest holder acquired the property before or during the conduct giving rise to the property's forfeiture, and such owner or interest holder:

(A) Did not know and could not have reasonably known of the act or omission or that it was likely to occur; or

(B) acted reasonably to prevent the conduct giving rise to forfeiture.

(4) No property is subject to forfeiture if the owner or interest holder acquired the property after the conduct giving rise to the property's forfeiture, including acquisition of proceeds of conduct giving rise to forfeiture, and such owner or interest holder:

(A) Acquired the property in good faith, for value; and

(B) was not knowingly taking part in an illegal transaction.

(5) (A) An interest in property acquired in good faith by an attorney as reasonable payment or to secure payment for legal services in a criminal matter relating to violations of this act or for the reimbursement of reasonable expenses related to the legal services is exempt from forfeiture unless before the interest was acquired the attorney knew of a judicial determination of probable cause that the property is subject to forfeiture.

(B) The state bears the burden of proving that an exemption claimed under this section is not applicable. Evidence made available by the compelled disclosure of confidential communications between an attorney and a client other than nonprivileged information relating to attorney fees, is not admissible to satisfy the state's burden of proof.

(b) Notwithstanding subsection (a), property is not exempt from forfeiture, even though the owner or interest holder lacked knowledge or reason to know that the conduct giving rise to property's forfeiture had occurred or was likely to occur, if the:

(1) Person whose conduct gave rise to the property's forfeiture had authority to convey the property of the person claiming the exemption to a good faith purchaser for value at the time of the conduct;

(2) owner or interest holder is criminally responsible for the conduct giving rise to the property's forfeiture, whether or not there is a prosecution or conviction; or

(3) owner or interest holder acquired the property with notice of the property's actual or constructive seizure for forfeiture under this act, or with reason to believe that the property was subject to forfeiture under this act.

(c) Prior to final judgment in a judicial forfeiture proceeding, a court shall limit the scope of a proposed forfeiture to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner's conduct including, but not limited to, a consideration of any of the following factors:

(1) The gain received or expected to be received by an owner from conduct that allows forfeiture;

(2) the value of the property subject to forfeiture;

(3) the extent to which the property actually facilitated the criminal conduct;

(4) the nature and extent of the owner's knowledge of the role of

others in the conduct that allows forfeiture of the property and efforts of the owner to prevent the conduct; and

(5) the totality of the circumstances regarding the investigation.

Sec. 12. K.S.A. 2023 Supp. 60-4104 and 60-4106 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.