

## **Kansas Land and Military Installation Protection Act; House Sub. for SB 172**

**House Sub. for SB 172** creates the Kansas Land and Military Installation Protection Act (Act). The bill prohibits foreign principals from countries of concern from acquiring any interest in non-residential real property located within 100 miles of the boundary of any military installation located in Kansas or an adjacent state.

The Act does not apply to a *de minimis* interest in such real property, transactions approved by the Committee on Foreign Investment in the United States (CFIUS), and foreign principals who hold a national security agreement with CFIUS or the U.S. Department of Defense.

### ***Real Property Interest Limitation***

The bill generally prohibits any foreign principal from owning or acquiring any interest in real property located within 100 miles of any military installation's boundary in Kansas or any adjacent state. Foreign principals may be permitted to acquire such interests by devise or bequest, through the enforcement of a security interest, or through the collection of a debt.

Any foreign principal that owns or acquires any interest in real property within the 100-mile radius must file registration of their ownership with the Attorney General no later than 90 days after July 1, 2024, or the date the interest is acquired; whichever is later. The bill requires registration of such property to include the:

- Name of the individual or entity holding such interest;
- Date of acquisition;
- Address and legal description of the real property; and
- Number of acres comprising the real property.

### ***Limitation Exceptions***

The bill provides a *de minimis* interest exception in such real property. The Act also does not apply to a foreign principal who registers such interest in real property in accordance with the Act, and:

- CFIUS has concluded any action related to the transaction, and the foreign principal has received a determination that the transaction does not pose an unresolved national security concern and there has been no change in control since that determination has taken place; or
- The foreign principal has a national security agreement with either CFIUS or the U.S. Department of Defense.

## ***Divestiture of Property***

The bill requires all registered property to be divested. A copy of all documentation showing the required divestiture must be submitted to the Attorney General no later than 30 days after the divestiture's effective date.

The bill permits a foreign principal who is subject to the Act to enter into an agreement with the Attorney General to divest such foreign principal's interest in real property no later than 360 days from entering into such agreement.

Property obtained by a foreign principal through devise or bequest, security interest enforcement, or the collection of debt is still subject to the property limitation, reporting, and divestiture provisions of this Act.

## ***Reporting and Enforcement***

The bill requires the Attorney General to establish policies and procedures for reporting non-notified transactions. The bill defines "non-notified transactions" as any transaction involving foreign investment that is not voluntarily submitted to CFIUS for review.

The Attorney General is required to investigate any suspected violation of the Act. The Attorney General is allowed to commence an action in a court of competent jurisdiction to enforce the Act. In any such action, the Attorney General may seek:

- A court order directing the defendant's divestiture of the real property;
- Injunctive relief;
- Civil forfeiture of the defendant's interest in the real property; and
- Reasonable attorney fees and court costs.

Upon a determination by a court of competent jurisdiction that the defendant violated the requirements of the Act, the bill requires the defendant to divest their interest in the real property or to otherwise come into compliance with the provisions of the Act within no more than 180 days from the date of such determination. If the defendant is ordered by the court to divest their interest in the real property and the defendant acquired such interest prior to July 1, 2024, the defendant may file a claim against the State for any reduction in sales price of the real property caused by such court-ordered divestiture. [Note: The procedure for filing claims against the state is found in continuing law and is overseen by the Joint Committee on Special Claims Against the State.]

The bill also updates civil asset forfeiture law to allow such property to be eligible for forfeiture.

## ***Reporting on Foreign Investment***

The bill requires the Attorney General to prepare and submit a report on any identified, non-notified transactions to CFIUS. The report must also be submitted to the:

- Governor;
- Adjutant General;
- Standing Committee on Federal and State Affairs of the Senate; and
- Standing Committee on Federal and State Affairs of the House of Representatives.

On or before February 1 of each year, the Attorney General must submit a report detailing the implementation of the Act and including the Attorney General's recommended amendments to the definition of any country of concern to the:

- Governor;
- Adjutant General;
- Standing Committee on Commerce, Labor and Economic Development of the House of Representatives;
- Standing Committee on Commerce of the Senate;
- Standing Committee on Federal and State Affairs of the Senate; and
- Standing Committee on Federal and State Affairs of the House of Representatives.

The Attorney General is required to retain copies of any documents that are submitted to CFIUS along with the required report.

On or before January 1, 2025, the Attorney General must adopt rules and regulations to implement the reporting requirements listed above.

### ***Report on Foreign Land Holdings of Real Property***

On or before March 1 of each year, the bill requires Kansas State University to 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.

### ***Other Provisions***

The bill authorizes the Fusion Center Oversight Board to adopt rules and regulations to reflect new designations or removals of foreign terrorist organizations on the federal terrorist organization list. The bill does not allow the Board to adopt any rules or regulations that will

designate an organization as a foreign terrorist organization if that organization is not on the federal terrorist organization list.

[*Note:* The Fusion Center Oversight Board was established in KSA 2023 Supp. 48-3705. The Board consists of the Attorney General, Adjutant General, and an appointee of the Attorney General with expertise in critical infrastructure protection.]

The bill prevents any foreign principal from receiving any direct benefit related to any economic development program.

The bill also declares any provision severable from the other provisions in the event one or more provisions are held to be unconstitutional or invalid.

## ***Definitions***

### ***Military Installation***

The bill defines “military installation” as any land, buildings, or other structures owned or controlled by any division of the U.S. 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.

### ***Country of Concern***

The bill defines “country of concern” to mean:

- Any foreign adversary, as such term is defined by 15 CFR § 7.4, as in effect on April 1, 2024; and
- Any organization listed on the federal foreign terrorist list, except as otherwise provided by the Fusion Center Oversight Board’s rules and regulations.

The bill excludes the Republic of China (Taiwan) from the definition.

[*Note:* Excluding terrorist organizations, the list of countries of concern will not be subject to modification by the Fusion Center Oversight Board.]

### ***Foreign Principal***

The bill defines a “foreign principal” as:

- The government or any official of the government of a country of concern;
- Any political party or any subdivision thereof, or any member of a political party of a country of concern;

- 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. The definition also includes any subsidiary owned or wholly controlled by any such entity;
- Any agent of or any entity otherwise under the control of a country of concern;
- Any individual who is a citizen of or resident in a country of concern and who is not a citizen or lawful permanent resident of the United States; or
- Any individual, entity, or combination described above that has a controlling interest in any company formed for the purpose of holding any interest in real property.

*Real Property; Interest in Real Property*

The bill defines “real property” as any real estate located within Kansas except real property used exclusively as a place of residence for human habitation.

The bill defines an “interest in real property” as:

- Ownership interest in any parcel of real property acquired by purchase, gift, grant, devise, bequest, or other transfer of such interest;
- Ownership or other interest in any easement or other right of egress onto or across any parcel of real property;
- Ownership or other interest in any right to any oil, gas, minerals, or water located on or under any parcel of real property; and
- 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.

*De minimis Interest in Real Property*

A “*de minimis* interest” means any interest in real property that is:

- The result of ownership of registered securities in a publicly traded company; and
- Such ownership is:
  - Less than 10 percent of any class of registered securities or less than 10 percent of the aggregate registered securities of multiple classes of securities; or

- A non-controlling interest in an entity that is controlled by a company that is registered with the U.S. Securities and Exchange Commission as an investment adviser under the federal Investment Advisers Act of 1940 and is not a foreign entity.

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