

House Substitute for SENATE BILL No. 172

By Committee on Commerce, Labor and Economic Development

3-14

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

11

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

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

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

20 New Sec. 2. As used in sections 1 through 8, and amendments
21 thereto:

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

24 (b) "Company" means any:

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

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

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

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

34 (2) nonprofit organization.

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

36 (A) People's republic of China, including the Hong Kong special

- 1 administrative region;
- 2 (B) republic of Cuba;
- 3 (C) islamic republic of Iran;
- 4 (D) democratic people's republic of Korea;
- 5 (E) Russian federation; and
- 6 (F) Bolivarian republic of Venezuela; and
- 7 (G) any organization that is designated as a foreign terrorist
- 8 organization as of July 1, 2024, pursuant to 8 U.S.C. § 1189, as in effect on
- 9 July 1, 2024, except as otherwise provided by rules and regulations
- 10 adopted by the fusion center oversight board pursuant to section 7, and
- 11 amendments thereto.
- 12 (2) "Country of concern" does not include the republic of China
- 13 (Taiwan).
- 14 (d) "Covered control transaction" means the same as defined in 31
- 15 C.F.R. § 800.210, as in effect on July 1, 2024.
- 16 (e) "Covered transaction" means the same as defined in 31 C.F.R. §
- 17 800.213, as in effect on July 1, 2024.
- 18 (f) "De minimis interest" means any interest in real property that is:
- 19 (1) The result of ownership of registered securities in a publicly
- 20 traded company; and
- 21 (2) such ownership is:
- 22 (A) Less than 10% of any class of registered securities or less than
- 23 10% of the aggregate registered securities of multiple classes of securities;
- 24 or
- 25 (B) a noncontrolling interest in an entity that is controlled by a
- 26 company that is registered with the United States securities and exchange
- 27 commission as an investment adviser under the investment advisers act of
- 28 1940, P.L. 117-263 and is not a foreign entity.
- 29 (g) "Domicile" means the country where:
- 30 (1) A company is organized;
- 31 (2) a company completes a substantial portion of its business; or
- 32 (3) a majority of a company's ownership interest is held.
- 33 (h) "Economic development incentive program" means:
- 34 (1) Any economic development incentive program administered
- 35 wholly or in part by the secretary of commerce;
- 36 (2) any tax credit program, except for social and domestic tax credits,
- 37 regardless of the administering state agency;
- 38 (3) property that has been exempted from ad valorem taxation under
- 39 the provisions of section 13 of article 11 of the constitution of the state of
- 40 Kansas;
- 41 (4) property that has been purchased, acquired, constructed,
- 42 reconstructed, improved, equipped, furnished, repaired, enlarged or
- 43 remodeled with all or any part of the proceeds of revenue bonds issued

1 under any authority granted in article 17 of chapter 12 of the Kansas
2 Statutes Annotated, and amendments thereto;

3 (5) any economic development fund, including, but not limited to, the
4 job creation program fund established by K.S.A. 74-50,224, and
5 amendments thereto, and the economic development initiatives fund
6 established by K.S.A. 79-4804, and amendments thereto; and

7 (6) any other economic development incentive program that provides
8 any form of tax credit, abatement or exemption or financial assistance
9 provided by or authorized by a governmental entity.

10 (i) "Foreign entity" means any company whose domicile is any
11 country other than the United States.

12 (j) "Foreign principal" means:

13 (1) The government or any official of the government of a country of
14 concern;

15 (2) any political party, subdivision thereof or any member of a
16 political party of a country of concern;

17 (3) any corporation, partnership, association, organization or other
18 combination of persons organized under the laws of or having its principal
19 place of business in a country of concern. "Foreign principal" includes any
20 subsidiary owned or wholly controlled by any such entity;

21 (4) any agent of or any entity otherwise under the control of a country
22 of concern;

23 (5) any individual who is a citizen or resident of a country of concern
24 and is not a citizen or lawful permanent resident of the United States; or

25 (6) any individual, entity or combination thereof described in
26 paragraphs (1) through (5) that has a controlling interest in any company
27 formed for the purpose of holding any interest in real property.

28 (k) "Fusion center oversight board" means the fusion center oversight
29 board established in K.S.A. 2023 Supp. 48-3705, and amendments thereto.

30 (l) "Interest in real property" means any:

31 (1) Ownership interest in any parcel of real property acquired by
32 purchase, gift, grant, devise, bequest or other transfer of such interest;

33 (2) ownership or other interest in any easement or other right of
34 egress onto or across any parcel of real property;

35 (3) ownership or other interest in any right to any oil, gas, minerals or
36 water located on or under any parcel of real property; and

37 (4) any interest or right to possess or use any parcel of real property
38 acquired by the execution of a lease, lease-purchase or any other form of
39 rental agreement.

40 (m) "Military installation" means any land, buildings or other
41 structures owned or controlled by any division of the United States
42 department of defense, Kansas national guard or any other federal or state
43 agency that is critical to the safety and security of Kansas or the United

1 States.

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

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

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

10 (q) "Social and domestic tax credits" means the adoption credit
11 created pursuant to K.S.A. 79-32,202a, and amendments thereto, the
12 earned income tax credit created pursuant to K.S.A. 79-32,205, and
13 amendments thereto, the food sales tax credit created pursuant to K.S.A.
14 79-32,271, and amendments thereto, the child and dependent care tax
15 credit created pursuant to K.S.A. 79-32,111c, and amendments thereto, and
16 the homestead property tax refund created pursuant to K.S.A. 79-4501 et
17 seq., and amendments thereto.

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

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

26 New Sec. 3. (a) Except as provided in subsections (d) and (e), no
27 foreign principal shall directly or indirectly own or acquire any interest in
28 any real property located within 150 miles of the boundary of any military
29 installation located in this state or any adjacent state, except a de minimis
30 interest in such real property.

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

37 (1) The name of the individual or entity holding such interest;

38 (2) the date of acquisition;

39 (3) the address and legal description of the real property; and

40 (4) the number of acres comprising the real property.

41 (c) (1) Any foreign principal that directly or indirectly owns or
42 acquires any interest in real property as described in subsection (a) and
43 that has registered such interest in accordance with subsection (b) shall

1 divest such interest in such real property not later than 360 days after
2 either July 1, 2024, or the date such interest is acquired, whichever is later.

3 (2) Any foreign principal that directly or indirectly owns or acquires
4 any interest in real property as described in subsection (a) that fails to
5 register such interest as required under subsection (b) shall divest such
6 interest in such real property not later than 180 days after either July 1,
7 2024, or the date such interest is acquired, whichever is later.

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

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

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

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

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

26 (B) the foreign principal has a national security agreement in effect
27 on July 1, 2024, with the committee on foreign investment in the United
28 States or the United States department of defense pursuant to 50 U.S.C. §
29 4565, as in effect on July 1, 2024, and continues to maintain such national
30 security agreement.

31 New Sec. 4. (a) Any person may report a suspected violation of
32 section 3, and amendments thereto, to the attorney general in such form
33 and manner as prescribed by the attorney general. The attorney general
34 shall investigate any reports that the attorney general reasonably suspects
35 constitutes a violation of section 3, and amendments thereto.

36 (b) Upon finding that a violation of section 3, and amendments
37 thereto, has occurred, the attorney general may commence an action in a
38 court of competent jurisdiction to enforce the provisions of section 3, and
39 amendments thereto. In any such action, the attorney general may seek:

40 (1) A court order directing the defendant to divest such defendant's
41 interest in such real property;

42 (2) injunctive relief;

43 (3) civil forfeiture of the defendant's interest in such real property

1 pursuant to K.S.A. 60-4101 et seq., and amendments thereto; and

2 (4) reasonable attorney fees and court costs.

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

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

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

16 (c) On or before February 1 of each year, the attorney general shall
17 prepare and submit a report to the governor, the adjutant general, the
18 standing committee on commerce, labor and economic development of the
19 house of representatives and the standing committee on commerce of the
20 senate.

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

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

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

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

38 New Sec. 8. Sections 1 through 7, and amendments thereto, are
39 declared severable. Any provision of sections 1 through 7, and
40 amendments thereto, or the application thereof to any person or
41 circumstance that is held to be unconstitutional or invalid shall not affect
42 the validity of any remaining provisions of sections 1 through 7, and
43 amendments thereto, or the applicability of such provisions to any person

1 or circumstance.

2 Sec. 9. K.S.A. 2023 Supp. 60-4104 is hereby amended to read as
3 follows: 60-4104. Conduct and offenses giving rise to forfeiture under this
4 act, whether or not there is a prosecution or conviction related to the
5 offense, are:

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

7 (b) violations involving controlled substances, as described in K.S.A.
8 21-5701 through 21-5717, and amendments thereto;

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

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

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

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

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

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

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

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

28 (k) any solicitation or conspiracy to commit any act or omission
29 described in this section, whether or not there is a prosecution or
30 conviction related to the act or omission;

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

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

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

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

1 K.S.A. 21-6420, and amendments thereto, and buying sexual relations, as
2 defined in K.S.A. 21-6421, and amendments thereto;

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

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

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

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

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

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

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

16 (w) unlawful acts concerning computers, as described in K.S.A. 21-
17 5839, and amendments thereto;

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

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

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

24 (aa) commercial sexual exploitation of a child, as defined in K.S.A.
25 21-6422, and amendments thereto;

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

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

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

33 (ee) violation of a consumer protection order as defined in K.S.A. 21-
34 6423, and amendments thereto; *and*

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

37 Sec. 10. K.S.A. 2023 Supp. 60-4106 is hereby amended to read as
38 follows: 60-4106. (a) All property, including all interests in property,
39 described in K.S.A. 60-4105, and amendments thereto, is subject to
40 forfeiture subject to all mortgages, deeds of trust, financing statements or
41 security agreements properly of record prior to the forfeiture held by an
42 interest holder except that property specifically exempted hereunder:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (3) owner or interest holder acquired the property with notice of the
43 property's actual or constructive seizure for forfeiture under this act, or

1 with reason to believe that the property was subject to forfeiture under this
2 act.

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

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

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

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

13 (4) the nature and extent of the owner's knowledge of the role of
14 others in the conduct that allows forfeiture of the property and efforts of
15 the owner to prevent the conduct; and

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

17 Sec. 11. K.S.A. 2023 Supp. 60-4104 and 60-4106 are hereby
18 repealed.

19 Sec. 12. This act shall take effect and be in force from and after its
20 publication in the statute book.