

TO: Senate Committee on Judiciary
FROM: Kansas Land Title Association
DATE: March 15, 2023
RE: In Opposition to Senate Bill 283

Dear Senate Committee on Judiciary members:

I submit comments today on behalf of the Kansas Land Title Association (KLTA), opposing Senate Bill 283. Since 1907, the KLTA has represented the interests of the land title industry, consisting of title insurance underwriting companies, title agencies, abstract companies, and their employees. We specialize in the orderly and secure transfer of real estate in Kansas by protecting lenders and buyers from financial loss caused by defects in title.

Senate Bill 283, Section 2(a)(1), states the following:

On or after July 1, 2023, no person owned by, controlled by or subject to the jurisdiction or direction of a foreign adversary shall purchase, acquire by grant, devise or descent or otherwise obtain ownership of any interest in real property parcels of 10 or more acres located in this state.

A “person owned by, controlled by or subject to the jurisdiction or direction of a foreign adversary” is defined as including any individual or entity who acts *in any capacity* at the request or under the direction or control of a foreign adversary or of a person *directly or indirectly* supervised, directed, controlled, financed, or subsidized by a foreign adversary. “Foreign adversary” is defined as any person, which includes individuals and entities, determined to be a foreign adversary pursuant to 15 C.F.R. § 7.4. This list currently includes five foreign governments and one politician and may be amended.

Our members agree that it would be impossible to determine if a party to a transaction is a person owned by, controlled by or subject to the jurisdiction or direction of a foreign adversary. Corporations and other business entities do not provide shareholder or member information of this nature when providing proof of authority to proceed with buying, selling, or encumbering land. It would be impossible for us to confirm that no foreign adversary owns an interest in, controls, or directs an entity that is party to a real estate transaction.

Further, the application of “parcels of 10 or more acres” is unknown. It is unclear if this limitation is for all land in the state owned by the same prohibited person, if it applies to 10 contiguous acres, no matter how divided into individual parcels, or if it only applies to a parcel that as described is 10 acres or more.

Section 2(e) provides the following penalty for violation of the prohibition of section 2(a)(1):

Real property that is the subject matter of a transaction that violates this section shall be subject to forfeiture under K.S.A. 60-4101 et seq., and amendments thereto.

We are rightfully concerned with the effect that application of our forfeiture act would have on Kansas land ownership. Specifically, innocent Kansans could buy land and be subject to forfeiture even when they have no actual knowledge of a violation of the proposed prohibition by the seller. The Kansas

forfeiture act, through K.S.A. 60-4106, does include an exemption for good faith “owners” or “interest holders” who acquired their interest in the property for value and without knowledge of the proscribed conduct. However, this is a narrow exemption that is limited by the following section within the statute:

(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:

(3) owner or interest holder acquired the property . . . *with reason to believe* that the property was subject to forfeiture under this act.

This places a heightened duty on purchasers and lenders beyond simply acting without “knowledge”—the normal standard for bona fide purchasers and lien holders of real property. If this legislation does move forward, we request that the following language is added into Section 2:

(f) No person not subject to this section shall be required to determine or inquire into whether another person is or may be subject to this section.

(g) No interest in real property shall be subject to forfeiture under subsection (e) if the owner or interest holder acquired the interest:

(1) after a violation of subsection (a) by another person; and

(2) without actual knowledge of the violation.

In conclusion, due to the unknown, unintended consequences on our industry, KLTA opposes Senate Bill 283 as written and believes that the effects need to be studied further before any action. At the very least, we urge you to add the language we have suggested.

Thank you very much for your consideration today.

Ashley Garr
On behalf of the Kansas Land Title Association