



Since 1894

Date: March 4, 2024

To: House Committee on Commerce, Labor, and Economic Development
Rep. Sean Tarwater, Chair

From: Aaron M. Popelka, V.P. of Legal and Governmental Affairs, Kansas Livestock Association

Re: **HB 2766 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; prohibiting foreign principals from countries of concern from receiving any economic development program benefits.**

Position: Opponent, In-Person

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing more than 5,700 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf, and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.

Thank you, Chairman Tarwater, and members of the Committee, for allowing the Kansas Livestock Association (KLA) the opportunity to share our views on HB 2766. In its current form, KLA opposes HB 2766, as it imposes unnecessary restrictions on commerce and could disrupt two existing agricultural companies in Kansas. While KLA urges the Committee to use caution on this topic and avoid unnecessary market restrictions, with an amendment, KLA would move to neutral on the bill.

As a general matter, KLA policy supports free markets with minimal government intrusion. Modern agricultural operations are diverse and often must find unique ways to access capital. Given the global nature of markets, equity and debt financing could come from foreign sources. If these sources are from allies of the United States, such arrangements should not be discouraged. In addition, many friendly nations have allowed, and will continue to allow, U.S. citizens to own and operate land in their country.

Currently, federal law requires all purchases of agricultural land by foreign nationals to be reported to the U.S. Department of Agriculture (USDA), which publishes an annual report¹. USDA's latest report discloses that 32 percent of all foreign owned agricultural land is held by

¹ U.S. Department of Agriculture, Farm Service Agency, Foreign Holdings of U.S. Agricultural Land Through December 31, 2022, available at https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2022_afida_annual_report_12_20_23.pdf

Canadians. This is followed by the Netherlands with 12 percent, Italy with 6 percent, the United Kingdom with 6 percent, and Germany with 5 percent. China is near the bottom of the list with 346,915 acres nation-wide, a decline of 37,020 from the previous year's report of 383,935 acres. This amount is less than 1 percent of all foreign-held farmland acres nationwide.

In Kansas, Chinese nationals are listed as only owning one-half acre of farmland in Russell County Kansas. The USDA report also notes "[t]he changes in pasture and cropland are mostly due to foreign-owned wind companies signing, as well as terminating, long-term leases on a large number of acres"² Based on research by Robin Reid at Kansas State University, 95 percent of all foreign holdings in Kansas are renewable energy leases.³ All other foreign ownership interests in Kansas account for only 67,717 acres, or 0.1 percent of all privately owned farmland in Kansas.⁴

In KLA's view, the issue of foreign investment is best handled by the federal government, and KLA would prefer that Congress address this issue. In the 118th Congress, U.S. Senator Tommy Tuberville introduced, and U.S. Senator Roger Marshall sponsored, S. 68. This bill places the U.S. Secretary of Agriculture on the Committee on Foreign Investment in the United States (CFIUS). It also requires CFIUS to review any investment that could result in foreign control of any U.S. agricultural business. Similar language was passed by the U.S. House of Representatives, Committee on Financial Services last September.

KLA believes this issue is one best handled by Congress because the federal government has greater resources to analyze national security threats and can craft solutions that apply equally to all states. Individual state efforts in this space have the potential to establish a patchwork of laws across the U.S. creating confusion and barriers to investment. In addition, state laws restricting foreign ownership of land could be susceptible to constitutional challenges based on the Foreign Commerce Clause or the Supremacy Clause of the U.S. Constitution if not carefully drafted.

While KLA firmly believes this matter should be left to Congress, we understand that some may want the State of Kansas to take a position in the interest of national and state security. From KLA's perspective, any state-based bill should limit restrictions to foreign adversaries, focus on actual security threats and avoid targeting only agricultural land, allow limited exceptions for occurrences like inheritance and foreclosures, and not disrupt existing businesses that have been determined not to be a threat to national security. HB 2766 meets all those requirements except the last point because the bill, as drafted, would require divestment of property from two existing food and agricultural companies in Kansas – Syngenta and Smithfield Foods. Both companies have undergone CFIUS review and have in place either a security agreement or were determined by CFIUS to pose no security risk.

² Foreign Holdings of U.S. Agricultural Land Through December 31, 2022, at 5, available at https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2022_afida_annual_report_12_20_23.pdf

³ Robin Reid, Extension Farm Economist, Kansas State University, Ownership of Agricultural Land in Kansas, Testimony before the Kansas Legislature's 2023 Special Committee on Foreign Adversary Investments and Land Purchases, at 21, available at https://www.kslegislature.org/li/b2023_24/committees/ctte_spc_2023_adversary_purchases_1/documents/testimony/20230927_13.pdf

⁴ See *id.*

For instance, Smithfield Foods, which operates pork processing plants in Junction City and Wichita, would be required to divest from these two plants under HB 2766. This would not only disrupt pork supply chains, but put almost 1,000 Kansans out of work and jeopardize approximately \$1.6 million in state and local tax revenue. Although Smithfield Foods' shares were purchased in 2013 by WH Group, a Hong Kong-based, publicly traded company, Smithfield Foods remains a U.S. company headquartered in Virginia where it was founded almost 90 years ago. The 2013 transaction was reviewed by CFIUS and determined not to be a national security risk.

To avoid divestment of property owned by companies like Smithfield Foods and Syngenta, KLA has attached an amendment to this testimony mirroring language offered by other agricultural associations. The proposed amendment creates an exception to the divestment requirement found in section 3, subsection (c) for companies that have undergone the CFIUS review and either were determined not to be a security threat or entered into a national security agreement allowing oversight of company activities. The amendment would also require such companies to report their interests to the Kansas Attorney General under section 3, subsection (b).

KLA appreciates the opportunity to submit testimony on HB 2766. Although opposed to the bill in its current form, KLA would remove its formal opposition to HB 2766 with adoption of our suggested amendment.

KLA Amendment to HB 2766

On page 4, following line 12, by inserting:

“(q) “Covered transaction” shall have the meaning as defined in 31 C.F.R. § 800.213, as in effect on July 1, 2024.

“(r) “Covered control transaction” shall have the meaning as defined in 31 C.F.R. § 800.210, as in effect on July 1, 2024.”

On page 4, line 13, by inserting the following after “subsection (d)”:

“and (e)”.

On page 5, following line 2, by inserting:

“(e) A foreign principal may own, acquire or hold an interest in real property notwithstanding the provisions hereof if the foreign principal reports such interest in real property in accordance with the provisions of subsection (b), and either:

(1) previously received a determination that there are no unresolved national security concerns and action under 50 U.S.C. § 4565, as in effect on July 1, 2024, has concluded with respect to a covered transaction, provided that such foreign principal has not undergone a change in control constituting a covered control transaction, since such determination to conclude action; or

(2) has a national security agreement in effect on July 1, 2024, with the Committee on Foreign Investment in the United States under 50 U.S.C. § 4565, as in effect on July 1, 2024, and maintains such national security agreement.”