

ENGROSSED LEGISLATIVE BILL 7

Introduced by DeKay, 40; Hardin, 48.

A BILL FOR AN ACT relating to real property; to amend sections 76-2,141, 76-3702, 76-3703, 76-3704, 76-3708, 76-3709, 76-3710, 76-3712, and 76-3715, Revised Statutes Cumulative Supplement, 2024; to change provisions relating to affidavits for covered real estate; to define and redefine terms under the Foreign-owned Real Estate National Security Act; to change provisions of such act relating to foreign-owned real estate, oil and gas leases, railroads, public utilities, common carriers, municipalities, manufacturing or industrial establishments, investigations and violations, and civil and criminal immunity; to harmonize provisions; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 76-2,141, Revised Statutes Cumulative Supplement, 2024, is amended to read:

76-2,141 (1) For purposes of this section, covered real estate means real estate described in 31 C.F.R. 802.211(b)(3), as such regulation existed on January 1, 2025.

(2) Whenever there is a conveyance of covered real estate, the purchaser of the real estate shall complete and sign an affidavit stating that such purchaser is not affiliated with any foreign government or nongovernment person determined to be a foreign adversary pursuant to 15 C.F.R. 791.4, as such regulation existed on February 7, 2025.

(3) The affidavit shall be submitted to the register of deeds of the county in which the covered real estate is located. The register of deeds shall not record any instrument reflecting the conveyance of such real estate until he or she has received such affidavit. The register of deeds shall send a copy of the affidavit to the Attorney General.

(4) Any person who swears falsely on such an affidavit shall be guilty of

(5) The responsibility for determining whether an affidavit is required under this section rests solely with the purchaser, and no individual or entity other than the purchaser shall bear any civil or criminal liability under this section. A violation of this section shall not make any title or interest in land invalid or unmarketable.

COUNTY OF)

.....

Date

76-3702 For purposes of the Foreign-owned Real Estate National Security Act:

(2) Foreign government means a government other than the federal government of the United States, the government of any territory or possession of the United States, or the government of any state, political subdivision of a state, or Indian tribe;

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federal law or formally acknowledged by the state;

(4) Nonresident alien means any human being who:

(a) Is not a citizen of the United States;

(b) Is not a national of the United States;

(c) Is not a lawful permanent resident of the United States; and

(d) Has not been physically present in the United States for at least one hundred eighty-three days during a three-year period that includes the current year and the two years immediately preceding the current year;

(5) Person means a human being, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, agency, or instrumentality, or any other legal or commercial entity; and

(6) Restricted entity means:

(a) Any person identified on the sanctions lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury as such sanctions lists existed on January 1, 2025; or

(b) Any person or foreign government determined by the United States Secretary of Commerce to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States pursuant to 15 C.F.R. 791.4, as such regulation existed on February 7, 2025.

Sec. 3. Section 76-3703, Revised Statutes Cumulative Supplement, 2024, is amended to read:

76-3703 (1) Except as provided in the Foreign-owned Real Estate National Security Act, a nonresident alien, foreign corporation, or foreign government, or an agent, trustee, or fiduciary thereof:

(a) Shall not purchase, acquire title to, or take any real estate or any leasehold interest extending for a period for more than five years or any other greater interest less than fee in any real estate in this state by descent, devise, purchase or otherwise on or after January 1, 2025; and

(b) Shall be in compliance with the federal Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. 3501 et seq., with respect to any

real estate in Nebraska.

(2) Except as provided in the Foreign-owned Real Estate National Security Act, a restricted entity, nonresident alien, foreign corporation, foreign government, or an agent, trustee, or fiduciary thereof, who on or after January 1, 2025, purchases, acquires title to, or takes any real estate or any leasehold interest in violation of the Foreign-owned Real Estate National Security Act shall be subject to divestment as prescribed under section 76-3712.

(3) Any person, nonresident alien, foreign corporation, or foreign government, or agent, trustee, or fiduciary thereof, of an excepted real estate foreign state as determined by the Committee on Foreign Investment in the United States pursuant to 31 C.F.R. 802.1001(a) and 802.214, as such regulations existed on January 1, 2025, is exempt from the Foreign-owned Real Estate National Security Act except for any restricted entity, or agent, trustee, or fiduciary thereof.

Sec. 4. Section 76-3704, Revised Statutes Cumulative Supplement, 2024, is amended to read:

76-3704 (1) Except as provided in subsection (2) of this section, corporations incorporated under the laws of the United States of America, or under the laws of any state of the United States of America, or any foreign corporation or any nonresident alien, doing business in this state, may acquire, own, hold, or operate leases for oil, gas, or other hydrocarbon substances, for a period as long as ten years and as long thereafter as oil, gas, or other hydrocarbon substances shall or can be produced in commercial quantities.

(2) A restricted entity or an agent, trustee, or fiduciary thereof may not acquire, own, hold, or operate leases for oil, gas, or other hydrocarbon substances pursuant to subsection (1) of this section. A restricted entity, or an agent, trustee, or fiduciary thereof, who violates this section shall be in violation of the Foreign-owned Real Estate National Security Act and subject to divestment as prescribed under section 76-3712.

Sec. 5. Section 76-3708, Revised Statutes Cumulative Supplement, 2024, is amended to read:

76-3708 (1) Except as provided in subsection (2) of this section, the provisions of sections 76-3703, 76-3706, and 76-3707 shall not apply to the real estate necessary for the construction and operation of railroads, public utilities, and common carriers.

(2) The provisions of sections 76-3703, 76-3706, and 76-3707 shall apply to the real estate of a restricted entity or an agent, trustee, or fiduciary thereof. A restricted entity, or an agent, trustee, or fiduciary thereof, who violates this section shall be in violation of the Foreign-owned Real Estate National Security Act and subject to divestment as prescribed under section 76-3712.

Sec. 6. Section 76-3709, Revised Statutes Cumulative Supplement, 2024, is amended to read:

76-3709 (1) Except as provided in subsection (2) of this section, any nonresident alien, foreign corporation, or foreign government, or an agent, trustee, or fiduciary thereof:

(a) May purchase, acquire, hold title to, or be a lessor or lessee of as much real estate as shall be necessary for the purpose of (i) erecting on such real estate manufacturing or industrial establishments, and in addition thereto such real estate as may be required for facilities incidental to such establishments, or (ii) erecting and maintaining establishments primarily operated for the storage, sale, and distribution of petroleum products or hydrocarbon substances, commonly known as filling stations or bulk stations; and

(b) Shall not expand establishments or facilities purchased, acquired, held, or leased pursuant to subdivision (1)(a) of this section or build new such establishments or facilities if such nonresident alien, foreign corporation, or foreign government is a restricted entity, or an agent, trustee, or fiduciary thereof.

(2)(a) A restricted entity, or an agent, trustee, or fiduciary thereof,

shall not purchase, acquire, hold title to, or be a lessor or lessee of real estate pursuant to subdivision (1)(a) of this section unless such restricted entity, or an agent, trustee, or fiduciary thereof, has received:

(i) A determination from the Committee on Foreign Investment in the United States that there are no unresolved national security concerns with respect to the real estate transaction and such restricted entity has not undergone a change in control constituting a covered control transaction, as defined in 31 C.F.R. 800.210, as such regulation existed on January 1, 2025, since such determination; or

(ii) A national security agreement with the Committee on Foreign Investment in the United States and maintains the validity of such national security agreement.

(b) A restricted entity, or an agent, trustee, or fiduciary thereof, who complies with the requirements of subdivision (2)(a)(i) or (ii) of this section shall annually certify such compliance to the Department of Agriculture on or before January 15, 2026, and on or before January 15 of each year thereafter.

(3) A restricted entity, or an agent, trustee, or fiduciary thereof, who violates this section shall be in violation of the Foreign-owned Real Estate National Security Act and subject to divestment as prescribed under section 76-3712.

Sec. 7. Section 76-3710, Revised Statutes Cumulative Supplement, 2024, is amended to read:

76-3710 (1) Except as provided in subsection (2) of this section, the provisions of the Foreign-owned Real Estate National Security Act shall not apply to any real estate lying within the corporate limits of cities and villages, or within three miles of such corporate limits, nor to any manufacturing or industrial establishment described in section 76-3709.

(2) A restricted entity, or an agent, trustee, or fiduciary thereof, who purchases, acquires, holds title to, or is the lessor or lessee of any real estate lying within the corporate limits of cities and villages, or within three miles of such corporate limits, or any manufacturing or industrial

establishment described in section 76-3709 shall be subject to sections 76-3703 and 76-3709. A restricted entity, or an agent, trustee, or fiduciary thereof, who violates this subsection shall be subject to divestment as prescribed under section 76-3712.

Sec. 8. Section 76-3712, Revised Statutes Cumulative Supplement, 2024, is amended to read:

76-3712 (1) Any person may notify the Department of Agriculture or the Attorney General of a violation or potential violation of the Foreign-owned Real Estate National Security Act.

(2) The Department of Agriculture shall investigate violations of the Foreign-owned Real Estate National Security Act. If the Director of Agriculture has reasonable suspicion to believe that a violation of the act has occurred, the director shall refer the suspected violation to the Attorney General or outside counsel retained by the Department of Agriculture for enforcement.

(3) The Attorney General or retained outside counsel, upon a referral by the Director of Agriculture or upon the receipt of any information from any person that gives the Attorney General or retained counsel reasonable suspicion to believe that a violation of the Foreign-owned Real Estate National Security Act has occurred, may issue subpoenas requiring the appearance of witnesses, the production of documents, and the giving of relevant testimony. Service of any subpoena shall be made in the same manner as a subpoena issued by any court in this state.

(4)(a) After investigation, if the Attorney General or retained outside counsel believes that a violation of the Foreign-owned Real Estate National Security Act has occurred, the Attorney General or retained outside counsel shall notify the person believed to have committed or be committing such violation that such person may voluntarily divest the interest in the real estate that is the subject of the violation.

(b) The person believed to have committed or be committing a violation shall indicate to the Attorney General or retained outside counsel whether such person is voluntarily divesting the interest in the real estate that is the

subject of the violation within thirty days of receiving the notice under subdivision (4)(a) of this section.

(c) If the person believed to have committed or to be committing a violation indicates that such person is voluntarily divesting the interest in the real estate that is the subject of the violation, such person shall be entitled to a grace period of one hundred eighty days to voluntarily divest the interest.

(d) The grace period of one hundred eighty days shall begin upon the end of the thirty-day period under subdivision (4)(b) of this section.

(e) No person shall sell or otherwise transfer real estate to another person prohibited under the act. Any person who violates this subdivision shall be subject to a civil penalty not to exceed fifty thousand dollars per parcel of real estate sold or otherwise transferred to another person prohibited under the act.

(5) The Attorney General or retained outside counsel shall commence an action in either the district court in the county in which all or part of the real estate is located or in the district court of Lancaster County if:

(a) The person described in subdivision (4)(a) of this section fails to indicate to the Attorney General or retained outside counsel that such person is voluntarily divesting the interest in the real estate that is the subject of the violation within the thirty-day period under subdivision (4)(b) of this section; or

(b) Such person fails to voluntarily divest the interest in the real estate that is the subject of the violation within the grace period of one hundred eighty days.

(6) Upon commencement of an action under this section, the Attorney General or retained counsel shall:

(a) Promptly record a notice of the pendency of the action in records with the register of deeds in each county in which all or part of the real estate is located; and

(b) Serve a copy of the petition by service of process in the same manner

as in civil cases as follows on:

- (i) The owner of the real estate if the owner's address is known;
 - (ii) Any secured party who has registered or filed a lien, mortgage, or trust deed against the real estate or filed a financing statement against the real estate as provided by law if the identity of the secured party can be ascertained by the person filing the petition by making a good faith effort to ascertain the identity of the secured party;
 - (iii) Any other bona fide lienholder or secured party or other person holding an interest in the real estate if such party is known; and
 - (iv) Any person residing on the real estate subject to divestment at the time the petition is filed.
- (7) The court shall have power to hear and determine the questions presented in such case and to declare such real estate to be divested. The burden is on the state to prove by clear and convincing evidence that the real estate is subject to divestment under the Foreign-owned Real Estate National Security Act. If the court finds that the real estate that is the subject of an action commenced under the act was purchased, acquired, taken, or held in violation of the act, the court shall enter an order that:
- (a) States the findings of the court;
 - (b) Orders the divestment of the interest in the real estate of the person that violated the act;
 - (c) Orders the Attorney General or retained outside counsel to promptly notify the Governor and the Clerk of the Legislature that the title to such real estate is ordered divested by the decree of the court;
 - (d) Orders the Attorney General or retained outside counsel to promptly record a copy of such divestment order with the register of deeds of each county in which all or part of the real estate is located;
 - (e) Appoints a receiver subject to sections 25-1081 to 25-1092 to manage and control the real estate through the final disposition of the real estate; and
 - (f) Authorizes the proceeds of the divestment to be disbursed in the

following order:

- (i) The payment of any taxes and assessments due;
 - (ii) The payment of court costs related to the action or actions commenced under the Foreign-owned Real Estate National Security Act;
 - (iii) The payment of authorized costs of the sale, including all approved fees and pending sale expenses and expenses of the referee;
 - (iv) Reimbursement of investigation and litigation costs and expenses, in an amount approved by the court, to the Attorney General or retained outside counsel;
 - (v) Payment to bona fide lienholders of the real estate, in order of lien priority, except for liens which under the terms of the divestment are to remain on the real estate; and
 - (vi) Remittance of any remaining proceeds to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.
- (8) If the interest is a lease, easement, or interest other than fee title, the court shall have power to declare such interest terminated.
- (9) If the respondent fails to answer or appear for the action commenced pursuant to this section, the court may enter default judgment.

Sec. 9. Section 76-3715, Revised Statutes Cumulative Supplement, 2024, is amended to read:

76-3715 Nothing in the Foreign-owned Real Estate National Security Act shall be construed to require any person to determine or inquire whether another person is subject to or in violation of the act, and such person shall bear no civil or criminal liability under the act for the failure to make such determination or inquiry. The Attorney General, retained outside counsel, and Director of Agriculture are responsible for determining whether a person is subject to or in violation of the act.

Sec. 10. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 11. Original sections 76-2,141, 76-3702, 76-3703, 76-3704, 76-3708, 76-3709, 76-3710, 76-3712, and 76-3715, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 7 was passed by the One Hundred Ninth Legislature
of Nebraska at its First Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR