



Since 1894

Date: March 21, 2023

To: Senate Committee on Judiciary
Sen. Kellie Warren, Chair

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

Re: **SB 283 AN ACT concerning real property; relating to the conveyance thereof; prohibiting the conveyance of real property parcels of 10 or more acres to foreign adversaries; establishing criminal penalties therefor; requiring the attorney general to investigate such conveyances.**

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, Chairwoman Warren, and members of the Committee, for allowing the Kansas Livestock Association (KLA) the opportunity to share our views on SB 283. In its current form, KLA opposes SB 283, as it is likely unconstitutional and imposes unnecessary restrictions on commerce. While KLA urges the Committee to use caution on this topic and avoid unnecessary market restrictions, with an amendment, KLA would move to neutral with concerns on the bill.

As a general matter, KLA policy supports free markets. 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 31 percent of all foreign owned agricultural land is held by Canadians. This is followed by the Netherlands with 12 percent, Italy with 7 percent, the United Kingdom with 6 percent, and Germany with 6 percent. China is near the bottom of the list with 383,935 acres nation-wide, which is slightly less than 1 percent of foreign-held acres.

¹ https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2021_afida_annual_report_through_12_31_2021.pdf

Nearly a third of all Chinese holdings are associated with Smithfield Foods. 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”

KLA policy supports the free market with minimal government intrusion. In our view, this issue is best handled by the federal government, and we would ask that you allow Congress to 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. It also requires the committee to review any investment that could result in foreign control of any U.S. agricultural business.

The reason we believe this issue is one best handled by Congress is because most attempts by state government to prohibit foreign ownership of land would likely violate Article I, Section 8, Clause 3 of the U.S. Constitution known as the Commerce Clause.² As noted in the Drake Journal of Law, in regard to existing state restrictions of foreign ownership of farmland:

Similarly, a dormant aspect of the Foreign Commerce Clause is recognized, though not as thoroughly developed as the interstate variant.³ A facially discriminatory statute, like the land ownership restrictions at issue, would be per se invalid if any nondiscriminatory means could be employed to achieve the desired end.⁴

In essence, anything the legislature attempts to do in this space that prohibits ownership would likely fail this test. While state and national security are an important local interest, creating exceptions for “real property parcels of 10 or more acres” casts doubt on the security purpose of the prohibitions and creates the appearance of protectionism prohibited by the Constitution. For instance, under SB 283, a foreign adversary would be prohibited from buying a quarter section of land in Wallace County, Kansas, but could readily buy ten acres abutting a U.S. military or Kansas National Guard installation anywhere in the state.

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. To that end, we have attached an amendment to this testimony to improve the ten-acre exemption issue referenced above. The amendment strikes the ten-acre exemption and inserts an exception for “residential real property acquired for the purpose of the owner establishing a personal residence.” While KLA believes SB 283 would still suffer from severe deficiencies, such an amendment would refocus the intent on state and national security and more closely mirror HB 2397 upon which KLA agreed to take a neutral position.

KLA appreciates the opportunity to submit testimony on the various aspects of SB 283. KLA would remove its formal opposition to the bill with adoption of our suggested amendment.

² “The Congress shall have the Power . . . To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes; . . .” U.S. Const. art. I, § 8, cl.3

³ Grant Wilson, *Reforming Alien Agricultural Landownership Restrictions in Corporate Farming Law States: A Constitutional and Policy View from Iowa*, 516445 Drake Jnl of Ag Law 17.3 (2012).

⁴ *Dep’t of Revenue v. Davis*, 553 U.S. 328, 337 (2008)

Sec. 2. (a) (1) 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.

(2) ~~(A)~~ The provisions of paragraph (1) shall not apply to:

(A) Residential real property acquired for the purpose of the owner establishing a personal residence;

(B) Land acquired by:

(i) A process of law in the collection of debts;

(ii) a deed in lieu of foreclosure pursuant to a forfeiture of a contract for deed; or

(iii) any procedure for the enforcement of a lien or claim on the land, whether created by mortgage or otherwise.

~~(3B)~~ Land described in ~~this~~ paragraph (2)(B) shall be sold or otherwise disposed of within two years after title is transferred.

(b) A person owned by, controlled by or subject to the jurisdiction or direction of a foreign adversary may sell or convey all or any portion of an ownership interest in real property located in this state that is residential real property acquired pursuant to paragraph (a)(2)(A) after July 1, 2023 or was acquired prior to July 1, 2023, but shall not sell or otherwise convey such ownership interest to any person owned by, controlled by or subject to the jurisdiction or direction of a foreign adversary in violation of subsection (a).