

2023 Regular Session

HOUSE BILL NO. 537

BY REPRESENTATIVES HODGES, AMEDEE, EDMONDS, EDMONSTON, EMERSON, FIRMENT, GAROFALO, HARRIS, HORTON, MACK, MIGUEZ, CHARLES OWEN, SCHAMERHORN, SCHLEGEL, SEABAUGH, THOMPSON, AND WRIGHT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONTRACTS: Provides for a prohibition against foreign adversary purchasing, leasing, or acquiring land

1 AN ACT

2 To enact R.S. 9:2717.1, relative to contracts; to provide relative to foreign adversaries or
3 persons connected with foreign adversaries; to prohibit the acquisition of immovable
4 property; to provide for prospective application; to provide for actions and
5 investigations by the attorney general; to provide for attorney fees and court costs;
6 to provide relative to judgments; to provide for civil forfeiture; to provide for
7 exceptions; to provide for definitions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:2717.1 is hereby enacted to read as follows:

10 §2717.1. Prohibition of acquisition of immovable property by a foreign adversary
11 or a person connected with a foreign adversary

12 A.(1) No foreign adversary or person connected with a foreign adversary
13 may purchase, lease, or otherwise acquire immovable property in this state.

14 (2) A party to a contract to purchase, lease, or otherwise acquire immovable
15 property may rescind the contract prior to the transfer of the immovable property if
16 the party determines that the purchaser or lessee is a foreign adversary or a person
17 connected with a foreign adversary.

1 (3) The provisions of this Section are applicable to contracts entered into by
2 a foreign adversary or person connected with a foreign adversary to purchase, lease,
3 or otherwise acquire immovable property after August 1, 2023. These provisions are
4 not applicable to existing contracts to purchase, lease, or otherwise acquire
5 immovable property or the renewal of existing leases that were in place prior to
6 August 1, 2023.

7 (4) A person may conclusively rely upon an affidavit made by a person
8 intended to acquire or holding an interest in immovable property to the effect that the
9 person is neither a foreign adversary nor a person connected with a foreign
10 adversary, and the correctness of those facts may not be controverted against a
11 person relying on the affidavit, unless actual fraud by such person is proved. A
12 person who gives a false affidavit shall be responsible for any loss or damage
13 suffered by any person whose rights are adversely affected.

14 (5) No party to the transaction other than the foreign adversary or person
15 connected with a foreign adversary shall be held liable unless they knew or should
16 have known they were entering into a transaction with a foreign adversary or person
17 connected with a foreign adversary.

18 B.(1) The attorney general may bring an action for injunctive relief in the
19 name of the state against the foreign adversary or the person connected with a
20 foreign adversary to enjoin the property transfer prior to the transfer of the
21 immovable property. The attorney general shall serve the petition for injunctive
22 relief upon all parties to the transaction.

23 (2) If the transfer or lease of the property has been completed, the attorney
24 general may bring an action in the name of the state against the foreign adversary or
25 a person connected with a foreign adversary.

26 (3) Any action by the attorney general may be brought in the district court
27 having civil jurisdiction in any parish in which a portion of the immovable property
28 is located, and the attorney general may recover reasonable attorney fees and court
29 costs.

1 (4) The attorney general may open an investigation if any of the following
2 exist:

3 (a) The attorney general has evidence that a foreign adversary or a person
4 connected with a foreign adversary is attempting to enter into, conspiring to enter
5 into, or has entered into a contract to purchase, lease, or otherwise acquire
6 immovable property in this state.

7 (b) The attorney general believes it to be in the public interest that an
8 investigation needs to be made to ascertain whether a foreign adversary or a person
9 connected with a foreign adversary in fact is attempting to enter into, conspiring to
10 enter into, or has entered into a contract to purchase, lease, or otherwise acquire
11 immovable property in this state.

12 (5) If an action is brought pursuant to this Section and no later than one
13 business day after filing the action, the attorney general shall record in the public
14 mortgage records of the parish clerk of court of each parish in which any portion of
15 the immovable property is located a notice of pendency of the action pursuant to
16 Code of Civil Procedure Article 3751 et seq. The institution of the action and the
17 recordation of the notice of pendency of the action shall have no effect on persons
18 obtaining rights in the immovable property prior to the recordation of the petition.
19 The attorney general shall cause the notice of pendency of action to be cancelled
20 from the mortgage records no later than one business day after judgment is rendered
21 or after a request for cancellation is made by any interested party in connection with
22 the transfer of the property to a person other than a foreign adversary or person
23 connected with a foreign adversary. If the notice of pendency of action relates to a
24 property interested vested in a foreign adversary or person connected with a foreign
25 adversary, the attorney general may petition the court for an order requiring the
26 proceeds of the sale attributable to the property interest of the foreign adversary or
27 person connected with a foreign adversary after the deduction of payments to
28 mortgagees, lienholders, person providing services in connection with the transfer
29 of the property, and credits to the purchaser relating to tax and other customary

1 prorations, be deposited in the registry of the court in which the proceeding is
2 pending.

3 (6) Prior to bringing an action pursuant to this Section, the attorney general
4 shall provide written notice to the holder of each mortgage, lien, privilege, and other
5 encumbrance encumbering the subject immovable property, which is filed in the
6 public mortgage records in the parish where the immovable property is located. Such
7 notice shall be provided in the same manner as provided in R.S. 40:2608 or R.S.
8 14:90.1.

9 C.(1) If the court finds that a foreign adversary or person connected with a
10 foreign adversary has purchased, leased, or otherwise acquired property in Louisiana
11 after August 1, 2023, the court may do one of the following:

12 (a) Order that the foreign adversary's interest in the property be sold to a
13 person who is not a foreign adversary or to a person who is not connected to a
14 foreign adversary.

15 (b) Order that the foreign adversary or person connected with a foreign
16 adversary's interest in the property be sold at a judicial sale in accordance with the
17 requirements of Code of Civil Procedure Article 3031 et seq.

18 (c) Under Subparagraphs (a) and (b) of this Paragraph, the court shall order
19 that the price of the sale be not less than the sum of all of the following:

20 (i) Ad valorem taxes and other liens payable to a political subdivision of the
21 State which are due or past due and attributable to the property.

22 (ii) Indebtedness, including interests, penalties, attorney fees, court costs,
23 and other expenses, secured by a conventional mortgage on the property or any
24 portion of the property.

25 (iii) Indebtedness, including interest, penalties, attorney fees, and court costs,
26 secured by a judicial or legal mortgage on the property.

27 (iv) Indebtedness, including interest, penalties, attorney fees, and court costs,
28 secured by a lien or privilege on the property.

29 (v) Commissions due to a real estate broker or real estate agent.

1 (vi) Costs related to the perfection of the sale.

2 (2) After satisfying all mortgages, liens, privileges, and other encumbrances
3 encumbering the property subject to this Section, and payment of all persons
4 providing services in connection with the transfer of the property, sheriff's fees, and
5 credits to the purchaser relating to tax and other customary prorations, the remaining
6 proceeds of the sale provided by this Subsection shall be considered a civil asset
7 forfeiture and the money shall be paid to the Department of Justice to fund services
8 for veterans of foreign wars. The attorney general may also enter into cooperative
9 endeavor agreements with other state agencies or local governments to provide
10 services for veterans who suffer from injury or disability as a result of foreign war.

11 D.(1) All proceedings under this Section shall be made with due provisions
12 to protect the rights of any person unless the attorney general proves beyond a
13 reasonable doubt that the person entered into the transaction with the foreign
14 adversary or person connected with a foreign adversary for the purpose of aiding
15 such foreign adversary or person connected with a foreign adversary in
16 compromising the security of the United States.

17 (2) No mortgage, lien, privilege, or other security interest recognized under
18 the laws of this state and no ownership interest in indivision, lease, servitude,
19 usufruct, right of use, bond for deed, or other real right shall be affected by a
20 forfeiture pursuant to this Section.

21 (3) No forfeiture or disposition under this Section shall affect the rights of
22 any person unless the attorney general proves beyond a reasonable doubt that the
23 person entered into the transaction with the foreign adversary or person connected
24 with a foreign adversary with the purpose of aiding such foreign adversary or person
25 connected with a foreign adversary in compromising the security of the United
26 States.

27 E. No attorney, title insurer, title insurance producer, title insurance agency
28 producer, lender, notary public, real estate agent, real estate broker, seller, or lessor
29 shall have a duty to make any investigation as to whether a party to a transaction

1 involving immovable property is a foreign adversary, nor shall any such person be
2 liable for failing to identify that a party to a transaction involving immovable
3 property is a foreign adversary.

4 F. The provisions of this Section shall not apply to any of the following:

5 (1) A natural person who is an American citizen, regardless of whether the
6 United States citizenship was acquired by birth or the United States citizenship was
7 granted to a person after meeting the requirements established by the United States
8 Congress in the Immigration and Nationality Act, 8 U.S.C. 1158, et seq.

9 (2) A person who is not a United States citizen but is a permanent legal
10 resident or lawfully present in the United States by virtue of authorization by the
11 United States Department of Homeland Security.

12 (3) A juridical person wholly owned by persons who qualify under
13 Paragraphs (1) and (2) of this Subsection.

14 (4) Immovable property purchased, leased, or otherwise acquired by a
15 natural person that is used as a one to four family residential property.

16 G. For the purposes of this Section:

17 (1) "Foreign adversary" means an individual or a government identified as
18 a foreign adversary in 15 CFR 7.4(a) including the People's Republic of China and
19 the Hong Kong Special Administrative Region, Republic of Cuba, Islamic Republic
20 of Iran, Democratic People's Republic of Korea, Russian Federation, and Venezuela
21 under the leadership of Nicolas Maduro and identified in the database maintained by
22 the United States Department of Treasury, Office of Foreign Assets Control.

23 (2) "Person connected with a foreign adversary" means the juridical person,
24 as defined in Civil Code Article 24, in which the foreign adversary has the power to
25 direct or cause the direction of the management or policies of the juridical person
26 whether through ownership of securities, by contract, or otherwise. A person or
27 entity that directly or indirectly has the right to vote fifty percent or more of the
28 voting interests of an entity or is entitled to fifty percent or more of its profits is

1 presumed to have the power to direct or cause the direction of the management or
 2 policies of the juridical person.

3 H. This Act shall apply only to property acquired by a foreign adversary or
 4 person connected with a foreign adversary on or after August 1, 2023. If a foreign
 5 adversary or person connected with a foreign adversary acquires immovable property
 6 despite the prohibitions as provided in this Section, the property shall only be subject
 7 to forfeiture during the period in which the prohibited foreign adversary or person
 8 connected with a foreign adversary owns the property. Rights in immovable property
 9 shall not be void or voidable because the property or right held in the property was
 10 previously held by a prohibited foreign adversary or person connected with a foreign
 11 adversary.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 537 Reengrossed

2023 Regular Session

Hodges

Abstract: Prohibits the purchase, lease, or otherwise acquisition of immovable property by foreign adversaries or persons connected with a foreign adversary.

Proposed law provides that beginning Aug. 1, 2023, no foreign adversary or person connected with a foreign adversary may purchase, lease, or acquire immovable property in this state. Proposed law further provides that parties to the contract with a foreign adversary may rescind the contract prior to the transfer of the immovable property if it is determined that the purchaser or lessee is a foreign adversary or a person connected with a foreign adversary.

Proposed law provides that proposed law is not applicable to existing contracts to purchase, lease, or otherwise acquire immovable property prior to Aug. 1, 2023.

Proposed law provides that a person may rely on an affidavit made by a person intended to acquire or holding an interest in immovable property to the effect that the person is not a foreign adversary or a person connected with a foreign adversary.

Proposed law provides that no party to a transaction other than a foreign adversary or a person connected with a foreign adversary shall be held liable unless he knew or should have known he was entering into a transaction with a foreign adversary or person connected with a foreign adversary.

Proposed law provides that the attorney general may bring an action for injunctive relief in the name of the state against a foreign adversary or the person connected with a foreign adversary prior to or after the transfer of property is complete.

Proposed law provides that venue shall be brought in the district court having civil jurisdiction in any parish in which a portion of the immovable property is located.

Proposed law provides that the attorney general may recover reasonable attorney fees and court costs.

Proposed law provides that the attorney general may open an investigation.

Proposed law provides that if an action is brought pursuant to proposed law the attorney general shall record in the public mortgage records of the parish clerk of court of each parish in which any portion of the immovable property is located a notice of pendency of action pursuant to present law (C.C.P. Art. 3751, et seq.) and provide written notice to mortgage, lien, privilege, and other encumbrance holders in the manner provided by present law (R.S. 40:2608 and R.S. 14:90.1).

Present law (C.C.P. Art. 3751, et seq.) provides for notice of pendency of actions.

Present law (R.S. 40:2608) provides for the sale of property pending forfeiture of property that is not evidence of a criminal violation by any law enforcement agency under the Seizure and Controlled Dangerous Substances Property Forfeiture Act of 1989 (R.S. 40:2601, et seq.).

Present law (R.S. 14:90.1) provides for the seizure and disposition of evidence, property, and proceeds, for the crime of gambling and related offenses.

Proposed law provides that the property be sold at judicial sale in accordance with present law (C.C.P. Art. 3031, et seq.)

Present law (C.C.P. Art. 3031, et seq.) provides for the acceptance of successions without administration for testate successions.

Proposed law provides that a court may order that the property be sold to someone who is not a foreign adversary or to a person that is not connected to a foreign adversary or sold at judicial sale. Proposed law provides that the court shall order that the price of the sale be not less than the sum of all of the following:

- (1) Ad valorem taxes and other liens payable to a political subdivision on the property.
- (2) Indebtedness secured by a conventional mortgage on the property.
- (3) Indebtedness secured by a judicial or legal mortgage on the property.
- (4) Indebtedness secured by a lien or privilege on the property.
- (5) Commissions due to a real estate broker or real estate agent.
- (6) Costs related to the perfection of the sale.

Proposed law provides that any immovable acquired by a foreign adversary or person connected with a foreign adversary is subject to civil forfeiture to the state. After satisfying all mortgages, liens, privileges, and other encumbrances encumbering the property, the remaining proceeds of the sale shall be paid to the Dept. of Justice to fund services for veterans of foreign wars. Proposed law provides that the attorney general may enter into cooperative endeavor agreements to provide such services.

Proposed law provides that all forfeitures and dispositions under proposed law shall not affect the rights of any person unless the attorney general proves beyond a reasonable doubt

that the person entered into the transaction for the purpose of aiding a foreign adversary or person connected with a foreign adversary in compromising the security of the United States.

Proposed law provides that no attorney, title insurer, title insurance producer, title insurance agency producer, lender, notary public, real estate agent, real estate broker, seller, or lessor shall have a duty to make an investigation as to whether a party is a foreign adversary.

Proposed law provides that the provisions of proposed law shall not apply to the following:

- (1) A natural person who is a U.S. citizen, either by birth or being granted lawful permanent residency status.
- (2) A person who is not a U.S. citizen but is a permanent legal resident or lawfully present in the U.S. with a valid visa issued by U.S. Citizenship and Immigration Services.
- (3) A juridical person wholly owned by persons who qualify under proposed law.
- (4) Immovable property purchased, leased, or otherwise acquired by a natural person that is used as a single family residential property.

Proposed law defines "foreign adversary" and "person connected with a foreign adversary".

Present law (15 CFR 7.4(A)) provides that certain foreign governments or foreign non-government persons are significantly adverse to the national security of the U.S. and are considered foreign adversaries.

Proposed law provides that proposed law shall only apply to property acquired by a foreign adversary or person connected with a foreign adversary on or after August 1, 2023, and the property shall only be subject to forfeiture during the period in which the foreign adversary or person connected with a foreign adversary owns the property. Proposed law provides that rights in an immovable property shall not be void or voidable because the property or right held in the property was previously held by a prohibited foreign adversary or person connected with a foreign adversary.

(Adds R.S. 9:2717.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Provide for notice of attorney general actions.
2. Change the disbursement of the proceeds from judicial sales to include certain veterans.
3. Authorize the attorney general to enter into cooperative endeavor agreements.
4. Provide that mortgage servicers and directors, officers, or employees of real estate agents, title insurance producers and underwriters, lenders, mortgage servicers, and examining attorneys shall not have additional liability for failure to identify a buyer as a foreign adversary or person connected with a foreign adversary.
5. Provide exceptions from proposed law for certain persons.
6. Change definition of "person connected with a foreign adversary".

The House Floor Amendments to the engrossed bill:

1. Provide that no party to the transaction other than a foreign adversary or person connected with a foreign adversary shall be held liable unless he knew or should have know he was entering into a transaction with a foreign adversary or person connected with a foreign adversary.
2. Provide that a person may conclusively rely on an affidavit.
3. Provide for the effect of the recordation of a notice of pendency of the action.
4. Provide that the sale shall not be less than the sum of certain indebtedness.
5. Provide that all proceedings shall be made with due provisions to protect the rights of any person unless the attorney general proves beyond a reasonable doubt that the person entered into the transaction with the purpose of aiding such foreign adversary or person connected with a foreign adversary.
6. Provide that no attorney, title insurer, title insurance producer, title insurance agency producer, lender, notary public, real estate agent, real estate broker, seller, or lessor shall have a duty to make an investigation about whether a party to a transaction is a foreign adversary.
7. Provide exception from proposed law for certain persons.
8. Change definition of "person connected with a foreign adversary".
9. Provide that proposed law shall apply only to property acquired by a foreign adversary or person connected with a foreign adversary on or after Aug. 1, 2023, and that property shall only be subject to forfeiture during the period owned by the prohibited foreign adversary or person connected with a foreign adversary.
10. Make technical amendments.