

GREEN SHEET REDIGEST

HB 537

2023 Regular Session

Hodges

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

DIGEST

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. 2331, et seq.)

Present law (C.C.P. Art. 2331, 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.
- (5) Agricultural land as defined in present law (R.S. 3:3602).

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 known 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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the reengrossed bill

1. Add provisions excluding agricultural land from types of immovable property prohibited.
2. Add provisions relative to judicial sales of immovable property held by foreign adversaries.
3. Removes enumerated list of foreign adversaries as identified in 15 CFR 7.4(a).
4. Make technical amendments.