

By: Parker, et al.
(Lambert, et al.)

S.B. No. 2117

Substitute the following for S.B. No. 2117:

By: King

C.S.S.B. No. 2117

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Committee on Foreign Investment to review certain transactions involving certain foreign entities in coordination with the attorney general; creating a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Government Code, is amended by adding Chapter 426 to read as follows:

CHAPTER 426. TEXAS COMMITTEE ON FOREIGN INVESTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 426.001. DEFINITIONS. In this chapter:

(1) "Committee" means the Texas Committee on Foreign Investment.

(2) "Control" means, with respect to an entity, the direct or indirect power, whether or not exercised, to:

(A) direct the activities of the entity;

(B) make or direct others to make legal commitments on behalf of the entity; or

(C) hire or fire a principal decision-maker of the entity.

(3) "Covered transaction" means a foreign transaction that is subject to this chapter in accordance with rules adopted under Section 426.101.

(4) "Critical infrastructure" means infrastructure in

one of the following categories:

- (A) chemical;
- (B) commercial facilities;
- (C) communications;
- (D) critical manufacturing;
- (E) dams;
- (F) defense industrial bases;
- (G) emergency services;
- (H) energy;
- (I) financial services;
- (J) food and agriculture;
- (K) government facilities;
- (L) health care and public health;
- (M) information technology;
- (N) nuclear reactors, materials, and waste;
- (O) transportation systems; or
- (P) water and wastewater systems.

(5) "Foreign transaction" means a merger or acquisition, including a merger or acquisition carried out through a joint venture, by or with a scrutinized foreign entity that results in control of a business, real property, or another asset located in this state by the scrutinized foreign entity.

(6) "Mitigation agreement" means an agreement proposed by the attorney general in the manner provided by Subchapter C to mitigate a national security risk arising from a covered transaction. The term includes an amended mitigation agreement proposed by the attorney general under Section 426.103.

1 (7) "Scrutinized foreign entity" means:

2 (A) a person who is not:

3 (i) a citizen or national of the United
4 States; or

5 (ii) an alien who is lawfully admitted for
6 residence in the United States under the federal Immigration and
7 Nationality Act (8 U.S.C. Section 1101 et seq.);

8 (B) a foreign government; or

9 (C) a business entity:

10 (i) organized in a foreign country that is
11 not listed by the Office of the United States Trade Representative
12 as a signatory to a trade agreement with the United States or under
13 the laws of a foreign government of a country that is not listed by
14 the Office of the United States Trade Representative as a signatory
15 to a trade agreement with the United States;

16 (ii) that has its principal place of
17 business in a foreign country that is not listed by the Office of
18 the United States Trade Representative as a signatory to a trade
19 agreement with the United States; or

20 (iii) controlled by an entity described by
21 Subparagraph (i) or (ii).

22 (8) "Sensitive personal data" means information,
23 including health, financial, or biometric information, that may
24 pose a threat to public safety if obtained by a scrutinized foreign
25 entity, including by exploiting the information to cause harm or
26 coerce an individual to perform an act on behalf of the entity.

27 (9) "Trade agreement" means any of the following

bilateral, multilateral, or plurilateral trade agreements, as negotiated by the Office of the United States Trade Representative and entered into by the United States:

(A) a trade and investment agreement;

(B) a trade in services agreement; or

(C) an environmental goods agreement.

Sec. 426.002. APPLICABILITY. This chapter does not apply to:

(1) a transaction governed exclusively by federal law, including an international agreement between the United States and a foreign nation;

(2) a transaction for which notice has been submitted to the federal Committee on Foreign Investment in the United States in the manner provided by 50 U.S.C. Section 4565(b)(1)(C);

(3) a foreign transaction consisting solely of a passive ownership interest in an entity that does not result in control of the entity by a scrutinized foreign entity;

(4) the sale, transfer, or other acquisition of real property intended for residential use; or

(5) the creation, transfer, sale, or other acquisition of a public security interest that does not grant rights to a scrutinized foreign entity exceeding those held by other shareholders.

SUBCHAPTER B. TEXAS COMMITTEE ON FOREIGN INVESTMENT

Sec. 426.051. COMMITTEE; MEMBERSHIP. (a) The Texas Committee on Foreign Investment is established to facilitate the review of certain foreign transactions as provided by this chapter.

1 (b) The committee is composed of the following members:

2 (1) a representative from the office of the secretary
3 of state appointed by the secretary of state, who shall serve as
4 chair;

5 (2) the following officers or their designees:

6 (A) the attorney general;

7 (B) the land commissioner;

8 (C) the comptroller; and

9 (D) the commissioner of agriculture; and

10 (3) the heads of the following agencies or their
11 designees:

12 (A) the Department of Public Safety;

13 (B) the Public Utility Commission of Texas;

14 (C) the Department of Information Resources, or
15 its successor in functions relating to cybersecurity; and

16 (D) the Railroad Commission of Texas.

17 Sec. 426.052. SUNSET PROVISION. The committee is subject
18 to Chapter 325 (Texas Sunset Act). Unless continued in existence
19 as provided by that chapter, the committee is abolished and this
20 chapter expires September 1, 2035.

21 SUBCHAPTER C. REVIEW OF CERTAIN TRANSACTIONS

22 Sec. 426.101. FOREIGN TRANSACTIONS SUBJECT TO REVIEW;
23 PUBLICATION OF CRITERIA. (a) The secretary of state, in
24 consultation with the committee, shall by rule adopt criteria for
25 determining whether a foreign transaction is subject to this
26 chapter. The criteria must be consistent with criteria established
27 under 50 U.S.C. Section 4565 and provide that a foreign transaction

1 is subject to this chapter if the transaction:

2 (1) exceeds the minimum dollar value or the minimum
3 ownership percentage as determined by the secretary of state; and

4 (2) affects at least one of the following concerns:

5 (A) critical infrastructure in this state;

6 (B) agricultural land in this state; or

7 (C) sensitive personal data of residents of this
8 state.

9 (b) The secretary of state, in consultation with the
10 committee, may by rule exempt certain transactions from the
11 requirements of this chapter.

12 (c) As soon as practicable after adopting the criteria under
13 Subsection (a) or an exemption under Subsection (b), the secretary
14 of state shall publish and maintain the criteria and exemptions on
15 the secretary of state's Internet website.

16 Sec. 426.102. NOTICE; REVIEW; REPORT TO COMMITTEE. (a) A
17 person who intends to enter into a covered transaction shall, not
18 later than the 45th day before the date of the closing or other
19 settlement of the transaction, notify the attorney general in the
20 form and manner prescribed by the attorney general.

21 (b) Not later than the 15th day after the date the attorney
22 general receives notice under Subsection (a), the attorney general
23 shall complete an initial review of the information provided in the
24 notice and determine whether further investigation is warranted. If
25 the attorney general determines that further investigation is
26 warranted, the attorney general shall conduct a secondary
27 investigation. The attorney general shall conclude a secondary

1 investigation not later than the 10th day after the date the
2 attorney general concludes the initial review.

3 (c) On completion of an initial review and, if applicable,
4 secondary investigation under Subsection (b), and not later than
5 the 25th day after the date the attorney general receives notice
6 under Subsection (a), the attorney general shall submit a report
7 containing the results of the review and investigation to the
8 committee. If the attorney general fails to submit a report to the
9 committee in the manner provided by this subsection, the attorney
10 general is considered to have determined that a mitigation
11 agreement is not necessary to protect the state's interests.

12 Sec. 426.103. MITIGATION AGREEMENT. (a) If the attorney
13 general determines that a mitigation agreement is necessary to
14 protect the state's interests, the attorney general shall, as soon
15 as practicable after submitting the report under Section 426.102
16 but not later than the 30th day after the date the attorney general
17 receives notice under Section 426.102(a), submit a proposed
18 mitigation agreement to the committee. The agreement must address
19 concerns raised in the report and may require a party to a covered
20 transaction to comply with certain requirements proposed by the
21 attorney general, including:

- 22 (1) data protection protocols;
23 (2) security clearance requirements;
24 (3) restrictions on access by scrutinized foreign
25 entities to assets that are a part of a covered transaction; and
26 (4) compliance reporting.

27 (b) Not later than the fifth business day after the date the

1 committee receives a mitigation agreement from the attorney
2 general, the committee shall adopt or reject the agreement.

3 (c) If the committee adopts the mitigation agreement, the
4 committee shall deliver the agreement to each party to the covered
5 transaction.

6 (d) If the committee rejects the mitigation agreement, the
7 attorney general shall, not later than the fifth day after the date
8 the committee rejects the initial mitigation agreement, prepare an
9 amended mitigation agreement that addresses the committee's
10 concerns with the initial agreement.

11 (e) If a provision of a mitigation agreement affects title
12 to a real property interest, the mitigation agreement must:

13 (1) require the attorney general to record notice of
14 the mitigation agreement in each county in which any part of the
15 real property subject to the provision is located; and

16 (2) provide that the mitigation agreement has no
17 effect if the attorney general does not record notice in the manner
18 provided by Subdivision (1).

19 (f) The committee shall adopt rules providing procedures to
20 implement this section.

21 Sec. 426.104. NO DUTY ON CERTAIN PARTICIPANTS TO REAL
22 PROPERTY TRANSACTION. Notwithstanding any other provision of this
23 chapter, this chapter may not be construed to impose a duty or
24 liability on a person, including a title insurance company, lender,
25 or real estate professional, who is not:

26 (1) a party to a covered transaction; or

27 (2) a governmental entity on which this chapter

explicitly imposes a duty.

Sec. 426.105. VIOLATION. A person violates this chapter if:

(1) the attorney general determines that a covered transaction involving the person requires a mitigation agreement; and

(2) the person knowingly or intentionally:

(A) executes a covered transaction without entering into a mitigation agreement; or

(B) violates a provision of a mitigation agreement.

Sec. 426.106. CONFIDENTIALITY. Notwithstanding any other law, information the committee obtains during a review under Section 426.102 or includes in a mitigation agreement under Section 426.103 is confidential and excepted from disclosure under Chapter 552. The information may be used in a proceeding under Subchapter D at the attorney general's discretion.

SUBCHAPTER D. ENFORCEMENT

Sec. 426.151. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter is liable to the state for a civil penalty in an amount not to exceed \$50,000 for each violation.

(b) The attorney general may bring an action to:

(1) recover the civil penalty imposed under Subsection (a); and

(2) restrain or enjoin a person from violating this chapter.

(c) The attorney general may recover reasonable attorney's

fees and other reasonable expenses incurred in bringing an action under this section.

Sec. 426.152. DEFENSE. It is a defense to an action brought under this subchapter that:

(1) a good-faith dispute exists between the parties to the mitigation agreement relating to whether an activity by a party to a mitigation agreement violates a provision of the agreement;

(2) the party performing the activity provides notice to the attorney general before performing the activity; and

(3) the attorney general provides a response to the notice provided under Subdivision (2) consenting to the activity described in the notice.

Sec. 426.153. VENUE. Notwithstanding any other law, the attorney general may bring an action under this chapter in the county where all or a substantial part of the assets that are the subject of the covered transaction are located.

SUBCHAPTER E. ANNUAL REPORT

Sec. 426.201. ANNUAL REPORT. Not later than September 1 of each year, the committee shall prepare and submit to the governor, secretary of state, lieutenant governor, and speaker of the house of representatives a report that includes:

(1) the number of transactions reviewed by the attorney general during the preceding fiscal year;

(2) an analysis of the measures imposed by the committee in mitigation agreements entered into under this chapter; and

(3) a summary of recommendations for legislative

1 changes the committee considers appropriate to promote state and
2 national security.

3 SECTION 2. Not later than December 1, 2025, the secretary of
4 state, in consultation with the Texas Committee on Foreign
5 Investment, shall adopt criteria under Section 426.101, Government
6 Code, as added by this Act.

7 SECTION 3. In accordance with Section 16, Article I, Texas
8 Constitution, Chapter 426, Government Code, as added by this Act,
9 applies only to a transaction governed by a contract entered into on
10 or after January 1, 2026. A transaction governed by a contract
11 entered into before that date is governed by the law in effect on
12 the date the contract was entered into, and the former law is
13 continued in effect for that purpose.

14 SECTION 4. This Act takes effect September 1, 2025.