



## Foreign Ownership of Agricultural Land: A Legislative Roadmap

*Reviewing State Law Provisions Restricting Foreign Landholdings  
(Revised September 22, 2023)*

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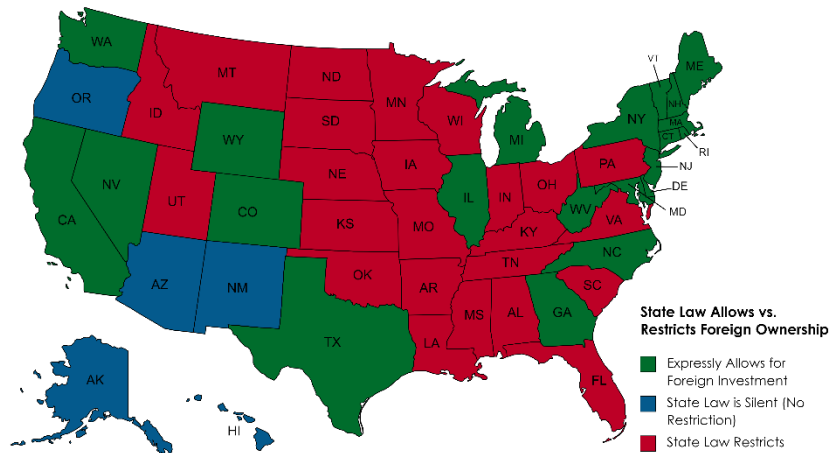
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### I. Introduction

Ownership of U.S. land, specifically agricultural lands, by foreign persons or entities has been an issue that traces to the origins of the United States.<sup>1</sup> In most states, foreign persons and entities have the same property rights as the citizens of those states. Other states restrict or significantly limit foreign ownership of agricultural land while allowing for at least some level of ownership of non-agricultural land. Some states restrict foreign ownership and investments in all real estate. Today, approximately twenty-four states<sup>2</sup> specifically



<sup>1</sup> The Colonies addressed British policies concerning land ownership through the Declaration of Independence where Representatives alleged that the Crown had “endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.” See U.S. National Archives and Records Administration, “Declaration of Independence: A Transcription.”

<sup>2</sup> States that restrict certain foreign investors from acquiring or holding an interest in private agricultural land include Alabama, Arkansas, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wisconsin.

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forbid or limit nonresident aliens, foreign businesses and corporations, and/or foreign governments from acquiring or holding an interest in private agricultural land within the boundaries of their state.

Each state with a restriction has taken its own approach. In other words, a uniform approach to restricting foreign ownership has not been established because state laws vary widely. Because there is no uniformity among the states that have restrictions, any legislative proposal will likely have components that make it unique from other states' proposals, reflecting the type of provisions that various interests may want included or excluded. This fact sheet discusses various provisions often included in states' foreign ownership laws and is a resource for legislators or others who may consider drafting or reviewing a foreign ownership proposal.

This resource does not advocate for or against the enactment of laws that restrict foreign ownership of agricultural land. The information provided in this fact sheet is for educational purposes only. This resource is meant to provide general information only, and does not constitute any legal advice offered by the National Agricultural Law Center, nor act as a substitute for legal advice and counsel.

## II. Background

In the past three years or so, the issue of restricting foreign investments and ownership of private land emerged or reemerged in the majority of states in the U.S. A recording of a NALC webinar discussing these state proposals can be viewed [here](#). NALC's *Foreign Investments in Agricultural Land: FAQs & Resource Library* also discusses some of these state proposals, which is available [here](#). This reemerging interest in restricting foreign investments in U.S. land, especially agricultural land, is partly due to a Chinese-owned company purchasing over 130,000 acres near a U.S. Air Force base in Texas. Another transaction that raised concerns among some lawmakers is the purchase of 300 acres near an Air Force base in North Dakota by the Chinese company Fufeng Group.

Each of these states proposed legislation that would restrict foreign ownership or investment of agricultural land to some degree. Like the states that had enacted a foreign ownership law before 2021, many states' proposals took their own approach to restricting foreign acquisitions of agricultural land within their state. In 2021, Senate Bill 312 ("SB 312") was introduced in the Arkansas legislature that, under the original version of the bill, included many identical provisions contained in Missouri's foreign ownership law. The Arkansas legislature enacted SB 312, but this law is entirely different from the original version that was proposed. In fact, the law does not restrict foreign ownership of agricultural land. Rather, the new law simply requires certain "foreign persons" to report their ownership interest in agricultural land within the state to the Secretary of the Arkansas Department of Agriculture.

In 2022, Indiana was the only state to enact a law restricting certain foreign investments in the state's agricultural land. To read the statutory language of



Indiana’s restriction law, click [here](#). In the same year, Mississippi amended its foreign ownership law to protect domestic entities from losing their interest in land through forfeiture or escheat because of the alienage of a former owner of the land. See [Miss. Code Ann. § 89-1-23](#). Also in 2022, both chambers of California’s state legislature unanimously passed a bill ([SB 1084](#)) that would restricting foreign governments from owning agricultural land within the state, but Governor Newsom vetoed the bill. To learn more on California’s SB 1084, read NALC’s “California’s Attempt to Restrict Foreign Agricultural Land Investments” article [here](#).

States that enacted a foreign ownership law during the 2023 legislative session include Alabama, Arkansas, Florida, Idaho, Louisiana, Montana, North Dakota, Ohio, Tennessee, Utah, and Virginia. Further, North Dakota amended a portion of their previously enacted foreign ownership law to extend the restriction to foreign governments and foreign government-controlled entities. Oklahoma also amended their state’s foreign ownership law in 2023; however, the legislation narrowed their restriction to specifically prohibit foreign acquisitions of land through business entities or trusts that engage in activities or ventures that are illegal under federal law (i.e., the production of marijuana). A recording of a NALC webinar discussing these state laws is available [here](#).

Historically, almost all of the land ownership restrictions placed on foreign investors have been established under state law. Accordingly, no federal law currently exists that restricts foreign investors from acquiring or holding U.S. agricultural land. However, over the past few years, federal policymakers have become increasingly concerned about foreign investments in land, especially agricultural land. As a result, there has been several bills introduced in Congress that seek to control or restrict certain foreign investments in agricultural land. A discussion of these proposals are outlined in more detail in a NALC publication titled *Congressional Considerations on Restricting Foreign Investments in U.S. Agriculture* which is available [here](#). Two NALC webinars discuss these federal proposals in great detail, which are available [here](#) and [here](#).

### **III. Discussion**

#### **A. Legislative Drafting Considerations**

There are several different elements to drafting a bill that seeks to restrict certain foreign investors from acquiring and holding agricultural land. Although there is no uniform or model foreign ownership law among the states, there are areas these laws commonly address that legislators may want to consider. However, different state legislators may have different goals when proposing a bill that aims at restricting foreign acquisitions. For example, some states may want to prohibit all foreign ownership while other states may seek to restrict only certain foreign parties from investing or participating in certain types of agricultural production within their state. Further, some states seek to restrict foreign investments from specific countries while other states seek to restrict all foreign acquisitions.



## 1. State Constitution and Statutes

Some states' constitutions<sup>3</sup> and codes provide foreign parties the right to hold and acquire real property. Consequently, a law that restricts foreign persons from investing in farmland will likely violate their state constitution. For example, some states have laws that permit foreign persons to inherit real estate, specifically farmland.<sup>4</sup> Other states' constitutions<sup>5</sup> or codes allow or specifically direct their legislature to enact laws that restrict or prohibit foreign persons from investing in land within their state. Alternatively, a few states are silent on the issue of restricting foreign ownership of private farmland within its state.<sup>6</sup>

## 2. Definitions

The definitions contained in any piece of legislation are important because they provide context to how the words or phrases are to be understood throughout the legislative text. This is especially true for legislation that seeks to restrict certain foreign investors from purchasing specific types of real estate within the state, such as agricultural land. However, there is not a uniform definition of “agricultural land” among the states that have a foreign ownership law. Nevertheless, a definition of “agricultural land” or similar terminology is almost always included or referenced in a foreign ownership law.

### a. “Agricultural Land” and “Farming”

Some states' foreign ownership laws define the phrase more broadly while other states have adopted a narrower definition. For example, Indiana's law defines “agricultural land” as “land for use in crop farming or timber production.”<sup>7</sup> Indiana's law does not specify what qualifies as “timber production,” but it does define “crop farming” as the “cultivation of land for the production of agricultural crops, consisting of plants or plant products that can be grown and harvested exclusively for profit or subsistence.”<sup>8</sup> On the other hand, Missouri's law defines “agricultural land” as:

“[A]ny tract of land in this state consisting of more than five acres, whether inside or outside corporate limits of any municipality, which is

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<sup>3</sup> For example, Cal. Const. art. I, § 20 (“Noncitizens have the same property rights as citizens.”); Mass. Gen. Laws Ann. ch. 184, § 1 (“Aliens may take, hold, transmit and convey real property....”); N.Y. Real Prop. Law § 10(2) (“Aliens are empowered to take, hold, transmit, and dispose of real property within this state in the same manner as native-born citizens....”); Tenn. Code Ann. § 66-2-101 (“An alien, resident or nonresident..., may take and hold property, real or personal, in this state....”).

<sup>3</sup> See K.S.A. § 17-5903.

<sup>4</sup> For example, see Ky. Rev. Stat. § 381.330.

<sup>5</sup> See Kan. Const. Bill of Rts. § 17; Miss. Const. Art. 4, § 84; Okla. Const. art. XXII, § 1; S.C. Const. art. III, § 35.

<sup>6</sup> Alaska, Arizona, Hawaii, Montana, New Mexico, Oregon, and Utah.

<sup>7</sup> Ind. Code Ann. § 32-22-3-1.

<sup>8</sup> *Id.* at § 32-22-3-2.



capable, without substantial modification to the character of the land, of supporting an agricultural enterprise, including but not limited to land used for the production of agricultural crops or fruit or other horticultural products, or for the raising or feeding of animals for the production of livestock or livestock products, poultry or poultry products, or milk or dairy products. Adjacent parcels of land under the same ownership shall be deemed to be a single tract...”<sup>9</sup>

A few states include separate definitions for “agricultural land” and “farming” within their law. For example, Iowa’s law defines “agricultural land” as “land suitable for use in farming” and defines “farming” as “the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock.”<sup>10</sup>

Some states specifically or implicitly exclude certain agricultural practices and products from their definitions of “agricultural land” and “farming.” Iowa’s law expressly excludes “production of timber, forest products, nursery products, or sod” and contracts for “spraying, harvesting or other farm services” as “farming.”<sup>11</sup> Indiana’s law explicitly excludes agricultural land used for confined feeding operations and raising and producing poultry and poultry products.<sup>12</sup>

Overall, the definition of “agricultural land” within each state’s foreign ownership law typically determines the types of agricultural practices or commodities foreign investors are prohibited from participating or producing. As a result, one state’s definition of “agricultural land” may not be practical for another state. For example, Indiana’s definition of “agricultural land” may be objectionable in states that produce large quantities of beef or dairy products, such as Texas and California, because the definition does not restrict foreign purchasers from acquiring or holding property for these production purposes.

## **b. Carbon, Solar, and Wind Energy Markets**

Agriculture has become a centerpiece of the climate discussion because agricultural producers are capable of delivering natural climate solutions by undertaking certain “carbon-smart” farming practices that sequester carbon. As a result, several carbon market-operating companies are currently offering market programs to producers who implement sustainable farming practices to boost market participation. As the carbon market industry continues develop into a money-making venture, foreign persons and entities may seek to invest in the industry. Consequently, this would most likely require the foreign party to invest in agricultural land. Similarly, solar, wind,

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<sup>9</sup> Mo. Rev. Stat. § 442.566(1).

<sup>10</sup> Iowa Code Ann. § 9I.1(1)–(2).

<sup>11</sup> Iowa Code Ann. § 9I.1(2).

<sup>12</sup> Ind. Code Ann. § 32-22-3-0.5(a)(3)–(4).



and other renewable energy markets also typically rely on agricultural land in order to convert a natural resource into energy.

Because carbon markets in the agricultural sector have created a new industry just recently, states have not specifically considered whether participation in carbon markets constitutes “farming” on “agricultural land” within the scope of a foreign ownership law. States also have not considered whether solar, wind, or other renewable energy market participation constitutes “farming” or whether land encumbered with solar or windmills panels constitutes “agricultural land.” Further, businesses and other entities generally lease agricultural land in order to participate in carbon and renewable energy markets. However, states have not considered whether leasing farmland to participate in these markets is considered “ownership” or a “leasehold interest” in land subject to a state’s foreign ownership restriction.

Minnesota is the only state to expressly mention wind within its foreign ownership law. While Minnesota’s law does not specifically reference wind energy markets, it does exempt foreign individuals and entities from its foreign ownership restriction when taking an easement upon agricultural land “for the installation and repair of transmission lines and for wind rights.”<sup>13</sup> This type of exemption is similar to other states’ laws that exempt foreign participation in oil and gas leases on agricultural land.

### **c. Restricted Foreign Parties**

Almost every state that has a foreign ownership law specifies which foreign investors are prohibited or restricted from purchasing, acquiring, owning, or otherwise holding agricultural land within its state. In general, the three different classifications of foreign investors that states restrict include foreign individuals, foreign business entities, and foreign governments. Some states only restrict one classification of foreign investor while other states restrict more than one type of foreign investor.

Multiple states restrict foreign individuals from investing in its state’s farmland, but there is no uniform approach to restricting this classification of foreign investor. Typically, states use the terms such as “aliens”, “non-resident aliens”, or “non-resident individuals”, or similar terminology to indicate its restriction applies to individual persons (i.e., not business entities or governments). However, these terms sometimes do not represent the same type of individual.

Specifically, the term “alien” can be interpreted to include all resident *and* non-resident aliens or individuals. These are two distinct groups of aliens, however, and each possess different legal rights within the United States. Permanent legal aliens are protected under the U.S. Constitution, meaning these individuals usually enjoy the same privileges granted to natural-born citizens of the U.S.

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<sup>13</sup> Minn. Stat. § 500.221, subd. 2(9).



The Fourteenth Amendment’s Equal Protection Clause of the U.S. Constitution prohibits federal and state governments from denying individuals equal protection under the law. In other words, the government cannot draw distinctions between individuals based on differences that are irrelevant to the overall objective of the law. Because natural-born U.S. citizens have the right to hold and acquire real property, a state’s foreign ownership law that possibly restricts permanent resident aliens from holding and acquiring agricultural land may be subject to an argument that the law violates their equal protection rights because the government likely has no compelling interest in restricting these types of investments.

Nebraska and Oklahoma are two states that prohibit “aliens” from acquiring or holding land located within its state.<sup>14</sup> Because the term “alien” is broad, it is unclear who is subject to the restriction without further defining the term within the law. Most states’ laws specify which type of foreign individuals they restrict. For example, North Dakota restricts “[a]n individual who is not a citizen of the United States, a citizen of Canada, or a permanent resident alien of the United States....”<sup>15</sup>

Of the approximate twenty-four states that currently have laws, nineteen of these states—Arkansas, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, Virginia, and Wisconsin—impose restrictions on foreign business entities from investing in private agricultural land. These restrictions overlap with corporate farming laws, which are laws that restrict the power of certain businesses to engage in agriculture within a state. The states restricting foreign business investments in agricultural land define or indicate the types of entities subject to the restrictions. For example, Indiana’s law restricts “foreign business entities” which is defined as “a corporation, professional corporation, nonprofit corporation, limited liability company, partnership, or limited partnership that is organized under the laws of another country” or any other type of entity that is equivalent to these business structures.<sup>16</sup>

A few states<sup>17</sup> offer agriculture-specific business structures to certain groups participating in the agricultural industry. Some of these business structures include “family farm corporations”, “authorized farm corporations”, “limited agricultural partnerships”, “family farm limited liability companies”, and “family farm unincorporated nonprofit associations”. Each of these structures are tailored for entities that are established for the purpose of farming and owning agricultural land.

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<sup>14</sup> Neb. Rev. Stat. § 76-402; Okla. Const. art. XXII, § 1; Okla. Stat. tit. 60, §121.

<sup>15</sup> N.D. Cent. Code Ann. § 47-10.1-02(1).

<sup>16</sup> Ind. Code Ann. § 32-22-3-3(a).

<sup>17</sup> States including Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota offer some form of agriculture-specific business structure.



These types of agriculture-specific entities are primarily exempt from restrictions imposed on businesses under states' laws.<sup>18</sup>

In addition to restrictions on individuals and business entities, Alabama, Arkansas, Florida, Idaho, Iowa, Louisiana, Montana, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, and Wisconsin restrict foreign governments from holding or acquiring farmland within its state. Some states define the term “foreign government.” For example, Iowa’s law defines “foreign government” as “a government other than the government of the United States, its states, territories or possessions.”<sup>19</sup> This definition clarifies that U.S. territories, such as Puerto Rico, Guam, and the U.S. Virgin Islands are excluded from the restriction, and also exempts Tribal Nations within the U.S. from the restriction.

Some states have sought to restrict certain foreign investments from specific countries, a trend that primarily emerged during the 2023 legislative session.<sup>20</sup> For example, Virginia’s newly enacted foreign ownership law<sup>21</sup> restricts a “foreign adversary” from obtaining an interest in agricultural land within the state.<sup>22</sup> The law defines “foreign adversary” as “any foreign government or nongovernment person determined by the U.S. 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 or security and safety of United States persons, as set forth in 15 C.F.R. § 7.4 or such successor regulation, declaration, or statute as may exist from time to time.”<sup>23</sup> In other words, the type of foreign investor subject to Virginia’s restriction relies on the list of countries or governmental regimes determined to be a “foreign adversary” by the U.S. Secretary of Commerce.

Some states use other federal definitions or lists to define which countries’ investors are prohibited from acquiring land within their state. Arkansas’ foreign ownership law<sup>24</sup> restricts acquisitions of land by investors of countries that are subject to the U.S. Secretary of State’s International Traffic in Arms Regulations<sup>25</sup> and entities

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<sup>18</sup> For example, see S.D. Codified Laws § 47-9A-13, which states “[t]he restrictions...do not apply to a family farm corporation or an authorized farm corporation.”

<sup>19</sup> Iowa Code Ann. § 9I.1(4).

<sup>20</sup> The fourteen states that had a foreign ownership before 2023 did not specifically restrict foreign acquisitions of land by investors from specific countries; Rather, these “traditional” foreign ownership laws restrict “any nonresident” or “any foreign business entity”, whereas almost all the states that enacted a foreign ownership law in 2023 restrict investments from individuals, entities, and/or governments from specific countries (namely China, Iran, North Korea, and Russia).

<sup>21</sup> See Va. Code Ann. §§ 55.1-507–509.

<sup>22</sup> Note that other state statutes use the U.S. Secretary of Commerce’s “foreign adversary” definition under 15 C.F.R. § 7.4, including La. Stat. Ann. § 9:2717.1, Montana 2023 Sess. Law Ch. No. 434, N.D. Cent. Code Ann. § 47-01-09, and Ohio Rev. Code Ann. § 5301.256 (Ohio Secretary of State is required to consult the “foreign adversary” list as well as other federal definitions and lists when compiling a registry of the types of foreign investments are prohibited within the state).

<sup>23</sup> Va. Code Ann. § 55.1-507.

<sup>24</sup> See Ark. Code Ann. §§ 18-11-110; 18-11-701–705.

<sup>25</sup> 22 C.F.R. § 126.1.





designated by the Secretary “Entities of Particular Concern” list<sup>26</sup>. Tennessee’s law<sup>27</sup> restricts nonresident individuals, foreign businesses, and foreign governments of countries subject to the U.S. Treasury Department’s “sanctions program list.”<sup>28</sup> Alabama’s law<sup>29</sup> also uses the “sanctions program list” to restrict the governments and government-controlled entities subject to this list from purchasing the state’s farmland, but also restricts governments and their entities of a “foreign country of concern.” Under the law, a “foreign country of concern” includes China, Iran, North Korea, and Russia. The state of Utah restricts land investments by companies—and any entity or country associated or affiliated with these companies—identified as Chinese military companies operating in the U.S.<sup>30</sup>

Florida’s law<sup>31</sup> restricts certain foreign land acquisitions from investors of specific countries, but the state’s law does not reference a federal definition or list. Rather, Florida restricts purchases and leases of agricultural land from investors of a “foreign country of concern,” which the law defines as China, Russia, Iran, North Korea, Cuba, Syria, and the Venezuelan regime of Nicolás Maduro.<sup>32</sup> Further, the Florida law specifically restricts the Chinese government, entities organized under the laws of China, and individuals “domiciled” in China from acquiring any real property located within the state.

#### **d. Property Interests**

Several states’ foreign ownership laws define the type of ownership interests that are restricted or prohibited. In general, there are several different types of ownership interests someone may hold in land, such as fee simple (outright ownership), joint ownership, a life estate, or a leasehold interest. Each type of ownership interest provides different rights and protections in property to individuals and entities. Accordingly, some states restrict foreign investors from acquiring “by grant, purchase, devise, descent, or otherwise” any farmland located within its state.<sup>33</sup> This type of statutory language would likely restrict foreign investors from acquiring any type of ownership or leasehold interest in agricultural land. Also, some states

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<sup>26</sup> “Entities of Particular Concern” designations are available on the U.S. Secretary of State’s website at: <https://www.state.gov/countries-of-particular-concern-special-watch-list-countries-entities-of-particular-concern/> (last updated Nov. 30, 2022).

<sup>27</sup> See Tenn. Code Ann. §§ 66-2-301–306.

<sup>28</sup> The U.S. Treasury Department’s list of sanctioned countries and entities is available on the agency’s website at <https://ofac.treasury.gov/sanctions-programs-and-country-information>.

<sup>29</sup> See Ala. Code § 35-1-1.1.

<sup>30</sup> See Utah Code Ann. §§ 63L-13-101–202. See also the U.S. Defense Department’s list of Chinese military companies operating directly or indirectly in the U.S. at: <https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF>.

<sup>31</sup> See Fla. Stat. Ann. §§ 692.201–205.

<sup>32</sup> *Id.* at § 692.201(3).

<sup>33</sup> Ind. Code Ann. § 32-22-3-4(a).



explicitly define leases on agricultural land are considered “ownership interests” in that land.<sup>34</sup>

### 3. Restriction Provision

Generally, the actual provision that establishes a restriction against foreign purchases and acquisitions of farmland does not have to be lengthy. In fact, many states’ laws contain a one- or two-sentence provision that declares a restriction or prohibition on foreign ownership of agricultural land located within their state. The most common components of a restriction provision include:

- The types of foreign persons or entities subject to the restriction (individuals, business entities, and/or foreign governments);
- The types of investments or acquisitions that are prohibited (grant, purchase, own, hold, transfer, devise, descent, lease, alienate, or otherwise acquire);
- A commencement date of the restriction;
- Whether direct and indirect acquisition is restricted; and
- Status changes of individuals and entities.

By compiling this into one provision, the legislative text of a restriction may resemble the following example provision:

“Nonresident aliens, foreign businesses, and foreign governments, or an agent, trustee or fiduciary thereof, shall not, directly or indirectly, grant, purchase, devise, descent, transfer, or otherwise acquire or hold any interest in agricultural land located within the borders of this state after January 1, 2023. This restriction applies to persons and entities that purchase or hold agricultural land whose status changes so that it becomes a nonresident alien or foreign business, and it must divest itself of all right, title and interest in the agricultural land within one year from the date of its status change.”<sup>35</sup>

Some states’ foreign ownership laws do not specifically restrict ownership or investments in farmland; rather, their restrictions apply to all real property located within the state.<sup>36</sup> Some of these states specify that this restriction applies to public and private real property located within the state.

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<sup>34</sup> See N.D. Cent. Code Ann. § 47-10.1-01(2), which specifies that an “interest in agricultural land” also includes a lease in agricultural land under the restriction law. *See also* Mo. Rev. Stat. § 442.581, which states “a lease on agricultural land for a term of ten years or longer...has acquired agricultural land....”

<sup>35</sup> Language in example based on Iowa Code Ann. § 9I.3(1).

<sup>36</sup> *See* Miss. Code Ann. § 29-1-75; Miss. Code Ann. § 89-1-23; Okla. Const. art XXII, § 1; Okla. Stat. tit. 60, § 121.



## 4. Exceptions

Every foreign ownership law contains exceptions to a restriction on foreign agricultural landholdings. In other words, every state's law contains provisions that permit foreign investors to acquire or hold agricultural land in certain situations. Most often, these provisions exempt certain foreign parties, agricultural practices, and land-use activities from a state's restriction. While some states have only a few exceptions, many states have multiple exceptions to its restriction on foreign investment in agricultural land.

### a. Acreage Limits

A few of the states that have a foreign ownership law include an acreage limit or cap to its restriction. Essentially, these types of exceptions restrict foreign investments in farmland only if the acquisition exceeds a specified number of acres. For example, Pennsylvania caps foreign ownership to 100 acres before the restriction applies, while Missouri limits a foreign investor from owning more than one percent of the "total agricultural land acreage" within the state.<sup>37</sup> Indiana's acreage limit exception relies on the type of production which limits foreign business acquisitions to 320 acres of crop farming land and 10 acres for land used for timber production.<sup>38</sup> Therefore, under these exceptions, foreign investors do not violate a restriction if their overall interest in farmland does not exceed the acreage limit provided under the law.

### b. Conversion

Some states' laws provide exceptions for conversions of agricultural land or the use of agricultural land for nonfarming enterprises. In general, this type of exception arises when a restricted foreign party acquires agricultural land, but converts the land into some use other than farming. This type of exception can be complex and difficult to draft, and there are a few things legislators should assess when considering this type of exception for a restriction bill.

First, some states' foreign ownership law that contain this type of exception is typically tailored towards manufacturing and industrial purposes.<sup>39</sup> Second, these types of exceptions generally include a specific period of time for a conversion. For example, North Dakota requires foreign business entities to enter into contracts within 150 days of acquiring the agricultural land for the construction of an industrial development.<sup>40</sup> If the foreign business fails to enter into these contracts within this time period, they must dispose of the land within 1 year from the date of acquiring the

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<sup>37</sup> 68 Pa. Stat. Ann. § 41; Mo. Rev. Stat. § 442.571(1).

<sup>38</sup> Ind. Code Ann. § 32-22-3-0.5(a)(2).

<sup>39</sup> For an example, see Neb. Rev. Stat. § 76-413.

<sup>40</sup> N.D. Cent. Code Ann. § 47-10.1-02(6).



land.<sup>41</sup> Other states, such as Iowa, require foreign parties to convert the agricultural land into other purposes within 5 years.<sup>42</sup>

Third, states that provide for this type of exception in its foreign ownership law usually permit the land to continue being used for farming purposes during the conversion or development of the nonfarming purpose. Some states, such as Missouri, allow the foreign-owned land to be used for farming purposes pending the development of the land for nonfarming purposes, but only if the land is leased to certain persons or entities engaged in farming.<sup>43</sup> Generally, these types of exceptions require foreign investors to lease the land to individuals or businesses not subject to a state's restriction.<sup>44</sup>

Fourth, a few states with foreign ownership laws limit the amount of agricultural land a foreign party may convert for nonfarming purposes. North Dakota, for example, exempts foreign parties to convert farmland into an industrial purpose, but only the amount of land "reasonably necessary for industrial purposes."<sup>45</sup> South Dakota's does not limit conversion to industrial purposes; rather, the state's law permits restricted foreign owners to hold agricultural land "in such acreage as may be necessary to its *nonfarm business operations*."<sup>46</sup>

Fifth, a few states' foreign ownership laws govern situations where a foreign party ceases to use the land for the converted purpose. States most likely include this "exception to the exception" provision to ensure foreign investors do not use a conversion exemption as a loophole to own agricultural land. For example, in Missouri foreign-held agricultural land is in violation of the state's restriction if the land "ceases to be used for nonagricultural purposes."<sup>47</sup> Mississippi's foreign ownership law permits nonresident aliens to acquire agricultural land for industrial development purposes, but if the land ceases to be used for this purpose, "it shall escheat to the state." This type of exemption likely safeguards against foreign investors using a conversion exemption as a loophole to own agricultural land.

### **c. Agricultural Production, Research, and Experimentation**

Several states that have a foreign ownership law typically exempt certain types of agricultural production from its restriction. Some states<sup>48</sup> exempt foreign parties from restrictions when foreign-owned agricultural land is used for certain purposes,

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<sup>41</sup> *Id.*

<sup>42</sup> Iowa Code Ann. § 9I.3(2).

<sup>43</sup> Mo. Rev. Stat. § 442.591.

<sup>44</sup> For instance, see Wis. State. § 710.02(3).

<sup>45</sup> N.D. Cent. Code Ann. § 47-10.1-02(6).

<sup>46</sup> S.D. Codified Laws § 43-2A-8 (emphasis added).

<sup>47</sup> Mo. Rev. Stat. § 442.576(1).

<sup>48</sup> See Ind. Code Ann. § 32-22-3-0.5(a)(3)-(4); Iowa Code Ann. § 9I.3(3)(d)(3); Kan. Stat. Ann. § 17-5904(a)(8)-(9), (11); Mo. Rev. Stat. § 350.015(5); Okla. Stat. tit. 18, § 954; S.D. Codified Laws §§ 47-9A-1.1, 3.1-3.3, 10, 11.



such as raising breeding stock, livestock feeding operations, cultivating nursery plants, vegetables, grain, fruits or sod, producing poultry or poultry products, producing timber and forest products, and dairy or swine operations. Other states<sup>49</sup> exempt certain types of research and experimental testing, development, or production of agricultural commodities and practices from its restriction.

#### **d. Estates**

Another exception found in many states' foreign ownership law or statutory code is taking agricultural land through someone's estate. Situations may arise where a restricted foreign party obtains ownership of agricultural land by inheritance ("by descent") or through the terms of a person's will ("by devise"). Many states have a public policy interest in allowing beneficiaries and descendants to receive and hold the property granted to them by devise or descent. However, some states that have this exception also limit the period of time a foreign person may hold the farmland granted to them. For instance, Kentucky's law<sup>50</sup> state that nonresident aliens may only hold inherited farmland for eight years from the time they acquired the land. If the nonresident alien does not become a U.S. citizen within that eight-year period, the land escheats to the state.

#### **e. Oil, Gas, and Mineral Leases**

Foreign ownership laws generally include an exception for certain leases of farmland that involve nonfarming operations, such as mineral leases. Oil, gas, and other mineral drilling, mining, or production may supplement a state's economy and restricting foreign parties involved in this industry may not serve a state's interest. Some states, such as Wisconsin, exempt "leases for exploration or production of oil, gas, coal, shale and related hydrocarbons..."<sup>51</sup> from their foreign ownership restriction. Other states limit this type of exception to a specific number of years for leases on agricultural land or circumstances in which a lease may end, such as instances where oil, gas, or other minerals can no longer be produced in commercial quantities.<sup>52</sup> Further, as carbon, solar, and wind energy markets continue to develop within the agricultural industry, some foreign ownership proposals may include exceptions for foreign investors leasing farmland in order to participate in these markets.

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<sup>49</sup> See Ind. Code Ann. § 32-22-3-0.5(a)(1); Iowa Code Ann. §§ 9H.4(1), 9I.3(3)(d); Kan. Stat. Ann. § 17-7504(a)(10); Minn. Stat. Ann. § 500.221, subdivision 2(5); Mo. Rev. Stat. § 350.015(4); Okla. Stat. tit. 18, § 954(1); S.D. Codified Laws § 47-9A-9; Wis. Stat. § 182.001(2)(d).

<sup>50</sup> Ky. Rev. Stat. Ann. § 381.300.

<sup>51</sup> Wis. Stat. § 710.02(2)(g).

<sup>52</sup> Neb. Rev. Stat. § 76-404 limits leases for oil, gas, or other hydrocarbon substances to 10 years and "as long thereafter...shall or can be produced in commercial quantities."



## **f. Interstate Commerce Exception**

Some states' foreign ownership laws exclude certain types of business operations from its restriction so that the law does not violate federal law. Certain business operations, such as railroads, public utilities, common carriers, and pipeline companies<sup>53</sup> conduct business and provide services across large portions of land in sometimes several different states. Accordingly, restricting foreign parties that operates these types of businesses from purchasing certain land within a state can burden commercial activity, which could likely violate the Dormant Commerce Clause.

Essentially, the Dormant Commerce Clause, which derives from the Commerce Clause under Article I of the U.S. Constitution, prohibits a state legislature from enacting laws that place an excessive burden on interstate or international commerce. In other words, states violate the Dormant Commerce Clause when they regulate commercial activity that occurs outside its borders. Therefore, some states exempt these types of business activities from its foreign ownership law to avoid violating federal law.

## **g. Federal Treaties**

Under the U.S. Constitution, the President has the power to enter into treaties with other nations.<sup>54</sup> In certain instances, the federal government may grant citizens or entities from another country the right to acquire or hold land within the U.S. under an international treaty. Because these treaties have the force of federal legislation, these treaties preempt or supersede state law. This is why the U.S. Supreme Court has previously ruled that states have the authority to regulate foreign ownership of real property “where there [is] no treaty....”<sup>55</sup> Accordingly, some states<sup>56</sup> exclude certain “foreign governments” from its foreign ownership law. For instance, Wisconsin does not prohibit “foreign governments or subjects of a foreign government whose rights to hold...land are secured by treaty.”<sup>57</sup>

## **h. Securing Debt with Agricultural Land**

Most states with a foreign ownership law exempt lenders from a restriction when agricultural land is collateral for a loan. Generally, lenders require borrowers to give them a security interest or lien in some type of property before supplying the funds so that they may enforce this interest against a borrower if they do not satisfy the unpaid

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<sup>53</sup> Some states provide an exception to one or more of these types of businesses or service providers (Minn. Stat. Ann. § 500.221, subdivision 2(3); Neb. Rev. Stat. § 76-412; N.D. Cent. Code Ann. § 47-10.1-02(7); Wis. Stat. § 710.02(2)(c).

<sup>54</sup> See U.S. Const. art. II, § 2.

<sup>55</sup> *Blythe v. Hinckley*, 180 U.S. 333, 340-41 (1901).

<sup>56</sup> Fla. Stat. Ann. § 692.205; N.D. Cent. Code Ann. §§ 47-10.1-02(1)(a), (7); N.D. Cent. Code Ann. § 47-01-09(4)(c) (exempting certain foreign governments from the state's foreign ownership law restriction for foreign governments that maintain “an active national security agreement with the [U.S.] federal government.”); 68 Pa. Stat. Ann. § 41; Va. Code Ann. § 55.1-505(E); Wis. Stat. § 710.02(2)(b).

<sup>57</sup> Wis. Stat. § 710.02(2)(b).



debt. In cases where the lender is a foreign person or entity, most states' laws exempt the foreign lender from enforcing their interest in collateralized agricultural land.

A few states that permit foreign lenders to enforce its security interest in agricultural land also limit the period of time in which a foreign lender may hold title to the land after foreclosure. Some of these states limit the types of persons or entities eligible to purchase or acquire the land from the foreign lender (*i.e.*, U.S. citizens and resident aliens and/or U.S. business entities). Further, states with this type of exemption often attach penalties to foreign lenders if they do not sell or otherwise dispose of the property to an eligible party before the specified time period expires, such as escheat or forfeiture of the land.

### **i. "Grandfather" Clause**

States with a foreign ownership law usually include a "grandfather clause." Essentially, a grandfather clause exempts certain persons from the requirements of a law by allowing these persons to continue with the activities that were permissible before the implementation of the new law. For example, Iowa's law excludes nonresident aliens from its restriction if they owned or held agricultural land located within the state on January 1, 1980.<sup>58</sup> Although this exemption is provided under states' foreign ownership law, foreign persons are generally not exempt from additional investments in farmland. Further, some states' grandfather clauses forbid foreign persons from selling or transferring exempt farmland to other restricted parties.

## **5. Enforcement and Penalty Provision**

Many states' restriction laws contain enforcement and penalty provisions while some states are silent on enforcement of their restriction law. Some states have assigned enforcement authority upon the state's attorney general or a district attorney of the county where the foreign-owned land is located. Under this approach, the attorney general or district attorney, when notified or suspecting a foreign party is in violation of a foreign ownership law, will file an escheat or forfeiture action against the foreign person or entity. Thus, if a judge determines that the foreign party is in violation of the restriction law, the land escheats or forfeits to the state which means the state takes title to the land.

Other states permit private enforcement.<sup>59</sup> In other words, residents of the state have the ability to bring a divestment action against a foreign party suspected of violating a foreign owner law. If a judge rules in favor of the resident in this type of lawsuit, they can require the foreign party to sell or transfer their interest in the agricultural land they held in violation of the restriction law.

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<sup>58</sup> Iowa Code Ann. § 9-1.3(1).

<sup>59</sup> Okla. Stat. tit. 18, § 956.



Aside from losing an ownership interest in agricultural land, some states require foreign persons that violate its law to pay a civil penalty. Sometimes, the amount of the penalty is ordered by a judge. Other times, the penalty is assessed on a certain percentage amount of the firm market value of the foreign-held land in violation or the number of violations committed by a foreign person.

## 6. Reporting Provision

While certain foreign persons are required to disclose their interests in U.S. agricultural land to USDA under the federal Agricultural Foreign Investment Disclosure Act of 1978 (“AFIDA”), some states have their own reporting requirements. Specifically, approximately \_\_ states—Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin—require certain nonresident aliens and/or foreign entities to report their agricultural landholdings within the state. These states require foreign investors to report their farmland holding interest to the state’s attorney general, secretary of state, or agricultural department. In some states, its reporting statute requires foreign parties to submit a copy of their AFIDA report to a state agency to satisfy their reporting requirement. State-level reporting statutes are compiled on the NALC’s website [here](#).

Pennsylvania does not have reporting requirements separate from AFIDA; rather, the state has enacted a law that requires the Pennsylvania Department of Agriculture to review AFIDA data to ensure compliance with the state’s restriction on foreign ownership of agricultural land.<sup>60</sup> In Virginia, foreign persons and entities are not required to report their agricultural landholdings, but state law requires the Virginia Department of Agriculture and Consumer Services to compile an annual report that contains certain information concerning foreign ownership and investments in the state’s agricultural land.<sup>61</sup> In 2023, the Mississippi state legislature enacted a law<sup>62</sup> which established a committee to study and monitor foreign interests in agricultural land, water rights, and energy production within the state, but no reporting requirement was established under the legislation.

## IV. Conclusion

In recent years, there has been an increasing number of states considering legislation aimed at restricting foreign ownership and investments in land, specifically agricultural land, within their state. Because of the interest in restricting foreign ownership in U.S. agricultural land, more states may choose to introduce legislation seeking to limit foreign ownership interests. These states that seek to propose a foreign ownership law will likely include some if not most of the type of provisions discussed in this fact sheet.

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<sup>60</sup> 68 Pa. Stat. Ann. § 45.

<sup>61</sup> Va. Code Ann. § 55.1-509.

<sup>62</sup> Miss. Laws 2023, H.B. 280, § 1 (effective July 1, 2023).





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## A “roadmap” of the most common foreign ownership law provisions

The provisions discussed in this fact sheet have been condensed into a flowchart to summarize the most common components included in most foreign ownership laws. Importantly, this chart does not represent a complete list of every type of provision contained in a foreign ownership law.

