



The National Agricultural Law Center  
*The nation's leading source of agricultural and food law research and information*



*Foreign Ownership of Ag Lands:  
Legal Background & Updates*

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Special Thanks



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# About the Center

- National Agricultural Law Center serves as the nation’s leading source for agricultural and food law research and information
  - A standalone unit of the University of Arkansas System Division of Agriculture, within the Agricultural Experiment Station
  - In close partnership with the USDA Agricultural Research Service, National Agricultural Library
- Objective, non-partisan research and information regarding laws and regulations affecting agriculture



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# Today’s Outline:

- Historical Context/Overview
- States’ Laws – Foreign Ownership “Expressly Allowed”
- States’ Laws – Foreign Ownership Prohibited/Restricted
- States’ Laws – Reporting Requirements
- States’ Corporate Farming Laws
- Federal Legislation and Proposals
- Comments/Q&A



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## Historical Context: Long Ago Not So Far Away

- English common law significantly limited ability of aliens to hold or acquire real property
  - Pre-dated by feudalistic system in which all land was owned by the King
  - English common law carried over to the American colonies
  
- Tensions mounted between American colonies and the Crown over the ability of “aliens” to obtain real property
  
- Declaration of Independence reflected these concerns
  
- The Territorial Land Act of 1887
  - Several states passed similar laws (i.e., declaring intent for citizenship or actually applying for citizenship)
  
- States’ laws developed unevenly and at different political flashpoints over the ensuing decades/centuries
  - Post-Civil War, Early 1900s, Post-WWII, 1970s (. . . and 2021 moving forward?)



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## Historical Context: One The Eve of AFIDA

- *Report by the Comptroller General of the United States: Foreign Ownership of U.S. Farmland— Much Concern, Little Data* (CED-78-132) (June 12, 1978)
- “There is virtually unanimous agreement among people at all levels of government and in the private sector that, currently, there is no reliable data on the amount of U.S. farmland owned by nonresident aliens or on recent trends in such ownership. Such information would be very helpful to the Congress if it wishes to formulate and implement a national policy on nonresident aliens owning farmland in the United States. Clearly, efforts need to be started now to produce useful and meaningful information.”
- Reported that in May of 1978, 25 states had laws that to some degree restricted aliens from acquiring agricultural land
  
  - On October 14, 1978, the Agricultural Foreign Investment Disclosure Act (AFIDA) was enacted
    - The information (or lack thereof) we have today derives from AFIDA



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# Snapshot of 2021

- Latest official data is through December 31, 2019
  - Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) (available [here](#))
- All 50 states and Puerto Rico report having some level foreign investment/ownership
  - Concentrated in the Southern and Western United States
  - Texas has largest amount of acreage (4.4 million), followed by Maine (3.3 million acres) and Alabama (1.8 million acres)
  - 49% forest land, 25% cropland, 24% for pasture/other ag land
- 40%+ of increase from 2018 to 2019 is attributed to Texas, Oklahoma, and Colorado
- Foreign individuals/entities reported holding an interest in about **35.2 million acres** of U.S. agricultural land
  - 2.7% of all privately held **agricultural land** in the U.S.
  - 1.5% of all land in the U.S.
- Take special note of Maine – accounts for about 10% of all reported U.S. ag land
  - Followed by Hawaii (9.2%), Washington (6.9%), Alabama (6.1%), and Florida (5.8%)



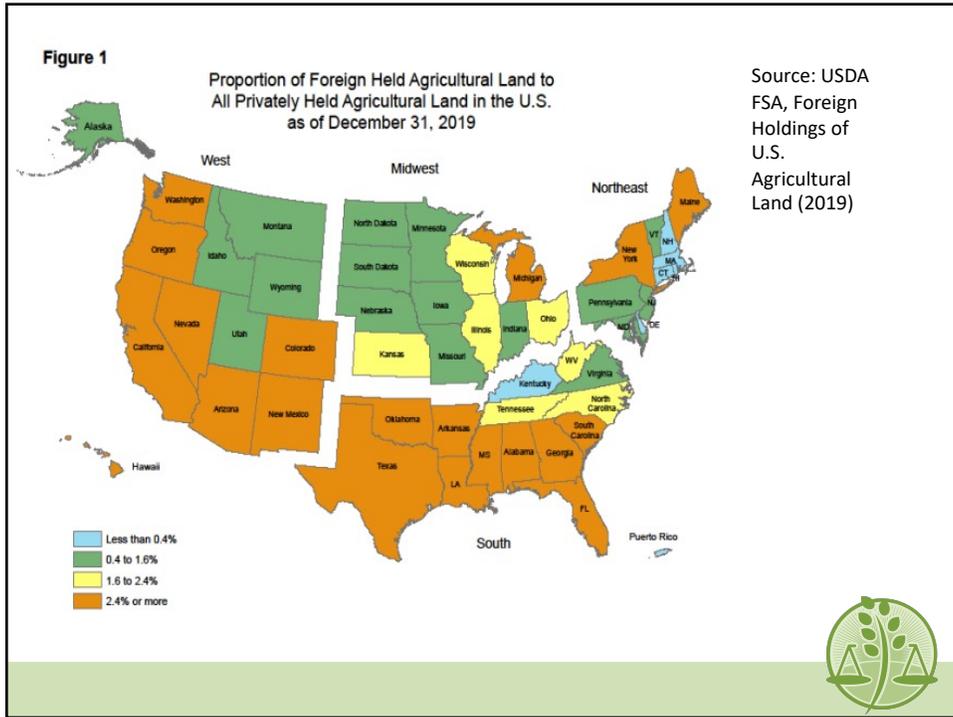
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# Snapshot of 2021: Country of Origin

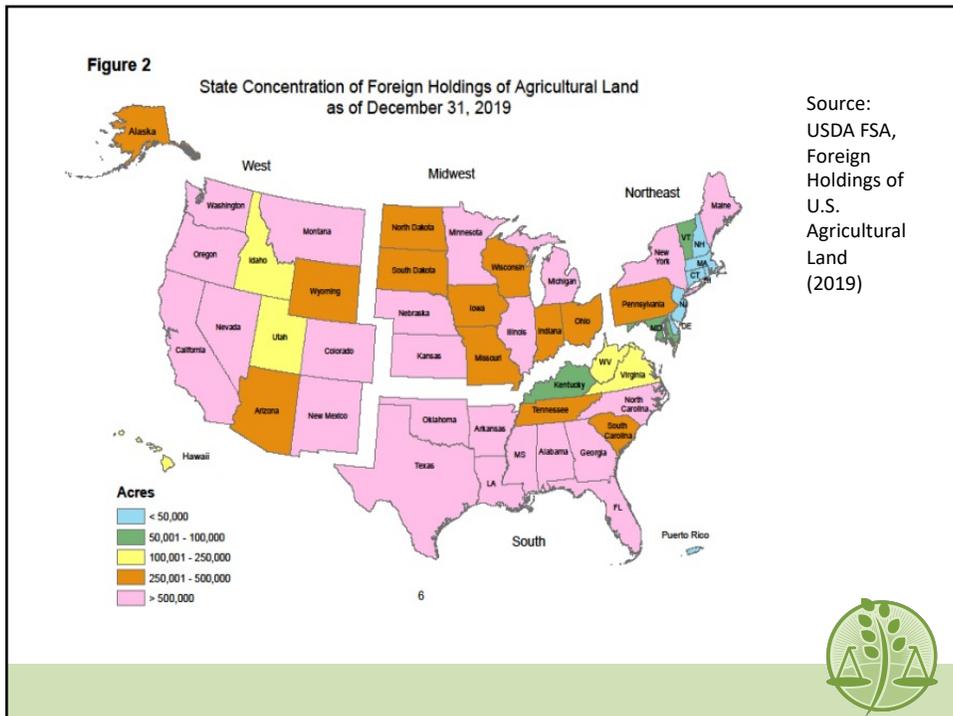
- Canadian investors own largest amount of acreage (ag and non-ag)
  - 10,519,144 acres (primarily forest land)
  - 29%
- Netherlands (14%), Italy (7%), Germany (6%), and United Kingdom (6%)
  - Combined, 11.7 million acres
  - 33%
- The remaining 13.6 million acres (38%) is spread across about 100 other countries
- Chinese investors own 191,652 acres, representing 0.05% of total foreign ownership
- Note that “ownership” includes long-term leases



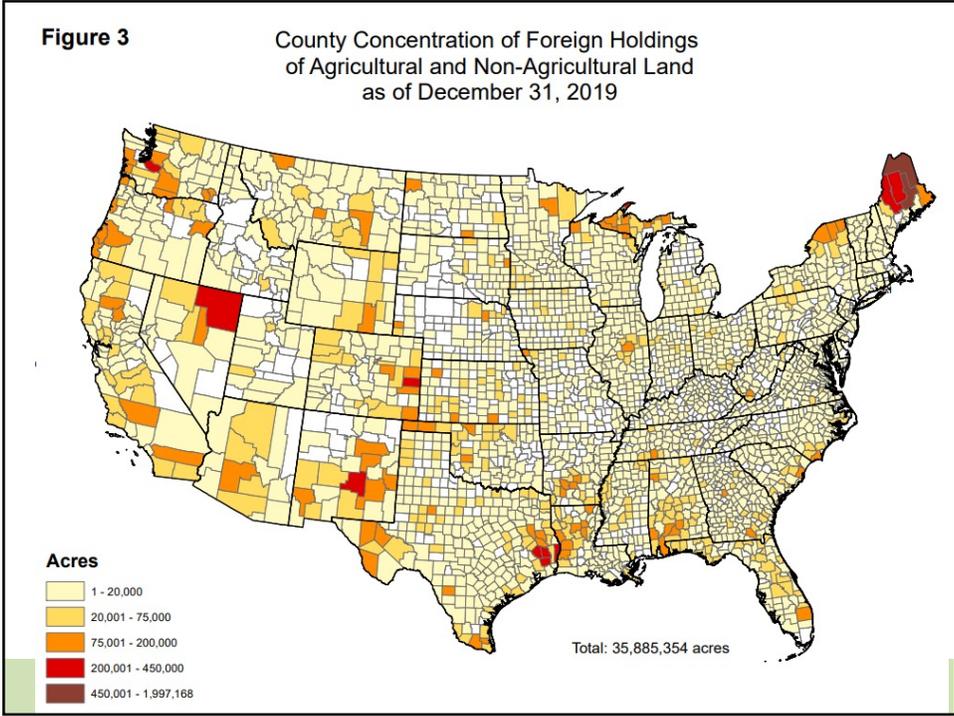
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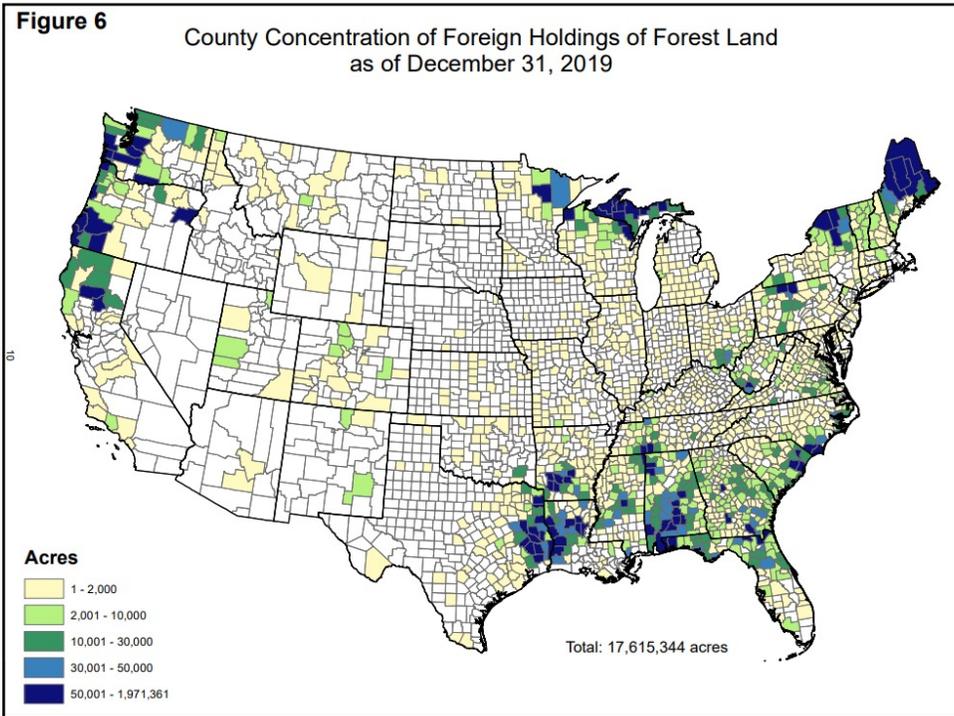
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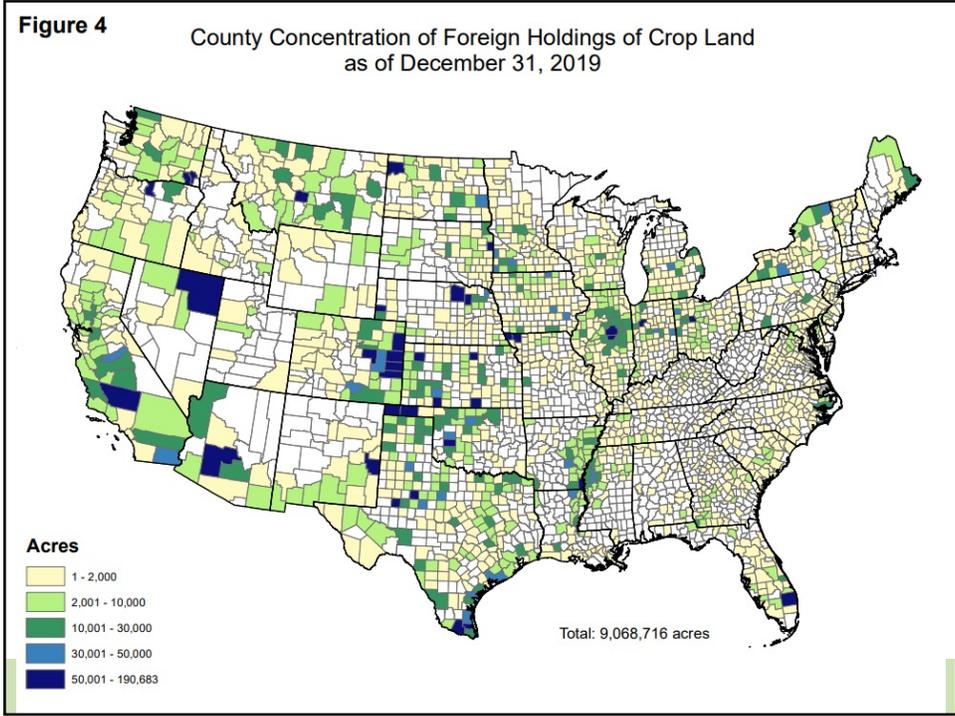
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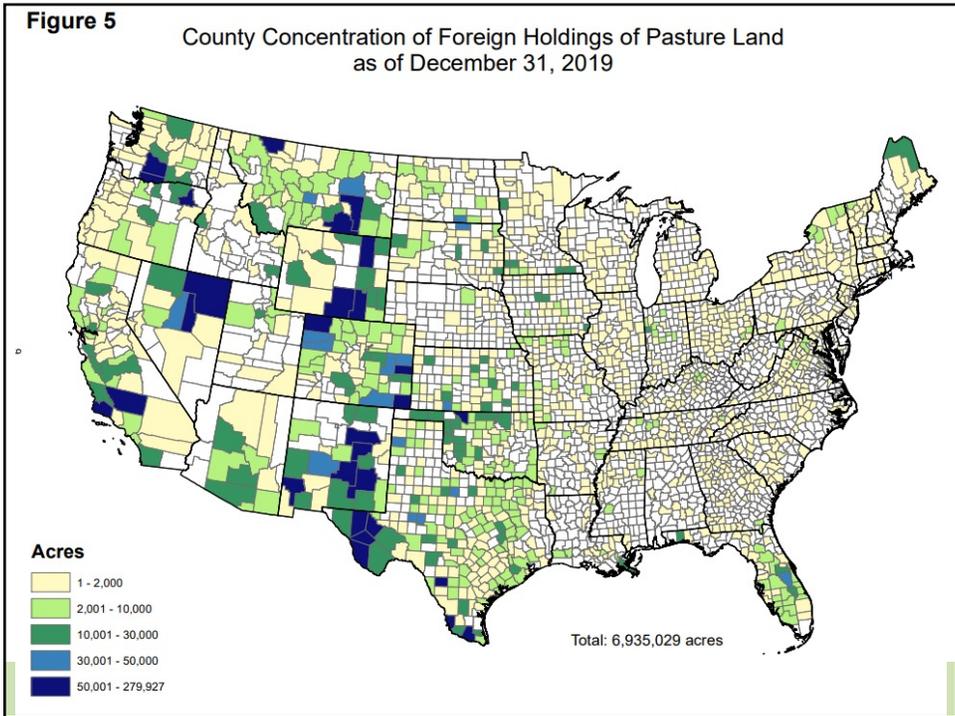
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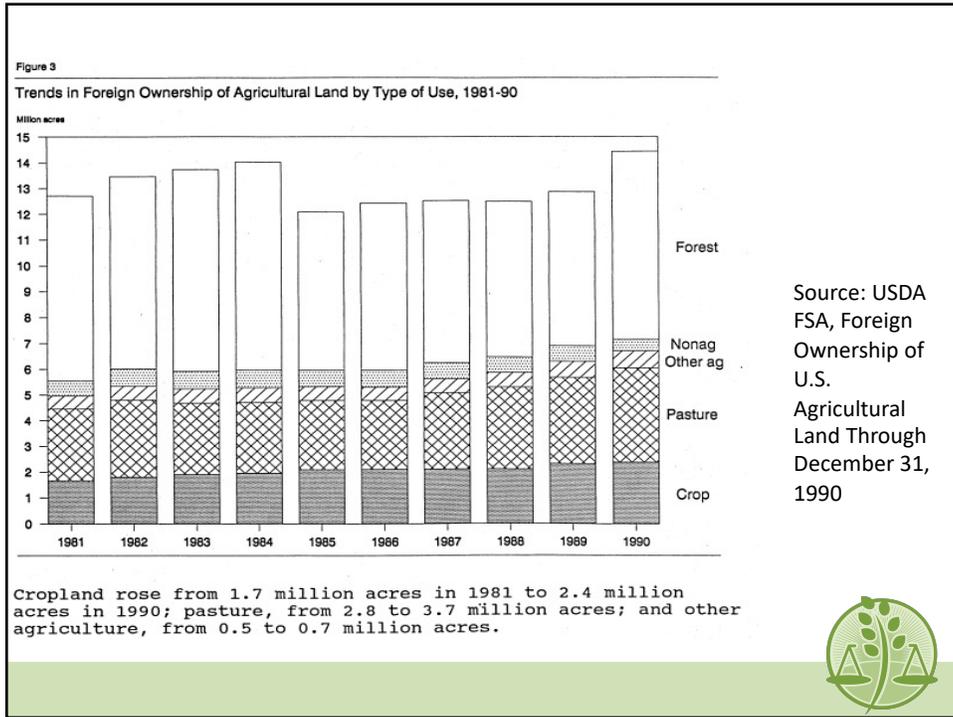
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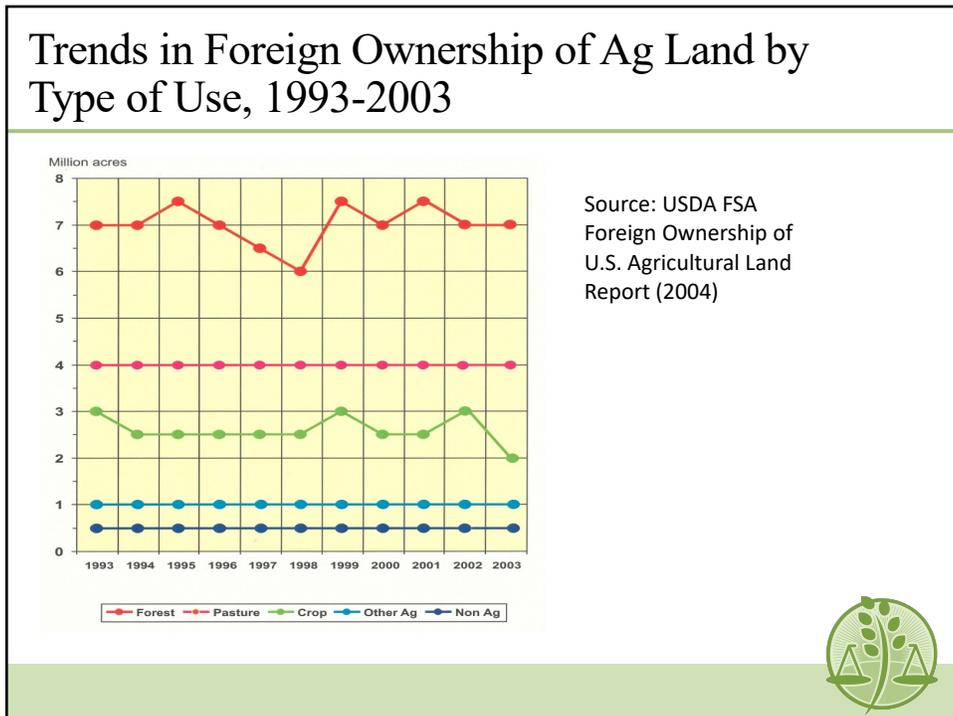
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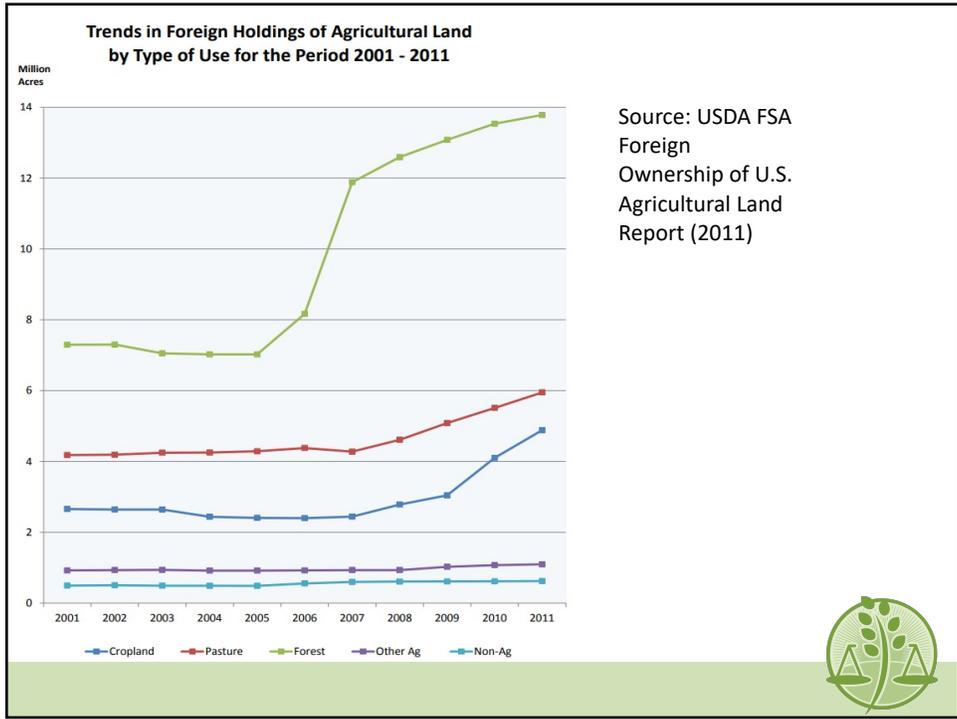
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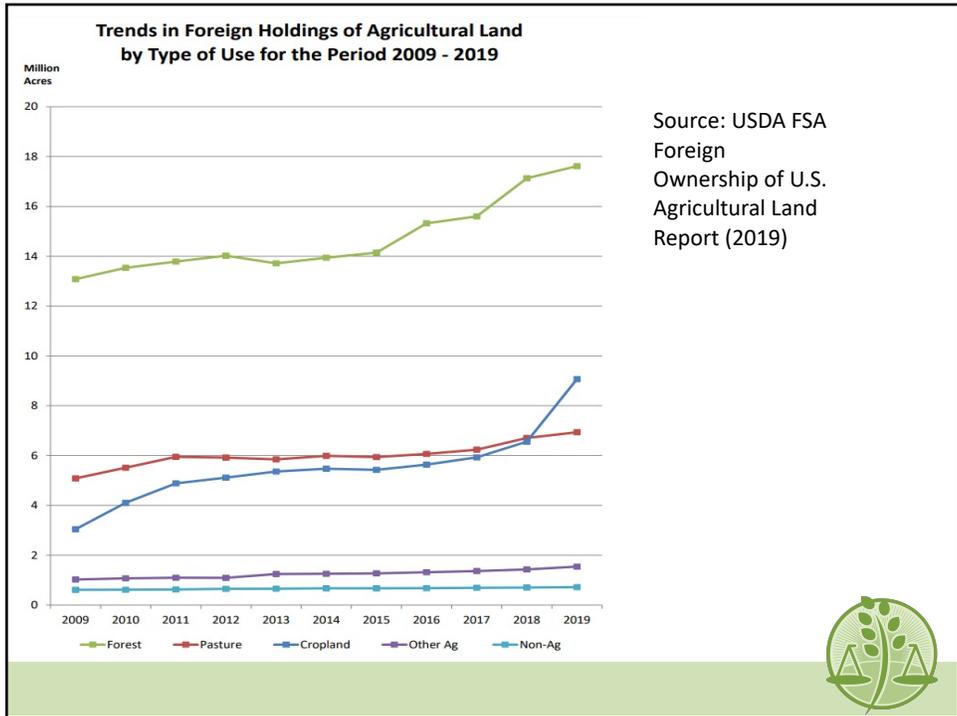
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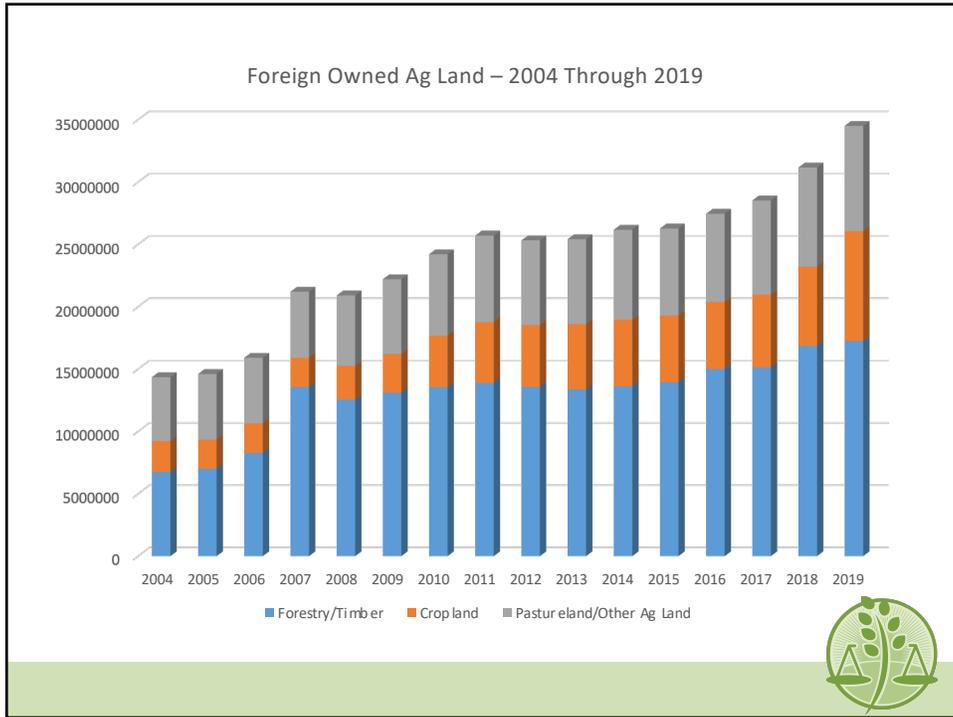
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## Snapshot of States' Laws

- There is no state with an absolute prohibition on foreign ownership
  - This statement contradicts many publications/articles
- 14\* states have some level of foreign ownership restriction
  - This statement contradicts many publications/articles
- 12 states have some type of reporting and/or registration requirement for ag land
  - This does not account for laws requiring any corporation to obtain license or register
- 28\* states expressly allow for foreign ownership
  - 6 states are currently silent on the issue (reporting and prohibition/restriction)
- Several states have prohibitions specific only to public/state land, which is not specifically addressed in this presentation



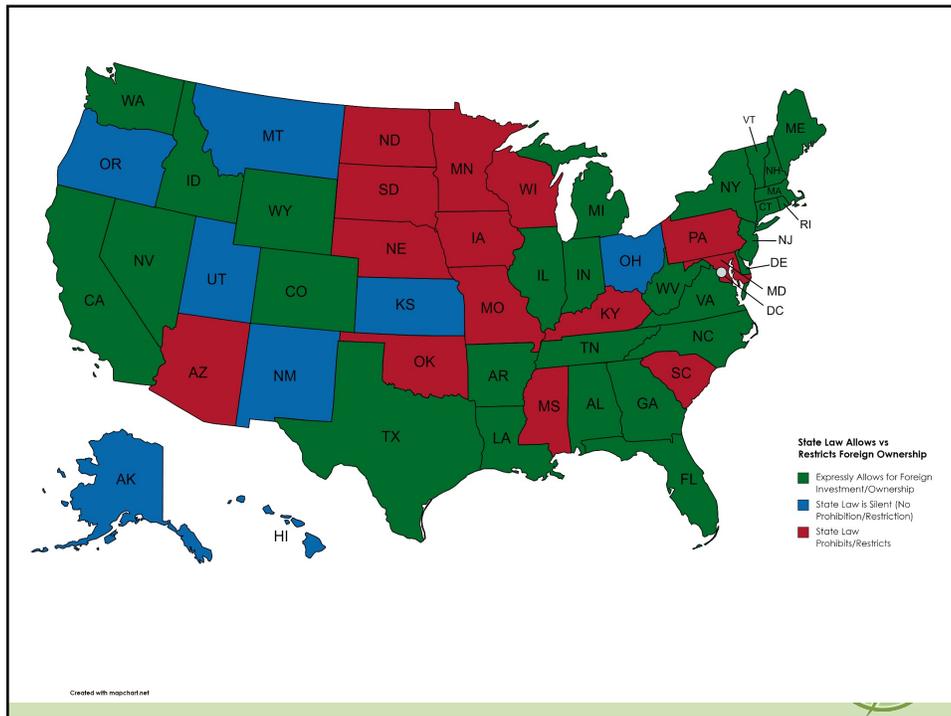
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## Snapshot of States' Laws

- There is no “uniform” law; one size does not fit all
- There are some general categories in the laws
  - Restrictions on the amount of land that can be owned
  - Restrictions on duration of ownership
  - Distinction (or lack thereof) between resident and nonresident aliens
  - Restrict ownership of foreign corporations (i.e., corporate farming laws)
  - Definition of “agricultural land”
  - Impact of inheritance on ability to own
  - Public vs private land
  - Enforcement (or lack thereof)
  - Penalties



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## Expressly Allows for Foreign Ownership: Common Language

- “Foreigners who are, or who may hereafter become, **bona fide residents** of this state, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native born citizens.” (Ala. Const., § 34)
- “An alien, **resident or nonresident** may take and hold property, real and personal, in this state, either by purchase, descent, or devise, and may dispose of and transmit the same by sale, descent, or devise as a native citizen.” (Ala. Code 1975 § 35-1-1)
  - See, *Christian v. American Freehold Land & Mortgage Co.*, 89 Ala. 198, 7 So. 427 (Ala. 1980) (§ 35-1-1 also applies to foreign corporations)
- “No distinction shall ever be made by law between **resident aliens** and citizens as to the possession, taxation, enjoyment, and descent of property.” (Wyo. Const. Art. I, § 29)



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## Expressly Allows for Foreign Ownership: Common Language

- “**Any alien**, whether or not resident of the United States, may hold, acquire, lease, inherit and transfer real estate in this state in as full manner as native-born citizens.” (Conn. Gen. Stat. Ann. § 47-7a(a))
- “No distinction shall ever be made by law, between **resident aliens and citizens**, in regard to the possession, enjoyment or descent of property.” (Ark. Const. art. II, § 20)
- “**All aliens** shall be capable of taking, by deed or will, lands and tenements in fee simple or other less estate, and of holding, aliening, and devising them.” (Ark. Code Ann. § 18-11-101)
- “**Aliens who are residents** of this state shall enjoy the same rights and privileges in property as citizens of this state.” (Mich. Const. Art. 10, § 6)
- “**Any alien** may acquire and hold lands, or any right thereto or interest therein, by purchase, devise or descent, and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner, and with like effect, as if such alien were a native citizen of this state, or of the United States.” (M.C.L.A. § 554.135)



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## Expressly Allows: Florida

- The Florida Constitution (Fla. Const. Art. 1, § 2) previously stated:

“Except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law.”

- Amended in 2018 to now state as follows:

“All natural persons . . . are equal before the law and have inalienable rights . . . to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability.”



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## Expressly Allows: Louisiana

- La. Const. Ann. Art. I, § 4:

“Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.”



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## Expressly Allows: New Jersey

- N.J. Stat. Ann. 46: 3-18 states:

“**Alien friends** shall have the same rights, powers and privileges and be subject to the same burdens, duties, liabilities and restrictions in respect of real estate situate in this State as native-born citizens. Any alien who shall be domiciled and resident in the United States and licensed or permitted by the government of the United States to remain in and engage in business transactions in the United States, and who shall not be arrested or interned or his property taken by the United States, shall be considered an alien friend within the meaning of this act.”



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# Expressly Allows: Vermont

• Vt. Const. Ch. II, § 66:

Individuals who “come[] to settle in this State, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold and transfer land or other real estate; and after one year’s resident shall be deemed a free denizen thereof, and entitled to all rights of a natural born subject of this State. . . .”

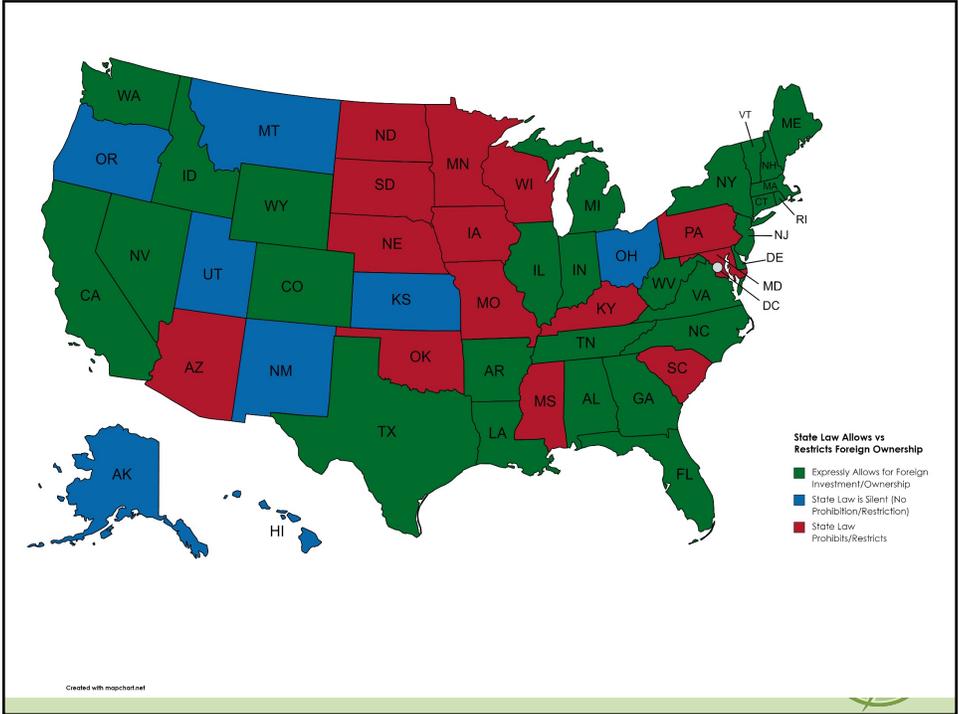
*See, State v. Bos., C&M.R. Co., 25 Vt. 433 (1853) (Vermont Supreme Court expressed unwillingness to construe the above constitutional provision as restricting the real property rights of aliens)*



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## Foreign Ownership of Ag Land as of December 31, 2019

|  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Iowa             <ul style="list-style-type: none"> <li>• 386,597</li> <li>• 1.2% (only state that had decrease from 2018)</li> </ul> </li> <li>• Kentucky             <ul style="list-style-type: none"> <li>• 78,361</li> <li>• 0.4%</li> </ul> </li> <li>• Minnesota             <ul style="list-style-type: none"> <li>• 520,741</li> <li>• 1.5%</li> </ul> </li> <li>• Mississippi             <ul style="list-style-type: none"> <li>• 720,412</li> <li>• 2.7%</li> </ul> </li> <li>• Missouri             <ul style="list-style-type: none"> <li>• 345,658</li> <li>• 1.0%</li> </ul> </li> <li>• Nebraska             <ul style="list-style-type: none"> <li>• 517,613</li> <li>• 1.1%</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• North Dakota             <ul style="list-style-type: none"> <li>• 302,715</li> <li>• 0.8%</li> </ul> </li> <li>• Oklahoma             <ul style="list-style-type: none"> <li>• 1,145,797</li> <li>• 3.0%</li> </ul> </li> <li>• Pennsylvania             <ul style="list-style-type: none"> <li>• 331,215</li> <li>• 1.6%</li> </ul> </li> <li>• South Carolina             <ul style="list-style-type: none"> <li>• 481,475</li> <li>• 3.1%</li> </ul> </li> <li>• South Dakota             <ul style="list-style-type: none"> <li>• 306,601</li> <li>• 0.8%</li> </ul> </li> <li>• Wisconsin             <ul style="list-style-type: none"> <li>• 476,241</li> <li>• 1.8%</li> </ul> </li> </ul> |
|--|---|

**Total Acres:**  
**5,613,426;**  
**16% of foreign owned ag land**



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## Iowa

- “A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, shall not purchase or otherwise acquire agricultural land in this state.”
  - Grandfathered in ag land owned/held prior to January 1, 1980
  - Cannot transfer to a nonresident alien, foreign business/government, or an agent, trustee or fiduciary EXCEPT by devise or descent
    - BUT: must divest of all right, title, and interest within 2 years
  - Must convert to nonfarming use within 5 years (if acquisition allowed via exceptions below)
- Exceptions:
  - Ag land acquired by devise or descent;
  - Bona fide encumbrance on agricultural land taken for purposes of security;
  - Ag land acquired by debt collection, deed in lieu of foreclosure, forfeiture of a contract for deed, enforcement of lien or claim on land;
  - Ag land acquired for research or experimental purposes;\*\*
  - Interest in ag land, not to exceed 320 acres, acquired for an immediate or pending use other than farming (if used for farming, must be leased)



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## Iowa

- Enforcement
  - If Secretary of State finds a violation, must be reported to the Attorney General
  - Upon receipt, the Attorney General “shall initiate an action in the district court of any county in which the land is located.”
  - If court finds violation, an order shall be filed in county records
- Escheat
  - If court finds violation, “or that the land has not been converted to the purpose other than farming within five years. . . , the court shall declare the land escheated to the state.”
  - Notifies Governor, and property is sold
  - Proceeds pay court costs first, then to prior owner with any remaining funds to county/counties
- Civil penalty
  - \$2,000 for each offense of failing to report or to register



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# Pennsylvania

General Rule:

An alien, who is not a resident of a state or territory of the United States or of the District of Columbia, and a foreign government shall not acquire an interest in agricultural land, exceeding 100 acres, except such as may be acquired by devise or inheritance, and such as may be held as security for indebtedness. The provisions of this section shall not apply to citizens, foreign governments or subjects of a foreign country whose rights to hold land are secured by treaty.

- Does not apply to ag land acquired via debt collection, lien enforcement, and the like, BUT must be disposed of within 3 years
- Does not apply to nonresident alien who is “bona fide resident of some state or territory or the District of Columbia”



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# Pennsylvania

“Agricultural land”:

“. . . land capable of use in the production of agricultural crops, timber, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products. . . .”

**BUT does not include**

“any royalty interest, any oil, gas or other mineral interest, or any lease, right-of-way, option or easement relating thereto, or any land zoned by a local government unit for a use other than and nonconforming with agricultural use.”



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## Pennsylvania

- Violation triggers forfeiture of land to the State
- Attorney General has responsibility for enforcement
  - HOWEVER, action must be brought within 5 years after property has been acquired or held by alien
- Department of Agriculture “shall monitor” for compliance in conjunction with federal AFIDA reporting



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## Missouri

- Generally prohibits resident and nonresident aliens from acquiring agricultural land
- Aliens and foreign businesses cannot acquire ag land if “total aggregate alien and foreign ownership of agricultural acreage” in the state exceeds 1% of the total aggregate ag acreage in the state



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## Oklahoma

OK Const. Art. 22, § 1:

No alien or person who is not a citizen of the United States, shall acquire title to or own land in this state, and the Legislature shall enact laws whereby all persons not citizens of the United States, and their heirs, who may hereafter acquire real estate in this state by devise, descent, or otherwise, shall dispose of the same within five years upon condition of escheat or forfeiture to the State: Provided, This shall not apply to Indians born within the United States, nor to aliens or persons not citizens of the United States who may become bona fide residents of this State: And Provided Further, That this section shall not apply to lands now owned by aliens in this State.



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## Oklahoma

- General Rule (Okla. Stat. Ann. Tit. 60, §121):

“No alien or any person who is not a citizen of the United States shall acquire title or own land in the State of Oklahoma . . . .”

- Exceptions (§122):

Does not apply to “any alien who is or shall take up bona fide residence in this state: and any alien who is or shall become a bona fide resident of the State of Oklahoma shall have the right to acquire and hold lands in this state upon the same terms as citizens of the State of Oklahoma during the continuance of such bona fide residence of such alien in this state. . . .”



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## Oklahoma

- Subject to several exceptions, Oklahoma generally prohibits foreign corporations to be formed or licensed “for the purpose of engaging in farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching.” (18 Okla. St. Ann. § 951)



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## Oklahoma: Recent Proposal

- HB1497 (April 6, 2021)
- Would amend to provide that “No alien or any person who is not a citizen of the United States shall acquire title or own land in *this state either directly or indirectly through a business entity or trust. . . .*”
- Amendment would require abstract companies, closing companies, or title companies “with reason to believe that a client is attempting to purchase land” in violation of law to report to Attorney General or county district attorney
- Would not apply to present owners or aliens who “shall take up bona fide residence” in the state, “or any lawfully recognized business entity, the majority of the voting stock or equivalent controlling equity interest of which is owned by one or more resident aliens. . . .”



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## Kentucky

- Ky. Rev. Stat. Ann. §§ 381.290 to 381.340
  - “After declaring his intention to become a citizen of the United States, according to the forms required by law, **any alien, not an enemy**, may recover, inherit, hold, and pass by descent, devise or otherwise, any interest in real or personal property, in the same manner as if he were a citizen of this state.”
  - “Except as otherwise provided in this chapter, the real estate of a nonresident alien may be escheated to the state at any time after the expiration of eight (8) years after the time he acquires title thereto.”
  - Any alien who has purchased, or contracted to purchase, any real estate, or who holds or has title thereto, and who becomes a citizen of the United States before the property is escheated . . . shall take and hold the property free and released from any right or claim of the state by reason of such person's having been an alien.”



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## The Mississippi Mystery

- “The Legislature shall enact laws to limit, restrict, or prevent the acquiring and holding of land in this State by nonresident aliens, and may limit or restrict the acquiring or holding of lands by corporations.” (MS Const. Art. 4, § 84)
- Resident alien may acquire/hold land and may dispose/transmit it the same as any citizen of Mississippi
- Nonresident cannot acquire/hold land, subject to exceptions



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## The Mississippi Mystery

- Appears that nonresident alien can acquire/hold property in 4 circumstances:
  - Can have or take lien on land to secure a debt, or at any sale of land to enforce payment of the debt purchase the property;
    - This triggers 20-year window during which property can be sold to citizen, OR the nonresident alien “may retain it by becoming a citizen during that time”
      - Statutory interpretation conflict with provision that allows resident alien to hold/acquire property same as MS citizen?
  - Can purchase or hold from an alien, but must declare intention of becoming a citizen;
  - Can acquire/hold up to 320 acres for industrial development; or
  - Can acquire/hold up to 5 acres of land for residential purposes.
- Land held in violation of the law escheats to the state (statute does not set out escheat process)
- Corporation “in which the stock thereof is partially or wholly owned by nonresident aliens” not eligible for 320-acre exception



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## South Carolina

- State constitution requires Legislature “to enact laws limiting the number of acres of land which any alien or any corporation controlled by aliens may own within this State.” (S.C. Const. Art. III, § 35)
- “An alien cannot own or control more than 500,000 acres. . . .” (with exception for land acquired via foreclosure)



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# South Dakota

- Prohibits alien ownership of ag land in excess of 160 acres (S.D. Codified Laws § § 43-2A-1 through 7)
- Note: Attorney General Opinion states that nonresident aliens cannot acquire ag land through a wholly owned South Dakota corporation (S.D. Op. Att’y Gen. 80-21)



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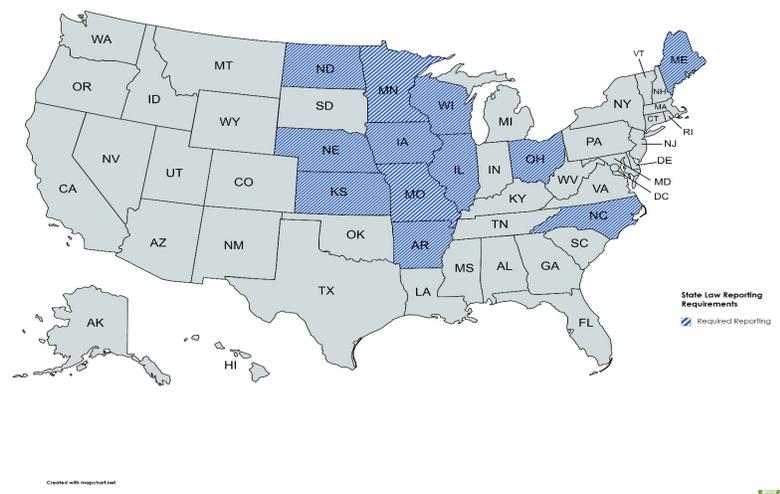
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# Reporting Requirements

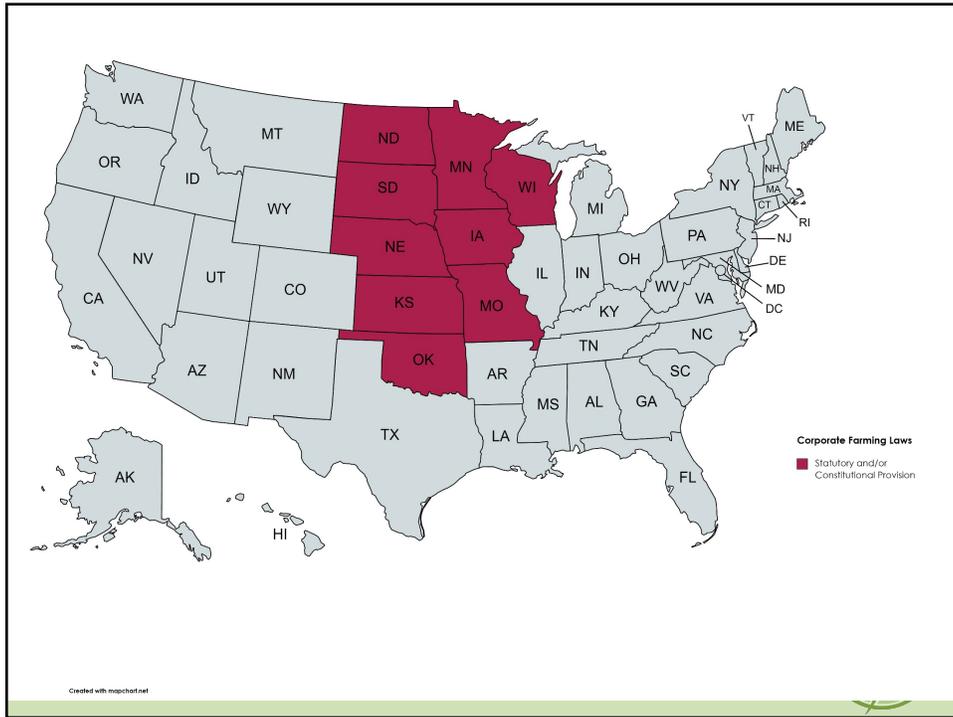


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## Federal Legislation and Proposals

- Foreign Adversary Risk Management (“FARM” Act)
  - Food Security is National Security Act (S. 616) (2017)
- Agricultural Security Risk Review Act (H.R. 3413) (May 2021)  
(would add USDA Secretary to Committee on Foreign Investment in the United States)
- Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (H.R. 4356)
- Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA)



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## FARM Act

- *See* “Who Owns the FARM: Foreign Investment in U.S. Agriculture”, Micah Brown, available on NALC website [here](#)
- Would amend the Defense Production Act of 1950 in four basic ways
  - Adds USDA Secretary to the Committee on Foreign Investment in the United States (CFIUS)
  - Directs CFIUS to review or investigate transactions that could result in foreign control of a U.S. business that engages in agriculture
  - Designates ag supply chains as critical infrastructure and critical technologies under the Defense Production Act (i.e., they would be considered matters of national security under the DPA)
  - Requires USDA and the Government Accountability Office to conduct inspection of foreign influences in U.S. ag industry and submit report to Congress



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## Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (H.R. 4356)

- Would require the USDA Secretary to “take such actions as may be necessary to prohibit the purchase of agricultural land located in the United States by companies owned, in full or in part, by the People’s Republic of China.”
- Would prohibit ag land owned by the PROC or companies owned, in full or in part, by the PROC from being eligible for USDA programs



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## Comments/Questions

- Virtually everything about this is more difficult than you might think, no matter what perspective one may have or position in public/private sector
  - Many parts of economy/farm economy and numerous areas of law and policy all intersect
  - Ag land vs. processor/company level
- Fifth flashpoint in our country’s history -- is there such thing as turning back?
- Constitutionality/Role of States vs. Federal Government
- Carbon markets
- The Basics?: “Resident”, “Bona fide resident”
- AFIDA! – 40 years of lessons, etc.



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## Comments/Questions



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