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## **9<sup>th</sup> Annual Mid-South Conference Materials**

### **Foreign Ownership of Agricultural Land in the Mid-South: Legal and Legislative Update**

*Harrison Pittman and Micah Brown*



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## Foreign Ownership of Ag Land

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## Foreign Ownership of Ag Land

**Micah Brown**

*National Agricultural Law Center*

Agriculture is faced with a host of legal issues on an annual basis and the foreign ownership of agricultural land is a recent issue garnering much attention.

### Foreign Ownership of Agricultural Land

*Alabama Senate Bill 14 by Micah Brown*

Recently, an Alabama state lawmaker proposed a bill ([S.B. 14](#)) that is aimed at restricting foreign ownership of agricultural land within the state. According to a [2019 U.S. Department of Agriculture \("USDA"\) report](#), foreign investors own over 1.7 million acres of Alabama agricultural land, which is the third-highest amount among U.S. states. Most of this foreign-owned property is forests at 1,734,581 acres, followed by 11,359 acres of cropland and 3,222 acres of pastureland. Specifically, the bill would restrict nonresident aliens, foreign businesses, and foreign governments from purchasing or acquiring an interest in agricultural land located within the state.

### Background

The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.

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. Today, approximately thirteen states specifically forbid or limit nonresident aliens, foreign businesses and corporations, and foreign governments from acquiring or owning an interest in agricultural land within their state. To see a compilation of the various restrictions enacted by each state, check out the National Agricultural Law Center’s “Statutes Regulating Ownership of Agricultural Land” chart [here](#).

Although these states have instituted restrictions, each state has taken its own approach. In other words, a uniform approach to restricting foreign ownership has not been established because state laws vary widely. For instance, each state’s statute may define “agricultural land” and “farming” differently, make distinctions between resident and nonresident aliens, allow foreign purchasers to acquire up to a certain acreage amount of farmland, and provide different enforcement procedures and penalties for alleged violators. Despite this, Alabama’s S.B. 14 takes a similar approach to the [foreign ownership restrictions instituted by Iowa](#). In fact, the current version of the bill contains many of the same statutory provisions contained in Iowa’s law.

Most states have not enacted restrictions or prohibitions on foreign ownership of privately held agricultural land. Rather, most of these states expressly allow foreign ownership of real property within their state. Alabama is currently a prime example of such a state. In general, these states provide foreign persons and entities the same real property rights as natural born citizens of their state. For example, current Alabama law permits “[f]oreigners who are, or may hereafter become, bona fide residents of this state, shall enjoy the same rights in respect to the possession...of property, as native born citizens.” [Ala. Const. Art. I § 34](#). Further, Alabama allows resident or nonresident aliens to purchase and hold real property in the state in the same manner as native citizens. [Ala. Code § 35-1-1](#). Accordingly, even though Alabama law expressly allows foreign ownership of real property, S.B. 14 would—if enacted—exclude agricultural land as a type of property which foreign investors could purchase.

### **Proposed Bill Provisions**

According to the current text of S.B. 14, its purpose is to “restrict ownership of agricultural land to United States citizens and resident aliens only.” To accomplish this, the bill provides that “a nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary thereof, may purchase or otherwise acquire agricultural land in this state.”

In general, knowing the definitions contained in the bill is essential to understanding precisely which parties are restricted from purchasing property that qualifies as agricultural land. Under S.B. 14, “agricultural land” is defined as “[i]and suitable for use in farming,” and “farming” is defined as producing agricultural crops, eggs, milk, horticultural crops, including fruit, raising poultry, and grazing or producing livestock. Further, the production of timber, forest products, nursery products, and sod also qualify as “farming” under the proposed bill. However, the term does not include contracts for farm services from a provider of farm products or supplies, such as spraying or harvesting. Therefore, if a piece of property is being used to produce agricultural

commodities, timber, sod, or nursery products, it likely qualifies as “agricultural land” under S.B. 14.

The proposed bill identifies three types of parties who are prohibited from purchasing or acquiring an interest in agricultural land. First, a “nonresident alien” is an individual who is not (1) a U.S. citizen, or (2) admitted into the U.S. for permanent residence by the U.S. Immigration and Naturalization Service. The second type of party includes “foreign businesses.” Under S.B. 14, this includes a “corporation incorporated under the laws of a foreign country, or a business entity...in which a majority interest is owned directly or indirectly by nonresident aliens.” Third, “foreign governments” are also restricted under the bill, which includes any government that is not the U.S. government, its states or territories.

While S.B. 14 restricts these types of parties from purchasing farmland within the state, there are some exceptions to this restriction. The exceptions contained within this proposed legislation are common to appear in some form in other states’ laws. One exception allows prohibited parties to acquire agricultural land by inheritance. Another exception under the bill permits these parties to acquire an interest in land by taking a security interest in agricultural land as collateral to secure a loan. When this occurs, the foreign individual or entity may obtain ownership of the land by foreclosing on the property to satisfy the debt owed by the borrower. Although these exceptions give ownership rights to prohibited foreign parties, these exceptions are limited. Specifically, if a foreign party acquires ownership of agricultural land under either of these exceptions, they must sell or dispose of their interest in the property within two years from the date they gained their ownership interest.

The proposed legislation also provides an exception for foreign parties who currently own or hold an interest in agricultural land. In general, if the current version of S.B. 14 is enacted, foreign parties that own agricultural land on the effective date of the bill may continue to own that property. However, the bill prohibits these parties from purchasing or acquiring additional agricultural land once the bill is in effect.

Aside from the exceptions, S.B. 14 also considers status changes of residents and businesses. Essentially, the bill provides that a U.S. resident or business that becomes a nonresident alien or foreign business after the effective date of the bill has two years to sell or otherwise dispose of any agricultural land they own or hold within the state.

Under S.B. 14, parties who purchase farmland or continue to hold land in violation of this bill remain in violation “for as long as the person holds an interest in the land.”

Another important provision contained under S.B. 14 is a registration or reporting requirement. 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”), several states have their own reporting requirements. Under the current text of S.B. 14, foreign parties will be required to register their agricultural landholdings with the Alabama Secretary of State. This means that a foreign person who meets any exception or changes their status after the



effective date of the bill has 60 days to register their ownership interest. To satisfy this requirement, parties will have to provide their name, location, and the amount of agricultural acreage they own by municipality and county. Parties who fail to timely register may be subject to a penalty of up to \$2,000 for each offense.

Like many other states who have enacted restrictions on foreign ownership, S.B. 14 provides instructions on how it would be enforced. According to the current text of the legislation, a court that finds a party acquired land in violation of the bill “shall declare the land escheated to the state.” This means the government takes automatic ownership of the property. Afterwards, the state would be required to sell the property. The proceeds from the sale would be used to pay court costs and pay the violating foreign party up to the amount they paid for the property. If any proceeds remain, the state would distribute the funds to the county or counties where the property is located.

Although S.B. 14 provides an enforcement process, the bill does not indicate who may bring a legal action against a suspected violator. Thus, under the current version of the bill, it is unclear whether a private citizen may bring an action or if the state must file suit against a suspected violating party.

## Conclusion

Over the past year, the issue of restricting foreign investments and ownership of farmland emerged in a few states, such as Missouri, Oklahoma, and most recently, [Indiana](#). Alabama is now included in this list of states considering the issue with the introduction of S.B. 14. Under the current version of the bill, foreign individuals and entities would be restricted from purchasing Alabama agricultural land. However, because this bill has a long way to go before it becomes law, it may be amended and some provisions discussed in this article may be revised or replaced. Accordingly, readers should reference the most current version of the bill [here](#).

To read S.B. 14, click [here](#).

To view a NALC webinar discussing laws limiting foreign ownership of agricultural land, click [here](#).

For information on state laws governing foreign ownership of agricultural land, click [here](#).

## *Foreign Adversary Risk Management Act by Micah Brown*

Over the past decade, foreign investments in agricultural land have grown. At the start of 2020, foreign persons held [over 35 million acres](#) of U.S. agricultural land according to the Farm Service Agency. In response to these types of purchases, a bill known as the [Foreign Adversary Risk Management \("FARM"\) Act](#) was recently introduced in Congress. Proponents of the FARM Act claim that it will help secure the nation’s food supply chain and agricultural industry from inappropriate foreign interference. Congressional representatives Ronny Jackson (R-TX) and Filemon Vela (D-TX) introduced the FARM Act in the U.S. House while Senator Tommy Tuberville (R-AL) introduced the bill in the Senate. It seeks to amend the [Defense Production Act \("DPA"\) of 1950](#) to place agriculture in the [Committee on Foreign Investment in the United States \("CFIUS"\)](#).



Specifically, the legislation seeks to require CFIUS to consider agriculture-specific criteria when determining whether a foreign investment poses a risk to the United States national security.

## CFIUS

CFIUS is a multi-government agency entity that is authorized by the DPA ([50 U.S.C. § 4565](#)) to review certain transactions involving foreign investments and acquisitions of American companies and real estate to determine whether there is a threat to national security. Originally established by [Executive Order 11858](#) issued by President Gerald Ford, CFIUS was codified and given statutory authority in 2008 under the [Foreign Investment and National Security Act \(FINSA\)](#). In other words, Congress assigned specific powers and duties to CFIUS to enforce the provisions of the FINSA. Specifically, the FINSA reformed CFIUS by implementing new vetting procedures and expanding the Committee's role in reviewing foreign investments. CFIUS was reformed again in 2018 with the passage of the [Foreign Investment Risk Review Modernization Act \("FIRRMA"\)](#), which expands the Committee's power to review certain transactions.

Essentially, CFIUS has the power to suspend, renegotiate, and impose conditions to transactions (whether pending or already completed) that may pose a risk to the national security of the U.S. In other words, the Committee uses these measures to mitigate any threat to national security that arises from a transaction. Transactions that may pose a risk to the national security, for example, are investments and acquisitions of *critical infrastructure*, such as transportation, telecommunication, public health, and energy. Another type of transaction CFIUS closely reviews include investments in *critical technologies*. In general, these technologies are created or used by certain U.S. businesses and industries that are essential to the nation's economic and national security.

Typically, CFIUS begins the review process when a foreign investor voluntarily notifies the Committee of its potential investment. However, CFIUS has the authority to review certain transactions that may raise national security concerns but are not reported by a foreign investor. After initiating the review process, CFIUS has 45 days to determine whether it will allow a transaction move forward, or if a subsequent investigation is needed. If so, it will have an additional 45 days to determine whether the foreign investment presents national security risks.

After the review or investigation is complete, if CFIUS determines a transaction still poses a risk to national security, it may refer a transaction to the President. Although CFIUS has the ability to use measures to mitigate some risks a transaction may impose, the President is the only official with authority to block a foreign merger, acquisition, or takeover (50 U.S.C.(d)(1)). Accordingly, CFIUS may refer a transaction to the President and recommend the President suspend or block the transaction. However, the President is not required to follow a recommendation from CFIUS. Nevertheless, if the President decides to review a foreign transaction and finds that there is credible evidence that the transaction will impair national security, they can choose to suspend or block the transaction.

## FARM Act



In an effort to control foreign investments in U.S. agricultural production and food supply chains, federal lawmakers have introduced the FARM Act in both chambers of Congress. There are four main components to the piece of legislation.

First, the bill adds the Secretary of Agriculture as a member to CFIUS. Currently, the agricultural industry is not directly represented on CFIUS, and legislators in the past have criticized the lack of agricultural representation on the Committee. Much of this criticism stems from the [acquisition of Smithfield Foods](#), one of the largest pork processors in the nation, by a Chinese-based corporation in 2012. More criticism from lawmakers [surfaced in 2017](#) when Bayer and Monsanto, DuPont and Down Chemical, and ChemChina and Syngenta announced their plans to merge. Each of these acquisitions were reviewed and approved by CFIUS without representation from the agricultural sector on the Committee. According to the FARM Act sponsors, placing the Secretary of Agriculture as a CFIUS member will provide leverage to protect the interests of the agricultural industry in foreign investments and acquisitions of U.S. agricultural businesses.

Second, the bill adds language to the DPA to protect the agricultural sector from foreign control through investments, acquisitions, mergers, or agreements. Essentially, this provision of the legislation directs CFIUS to review or investigate transactions that could result in foreign control of a U.S. business that engages in agriculture.

The third component of the bill designates agricultural supply chains as critical infrastructure and critical technologies under the DPA. This provision places the agricultural industry and food supply chains as areas CFIUS can consider as it relates to national security. In other words, agriculture and food security will be considered as matters of national security.

Fourth, the bill mandates the United States Department of Agriculture (“USDA”) and the Government Accountability Office (“GAO”) to conduct an inspection of foreign influences in the U.S. agriculture industry and submit a report to Congress. In this report, USDA and GAO must specify current and potential foreign agriculture investments, the greatest international threats for increased foreign control in agriculture, and agriculture-related tactics or schemes used by foreign governments to target the U.S. agricultural industry.

### **Other Legislation**

The FARM Act is not the first piece of legislation that would give USDA representation on CFIUS and require CFIUS to consider the agricultural industry as a matter of national security. In 2017, a bipartisan bill known as the Food Security is National Security Act ([S.616](#)) was introduced in Congress. This bill sought to add agriculture and food systems as threats considered by CFIUS and sought to add the Secretary of Agriculture as a member of the Committee. Ultimately, this bill was referred to the Senate Banking Committee, but did not move forward in the legislative process. Nevertheless, there are other pieces of legislation besides the FARM Act that seek to prevent foreign investments in U.S. agriculture currently being considered by Congress.



In May 2021, congressional representative Frank Lucas (R-OK) introduced the Agricultural Security Risk Review Act ([H.R. 3413](#)). This bill, which was [previously introduced](#) in Congress in 2019, would add the Secretary of Agriculture to CFIUS. Another bill being considered in Congress is the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2022 ([H.R. 4356](#)). The text of this legislation provides the Secretary of Agriculture the ability to block any purchase of agricultural land by companies fully or partly controlled by the Chinese government. Additionally, this bill would prohibit these companies from participating in USDA-led support programs.

To read the FARM Act, click [here](#).

To track the FARM Act as it progresses through the legislative process, click [here](#).

### *Statutes Regulating Ownership of Agricultural Land by Micah Brown and Nick Spellman*

Foreign ownership of U.S. land, specifically private agricultural lands, is an issue that traces to the origins of the United States. State laws vary widely and without a generalized or uniform approach. The following compilation includes state statutory prohibitions on foreign ownership of agricultural land, foreign ownership of other real property, reporting requirements, and corporate farming restrictions. It bears noting that some states' laws restrict only ownership of agricultural lands while allowing for at least some level of ownership of non-agricultural land. Some states, such as Arizona, contain prohibitions on foreign ownership of public lands, which is outside the scope of this compilation.

In some states, foreign persons and entities have the same property rights as the citizens of those states. In other states, however, foreign ownership of agricultural land is prohibited or significantly limited within the boundaries of the state. Approximately fourteen states specifically forbid or limit nonresident aliens, foreign businesses and corporations, and foreign governments from acquiring or owning an interest in agricultural land within their state. Additionally, some states require foreign persons and entities to report their purchase or ownership interest in farmland within their state. These state reporting statutes often correspond with the federal reporting law under the Agricultural Foreign Investment Disclosure Act.

These compilations are only an aid to research. State courts and federal courts, including United States Supreme Court decisions, have interpreted and continue to interpret these statutes. Further, this publication does not include case annotations, which a researcher must consult to thoroughly understand any particular statute. As such, these charts are intended for use solely as an educational tool and research aid, and not as a substitute for individual legal advice. Additionally, the reader is cautioned that these laws are subject to changes that are often significant.

For each state, the first column of the chart includes a reference and link to the text of the relevant state constitutional and statutory provisions. Each compilation contains the code sections relevant to the topics found at the head of the chart and are linked to the specific language at issue. This compilation was last updated in March 2022.





State	Relevant Provision(s)	Prohibition	Permission	Reporting	Corporate Farming
Alabama	Ala. Const. § 34 Ala. Code § 35-1-1	None	Yes	None	None
Alaska	None	None	Not Expressly	None	None
Arizona	Ariz. Const. art. X, § 11 Ariz. Rev. Stat. Ann. § 37-240	Yes—public land only	Not Expressly	None	None
Arkansas	Ark. Const. art. II, § 20 Ark. Code Ann. § 2-3-111 Ark. Code Ann. § 18-11-101	None	Yes	Yes	None
California	Cal. Const. art. I, § 20 Cal. Civ. Code § 671	None	Yes	None	None
Colorado	Colo. Const. art. II, § 27	None	Yes	None	None
Connecticut	Conn. Gen. Stat. Ann. § 47-7a	None	Yes	None	None
Delaware	Del. Code Ann. tit. 25, § 305 Del. Code Ann. tit. 25, § 306 Del. Code Ann. tit. 25, § 308	None	Yes	None	None
Florida	Fla. Const. art. I, § 2	None	Yes	None	None

<b>Georgia</b>	<b>Ga. Code Ann. § 1-2-11</b>	Yes	None	None	None
<b>Hawaii</b>	<b>HI Organic Act § 73(f) Haw. Rev. Stat. § 171-68</b>	Yes—public land only	Not Expressly	None	None
<b>Idaho</b>	<b>Idaho Code Ann. § 55- 103 Idaho Code Ann. § 58- 313</b>	Yes—public land only*	Yes*	None	None
<b>Illinois</b>	<b>765 Ill. Comp. Stat. Ann. 50/1 to 50/8 765 Ill. Comp. Stat. Ann. 60/7</b>	None	Yes	Yes	None
<b>Indiana</b>	<b>Ind. Code Ann. § 32-22- 2-1 Ind. Code Ann. § 32-22- 2-5  Ind. Code Ann. §§ 32-22- 3-0.5 to 32-22-3-6</b>	Yes— business entities only	Yes*	Yes— business entities only	Yes
<b>Iowa</b>	<b>Iowa Code Ann. §§ 9H.1 to 9H.5 Iowa Code Ann. §§ 9I.1 to 9I.12  Iowa Code Ann. §§ 10.1 to 10.14  Iowa Code Ann. §§ 10B.1 to 10B.7  Iowa Code Ann. §§ 202B.101 to 202B.402</b>	Yes	None	Yes	Yes
<b>Kansas</b>	<b>Kan. Const. Bill of Rts. § 17 Kan. Stat. Ann. § 17-</b>	Yes— business entities only	Not Expressly	Yes— foreign for- profit	Yes

	<p><b>5904</b></p> <p><b>Kan. Stat. Ann. § 17-7505</b> (effective until Jan. 1, 2023)</p> <p><b>Kan. Stat. Ann. § 17-7505</b> (effective Jan. 1, 2023)</p>			corporations and cooperatives only	
<b>Kentucky</b>	<b>Ky. Rev. Stat. Ann. §§ 381.290 to 381.300</b>	Yes	None	None	None
<b>Louisiana</b>	<b>La. Const. Ann. art. I, § 4</b>	None	Yes	None	None
<b>Maine</b>	<b>Me. Rev. Stat. tit. 7, §§ 31 to 36</b> <b>Me. Rev. Stat. tit. 33, § 451</b>	None	Yes	Yes—foreign corporations and partnerships only	None
<b>Maryland</b>	<b>Md. Code Ann., Real Prop. § 14-101</b>	Yes	None	None	None
<b>Massachusetts</b>	<b>Mass. Gen. Laws Ann. ch. 184, § 1</b>	None	Yes	None	None
<b>Michigan</b>	<b>MI CONST Art. 10, § 6</b> <b>Mich. Comp. Laws Ann. § 554.135</b>	None	Yes	None	None
<b>Minnesota</b>	<b>Minn. Stat. Ann. §§ 500.24</b> <b>Minn. Stat. Ann. §§ 500.221</b>	Yes	None	Yes	Yes
<b>Mississippi</b>	<b>Miss. Const. Art. 4, § 84</b> <b>Miss. Code Ann. § 29-1-75</b>	Yes	None	None	None



	<b>Miss. Code Ann. § 89-1-23</b>				
<b>Missouri</b>	<b>Mo. Rev. Stat. §§ 350.010 to 350.040 Mo. Rev. Stat. §§ 442.560 to 442.592</b>	Yes	None	Yes	Yes
<b>Montana</b>	None	None	Not Expressly	None	None
<b>Nebraska</b>	<b>Neb. Rev. Stat. §§ 76-402 to 76-415 Neb. Rev. Stat. §§ 76-1520 to 76-1524</b>	Yes	None	Yes	Yes
<b>Nevada</b>	<b>Nev. Rev. Stat. Ann. § 111.055</b>	None	Yes	None	None
<b>New Hampshire</b>	<b>N.H. Rev. Stat. Ann. § 477:20</b>	None	Yes	None	None
<b>New Jersey</b>	<b>N.J. Stat. Ann. § 46:3-18</b>	Yes	None	None	None
<b>New Mexico</b>	None	None	Not Expressly	None	None
<b>New York</b>	<b>N.Y. Real Prop. Law § 10</b>	None	Yes	None	None
<b>North Carolina</b>	<b>N.C. Gen. Stat. Ann. §§ 64-1 to 64-1.1</b>	None	Yes	Yes	None
<b>North Dakota</b>	<b>N.D. Cent. Code Ann. §§ 10-06.1-01 to 10-06.1-27 N.D. Cent. Code Ann. §§ 47-10.1-01 to 47-10.1-06</b>	Yes	None	Yes	Yes

Ohio	Ohio Rev. Code Ann. § 2105.16 Ohio Rev. Code Ann. §§ 5301.254; 5301.99	None	Yes	Yes	None
Oklahoma	Okla. Const. art. XXII, § 1 Okla. Const. art. XXII, § 2  Okla. Stat. tit. 18, §§ 951 to 956  Okla. Stat. tit. 60, §§ 121 to 125	Yes	None	None	Yes
Oregon	Or. Rev. Stat. Ann. § 273.255	Yes—public land only	Not Expressly	None	None
Pennsylvania	68 Pa. Stat. Ann. §§ 41 to 47	Yes*	Yes*	State monitors AFIDA reporting	None
Rhode Island	34 R.I. Gen. Laws Ann. § 34-2-1	None	Yes	None	None
South Carolina	S.C. Const. art. III, § 35 S.C. Code Ann. §§ 27-13-10 to 27-13-40	Yes	None	None	None
South Dakota	S.D. Codified Laws §§ 43-2A-1 to 43-2A-7 S.D. Codified Laws §§ 47-9A-1 to 47-9A-23	Yes	None	State monitors AFIDA reporting	Yes
Tennessee	Tenn. Code Ann. § 66-2-101	None	Yes	None	None
Texas	Tex. Prop. Code Ann. § 5.005	None	Yes	None	None

<b>Utah</b>	None	None	Not Expressly	None	None
<b>Vermont</b>	<b>Vt. Const. CH II, § 66</b>	None	Yes	None	None
<b>Virginia</b>	<b>Va. Code Ann. § 55.1-100</b>	Yes	None	None	None
<b>Washington</b>	<b>Wash. Rev. Code Ann. § 64.16.005</b>	None	Yes	None	None
<b>West Virginia</b>	<b>W. Va. Const. art. II, § 5 W. Va. Code Ann. § 36-1-21</b>	None	Yes	None	None
<b>Wisconsin</b>	<b>Wis. Stat. § 182.001 Wis. Stat. §§ 710.01 to 710.02</b>	Yes*	Yes*	Yes	Yes
<b>Wyoming</b>	<b>Wyo. Const. art. I, § 29</b>	None	Yes	None	None

\* State Code contains law(s) that permit and prohibit foreign individuals and/or entities from acquiring, holding, or owning an interest in real estate located within the boundaries of their state.

