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

Micah Brown, Staff Attorney
Harrison Pittman, Director
National Agricultural Law Center
University of Arkansas System Division of Agriculture

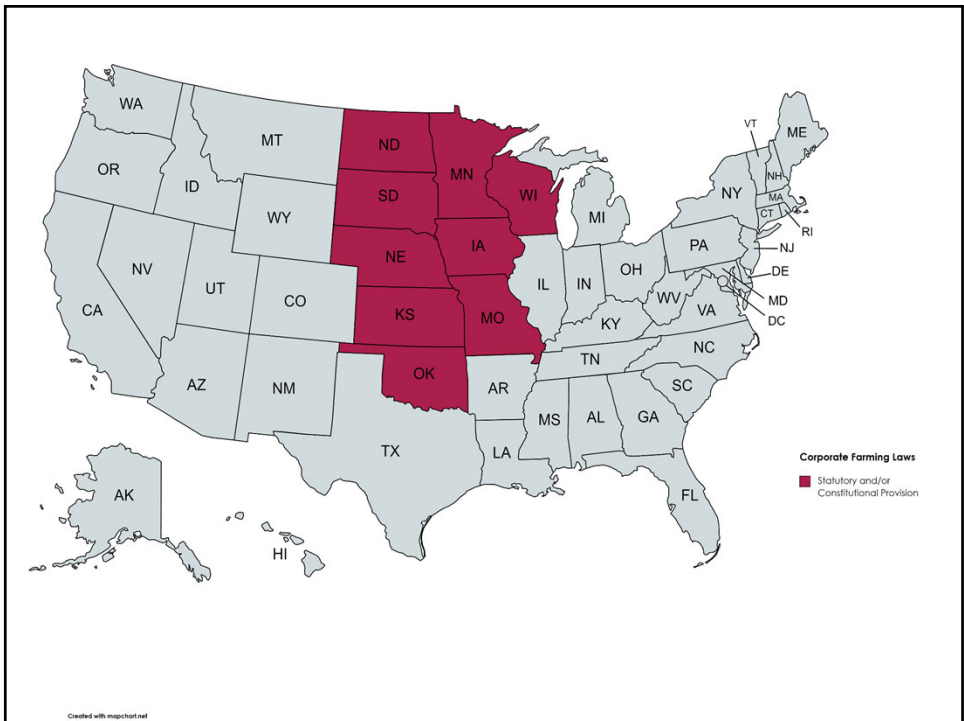
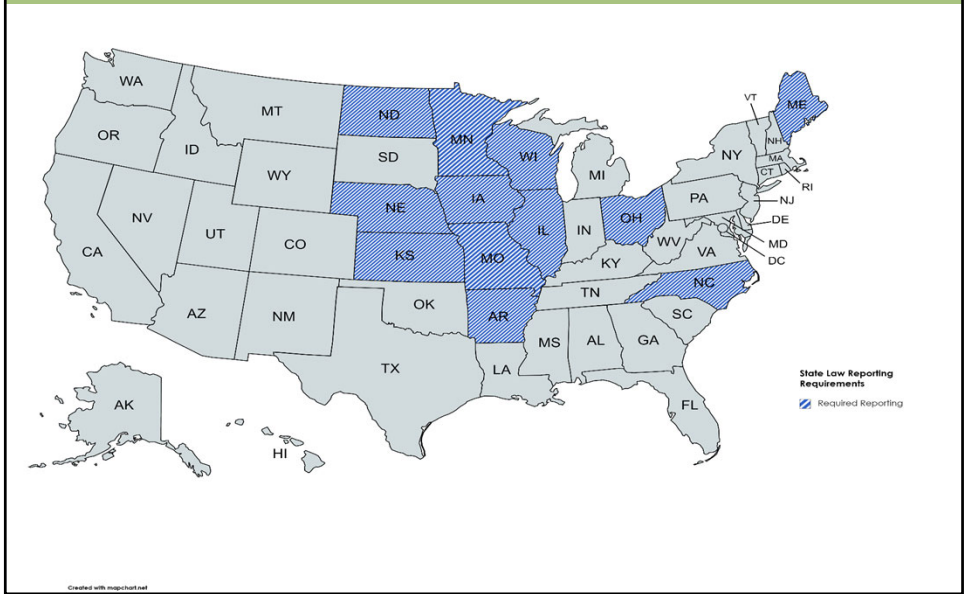
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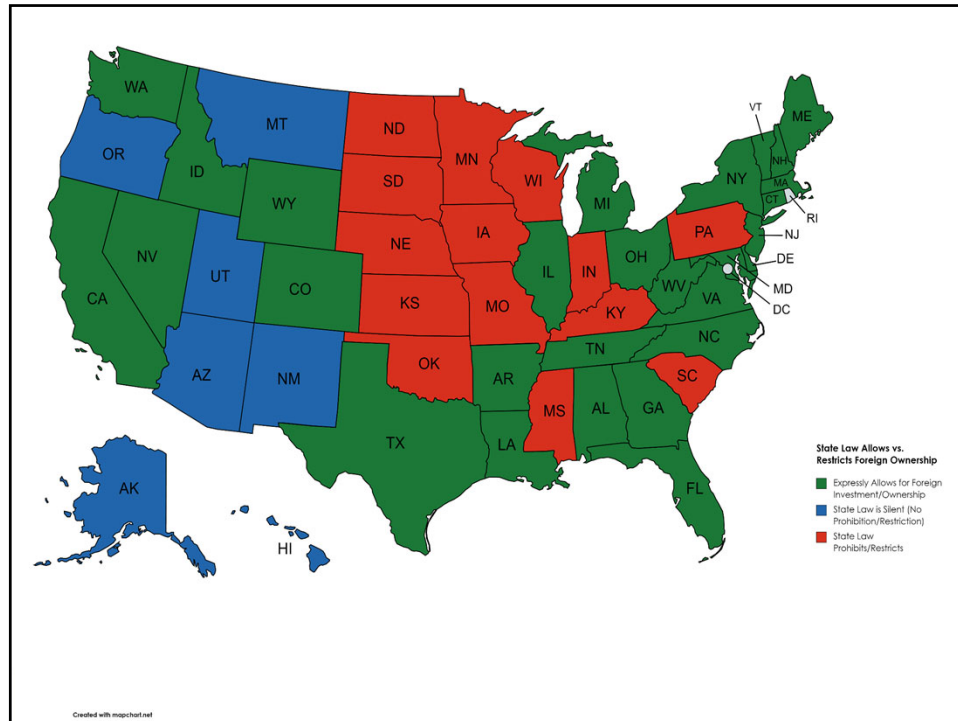
Key Laws & Resources

- Agricultural Foreign Investment Disclosure Act (AFIDA) of 1978
- States' laws (or lack thereof)
 - Foreign ownership
 - Corporate farming laws
 - Reporting (separate from AFIDA)
- Key resources:
 - National Agricultural Law Center website
 - USDA AFIDA annual reports (and accompanying regulations)



State Level Reporting Requirements





1978: One The Eve of AFIDA Enactment

- *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



2020: 40+ years of AFIDA

- Latest official data via AFIDA is through December 31, 2020
- 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 (4.7 million), followed by Maine (3.5 million acres) and Alabama (1.8 million acres)
 - 46% forest land, 29% cropland, 23% for pasture/other ag land
- 39%+ of increase from 2019 to 2020 is attributed to Texas, Oklahoma, and Colorado



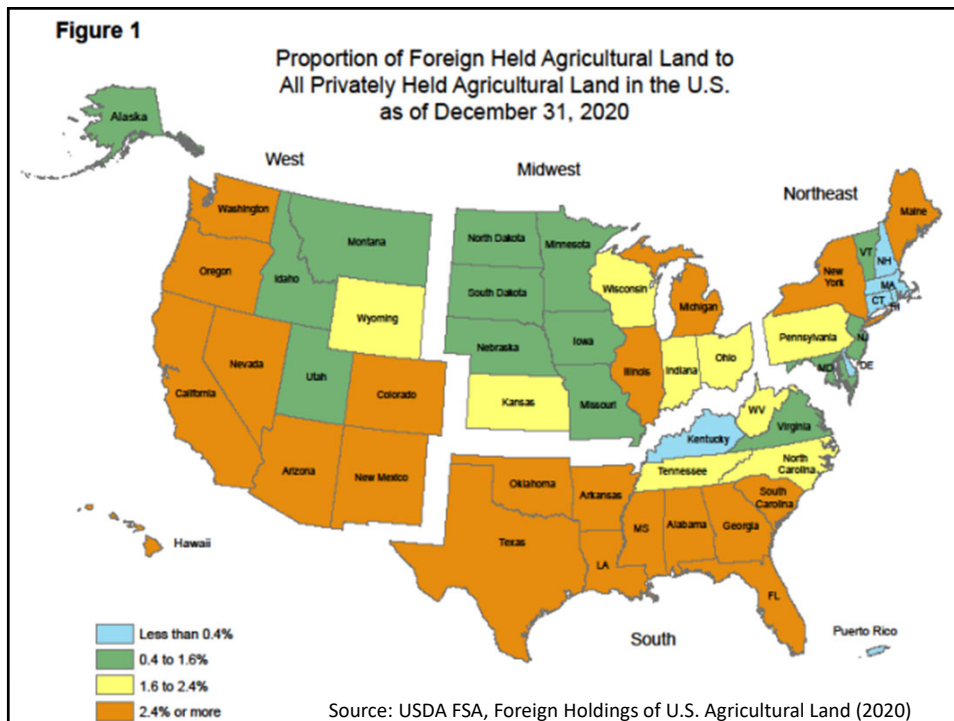
2020: 40+ years of AFIDA

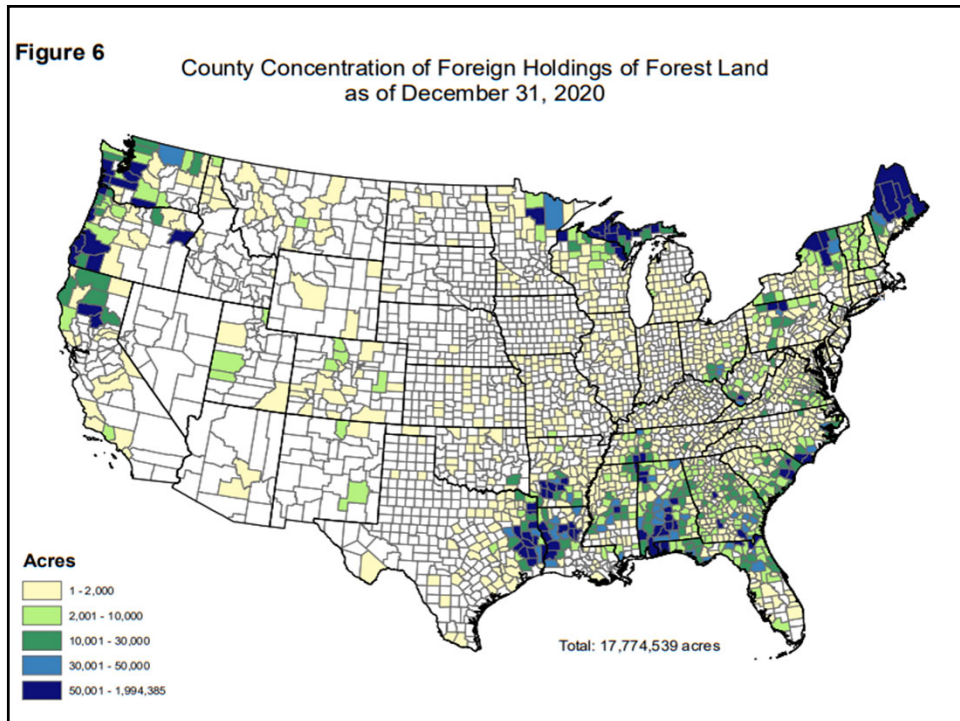
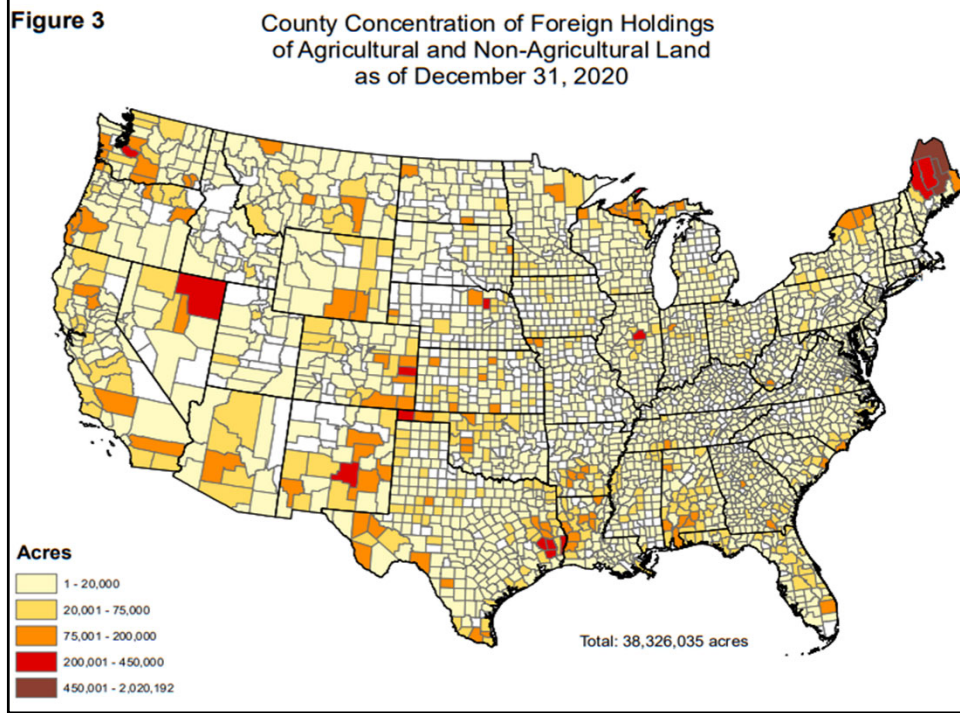
- Foreign individuals/entities reported holding an interest in about **37.6 million acres** of U.S. agricultural land
 - 2.9% of all privately held **agricultural land** in the U.S.
 - 1.7% of all land in the U.S.
- Take special note of Maine – accounts for about 9% of all AFIDA-reported privately held ag land in the U.S.
 - 19.5% of private ag land in Maine is foreign-owned
 - Hawaii (9.2%), Washington (7.1%), Alabama (6.2%), and Florida (5.8%), Louisiana (5.8%), and Michigan (5.7%)
 - Oregon and New Hampshire are the only two states reporting a decrease

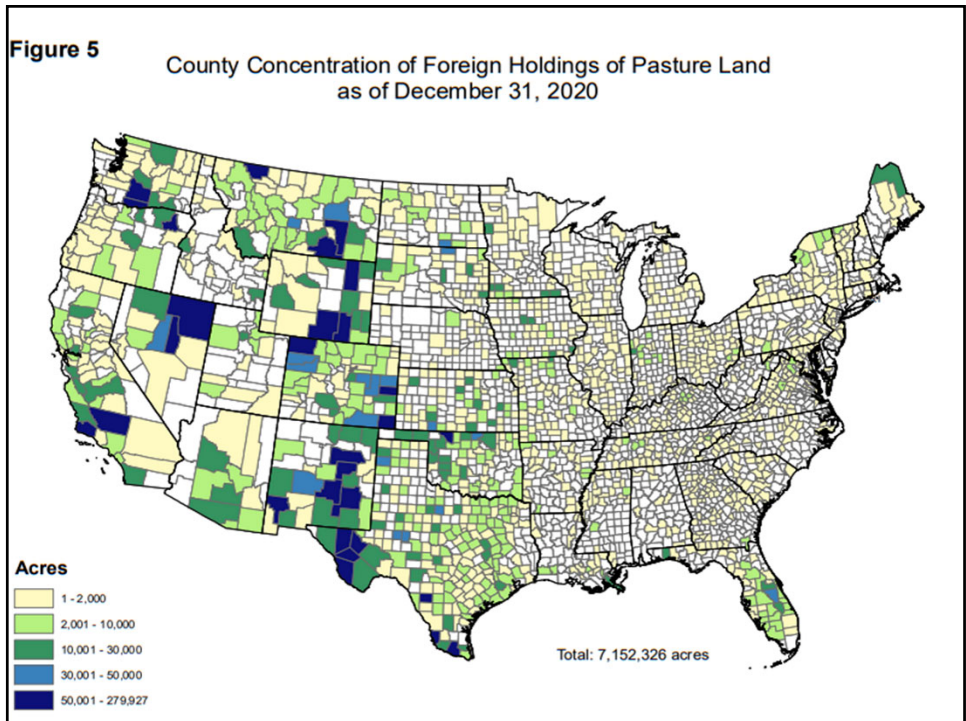
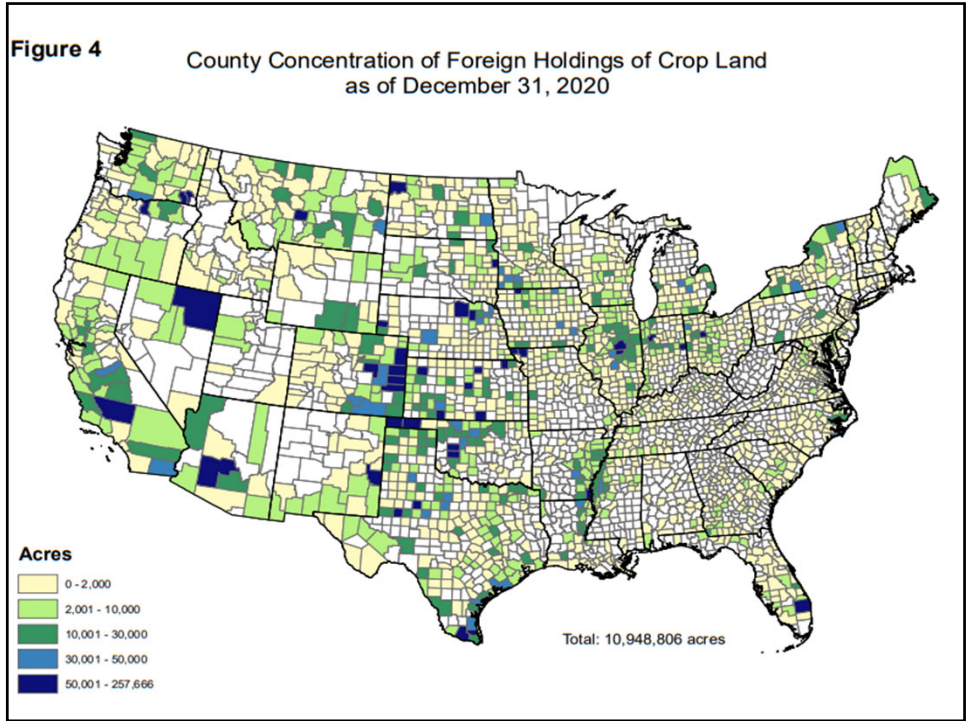


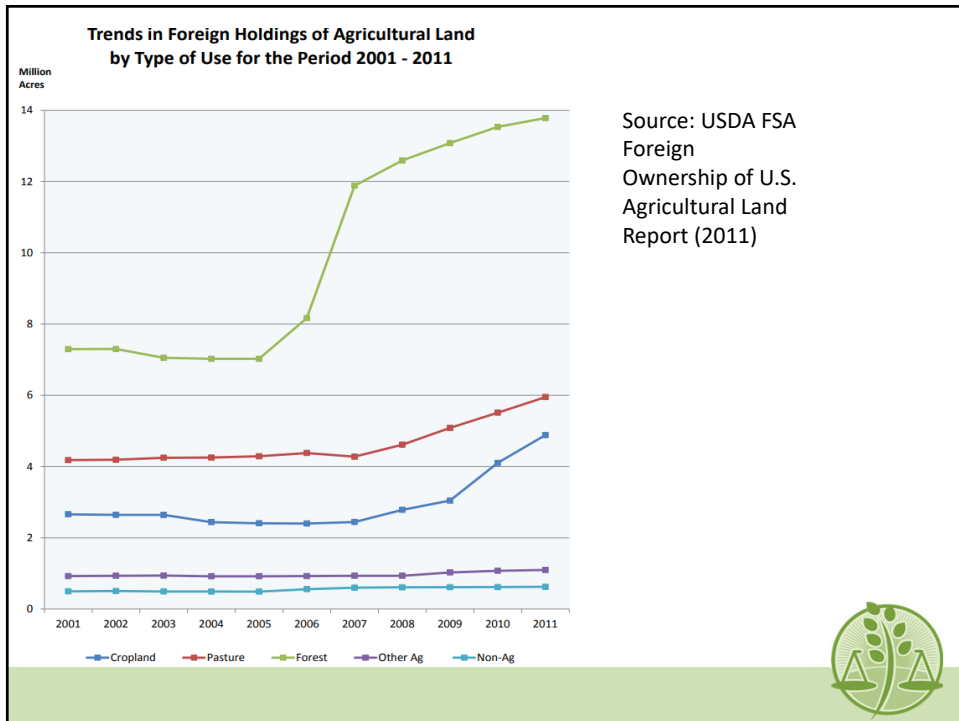
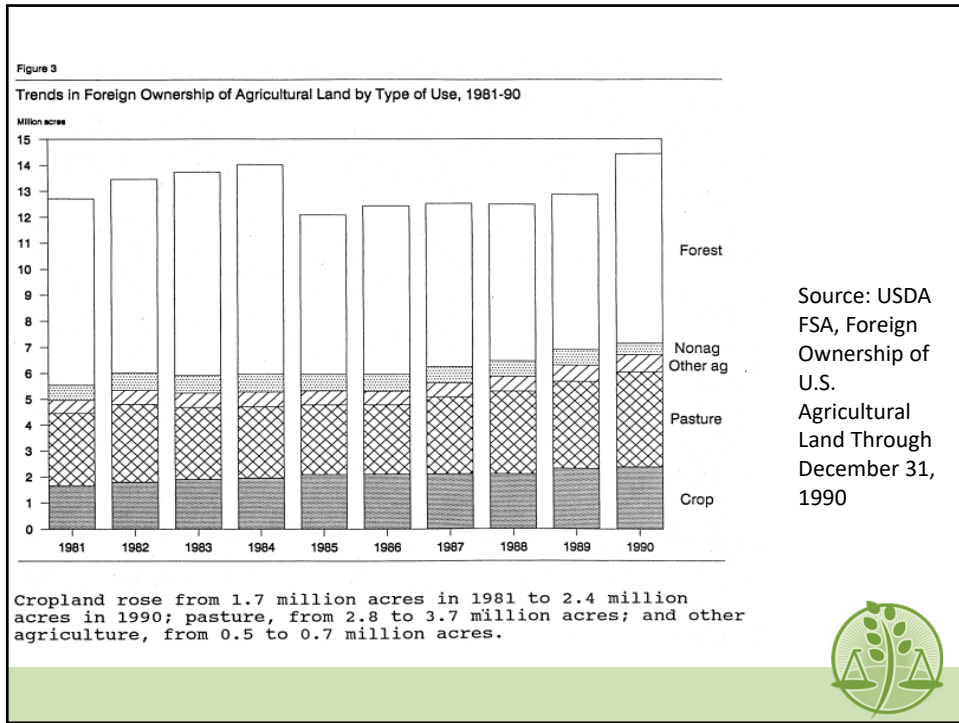
2020 Snapshot: Country of Origin

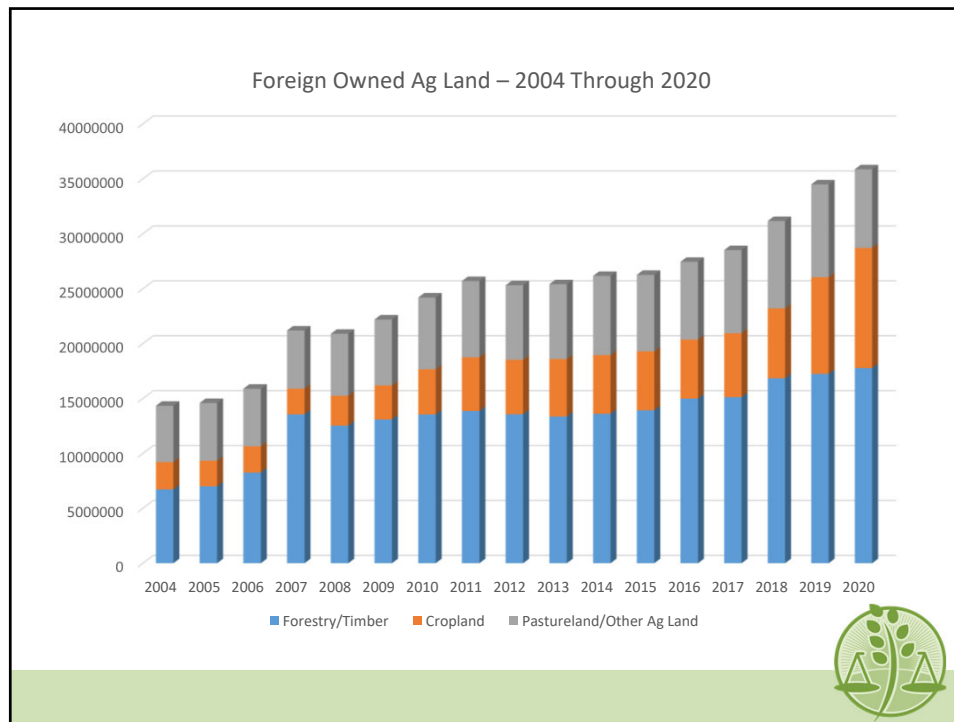
- Canadian investors own largest amount of acreage (ag and non-ag)
 - 12.4 million acres (primarily forest land)
 - Represents 32% of all foreign-owned land reported via AFIDA
- Netherlands (13%), Italy (7%), United Kingdom (6%), Germany (5%)
 - Combined, 12 million acres
 - 31%
- The remaining 13.9 million acres (36%) derives from investors spread across about 100 other countries
- Chinese investors own 352,140 acres, representing slightly less than 1% of total foreign ownership
- Note that “ownership” includes long-term leases











Snapshot of States' Laws

- There is no state with an absolute prohibition on foreign ownership
 - This statement contradicts some publications/articles
- 14* states have some level of foreign ownership restriction
 - This statement contradicts many publications/articles
- 13 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
 - 7 states are currently silent on the issue (reporting and prohibition/restriction)
- Several states have prohibitions specific only to public/state land, which is not covered here



Snapshot of States' Laws

- There is no “uniform” law; one size does not fit all

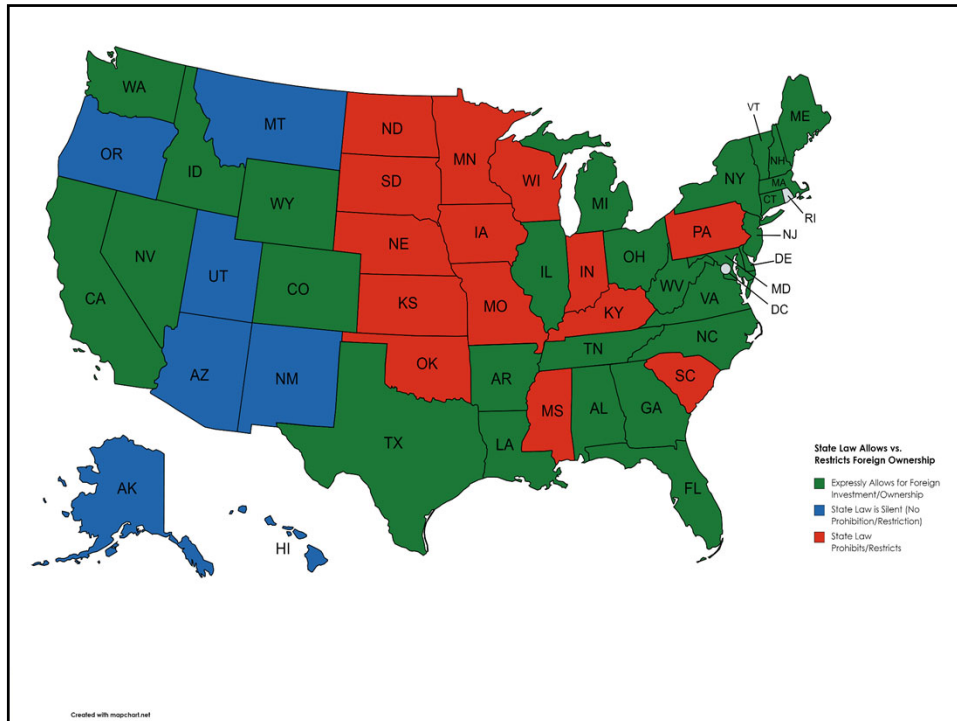
- There are some general categories in the laws
 - Restrictions on the amount of land that can be owned
 - Restrictions on duration of ownership
 - Distinction (or lack thereof) between resident and nonresident aliens
 - Restrict ownership of foreign corporations (i.e., corporate farming laws)
 - Definition of “agricultural land”
 - Impact of inheritance on ability to own
 - Public vs private land
 - Enforcement (or lack thereof)
 - Penalties



Foreign Ownership of Ag Land as of December 31, 2020

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> • Iowa <ul style="list-style-type: none"> • 549,157 • 1.6% • Kentucky <ul style="list-style-type: none"> • 89,494 • 0.4% • Minnesota <ul style="list-style-type: none"> • 535,772 • 1.6% • Mississippi <ul style="list-style-type: none"> • 727,906 • 2.8% • Missouri <ul style="list-style-type: none"> • 393,546 • 1.1% • Nebraska <ul style="list-style-type: none"> • 690,692 • 1.5% | <ul style="list-style-type: none"> • North Dakota <ul style="list-style-type: none"> • 314,626 • 0.8% • Oklahoma <ul style="list-style-type: none"> • 1,529,397 • 4.0% • Pennsylvania <ul style="list-style-type: none"> • 340,641 • 1.7% • South Carolina <ul style="list-style-type: none"> • 484,175 • 3.1% • South Dakota <ul style="list-style-type: none"> • 356,579 • 0.9% • Wisconsin <ul style="list-style-type: none"> • 502,051 • 1.9% | <p>Total Acres: 6,514,036; 17% of foreign owned ag land</p> |
|--|---|--|





Alabama: Expressly Allows

- 2020 Landholdings:
 - Forestry: 1,751,572
 - Crop: 21,309
 - Pasture: 3,337
 - Other Ag: 4,619
 - Total: 1,780,837 (+24,656 since 2019)
- “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)



Alabama: SB 14

- Proposal took similar approach to Iowa's law
- Provided that "a nonresident alien, foreign business, or foreign government, . . . may not purchase or otherwise acquire agricultural land in this state."
- Exceptions :
 - Acquire ag land by inheritance
 - Security interest
 - Under either exception, foreign party must divest interest within 2 years of gaining interest
- Allowed current owners to continue ownership after effective date
- Changing citizenship status requires party to divest interest in two years
- Required foreign party to register ag landholding with Secretary of State
- Court finds violation, land automatically escheats to the state
 - State required to sell property
 - Proceeds would pay court costs and violating foreign party up to amount they paid for the property
 - Did not specify who may bring a legal action against a suspected violator



Arkansas: Expressly Allows

- 2020 Landholdings:
 - Forestry: 773,786
 - Crop: 316,943
 - Pasture: 22,552
 - Other Ag: 18,318
 - Total: 1,131,598 (+26,585 since 2019)
- "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)



Arkansas: SB 312

- How it started
 - Goal was to prohibit/restrict certain foreign ownership
 - Largely borrowed from Missouri statute
- How it went
 - Passed through Arkansas Senate quickly and overwhelmingly
 - Hit a wall in the Arkansas House
- How it ended
 - Suspended existing reporting law so long as AFIDA is in effect
 - Requires AFIDA reporting to also be made to the state



Florida: Expressly Allows

- 2020 Landholdings:
 - Forestry: 784,166
 - Crop: 213,523
 - Pasture: 181,648
 - Other Ag: 93,138
 - Total: 1,272,474 (+6,038 since 2019)
- 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.”



Georgia: Expressly Allows

- 2020 Landholdings:
 - Forestry: 984,596
 - Crop: 96,333
 - Pasture: 20,228
 - Other Ag: 19,157
 - Total: 1,120,314 (+29,586 since 2019)
- “Aliens are the subjects of foreign governments who have not been naturalized under the laws of the United States.”
- “Aliens who are subjects of governments at peace with the United States and this state, as long as their governments remain at peace with the United States and this state, shall be entitled to all the rights of citizens of other states who are temporarily in this state and shall have the privilege of purchasing, holding, and conveying real estate in this state.”
(Ga. Code Ann. § 1-2-11)



Kentucky: Expressly Allows, But

- 2020 Landholdings:
 - Forestry: 19,102
 - Crop: 25,895
 - Pasture: 35,127
 - Other Ag: 9,369
 - Total: 89,494 (+10,863 since 2019)
- “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.” (Ky. Rev. Stat. § 381.290)



Kentucky: Expressly Allows, But

- “. . . 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.”
- All claims of state are eliminated if nonresident alien becomes a U.S. citizen before the property is escheated



Louisiana: Expressly Allows

- 2020 Landholdings:
 - Forestry: 1,198,674
 - Crop: 138,294
 - Pasture: 39,589
 - Other Ag: 10,958
 - Total: 1,387,515 (+15,036 since 2019)
- La. Const. Ann. Art. I, § 4(A):

“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.”



Mississippi: Restricts

- 2020 Landholdings:
 - Forestry: 529,535
 - Crop: 176,196
 - Pasture: 11,060
 - Other Ag: 11,116
 - Total: 727,906 (+7,494 since 2019)
- “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, “Acquisition of land by nonresident aliens and corporations”)
- 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



Mississippi: Restricts

- 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



Missouri: Restricts

- 2020 Landholdings:
 - Forestry: 14,812
 - Crop: 210,871
 - Pasture: 88,959
 - Other Ag: 78,904
 - Total: 393,546 (+47,888 since 2019)
- 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
- W-9



Missouri: SB 791

- Proposed that “beginning August 28, 2022, no alien or foreign business shall acquire by grant, purchase, devise, descent, or otherwise any agricultural land in this state.”
- Prohibits aliens and foreign businesses who own ag land before the enactment date to sell or transfer ag land to other foreign parties



North Carolina: Expressly Allows

- 2020 Landholdings:
 - Forestry: 350,162
 - Crop: 92,066
 - Pasture: 3,269
 - Other Ag: 72,932
 - Total: 518,429 (+10,984 since 2019)
- “It is lawful for aliens to take both by purchase and descent, or other operation of law, any lands, tenements or hereditaments, and to hold and convey the same as fully as citizens of the State can or may do, any law or usage to the contrary notwithstanding.” (N.C. Gen. Stat. Ann. § 64-1)
- Authorizes Secretary of State to collect information “obtainable from reports by aliens to agencies of the federal government on ownership of real property interests in North Carolina” and make the information public



Oklahoma: Restricts

- 2020 Landholdings:
 - Forestry: 18,431
 - Crop: 972,739
 - Pasture: 452,580
 - Other Ag: 85,647
 - Total: 1,529,397 (+383,600 since 2019)
- 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.”



Oklahoma: Restricts

- 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. . . .” (§122)
 - Nonresident aliens who gain ownership by inheritance or by purchase under foreclosing liens in favor of the alien may hold land for 5 years (§123)
 - After 5 years, land escheats to the state



Oklahoma: Restricts

- Provides that no “corporation be created or licensed to do business in this State for the purpose of acting as agent in buying and selling or leasing land for agricultural purposes; provided, however, that corporations shall not be precluded from taking mortgages on real estate to secure loans or debts, or from acquiring title thereto upon foreclosure of such mortgages or in the collection of debts” (OK Const. Art. 22, § 2)
 - Corporations can only hold real property for 7 years
- 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)
 - “Any resident of the county in which the land is situated...may initiate an action...for divestment of an interest in land held in violation....” (§ 956(A))



Oklahoma: HB 1497

- 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. . . .”



South Carolina: Restricts**

- 2020 Landholdings:
 - Forestry: 438,971
 - Crop: 27,837
 - Pasture: 5,197
 - Other Ag: 12,169
 - Total: 484,175 (+2,701 since 2019)
- 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) (S.C. Code Ann. § 27-13-30)
 - Would 3.2% of all ag land in the state, virtually the same amount of all ag land currently foreign owned



Tennessee: Expressly Allows

- 2020 Landholdings:
 - Forestry: 367,002
 - Crop: 34,918
 - Pasture: 17,728
 - Other Ag: 7,640
 - Total: 427,288 (+5,273 since 2019)
- “An alien, resident or nonresident of the United States, may take and hold property, real or personal, in this state and dispose of or transmit the same as a native citizen.” (Tenn. Code Ann. § 66-2-101)
- HB 1451 sought to amend Tennessee law
 - Introduced February 2021
 - Deferred to Summer Study in Agriculture & Natural Resource Committee on March 30, 2021



Tennessee HB 1451

- Prohibits “nonresident alien, foreign business, or foreign government” from purchasing ag land
 - Must divest of ag land within 2 years of acquisition
- Foreign party has 5 years to convert ag land for other purpose
- Exceptions:
 - Inheritance
 - Lien/security interest
 - >320 acres
- Required reporting to the Secretary of State
 - Within 60 days of acquisition
- If SOS finds violation of restriction, report violation to Attorney General
 - AG must initiate escheat action
- Maximum \$2,000 civil penalty for violations of reporting provision



Texas: Expressly Allows

- 2020 Landholdings:
 - Forestry: 1,778,287
 - Crop: 1,289,930
 - Pasture: 1,398,975
 - Other Ag: 251,952
 - Total: 4,719,144 (+287,002 since 2019)

- “An **alien** has the same real and personal property rights as a United States citizen.” (Tex. Prop. Code Ann. § 5.005)

- Legislature proposed HB 58
 - Proposed to restrict a “nonresident alien, foreign business, or foreign government...” from purchasing or otherwise acquiring title to ag land
 - Would require Department of Agriculture to report that identifies all ag land owned by foreign parties to the governor, lieutenant governor, and speaker of the house.



Texas Foreign Ownership of Ag Land as of December 31, 2020

- 3.1% of all ag land is foreign held
- 287,000 acreage increase from 2019 to 2020
- 2019 vs. 2020 Land Use:

| | 2019 | 2020 | Increase |
|-----------------------|------------------|------------------|----------------|
| Cropland | 1,193,886 | 1,289,930 | 96,044 |
| Pasture | 1,330,488 | 1,398,975 | 68,487 |
| Forest | 1,766,208 | 1,778,287 | 12,079 |
| Other Ag | 141,561 | 251,952 | 110,391 |
| Total Ag Acres | 4,432,142 | 4,719,144 | 287,002 |



Federal Proposals

- Foreign Adversary Risk Management (“FARM” Act)
- Appropriations bills



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



Comments/Questions



Harrison Pittman

(479) 575-7640
 hmpittm@uark.edu
 www.nationalaglawcenter.org



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)



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

