

- National Agricultural Law Center -
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Navigating Foreign Ownership Laws in the Wild, Wild West: Latest Trends and Developments

PRESENTED BY

Marisa Bocci, Partner

K&L Gates LLP

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Agricultural Land Acquisitions by Foreign Persons

↘ Federal Requirements

- ↘ Agricultural Foreign Investment Disclosure Act of 1978
- ↘ Contrast: CFIUS

↘ State-Level Requirements

- ↘ Disclosure Requirements
- ↘ Acreage Limitations
- ↘ Prohibition on Foreign Ownership
- ↘ Other (*e.g.*, tax, registered agent)

↘ Recent Legislative Activity

Federal Requirements

Agricultural Foreign Investment Disclosure Act of 1978 (“AFIDA”)

“Any foreign person who acquires or transfers any interest, other than a security interest, in agricultural land shall submit a report to the Secretary of Agriculture not later than 90 days after the date of such acquisition or transfer.” 7 U.S. Code § 3501(a).

In addition to farms, this statute may apply to transactions involving

- Wind or Solar Energy Assets
- Corporations with Farmland, Pasture or Timber Assets
- “Path of Growth” Developer

“Foreign Person” means...

- An entity organized under the laws of a foreign government;
- An entity whose principal place of business is located outside the US; or
- A domestic entity when a foreign person holds a “significant interest or substantial control” over that entity, which means
 - (i) a single foreign person owns an interest of 10% or more,
 - (ii) multiple foreign persons acting in concert own an interest of 10% or more in the aggregate, or
 - (iii) multiple foreign persons own an interest of 50% or more in the aggregate, whether or not acting in concert.

7 CFR § 781.2(2016)

“Interest” in “Agricultural Land” means...

- **Interest:** “[A]ll interests acquired, transferred or held in agricultural lands,” subject to enumerated exceptions
- Exceptions include
 - leaseholds of less than 10 years,
 - contingent future interests (i.e., options), and
 - easements unrelated to agricultural production.
- **Agricultural Land:** Land “currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production.”

7 CFR § 781.2(2016)

Process

- Must file within 90 days after the applicable triggering transaction:
 - Acquisition
 - Disposition
 - Change in Foreign Person Interest
 - Change in Farmland Status

- Filing process:
 - File AFIDA Report Form FSA-153 in the County Farm Service Agency Office where the tract of land is located
 - County specific – some transactions may require multiple filings
 - Large transactions – encouraged to file in Washington, D.C.

7 CFR § 781.4(2016)

Penalties

- Late Report: 0.1% of the fair market value of the land for each week that the violation continued
- Failure to Report: 25% of the fair market value of the land
- FMV: value of farmland at the time violation is determined

7 CFR § 781.4(2016)

CFIUS and Real Estate

- The Committee on Foreign Investment in the United States ("CFIUS")
- CFIUS operates pursuant to section 721 of the Defense Production Act of 1950, as amended (section 721), and as implemented by Executive Order 11858, as amended, and the regulations at chapter VIII of title 31 of the Code of Federal Regulations
- The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) expanded CFIUS committee review over certain real estate assets in close proximity to US military installations, ports, or other sensitive facilities
- Excluded Transactions ---- carves out certain transactions
- Excepted Real Estate Foreign States:
 - Australia, Canada, New Zealand, United Kingdom of Great Britain, and Northern Ireland

NOTE: CFIUS exclusions do not negate any AFIDA filing obligations.

Remember, even if the purpose of the transaction is not agricultural-related, AFIDA can be triggered if the land *could* be used for agriculture (or if idle, was used for agriculture in the last *five years*).

In short:

- 1) Consider the direct and indirect ownership interests in the acquisition or disposition.
- 2) Check current use and, if idle, five years prior.
- 3) CFIUS and AFIDA are two different regimes.

State Limitations

State Disclosure/Reporting Requirements

- Many states model their disclosure and reporting requirements after AFIDA, but vary in the amount of information required to be disclosed and timing
- Arkansas, Illinois, Indiana, Iowa, Kansas, Maine, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin
 - Illinois
 - Any foreign person that acquires or transfers any interest in agricultural land will submit a report to the Director of Agriculture within 90 days after the date of such acquisition or transfer. 765 ILL. COMP. STAT. 50/3.
 - To be in compliance, a party can file a copy of his or her AFIDA filing. 765 ILL. COMP. STAT. 50/6.

State Disclosure Requirements, cont.

- Missouri

- Any foreign person (including entities) who acquires or transfers any interest (including leaseholds of ten or more years) in agricultural land must submit a report to the director of agriculture no later than 30 days after the date of the acquisition or transfer. MO. REV. STAT. § 442.592.

- North Dakota

- Every year before April 16, all corporations or limited liability companies engaged in farming or ranching must file an annual report with the secretary of state. N.D. CENT. CODE § 10-06.1-17.

State Acreage Limitations

- Some states limit the number of acres an entity can acquire
- Arizona, Indiana, Mississippi, Missouri, Pennsylvania, South Carolina, South Dakota, Wisconsin
 - South Dakota
 - Nonresident aliens may not acquire agricultural lands exceeding 160 acres. S.D. CODIFIED LAWS §43-2A-2.
 - Wisconsin
 - Foreign entities with more than 20% their equity owned by nonresident aliens, or foreign corporations of the United States, are prohibited from owning more than 640 acres of land. Wis. STAT. § 710.02(1)(c)(1).

State Prohibitions on Foreign Ownership

- Some states ban foreign ownership of agricultural land (or any land), with certain exemptions
- Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota....
 - Nebraska
 - Nebraska prohibits aliens and corporations that are not incorporated under the laws of the State of Nebraska from acquiring title or taking or holding any land, real estate, leasehold interest extending for more than 5 years. NEB. REV. STAT. § 76-402.
 - Oklahoma
 - No alien or person not a citizen of the United States may acquire land in the state. Okla. Const. art. XXII §1.

Recent Legislation Activity

- This is a rapidly changing area of law.
- Policy makers are on all sides of this issue.
- New prohibitions are being proposed (seemingly) on a weekly basis.

117th Congress (2021-2022) Proposals:

- Measures to ban Chinese government and Chinese-owned entities from owning US agricultural land:
 - the Countering Communist China Act (H.R. 4792) and the Prohibition of Agricultural Land for the People's Republic of China (H.R. 7892).
- Measures to compel USDA to prevent companies owned by China, Russia, North Korea, and Iran from purchasing agricultural land within the U.S.:
 - H.R. 4502; H.R. 8239; H.R. 8294
- Measures to restrict foreign investments in all public and private real estate located in the U.S. (not just farmland):
 - the Securing America's Land from Foreign Interference Act (S. 4703/H.R. 3847) and the Protecting our Land Act (H.R. 8652).

118th Congress (2023-2024) Proposals:

- Measures that were considered during the 117th Congressional session, and have been reintroduced:
 - the Prohibition of Agricultural Land for the People's Republic of China Act (H.R. 809),
 - the Securing America's Land from Foreign Interference Act (H.R. 344),
 - the Protecting our Land Act (H.R. 212),
 - the Promoting Agriculture Safeguards and Security Act ("PASS Act") of 2023 (S. 168/H.R. 683)
- New Measures:
 - This Land Is Our Land Act (S. 684): would ban foreign individuals or entities domiciled in or associated with China from obtaining an interest in farmland;
 - Saving American Farms from Adversaries Act (H.R. 840): would require the President to take actions necessary "to prohibit the purchase of public or private real estate...by any foreign person" for a five-year period.

State Legislation Activity – Three Year Trend Profiles

Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
Alabama	n	n	y-f	y-a	No Active Statutes BUT Recent Legislative Activity
Alaska	n	n	n	n	No Active Statutes and No Pending Legislation
Arizona	y	y-p	n	y-a	Active Statutes AND Recent Legislative Activity
Arkansas	y	n	n	y-p	Active Statutes AND Recent Legislative Activity
California	n	-->	y-v	y-a	No Active Statutes BUT Recent Legislative Activity

State Legislation Activity – Three Year Trend Profiles

Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
Colorado	n	n	n	y-f	No Active Statutes BUT Recent Legislative Activity
Connecticut	n	n	n	n	No Active Statutes and No Pending Legislation
Delaware	n	n	n	n	No Active Statutes and No Pending Legislation
Florida	n	n	n	y-a	No Active Statutes BUT Recent Legislative Activity
Georgia	y	n	n	y-a	Active Statutes AND Recent Legislative Activity

State Legislation Activity – Three Year Trend Profiles

Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
Hawaii	y	n	n	y-f	Active Statutes AND Recent Legislative Activity
Idaho	y	n	n	y-p	Active Statutes AND Recent Legislative Activity
Illinois	y	n	n	y-a	Active Statutes AND Recent Legislative Activity
Indiana	y	n	y-p	y-p	Active Statutes AND Recent Legislative Activity
Iowa	y	n	y-f	y-a	Active Statutes AND Recent Legislative Activity

State Legislation Activity – Three Year Trend Profiles

Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
Kansas	y	n	n	y-a	Active Statutes AND Recent Legislative Activity
Kentucky	y	n	n	y-f	Active Statutes AND Recent Legislative Activity
Louisiana	n	n	n	y-a	No Active Statutes BUT Recent Legislative Activity
Maine	y	n	n	n	Active Statutes BUT No Recent Legislative Activity
Maryland	y	n	n	y-f	Active Statutes AND Recent Legislative Activity

State Legislation Activity – Three Year Trend Profiles

Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
Massachusetts	n	n	n	n	No Active Statutes and No Pending Legislation
Michigan	n	n	n	y-a	No Active Statutes BUT Recent Legislative Activity
Minnesota	y	n	n	n	Active Statutes BUT No Recent Legislative Activity
Mississippi	y	n	n	y-p	Active Statutes AND Recent Legislative Activity
Missouri	y	y-f	y-f	y-a	Active Statutes AND Recent Legislative Activity

State Legislation Activity – Three Year Trend Profiles

Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
Montana	n	n	n	y-a	No Active Statutes BUT Recent Legislative Activity
Nebraska	y	n	n	n	Active Statutes BUT No Recent Legislative Activity
Nevada	n	n	n	n	No Active Statutes and No Pending Legislation
New Hampshire	n	n	n	n	No Active Statutes and No Pending Legislation
New Jersey	y	tax policy	n	y-a	Active Statutes AND Recent Legislative Activity

State Legislation Activity – Three Year Trend Profiles

Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
New Mexico	n	n	n	n	No Active Statutes and No Pending Legislation
New York	n	n	n	y-a	No Active Statutes BUT Recent Legislative Activity
North Carolina	n	n	n	y-a	No Active Statutes BUT Recent Legislative Activity
North Dakota	y	n	n	y-p	Active Statutes AND Recent Legislative Activity
Ohio	y	n	n	n	Active Statutes BUT No Recent Legislative Activity

State Legislation Activity – Three Year Trend Profiles

Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
Oklahoma	y	n	n	y-a	Active Statutes AND Recent Legislative Activity
Oregon	y	n	n	y-a	Active Statutes AND Recent Legislative Activity
Pennsylvania	y	n	n	n	Active Statutes BUT No Recent Legislative Activity
Rhode Island	n	n	n	n	No Active Statutes and No Pending Legislation
South Carolina	y	n	n	y-a	Active Statutes AND Recent Legislative Activity

State Legislation Activity – Three Year Trend Profiles

Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
South Dakota	y	n	n	y-p	Active Statutes and Recently Passed Legislation
Tennessee	n	y-f	y-f	y-a	No Active Statutes BUT Recent Legislative Activity
Texas	y	n	n	y-p	Active Statutes and Recently Passed Legislation
Utah	y	n	n	y-p	Active Statutes and Recently Passed Legislation
Vermont	n	n	n	n	No Active Statutes and No Pending Legislation

State Legislation Activity – Three Year Trend Profiles

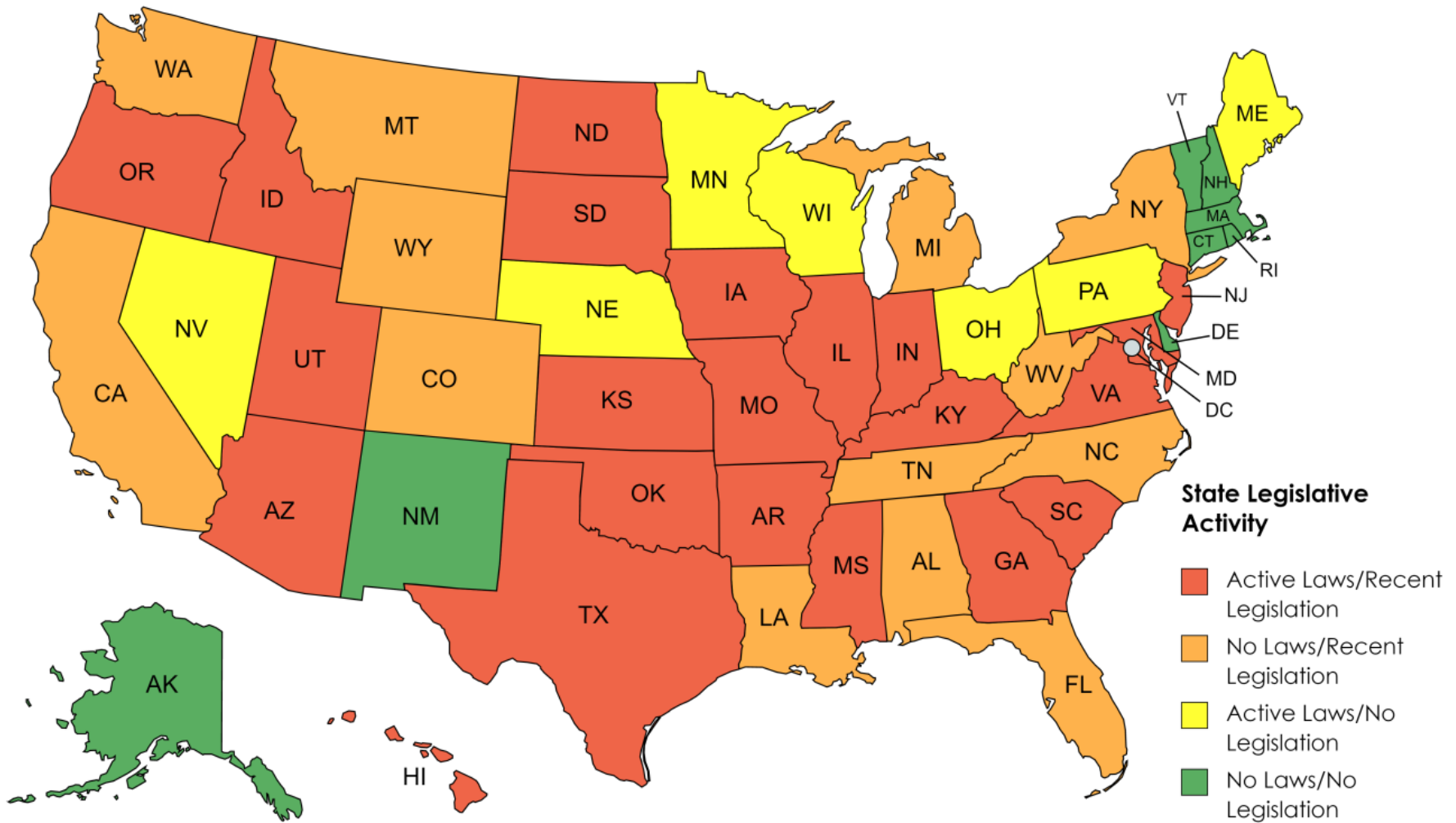
Jurisdiction and Legislation As of 5-3-2023

Jurisdiction	Current Restrictions	2021 Legislation	2022 Legislation	2023 Legislation	Heat Map Indicator
Virginia	y	n	n	y-p	Active Statutes and Recently Passed Legislation
Washington	n	n	n	y-a	No Active Statutes BUT Recent Legislative Activity
West Virginia	n	n	n	y-f	No Active Statutes BUT Recent Legislative Activity
Wisconsin	y	n	n	n	Active Statutes BUT No Recent Legislative Activity
Wyoming	n	n	n	y-f	No Active Statutes BUT Recent Legislative Activity

Drilldown: Regional Legislative Activity

Jurisdiction	Bill #	Summary	Status of Bill	Type of Land Involved
Arizona	House Bill 2376	Prohibits selling, leasing, or subleasing agricultural state land to a foreign government. No foreign government or state-controlled enterprise may transact business in this state without the Arizona Corporation Commission's approval. Would go into effect upon enactment.	Alive - Passed House; In Senate Committee	Agricultural Land
Arizona	House Bill 2676	Blanket ban on conveying any real property to any foreign government or state-controlled enterprise. Would go into effect upon enactment.	Alive - In Original Chamber Committee	All Real Property
Arizona	House Resolution 2002	A non-binding resolution stating that Arizona Legislators "support the enactment of the Securing America's Land from Foreign Interference Act (HR 344), or similar legislation, to prohibit the sale of United States land to foreign investors."	Passed and transmitted to AZ Secretary of State	All Real Property
Arizona	Senate Bill 1112	Blanket ban on conveying any real estate to foreign entities affiliated or headquartered in China, Cuba, Iran, North Korea, Russia, Saudi Arabia, Syria, or Venezuela.	Alive - In Original Chamber Committee	All Real Property
California	Assembly Bill 475	Prohibits companies/entities from "nonmarket economy countries" (19 USC § 1677(18)) or "national security risks" (50 USC §3043b) from purchasing "sensitive land" within 50 miles of any military base. All purchases prior to January 1, 2024 are exempted. Also requires the California Attorney General to investigate "upon the request of any person or upon receipt of any information that leads them to believe a violation may have occurred."	Alive - In Original Chamber Committee	Critical Infrastructure
California	Senate Bill 224	Prohibit foreign governments or state-controlled enterprises from acquiring, leasing, or holding a controlling interest in agricultural land within the State of California. All purchases prior to January 1, 2024 are exempted. Also requires the California Attorney General to investigate "upon the request of any person or upon receipt of any information that leads them to believe a violation may have occurred."	Alive - In Original Chamber Committee	Agricultural Land
Idaho	House Bill 173	Prohibits a foreign government or foreign government controlled entity from purchasing, acquiring or holding a controlling interest in agricultural land, water rights, mining claims or mineral rights in the state of Idaho.	Signed by Governor	Agricultural Land
Nevada	N/A	No current legislation.	N/A	N/A
Oregon	House Bill 3460	Requires Department of Land Conservation and Development to study foreign investment in Oregon agricultural land and submit findings to interim committees of Legislative Assembly related to agriculture and land use not later than September 15, 2024.	Alive - In Original Chamber Committee	Agricultural Land
Utah	House Bill 186	Prohibits any entity identified in the National Defense Authorization Act as a foreign "military company" or an affiliate from purchasing any real property. All affected companies who already hold land will have 5 years to divest, or it escheats to the state. May 3, 2023 is when the prohibition is effective.	Signed by Governor	All Real Property

State Legislative Activity – A Heat Map*



*Three Year Trend, As of May 3, 2023

Questions?

Marisa Bocci
K&L Gates LLP
marisa.bocci@klgates.com
206-370-7638