



Foreign Ownership of Land: 2023 Legislative Review

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National Agricultural Law Center

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Foreign Ownership in U.S. Farmland

- Agricultural Foreign Investment Disclosure Act (“AFIDA”) of 1978
- Latest official data is through December 31, 2021
 - Foreign ownership in private ag land: **40,031,308** (3.1% of all private ag land)
 - +2.4 million acres from Dec. 31, 2020
 - 14.3+ million-acre increase (+35.7%) from 2011 to 2021
 - 47% forestland
 - 29% cropland
 - 22% pasture/other ag purposes

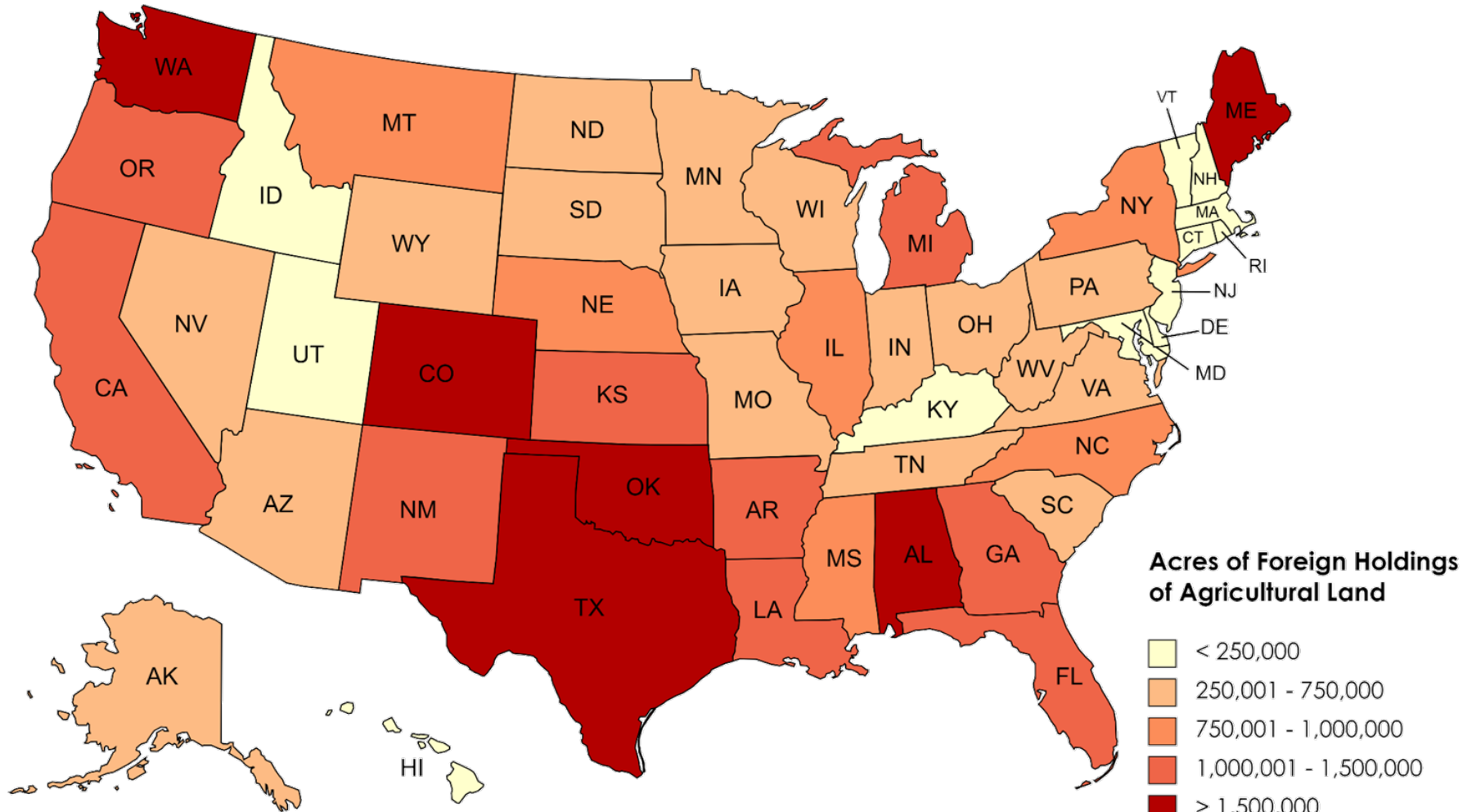


Foreign Ownership in U.S. Farmland

- Top countries of foreign investments?
 1. Canada (31%)
 2. Netherlands (12%)
 3. Italy (7%)
 4. United Kingdom & Germany (6%)
- China reports 0.9% ownership interest in ag and non-ag land
- States with most foreign held ag land acres?
 1. Texas (5.2 million)
 2. Maine (3.6 million)
 3. Colorado (1.9 million)
 4. Alabama (1.8 million)
 5. Oklahoma (1.67 million)
 6. Washington (1.58 million)



Foreign Ownership of U.S. Farmland



Federal Proposals

- 118th Congress has considered several measures that seek to control, prohibit, restrict, or increase oversight on foreign investments in U.S. agriculture
- Categories:
 1. Restrict Chinese investments in U.S. agricultural land
 2. Restrict multiple foreign countries from investing in U.S. agricultural land
 3. Restrict investments in all U.S. real property
 4. Restrict through other methods
 5. Amend AFIDA
 6. Prevent foreign participation in farm programs
 7. Adding USDA as a member of CFIUS



Restricting Chinese Investments in Ag Land

- Lower Energy Costs Act ([H.R. 1](#))
 - House adopted amendment to prohibit CCP, its agents, and gov't-owned entities from acquiring “any interest” in ag land (and land to produce renewable energy)
- Prohibition of Agricultural Land for the People’s Republic of China Act ([H.R. 809](#))
 - *“President shall take actions...to prohibit the **purchase** of public or private agricultural (including ranching) real estate...by nonresident aliens, foreign businesses, an agent, trustee, or fiduciary associated with the Government of the People’s Republic of China.”*
- This Land Is Our Land Act ([S. 684](#))
 - Restricts individuals, entities, and gov’t of China from **acquiring/leasing** ag land
 - Chinese ag land owned before effective date → must divest within 2 years
 - Fine of \$100 per acre per day
 - Forfeiture (public sale); imprisonment up to 5 years
 - Enforced by AG



Restricting Multiple Countries Investments in Ag Land

- National Defense Authorization Act for Fiscal Year 2024 ([S.Amdt.813](#))
 - Originally introduced as the Promoting Agriculture Safeguards and Security Act (“PASS Act”) ([S. 168/H.R. 683](#))
 - CFIUS determines a transaction would result in **control** by a “covered foreign person” of ag land (>320 acres or \$5 million) or ag business, **president must prohibit** transaction
 - “Covered foreign person” includes an individual, entity, and gov’t of the China, Iran, North Korea, or Russia (“Big 4”)
 - President **may waive** this requirement waiver is vital to U.S. national security
- Protecting America’s Agricultural Land from Foreign Harm Act of 2023 ([S. 926/H.R. 3357](#))
 - Directs president to prohibit the **purchase/lease** of public or private ag land by individual, entity, or gov’t of the Big 4
 - Fine of \$250K or 2x amount of transaction
 - Criminal fine up to \$1 million and/or up to 20 years in prison



Restricting Multiple Countries Investments in Ag Land

- Farmland for Farmers Act ([S. 2583](#))
 - Establishes corporate farming law
 - Restricts U.S./foreign entities from participating in agriculture/acquiring ag land
 - **Exempts research and experimentation**
 - Grandfather clause
 - If USDA determines a violation occurs, **reports to AG**
 - If violation, must divest w/in 1 year
 - If not, civil penalty 2x FMV of ag land and up to 5 years imprisonment
 - Authorizes **state AGs** to bring action
- Agriculture appropriations for FY24 ([H.R. 4368](#))
 - Directs USDA to prohibit the **purchase** of ag land by foreign (nonresident) individuals and foreign businesses associated with the Big 4



Restricting Investments in Real Property

- Protecting our Land Act ([H.R. 212](#))
 - *“President shall direct...**Federal departments and agencies** to promulgate rules and regulations to prohibit the purchase of public or private real estate...by a foreign adversary, a state sponsor of terrorism....”*
 - “Foreign adversary” includes foreign governments and “nongovernment persons” engaged in conduct adverse to U.S. national security
- Securing America’s Land from Foreign Interference Act ([H.R. 344](#))
 - President must prohibit **members** of and **entities** owned/controlled by the **CCP** from acquiring any public/private real property
- Saving American Farms for Adversaries Act ([H.R. 840](#))
 - President has 5 years to prohibit “**any foreign person**” from **purchasing** public or private real property
 - Directs GAO to report to Congress on foreign purchases of U.S. land



Restricting Investments in Real Property

- Protection of American Land Act of 2023 ([H.R. 4806](#))
 - Prohibit a “foreign national” from owning or purchasing land
 - “Foreign nation” includes **foreign gov’t, gov’t-owned entity, and gov’t officials**
 - Requires foreign nation to **return land** to U.S. gov’t → U.S. gov’t pays market-rate compensation
- Not One More Inch or Acre Act ([S. 1136](#))
 - President must prohibit individuals, entities, and the gov’t of **China** from purchasing public/private real property
 - Directs president to **require the sale** of real estate owned by China or Chinese investors if the ownership poses a **risk to national security**
 - Does not apply to: (1) U.S. citizens; (2) lawful permanent residents; (3) refugees; and (4) person granted asylum



Restricting Through Other Methods

- Stop China's Continuous Purchase of Land Act ([H.R. 4772](#))
 - States are **ineligible to receive funds** from certain federal programs if the state does not have a FOL restricting certain countries (includes Big 4)
- Protecting American Farmland Act ([H.R. 3996](#))
 - Introduced under the Build It in America Act ([H.R. 3938](#)) which is part of the tax package under the “American Families and Jobs Act”
 - Imposes **60% tax** on amount paid for farmland by Big 4 + Cuba/Venezuela



Amending AFIDA

- Protecting America’s Agricultural Land from Foreign Harm Act of 2023 ([S. 926](#))
 - Require USDA to publish all data it receives through FSA-153s
 - Disclose foreign persons who hold **at least 1%** interest in ag land
 - Update database w/in 30 days of receiving FSA-153
- Security and Oversight for International Landholdings Act of 2023 (“SOIL Act”) ([H.R. 1066](#))
 - Decreases reporting requirement for leases **5+ years**
 - Directs USDA to identify countries that own/lease **water rights** in the U.S.
- Not One More Inch or Acre Act ([S. 1136](#))
 - Increases base penalty to **10%** of FMV
- [H.R. 1789](#)
 - Increases base penalty to **50%** of FMV



Amending AFIDA

- Foreign Agricultural Restrictions to Maintain Local Agriculture and National Defense Act of 2023) (“FARMLAND Act”) ([S. 2060](#))
 - Directs USDA to **conduct investigations** into efforts to steal ag technology and knowledge to disrupt the U.S. ag base
 - Directs USDA to conduct an **annual audit** of FSA-153s for compliance
- Farmland Security Act of 2023 ([S. 2382](#))
 - AFIDA violations by **shell corporations** penalized at **100% FMV**
 - Directs USDA to annually **audit at least 10%** of the FSA-153s received that year



Restricting Farm Program Participation

- Protecting America’s Agricultural Land from Foreign Harm Act of 2023 ([S. 926/H.R. 3357](#))
 - Ag land owned/leased by an individual, entity, or gov’t of the Big 4 are ineligible for USDA-administered programs
 - Exempts: (1) food inspection/safety regulatory requirements; (2) health/labor safety requirements; and (3) participation in AFIDA
- FARMLAND Act ([S. 2060](#))
 - Prohibits ag land owned/operated by “foreign person” from participating
 - Participant must **certify** they are not a foreign person
 - Penalty for violation can be up to 125% of benefits received from program participation
- SOIL Act ([S. 1066](#))
 - No federal assistance for certain foreign ag landholdings



Adding Agriculture to CFIUS

- Foreign Adversary Risk Management Act (“FARM Act”) ([S. 68/H.R. 513](#))
 - Adds ag systems and supply chains within the meaning of “critical infrastructure” and “critical technologies”
 - Authorizes CFIUS to review transactions that would result in foreign **control** of any U.S. ag business
- Protecting U.S. Farmland and Sensitive Sites From Foreign Adversaries Act ([H.R. 4577](#))
 - Adds USDA as a member of CFIUS to review transactions related to the ag industry (purchase of ag land and ag biotechnology)
- SOIL Act ([S. 1066](#))
 - Directs CFIUS to review ag land purchases by person of either (i) a nonmarket economy country, or (ii) countries identified as posing a risk to national security under the most recent “Annual Threat Assessment”

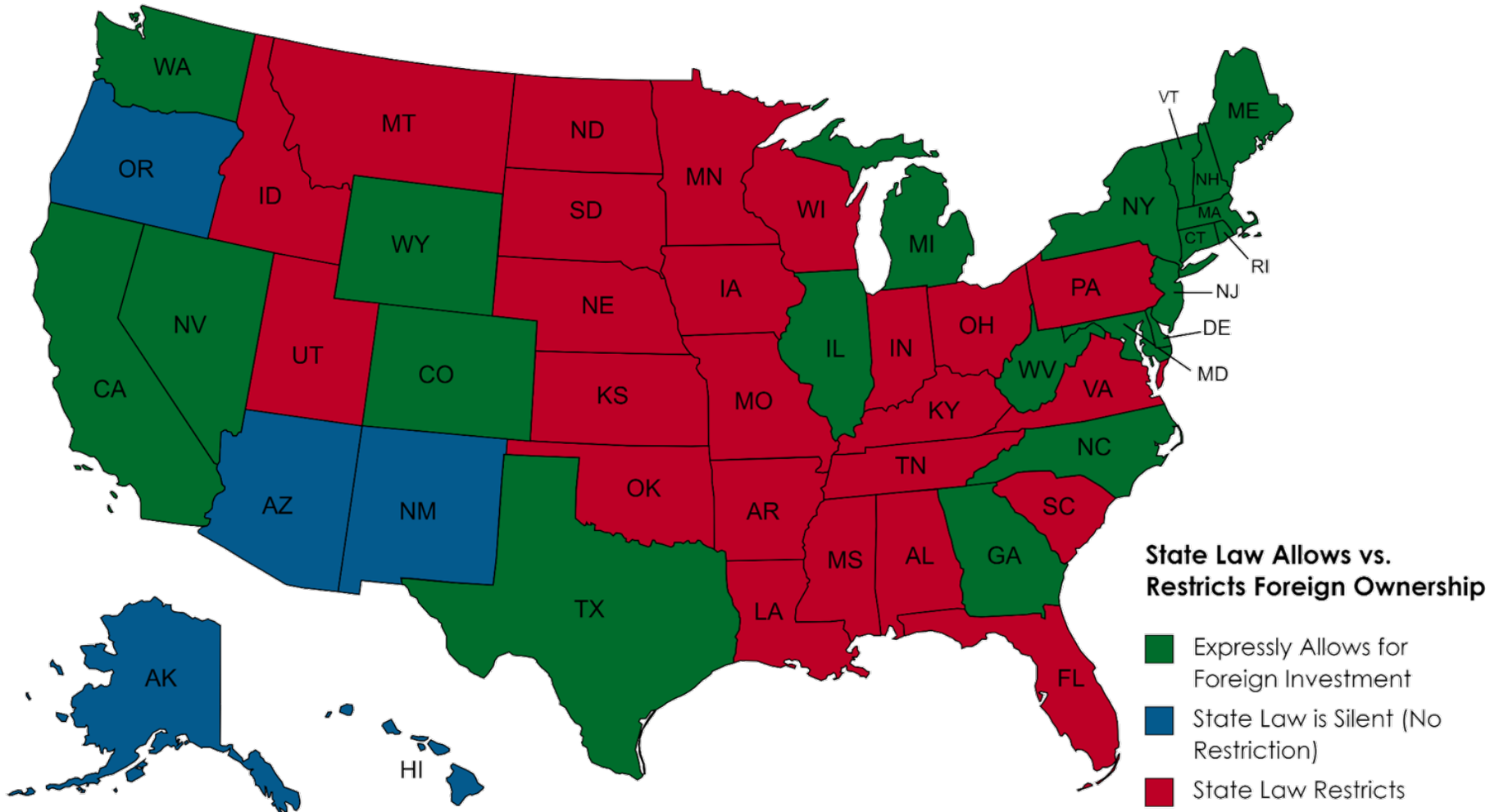


Adding Agriculture to CFIUS

- FARMLAND Act ([S. 2060](#))
 - Requires CFIUS to review foreign entities' land purchases/leases exceeding \$5 million or 320 acres of land over the past 3 years
- National Defense Authorization Act for Fiscal Year 2024 ([S. 2226](#))
 - If CFIUS determines a transaction would result in **control** by an investor of the Big 4 in ag land or ag business, **president must prohibit** the transaction
 - President **may waive** this requirement to prohibit a transaction if it is vital to U.S. national security to waive the prohibition
- Food Security is National Security Act of 2023 ([S. 2312](#))
 - Authorizes CFIUS to **review transactions** that have a potential impact on U.S. food security and ag systems

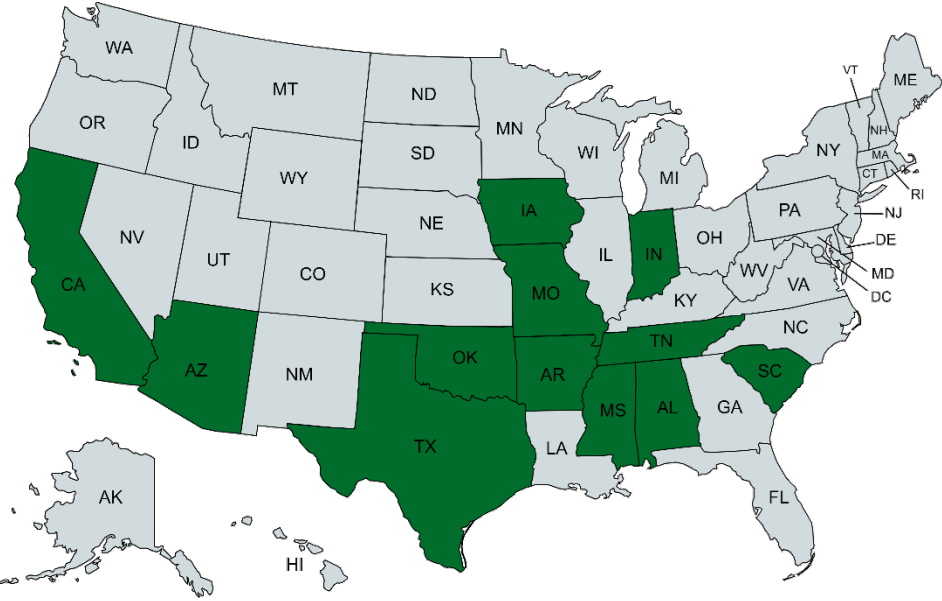


State Law Allows vs. Restricts Foreign Ownership

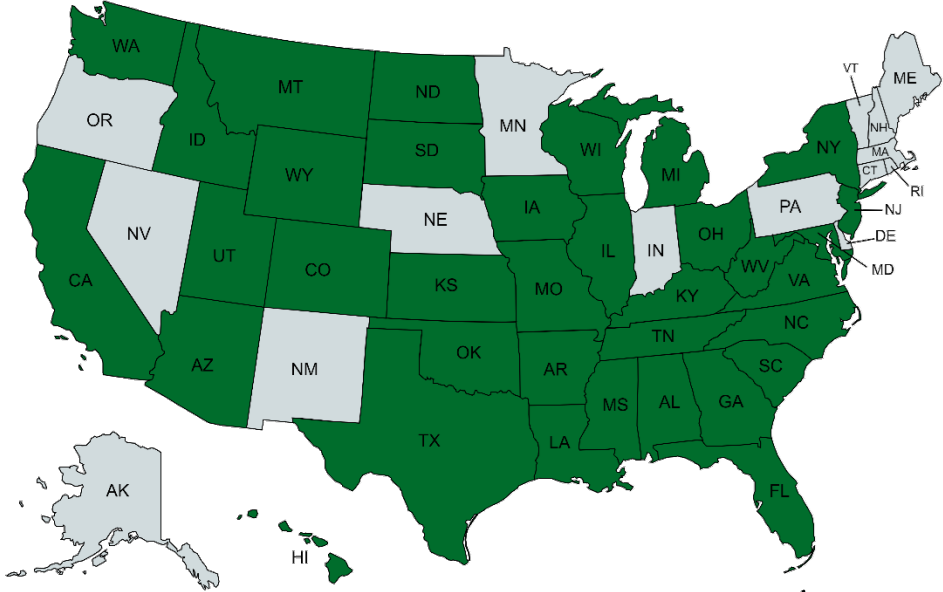


State Foreign Ownership Proposals

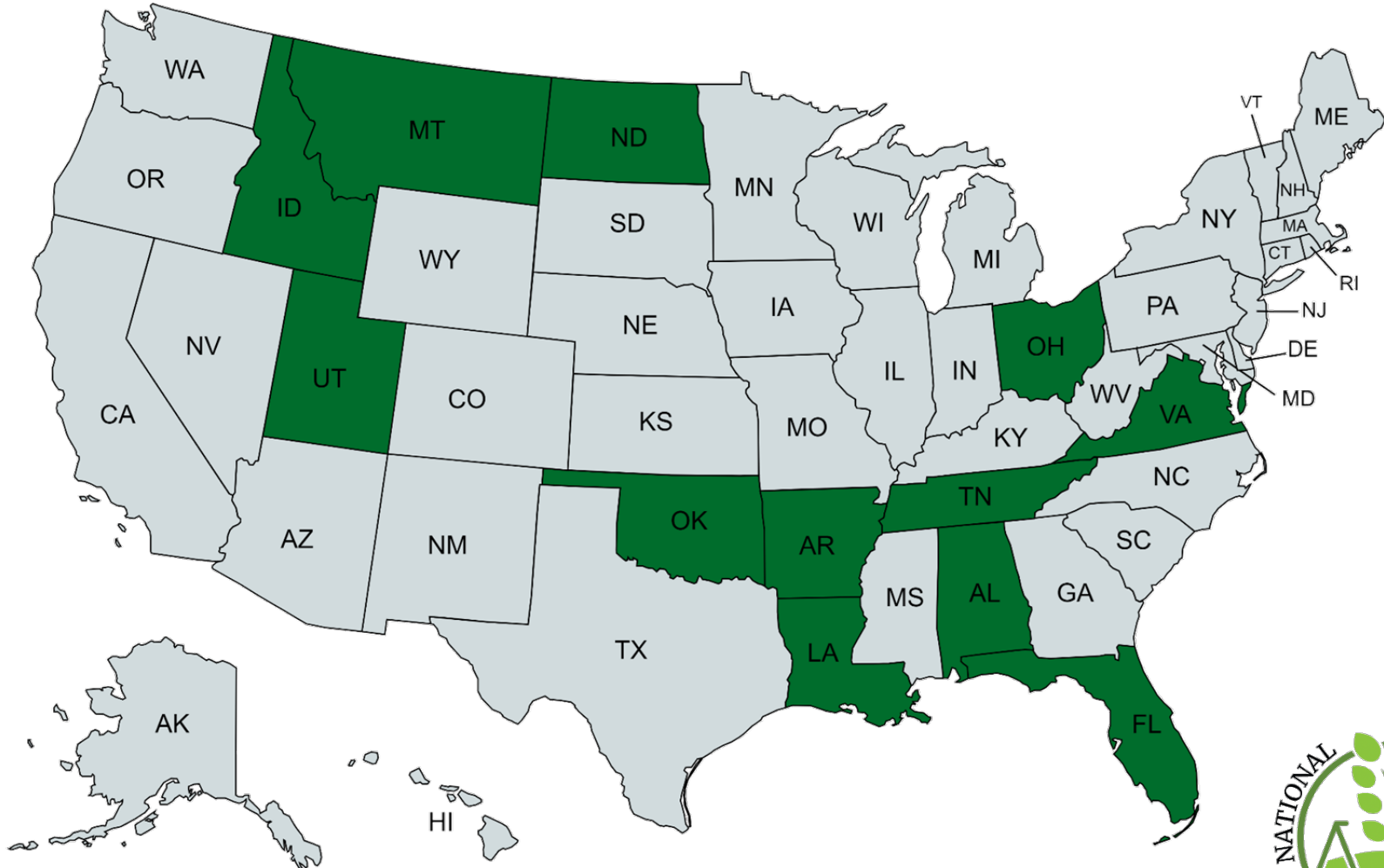
2021-2022



2023

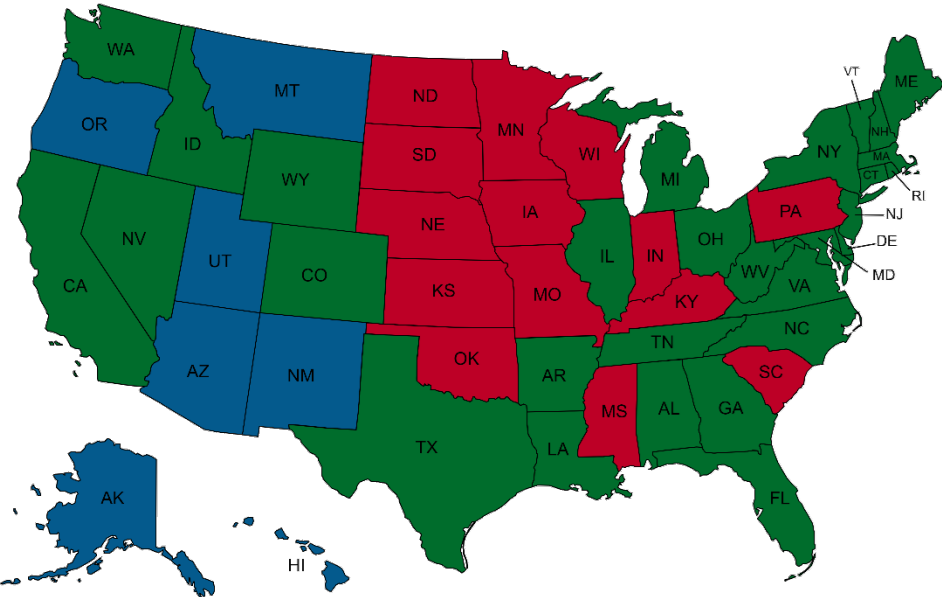


2023 Foreign Ownership Laws: Enacted

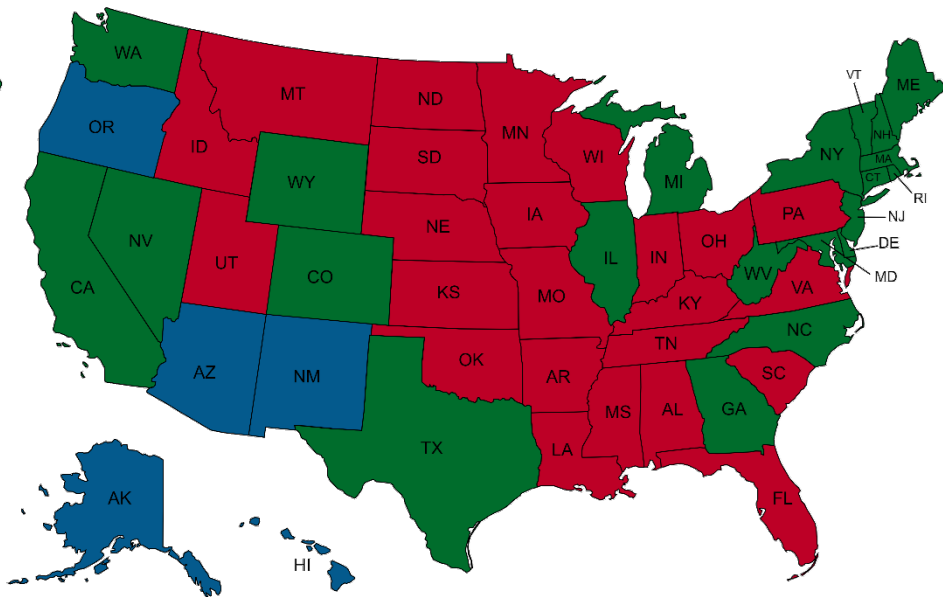


2022 vs. 2023 Foreign Ownership Laws

2022



2023



Alabama: HB 379 (*Enacted*)

- Restricts “**foreign principals**” of “foreign country of concern” from acquiring **agricultural land** (includes forest property)
 - **Gov’t** and **political party** of China, Iran, North Korea, or Russia (the “Big 4”)
- “Purchase or other acquisition of title....”
 - Leases?
- “No title insurer, title agent, real estate licensee, or other settlement provider...shall be liable for any violations....”
- Enforcement/penalty provisions?



Arkansas: SB 383 (*Enacted*)

- Restricts “**prohibited foreign party**” (“PFP”) from acquiring “any interest” in **ag land and forestland** (excludes minerals)
 - **Individual, entity, and gov’t** subject to International Traffic in Arms Regulations (“ITAR”)
 - “Entities of particular concern” (as designated by U.S. SOS)
 - Domestic/non-ITAR foreign entities if PFP has “significant interest or substantial control”
 - Exempts “resident alien” (PFP that resides in AR)
 - No express “grandfather clause”
 - No research/experimentation exception
 - Enforced by AG and “Office of Agricultural Intelligence”
 - Judicial foreclosure
 - **Felony** punishable by up to 2 years imprisonment and/or \$15K fine
- Restricts “**PFP-controlled business**” from acquiring public/private **real estate**
 - PFPCB is PFP with a “controlling interest” (50% or more) in entity



Florida: SB 264 (*Enacted*)

- Restricts “**foreign principal**” from “directly or indirectly owning, holding, or acquiring...any interest” in **ag land** and **forestland**
- **Individual, entity, and gov’t** of “foreign country of concern” (*i.e.*, Big 4)
- Ag land violation enforced by FL Dep’t of Agriculture and Consumer Services
 - Forfeiture
 - **Second-degree misdemeanor** (up to 60 days in prison and/or \$500 fine)
- Restricts Chinese gov’t, Chinese entities, and individuals “domiciled in China” (not a citizen or lawful permanent resident of the U.S.) from acquiring **real property**
 - Forfeiture
 - **Third-degree felony** (up to 5 years in prison and/or \$5K fine)
- Criminal penalties for **knowingly selling** land to prohibited purchaser
- *Shen v. Simpson*, No. 4:23-cv-208 (N.D. Fla. 2023)



Idaho: HB 173 (*Enacted*)

- Restricts a **foreign gov't** and **state-controlled enterprise** from acquiring/holding a “controlling interest” in **ag land**, water rights, mining claims, or mineral rights
 - “Controlling interest” means: (1) > 50% ownership interest; or (2) < 50% but the gov't directs the business affairs
 - Express grandfather clause
 - Exempts foreign pension funds
- “Foreign government” is any gov't that is not the U.S. federal gov't or state gov't
 - Federally recognized Indian tribes?



Louisiana: HB 537 (*Enacted*)

- Restricts “**foreign adversary**” from purchasing/leasing acquiring **real property**
- Sellers can **rescind a contract** prior to the transfer of the property
- Sellers/lessors are liable if **aiding** foreign adversary to acquire land
- “No attorney, title insurer, title insurance producer, title insurance agency producer, lender, mortgage loan servicer, notary public, real estate agent, real estate broker, seller, or lessor shall have a duty to **make any investigation...**nor shall any person be **liable for failing to identify**” a foreign adversary
- State AG authorized to enforce → court must order property be sold if violation
- Rights in property are not void or voidable because property was held in violation
 - Including mortgage, liens, security interests on the property



Montana: SB 203 (*Enacted*)

- Restricts “**foreign adversary**” from buying/leasing **ag land** or entering into a contract which gives them control of **ag land**
 - Must divest w/in 1 year
 - If no divestment, state AG or county enforces → land sold at public auction



North Dakota: HB 1135; SB 2371 (*Enacted*)

- **HB 1135**: Restrict **foreign gov't** and **gov't-owned entities** from holding any interest in **ag land**
 - Exempts ag land used for research, development, and experimentation of ag inputs
 - Up to 160 acres
- **SB 2371**: Restricts gov't and entities of a “**foreign adversary**” from acquiring **real property**
 - Must divest w/in 3 years
 - If they fail to divest, state's attorney in the county where the property is located is authorized to bring a lawsuit for divestment
 - If violation, the court must order divestment → must fully divest w/in 6 months
 - If foreign owner fails to divest, the property is sold at a **public sale** and the foreign owner is subject to a civil penalty up to \$25K



Ohio: HB 33 (*Enacted*)

- Restricts certain foreign investors from acquiring **ag land**
 - **Ohio SOS compiles registry** of prohibited purchasers based on different federal lists (“foreign adversary” list; terrorist exclusion list; international terrorism list)
- Grandfather clause (cannot acquire additional land)
- Exempts inheritance/security interest (must divest w/in 2 years)
- May acquire up to 150 acres for **non-ag purpose**
- SOS reports violations to state AG, who brings escheat action



Oklahoma: SB 212 (*Enacted*)

- Amends FOL to restrict “alien or any person who is not a citizen” from acquiring title to **land** “either directly or indirectly **through a business entity or trust....**”
- Restriction does not apply to entities “engaged in **regulated interstate commerce** in accordance with federal law”
 - *I.e.*, only restricts federal illegal activities, such as the production of marijuana
- Deeds recorded must include affidavit that attests buyer is in compliance with the law



Tennessee: HB 40 (*Enacted*)

- Restricts **nonresident individuals, foreign business, or foreign gov't** of “sanctioned” countries from acquiring **real property**
 - Sanctions program list (U.S. Treasury Dept.)
- Exempts inheritance/security interest (must divest w/in 2 years)
- All sanctioned investors must **register** landholdings with SOS
 - Including landholdings before July 1, 2023
 - \$2K penalty
- SOS reports potential violations to state AG → AG required to initiate an action
- If violation, land escheats → public sale
- No liability on real estate broker, attorney, title insurance company/agent
 - **BUT only those licensed in Tennessee!**



Utah: HB 186 (*Enacted*)

- Prohibits “restricted foreign entity” from acquiring **real property**
 - Includes “agricultural land”; “waters of the state”
- “Restricted foreign entity” includes an **entity** (and the **gov’t** of the country where the entity is organized/has PPOB) classified as a “**military company**” by the U.S. Dept. of Defense
- Exempts land acquired before May 3, 2023
- Exempts land acquired by inheritance, gift, donation, or grant after May 3, 2023 (must divest w/in 5 years)
 - If failure to divest, the land escheats to the state
- “A deed or other written instrument...purporting to convey an interest in land to a restricted foreign entity in violation” of the restriction is **invalid**



Virginia: SB 1438/HB 2325 (*Enacted*)

- Restricts “**foreign adversary**” from obtaining **ag land**
- Any acquisition in violation is void
 - Title vests in state on date of FA acquisition (w/o payment)
 - If transferred to non-FA, title vests in non-FA owner on date of FA acquisition
- FA is barred from making **claim for restitution** of purchase price or any loss
- City, county, town attorney, AG, or any non-FA person that was a party to a void transaction or subsequent holder of ag land by file an action:
 - i. Eject FA from possession
 - ii. Quiet title
 - iii. Any other appropriate action to ratify the nullification of the transaction
- Requires VA Dep’t of Agriculture and Consumer Services to publish annual report concerning foreign ownership of agricultural land and energy production



NALC Foreign Ownership Resources

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