

# The National Agricultural Law Center

*We are the nation's leading source of agricultural and food law research and information*



## *Buying the Farm: Navigating Restrictions, Title, & Transparency Requirements of Foreign Investments in U.S. Land*

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**UofA**

**DIVISION OF AGRICULTURE**

**RESEARCH & EXTENSION**

*University of Arkansas System*

# Agricultural Foreign Investment Disclosure Act of 1978

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- Requires a “foreign person” to report ag landholdings (and leases 10+ years) to USDA
- AFIDA = Statute + Regulations + FSA Handbook + FSA-153 Form
- “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).
- “Agricultural Land” is Land currently used for, or, if currently idle, *land last used within the past five years*, for farming, ranching, or timber production.



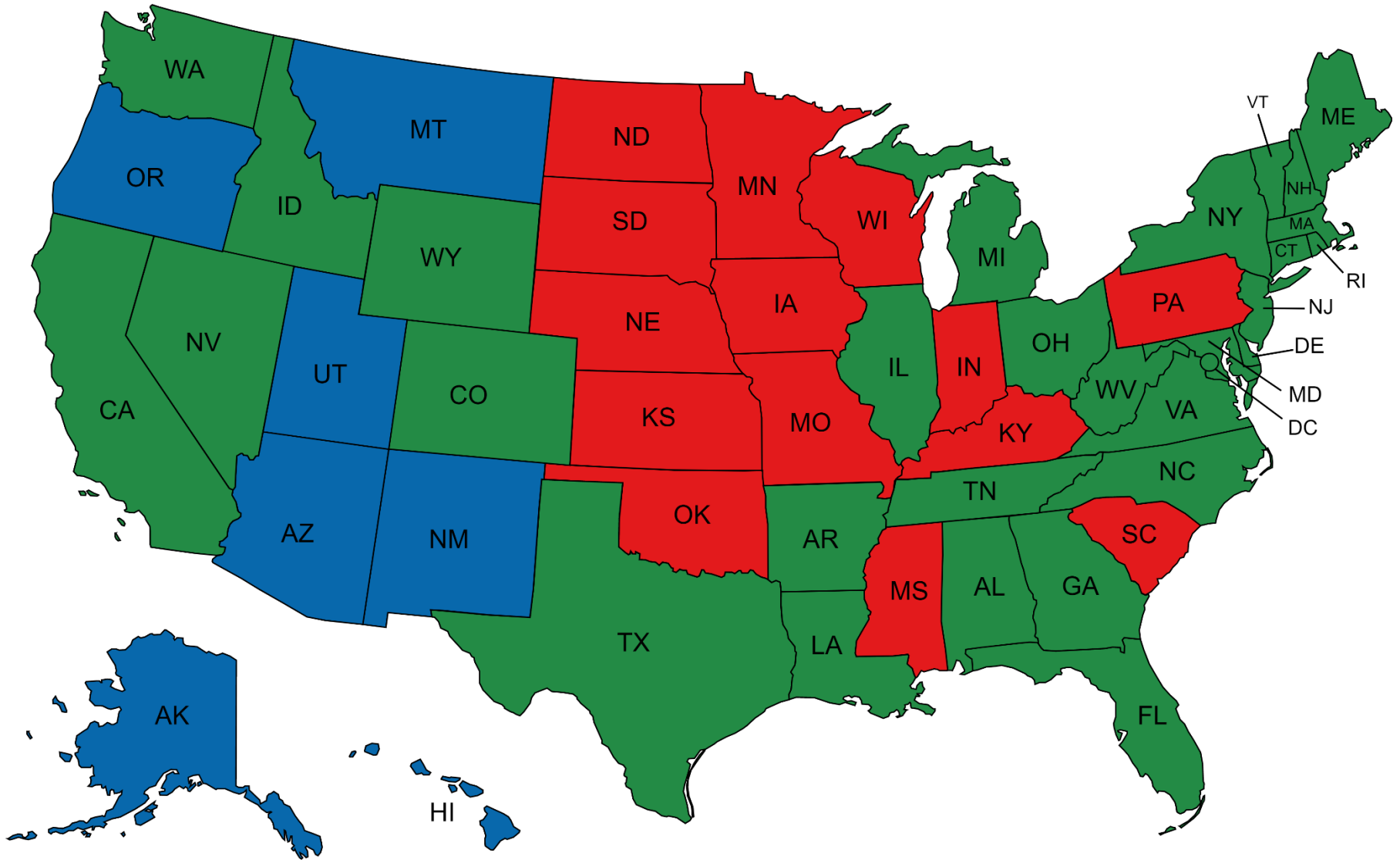
# Agricultural Foreign Investment Disclosure Act of 1978

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- “Significant interest or substantial control”
- Foreign person includes domestic entity when a foreign person holds a “significant interest or substantial control” over that entity, which means (1) a single foreign person owns an interest of 10% or more, (2) multiple foreign persons acting in concert own an interest of 10% or more in the aggregate, or (3) multiple foreign persons own an interest of 50% or more in the aggregate, whether or not acting in concert.



# Foreign Ownership Laws: December 31, 2022



# “Traditional” Foreign Ownership Laws (Pre-2023)

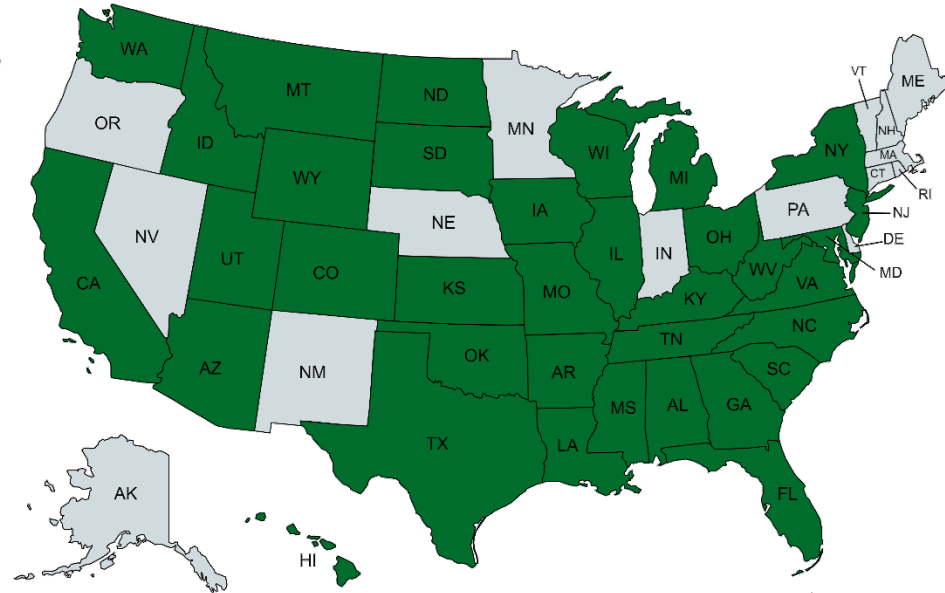
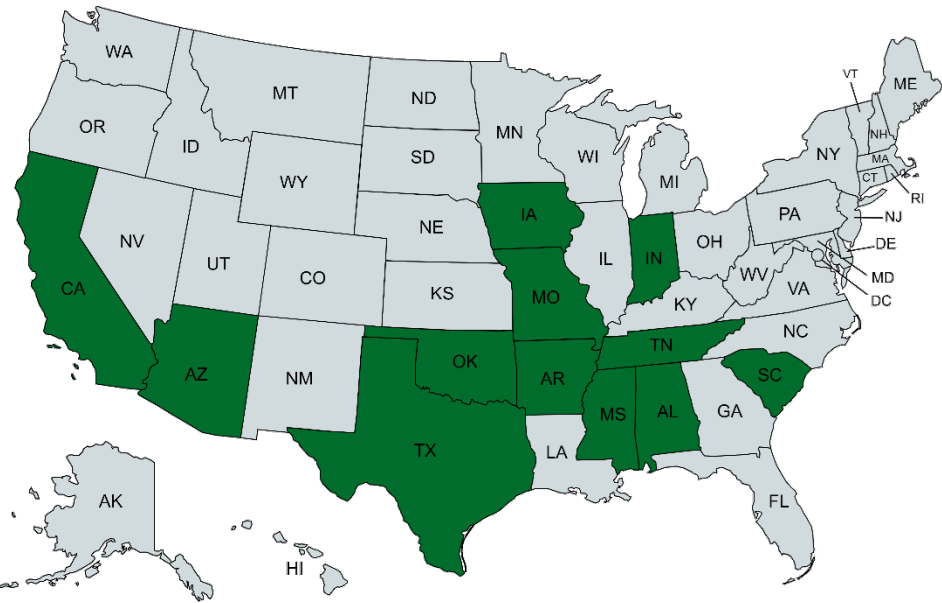
- “[A] **foreign business entity** may not acquire by grant, purchase, devise, descent, or otherwise any **agricultural land** located within Indiana for the purpose of crop farming or timber production.” (Ind. Code Ann. § 32-22-3-4(a))
- “[N]onresident aliens shall not hereafter acquire or hold **land**....” (Miss. Code Ann. § 89-1-23)
- “No **alien**, who is not a resident of this state, ...and no **foreign government** shall hereafter acquire **agricultural lands**, or any interest therein, exceeding one hundred sixty acres....” (S.D. Codified Laws § 43-2A-2)
- “[N]o **foreign [entity]** may...own, acquire, or otherwise obtain an interest...to **real estate used for farming** or capable of being used for farming in this state.” (S.D. Codified Laws § 47-9A-3)
- “An **alien**, who is not a resident of a state or territory of the United States..., and a **foreign government** shall not acquire an interest in **agricultural land**, exceeding 100 acres....” (68 Pa. Stat. Ann. § 41)



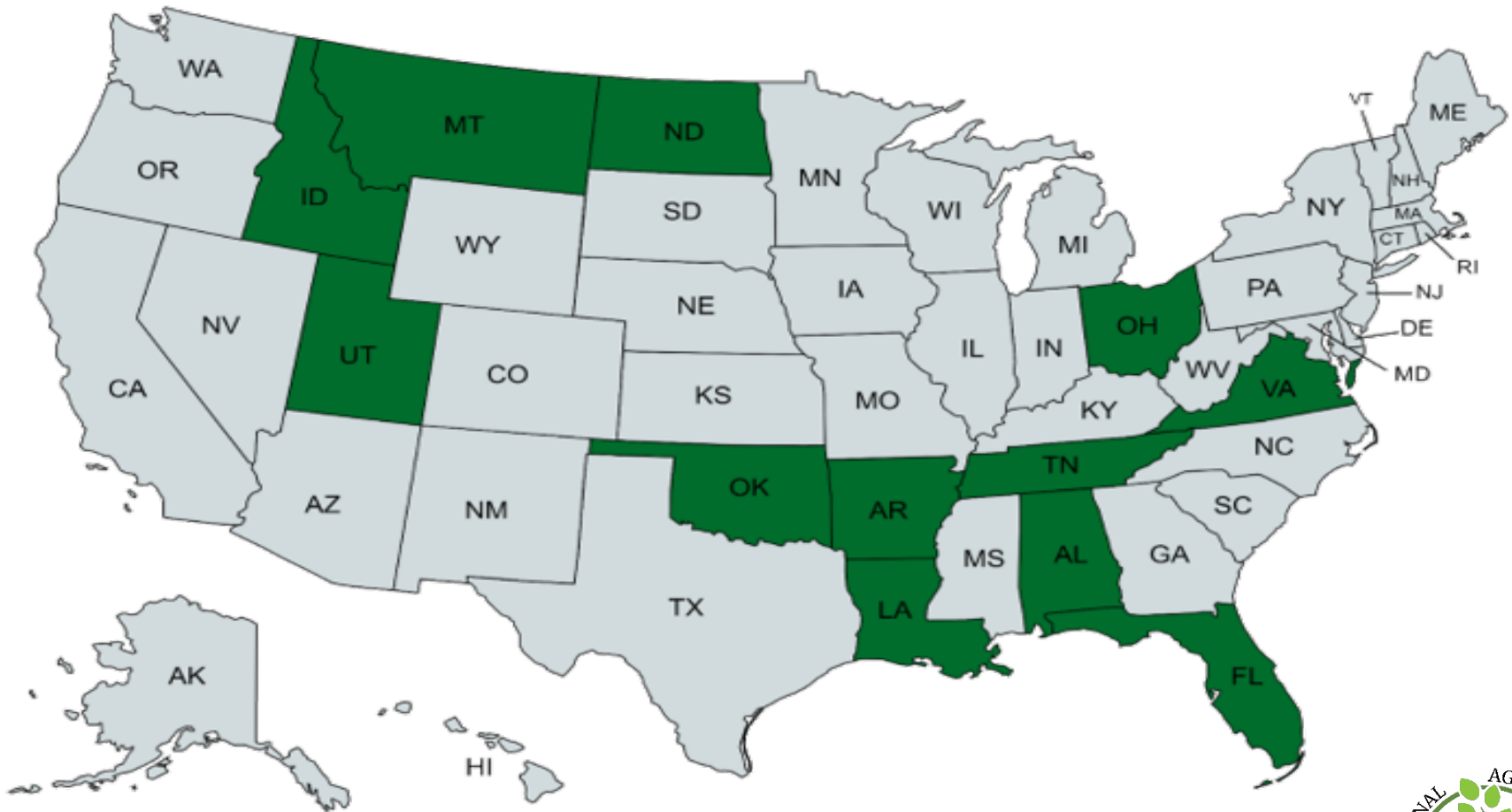
# Foreign Ownership: Proposed Legislation

**2021–2022**

**2023**



# Foreign Ownership Laws: Enacted in 2023



# State Reporting & Anti-Corporate Farming Laws

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- Several states have state foreign ownership reporting requirements:

Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin

- Anti-corporate farming laws





# “New” Foreign Ownership Laws

- *Alabama – HB 379*
  - Restricts **governments** and **political parties** of China, Iran, North Korea, and Russia (“Big 4”) from acquiring **agricultural land**
- *Arkansas – SB 383*
  - Restricts a “prohibited foreign party” (**individual, entity, and gov’t** of countries subject to **International Traffic in Arms Regulations**) from acquiring ag land
  - Restricts “prohibited foreign-party-controlled business” from acquiring **real property**
  - Criminal liability for violations
  - Office of Agricultural Intelligence
  - Enforcement action against Syngenta
- *Florida – SB 264*
  - Restricts **individual, entity, and gov’t** of Big 4 from acquiring **ag land**
  - Restricts Chinese gov’t, entities, and individuals from acquiring **real property**
  - Criminal liability for violations
  - *Shen v. Simpson*, No. 4:23-cv-208 (N.D. Fla. 2023)



# 2023 Enacted Foreign Ownership Laws

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- *Idaho – HB 173*
  - Restricts **foreign gov’t** and **gov’t-controlled entities** from acquiring ag land, water rights, mining claims, or mineral rights (resembles “traditional” FOL)
- *Louisiana – HB 537*
  - Restricts “**foreign adversary**” from acquiring **real property**
  - “Foreign adversary” determined by U.S. Secretary of Commerce under [15 C.F.R. § 7.4\(a\)](#)
- *Montana – SB 203*
  - Restricts “foreign adversary” from acquiring any interest in **ag land**, critical infrastructure, or real property directly in sight of a military installation
- *Ohio – HB 33*
  - Restricts **ag land** investments by “persons” listed on Ohio’s SOS registry
  - Ohio SOS compiles registry of prohibited persons based on various federal lists (*i.e.*, “foreign adversary” list; “terrorist exclusion” list; “sanctions program” list)



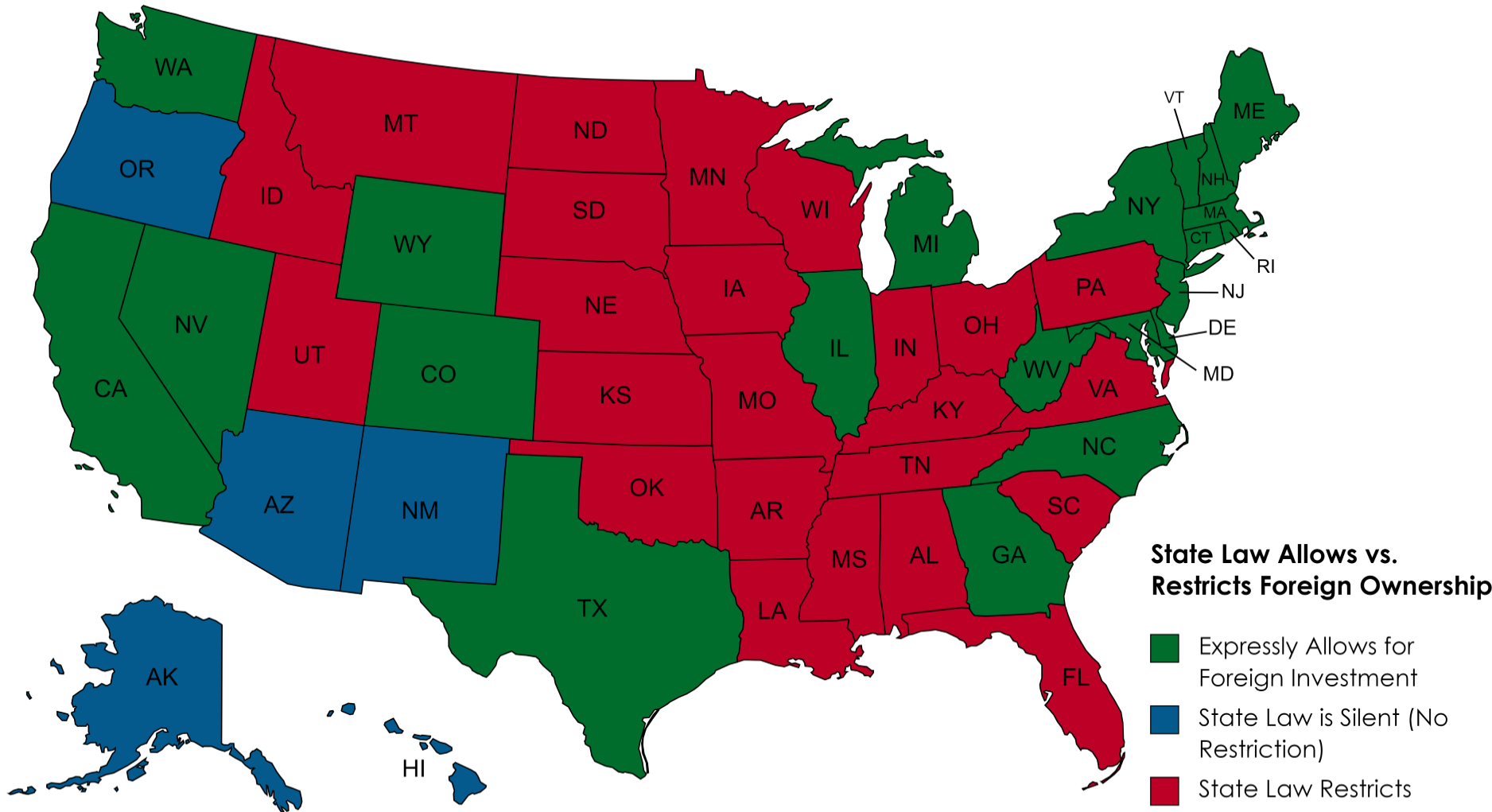
# 2023 Enacted Foreign Ownership Laws

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- *Tennessee – HB 40/SB 122*
  - Restricts individual, entity, and gov't of country on U.S. Treasury Department's **sanctions program list** from acquiring **real property**
- *Utah – HB 186*
  - “Restricted foreign entity” may not acquire **real property**
  - “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. Dep't of Defense
- *Virginia – SB 1438/HB 2325*
  - Restricts “foreign adversary” from acquiring any interest in **ag land**



# Foreign Ownership Laws: Today (Except Georgia)



# Corporate Transparency Act of 2021:



More info from  
NALC partner:

IOWA STATE  
UNIVERSITY  
Center for  
Agricultural Law  
& Taxation



The National  
Agricultural Law  
Center

- **Why:**

- Regulations implementing the Corporate Transparency Act of 2021; goal: prevent money laundering/tax evasion
- Written/implemented by United States Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN")

- **What:**

- Corps/LLCs/LLP/LP/other businesses formed with the Sec of State must file a timely/accurate report with FinCEN\*
  - \*Unless excluded. No exclusion for ag/small businesses
- Report will include:
  - Company identifying details
  - Personal identifying details of all "beneficial owners"
- Beneficial owners include:
  - Indiv who own/control at least 25% of reporting company OR
  - Indiv who directly/indirectly exercises substantial control over a reporting company
    - President/CEO/CFO/manager/general counsel etc

- **When:**

- *Companies created before 1/1/24:* Before 1/1/25
- *Companies created during 2024:* 90 days after formation
  - Also must report "company applicants"
- *Companies created after 1/1/25:* 30 days after formation
- *Update subsequent changes:* 30 days after change

- **Potential consequences for non-compliance (false info or failure to report):**

- < \$500 for each day in violation, max \$10k
- < 2 years imprisonment

# Baseline Hypothetical

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- Land currently used for agricultural purposes
- Located in Devinsville, AnyState.
- All cash purchase by Parrison Hittman, a U.S. citizen.



# Nuance #1 – USA! USA!

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- Land currently used for agricultural purposes located in Devinsville, AnyState

BUT

Purchaser is Parrison Hittman, Inc., a U.S. corporation that is 100% U.S.-owned (direct and indirect ownership)

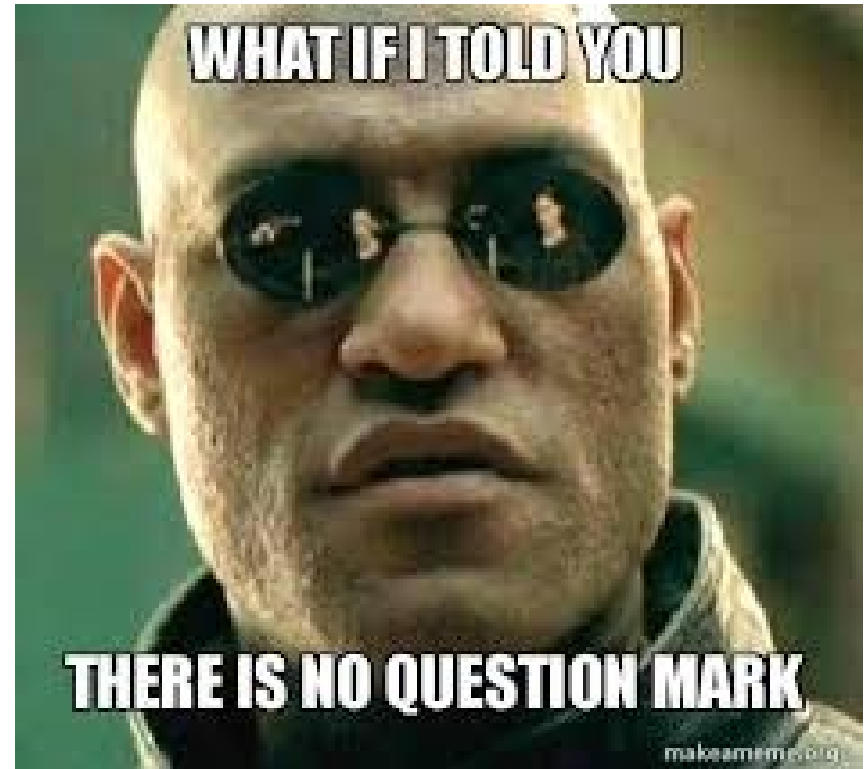


# Nuance #2 – USA? USA?

- Land currently used for agricultural purposes located in Devinsville, AnyState

BUT

Purchaser is Parrison Hittman, LLC., a U.S. corporation that has some level of foreign ownership





# Nuance #3 – Oh, Canada! Eh?

- Land currently used for agricultural purposes located in Devinsville, AnyState
- All cash purchase by JustinTrudeau Incorporated, a corporation owned in part (directly or indirectly) by the Canadian government.



# Nuance #4 – Are they for us, or agin’ us?

- Land currently used for agricultural purposes located in Devinsville, AnyState

BUT

All cash purchaser is citizen of country that has been listed as a “foreign adversary” by U.S. Department of Commerce

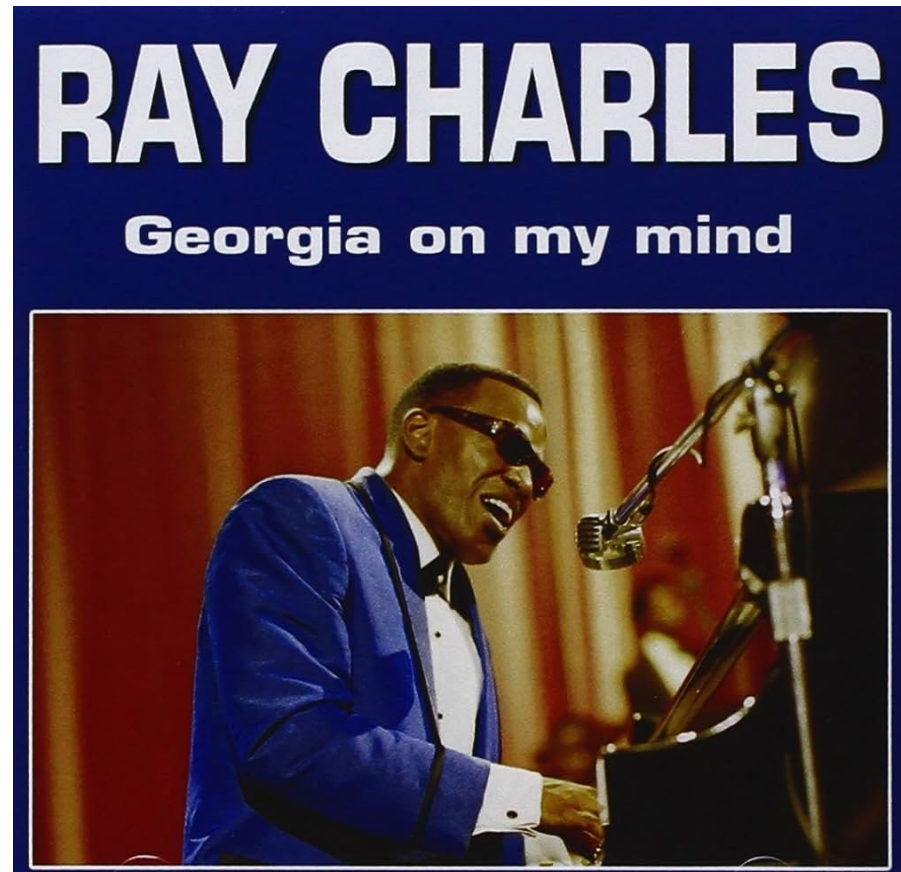


# Nuance #5 – Georgia (and the 11<sup>th</sup> Circuit) on My Mind

- Land currently used for agricultural purposes
- Purchaser is Corporation owned in part (directly or indirectly) by a Chinese citizen and/or Chinese-based corporation

BUT

Will be converted to non-ag (e.g., industrial) use



# Nuance #6 – Annie Get Your . . . Non-Ag Land

- All cash purchase of non-agricultural property in Oklahoma
- Buyer is a corporation owned in part (directly or indirectly) by a citizen or government of one of the “Big Four”



# Nuance #7 – Forgive Us Of Our Debts

- Purchase of agricultural property in Arkansas with purchase money mortgage by a foreign lender



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- Comments/Questions

