



Foreign Ownership of Ag Land: Federal & State Legislative Update

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- The National Agricultural Law Center is the nation's leading source for agricultural and food law research and information.
 - Created in 1987, the NALC is a unit of the University of Arkansas System Division of Agriculture
 - The Center also works in close partnership with the USDA Agricultural Research Service, National Agricultural Library
- We provide objective, non-partisan research and information regarding laws and regulations affecting agriculture



NALC Resources & Conferences

- *The Feed*
 - Provides recent developments in ag law and policy
- Western Agricultural and Environmental Law Conference
 - May 4–5, 2023 at the Peppermill Reno Resort
 - *Navigating Foreign Ownership Laws in the Wild, Wild West: Latest Trends and Developments* (Marisa N. Bocci, Partner, K&L Gates)





Background

- No federal foreign ownership law (law prohibiting ownership)
 - Federal gov't only monitors foreign ownership in ag land under the Agricultural Foreign Investment Disclosure Act (“AFIDA”) of 1978
- Approximately 14 states have laws
 - Lack uniformity
- Increasing concern among federal and state lawmakers
 - 35.7% increase (14.3+ million acres) in foreign agricultural land ownership (2011–2021)
 - Chinese-owned company purchasing 130,000+ acres in Texas near U.S. Air Force base
 - Another Chinese-owned company purchased 300 acres in North Dakota near Air Force base
- Past two years, several proposals at state and federal levels
 - 2021-2022: Alabama, Arkansas, California, Indiana, Missouri, Oklahoma, Tennessee, and Texas
 - Indiana only state to enact
 - Arkansas enacted reporting requirement
 - 2023 (so far): Florida, Mississippi, Missouri, Montana, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming



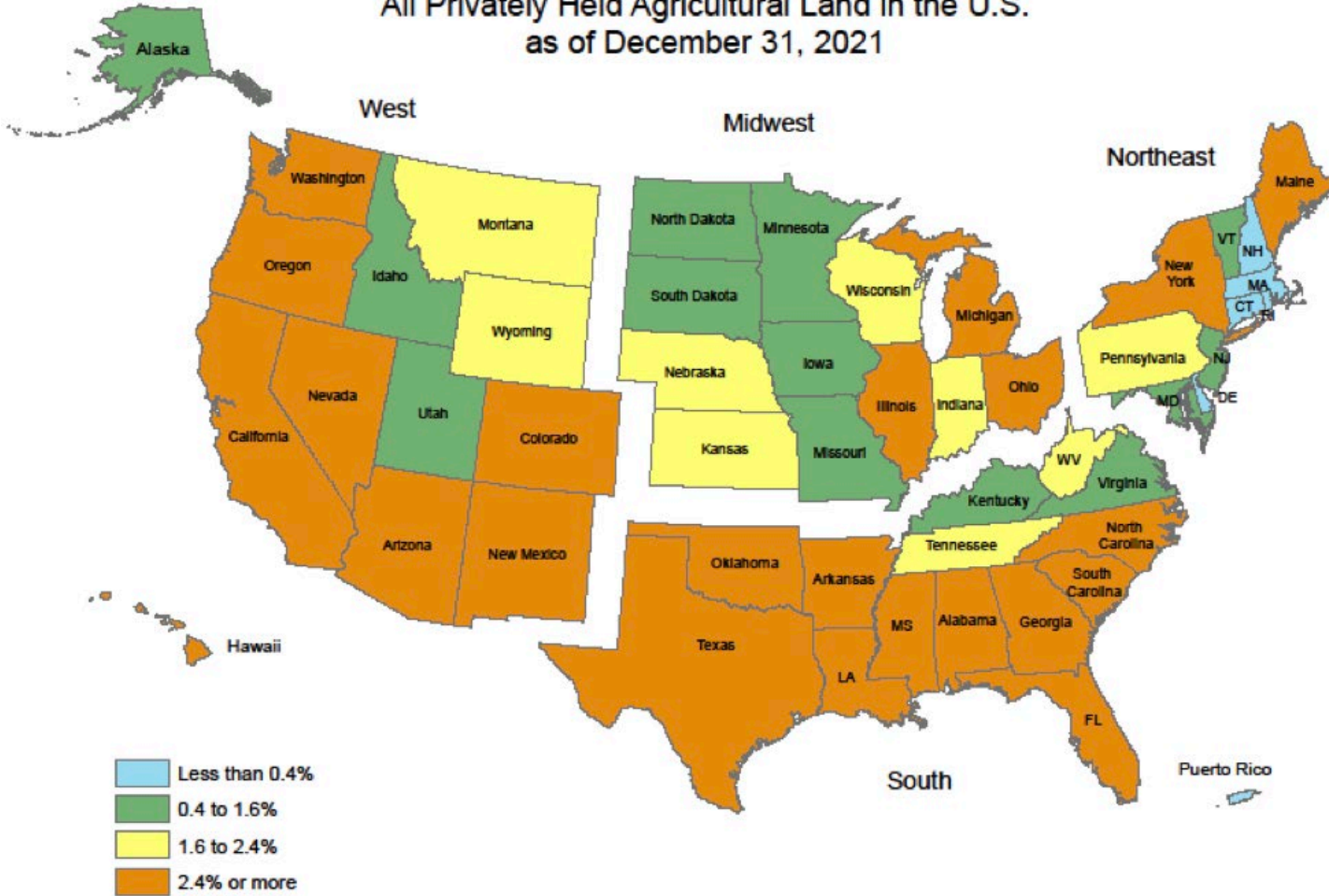
Foreign Ownership in U.S. Farmland

- Agricultural Foreign Investment Disclosure Act (“AFIDA”) of 1978
- Latest official data is through December 31, 2021
 - December 31, 2021, foreign ownership in private agricultural land: 40,031,308 acres
 - 2.4 million acre increase from Dec. 31, 2020
 - 3.1% of all privately held U.S. farmland
 - 47% forest land, 29% crop land, 22% pasture/other ag purposes
 - Canadian investors own 31% of reported foreign-held ag and non-ag land
 - Followed by Netherlands (12%), Italy (7%), United Kingdom and Germany (6%)
 - China reports 0.9% ownership interest in ag and non-ag land
- All 50 states and Puerto Rico report having some level foreign ownership/investment
 - Concentrated in the Southern and Western United States
 - Texas has largest amount of acreage (5.2 million), followed by Maine (3.6 million), Colorado (1.9 million), and Alabama (1.8 million) (Dec. 31, 2021)



Figure 1

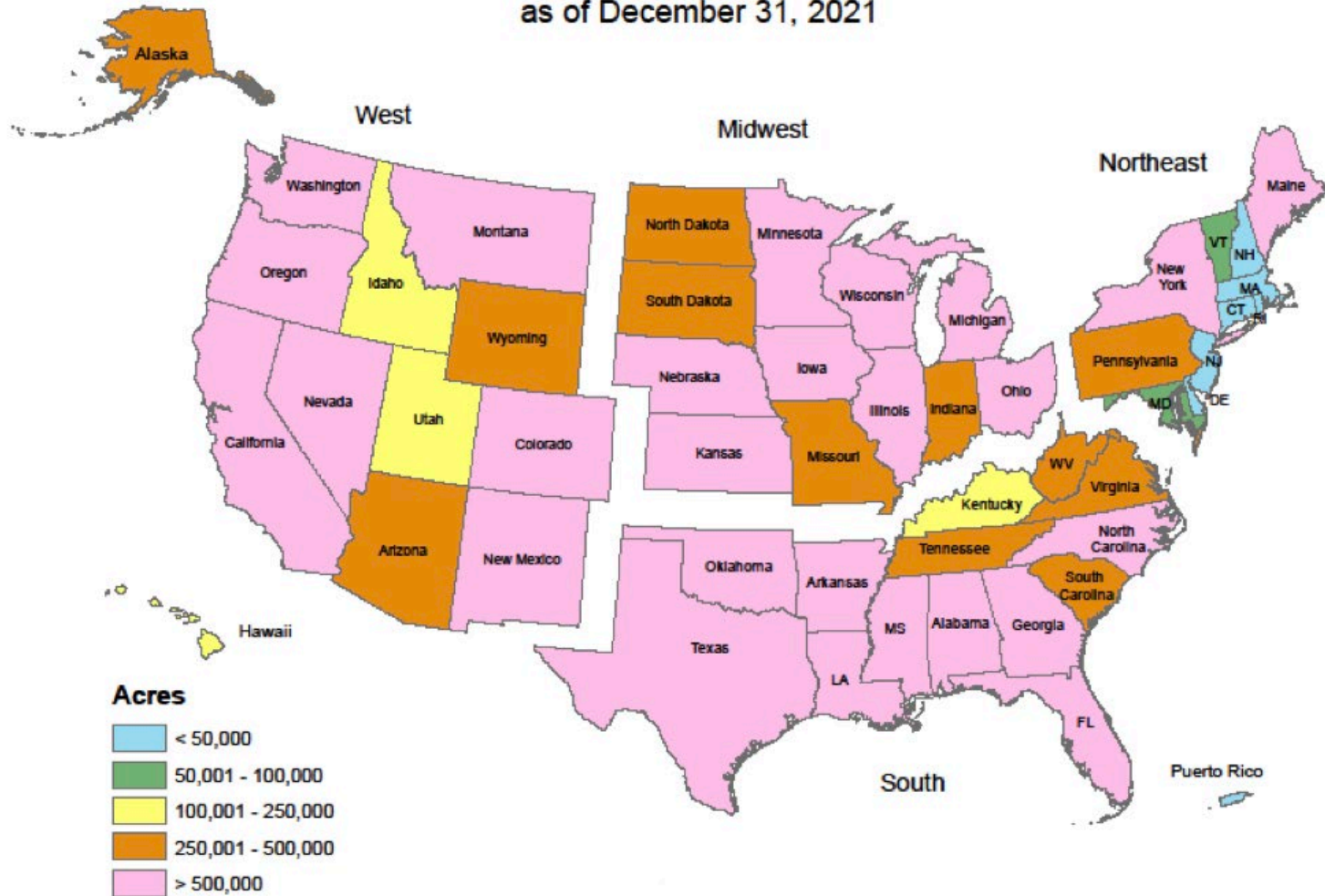
Proportion of Foreign Held Agricultural Land to All Privately Held Agricultural Land in the U.S. as of December 31, 2021



Source: USDA FSA, Foreign Holdings of U.S. Agricultural Land (2021)

Figure 2

**State Concentration of Foreign Holdings of Agricultural Land
as of December 31, 2021**



Source: USDA FSA, Foreign Holdings of U.S. Agricultural Land (2021)

Federal Proposals – Introduction

- During the 117th Congress, several measures introduced seeking to control, prohibit, restrict, or increase oversight on foreign investments in the U.S. ag sector
- Proposal categories:
 1. Restrict/prohibit foreign ownership/investment in U.S. real estate
 - i. Ag Land, China Only
 - ii. Ag Land, Multiple Countries
 - iii. All Land
 2. Amending AFIDA
 3. Prevent foreign participation in farm programs
 4. Adding USDA as a member of the Committee on Foreign Investments in the United States (“CFIUS”)
- Some bills fall within multiple categories



Restricting Ownership/Investments: *Ag Land, China Only*

- Countering Communist China Act ([H.R. 4792](#))
 - *“The Secretary of Agriculture shall take such actions as may be necessary to prohibit the purchase of agricultural land located in the United States by companies owned, in full or in part, by the People’s Republic of China.”* (Sec. 117)
 - Public/private ag land?
 - Excludes individuals/nonresident aliens
- Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2022 ([H.R. 4356](#))
- Prohibition of Agricultural Land for the People’s Republic of China ([H.R. 7892](#))
 - *“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.”* (Sec. 2(a))
 - “Public” include state lands?
 - “Associated with”?



Restricting Land Investments: *Ag Land, Multiple Countries*

- FY2022 Agriculture appropriations ([H.R. 4502](#))
- Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2023 ([H.R. 8239](#))
- Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2023 ([H.R. 8294](#))
 - Would require USDA to take actions to prohibit purchase of farmland by companies owned by China, Russia, North Korea, or Iran
 - Public/private?



Restricting Land Investments: *All Land*

- Securing America’s Land from Foreign Interference Act ([S. 4703/H.R. 3847](#))
 - *“President shall take actions...to prohibit the purchase of public or private real estate...by any member of the Chinese Communist Party or any foreign person acting for or on behalf of the Chinese Communist Party.”*
 - Bill introduced in the 118th Congress (bill [here](#))
- Protecting our Land Act ([H.R. 8652](#))
 - *“President shall direct the heads of the 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” means foreign gov’t/person engaged in conduct adverse to U.S. national security
 - Currently: China, Russia, Iran, North Korea, Cuba, and Maduro regime (Venezuela)
 - “State sponsor of terrorism” means a gov’t provided support for international terrorism
 - Currently: Cuba, Iran, North Korea, and Syria



Restricting Land Investments: *All Land*

- National Security Moratorium on Foreign Purchases of U.S. Land ([H.R. 6383](#))
 - For a 5-year period, the President would be required to take actions to prohibit “any foreign person” from purchasing public or private real estate
 - “Foreign person” includes foreign individuals, foreign governments, foreign entities, and “any entity over which **control is exercised or exercisable**” by these types of parties
- [H.R. 8603](#)
 - *“President shall take such actions as may be necessary to prohibit the purchase of public or private real estate...by a foreign government, including a foreign government using a shell corporation that is owned or controlled by such government.”*
 - “Foreign government”?
 - What business structures are included? LLCs? Joint ventures?
 - How much ownership/control?



Amending AFIDA

- Securing America’s Land from Foreign Interference Act ([S. 4703](#))
 - Amend penalty provision—fines no less than 10% of FMV of land interest
- Security and Oversight for International Landholdings Act (“SOIL Act”) of 2022 ([S. 4821](#))
 - Reduces leasehold interests in “agricultural land” to 5 years
 - USDA annually report on foreign holdings
- Agricultural Foreign Investment Transparency Act (“AFIT Act”) ([H.R. 9483](#))
 - *“Secretary shall **make publicly available** on the website of the Department each report submitted to the Secretary...not later than 30 days after...received by the Secretary.”*
 - *“Not later than one year...each report submitted...on or after January 1, 2000.”*
 - “Agricultural land” would include land used in preceding 10-year period
 - “Interest in agricultural land” would include security interests and all leases
 - “Publicly available” mean complete FSA-153?



Amending AFIDA

- Farmland Security Act of 2022 ([S. 4667/H.R. 9395](#))
 - Online interactive database that contains data from FSA-153 disclosure
 - Data entry starts from previous year
 - Require data update with each disclosure USDA receives (within 10 days of submission)
 - Data organized by two categories:
 - (1) Citizenship of foreign person (individuals)
 - (2) Nature of legal entity, country registered/organized, and PPOB (business entities)
 - Concerns/Questions:
 - USDA likely not to receive disclosure within 10 days
 - Not representative of all ownership interests
 - What information contained in database?
 - Data stay in database after sale/transfer?
 - Dual citizenship?
- Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2023 ([S. 4661](#))
 - Similar to Farmland Security Act
 - Update database every 90 days
 - United States Innovations and Competition Act of 2021 (H.R. 4521) contained similar provision



Amending AFIDA: *Consolidated Appropriations Act, 2023*

- FY23 spending package ([H.R. 2617](#)) **signed into law** on December 29, 2022
- Sec. 773 amends AFIDA
- Requires USDA to report to Congress on how foreign agricultural land ownership and investments impact family farms, rural communities, and the domestic food supply
 - Originally in AFIDA
- *“[W]ithin 3 years...the Secretary shall establish a streamlined process for electronic submission and retention of disclosures...including an internet database that contains disaggregated data from each disclosure submitted.”*
- All prior year disclosures to be published
- “Personally identifiable information” is protected
 - Including business name? Location of ag land?



Restricting Farm Program Participation

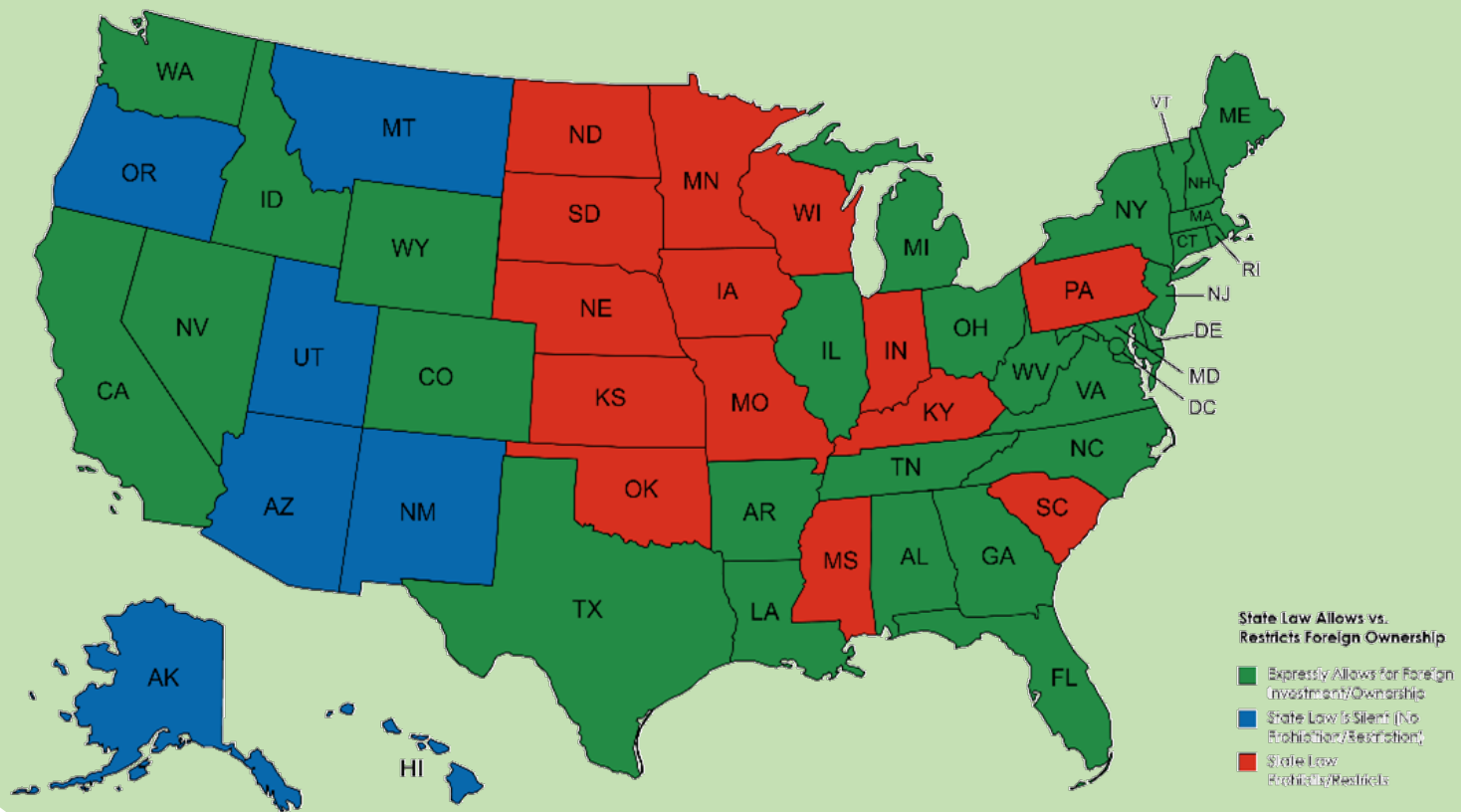
- Countering Communist China Act ([H.R. 4792](#))
 - Chinese gov't ag land ineligible for USDA program participation
 - No exception for food inspection/safety programs or regulatory requirements
 - Same provision contained in Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2022 ([H.R. 4356](#))
- FY2022 Agriculture appropriations ([H.R. 4502](#))
 - Restricts farm program participation for ag land owned by China, Russia, Iran, or North Korea
- Prohibition of Agricultural Land for the People's Republic of China ([H.R. 7892](#))
 - *“President shall take such actions...to prohibit participation in programs administered by [USDA] by nonresident aliens, foreign businesses, an agent, trustee, fiduciary **associated with**” the Chinese government.*
 - *“...with the exception for food inspection or other food and safety regulatory requirements.”*
- Farm Credit for Americans Act of 2022 ([S. 4954](#))
 - *“Effective beginning on January 1, 2024, ... a foreign person...shall be ineligible for any credit or financial services provided by a Farm Credit System institution.”*
 - “Foreign person” as defined under AFIDA (7 U.S.C. § 3508(3))



Adding Ag to CFIUS

- Foreign Adversary Risk Management (“FARM” Act) ([H.R. 5490](#))
 - Add USDA as a member of CFIUS
 - Designate ag supply chains as “critical infrastructure” and “critical technologies”
 - Review transactions resulting in foreign control in ag
- Agricultural Security Risk Act ([H.R. 3413/S.1755](#))
- Food Security Is National Security Act of 2021 ([S. 3089](#))
- Security and Oversight for International Landholdings Act (“SOIL Act”) of 2022 ([S. 4821](#))
- Promoting Agriculture Safeguards and Security Act of 2022 (“PASS Act”) ([H.R. 8274/S. 4786](#))
 - “...persons who are acting on behalf of or otherwise directed by the government of a prohibited country may not carry out any merger, acquisition, or takeover that could result in foreign control of a United States agricultural company.”
 - “Prohibited country” includes: China, Russian, Iran, and North Korea
- Protecting Military Installations and Ranges Act of 2021 ([S. 1278](#))/Protecting Military Installations from Foreign Espionage Act ([H.R. 2728](#))





State Proposals

Alabama (*Failed*)

- [SB 14](#) (2022)
- “...*a nonresident alien, foreign business, or foreign government, ...may not purchase or otherwise acquire agricultural land in this state.*”
- “Agricultural land” means “land suitable for use in farming”
 - Agricultural crops, eggs, milk, horticultural crops, including fruit, raising poultry, and grazing or producing livestock
 - Timber, forest products, nursery products, and sod
- Exceptions:
 - Inheritance
 - Security interest
 - Dispose within 2 years



Arizona (*Proposed*)

- [HB 2376](#) (2023)
 - Prohibit the sale of state agricultural land to foreign gov't entity
 - Prohibit leases/subleases of state agricultural land to foreign gov't entity
 - Not private farmland



Arkansas (*Enacted—reporting requirement only*)

- [SB 312](#) (original version) (2021)
- Original version included language contained in Missouri's law
- Underwent complete transformation
- Enacted a reporting requirement ([Ark. Code Ann. § 2-3-111](#))
 - Certain foreign persons required to report ag land holdings to Arkansas Department of Agriculture (i.e., copy of AFIDA disclosure)



California (*Failed*)

- Unanimously passed [SB 1084](#) (2022)
- Restrict **foreign governments** from purchasing, acquiring, or leasing agricultural land located within the state
- Restricted “state controlled-enterprises” from purchasing ag land
 - “State controlled-enterprise” is a business which a gov’t has a “controlling interest”
 - (1) 51%+ interest in entity
 - (2) 51% or less, but directs activities without outside influence
- Directed CA Dept. of Food and Ag to publish annual report on:
 - Changes/trends of **foreign-owned** ag land
 - **Foreign-owned** water rights
- Governor Newsom vetoed



Florida (*Proposed*)

- Agricultural Commissioner Wilton Simpson has laid out the “Florida’s Strategic Land Plan”
- Seeks to restrict the “purchase, acquisition, lease, or holding of controlling interest in agricultural land in the state of Florida by nonresident aliens, foreign businesses and corporations, or foreign governments.”



Indiana (*Enacted*)

- Enacted [SB 388 \(Ind. Code Ann. § 32-22-3-0.5 et seq.\)](#) (2022)
- Restricts **foreign business entities** from purchasing ag land for purposes of crop farming or timber production
 - “Crop farming” means “cultivation of land for the production of ag crops, consisting of plants or plant products that can be grown and harvested exclusively for profit.” (Ind. Code Ann. § 32-22-3-4(b))
- Exceptions:
 - Conversion
 - 320 acres cropland/10 acres timberland
 - Operate/construct confined feeding operation or egg/poultry production
- Require reporting to state’s SOS and AG



Mississippi (*Proposed*)

- [HB 280](#) (2023)
 - Restricts **foreign governments** from acquiring interest in farmland
 - Grandfather clause (July 1, 2023)
 - Doesn't apply to federally recognized Indian tribe or its government units/enterprises
 - Requires the Mississippi Dept. of Agriculture and Commerce to compile annual report containing data and analysis of:
 - Total amount of foreign owned ag land
 - Percentage change (past 10 years)
 - Current use of ag land
 - Changes/trends of use
 - Info regarding extent/changes in foreign ownership of water rights
 - Similar provision to California's SB 1084



Missouri (*Proposed*)

- [HB 1947/SB 791](#) (2021)
 - Seeking to repeal 2013 amendment and to restrict any “alien or foreign business” from acquiring an interest in agricultural land
 - Grandfather clause included
- 2023 legislative session: 10 proposals introduced (so far)
 - [SB 9](#), [SB 144](#), [SB 332](#), [HB 430](#), and [HB 707](#) contain similar language
 - Repeal “1% of the aggregate” exception
 - Beginning Aug. 28, 2023, an “alien and foreign business” from acquiring agricultural land “by grant, purchase, devise, descent, or otherwise” within the state
 - Prohibits foreign party to foreign party transactions/transfers of ag land after Aug. 28, 2023
 - [SB 76](#) seeks to remove “1% of the aggregate” exception from current law
 - [SB 334](#) seeks to restrict all foreign ownership/investments in all real estate
 - [SB 55/HB 465](#) seek to decrease aggregate acreage percentage to “one half of one percent of the total aggregate agricultural acreage”
 - Prohibit “any alien or foreign business” purchases/leases 30 miles of:
 - (1) Ag land
 - (2) Military installation
 - (3) Military contractor/manufacturer
 - [HB 499](#) would require foreign business to sell/dispose of ag land interest by Aug. 28, 2028
 - MDA form list of ag land owned/held by foreign businesses
 - Jan. 1, 2024, inform foreign businesses of requirement
 - Track divestments
 - Report violations (silent on receiving entity)



Montana (*Proposed*)

- Recently introduced [LC 614](#) (2023)
 - Restricts entity from selling, leasing, or renting “agricultural production land” or “critical infrastructure” to “foreign adversary”
 - Restricts entity from entering into contracts that provide “foreign adversary” control of ag production land/critical infrastructure
 - “Foreign adversary” means:
 - 1) Foreign gov’t
 - 2) Foreign nongovernment person that has engaged in long-term pattern or serious instances of conduct adverse to U.S. national security or U.S. residents
 - 3) Corporation formed in foreign country
- [LC 4049](#) in drafting process
 - Concerning foreign ownership of agricultural lands and assets



North Dakota (*Proposed*)

- Current law restricts nonresident aliens and foreign business entities
- Introduced [HB 1135](#) (2023 regular session)
 - Amend current law, adding foreign government
 - No acreage exception
 - Grandfather clause
- [HB 1356](#) (2023)
 - Establishes the “State Agricultural Foreign Investment Review Board”
 - Similar to CFIUS



Oklahoma (*Failed*)

- Currently prohibits “aliens” and foreign businesses
- [HB 1497](#) and [SB 1534](#) (2022)
- HB 1497 sought to permit “resident aliens” to acquire and hold land, but only if U.S. citizens have reciprocal permission in their country
- SB 1534 sought to require buyers of land to certify they are not violating state’s foreign ownership law
 - Establish “Citizen Land Ownership Unit”



South Carolina (*Proposed*)

- Current law prohibits any “alien or corporation controlled by aliens” from owning/controlling 500K+ acres of land
- Introduced [H 3566](#) (2023)
 - Company directly/indirectly owned by Chinese gov’t or company with PPOB located in China cannot own, lease, or possess 100+ acres
 - Not ag-specific



South Dakota (*Proposed*)

- Current law restricts nonresident aliens/foreign gov't from holding 160+ acres
- Corporate farming law restricts certain foreign business entities
- [HB 1069](#) (2023)
 - Restricts foreign governments from purchasing, leasing, or holding ag land
- Governor Noem announced plan to introduce legislation in 2023 to create the Committee on Foreign Investment in the United States – South Dakota (“CFIUS–SD”)
 - CFIUS–SB will investigate proposed purchases of agricultural land by foreign individuals and entities
 - Any transaction of any acreage
 - Any lease of 1+ years
 - Transactions considered by federal CFIUS
 - Recommend approval/denial



Tennessee (*Proposed*)

- Introduced [SB 1070](#) and [HB 1451](#) (2021)
 - Similar to Iowa's foreign ownership law
 - Restriction on nonresident aliens, foreign business entities, and foreign gov't
- Permits conversion of farmland by foreign investors
 - Convert within 5 years
- [HB 40](#) and [SB 122](#) (2023)
 - Prohibits nonresident alien, foreign business, and foreign gov't from acquiring real property, including easements, water rights, and agricultural land, if the country where the foreign party resides, is located, or represents prohibits U.S. citizens from purchasing land located in that country
 - Requires registration with SOS
 - Violations reported to AG who "*must initiate an action*"
 - If court finds violation, must declare property escheat and order sale



Texas (*Proposed*)

- Introduced [HB 58](#), [HB 69](#), [HB 305](#) (2021)
 - Restrict nonresident aliens, foreign business entities, and foreign governments from acquiring an interest in farmland
- [SB 147](#) and [HB 1075](#) (2023)
 - SB 147 seeks to restrict, individuals, foreign businesses, and foreign government entities from China, Iran, North Korea, or Russia from investing/acquiring **real property**
 - HB 1075 seeks to restrict foreign gov't and entities of foreign gov't from purchasing/acquiring/leasing **ag land**
 - Property interest terminates on/after Sept. 1, 2023 may not be renewed
 - “Foreign government” doesn’t include federally recognized Indian tribe



Utah (*Proposed*)

- [HB 186](#) (2023)
 - Prohibits “restricted foreign entity” from acquiring an interest in “land”
 - Requires “restricted foreign entity” to divest certain interests in “land”
 - “Restricted foreign entity” means a company that the U.S. DOD identifies and reports as a military company of the Chinese Military that’s operating directly/indirectly in the U.S.
 - “Land” includes “agricultural land” (private and public)



Virginia (*Proposed*)

- [SB 1438](#) and [HB 2325](#) (2023)
 - Restricts foreign governments from purchasing, acquiring, leasing, or holding farmland within the state
 - Exceptions:
 - Grandfather clause (January 1, 2023)
 - Federally recognized Indian tribe or its government units/enterprises
 - Treaties between U.S. and another country



Washington (*Proposed*)

- [HB 1412](#) (2023)
 - Restricts foreign governments, foreign state-controlled enterprises, foreign businesses, and foreign-controlled domestic businesses from purchasing, acquiring, or leasing farmland
 - Beginning January 1, 2024, all agricultural land sales must be reviewed by the Washington Department of Agriculture before closing of the transaction
 - No purchase/sale of ag land is valid unless reviewed and approved



Wyoming (*Proposed*)

- [HB 88](#) and [SF 124](#) (2023)
 - Restricts foreign government, foreign business or foreign person from acquiring ag land
 - If a foreign party owns ag land on or before July 1, 2023, they must register ownership with SOS
 - Report violations of law to AG



Comments/Questions

- May see more federal and state proposals seeking to restrict foreign ownership/investments in some degree
- *See* “Foreign Investments in Agricultural Land: FAQs & Resource Library” available on NALC’s website [here](#)
- *See* “Statutes Regulating Ownership of Agricultural Land” available on NALC’s website [here](#)





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