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Farm Ownership & Corporate Farming Laws: *South Dakota*



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Farm Ownership & Corporate Farming Laws: South Dakota

Fast Find:

- 1) Prohibition: S.D. Const. art. VI, § 14; S.D. Codified Laws §§ 43-2A-1 to 43-2A-8
- 2) Permission: None
- 3) Reporting: S.D. Codified Laws §§ 43-2A-7.1; 59-11-24 to 24.1
- 4) Corporate Farming: S.D. Codified Laws §§ 47-9A-1 to 47-9A-23

S.D. Const. art. VI, § 14
S.D. Codified Laws §§ 43-2A-1 to 43-2A-8
S.D. Codified Laws §§ 47-9A-1 to 47-9A-23
S.D. Codified Laws §§ 59-11-24 to 59-11-24.1

Current through 2024 Regular Session passed by the 99th South Dakota State Legislature.

Art. VI, § 14. Resident aliens' property rights

No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment or descent of property.

§ 43-2A-1. Definitions

Terms used in this chapter mean:

- (1) "Agricultural land," land capable of being used in the production of:
 - (a) Agricultural crops;
 - (b) Fruit and other horticultural products;
 - (c) Livestock or livestock products;
 - (d) Milk or dairy products;
 - (e) Poultry or poultry products; or
 - (f) Timber;
- (2) "Foreign entity," any organization that:



- (a) Is registered outside of the United States or its territories; or
- (b) Has more than ten percent ownership by a foreign government, foreign person, or any combination thereof. However, this permissive threshold does not apply to a prohibited entity;
- (3) “Foreign government,” a government or state-controlled enterprise of a government, other than the United States, its states, its territories, or its federally recognized Indian tribes;
- (4) “Foreign person,” a natural person who is not a United States citizen or a resident;
- (5) “Prohibited entity,” a foreign entity from, foreign government from, or foreign person from:
 - (a) The People’s Republic of China;
 - (b) The Republic of Cuba;
 - (c) The Islamic Republic of Iran;
 - (d) The Democratic People's Republic of Korea;
 - (e) The Russian Federation; or
 - (f) The Bolivarian Republic of Venezuela; and
- (6) “Resident”, any individual who is a legal resident of this state, of another state or territory of the United States, or of the District of Columbia, and makes no claim of residency in a foreign country.

§ 43-2A-2. Limitations on foreign ownership—exceptions

The following provisions apply to the ownership or leasing of agricultural land in this state:

- (1) A prohibited entity may not own agricultural land in this state;
- (2) A prohibited entity may not lease or hold an easement on agricultural land in this state, unless:
 - (a) The lease is exclusively for agricultural research purposes and encumbers no more than three hundred and twenty acres; or
 - (b) The lease is exclusively for contract feeding of livestock, at an animal feeding operation, by a family farm unit, a family farm corporation, or an authorized farm corporation;
- (3) Excluding a prohibited entity, a foreign entity, foreign government, or foreign person may not own more than one hundred and sixty acres of agricultural land in this state, provided this limitation does not include:
 - (a) Agricultural land acquired by devise or inheritance; or



(b) Agricultural land held as security for indebtedness; and

(4) Excluding a prohibited entity, there is no restriction on easements or the number of acres of agricultural land that a foreign entity, foreign government, or foreign person may lease.

This section does not apply to a foreign entity, foreign government, or foreign person whose right to hold land is secured by treaty.

§ 43-2A-3. Agricultural land acquired in violation—period to comply

Any foreign entity, foreign government, foreign person, or prohibited entity that acquires agricultural land in this state by devise or descent, in violation of this chapter, has three years from the transfer of ownership to dispose of the land.

Any foreign entity who violates this chapter by other means has two years from the initial date of the violation to comply with this chapter or to dispose of the property.

§ 43-2A-4. Aliens acquiring agricultural land by process of law—time to alienate title

The prohibitions of § 43-2A-2 do not apply to agricultural lands acquired by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise. However, all agricultural lands so acquired shall be disposed of within three years after acquiring title.

§ 43-2A-5. Nonresident alien becoming bona fide resident—right to acquire agricultural land

Any foreign person who is or becomes a resident may acquire and hold agricultural land in this state, upon the same terms as a resident of this state, during the continuance of the residency.

If the foreign person ceases to be a resident, the foreign person has three years from the time the residency is terminated to dispose of agricultural land in excess of one hundred sixty acres.

§ 43-2A-6. Agricultural land acquired or held in violation of act—forfeiture to state

Any agricultural land owned in violation of this chapter is forfeited to the state. Any agricultural land lease, or easement, held by a prohibited entity in violation of this chapter, is terminated.

The attorney general shall enforce the forfeiture or the termination of a lease or easement. A forfeiture or a termination of a lease or easement may not be adjudged unless the action to enforce is brought within three years after evidence of a violation of this chapter is referred to the attorney general, as



provided for in § 43-2A-6.1. No title to land is invalid or liable to forfeiture by reason of the alienage of any former owner or interested person.

§ 43-2A-6.1. Violation—investigation—subpoena power

The Department of Agriculture and Natural Resources shall refer evidence of noncompliance to the attorney general, who shall investigate the evidence for violations of this chapter. The attorney general may bring an action pursuant to title 15 to enforce this chapter.

After the attorney general commences an enforcement action, the attorney general may, in addition to any authority granted under §§ 15-6-28.2 to 15-6-28.4, inclusive, subpoena from a subject foreign entity, foreign government, foreign person, or prohibited entity:

- (1) Real property titles;
- (2) Deeds;
- (3) Real estate transaction documents;
- (4) Financial or financial documents related to the ownership or financing of the agricultural land transitions;
- (5) Documents depicting the identity of any party to the agricultural land transactions; and
- (6) Any other information necessary to demonstrate a violation of § 43-2A-2.

§ 43-2A-6.2. Violation—burden of proof

The attorney general shall prove any violation of § 43-2A-2 by a preponderance of the evidence.

§ 43-2A-6.3. Violation—appeal

A foreign entity, foreign government, foreign person, or prohibited entity, whose agricultural land interest was forfeited by an enforcement action brought by the attorney general, may appeal within thirty days of the judgment, pursuant to chapter 15-26A.

§ 43-2A-7. Reports monitored by Department of Agriculture and Natural Resources

The Department of Agriculture and Natural Resources shall review:

- (1) Any report received by the department in accordance with section 2 of this Act;



- (2) Any report transmitted to the department pursuant to the Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. § 3505 (January 1, 2024);
- (3) Any annual report required by § 59-11-24; and
- (4) Any report voluntarily submitted by a county register of deeds alleging a violation of this chapter.

If the department has reason to believe that a violation of this chapter may have occurred, the department must refer the evidence to the attorney general, who must investigate in accordance with section 7 of this Act.

§ 43-2A-7.1. AFIDA report—Duplicate filing with department

Any person required to submit a report to the United States Department of Agriculture in accordance with the Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. § 3501 et seq. (January 1, 2024) shall file a copy of the required report with the secretary of the Department of Agriculture and Natural Resources, within the time period required for submission under 7 U.S.C. § 3501.

§ 43-2A-8. Exception for property owned by corporation for nonfarming purposes—cement plant commission property

This chapter does not apply to agricultural land owned by a foreign entity, a foreign government, or a foreign person for an immediate or potential nonagricultural use. A foreign entity, a foreign government, or a foreign person may hold agricultural land in an amount necessary for the conduct of its nonagricultural business operations. Pending the development of agricultural land for a nonagricultural use, the land may not be used for farming, except under lease to a family farm unit, a family farm corporation, or an authorized farm corporation. A foreign entity, foreign government, or foreign person developing land for nonagricultural use has five years from acquiring interest to initiate a nonagricultural business operation or be deemed in violation of this chapter. For purposes of this section, the term "nonagricultural business operation" includes the filing of a permit or an application with this state, a political subdivision of this state, a federally recognized Indian tribe, or a federal agency having jurisdiction over the project for permitting purposes. All real property owned or held by this state by and through the South Dakota State Cement Plant Commission, as of December 28, 2000, is owned or held by it and its successors in title for immediate or potential use for nonfarming purposes and the real property is necessary for nonfarming business operations.

§ 47-9A-1. Agriculture prohibited as corporate or limited liability company purpose

The Legislature of the State of South Dakota recognizes the importance of the family farm to the economic and moral stability of the state, and the Legislature recognizes that the existence of the family farm is threatened by conglomerates in farming. Therefore, it is hereby declared to be the public



policy of this state, and shall be the provision of this chapter, that, notwithstanding the provisions of § 47-1A-301, no foreign or domestic corporation, except as provided herein, shall be formed or licensed under the South Dakota Business Corporation Act for the purpose of owning, leasing, holding or otherwise controlling agricultural land to be used in the business of agriculture.

It is further declared that no foreign or domestic limited liability company, except as provided herein, shall be formed or licensed under the South Dakota Limited Liability Company Act for the purpose of owning, leasing, holding or otherwise controlling agricultural land to be used in the business of agriculture.

§ 47-9A-1.1. Certain breeding stock, products, and facilities exempt

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural land, animals, or facilities owned or operated primarily for the purpose of producing animal breeding stock or reproductive products from animals.

§ 47-9A-2. Definition of terms

Terms used in this chapter, unless the context otherwise plainly requires, mean:

- (1) “Agricultural land,” land used for farming;
- (2) “Corporation” or any derivation of “corporation,” both corporations under the South Dakota Business Corporation Act and limited liability companies under the South Dakota Limited Liability Company Act;
- (2A) “Family,” all descendants born of common parents after the year 1900 as well as their spouses, step-children, and adopted children. Once a person is a family member subsequent events such as death or divorce, do not disqualify that person from being a family member under this chapter.
- (3) “Family farm,” an unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming;
- (4) “Farming,” the cultivation of land for the production of agricultural crops; livestock or livestock products; poultry or poultry products; milk or dairy products; or fruit or other horticultural products. It shall not include the production of timber or forest products; nor shall it include a contract whereby a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services;
- (5) “Shareholders” or “stockholders,” include the members of a limited liability company; and
- (6) “Shares” or “stock,” include membership interests in a limited liability company.



§ 47-9A-3. Corporate farming and acquisition of interest in farm real estate prohibited

Except as provided herein, no foreign or domestic corporation may engage in farming; nor may any foreign or domestic corporation, directly or indirectly, own, acquire, or otherwise obtain an interest, whether legal, beneficial or otherwise, in any title to real estate used for farming or capable of being used for farming in this state.

§ 47-9A-3.1. Certain greenhouse operations exempt

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to the cultivation of edible fruits, vegetables or mushrooms if such cultivation occurs within a greenhouse or other enclosed or semi-enclosed structure.

§ 47-9A-3.2. Facilities for feeding poultry or producing meat or eggs exempt

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to facilities acquired by a corporation for the purpose of feeding poultry for the production of meat or eggs.

§ 47-9A-3.3. Dairy on agricultural lands exempt

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural lands acquired by a corporation solely for the purpose of operating a dairy.

§ 47-9A-4. Banks and trust companies exempt—Purchase of agricultural land through pooled investment fund excepted

Any national or state chartered bank, or trust company, authorized to do business in this state shall be exempt from the provisions of this chapter; provided, however, that no national or state bank or trust company shall purchase agricultural lands in South Dakota through a pooled investment fund formed from assets from retirement, pension, profit sharing, stock bonds or other trusts.

§ 47-9A-5. Certain limited liability entities exempt from restrictions

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural land and land capable of being used for farming which:

- (1) Was owned by a corporation as of July 1, 1974, including the normal expansion of such ownership at a rate not to exceed twenty percent, measured in acres, in any five-year period; or
- (2) Is leased by a corporation in an amount, measured in acres, not to exceed the acreage under lease to such corporation as of July 1, 1974, and the additional acreage required for normal expansion at a rate not to exceed twenty percent in any five-year period;



and the additional acreage necessary to meet the requirements of pollution control regulations.

§ 47-9A-6. Encumbrance taken for security exempt

The restrictions provided in §§ 47-9A-1 and 47-9A-3 do not apply to a bona fide encumbrance taken for purposes of security.

§ 47-9A-7. Lands acquired in collection of debt or enforcement of claim exempt— Period allowed for disposition—Covenant runs with land

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural lands acquired by a corporation by process of law in the collection of debts; or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise. However, any land so acquired shall be disposed of within ten years after acquiring the title thereto. In addition, no land so acquired may be used for farming during the ten-year period except under a lease to a family farm unit, a family farm corporation or an authorized farm corporation. The aforementioned ten-year limitation period shall be deemed a covenant running with the title to the land against any corporate grantee or assignee or the successor of such corporation.

§ 47-9A-8. Agricultural land—Gift—Restrictions—Applicability

The restrictions in §§ 47-9A-1 and 47-9A-3 do not apply to a gift of agricultural land, whether by grant or devise, to any nonprofit entity organized under the laws of this state and registered with the secretary of state.

§ 47-9A-9. Farms, for scientific, medical, research, or experimental purposes exempt if sale of products incidental

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to any entity that engages in farming primarily for scientific, medical, research, or experimental purposes. However, any commercial sales from such farming shall be incidental to the scientific, medical, research, or experimental objectives of the entity.

§ 47-9A-10. Raising breeding stock for resale exempt—Nurseries and seed farms

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural land operated by a corporation for the purpose of raising breeding stock for resale to farmers or operated for the purpose of growing seed, nursery plants, or sod.

§ 47-9A-11. Livestock feeding exempt

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural lands acquired by a corporation solely for the purpose of feeding livestock.



§ 47-9A-12. Land acquired for nonfarming uses exempt—Acreage allowed—Restrictions on farming pending development

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural land acquired by a corporation other than a family farm corporation or authorized farm corporation for immediate or potential use in nonfarming purposes. A corporation may hold such agricultural land in such acreage or such form of ownership as may be necessary to its nonfarm business operation. However, pending the development of agricultural land for nonfarm purposes, such land may not be used for farming except under lease to a family farm unit, a family farm corporation or an authorized farm corporation, or except when controlled through ownership, options, leaseholds or other agreements by a corporation which has entered into an agreement with the United States of America pursuant to the New Community Act of 1968, (Title IV of the Housing and Urban Development Act of 1968, 42 U.S.C. 3901-3914), as amended, or a subsidiary or assign of such a corporation.

§ 47-9A-12.1. Cement Plant Commission property used for nonfarming purposes

All real property owned or held by the State of South Dakota by and through the South Dakota State Cement Plant Commission as of December 28, 2000, is owned or held by it and its successors in title for immediate or potential use for nonfarming purposes and the real property is necessary for nonfarming business operations.

§ 47-9A-13. Family farm and authorized farm corporations exempt

The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to a family farm corporation or an authorized farm corporation.

§47-9A-13.2. Pork production subject to same provisions as other operations

The production of pork is subject to the same provisions which apply to livestock feeding, breeding stock, dairies, and poultry and egg operations under this chapter.

§ 47-9A-14. Family farm corporation defined

As used in this chapter, the term, family farm corporation, means any corporation founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by members of a family, an estate of a family member, or a trust that benefits members of the family, and at least one of whose stockholders is a person who is residing on or actively operating the farm or who has resided on or has actively operated the farm, and none of whose stockholders are corporations. Transfers of shares to persons who are or have been family members are qualified as a family member under this chapter.



§ 47-9A-15. Qualifications of authorized small farm corporation

As used in this chapter, unless the context otherwise plainly requires, “authorized farm corporation” means a corporation whose shareholders do not exceed ten in number, whose shareholders are all natural persons or estates, whose shares are all of one class, and whose revenues from rent, royalties, dividends, interest, and annuities do not exceed twenty percent of its gross receipts.

§ 47-9A-16. Report required of corporation engaged in farming—Contents

Every corporation engaged in farming or proposing to commence farming in this state shall file with the secretary of state a report containing:

- (1) The information required by § 59-11-6; and
- (2) The acreage and location listed by section, township, and county of each lot or parcel of land in this state that is owned or leased by the corporation and used for the growing of crops or the keeping or feeding of poultry or livestock.

§ 47-9A-17. Additional information for qualification as family or authorized farm corporation

The report of a corporation seeking to qualify hereunder as a family farm corporation or an authorized farm corporation shall contain, in addition:

- (1) The number of shares owned by persons residing on the farm or actively engaged in farming, or their relatives within the third degree of kindred;
- (2) The name, address, and number of shares owned by each shareholder; and
- (3) A statement as to percentage of gross receipts of the corporation derived from rent, royalties, dividends, interest, and annuities.

§ 47-9A-18. Farming prohibited without certification by secretary of state

No corporation shall commence farming in this state until the secretary of state has inspected the report required by § 47-9A-16 and certified that its proposed operations comply with the provisions of §§ 47-9A-16 and 47-9A-17.

§ 47-9A-20. Corporation failing to file or filing false report—Civil fine

Any corporation which fails to file any report required by this chapter or intentionally files false information on any report required by this chapter is subject to a civil fine of not more than one thousand dollars.



§ 47-9A-21. Attorney general to prosecute violations—Order of court declaring violation

If the attorney general has reason to believe that a corporation is in violation of this chapter, he shall commence an action in the circuit court for the county in which any agricultural lands relative to such violation are situated, or if situated in two or more counties, in any county in which a substantial part of the lands are situated. If the court finds that the lands in question are being held in violation of this chapter, it shall enter an order so declaring.

§ 47-9A-22. Recording of order—Divestiture within prescribed period—Covenant running with land—Public sale of lands not divested

The attorney general shall file any order under § 47-9A-21 for record with the register of deeds of each county in which any portion of said lands are located. Thereafter, the corporation owning such land shall have a period of five years from the date of such order to divest itself of such lands. The aforementioned five-year limitation period shall be deemed a covenant running with the title to the land against any corporate grantee or assignee or the successor of such corporation. Any lands not so divested within the time prescribed shall be sold at public sale in the manner prescribed by order of the court.

§ 47-9A-23. Citation of chapter

This chapter shall be known and may be cited as the Family Farm Act of 1974.

§ 59-11-24. Annual report

Each filing entity or qualified foreign entity, except a bank organized under § 51A-3-1.1, a limited partnership organized pursuant to chapter 48-7, or a series of a limited liability company established under §§ 47-34A-701 to 47-34A-707, inclusive, shall deliver to the Office of the Secretary of State for filing an annual report that sets forth:

- (1) The name of the filing entity or qualified foreign entity;
- (2) The jurisdiction under whose law it is formed;
- (3) The address of its principal office, wherever located;
- (4) The information required by § 59-11-6; and
- (5) The names and business addresses of its governors except in the following two cases:
 - (a) If a business corporation has eliminated its board of directors pursuant to § 47-1A-732, the annual report shall set forth the names of the shareholders instead; and



(b) If a limited liability company is member-managed, the names and business addresses of its governors need not be set forth.

(6) Whether the entity owns any agricultural land, as defined in § 43-2A-1, and, if so, whether the entity has any foreign beneficial owners. If the entity referenced in subdivision (6) is a foreign entity or has any foreign beneficial owners, the filing must also include:

(a) A legal description of the agricultural land or a description of the land's common location;

(b) The total acreage of agricultural land held by the entity; and

(c) The current use of the agricultural land.

Information in the annual report must be current as of the date the annual report is executed on behalf of the filing entity or qualified foreign entity. Any other provisions of law notwithstanding the annual report may be executed by any authorized person. Any amendment filed is a supplement to, and not in place of, the annual filing required by this section.

On or before December first of each year, the Office of the Secretary of State shall make available to the public an aggregated report listing all foreign entities and entities with foreign beneficial ownership that indicated they owned agricultural land during the reporting period. For each entity listed, the report must include the information gathered under this section.

§ 59-11-24.1. Voluntary disclosure of beneficial interests

In addition to filing an annual report pursuant to § 59-11-24, a filing entity may include in its annual report a statement of voluntary disclosure of other beneficial interests.

