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Farm Ownership & Corporate Farming Laws:

South Dakota



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Farm Ownership & Corporate Farming Laws:
South Dakota

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- 1) Reporting: None
- 2) Prohibition: S.D. Codified Laws §§ [43-2A-1](#); [43-2A-2](#); [43-2A-3](#); [43-2A-4](#); [43-2A-5](#); [43-2A-6](#); [43-2A-7](#)
- 3) Corporate Farming: S.D. Codified Laws §§ [47-9A-1](#); [47-9A-1.1](#); [47-9A-2](#); [47-9A-3](#); [47-9A-3.1](#); [47-9A-3.2](#); [47-9A-3.3](#); [47-9A-4](#); [47-9A-5](#); [47-9A-6](#); [47-9A-7](#); [47-9A-8](#); [47-9A-9](#); [47-9A-10](#); [47-9A-11](#); [47-9A-12](#); [47-9A-12.1](#); [47-9A-13](#); [47-9A-13.2](#); [47-9A-14](#); [47-9A-15](#); [47-9A-16](#); [47-9A-17](#); [47-9A-18](#); [47-9A-20](#); [47-9A-21](#); [47-9A-22](#); [47-9A-23](#)

[S.D. Codified Laws §§ 43-2A-1 to 43-2A-7](#)

[S.D. Codified Laws §§ 47-9A-1 to 47-9A-23](#)

Current through 2021 Session Laws passed by the 96th South Dakota State Legislature, Executive Order 2021-05, and Supreme Court Rule 21-12.

[§ 43-2A-1. “Agricultural land” defined](#)

For purposes of this chapter, the term “agricultural land” means land capable of use in the production of agricultural crops, timber, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any royalty interest, any oil, gas, or other mineral interest, or any lease, right-of-way, option, or easement relating thereto, or any land zoned by a local governmental unit for a use other than and nonconforming with agricultural use.

[§ 43-2A-2. Maximum alien ownership of agricultural land—exceptions](#)

No alien, who is not a resident of this state, of some state or territory of the United States or of the District of Columbia; and no foreign government shall hereafter acquire agricultural lands, or any interest therein, exceeding one hundred sixty acres, except such as may be acquired by devise or inheritance, and such as may be held as security for indebtedness. The provisions of this section do not apply to citizens, foreign governments or subjects of a foreign country whose right to hold land are secured by treaty.



§ 43-2A-3. Agricultural land acquired by devise or descent—time to alienate title

All nonresident aliens who may acquire agricultural lands in this state by devise or descent shall have three years from the date of so acquiring such title in which to alienate such agricultural lands.

§ 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 nonresident alien who is or becomes a bona fide resident of this state, of some state or territory of the United States or of the District of Columbia, shall have the right to acquire and hold agricultural lands in this state upon the same terms as citizens of this state during the continuance of such bona fide residence. However, if such resident alien ceases to be a bona fide resident, he shall have three years from the time of termination of residency in which to alienate agricultural lands in excess of one hundred sixty acres.

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

All agricultural lands acquired or held in violation of §§ 43-2A-2 and 43-2A-3 shall be forfeited to the state. The attorney general shall enforce such forfeiture. However, no such forfeiture may be adjudged unless the action to enforce is brought within three years after such property has been acquired or held by such alien. No title to land is invalid or liable to forfeiture by reason of the alienage of any former owner or person interested therein.

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

The Department of Agriculture and Natural Resources shall monitor, for compliance to this chapter, biannual reports transmitted to the department pursuant to section 6 of the United States Agricultural Foreign Investment Disclosure Act of 1978. If this review reveals evidence of noncompliance with this chapter the Department of Agriculture and Natural Resources shall refer this evidence to the attorney general who shall investigate the case and initiate legal action if necessary in the circuit court district in which the land held in violation of § 43-2A-4 is situated.

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

The restrictions of this chapter do not apply to agricultural land owned by a corporation for immediate or potential use in nonfarming purposes. A corporation may hold such agricultural land in such acreage as may be necessary to its nonfarm business operations. 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.

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-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.

