

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 340

By: Senator B. Johnson
By: Representative Vaught

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING OWNERSHIP AND
POSSESSION OF REAL PROPERTY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING OWNERSHIP AND
POSSESSION OF REAL PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 18-11-101(a), concerning the capacity of aliens to take and transfer lands, is amended to read as follows:

(a) ~~All~~ Except as provided in §§ 18-11-110 and 18-11-701 et seq., all aliens shall be capable of taking, by deed or will, lands and tenements in fee simple, or other less estate, and of holding, aliening, and devising them.

SECTION 2. Arkansas Code § 2-3-102(1), concerning the definition of "agricultural land" used in the Arkansas Agricultural Foreign Investment Act is amended to read as follows:

(1)(A) "Agricultural land" means any Arkansas land which is outside the corporate limits of a municipality and is: ~~used or capable, without substantial modification to the character of the land, of use for agricultural, forestry, or timber production,~~

(i) Used for forestry production, including without limitation land exceeding ten (10) acres in which ten percent (10%) of the land is stocked by trees of any size, including land that formerly had trees



of any size covering the land that will be naturally or artificially regenerated; or

(ii) Currently used for, or, if currently idle, land last used within the past five (5) years, for farming, ranching, or timber production, except land not exceeding ten (10) acres in the aggregate, if the annual gross receipts from the sale of the farm, ranch, or timber products produced on the land do not exceed one thousand dollars (\$1,000), including without limitation land used for activities described in the Standard Industrial Classification Manual (1987), Division A, exclusive of industry numbers 0711-0783, 0851, and 0912-0919 which cover animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise, and wildlife management.

(B) "Agricultural land" ~~but~~ does not include oil, gas, and all other minerals, including coal, lignite, brine, and all minerals known and recognized as commercial minerals underlying the land;

SECTION 3. Arkansas Code § 2-3-102(3)(D), concerning the definition of "foreign party" used in the Arkansas Agricultural Foreign Investment Act, is amended to read as follows:

(D) ~~Any~~ A party other than an individual or a government:

(i) Which is created or organized under the laws of any state; and

(ii) In which a significant interest ~~is directly or indirectly held or in which not insubstantial or substantial~~ control is directly or indirectly held or is capable of being exercised by:

(a) ~~Any~~ An individual referred to in subdivision (3)(A) of this section;

(b) ~~Any~~ A foreign government;

(c) ~~Any~~ A party referred to in subdivision (3)(C) of this section;

(d) ~~Any~~ A combination of ~~such~~ individuals, parties, or government referred to in this subdivision (3)(D)(ii) of this section; and

SECTION 4. Arkansas Code § 2-3-102, concerning the definitions used in the Arkansas Agricultural Foreign Investment Act, is amended to add an

additional subdivision to read as follows:

(5) "Significant interest" or "substantial control" means:

(A) An interest of thirty-three percent (33%) or more held by:

(i) A party referred to in subdivision (3)(D) of this section;

(ii) An individual referred to in subdivision (3)(A) of this section;

(iii) A party referred to in subdivision (3)(C) of this section; or

(iv) A single government referred to in subdivision (3)(B) of this section;

(B) An interest of thirty-three percent (33%) or more held whenever the parties, individuals, or governments referred to in subdivision (5)(A) of this section are acting in concert with respect to the interest even though no single individual, party, or government holds an interest of thirty-three percent (33%) or more; or

(C) An interest of fifty percent (50%) or more, in the aggregate, held by parties, individuals, or governments referred to in subdivision (5)(A) of this section even though the individuals, parties, or foreign governments may not be acting in concert.

SECTION 5. Arkansas Code § 2-3-103(a)(1)(A), concerning registration of foreign interest in agricultural land in Arkansas, is amended to read as follows:

(a)(1)(A)(i) When after April 19, 1979, any foreign party acquires any interest in agricultural land in Arkansas by grant, purchase, adverse possession, devise, descent, or in any other manner or any agent, trustee, or fiduciary acquires title to agricultural land in Arkansas on behalf of a foreign party, the foreign party or agent, trustee, or fiduciary shall register the ownership in the office of the circuit clerk in the county in which the land is located within sixty (60) days after the acquisition.

(ii) A foreign party that acquires an interest in agricultural land by reason of grant, purchase, devise, descent, or otherwise before August 1, 2023, and failed to register the ownership as required by subdivision (a)(1)(A)(i) of this section shall be granted a grace period

until midnight December 31, 2023, to register the ownership.

(iii) A registration of ownership by a foreign party made by the end of the grace period under subdivision (a)(1)(A)(ii) of this section is proper and not in violation of this section.

SECTION 6. Arkansas Code Title 18, Chapter 11, Subchapter 1, is amended to add an additional section to read as follows:

18-11-110. Land ownership by prohibited foreign party controlled business prohibited – Definitions.

(a) As used in this section:

(1) "Controlling interest" means an ownership interest of fifty percent (50%) or more, in the aggregate;

(2) "Prohibited foreign party controlled business" means a corporation, company, association, firm, partnership, society, joint-stock company, trust, estate or other legal entity whose controlling interest is owned by a prohibited foreign party; and

(3) "Prohibited foreign party" means the same as provided by § 18-11-702.

(b)(1) A prohibited foreign party controlled business shall not acquire by grant, purchase, devise, descent, or otherwise any interest in public or private land in this state.

(2) A party may not hold public or private land as an agent, trustee, or other fiduciary for a prohibited foreign party controlled business in violation of this section.

(c)(1) A prohibited foreign party controlled business entity in violation of this section shall have two (2) years to divest of the public or private land.

(2) Any public or private land that is not divested within two (2) years as required by subdivision (c)(1) of this section shall be sold:

(A) By order of the circuit court; and

(B) At a public sale in the manner prescribed by law for a statutory foreclosure under § 18-50-101 et seq.

SECTION 7. Arkansas Code Title 18, Chapter 11, is amended to add an additional subchapter to read as follows:

Subchapter 7 – Foreign Ownership of Agricultural Land

18-11-701. Purpose.

Under § 2-4-101, "It is the declared policy of the state to conserve, protect, and encourage the development and improvement of its agricultural and forest lands and other facilities for the production of food, fiber, and other agricultural and silvicultural products".

18-11-702. Definitions.

As used in this subchapter:

(1) "Agricultural land" means the same as provided by § 2-3-102;

(2) "Foreign government" means the same as provided by § 2-3-102;

(3) "Interest in agricultural land" means all direct interest acquired, transferred, or held in agricultural land including without limitation a lease of agricultural land:

(A) For a term of one (1) year or longer; or

(B) Renewable by option for terms which, if the options were all exercised, would total one (1) year;

(4) "Party" means the same as provided by § 2-3-102;

(5) "Prohibited foreign party" means:

(A) A citizen or resident of a country subject to international Traffic in Arms Regulations, 22 C.F.R. § 126.1;

(B) A foreign government formed within a country subject to International Traffic in Arms Regulations, 22 C.F.R. § 126.1;

(C) A party other than an individual or a government, that is created or organized under the laws of a foreign government within a country subject to International Traffic in Arms Regulations, 22 C.F.R. § 126.1; or

(D) Any party other than an individual or a government:

(i) That is created or organized under the laws of any state; and

(ii) In which a significant interest or substantial control is directly or indirectly held or is capable of being exercised by:

(a) An individual referred to in subdivision

(5)(A) of this section; or

(b) A foreign government referred to in

subdivision (5)(B) of this section;

(c) A party referred to in subdivision (5)(C) of this section;

(d) A combination of the individuals, parties, or governments referred to in this subdivision (5)(D)(ii) of this section;

(E) An Entity of Particular Concern designated by the United States Department of State; or

(F) An agent, trustee, or other fiduciary of a person or entity enumerated in subdivisions (5)(A)-(E) of this section;

(6) "Residence" means a person's principal dwelling place where the person intends to remain permanently for an indefinite period of time;

(7) "Resident alien" means a person who:

(A) Is not a citizen of the United States; and

(B) Is a resident of a:

(i) State of the United States;

(ii) Territory of the United States;

(iii) Trusteeship of the United States; or

(iv) Protectorate of the United States; and

(8) "Significant interest" or "substantial control" means the same as provided by § 2-3-102.

18-11-703. Limitations on owning agricultural land – Violation.

(a)(1) Except as provided in § 18-11-704, a prohibited foreign party shall not acquire by grant, purchase, devise, descent, or otherwise any interest in agricultural land in this state regardless of whether the prohibited foreign party intends to use the agricultural land for nonfarming purposes.

(2) A party may not hold agricultural land as an agent, trustee, or other fiduciary for a prohibited foreign party in violation of this subchapter.

(b) A prohibited foreign party that acquires agricultural land in violation of this subchapter remains in violation as long as the prohibited foreign party holds an interest in the agricultural land.

18-11-704. Interest in agricultural land owned by prohibited foreign parties – Exceptions – Penalty.

(a) A prohibited foreign party who is a resident alien of the United States shall have the right to acquire and hold agricultural land in the state upon the same terms as a citizen of the United States during the continuance of his or her residence in the State of Arkansas.

(b)(1) If a prohibited foreign party is no longer a resident alien under subsection (a) of this section, he or she shall have two (2) years to divest of the agricultural land.

(2) Any agricultural land that is not divested within two (2) years as required by subdivision (b)(1) of this section shall be sold:

(A) By order of the circuit court; and

(B) At a public sale in the manner prescribed by law for a statutory foreclosure under § 18-50-101 et seq.

(c)(1) When the Office of Agricultural Intelligence determines a foreign party has acquired agricultural land in Arkansas in violation of this subchapter, the office shall report the violation to the Attorney General.

(2) Upon receiving notice under subdivision (c)(1) of this section, or otherwise in his or her discretion, the Attorney General shall institute an action in the circuit court of any county in which any portion of the agricultural land acquired or held in violation of this subchapter is located.

(3) A prohibited foreign party owning agricultural land subsequent to the passage of this subchapter and not listed under one (1) of the exceptions set out in subsections (a) and (b) of this section shall upon conviction be guilty of a felony punishable by not more than two (2) years imprisonment in the custody of the Division of Correction or a fifteen thousand dollar (\$15,000) fine, or both.

(d) It is an affirmative defense to prosecution under this subchapter that a prohibited foreign party is a resident alien of the State of Arkansas.

18-11-705. Office of Agricultural Intelligence – Creation – Duties.

(a) There is created within the Department of Agriculture the Office of Agricultural Intelligence.

(b) The office is authorized and directed to:

(1) Collect and analyze information concerning the unlawful sale or possession of agricultural land by prohibited foreign parties; and

(2) Administer and enforce the provisions of this subchapter,

including without limitation the reporting of a violation of this subchapter to the Attorney General under § 18-11-705(c).

(c) The office shall operate under the direction of the Secretary of the Department of Agriculture.