

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

1 State of Arkansas *As Engrossed: S3/3/21 H3/29/21*

2 93rd General Assembly

A Bill

3 Regular Session, 2021

SENATE BILL 312

4

5 By: Senators B. Johnson, M. Pitsch, *B. Ballinger, Beckham, Caldwell, J. Dismang, Flippo, T. Garner,*

6 *Gilmore, Hester, Hill, Irvin, Rice, B. Sample, J. Sturch, D. Sullivan, D. Wallace*

7 *By: Representatives Lundstrum, Bentley, Brown, Cavanaugh, Crawford, Gazaway, J. Mayberry, Miller,*

8 *Payton, Richmond, Rye, B. Smith, Vaught*

9

10 For An Act To Be Entitled

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

13

14

15 Subtitle

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

18

19

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

21

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

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

27

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

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

35 (i) Used for forestry production, including without
36 limitation land exceeding ten (10) acres in which ten percent (10%) is



1 stocked by trees of any size, including land that formerly had trees of any
 2 size covering the land that will be naturally or artificially regenerated; or
 3 (ii) Currently used for, or, if currently idle, land
 4 last used within the past five (5) years, for farming, ranching, or timber
 5 production, except land not exceeding ten (10) acres in the aggregate, if the
 6 annual gross receipts from the sale of the farm, ranch, or timber products
 7 produced on the land do not exceed one thousand dollars (\$1,000), including
 8 without limitation land used for activities described in the Standard
 9 Industrial Classification Manual (1987), Division A, exclusive of industry
 10 numbers 0711-0783, 0851, and 0912-0919 which cover animal trapping, game
 11 management, hunting carried on as a business enterprise, trapping carried on
 12 as a business enterprise, and wildlife management.

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

16
 17 SECTION 3. Arkansas Code § 2-3-102(3)(D), concerning the definition of
 18 "foreign party" used in the Arkansas Agricultural Foreign Investment Act, is
 19 amended to read as follows:

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

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

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

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

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

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

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

34
 35 SECTION 4. Arkansas Code § 2-3-102, concerning the definitions used in
 36 the Arkansas Agricultural Foreign Investment Act, is amended to add an

1 additional subdivision to read as follows:

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

3 (A) An interest of ten percent (10%) or more held by:

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

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

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

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

12 (B) An interest of ten percent (10%) or more held whenever
13 the parties, individuals, or governments referred to in subdivision (5)(A) of
14 this section are acting in concert with respect to the interest even though
15 no single individual, party, or government holds an interest of ten percent
16 (10%) or more; or

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

21

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

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

32 (ii) A foreign party that acquired an interest in
33 agricultural land by reason of grant, purchase, devise, descent, or otherwise
34 before August 1, 2021, and failed to register the ownership as required by
35 subdivision (a)(1)(A)(i) of this section shall be granted a grace period
36 until midnight December 31, 2021, to register the ownership.

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

4
5 SECTION 6. Arkansas Code Title 18, Chapter 11, is amended to add an
6 additional subchapter to read as follows:

7
8 Subchapter 7 – Foreign Ownership of Agricultural Land

9
10 18-11-701. Purpose.

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

15
16 18-11-702. Definitions.

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

18 (2) "Foreign government" means the same as provided by § 2-3-
19 102;

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

21 (4) "Interest in agricultural land" means all interest acquired,
22 transferred, or held in agricultural lands including without limitation a
23 lease of agricultural land:

24 (A) For a term of ten (10) years or longer; or

25 (B) Renewable by option for terms which, if the options
26 were all exercised, would total ten (10) years;

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

28 (6) "Prohibited foreign party" means any foreign party that is:

29 (A) A citizen or resident of a country listed in the
30 International Traffic in Arms Regulations, 22 C.F.R. § 126.1, as it existed
31 on January 1, 2021, or the International Emergency Economic Powers Act, 50
32 U.S. Code Chapter 35, as it existed on January 1, 2021;

33 (B) Any foreign government formed within a country listed
34 in the International Traffic in Arms Regulations, 22 C.F.R. § 126.1, as it
35 existed on January 1, 2021, or the International Emergency Economic Powers
36 Act, 50 U.S. Code Chapter 35, as it existed on January 1, 2021;

1 (C) Any party other than an individual or a government,
2 that is created or organized under the laws of a foreign government within a
3 country listed in the International Traffic in Arms Regulations, 22 C.F.R. §
4 126.1, as it existed on January 1, 2021, or the International Emergency
5 Economic Powers Act, 50 U.S. Code Chapter 35, as it existed on January 1,
6 2021, or that has its principal place of business located within a country
7 listed in the International Traffic in Arms Regulations or the International
8 Emergency Economic Powers Act;

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

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

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

15 (a) Any individual referred to in subdivision
16 (6)(A) of this section;

17 (b) Any foreign government referred to in
18 subdivision (6)(B) of this section;

19 (c) Any party referred to in subdivision
20 (6)(C) of this section; or

21 (d) Any combination of the individuals,
22 parties, or government; or

23 (E) Any agent, trustee, or other fiduciary of a person or
24 entity enumerated in subdivisions (6)(A)-(D) of this section;

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

27 (8) "Resident alien" means a person who:

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

29 (B) Is a resident of a:

30 (i) State of the United States;

31 (ii) Territory of the United States;

32 (iii) Trusteeship of the United States; or

33 (iv) Protectorate of the United States; and

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

36

1 18-11-703. Limitations on owning agricultural land – Violation.

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

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

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

13
14 18-11-704. Interest in agricultural land owned by prohibited foreign
15 parties- Exceptions – Penalty.

16 (a) A prohibited foreign party that owns an interest in agricultural
17 land before the passage of this act may continue to own the interest in
18 agricultural land.

19 (b)(1) A prohibited foreign party who is or shall become a resident
20 alien of the United States may own an interest in agricultural land.

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

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

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

30 (A) By order of the circuit court; and

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

33 (d) Any interest in agricultural land acquired by a prohibited foreign
34 party, subsequent to the passage of this act and not listed under one (1) of
35 the exceptions set out in subsections (a)-(c) of this section, shall be
36 subject to the proceedings and penalties set forth in §§ 2-3-106 and 2-3-107.

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18-11-705. Rules.

The Department of Agriculture shall adopt rules necessary for the implementation of this subchapter.

/s/B. Johnson