

State of Arkansas

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A Bill

HOUSE BILL

1893

By: Representatives Hankins, McKissack and S. Miller

For An Act To Be Entitled

"AN ACT TO SET OUT THE OBLIGATIONS OF FOREIGN OWNERS
OF AGRICULTURAL LAND IN ARKANSAS; TO REGULATE THE
TRANSFER THEREOF; AND FOR OTHER PURPOSES."

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

SECTION 1. This Act may be cited as the 'Arkansas Agricultural Land Foreign Investment Act'.

SECTION 2. Definitions. As used in this act, unless the context otherwise requires:

(1) "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, 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;

(2) "Foreign government" means any government other than the federal government or any government of a state or a political subdivision of a state;

(3) "Party" means any individual, corporation, company, association, firm, partnership, society, joint-stock company, trust, estate, or any other legal entity;

(4) "Foreign party" means:

(A) Any individual who is not a citizen of the United States and who is not a resident of some state, territory, or possession of the United States;

(B) Any foreign government;

(C) Any party, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its

principal place of business located outside the United States;

(D) Any 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 or substantial control is directly or indirectly held by:

(a) any individual referred to in subdivision (4) (A) of this section;

(b) any foreign government;

(c) any party referred to in subdivision (4) (C) of this section;

(d) any combination of such individuals, parties, or government; and

(e) any agent, trustee, or other fiduciary of a person or entity enumerated in this subsection.

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

(A) An interest of twenty percent (20%) or more in value held by a foreign party; or

(B) An interest of twenty percent (20%) or more in value held by foreign parties, whenever such parties or governments are acting in concert with respect to such interest even though no single foreign party or government holds an interest of twenty percent (20%) or more; or

(C) An interest of fifty percent (50%) or more in value, in the aggregate, held by foreign parties, even though such parties may not be acting in concert.

SECTION 3. Restriction on agricultural land holdings. (a) (1) A foreign party shall not, directly or indirectly, purchase or otherwise acquire any interest of agricultural land in excess of twelve hundred eighty (1,280) acres in Arkansas. A foreign party which lawfully holds an interest in over twelve hundred eighty (1,280) acres of agricultural land in Arkansas on the effective date of this act may continue to own or hold such interest, but shall not purchase or otherwise acquire any additional interest in agricultural land in Arkansas except by devise or descent.

(2) The restriction set forth in subdivision (a) (1) of this section does not apply to the following:

(A) An interest in agricultural land acquired by devise or descent.

(B) A bona fide encumbrance on agricultural land taken for purposes of security.

(C) An interest in agricultural land acquired by any procedure for the enforcement of a debt secured by a lien on the land, whether created by mortgage or otherwise. However, an interest in agricultural land so acquired shall be sold or otherwise disposed of within two (2) years after title is acquired. Pending the sale or disposition, the land which is the subject of the interest shall not be used for any purpose other than agricultural land, and the land shall not be used for agricultural production except under lease to a party who is not a foreign party.

(D) An interest in agricultural land acquired by foreign parties whose right to hold interests in land is secured by treaty.

(b) Any foreign party who obtains a lease of agricultural land for a term of ten (10) years or longer or a lease renewable by option for terms which, if the options were all exercised, would total ten (10) years shall be deemed to have acquired agricultural land within the meaning of this chapter.

SECTION 4. Proceedings upon failure to comply. (a) Any recorder, tax assessor, or other public official who shall learn that a foreign party has acquired agricultural land in Arkansas after the effective date of this act in an amount exceeding twelve hundred eighty (1,280) acres, or otherwise holds agricultural land in violation of this act, shall report the violation to the Attorney General of the State of Arkansas.

(b) (1) Upon receiving notice under subsection (a) of this section from any other source, or otherwise in his discretion, the Attorney General shall institute an action in the Circuit or Chancery Court of Pulaski County or in the circuit or chancery court of any county in which any portion of the agricultural land acquired or held in violation of Section 3 of this act is located.

(2) The Attorney General shall file a notice of the pendency of the action with the recorder of deeds of each county in which any portion of the agricultural land is located.

(c) If the court finds that the agricultural land has been acquired or is held in violation of this chapter, the court shall enter a declaratory

judgment of the violation and order that the agricultural land be divested to a party, other than another foreign party, within two (2) years of the date of the order.

(d) (1) Upon the entry of a declaratory judgment of a violation and an order of divestiture, the Attorney General shall cause a copy of the order to be filed with the recorder of deeds of each county in which any portion of the agricultural land is located.

(2) (A) The order of divestiture shall be a covenant running with the land against any foreign party, grantee, or assignee.

(B) Any foreign party who shall acquire any portion of the agricultural land within the two-year divestiture period specified in the order shall be required to divest within the two-year period.

(e) Any agricultural land which is not divested within the time prescribed by an order pursuant to subsection (c) of this section shall be ordered sold at public sale in the manner prescribed by law for the foreclosure of a mortgage on real estate for default in payment.

SECTION 5. Exceptions generally. (a) This chapter shall not apply to any alien while he is a bona fide resident of the United States or one (1) of its territories or possessions.

(b) Should any alien owning agricultural land in excess of twelve hundred eighty (1,280) acres in Arkansas on the effective date of this act cease to be a bona fide resident of the United States or one (1) of its territories or possessions, the alien shall be subject to Sections 3 and 4 of this act.

SECTION 6. Agricultural land used for nonagricultural purposes and mineral leases.

(a) Except as provided in this section, the ownership restrictions set forth in this act shall not apply to agricultural land acquired by a foreign party for immediate or potential use for non-agricultural purposes.

(b) (1) Any foreign party who acquires agricultural land for non-agricultural purposes shall file with the Secretary of State a declaration of intent as to the intended use of the land, the foreign party's identity, and a legal description of the land acquired.

(2) The filings shall be made within sixty (60) days of the date of

transfer of title to the land to the foreign party.

(c) (1) Any foreign party who acquires agricultural land pursuant to subsection (a) of this section and fails to put the land to the use described in its declaration of intent or subsequently to complete all steps necessary to do so within five (5) years of the filing of declaration shall, within two (2) years after the expiration of such five-year period, divest itself of all right and title to any portion of the total interest in agricultural land then owned by it that exceeds twelve hundred eighty (1,280) acres.

(2) Failure to comply with the provisions of subdivision (c) (1) shall be subject to actions as provided in Section 4 of this act.

(d) The ownership restrictions set forth in this act shall not apply to leases or other conveyances granting the right to explore for and produce the oil, gas, and all other minerals, including coal, lignite, brine, and all minerals known and recognized as commercial minerals underlying the land, and oil, gas, coal, lignite, brine, and other mineral or royalty interests regardless of type or duration, easements, or tracts of land reasonably necessary for the extraction of oil, gas, and all other minerals, including coal, lignite, brine, and all minerals known and recognized as commercial minerals underlying the land.

SECTION 7. Continuing violation. Any party who acquires or holds any interest in agricultural land in violation of this chapter shall continue to violate this chapter for as long as he holds an interest in the land.

SECTION 8. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly that the present laws with regard to foreign owners of Arkansas agricultural land are inadequate to protect the public; and that this act provides additional safeguards and is necessary to preserve the public peace, health

and safety. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

