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A Bill

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SENATE BILL 383

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5 By: Senators B. Johnson, J. Boyd, J. Bryant, Crowell, B. Davis, J. Dotson, J. English, Flippo, Gilmore, K.

6 Hammer, Hester, Hill, M. McKee, J. Payton, C. Penzo, J. Petty, Rice, Stone, G. Stubblefield, D. Sullivan

7 By: Representatives Vaught, Cavanaugh, Beaty Jr., Andrews, *Puryear*

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For An Act To Be Entitled

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AN ACT TO AMEND THE LAW CONCERNING OWNERSHIP AND

11

POSSESSION OF REAL PROPERTY; AND FOR OTHER PURPOSES.

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13

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Subtitle

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TO AMEND THE LAW CONCERNING OWNERSHIP AND

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POSSESSION OF REAL PROPERTY.

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

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

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

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28 SECTION 2. Arkansas Code Title 18, Chapter 11, Subchapter 1, is
29 amended to add an additional section to read as follows:

30 18-11-110. Land ownership by prohibited foreign-party-controlled
31 business prohibited – Definitions.

32 (a) As used in this section:

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

35 (2) "Prohibited foreign-party-controlled business" means a
36 corporation, company, association, firm, partnership, society, joint-stock



1 company, trust, estate or other legal entity whose controlling interest is
2 owned by a prohibited foreign party; and

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

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

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

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

13 (2) If a prohibited foreign-party-controlled business entity
14 does not divest the public or private land as required by subdivision (c)(1)
15 of this section, the Attorney General shall commence an action in the circuit
16 court within the jurisdiction of the public or private land.

17 (3)(A) If the public or private land is held in violation of
18 this section, the circuit court shall order that the public or private land
19 be sold through judicial foreclosure.

20 (B) Proceeds of the sale shall be disbursed to lien
21 holders, in the order of priority, except for liens which under the terms of
22 the sale are to remain on the public or private land.

23 (4) The Attorney General shall promptly record a copy of the
24 following in the local land records:

25 (A) Upon commencement, notice of the pendency of an action
26 brought under subdivision (c)(2) of this section; and

27 (B) The order for the sale of the public or private land
28 under subdivision (c)(3)(A) of this section.

29 (d) A prohibited foreign-party-controlled business entity shall upon
30 conviction be guilty of a felony punishable by not more than two (2) years
31 imprisonment in the custody of the Division of Correction or a fifteen
32 thousand dollar (\$15,000) fine, or both.

33 (e) It is an affirmative defense to prosecution under this section
34 that a prohibited foreign-party-controlled business entity is a resident
35 alien of the State of Arkansas.

36 (f) Title to public or private land is not invalid or subject to

1 divestiture due to a violation of this section by:

2 (1) Any former owner; or

3 (2) Other person holding or owning a former interest in the
4 public or private land.

5 (g) No person not subject to this section shall be required to
6 determine or inquire into whether another person is or may be subject to this
7 section.

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9 SECTION 3. Arkansas Code Title 18, Chapter 11, is amended to add an
10 additional subchapter to read as follows:

11 Subchapter 7 – Foreign Ownership of Agricultural Land

12
13 18-11-701. Purpose.

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

18
19 18-11-702. Definitions.

20 As used in this subchapter:

21 (1)(A) "Agricultural land" means any Arkansas land which is
22 outside the corporate limits of a municipality and is:

23 (i) Used for forestry production, including without
24 limitation land exceeding ten (10) acres in which ten percent (10%) of the
25 land is stocked by trees of any size, including land that formerly had trees
26 of any size covering the land that will be naturally or artificially
27 regenerated; or

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

1 as a business enterprise, and wildlife management.

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

5 (2) "Foreign government" means the same as provided by § 2-3-
6 102;

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

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

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

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

14 (5) "Prohibited foreign party" means:

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

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

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

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

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

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

28 (a) An individual referred to in subdivision
29 (5)(A) of this section;

30 (b) A foreign government referred to in
31 subdivision (5)(B) of this section;

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

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

36 (E) An Entity of Particular Concern designated by the

1 United States Department of State; or

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

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

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

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

8 (B) Is a resident of a:

9 (i) State of the United States;

10 (ii) Territory of the United States;

11 (iii) Trusteeship of the United States; or

12 (iv) Protectorate of the United States; and

13 (8) "Significant interest" or "substantial control" means:

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

16 (i) A party referred to in subdivision (5)(D) of
17 this section;

18 (ii) An individual referred to in subdivision (5)(A)
19 of this section;

20 (iii) A party referred to in subdivision (5)(C) of
21 this section; or

22 (iv) A single government referred to in subdivision
23 (5)(B) of this section;

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

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

33
34 18-11-703. Limitations on owning agricultural land – Violation.

35 (a)(1) Except as provided in § 18-11-704, a prohibited foreign party
36 shall not acquire by grant, purchase, devise, descent, or otherwise any

1 interest in agricultural land in this state regardless of whether the
2 prohibited foreign party intends to use the agricultural land for nonfarming
3 purposes.

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

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

10
11 18-11-704. Interest in agricultural land owned by prohibited foreign
12 parties – Exceptions – Penalty.

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

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

20 (2) If the prohibited foreign party does not divest of the
21 agricultural land as required by subdivision (b)(1) of this section, the
22 Attorney General shall commence an action in circuit court within the
23 jurisdiction of the agricultural land.

24 (3) If the agricultural land is held in violation of this
25 section, the circuit court shall order that the agricultural land be sold
26 through judicial foreclosure.

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

31 (2) Upon receiving notice under subdivision (c)(1) of this
32 section or upon receipt of information that leads the Attorney General to
33 believe that a violation of this subchapter may exist, the Attorney General
34 may issue subpoenas requiring the:

35 (A) Appearance of witnesses;

36 (B) Production of relevant records; and

1 (C) Giving of relevant testimony.

2 (3) If as a result of the investigation under subdivision (c)(2)
3 of this section the Attorney General concludes that a violation of this
4 subchapter has occurred, the Attorney General shall commence an action in
5 circuit court within the jurisdiction of the agricultural land.

6 (4) If the agricultural land is held in violation of this
7 subchapter, the circuit court shall order that the agricultural land be sold
8 through judicial foreclosure.

9 (d)(1) The proceeds of the sale of agricultural land by judicial
10 foreclosure authorized under this section shall be disbursed to lien holders,
11 in the order of priority, except for liens which under the terms of the sale
12 are to remain on the agricultural land.

13 (2) The Attorney General shall promptly record a copy of the
14 following in the local land records:

15 (A) Upon commencement, notice of the pendency of an action
16 brought under subdivisions (b)(2) and (c)(2) of this section; and

17 (B) The order for the sale of the agricultural land under
18 subdivisions (b)(3) and (c)(3) of this section.

19 (e) A prohibited foreign party owning agricultural land subsequent to
20 the passage of this subchapter and not listed under one (1) of the exceptions
21 set out in subsections (a) and (b) of this section shall upon conviction be
22 guilty of a felony punishable by not more than two (2) years imprisonment in
23 the custody of the Division of Correction or a fifteen thousand dollar
24 (\$15,000) fine, or both.

25 (f) It is an affirmative defense to prosecution under this section
26 that a prohibited foreign party is a resident alien of the State of Arkansas.

27 (g) Title to agricultural land is not invalid or subject to
28 divestiture due to a violation of this subchapter by:

29 (1) Any former owner; or

30 (2) Other person holding or owning a former interest in the
31 agricultural land.

32 (h) No person not subject to this subchapter shall be required to
33 determine or inquire into whether another person is or may be subject to this
34 subchapter.

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36 18-11-705. Office of Agricultural Intelligence – Creation – Duties.

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

3 (b) The office is authorized and directed to:

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

6 (2) Administer and enforce the provisions of this subchapter,
7 including without limitation the reporting of a violation of this subchapter
8 to the Attorney General under § 18-11-704(c).

9 (c) The Secretary of the Department of Agriculture may designate
10 employees of the Department of Agriculture who meet the requirements of § 25-
11 38-203(a)(12) to perform the duties of the office under subsection (b) of
12 this section.

13 (d) The office shall operate under the direction of the Secretary of
14 the Department of Agriculture.

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19 */s/B. Johnson*
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