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2 94th General Assembly
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A Bill

SENATE BILL 383

4
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

For An Act To Be Entitled

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9
10 AN ACT TO AMEND THE LAW CONCERNING OWNERSHIP AND
11 POSSESSION OF REAL PROPERTY; AND FOR OTHER PURPOSES.

Subtitle

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

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

20
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.

27
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) Any public or private land that is not divested within two
14 (2) years as required by subdivision (c)(1) of this section shall be sold:

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

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

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

21 Subchapter 7 – Foreign Ownership of Agricultural Land

22
23 18-11-701. Purpose.

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

28
29 18-11-702. Definitions.

30 As used in this subchapter:

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

33 (i) Used for forestry production, including without
34 limitation land exceeding ten (10) acres in which ten percent (10%) of the
35 land is stocked by trees of any size, including land that formerly had trees
36 of any size covering the land that will be naturally or artificially

1 regenerated; or

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

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

15 (2) "Foreign government" means the same as provided by § 2-3-
16 102;

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

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

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

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

24 (5) "Prohibited foreign party" means:

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

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

29 (C) A party other than an individual or a government, that
30 is created or organized under the laws of a foreign government within a
31 country subject to International Traffic in Arms Regulations, 22 C.F.R. §
32 126.1; or

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

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

36 (ii) In which a significant interest or substantial

1 control is directly or indirectly held or is capable of being exercised by:

2 (a) An individual referred to in subdivision
3 (5)(A) of this section;

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

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

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

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

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

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

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

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

18 (B) Is a resident of a:

19 (i) State of the United States;

20 (ii) Territory of the United States;

21 (iii) Trusteeship of the United States; or

22 (iv) Protectorate of the United States; and

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

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

26 (i) A party referred to in subdivision (5)(D) of
27 this section;

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

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

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

34 (B) An interest of thirty-three percent (33%) or more held
35 whenever the parties, individuals, or governments referred to in subdivision
36 (5)(A) of this section are acting in concert with respect to the interest

1 even though no single individual, party, or government holds an interest of
2 thirty-three percent (33%) or more; or

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

7
8 18-11-703. Limitations on owning agricultural land – Violation.

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

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

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

20
21 18-11-704. Interest in agricultural land owned by prohibited foreign
22 parties – Exceptions – Penalty.

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

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

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

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

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

35 (c)(1) When the Office of Agricultural Intelligence determines a
36 foreign party has acquired agricultural land in Arkansas in violation of this

1 subchapter, the office shall report the violation to the Attorney General.

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

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

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

15
16 18-11-705. Office of Agricultural Intelligence – Creation – Duties.

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

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

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

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

25 (c) The Secretary of the Department of Agriculture may designate
26 employees of the Department of Agriculture who meet the requirements of § 25-
27 38-203(a)(12) to perform the duties of the office under subsection (b) of
28 this section.

29 (d) The office shall operate under the direction of the Secretary of
30 the Department of Agriculture.

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