

2023 Regular Session

HOUSE BILL NO. 125

BY REPRESENTATIVES ECHOLS, GAROFALO, AND THOMPSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AGRICULTURE: Provides relative to agriculture land protection against foreign adversaries

1 AN ACT

2 To enact R.S. 3:3613, relative to protection of agricultural lands from foreign adversaries;
3 to restrict a foreign adversary with an ownership interest in a corporately formed
4 business from owning or having an interest in agricultural land; to provide for
5 exceptions; to provide for reporting requirements; to provide for definitions; to
6 authorize the attorney general to take certain actions in response to violations
7 involving the acquisition or sale of immovable property by foreign adversaries; to
8 authorize certain courts to issue orders against foreign adversaries; to provide for
9 immunity from liability for certain professionals involved in the consummation of
10 real estate transactions; to provide for forfeiture and civil penalties; and to provide
11 for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 3:3613 is hereby enacted to read as follows:

14 §3613. Ownership of agricultural lands by foreign adversaries restricted;
15 exceptions; reporting requirements; civil penalty

16 A.(1) No foreign adversary with an ownership interest in a corporation,
17 limited liability company, pension or investment fund, trust, or limited partnership
18 shall directly or indirectly, own, acquire, lease, or otherwise obtain any interest in
19 agricultural land as defined by R.S. 3:3602.

1 (2) A foreign adversary may sell or convey an ownership interest in
2 agricultural land in this state that was acquired prior to July 30, 2023, but shall not
3 sell or otherwise convey such ownership interest to any other foreign business entity
4 that qualifies as a foreign adversary after August 1, 2023, in violation of Paragraph
5 (A)(1) of this Section.

6 (3) For purposes of this Section, the term "foreign adversary" means a
7 foreign non-government person or foreign government identified as a foreign
8 adversary pursuant to 15 CFR 7.4 including the People's Republic of China and the
9 Hong Kong Special Administrative Region, Republic of Cuba, Islamic Republic of
10 Iran, Democratic People's Republic of Korea, Russian Federation, and Venezuela
11 under the leadership of Nicolas Maduro. It shall not include a person that is a legal
12 permanent resident with lawful presence in the United States.

13 B. The provisions of this Section shall not apply to foreign business entities
14 that might otherwise qualify as a foreign adversary owning agricultural lands under
15 the following circumstances:

16 (1) If the right is guaranteed by a treaty or if the person's country of origin
17 affords certain real estate rights to United States citizens.

18 (2) If a title to agricultural land is held as a security to indebtedness or real
19 estate acquired upon collection of a debt.

20 (3) If such foreign business entity is a religious, educational, charitable, or
21 scientific corporation.

22 (4) If inherited land, or land received by such foreign business entity as
23 payment for a debt, is sold or transferred within five years.

24 C.(1) Any foreign business entity that acquires, sells, leases, or transfers
25 agricultural land located in this state after July 30, 2023, shall report the acquisition,
26 sale, lease, or transfer to the secretary of state and the attorney general no later than
27 thirty days after the acquisition, sale, or transfer of the agricultural land is finalized.
28 The report shall be made in a form and manner prescribed by the secretary of state.
29 The attorney general shall review the reports received pursuant to this Subsection

1 and investigate the acquisition, sale, lease, or transfer of agricultural land if the
2 attorney general believes the acquisition, sale, lease, or transfer of agricultural land
3 violates Subsection A of this Section.

4 (2)(a) Any corporation, limited liability company, pension or investment
5 fund, trust, or limited partnership in which a foreign adversary has an ownership
6 interest that violates the provisions of this Section shall be subject to a civil penalty
7 of fifty thousand dollars and forfeiture if such entity does not divest itself of
8 agricultural land acquired in violation of this Section within one year after judgment
9 is entered in this action.

10 (b) Any civil penalty collected pursuant to this Paragraph shall be paid to the
11 attorney general to offset costs associated with enforcement of provisions contained
12 in this Section.

13 (3) A party to the contract to purchase, lease, or otherwise acquire
14 immovable property may rescind the contract prior to the transfer of the immovable
15 property if the party determines that a foreign adversary has an ownership interest
16 that violates the provisions of this Section.

17 (4) The attorney general may bring an action for injunctive relief in the name
18 of the state against the foreign adversary or the person connected with a foreign
19 adversary to restrain and enjoin the sale or lease prior to the transfer of the
20 immovable property or to restrain or enjoin the lease.

21 (5)(a) The attorney general may serve an investigative demand or subpoena
22 for deposition testimony to any person who is believed to have information,
23 documentary material, or physical evidence relevant to the alleged or suspected
24 attempt to enter into, conspiracy to enter into, or entering into a contract to purchase,
25 lease, or otherwise acquire immovable property in this state if all of the following
26 exist:

27 (i) The attorney general has evidence that a foreign adversary or a person
28 connected with a foreign adversary is attempting to enter into, conspiring to enter

1 into, or has entered into a contract to purchase, lease, or otherwise acquire
2 immovable property in this state.

3 (ii) The attorney general believes it to be in the public interest that an
4 investigation should be made to ascertain whether a foreign adversary or a person
5 connected with a foreign adversary in fact is attempting to enter into, conspiring to
6 enter into, or has entered into a contract to purchase, lease, or otherwise acquire
7 immovable property in this state.

8 (b)(i) Such investigative demand or subpoena for deposition testimony shall
9 contain a description of the attempt to enter into, conspiracy to enter into, or entering
10 into a contract to purchase, lease, or otherwise acquire immovable property in this
11 state under investigation and shall require such person to furnish, under oath or
12 otherwise, a report in writing setting forth the relevant facts and circumstances of
13 which he has knowledge, or to produce relevant documentary material or physical
14 evidence for examination, at such reasonable time and place as may be stated in the
15 investigative demand that is the subject matter of the investigation.

16 (ii) Any subpoena for deposition testimony issued pursuant to this Section
17 shall include a notice informing the prospective deponent of the deponent's right to
18 counsel at the deposition with an opportunity for cross-examination, and the
19 deposition shall be conducted at the deponent's principal place of business, deponent's
20 place of residence, deponent's domicile, or, if agreeable to the deponent, at some
21 other place convenient to the attorney general and the deponent's attorney.

22 (iii) Any such deposition shall be held at a reasonable time, as may be stated
23 in the investigative subpoena. At any time before the return date specified in the
24 investigative demand or before the noticed deposition, or within twenty days after
25 the demand or deposition notice has been served, whichever is shorter, a petition
26 stating good cause for a protective order to extend the return date, or to modify or set
27 aside the demand or deposition notice, may be filed in the district court having civil
28 jurisdiction in the parish where the person served with the demand resides, is
29 domiciled, or has his principal place of business located.

1 (iv) If no protective order from the court is secured and the written request
2 by the attorney general is not complied with by the return date thereof, the attorney
3 general may apply to the court for an order compelling compliance with the
4 investigative demand or deposition notice.

5 (v) If any person fails or refuses to file any statement, report, documentary
6 material or physical evidence, or obey any investigative subpoena or demand issued
7 by the attorney general, except as permitted by a protective order issued by an
8 appropriate court, the attorney general may apply to the district court having civil
9 jurisdiction in the parish where the person served with the demand or subpoena
10 resides, is domiciled, or has his principal place of business located, for a rule to show
11 cause why an order compelling compliance should not be issued.

12 (vi) Any disobedience of an order compelling compliance under this Section
13 by any courts shall be punished as a contempt of court.

14 (6) Service of any demand, subpoena, or petition shall be made in the
15 manner provided by law.

16 (7) Any immovable property acquired by a foreign adversary or a person
17 connected with a foreign adversary is subject to divestiture or civil forfeiture to the
18 state.

19 (8) The attorney general may use, in the enforcement of this Section, all
20 other procedures and authority for investigation, supervision, and conduct of actions
21 on behalf of the state as provided by law.

22 (9) A court petitioned by the attorney general may issue such additional
23 orders or render judgments against the foreign adversary or the person connected
24 with a foreign adversary as may be necessary to protect the public. Such orders shall
25 include but not be limited to the following:

26 (a) Revocation, forfeiture, or suspension of any license, charter, franchise,
27 certificate, or other evidence of authority of any person to do business in the state.

28 (b) Appointment of a receiver.

29 (c) Dissolution of domestic corporations or associations.

1 (d) Suspension or termination of the right of foreign corporations or
2 associations to do business in this state.

3 (e) Restitution to compensate any person who did not knowingly enter into
4 a transaction with the foreign adversary or person connected with the foreign
5 adversary for any loss, expenses, court costs, or attorney fees which may have been
6 incurred because of the sale being void or enjoined.

7 (f) Civil forfeiture of any immovable property acquired by the foreign
8 adversary or the person connected with a foreign adversary.

9 (10)(a) If, after examining the evidence, the attorney general concludes that
10 a violation of this Section occurred, the attorney general shall order the foreign
11 adversary to divest himself of all interests in the land within ninety days after service
12 of the order upon the foreign adversary.

13 (b) The order of divestiture, as described in Subparagraph (a) of this
14 Paragraph, shall be served personally or by mail.

15 (11)(a) If the holder of the interest that is ordered to be divested disputes the
16 determination of the attorney general that a violation of this Section occurred, the
17 holder may submit a written request for a judicial determination to the attorney
18 general.

19 (b) The written request, as described in Subparagraph (a) of this Paragraph,
20 shall be delivered to the attorney general within sixty days after service of the order
21 of divestiture. If no written request is received within this time, the determination of
22 the attorney general shall become final.

23 (c) A foreign adversary or any holder of interest may seek judicial review
24 after the attorney general's final determination.

25 (d) Any appeal from the final determination of the attorney general shall be
26 in accordance with the Administrative Procedure Act.

27 (12)(a) If the foreign adversary fails to divest himself of all interests pursuant
28 to Subparagraph (10)(a) of this Subsection or if a holder of the interest submits a

1 written request pursuant to Paragraph (11) of this Subsection, the attorney general
2 shall bring an action to divest the interest.

3 (b) The attorney general may initiate a civil action pursuant to this Section
4 in either the parish of East Baton Rouge or a parish where a portion of the
5 immovable property is located.

6 (c) The attorney general shall record in the public mortgage records of the
7 parish clerk of court of each parish in which any portion of the immovable property
8 is located a notice of pendency of the action pursuant to Book 7, Title 2, Chapter 4
9 of the Code of Civil Procedure.

10 (13) If the holder of the interest in immovable property has submitted a
11 written request pursuant to Paragraph (11) of this Subsection, the court shall conduct
12 an evidentiary hearing to determine, by a preponderance of the evidence, if a
13 violation of this Section occurred, prior to taking any other action. If the court
14 determines that there has been no violation, the court shall dismiss the action and
15 expunge the notice of pending action.

16 (14) If a court of competent jurisdiction determines that a violation of this
17 Section occurred, the court shall order that such immovable property be sold by the
18 sheriff in the parish where the immovable property is located in the same manner as
19 a judicial sale in accordance with the requirements of Book 4, Title 2, Chapter 2 of
20 the Code of Civil Procedure.

21 D.(1) All forfeitures or dispositions under this Section shall be made with
22 due provisions for the rights of any person who did not knowingly enter into a
23 transaction with the foreign adversary or person connected with the foreign
24 adversary.

25 (2) No mortgage, lien, privilege, or other security interest recognized under
26 the laws of this state and no ownership interest in indivision shall be affected by the
27 forfeiture, seizure, or divestiture provisions of this Section.

1 (3) No forfeiture or disposition under this Section shall affect the rights of
 2 any person who did not knowingly enter into a transaction with the foreign adversary
 3 or person connected with the foreign adversary.

4 (4) The attorney general shall, within seven days of instituting any action
 5 under this Section, file a copy of the petition or other pleading instituting the action
 6 in the mortgage records of the parish in which any related immovable property is
 7 situated.

8 (5) Notice of pending forfeiture, seizure, or divestiture shall be provided by
 9 the attorney general to the holder of each mortgage, lien, or security interest in the
 10 same manner as provided in R.S. 40:2608(3) or R.S. 14:90.1(B)(3).

11 E. The failure to identify a party to or person affiliated with a transaction as
 12 a foreign adversary or person connected with the foreign adversary shall not create
 13 any liability for any real estate agent, title insurance producer, title insurance
 14 underwriter, lender, mortgage servicer, examining attorney, or any of their directors,
 15 officers, or employees, nor shall it create a separate cause of action against any real
 16 estate agent, title insurance producer, title insurance underwriter, lender, mortgage
 17 servicer, examining attorney, or any of their directors, officers, or employees.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 125 Re-Reengrossed

2023 Regular Session

Echols

Abstract: Restricts ownership of agricultural lands by foreign adversaries.

Proposed law restricts any foreign adversary with an ownership interest in a corporation, limited liability company, pension or investment fund, trust, or limited partnership from directly or indirectly, owning, acquiring, leasing, or otherwise obtaining any interest, in agricultural land as defined by present law (R.S. 3:3602).

Proposed law defines "foreign adversary" as an individual or a government identified as a foreign adversary pursuant to 15 CFR 7.4, including the People's Republic of China and the Hong Kong Special Administrative Region, Republic of Cuba, Islamic Republic of Iran, Democratic People's Republic of Korea, Russian Federation, and Venezuela under the leadership of Nicolas Maduro. Specifies that it does not include a person that is a legal permanent resident with lawful presence in the U.S.

Proposed law authorizes a foreign adversary to sell or convey ownership interest in agricultural land in this state that was acquired prior to July 30, 2023, but prohibits the sale or other conveyance of such ownership interest to any other foreign business entity that qualifies as a foreign adversary after Aug. 1, 2023.

Proposed law exempts foreign business entities that might otherwise qualify as a foreign adversary from the ownership restrictions applicable to agricultural lands; under the following circumstances:

- (1) If the right is guaranteed by a treaty or if the person's country of origin affords certain real estate rights to U.S. citizens.
- (2) If a title to agricultural land is held as a security to indebtedness or real estate acquired upon collection of a debt.
- (3) If such foreign business entity is a religious, educational, charitable, and scientific corporation.
- (4) If inherited land, or land received by such foreign business entity as payment for a debt, is sold or transferred within five years.

Proposed law requires any foreign business entity that acquires, sells, leases, or transfers agricultural land located in the state after July 30, 2023, to report that conveyance to the secretary of state and the attorney general no later than 30 days after the acquisition, sale, or transfer of the agricultural land is finalized. Specifies that the report must be made in the form and manner prescribed by the secretary of state. Requires the attorney general to review the reports that he receives and investigate the conveyance of agricultural land if the attorney general believes it violates proposed law.

Proposed law provides that any corporation, limited liability company, pension or investment fund, trust, or limited partnership in which a foreign entity has an ownership interest that violates proposed law is subject to a civil penalty of \$50,000 and forfeiture of the agricultural land if such entity does not divest itself of land acquired in violation of proposed law within one year after judgment is entered in this action. Establishes requirements for rescinding contracts for violations of proposed law.

Proposed law establishes a process for the attorney general to bring an action for injunctive relief that involves discovery through investigative demands and depositions and to compel discovery through a rule to show cause if a party fails to comply. Authorizes the attorney general to enforce proposed law through lawful means that are available to him. Authorizes the court to issue additional orders such as revocation, forfeiture, or suspension of licensure; to appoint a receiver; to dissolve a domestic corporation; to suspend or terminate a foreign company's right to do business in the state, to require restitution; and to require civil forfeiture or divestiture of immovable property.

Proposed law authorizes a foreign adversary or any holder of interest to seek judicial review after the attorney general's final determination related to an order of divestiture.

Proposed law specifies that the failure to identify a buyer as a foreign adversary does not create additional liability for those involved in the consummation of a real estate transaction.

(Adds R.S. 3:3613)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Agriculture, Forestry, Aquaculture, and Rural Development to the original bill:

1. Modify the definition of "foreign adversary" by modeling the language after 15 CFR 7.4.
2. Add "leases" as a mandatory reported transaction.
3. Establish requirements for rescinding contracts for violations of proposed law.
4. Add a process, including service and filing requirements, for the attorney general to address violations of proposed law by authorizing him to do the following:
 - (a) Bring an action for injunctive relief that involves discovery through investigative demands and depositions.
 - (b) Compel discovery through a rule to show cause if a party fails to comply.
 - (c) Enforce proposed law through whatever lawful means are available to him.
5. Add authorization for the court to issue additional orders involving the following:
 - (a) Revocation, forfeiture, or suspension of licensure.
 - (b) Appointment of a receiver.
 - (c) Dissolution of a domestic corporation.
 - (d) Suspension or termination of a foreign company's right to do business in the state.
 - (e) Restitution.
 - (f) Civil forfeiture of immovable property.
6. Add a provision that specifies that the failure to identify a buyer as a foreign adversary does not create additional liability for those involved in the consummation of a real estate transaction.

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Provide for the divestiture, in addition to civil forfeiture, of immovable property acquired by a foreign adversary or a person connected with a foreign adversary.
2. Provide the procedure for the divestiture of immovable property acquired by a foreign adversary or a person connected with a foreign adversary.
3. Provide that no mortgage, lien, privilege, or other security interest and no ownership interest in indivision shall be affected by the forfeiture, seizure, or divestiture under the proposed law.
4. Provide for the notice of pending forfeiture, seizure, or divestiture to be provided by the attorney general to the holder of each mortgage, lien, or security interest.

5. Change language regarding a buyer as a foreign adversary to a party or person affiliated with a transaction as a foreign adversary or person connected with a foreign adversary.
6. Add mortgage servicer to the list of persons or businesses who will not be held liable for the failure to identify a foreign adversary.
7. Make technical changes.

The House Floor Amendments to the reengrossed bill:

1. Change language regarding the definition of "foreign adversary" from an individual or government to a foreign non-governmental person and foreign government.
2. Add "lease" as a mandatory transaction that requires an investigation by the attorney general upon receiving a report from a foreign business entity.
3. Provide that any civil penalty collected must be paid to the attorney general.
4. Authorize a foreign adversary or any holder of interest to seek judicial review after the attorney general's final determination that a violation of this Section has occurred.
5. Specify that the Administrative Procedure Act governs any appeal taken as a result of the attorney general's final determination.
6. Make technical changes.