



2024 South Dakota Legislature
House Bill 1231
ENROLLED

AN ACT

ENTITLED An Act to place restrictions on the ownership of agricultural land.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 43-2A-1 be AMENDED:

43-2A-1. Terms used in this chapter mean:

- (1) "Agricultural land," land capable of being used in the production of:
 - (a) Agricultural crops;
 - (b) Fruit and other horticultural products;
 - (c) Livestock or livestock products;
 - (d) Milk or dairy products;
 - (e) Poultry or poultry products; or
 - (f) Timber;
- (2) "Foreign entity," any organization that:
 - (a) Is registered outside of the United States or its territories; or
 - (b) Has more than ten percent ownership by a foreign government, foreign person, or any combination thereof. However, this permissive threshold does not apply to a prohibited entity;
- (3) "Foreign government," a government or state-controlled enterprise of a government, other than the United States, its states, its territories, or its federally recognized Indian tribes;
- (4) "Foreign person," a natural person who is not a United States citizen or a resident;
- (5) "Prohibited entity," a foreign entity from, foreign government from, or foreign person from:
 - (a) The People's Republic of China;
 - (b) The Republic of Cuba;
 - (c) The Islamic Republic of Iran;
 - (d) The Democratic People's Republic of Korea;

- (e) The Russian Federation; or
- (f) The Bolivarian Republic of Venezuela; and
- (6) "Resident", any individual who is a legal resident of this state, of another state or territory of the United States, or of the District of Columbia, and makes no claim of residency in a foreign country.

Section 2. That a NEW SECTION be added to chapter 43-2A:

Any person required to submit a report to the United States Department of Agriculture in accordance with the Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. § 3501 et seq. (January 1, 2024) shall file a copy of the required report with the secretary of the Department of Agriculture and Natural Resources, within the time period required for submission under 7 U.S.C. § 3501.

Section 3. That § 43-2A-2 be AMENDED:

43-2A-2. The following provisions apply to the ownership or leasing of agricultural land in this state:

- (1) A prohibited entity may not own agricultural land in this state;
- (2) A prohibited entity may not lease or hold an easement on agricultural land in this state, unless:
 - (a) The lease is exclusively for agricultural research purposes and encumbers no more than three hundred and twenty acres; or
 - (b) The lease is exclusively for contract feeding of livestock, at an animal feeding operation, by a family farm unit, a family farm corporation, or an authorized farm corporation;
- (3) Excluding a prohibited entity, a foreign entity, foreign government, or foreign person may not own more than one hundred and sixty acres of agricultural land in this state, provided this limitation does not include:
 - (a) Agricultural land acquired by devise or inheritance; or
 - (b) Agricultural land held as security for indebtedness; and
- (4) Excluding a prohibited entity, there is no restriction on easements or the number of acres of agricultural land that a foreign entity, foreign government, or foreign person may lease.

This section does not apply to a foreign entity, foreign government, or foreign person whose right to hold land is secured by treaty.

Section 4. That § 43-2A-3 be AMENDED:

43-2A-3. Any foreign entity, foreign government, foreign person, or prohibited entity that acquires agricultural land in this state by devise or descent, in violation of this chapter, has three years from the transfer of ownership to dispose of the land.

Any foreign entity who violates this chapter by other means has two years from the initial date of the violation to comply with this chapter or to dispose of the property.

Section 5. That § 43-2A-5 be AMENDED:

43-2A-5. Any foreign person who is or becomes a resident may acquire and hold agricultural land in this state, upon the same terms as a resident of this state, during the continuance of the residency.

If the foreign person ceases to be a resident, the foreign person has three years from the time the residency is terminated to dispose of agricultural land in excess of one hundred sixty acres.

Section 6. That § 43-2A-6 be AMENDED:

43-2A-6. Any agricultural land owned in violation of this chapter is forfeited to the state. Any agricultural land lease, or easement, held by a prohibited entity in violation of this chapter, is terminated.

The attorney general shall enforce the forfeiture or the termination of a lease or easement. A forfeiture or a termination of a lease or easement may not be adjudged unless the action to enforce is brought within three years after evidence of a violation of this chapter is referred to the attorney general, as provided for in section 7 of this Act. No title to land is invalid or liable to forfeiture by reason of the alienage of any former owner or interested person.

Section 7. That a NEW SECTION be added to chapter 43-2A:

The Department of Agriculture and Natural Resources shall refer evidence of noncompliance to the attorney general, who shall investigate the evidence for violations of this chapter. The attorney general may bring an action pursuant to title 15 to enforce this chapter.

After the attorney general commences an enforcement action, the attorney general may, in addition to any authority granted under §§ 15-6-28.2 to 15-6-28.4, inclusive,

subpoena from a subject foreign entity, foreign government, foreign person, or prohibited entity:

- (1) Real property titles;
- (2) Deeds;
- (3) Real estate transaction documents;
- (4) Financing or financial documents related to the ownership or financing of the agricultural land transaction;
- (5) Documents depicting the identity of any party to the agricultural land transaction; and
- (6) Any other information necessary to demonstrate a violation of § 43-2A-2.

Section 8. That a NEW SECTION be added to chapter 43-2A:

The attorney general shall prove any violation of § 43-2A-2 by a preponderance of the evidence.

Section 9. That a NEW SECTION be added to chapter 43-2A:

A foreign entity, foreign government, foreign person, or prohibited entity, whose agricultural land interest was forfeited by an enforcement action brought by the attorney general, may appeal within thirty days of the judgment, pursuant to chapter 15-26A.

Section 10. That § 43-2A-7 be AMENDED:

43-2A-7. The Department of Agriculture and Natural Resources shall review:

- (1) Any report received by the department in accordance with section 2 of this Act;
- (2) Any report transmitted to the department pursuant to the Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. § 3505 (January 1, 2024);
- (3) Any annual report required by § 59-11-24; and
- (4) Any report voluntarily submitted by a county register of deeds alleging a violation of this chapter.

If the department has reason to believe that a violation of this chapter may have occurred, the department must refer the evidence to the attorney general, who must investigate in accordance with section 7 of this Act.

Section 11. That § 43-2A-8 be AMENDED:

43-2A-8. This chapter does not apply to agricultural land owned by a foreign entity, a foreign government, or a foreign person for an immediate or potential nonagricultural use.

A foreign entity, a foreign government, or a foreign person may hold agricultural land in an amount necessary for the conduct of its nonagricultural business operations. Pending the development of agricultural land for a nonagricultural use, the land may not be used for farming, except under lease to a family farm unit, a family farm corporation, or an authorized farm corporation.

A foreign entity, foreign government, or foreign person developing land for nonagricultural use has five years from acquiring interest to initiate a nonagricultural business operation or be deemed in violation of this chapter.

For purposes of this section, the term "nonagricultural business operation" includes the filing of a permit or an application with this state, a political subdivision of this state, a federally recognized Indian tribe, or a federal agency having jurisdiction over the project for permitting purposes.

All real property owned or held by this state by and through the South Dakota State Cement Plant Commission, as of December 28, 2000, is owned or held by it and its successors in title for immediate or potential use for nonfarming purposes and the real property is necessary for nonfarming business operations.

Section 12. That § 59-11-24 be AMENDED:

59-11-24. Each filing entity or qualified foreign entity, except a bank organized under § 51A-3-1.1, a limited partnership organized pursuant to chapter 48-7, or a series of a limited liability company established under §§ 47-34A-701 to 47-34A-707, inclusive, shall deliver to the Office of the Secretary of State for filing an annual report that sets forth:

- (1) The name of the filing entity or qualified foreign entity;
- (2) The jurisdiction under whose law it is formed;
- (3) The address of its principal office, wherever located;
- (4) The information required by § 59-11-6;
- (5) The names and business addresses of its governors except:
 - (a) If a business corporation has eliminated its board of directors pursuant to § 47-1A-732, the annual report must set forth the names of the shareholders instead; and

- (b) If a limited liability company is member-managed, the names and business addresses of its governors need not be set forth; and
- (6) Whether the entity owns any agricultural land, as defined in § 43-2A-1, and, if so, whether the entity has any foreign beneficial owners.

If the entity referenced in subdivision (6) is a foreign entity or has any foreign beneficial owners, the filing must also include:

- (a) A legal description of the agricultural land or a description of the land's common location;
- (b) The total acreage of agricultural land held by the entity; and
- (c) The current use of the agricultural land.

Information in the annual report must be current as of the date the annual report is executed on behalf of the filing entity or qualified foreign entity. Any other provisions of law notwithstanding, the annual report may be executed by any authorized person. Any amendment filed is a supplement to, and not in place of, the annual filing required by this section.

On or before December first of each year, the Office of the Secretary of State shall make available to the public an aggregated report listing all foreign entities and entities with foreign beneficial ownership that indicated they owned agricultural land during the reporting period. For each entity listed, the report must include the information gathered under this section.

An Act to place restrictions on the ownership of agricultural land.

I certify that the attached Act originated in the:
House as Bill No. 1231

Received at this Executive Office this ____ day of _____, 2024 at _____ M.

Chief Clerk

By _____ for the Governor

Speaker of the House

The attached Act is hereby approved this _____ day of _____, A.D., 2024

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2024 at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1231
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State