

# Restrictions on Corporate Farming and Foreign Ownership

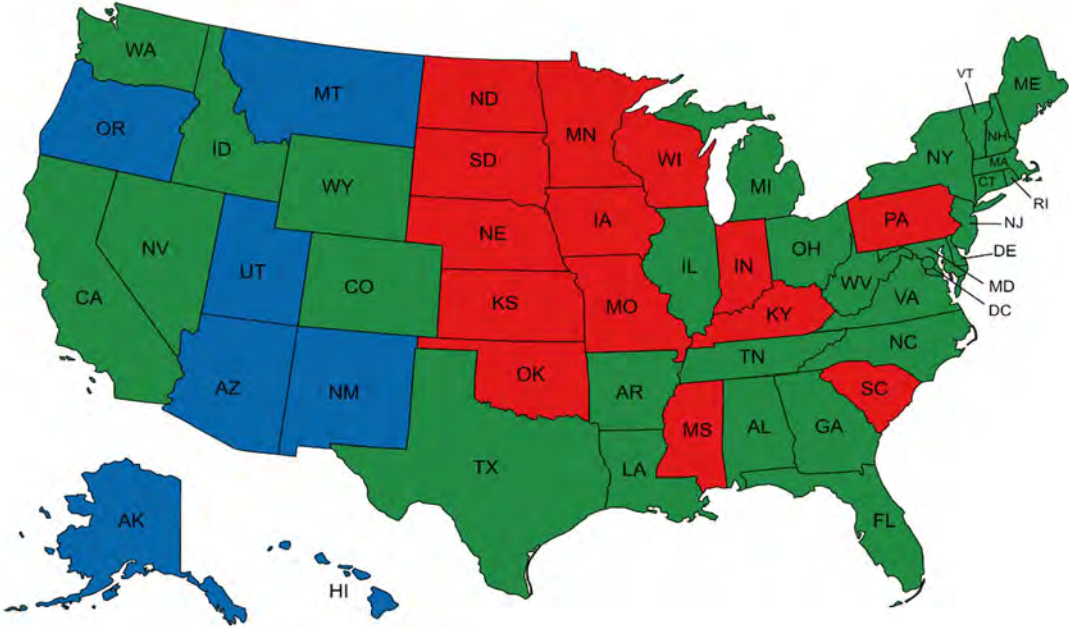
Presented by: Jen Modjeska

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# Foreign Ownership Laws: December 31, 2022



Source: National Agricultural Law Center

# “Traditional” Foreign Ownership Laws (pre-2023)

- “[A] **foreign business entity** may not acquire by grant, purchase, devise, descent, or otherwise any **agricultural land** located within Indiana for the purpose of crop farming or timber production.” (Ind. Code Ann. § 32-22-3-4(a))
- “[N]onresident **aliens** shall not hereafter acquire or hold **land**...” (Miss. Code Ann. § 89-1-23)
- “No **alien**, who is not a resident of this state,...and no **foreign government** shall hereafter acquire **agricultural lands**, or any interest therein, exceeding one hundred sixty acres...” (S.D. Codified Laws § 43-2A-2)
- “[N]o **foreign [entity]** may...own, acquire, or otherwise obtain an interest...to **real estate used for farming** or capable of being used for farming in this state.” (S.D. Codified Laws § 47-9A-3)
- “An **alien**, who is not a resident of a state or territory of the United States..., and a **foreign government** shall not acquire an interest in **agricultural land**, exceeding 100 acres...” (68 Pa. Stat. Ann. § 41)

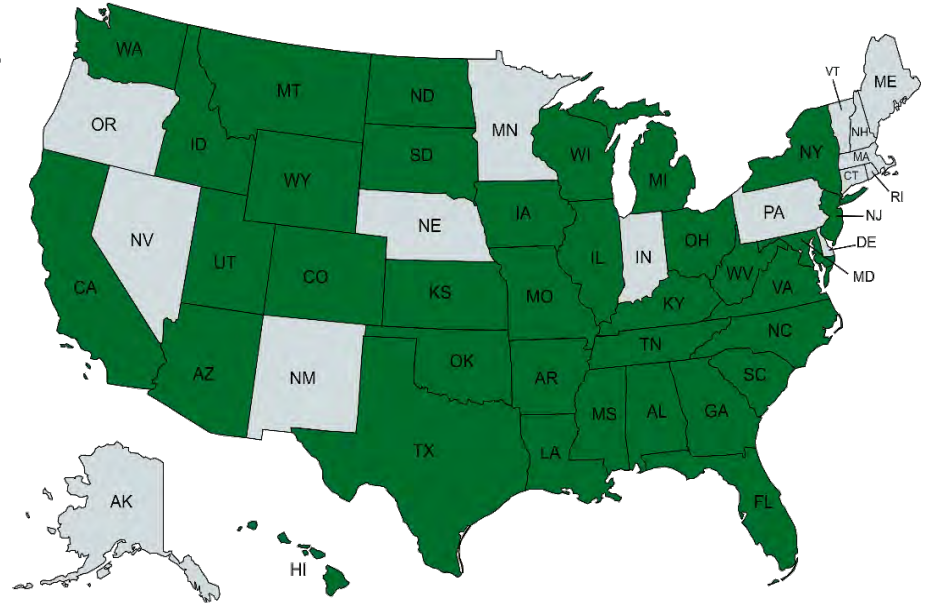
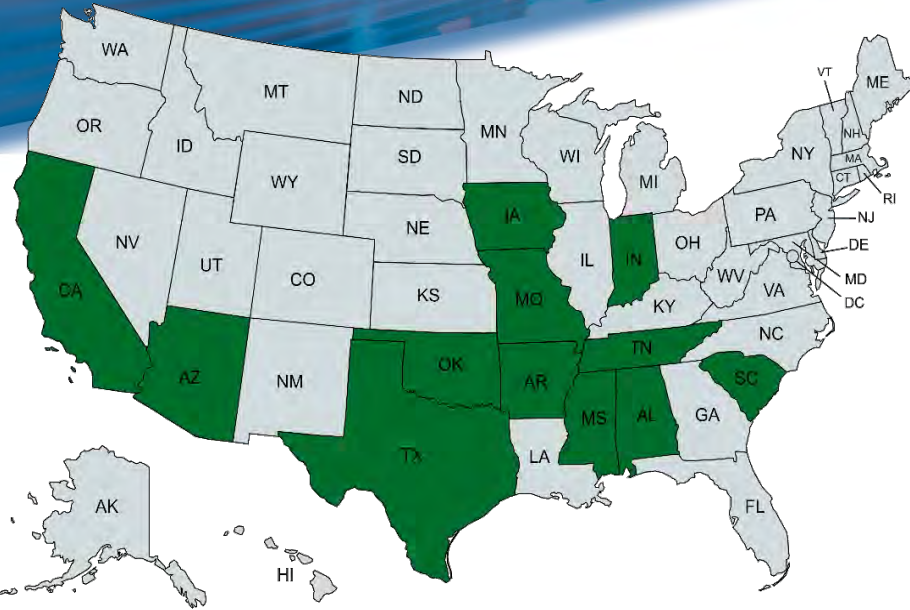


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# Foreign Ownership: Proposed Legislation

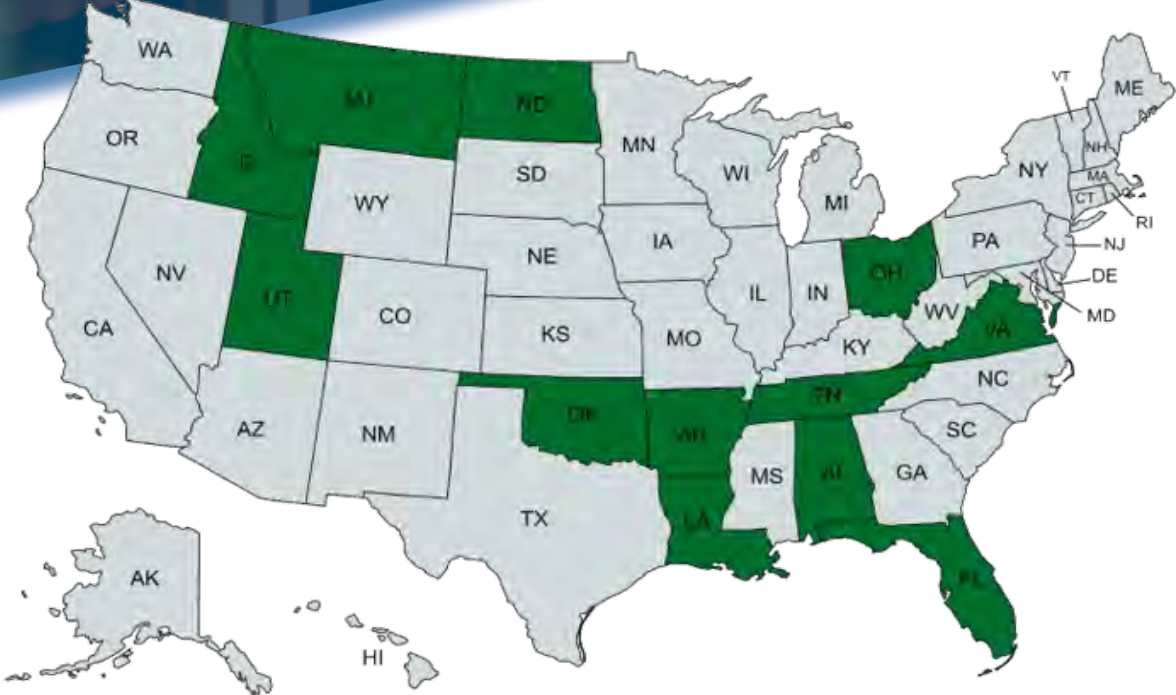
2021–2022

2023





# Foreign Ownership Laws: Enacted in 2023



Source: National Agricultural Law Center



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# “New” Foreign Ownership Laws (2023-2024)

- *Alabama – HB 379 (2023)*
- *Arkansas – SB 383 (2023)*
  - Enforcement action against Syngenta
- *Florida – SB 264 (2023)*
  - *Shen v. Simpson*, No. 4:23-cv-208 (N.D. Fla. 2023)
- *Idaho – HB 173 (2023) & HB 496 (2024 amendment)*



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# “New” Foreign Ownership Laws (2023-2024)

- *Indiana – SB 477 (2023) & HB 1183 (2024)*
- *Iowa – SF 2204 (2024 amendments to existing statute)*
- *Louisiana – HB 537 (2023) & HB 238 (2024)*
- *Mississippi – HB 280 (2023) & SB 2519 (2024)*
- *Missouri – Executive Order 24-01 (2024)*
- *Montana – SB 203 (2023)*
- *Nebraska (L.B. 1120 & 1301) (2024)*
- *New Hampshire (HB 1358) passed August 2024 (study committee)*
- *North Dakota – SB 2371 (2023) & HB 1135 (2023)*
- *Ohio – HB 33 (2023)*



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# “New” Foreign Ownership Laws (2023-2024)

- *Oklahoma - SB 212 (2023)*
- *South Dakota – HB 1189 (2023) & HB 1231 (2024)*
- *Tennessee – HB 40/SB 122 (2023)*
- *Utah – HB 186 (2023) & HB 516 (2024 amendment to 2023 law)*
- *Virginia – SB 1438/HB 2325 (2023)*



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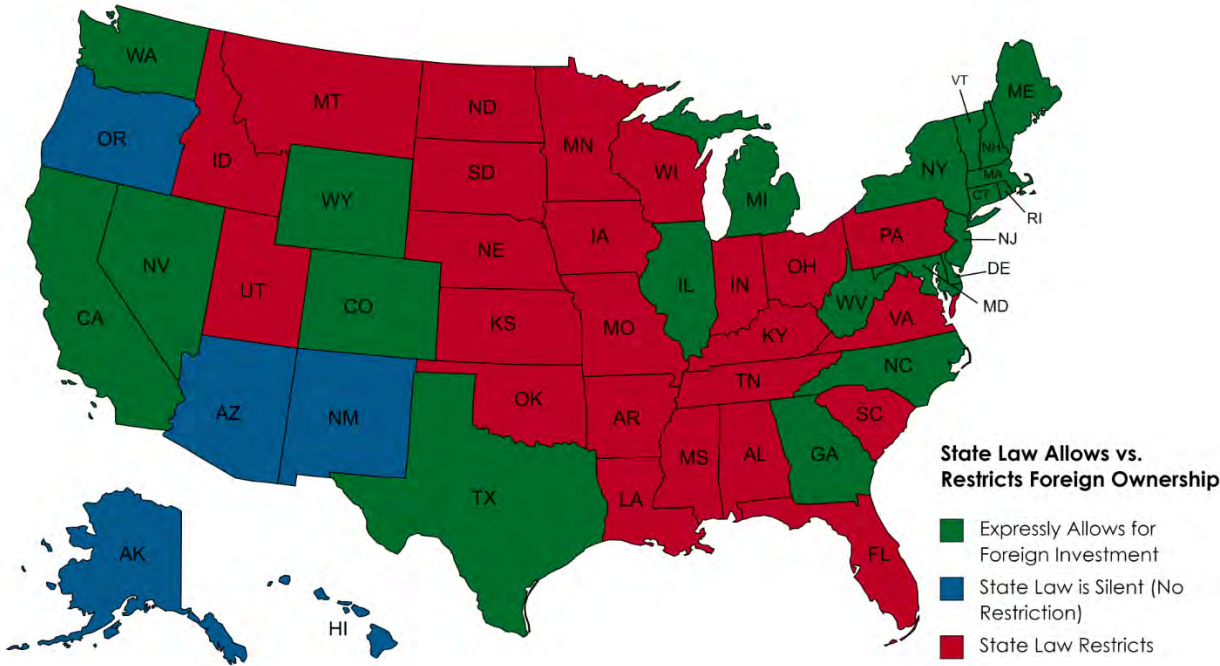
# Noteworthy New Foreign Ownership Law (Georgia)

- Georgia (SB 420) (2024)
  - Formerly permitted ownership by aliens who were subjects of governments at peace with US
  - Now subject to restriction on any nonresident alien (*agent of foreign government or entity owned at least 25% by country designated foreign adversary (15 CFR 7.4)*) re acquisition of any possessory interest in ag land



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# Foreign Ownership Laws: Today (except Georgia)



Source: National Agricultural Law Center

# Baseline Hypothetical

- Land currently used for agricultural purposes
- Located in AnyTown, AnyState.
- All cash purchase by America T. Beautiful, a U.S. citizen.



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# Nuance #1 - AnyTown

- Land currently used for agricultural purposes located in AnyTown, AnyState

BUT

- Purchaser is Xeno Phobia, Inc., a U.S. corporation 100% U.S.-owned (directly and indirectly)



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# Nuance #2 – USA? USA?

- Land currently used for agricultural purposes located in AnyTown, AnyState  
BUT
- Purchaser is Xeno Phobia, LLC, a U.S. corporation that has some level of foreign ownership



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# Nuance #3 – Oh, Canada! Eh?

- Land currently used for agricultural purposes located in AnyTown, AnyState
- All cash purchase by Trudeau Incorporated, a corporation owned in part (directly or indirectly) by the Canadian government.



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# Nuance #4 – Are they for us, or agin’ us?

- Land currently used for agricultural purposes located in AnyTown, AnyState

BUT

- All cash purchaser is citizen of country that has been listed as a “foreign adversary” by U.S. Department of Commerce (§15 CFR 791.4)



- (1) The People's Republic of China, including the Hong Kong Special Administrative Region (China);
- (2) Republic of Cuba (Cuba);
- (3) Islamic Republic of Iran (Iran);
- (4) Democratic People's Republic of Korea (North Korea);
- (5) Russian Federation (Russia); and
- (6) Venezuelan politician Nicolás Maduro (Maduro Regime).



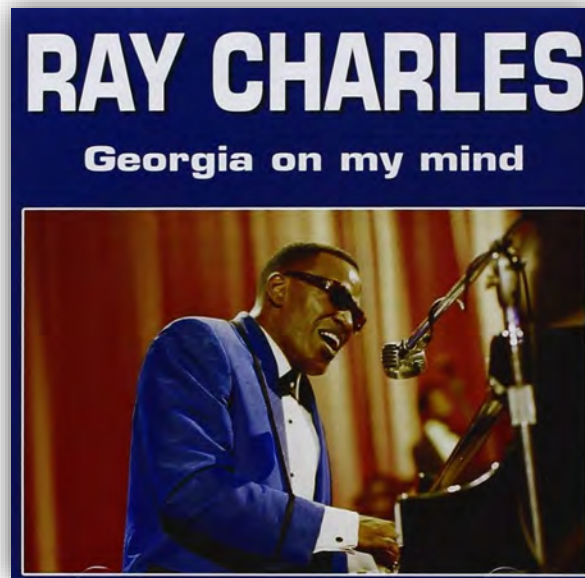
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# Nuance #5 – Georgia (and the 11<sup>th</sup> Circuit) on My Mind

- Land currently used for agricultural purposes
- Purchaser is a corporation owned in part (directly or indirectly) by a Chinese citizen and/or Chinese-based corporation

BUT

- Will be converted to non-agricultural use (e.g., industrial)



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# Nuance #6 – Annie Get Your...Non-Ag Land

- All cash purchase of non-agricultural property in Oklahoma
- Buyer is a corporation owned in part (directly or indirectly) by a citizen or government of one of the “Big Four”



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# Nuance #7 – Forgive Us Of Our Debts

- Purchase of agricultural property in Arkansas with purchase money mortgage by a foreign lender



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# 2021 ALTA Policy Exclusions

## EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
    - i. the occupancy, use, or enjoyment of the Land;
    - ii. the character, dimensions, or location of any improvement on the Land;
    - iii. the subdivision of land; or
    - iv. environmental remediation or protection.
  - b. any governmental forfeiture, police, regulatory, or national security power.
  - c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.
- Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.



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# 2021 ALTA Policy Exclusion (cont'd)

3. Any defect, lien, encumbrance, adverse claim, or other matter:
  - a. created, suffered, assumed, or agreed to by the Insured Claimant;
  - b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - c. resulting in no loss or damage to the Insured Claimant;
  - d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
  - e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.



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# Questions?

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