

GREEN SHEET REDIGEST

HB 125

2023 Regular Session

Echols

AGRICULTURE: Provides relative to agriculture land protection against foreign adversaries.

DIGEST

Proposed law restricts any foreign adversary or prohibited foreign actor 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 prohibited foreign actor to sell or convey ownership interest in agricultural land in this state.

Proposed law authorizes a person to rely conclusively upon an affidavit made by a person intending to acquire or holding an interest in immovable property as long as that person is not a foreign adversary nor a prohibited foreign actor. Provides penalties for giving a false affidavit.

Proposed law provides definitions of "prohibited foreign actor" and "controlling interest".

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 provides that a prohibited foreign actor who violates the provisions of proposed law is subject to a civil penalty of \$50,000 and forfeiture of the agricultural land if such person 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 a prohibited foreign actor 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 or prohibited foreign actor does not create additional liability for those involved in the consummation of a real estate transaction.

Proposed law provides immunity to specific individuals under certain circumstances.

(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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Agriculture, Forestry, Aquaculture, and Rural Development to the re-reengrossed bill

1. Add "prohibited foreign actor" to the list of individuals restricted from directly or indirectly, owning, acquiring, leasing, or otherwise obtaining any interest, in agricultural land.
2. Authorize a person to rely upon an affidavit made by a person intending to acquire or holding an interest in immovable property as long as that person is not a foreign adversary nor a prohibited foreign actor.
3. Provide definitions of "prohibited foreign actor" and "controlling interest".
4. Provide for additional authority of the attorney general.

5. Provide immunity to specific individuals under certain circumstances.
6. Make technical changes.