

2024 Regular Session

HOUSE BILL NO. 238

BY REPRESENTATIVES ECHOLS AND WYBLE

AGRICULTURE: Provides relative to agriculture land protection against foreign adversaries

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AN ACT

To enact Part I-A of Chapter 22 of Title 3 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 3:3613 through 3619, relative to protection of agricultural lands from foreign adversaries; to restrict a foreign adversary with an ownership interest in a corporately formed business from owning or having an interest in agricultural land; to provide for exceptions; to provide for reporting requirements; to provide for definitions; to authorize the attorney general to take certain actions in response to violations involving the acquisition or sale of immovable property by foreign adversaries; to authorize certain courts to issue orders against foreign adversaries; to provide for immunity from liability for certain professionals involved in the consummation of real estate transactions; to provide for forfeiture and civil penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part I-A of Chapter 22 of Title 3 of the Louisiana Revised Statutes of 1950, comprised of R.S. 3:3613 through 3619 is hereby enacted to read as follows:

PART I-A. PROTECTION OF AGRICULTURAL LANDS

§3613. Ownership of agricultural lands by foreign adversaries restricted

A. No foreign adversary or prohibited foreign actor shall directly or indirectly, own, acquire, lease, or otherwise obtain any interest in agricultural land as defined by R.S. 3:3602.

1 B. A prohibited foreign actor may sell or convey an ownership interest in
2 agricultural land in this state.

3 C. A person may conclusively rely upon an affidavit made by a person
4 intending to acquire or holding an interest in immovable property to the effect that
5 the person is not a foreign adversary nor a prohibited foreign actor, and the
6 correctness of those facts may not be controverted against any person relying on the
7 affidavit, unless actual fraud by such person is proven. A person who gives a false
8 affidavit shall be responsible for any loss or damage suffered by any person whose
9 rights are adversely affected.

10 §3614. Definitions

11 For purposes of this Part, the following definitions shall apply:

12 (1) "Controlling interest" means possession of the power to direct or cause
13 the direction of the management or policies of a company, whether through
14 ownership of securities, by contract or otherwise. A person or entity that directly or
15 indirectly has the right to vote fifty percent or more of the voting interests of an
16 entity or is entitled to fifty percent or more of its profits is presumed to possess a
17 controlling interest.

18 (2) "Foreign adversary" means a foreign nongovernment person or foreign
19 government identified as a foreign adversary pursuant to 15 CFR 7.4 including the
20 People's Republic of China and the Hong Kong Special Administrative Region,
21 Republic of Cuba, Islamic Republic of Iran, Democratic People's Republic of Korea,
22 Russian Federation, and Venezuela under the leadership of Nicolas Maduro. It shall
23 not include a person that is a legal permanent resident with lawful presence in the
24 United States.

25 (3) "Prohibited foreign actor" means a corporation, limited liability
26 company, pension or investment fund, trust, or limited partnership in which a foreign
27 adversary has a controlling interest.

1 §3615. Exceptions

2 The provisions of this Part shall not apply to foreign business entities that
3 might otherwise qualify as a foreign adversary owning agricultural lands under the
4 following circumstances:

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

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

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

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

13 §3616. Civil penalties; actions

14 A.(1) A prohibited foreign actor that violates the provisions of this Part shall
15 be subject to a civil penalty of fifty thousand dollars and forfeiture if such entity does
16 not divest itself of agricultural land acquired in violation of this Part within one year
17 after judgment is entered in this action.

18 (2) Any civil penalty collected pursuant to this Section shall be paid to the
19 attorney general to offset costs associated with enforcement of provisions contained
20 in this Section.

21 B. A party to the contract to purchase, lease, or otherwise acquire immovable
22 property may rescind the contract prior to the transfer of the immovable property if
23 the party determines that a foreign adversary has an ownership interest that violates
24 the provisions of this Section.

25 C. The attorney general may bring an action for injunctive relief in the name
26 of the state against the foreign adversary or prohibited foreign actor to restrain and
27 enjoin the sale or lease prior to the transfer of the immovable property or to restrain
28 or enjoin the lease. The attorney general shall serve the petition for injunctive relief
29 upon the parties to the transaction. Upon receipt of the petition, a party may rescind
30 the contract to purchase, lease, or otherwise acquire immovable property pursuant

1 to Subsection B of this Section. The attorney general shall file a notice of lis
2 pendens in the mortgage records of the parish in which the property is located no
3 later than three business days after instituting the proceeding. The institution of the
4 action and the filing of the notice of lis pendens shall have no effect on persons
5 obtaining rights in the immovable property prior to the filing of the notice of the
6 pending action.

7 D.(1) The attorney general may serve an investigative demand or subpoena
8 for deposition testimony to any person who is believed to have information,
9 documentary material, or physical evidence relevant to the alleged or suspected
10 attempt to enter into, conspiracy to enter into, or entering into a contract to purchase,
11 lease, or otherwise acquire immovable property in this state if all of the following
12 exist:

13 (a) The attorney general has evidence that a foreign adversary or a prohibited
14 foreign actor is attempting to enter into, conspiring to enter into, or has entered into
15 a contract to purchase, lease, or otherwise acquire immovable property in this state.

16 (b) The attorney general believes it to be in the public interest that an
17 investigation should be made to ascertain whether a foreign adversary or a prohibited
18 foreign actor in fact is attempting to enter into, conspiring to enter into, or has
19 entered into a contract to purchase, lease, or otherwise acquire immovable property
20 in this state.

21 (2)(a) Such investigative demand or subpoena for deposition testimony shall
22 contain a description of the attempt to enter into, conspiracy to enter into, or entering
23 into a contract to purchase, lease, or otherwise acquire immovable property in this
24 state under investigation and shall require such person to furnish, under oath or
25 otherwise, a report in writing setting forth the relevant facts and circumstances of
26 which he has knowledge, or to produce relevant documentary material or physical
27 evidence for examination, at such reasonable time and place as may be stated in the
28 investigative demand that is the subject matter of the investigation. Nonpublic
29 personal information may be excluded from the report, deposition, or other
30 testimony.

1 (b) Any subpoena for deposition testimony issued pursuant to this Section
2 shall include a notice informing the prospective deponent of the deponent's right to
3 counsel at the deposition with an opportunity for cross-examination, and the
4 deposition shall be conducted at the deponent's principal place of business,
5 deponent's place of residence, deponent's domicile, or, if agreeable to the deponent,
6 at some other place convenient to the attorney general and the deponent's attorney.

7 (c) Any such deposition shall be held at a reasonable time, as may be stated
8 in the investigative subpoena. At any time before the return date specified in the
9 investigative demand or before the noticed deposition, or within twenty days after
10 the demand or deposition notice has been served, whichever is shorter, a petition
11 stating good cause for a protective order to extend the return date, or to modify or set
12 aside the demand or deposition notice, may be filed in the district court having civil
13 jurisdiction in the parish where the person served with the demand resides, is
14 domiciled, or has his principal place of business located.

15 (d) If no protective order from the court is secured and the written request
16 by the attorney general is not complied with by the return date thereof, the attorney
17 general may apply to the court for an order compelling compliance with the
18 investigative demand or deposition notice.

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

26 (f) Any disobedience of an order compelling compliance under this Section
27 by any courts shall be punished as a contempt of court.

28 E. Service of any demand, subpoena, or petition shall be made in the manner
29 provided by law.

1 F. Any immovable property acquired by a foreign adversary or a prohibited
2 foreign actor is subject to divestiture or civil forfeiture to the state.

3 G. In the enforcement of this Part, the attorney general may use all other
4 procedures and authority for investigation, supervision, and conduct of actions on
5 behalf of the state as provided by law.

6 H. A court petitioned by the attorney general may issue such additional
7 orders or render judgments against the foreign adversary or the prohibited foreign
8 actor as may be necessary to protect the public. Such orders shall include but not be
9 limited to the following:

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

12 (2) Appointment of a receiver.

13 (3) Dissolution of domestic corporations or associations.

14 (4) Suspension or termination of the right of foreign corporations or
15 associations to do business in this state.

16 (5) Restitution to compensate any person who did not knowingly enter into
17 a transaction with the foreign adversary or a prohibited foreign actor for any loss,
18 expenses, court costs, or attorney fees which may have been incurred because of the
19 sale being void or enjoined.

20 (6) Civil forfeiture of any immovable property acquired by the foreign
21 adversary or the prohibited foreign actor in accordance with the provisions of this
22 Section.

23 I.(1) If, after examining the evidence, the attorney general concludes that a
24 violation of this Part occurred, the attorney general shall order the foreign adversary
25 or prohibited foreign actor to divest himself of all interests in the land within ninety
26 days after service of the order upon the foreign adversary or prohibited foreign actor.

27 (2) The order of divestiture, as described in Paragraph (1) of this Subsection,
28 shall be served personally or by certified mail.

1 J.(1) If the holder of the interest that is ordered to be divested disputes the
2 determination of the attorney general that a violation of this Part occurred, the holder
3 may submit a written request for a judicial determination to the attorney general.

4 (2) The written request, as described in Paragraph (1) of this Subsection,
5 shall be delivered to the attorney general within sixty days after service of the order
6 of divestiture. If no written request is received within this time, the determination
7 of the attorney general shall become final.

8 (3) A foreign adversary, prohibited foreign actor, or any holder of interest
9 may seek judicial review after the attorney general's final determination.

10 (4) Any appeal from the final determination of the attorney general shall be
11 in accordance with the Administrative Procedure Act.

12 K.(1) If the foreign adversary or prohibited foreign actor fails to divest
13 himself of all interests pursuant to Paragraph (I)(1) of this Section or if a holder of
14 the interest submits a written request pursuant to Subsection J of this Section, the
15 attorney general shall bring an action to divest the interest.

16 (2) The attorney general may initiate a civil action pursuant to this Section
17 in either the parish of East Baton Rouge or a parish where a portion of the
18 immovable property is located.

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

23 L. If the holder of the interest in immovable property has submitted a written
24 request pursuant to Subsection J of this Section, the court shall conduct an
25 evidentiary hearing to determine, by a preponderance of the evidence, if a violation
26 of this Part occurred, prior to taking any other action. If the court determines that
27 there has been no violation, the court shall dismiss the action and expunge the notice
28 of pending action.

29 M. If a court of competent jurisdiction determines that a violation of this Part
30 occurred, the court shall order that such immovable property be sold by the sheriff

1 in the parish where the immovable property is located in the same manner as a
2 judicial sale in accordance with the requirements of Book 4, Title 2, Chapter 2 of the
3 Code of Civil Procedure.

4 §3617. Protection of ownership interests

5 A. All forfeitures or dispositions under this Part shall be made with due
6 provisions for the rights of any person who did not knowingly enter into a transaction
7 with the foreign adversary or the prohibited foreign actor.

8 B. No mortgage, lien, privilege, or other security interest recognized under
9 the laws of this state and no ownership interest in indivision, lease, servitude,
10 usufruct, right of use, bond for deed, or other real right shall be affected by the
11 forfeiture, seizure, or divestiture provisions of this Part.

12 C. No forfeiture or disposition under this Part shall affect the rights of any
13 person who did not knowingly enter into a transaction with the foreign adversary or
14 a prohibited foreign actor.

15 D. The attorney general shall, within three business days of instituting any
16 action under this Part, file a copy of the petition or other pleading instituting the
17 action in the mortgage records of the parish in which any related immovable property
18 is situated.

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

22 F. Notice of pending forfeiture, seizure, or divestiture shall be provided by
23 the attorney general to the holder of any interest in the immovable property being
24 seized.

25 G. The attorney general shall cause the petition or other pleading to be
26 cancelled from the mortgage records no later than three business days after judgment
27 is rendered or after a request for cancellation is made by any interested party seeking
28 to transfer the property to a person other than a foreign adversary or a prohibited
29 foreign actor. If the petition or other pleading relates to a property interest vested in
30 a foreign adversary or a prohibited foreign actor, the attorney general may petition

1 the court for an order requiring the proceeds of the sale attributable to the property
 2 interest of the foreign adversary or a prohibited foreign actor after the deduction of
 3 payments to mortgagees, lienholders, person providing services in connection with
 4 the transfer of the property, and credits to the purchaser relating to tax and other
 5 customary prorations, be deposited in the registry of the court in which the
 6 proceeding is pending.

7 §3618. Limitation of liability for failure to identify a foreign adversary or prohibited
 8 foreign actor

9 No attorney, title insurer, title insurance producer, title insurance agency
 10 producer, lender, mortgage servicer, notary public, real estate agent, real estate
 11 broker, seller, or lessor, or any of their directors, officers, or employees shall have
 12 a duty to make any investigation as to whether a party to a transaction involving
 13 immovable property is a foreign adversary or prohibited foreign actor, nor shall any
 14 such person be liable for failing to identify that a party to a transaction involving
 15 immovable property is a foreign adversary or prohibited foreign actor.

16 §3619. Effectiveness

17 The provisions of this Part shall apply only to property acquired by a foreign
 18 adversary or prohibited foreign actor after August 1, 2024. If a foreign adversary or
 19 prohibited foreign actor acquires immovable property despite the prohibitions
 20 contained in this Part, the property shall only be subject to forfeiture during the
 21 period in which the foreign adversary or prohibited foreign actor owns the property.
 22 Rights in immovable property shall not be void or voidable because the property or
 23 right therein previously was held by a foreign adversary or prohibited foreign actor.

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 238 Engrossed

2024 Regular Session

Echols

Abstract: Restricts ownership of agricultural lands by foreign adversaries.

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 allows a prohibited foreign actor to sell or convey its ownership interest of agricultural land.

Proposed law allows a person to conclusively rely upon an affidavit made by a person who is intending to acquire or hold an interest in immovable property only if that person is not a foreign adversary nor a prohibited foreign. Further provides an exception for when fraud is committed.

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 defines "prohibited foreign actor" as a corporation, LLC, pension or investment fund, trust, or limited liability partnership in which a foreign adversary has a controlling interest.

Proposed law defines "controlling interest" as the power to direct the management or policies of a company.

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 any prohibited foreign actor 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.

Proposed law authorizes a party to a contract to purchase, lease or acquire immovable property rescind such contract for violations of proposed law.

Proposed law establishes a process for the attorney general to bring an action for injunctive relief against the foreign adversary or a prohibited foreign actor to restrain and enjoin the sale or lease of immovable property. Provides certain requirements for the attorney general to serve an investigative demand or subpoena for deposition testimony of a person who has information or other evidence of an alleged violation of proposed law. Further provides form, notice, and service requirements for such investigative demands and subpoenas. Authorizes the attorney general to apply to the court for an order compelling compliance with the investigative demand or subpoena if no protective order is secured. Further authorizes the attorney general to use other procedures authorized by law for a violation of

proposed law. 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 requires the attorney general to order the foreign adversary or prohibited foreign actor to divest himself of all interest in the land within ninety days if the attorney general concludes that a violation of proposed law has occurred. 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 provides required legal procedures for forfeitures.

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. 3:3613-3619)