

RÉSUMÉ DIGEST

HB 125

2023 Regular Session

Echols

Proposed law would have restricted 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 R.S. 3:3602.

Proposed law would have authorized a prohibited foreign actor to sell or convey ownership interest in agricultural land in this state.

Proposed law would have authorized a person to rely conclusively upon an affidavit made by a person intending to acquire or one holding an interest in immovable property as long as that person was not a foreign adversary nor a prohibited foreign actor. Proposed law would have provided penalties for giving a false affidavit.

Proposed law would have defined "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. Proposed law would have specified that the definition excluded a person that is a legal permanent resident with lawful presence in the U.S.

Proposed law would have defined a "prohibited foreign actor" as a corporation, limited liability company, pension or investment fund, trust, or limited partnership in which a foreign adversary had a controlling interest.

Proposed law would have defined "controlling interest" as a possession of power to direct or cause the direction of the management or policies of a company.

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

Proposed law would have provided that a prohibited foreign actor who violated the provisions of proposed law was subject to a civil penalty of \$50,000 and forfeiture of the agricultural land if such person did not divest itself of land acquired in violation of proposed law within one year after judgment was entered in this action. Proposed law would have established requirements for rescinding contracts for violations of proposed law.

Proposed law would have established a process for the attorney general to bring an action for injunctive relief that involved discovery through investigative demands and depositions and to compel discovery through a rule to show cause if a party failed to comply. Proposed law would have authorized the attorney general to enforce proposed law through lawful means that were available to him. Proposed law would have authorized 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 would have provided a process for the attorney general to cancel a mortgage and petition the court for proceeds from the sale of immovable property to be deposited in the registry of the Court.

Proposed law would have authorized 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 would have required those parties affiliated with a property transaction to investigate whether a party to a transaction involving immovable property was a foreign adversary or a prohibited foreign actor.

Proposed law would have specified the persons who do not have a duty to investigate as to whether a party to a transaction involving immovable property was a foreign adversary or a prohibited foreign actor. Proposed law would have provided immunity to such persons for failure to identify a foreign adversary or a prohibited foreign actor.

Proposed law would have applied only to property acquired by a foreign adversary or prohibited foreign actor after Aug. 1, 2023. Proposed law would have provided certain protections for ownership interests if the immovable property was previously held by a foreign adversary or prohibited foreign actor.

(Proposed to add R.S. 3:3613)

VETO MESSAGE: "This bill would have prohibited the acquisition, purchase, or ownership of agricultural land by a "foreign adversary or prohibited foreign actor." The bill is similar to House Bill No. 537, which I signed, rendering House Bill No. 125 unnecessary. House Bill No. 537 prohibits the purchasing or acquisition of immovable property by foreign adversaries, which would include agricultural land.

Despite their similarities, this bill differs from House Bill No. 537 in several problematic ways. First, House Bill No. 537 defines "foreign adversary" by referencing 15 CFR 7.4, the federal definition of foreign adversary that is subject to change. While House Bill No. 125 also references 15 CFR 7.4, it specifically names each of the governments currently included in 15 CFR 7.4. Should the federal government remove from the list of foreign adversaries any government currently included, Louisiana would continue to prohibit that government or people from that country from acquiring or owning agricultural land were this bill to be enacted.

Furthermore, House Bill No. 537 defines "person connected with a foreign adversary" as a juridical person. It does not apply to ownership of property by natural persons. Further, juridical persons categorized as persons connected with a foreign adversary are not prohibited outright from ownership of property as long as any ownership interest by a foreign adversary of the juridical entity is limited to less than fifty percent. House Bill No. 125 includes no such definition.

Accordingly, House Bill No. 125 will not become law."