

2023 Regular Session

HOUSE BILL NO. 125

BY REPRESENTATIVES ECHOLS, GAROFALO, AND THOMPSON

1 AN ACT

2 To enact R.S. 3:3613, relative to protection of agricultural lands from foreign adversaries;
3 to restrict a foreign adversary with an ownership interest in a corporately formed
4 business from owning or having an interest in agricultural land; to provide for
5 exceptions; to provide for reporting requirements; to provide for definitions; to
6 authorize the attorney general to take certain actions in response to violations
7 involving the acquisition or sale of immovable property by foreign adversaries; to
8 authorize certain courts to issue orders against foreign adversaries; to provide for
9 immunity from liability for certain professionals involved in the consummation of
10 real estate transactions; to provide for forfeiture and civil penalties; and to provide
11 for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 3:3613 is hereby enacted to read as follows:

14 §3613. Ownership of agricultural lands by foreign adversaries restricted;
15 exceptions; reporting requirements; civil penalty

16 A.(1) No foreign adversary or prohibited foreign actor shall directly or
17 indirectly, own, acquire, lease, or otherwise obtain any interest in agricultural land
18 as defined by R.S. 3:3602.

19 (2) A prohibited foreign actor may sell or convey an ownership interest in
20 agricultural land in this state.

21 (3) A person may conclusively rely upon an affidavit made by a person
22 intending to acquire or holding an interest in immovable property to the effect that
23 the person is not a foreign adversary nor a prohibited foreign actor, and the
24 correctness of those facts may not be controverted against any person relying on the

1 affidavit, unless actual fraud by such person is proven. A person who gives a false
2 affidavit shall be responsible for any loss or damage suffered by any person whose
3 rights are adversely affected.

4 (4) For purposes of this Section, the term "foreign adversary" means a
5 foreign non-government person or foreign government identified as a foreign
6 adversary pursuant to 15 CFR 7.4 including the People's Republic of China and the
7 Hong Kong Special Administrative Region, Republic of Cuba, Islamic Republic of
8 Iran, Democratic People's Republic of Korea, Russian Federation, and Venezuela
9 under the leadership of Nicolas Maduro. It shall not include a person that is a legal
10 permanent resident with lawful presence in the United States.

11 (5) For purposes of this Section, the term "prohibited foreign actor" means
12 a corporation, limited liability company, pension or investment fund, trust, or limited
13 partnership in which a foreign adversary has a controlling interest.

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

20 B. The provisions of this Section shall not apply to foreign business entities
21 that might otherwise qualify as a foreign adversary owning agricultural lands under
22 the following circumstances:

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

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

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

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

1 C. The provisions of this Section shall not apply to lease of land that is used
2 for agricultural research and development, experimental purposes, including testing,
3 developing, and or producing all crop protection inputs for sale or resale to farmers,
4 including but not limited to seeds, plants, pesticides, soil amendments, biologicals,
5 and fertilizers, provided that the acreage leased by the lease does not exceed 100
6 acres in the aggregate

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

11 (b) Any civil penalty collected pursuant to this Paragraph shall be paid to the
12 attorney general to offset costs associated with enforcement of provisions contained
13 in this Section.

14 (2) A party to the contract to purchase, lease, or otherwise acquire
15 immovable property may rescind the contract prior to the transfer of the immovable
16 property if the party determines that a foreign adversary has an ownership interest
17 that violates the provisions of this Section.

18 (3) The attorney general may bring an action for injunctive relief in the name
19 of the state against the foreign adversary or prohibited foreign actor to restrain and
20 enjoin the sale or lease prior to the transfer of the immovable property or to restrain
21 or enjoin the lease. The attorney general shall serve the petition for injunctive relief
22 upon the parties to the transaction. Upon receipt of the petition, a party may rescind
23 the contract to purchase, lease or otherwise acquire immovable property pursuant to
24 Paragraph (2) of this Subsection. The attorney general shall file a notice of lis
25 pendens in the mortgage records of the parish in which the property is located no
26 later than three business days after instituting the proceeding. The institution of the
27 action and the filing of the notice of lis pendens shall have no effect on persons
28 obtaining rights in the immovable property prior to the filing of the notice of the
29 pending action.

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

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

10 (ii) The attorney general believes it to be in the public interest that an
11 investigation should be made to ascertain whether a foreign adversary or a prohibited
12 foreign actor in fact is attempting to enter into, conspiring to enter into, or has
13 entered into a contract to purchase, lease, or otherwise acquire immovable property
14 in this state.

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

25 (ii) Any subpoena for deposition testimony issued pursuant to this Section
26 shall include a notice informing the prospective deponent of the deponent's right to
27 counsel at the deposition with an opportunity for cross-examination, and the
28 deposition shall be conducted at the deponent's principal place of business, deponent's
29 place of residence, deponent's domicile, or, if agreeable to the deponent, at some
30 other place convenient to the attorney general and the deponent's attorney.

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

9 (iv) If no protective order from the court is secured and the written request
10 by the attorney general is not complied with by the return date thereof, the attorney
11 general may apply to the court for an order compelling compliance with the
12 investigative demand or deposition notice.

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

20 (vi) Any disobedience of an order compelling compliance under this Section
21 by any courts shall be punished as a contempt of court.

22 (5) Service of any demand, subpoena, or petition shall be made in the
23 manner provided by law.

24 (6) Any immovable property acquired by a foreign adversary or a prohibited
25 foreign actor is subject to divestiture or civil forfeiture to the state.

26 (7) The attorney general may use, in the enforcement of this Section, all
27 other procedures and authority for investigation, supervision, and conduct of actions
28 on behalf of the state as provided by law.

29 (8) A court petitioned by the attorney general may issue such additional
30 orders or render judgments against the foreign adversary or the prohibited foreign

1 actor as may be necessary to protect the public. Such orders shall include but not be
2 limited to the following:

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

5 (b) Appointment of a receiver.

6 (c) Dissolution of domestic corporations or associations.

7 (d) Suspension or termination of the right of foreign corporations or
8 associations to do business in this state.

9 (e) Restitution to compensate any person who did not knowingly enter into
10 a transaction with the foreign adversary or person connected with the foreign
11 adversary for any loss, expenses, court costs, or attorney fees which may have been
12 incurred because of the sale being void or enjoined.

13 (f) Civil forfeiture of any immovable property acquired by the foreign
14 adversary or the prohibited foreign actor in accordance with the provisions of this
15 Section.

16 (9)(a) If, after examining the evidence, the attorney general concludes that
17 a violation of this Section occurred, the attorney general shall order the foreign
18 adversary or prohibited foreign actor to divest himself of all interests in the land
19 within ninety days after service of the order upon the foreign adversary or prohibited
20 foreign actor.

21 (b) The order of divestiture, as described in Subparagraph (a) of this
22 Paragraph, shall be served personally or by certified mail.

23 (10)(a) If the holder of the interest that is ordered to be divested disputes the
24 determination of the attorney general that a violation of this Section occurred, the
25 holder may submit a written request for a judicial determination to the attorney
26 general.

27 (b) The written request, as described in Subparagraph (a) of this Paragraph,
28 shall be delivered to the attorney general within sixty days after service of the order
29 of divestiture. If no written request is received within this time, the determination of
30 the attorney general shall become final.

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

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

5 (11)(a) If the foreign adversary or prohibited foreign actor fails to divest
6 himself of all interests pursuant to Subparagraph (9)(a) of this Subsection or if a
7 holder of the interest submits a written request pursuant to Paragraph (10) of this
8 Subsection, the attorney general shall bring an action to divest the interest.

9 (b) The attorney general may initiate a civil action pursuant to this Section
10 in either the parish of East Baton Rouge or a parish where a portion of the
11 immovable property is located.

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

16 (12) If the holder of the interest in immovable property has submitted a
17 written request pursuant to Paragraph (10) of this Subsection, the court shall conduct
18 an evidentiary hearing to determine, by a preponderance of the evidence, if a
19 violation of this Section occurred, prior to taking any other action. If the court
20 determines that there has been no violation, the court shall dismiss the action and
21 expunge the notice of pending action.

22 (13) If a court of competent jurisdiction determines that a violation of this
23 Section occurred, the court shall order that such immovable property be sold by the
24 sheriff in the parish where the immovable property is located in the same manner as
25 a judicial sale in accordance with the requirements of Book 4, Title 2, Chapter 2 of
26 the Code of Civil Procedure.

27 E.(1) All forfeitures or dispositions under this Section shall be made with
28 due provisions for the rights of any person who did not knowingly enter into a
29 transaction with the foreign adversary or the prohibited foreign actor.

1 (2) No mortgage, lien, privilege, or other security interest recognized under
2 the laws of this state and no ownership interest in indivision, lease, servitude,
3 usufruct, right of use, bond for deed, or other real right shall be affected by the
4 forfeiture, seizure, or divestiture provisions of this Section.

5 (3) No forfeiture or disposition under this Section shall affect the rights of
6 any person who did not knowingly enter into a transaction with the foreign adversary
7 or person connected with the foreign adversary.

8 (4) The attorney general shall, within three business days of instituting any
9 action under this Section, file a copy of the petition or other pleading instituting the
10 action in the mortgage records of the parish in which any related immovable property
11 is situated.

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

15 (6) Notice of pending forfeiture, seizure, or divestiture shall be provided by
16 the attorney general to the holder of any interest in the immovable property being
17 seized.

18 (7) The attorney general shall cause the petition or other pleading to be
19 cancelled from the mortgage records no later than three business days after judgment
20 is rendered or after a request for cancellation is made by any interested party seeking
21 to transfer the property to a person other than a foreign adversary or a prohibited
22 foreign actor. If the petition or other pleading relates to a property interest vested in
23 a foreign adversary or a prohibited foreign actor, the attorney general may petition
24 the court for an order requiring the proceeds of the sale attributable to the property
25 interest of the foreign adversary or a prohibited foreign actor after the deduction of
26 payments to mortgagees, lienholders, person providing services in connection with
27 the transfer of the property, and credits to the purchaser relating to tax and other
28 customary prorations, be deposited in the registry of the court in which the
29 proceeding is pending.

1 E. No attorney, title insurer, title insurance producer, title insurance agency
 2 producer, lender, mortgage servicer, notary public, real estate agent, real estate
 3 broker, seller, or lessor, or any of their directors, officers, or employees shall have
 4 a duty to make any investigation as to whether a party to a transaction involving
 5 immovable property is a foreign adversary or prohibited foreign actor, nor shall any
 6 such person be liable for failing to identify that a party to a transaction involving
 7 immovable property is a foreign adversary or prohibited foreign actor.

8 F. The provisions of this Section shall apply only to property acquired by a
 9 foreign adversary or prohibited foreign actor after August 1, 2023. If a foreign
 10 adversary or prohibited foreign actor acquires immovable property despite the
 11 prohibitions contained herein, the property shall only be subject to forfeiture during
 12 the period in which the foreign adversary or prohibited foreign actor owns the
 13 property. Rights in immovable property shall not be void or voidable because the
 14 property or right therein previously was held by a foreign adversary or prohibited
 15 foreign actor.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____