



## 2024 South Dakota Legislature

# House Bill 1231

Introduced by: **Representative** Wangsness

1 **An Act to place restrictions on the ownership of agricultural land.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 43-2A-1 be AMENDED:**

4 **43-2A-1.** ~~For purposes of this chapter, the term "agricultural land" means land capable~~  
 5 ~~of use in the production of agricultural crops, timber, livestock or livestock~~  
 6 ~~products, poultry or poultry products, milk or dairy products, or fruit and other~~  
 7 ~~horticultural products but does not include any royalty interest, any oil, gas, or~~  
 8 ~~other mineral interest, or any lease, right of way, option, or easement relating~~  
 9 ~~thereto, or any land zoned by a local governmental unit for a use other than and~~  
 10 ~~nonconforming with agricultural use~~

11 Terms used in this chapter mean:

12 (1) "Agricultural land," land capable of being used in the production of:

13 (a) Agricultural crops;

14 (b) Fruit and other horticultural products;

15 (c) Livestock or livestock products;

16 (d) Milk or dairy products;

17 (e) Poultry or poultry products; or

18 (f) Timber;

19 (2) "Foreign entity," any organization that:

20 (a) Is registered outside of the United States or its territories; or

21 (b) Has more than ten percent ownership by a foreign government, foreign  
 22 person, or any combination thereof. However, this permissive threshold  
 23 does not apply to a prohibited entity;

24 (3) "Foreign government," a government or state-controlled enterprise of a  
 25 government, other than the United States, its states, its territories, or its federally  
 26 recognized Indian tribes;

1 (4) "Foreign person," a natural person who is not a United States citizen or a resident;

2 (5) "Prohibited entity," a foreign entity from, foreign government from, or foreign  
3 person from:

4 (a) The People's Republic of China;

5 (b) The Republic of Cuba;

6 (c) The Islamic Republic of Iran;

7 (d) The Democratic People's Republic of Korea;

8 (e) The Russian Federation; or

9 (f) The Bolivarian Republic of Venezuela; and

10 (6) "Resident", any individual who is a legal resident of this state, of another state or  
11 territory of the United States, or of the District of Columbia, and makes no claim  
12 of residency in a foreign country.

13 **Section 2. That a NEW SECTION be added to chapter 43-2A:**

14 Any person required to submit a report to the United States Department of  
15 Agriculture in accordance with the Agricultural Foreign Investment Disclosure Act of 1978,  
16 7 U.S.C. § 3501 et seq. (January 1, 2024) shall file a copy of the required report with the  
17 secretary of the Department of Agriculture and Natural Resources, within the time period  
18 required for submission under 7 U.S.C. § 3501.

19 **Section 3. That § 43-2A-2 be AMENDED:**

20 ~~43-2A-2. No alien, who is not a resident of this state, of some state or territory of~~  
21 ~~the United States or of the District of Columbia; and no foreign government shall hereafter~~  
22 ~~acquire agricultural lands, or any interest therein, exceeding one hundred sixty acres,~~  
23 ~~except such as may be acquired by devise or inheritance, and such as may be held as~~  
24 ~~security for indebtedness. The provisions of this section do not apply to citizens, foreign~~  
25 ~~governments or subjects of a foreign country.~~The following provisions apply to the  
26 ownership or leasing of agricultural land in this state:

27 (1) A prohibited entity may not own agricultural land in this state;

28 (2) A prohibited entity may not lease or hold an easement on agricultural land in this  
29 state, unless:

30 (a) The lease is exclusively for agricultural research purposes and encumbers  
31 no more than three hundred and twenty acres; or

1           (b) The lease is exclusively for contract feeding of livestock, at an animal  
2           feeding operation, by a family farm unit, a family farm corporation, or an  
3           authorized farm corporation;

4       (3) Excluding a prohibited entity, a foreign entity, foreign government, or foreign  
5       person may not own more than one hundred and sixty acres of agricultural land in  
6       this state, provided this limitation does not include:

7           (a) Agricultural land acquired by devise or inheritance; or

8           (b) Agricultural land held as security for indebtedness; and

9       (4) Excluding a prohibited entity, there is no restriction on easements or the number  
10       of acres of agricultural land that a foreign entity, foreign government, or foreign  
11       person may lease.

12       This section does not apply to a foreign entity, foreign government, or foreign  
13       person whose right to hold land-are is secured by treaty.

14       **Section 4. That § 43-2A-3 be AMENDED:**

15           ~~43-2A-3. All nonresident aliens who may acquire agricultural lands~~Any foreign  
16       entity, foreign government, foreign person, or prohibited entity that acquires agricultural  
17       land in this state by devise or descent-shall have, in violation of this chapter, has three  
18       years from the date of so acquiring such title in which to alienate such agricultural lands  
19       transfer of ownership to dispose of the land.

20           Any foreign entity who violates this chapter by other means has two years from  
21       the initial date of the violation to comply with this chapter or to dispose of the property.

22       **Section 5. That § 43-2A-5 be AMENDED:**

23           ~~43-2A-5. Any nonresident alien~~foreign person who is or becomes a ~~bona fide~~  
24       ~~resident of this state, of some state or territory of the United States or of the District of~~  
25       ~~Columbia, shall have the right to~~may acquire and hold agricultural lands land in this state,  
26       upon the same terms as ~~citizens~~a resident of this state, during the continuance of ~~such~~  
27       ~~bona fide residence. However, if such resident alien~~the residency.

28           If the foreign person ceases to be a-bona fide resident, he shall have the foreign  
29       person has three years from the time of termination of the residency in which to alienate  
30       agricultural lands is terminated to dispose of agricultural land in excess of one hundred  
31       sixty acres.

32       **Section 6. That § 43-2A-6 be AMENDED:**

**43-2A-6.** ~~All agricultural lands acquired or held in violation of §§ 43-2A-2 and 43-2A-3 shall be~~ Any agricultural land owned in violation of this chapter is forfeited to the state. Any agricultural land lease, or easement, held by a prohibited entity in violation of this chapter, is terminated.

~~The attorney general shall enforce such forfeiture. However, no such~~ the forfeiture or the termination of a lease or easement. A forfeiture or a termination of a lease or easement may not be adjudged unless the action to enforce is brought within three years after such property has been acquired or held by such alien evidence of a violation of this chapter is referred to the attorney general, as provided for in section 7 of this Act. No title to land is invalid or liable to forfeiture by reason of the alienage of any former owner or interested person ~~interested therein.~~

**Section 7. That a NEW SECTION be added to chapter 43-2A:**

The Department of Agriculture and Natural Resources shall refer evidence of noncompliance to the attorney general, who shall investigate the evidence for violations of this chapter. The attorney general may bring an action pursuant to title 15 to enforce this chapter.

After the attorney general commences an enforcement action, the attorney general may, in addition to any authority granted under §§ 15-6-28.2 to 15-6-28.4, inclusive, subpoena from a subject foreign entity, foreign government, foreign person, or prohibited entity:

(1) Real property titles;

(2) Deeds;

(3) Real estate transaction documents;

(4) Financing or financial documents related to the ownership or financing of the agricultural land transaction;

(5) Documents depicting the identity of any party to the agricultural land transaction;  
and

(6) Any other information necessary to demonstrate a violation of § 43-2A-2.

**Section 8. That a NEW SECTION be added to chapter 43-2A:**

The attorney general shall prove any violation of § 43-2A-2 by a preponderance of the evidence.

**Section 9. That a NEW SECTION be added to chapter 43-2A:**

A foreign entity, foreign government, foreign person, or prohibited entity, whose agricultural land interest was forfeited by an enforcement action brought by the attorney general, may appeal within thirty days of the judgment, pursuant to chapter 15-26A.

**Section 10. That § 43-2A-7 be AMENDED:**

**43-2A-7.** The Department of Agriculture and Natural Resources shall ~~monitor, for compliance to this chapter, biannual reports review:~~

- (1) Any report received by the department in accordance with section 2 of this Act;
- (2) Any report transmitted to the department pursuant to ~~section 6 of the United States~~ the Agricultural Foreign Investment Disclosure Act of 1978. ~~If this review reveals evidence of noncompliance with this chapter the Department of Agriculture and Natural Resources shall,~~ 7 U.S.C. § 3505 (January 1, 2024);
- (3) Any annual report required by § 59-11-24; and
- (4) Any report voluntarily submitted by a county register of deeds alleging a violation of this chapter.

If the department has reason to believe that a violation of this chapter may have occurred, the department must refer this the evidence to the attorney general, who shall must investigate the case and initiate legal action if necessary in the circuit court district in which the land held in violation of § 43-2A-4 is situated in accordance with section 7 of this Act.

**Section 11. That § 43-2A-8 be AMENDED:**

**43-2A-8.** ~~The restrictions of this chapter do~~This chapter does not apply to agricultural land owned by a ~~corporation~~ foreign entity, a foreign government, or a foreign person for an immediate or potential nonagricultural use ~~in nonfarming purposes. A corporation.~~

A foreign entity, a foreign government, or a foreign person may hold such agricultural land in such acreage as may be an amount necessary to its nonfarm for the conduct of its nonagricultural business operations. However, pending Pending the development of agricultural land for nonfarm purposes, such a nonagricultural use, the land may not be used for farming, except under lease to a family farm unit, a family farm corporation, or an authorized farm corporation.

A foreign entity, foreign government, or foreign person developing land for nonagricultural use has five years from acquiring interest to initiate a nonagricultural business operation or be deemed in violation of this chapter.

1           For purposes of this section, the term "nonagricultural business operation" includes  
2           the filing of a permit or an application with this state, a political subdivision of this state,  
3           a federally recognized Indian tribe, or a federal agency having jurisdiction over the project  
4           for permitting purposes.

5           All real property owned or held by ~~the State of South Dakota~~ this state by and  
6           through the South Dakota State Cement Plant Commission, as of December 28, 2000, is  
7           owned or held by it and its successors in title for immediate or potential use for nonfarming  
8           purposes and the real property is necessary for nonfarming business operations.

9           **Section 12. That § 59-11-24 be AMENDED:**

10           **59-11-24.** Each filing entity or qualified foreign entity, except a bank organized  
11           under § 51A-3-1.1, a limited partnership organized pursuant to chapter 48-7, or a series  
12           of a limited liability company established under §§ 47-34A-701 ~~through~~ to 47-34A-707,  
13           inclusive, shall deliver to the Office of the Secretary of State for filing an annual report  
14           that sets forth:

- 15           (1) The name of the filing entity or qualified foreign entity;
- 16           (2) The jurisdiction under whose law it is formed;
- 17           (3) The address of its principal office, wherever located;
- 18           (4) The information required by § 59-11-6;
- 19           (5) The names and business addresses of its governors ~~except in the following two~~  
20           ~~cases:~~
  - 21           (a) If a business corporation has eliminated its board of directors pursuant to  
22           § 47-1A-732, the annual report ~~shall~~ must set forth the names of the  
23           shareholders instead; and
  - 24           (b) If a limited liability company is member-managed, the names and business  
25           addresses of its governors need not be set forth; and
- 26           (6) Whether the entity owns any agricultural land, as defined in § 43-2A-1, and, if so,  
27           whether the entity has any foreign beneficial owners.

28           If the entity referenced in subdivision (6) is a foreign entity or has any foreign  
29           beneficial owners, the filing must also include:

- 30           (a) A legal description of the agricultural land or a description of the land's  
31           common location;
- 32           (b) The total acreage of agricultural land held by the entity; and
- 33           (c) The current use of the agricultural land.

1 Information in the annual report must be current as of the date the annual report  
2 is executed on behalf of the filing entity or qualified foreign entity. Any other provisions  
3 of law notwithstanding, the annual report may be executed by any authorized person. Any  
4 amendment filed is a supplement to, and not in place of, the annual filing required by this  
5 section.

6 On or before December first of each year, the Office of the Secretary of State  
7 shall make available to the public an aggregated report listing all foreign entities and  
8 entities with foreign beneficial ownership that indicated they owned agricultural land  
9 during the reporting period. For each entity listed, the report must include the  
10 information gathered under this section.