

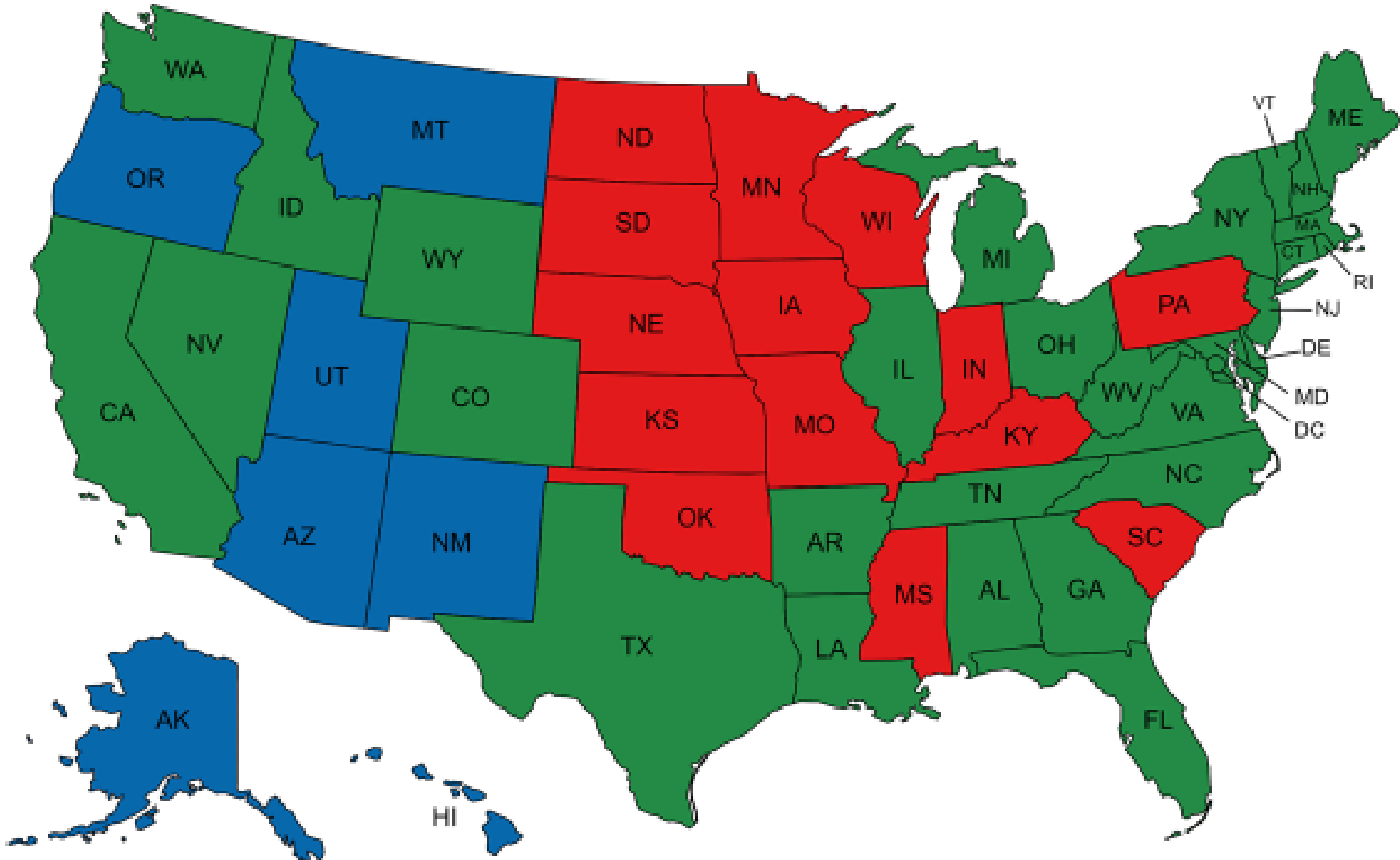


Legal Ethics for Ag Industry Professionals: CFIUS, Foreign Ownership, & National Security

Asa Hutchinson

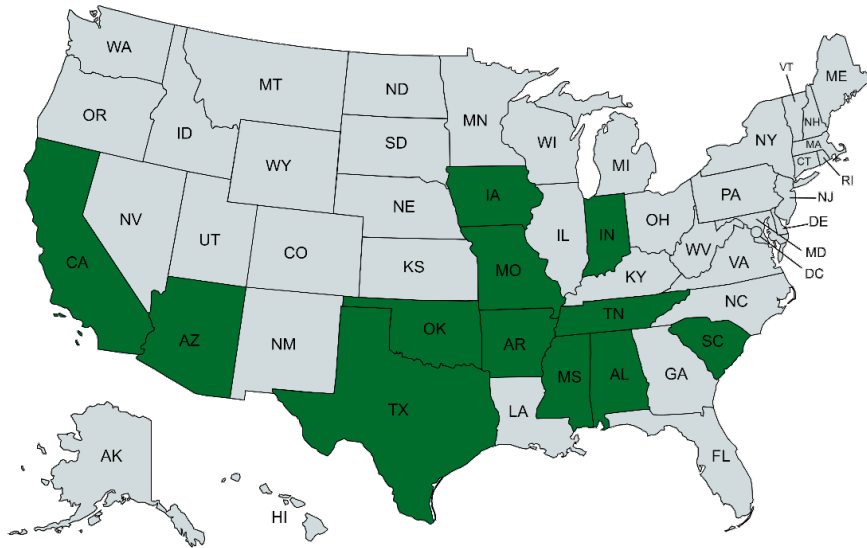
46th Governor of Arkansas; Former Under Secretary, United States Department of Homeland Security; Founder, Asa Hutchinson Law Group

Foreign Ownership Laws: December 31, 2022

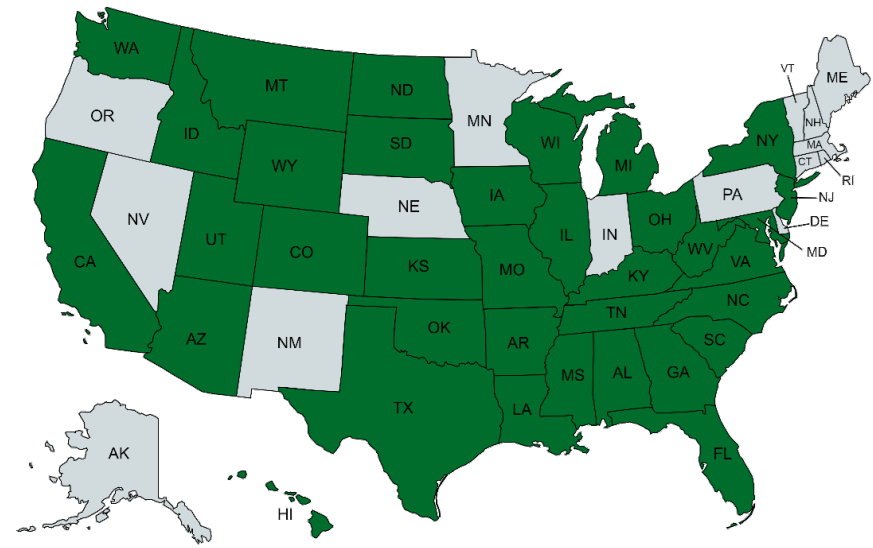


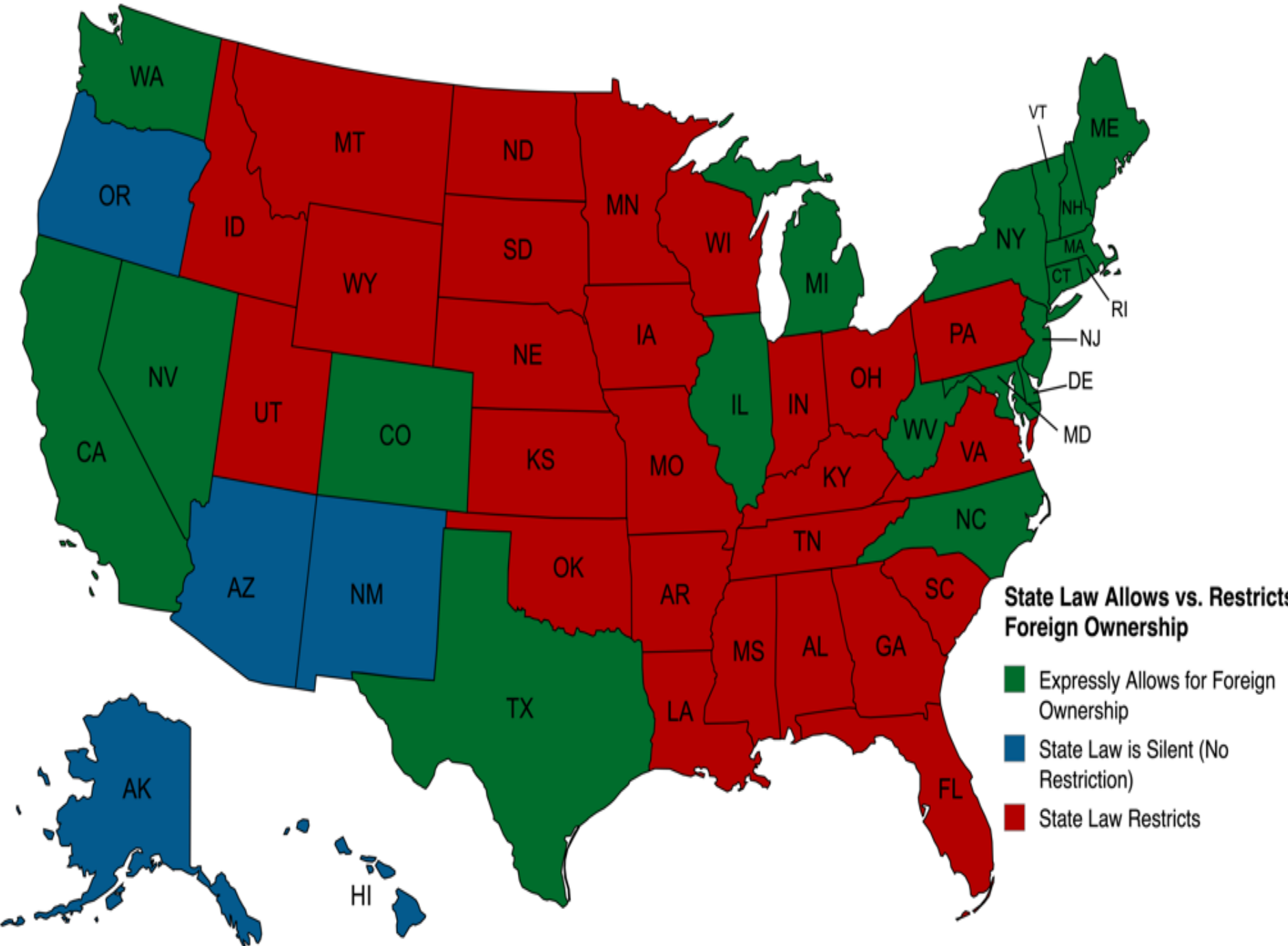
State Foreign Ownership Proposals

2021 – 2022



2023





Foreign Ownership in U.S. Farmland

- Agricultural Foreign Investment Disclosure Act (“AFIDA”) of 1978
- Requires a “foreign person” to report ag landholdings (and leases 10+ years) to USDA
- Latest official data is through December 31, 2023
- Foreign ownership in private ag land: Approx. 45 million acres (3.5% of all private ag land and 2% of all land in U.S.)
 - Almost +3.4 million acre increase from Dec. 31, 2021 to December 2022
 - About 2 million acre increase from 2022
 - 2012 – 2022? Appx. +17.3 million acre (+66%)
- 48% forestland/timber
- 29% cropland
- 21% pasture/other ag



Farmland Security Act of 2025

- S. 845 (Senators Chuck Grassley and Tina Smith)
- This is an evolution of the FY23 Appropriations provision that directed USDA to accept AFIDA filings electronically and to establish a database of certain disaggregated ownership data that is accessible to the public
- S. 845 would, among other things:
 - Penalize shell corporations 100% of FMV of entity's interest in "agricultural land" not reported to USDA
 - Require all foreign-owned shell companies to disclose ag landholdings, failure subject to penalty equal to person's interest in the land
 - However – allows a path for shell company to avoid civil penalty if it corrects filing (60 days within USDA notice of failure to report or a defective filing)
 - Requires annual audits of 10% of AFIDA filings
 - Requires USDA to provide training to state/county employees to identify improperly unreported ag and forestland
 - Reporting – research on leases and impact on family farms/communities/food supply & trends in foreign investment by shell corporations and the production capacity of foreign-owned land



2023 Enacted Foreign Ownership Laws

- *Alabama – HB 379*
 - Restricts **governments** and **political parties** of China, Iran, North Korea, and Russia (“Big 4”) from acquiring **agricultural land**
- *Arkansas – SB 383*
 - Restricts a “prohibited foreign party” (**individual, entity, and gov’t** of countries subject to **International Traffic in Arms Regulations**) from acquiring ag land
 - Restricts “prohibited foreign-party-controlled business” from acquiring **real property**
 - Criminal liability for violations
 - Office of Agricultural Intelligence
 - Enforcement action against Syngenta
- *Florida – SB 264*
 - Restricts **individual, entity, and gov’t** of Big 4 from acquiring **ag land**
 - Restricts Chinese gov’t, entities, and individuals from acquiring **real property**
 - Criminal liability for violations
 - *Shen v. Simpson*, No. 4:23-cv-208 (N.D. Fla. 2023)



2023 Enacted Foreign Ownership Laws

- *Louisiana – HB 537*
 - Restricts “**foreign adversary**” from acquiring **real property**
 - “Foreign adversary” determined by U.S. Secretary of Commerce under [15 C.F.R. § 7.4\(a\)](#)
- *Tennessee – HB 40/SB 122*
 - Restricts individual, entity, and gov’t of country on U.S. Treasury Department’s **sanctions program list** from acquiring **real property**
- *Virginia – SB 1438/HB 2325*
 - Restricts “foreign adversary” from acquiring any interest in **ag land**



2025 Picture

- About three dozen states have had one or more legislative proposals, several with multiple bills
- 2025 major action:
 - Idaho (amended existing law, added quite a few provisions)
 - Utah (amended existing law)
 - Kentucky (enacted new law)
 - West Virginia (27th state to enact a foreign ownership law)
 - Tennessee (amended existing law)
 - Georgia (amended to include military installations)
 - Arkansas (amended existing law, revised some definitions)
 - Texas (legislature passed law, sent to Governor)



State Enforcement & Legal Challenges Developments

- Arkansas' Enforcement Action
 - Enforcement action against Syngenta
 - Required to divest interest in 2 years or AG may bring legal action
- *Shen v. Simpson* (lawsuit challenging Florida's 2023 FOL)
 - District court denied preliminary injunction b/c law based on where a purchaser is domiciled rather than on race/ancestry (thus rational basis applies and the law overcomes this test)
 - Not preempted by federal law b/c CFIUS jurisdiction is limited/does not extend to all property
 - 11th Cir. Issues preliminary injunction for two *Shen* plaintiffs on Feb. 1
 - Preempted by federal law (specifically, FIRRMA which extended CFIUS jurisdiction to real property)
- Arkansas litigation – *Jones Eagle LLC v. Ward*



Rule 1.1 Comment

- [4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.



Rule 1.2 (b)----Client-Lawyer Relationship

- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.



Rule 1.2 Comment

Independence from Client's Views or Activities

- [5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.



Rule 2.1

Counselor

- In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

