

1 AN ACT relating to the acquisition of agricultural land.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in Section 1 to 5 of this Act:*

6 *(a) "Agricultural land" has the same meaning as in 7 U.S.C. sec. 3508;*

7 *(b) "Fiduciary" has the same meaning as in KRS 131.010;*

8 *(c) "Foreign agent" has the same meaning as in 18 U.S.C. sec. 1839;*

9 *(d) "Foreign business" has the same meaning as in 26 C.F.R. sec. 301.7701-5;*

10 *(e) "Nonresident alien" has the same meaning as in 26 C.F.R. sec. 1.871-2;*

11 *and*

12 *(f) "Trustee" has the same meaning as in KRS 218A.405.*

13 *(2) Notwithstanding any other provision of law to the contrary, except as provided in*
14 *subsections (3) to (7) of this section, on or after the effective date of this Act, a*
15 *nonresident alien, foreign business, foreign agent, trustee, or fiduciary associated*
16 *with the government of any proscribed country referenced in 22 C.F.R. sec.*
17 *126.1, as amended, shall be prohibited from:*

18 *(a) The purchase, lease, or acquisition of any interest in public or private*
19 *agricultural land located in the Commonwealth of Kentucky; and*

20 *(b) Participation in programs administered by the Department of Agriculture,*
21 *Agricultural Development Board, and Kentucky Agricultural Finance*
22 *Corporation.*

23 *(3) Any nonresident alien, foreign business, foreign agent, trustee, or fiduciary*
24 *associated with the government of any proscribed country referenced in 22*
25 *C.F.R. sec. 126.1, as amended, wishing to purchase, lease, or acquire agricultural*
26 *land shall submit an application for appeal to the Kentucky Foreign Investment*
27 *Review Board, pursuant to Section 2 of this Act, and may be granted conditional*

1 approval from the Kentucky Foreign Investment Review Board prior to the
2 purchase, lease, or acquisition of the agricultural land.

3 (4) Any agricultural land purchased, leased, or acquired by a nonresident alien,
4 foreign business, foreign agent, trustee, or fiduciary associated with the
5 government of any proscribed country referenced in 22 C.F.R. sec. 126.1, as
6 amended, prior to the effective date of this Act shall be exempt from the
7 provisions in Sections 1 to 5 of this Act.

8 (5) On or after the effective date of this Act, a transfer of ownership or possession of
9 the agricultural land exempt under subsection (4) of this section to a nonresident
10 alien, foreign business, foreign agent, trustee, or fiduciary associated with the
11 government of any proscribed country referenced in 22 C.F.R. sec. 126.1, as
12 amended, shall require prior approval from the Kentucky Foreign Investment
13 Review Board, pursuant to Section 2 of this Act.

14 (6) Nothing in Sections 1 to 5 of this Act shall prohibit:

15 (a) An existing foreign business associated with the government of any
16 proscribed country referenced in 22 C.F.R. sec. 126.1, as amended, located
17 in the Commonwealth, from purchasing, leasing, or acquiring agricultural
18 land adjacent to the land that the foreign business owns and operates in
19 order to expand the operation of its business; and

20 (b) A nonresident alien, foreign business, foreign agent, trustee, or fiduciary
21 associated with the government of any proscribed country referenced in 22
22 C.F.R. sec. 126.1, as amended, from the purchase, lease, or acquisition of
23 up to three hundred fifty (350) acres of agricultural land for agricultural
24 research and development or experimental purposes, including testing,
25 development, or production of any crop production inputs for sale or resale
26 to farmers, including but not limited to seeds, plants, pesticides, soil
27 amendments, biologicals, or fertilizers.

1 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO
2 READ AS FOLLOWS:

3 *(1) There is hereby established the Kentucky Foreign Investment Review Board*
4 *which shall be attached to the Department of Agriculture for administrative*
5 *purposes.*

6 *(2) The Kentucky Foreign Investment Review Board shall consist of the following*
7 *five (5) members:*

8 *(a) The Commissioner of Agriculture or his or her designee, who shall serve as*
9 *chair of the board;*

10 *(b) The Secretary of the Cabinet for Economic Development or his or her*
11 *designee;*

12 *(c) The Secretary of State or his or her designee;*

13 *(d) The Executive Director of the Kentucky Office of Homeland Security or his*
14 *or her designee; and*

15 *(e) A citizen member who shall be appointed jointly by the President of the*
16 *Senate and the Speaker of the House of Representatives.*

17 *(3) The citizen member appointed under subsection (2)(e) of this section shall have*
18 *expertise in real estate and shall serve:*

19 *(a) A two (2) year term and may be reappointed; and*

20 *(b) Until his or her successor is duly appointed by the President of the Senate*
21 *and the Speaker of the House of Representatives.*

22 *(4) Members of the board shall serve without compensation with exception to the*
23 *citizen member who shall be entitled to reimbursement by the department for*
24 *actual expenses incurred while carrying out the duties of the board.*

25 *(5) The board shall meet monthly or upon the call of the chair to:*

26 *(a) Assess foreign investments and interests in agricultural land in the*
27 *Commonwealth by a nonresident alien, foreign business, foreign agent,*

1 trustee, or fiduciary associated with the government of any proscribed
2 country referenced in 22 C.F.R. sec. 126.1, as amended, in order to consider
3 the public interests in maintaining national security and agricultural
4 integrity within the Commonwealth;

5 (b) Grant conditional approvals or deny applications for appeal for foreign
6 investments and interests in agricultural land by a nonresident alien,
7 foreign business, foreign agent, trustee, or fiduciary associated with the
8 government of any proscribed country referenced in 22 C.F.R. sec. 126.1, as
9 amended; and

10 (c) Evaluate any need for imposed restrictions for any investments and interests
11 in agricultural land by a nonresident alien, foreign business, foreign agent,
12 trustee, or fiduciary associated with the government of any proscribed
13 country referenced in 22 C.F.R. sec. 126.1, as amended.

14 (6) Three (3) members of the board shall constitute a quorum. An application for
15 appeal for foreign investments and interests in agricultural land shall be
16 conditionally approved or denied by a vote of the simple majority of the full
17 committee.

18 (7) The board may promulgate administrative regulations in accordance with KRS
19 Chapter 13A to establish:

20 (a) An appeal application process for foreign investments and interests in
21 agricultural land; and

22 (b) Guidelines for conditional approval, proposed restrictions, or any other
23 criteria necessary to carry out the provisions of Sections 1 to 5 of this Act.

24 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) Any nonresident alien, foreign business, foreign agent, trustee, or fiduciary
27 associated with the government of any proscribed country as referenced in 22

1 C.F.R. sec. 126.1, as amended, wishing to purchase, lease, or acquire agricultural
2 land, in the Commonwealth, on or after the effective date of this Act, may submit
3 an application for appeal to the Kentucky Foreign Investment Review Board for
4 conditional approval.

5 (2) Within thirty (30) days upon receipt of an application for appeal, the Kentucky
6 Foreign Investment Review Board shall grant a conditional approval or deny an
7 appeal application for a foreign investment or interest in agricultural land.

8 (3) Any applicant who is denied an appeal to purchase, lease, or acquire agricultural
9 land by the Kentucky Foreign Investment Review Board may request an
10 administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of
11 notification of the denial and may appeal the final decision to Franklin Circuit
12 Court or the Circuit Court of the county in which the agricultural land is located.

13 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) On or after the effective date of this Act, any deed that conveys agricultural land
16 and recorded with a county clerk shall include, as an exhibit to the deed, an
17 affidavit executed by the person or entity coming into title attesting that the
18 purchase or acquisition complies with the requirements of Sections 1 to 5 of this
19 Act and that no program assistance or funding source under subsection (2)(b) of
20 Section 1 of this Act is being used in the sale or transfer of agricultural land.

21 (2) A county clerk shall not accept and record any deed that conveys agricultural
22 land without an affidavit as required by subsection (1) of this section. On or after
23 the effective date of this Act, a county clerk shall submit a monthly report of all
24 agricultural land foreign investment affidavits received by the county clerk under
25 this section that were filed during the preceding month to the Kentucky Foreign
26 Investment Review Board.

27 (3) The Kentucky Foreign Investment Review Board shall submit a monthly report,

1 containing county clerk reports of agricultural land foreign investment affidavits
2 filed during the preceding month, to the Committee on Foreign Investment in the
3 United States via the United States Department of the Treasury.

4 (4) Nothing in this section shall exempt a nonresident alien, foreign business,
5 foreign agent, trustee, or fiduciary associated with the government of any
6 proscribed country referenced in 22 C.F.R. sec. 126.1, as amended, from the
7 provisions of the Agricultural Foreign Investment Disclosure Act, 7 U.S.C. sec.
8 3501 et seq., and its accompanying regulations at 7 C.F.R. pt. 781 et. seq. or any
9 amendments thereto.

10 (5) Any licensed attorney, title insurance company, title insurance underwriter, title
11 insurance agent, or any other third party involved in a real property transaction
12 shall not be civilly or criminally liable for a person or entity providing a
13 fraudulent or incorrect affidavit under subsection (1) of this section.

14 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO
15 READ AS FOLLOWS:

16 (1) A nonresident alien, foreign business, foreign agent, trustee, or fiduciary
17 associated with the government of any proscribed country referenced in 22
18 C.F.R. sec. 126.1, as amended, who purchases, leases, or acquires agricultural
19 land on or after the effective date of this Act, and has received denial of
20 application for appeal from the Kentucky Foreign Investment Review Board,
21 shall divest itself of all right, title, and interest in the agricultural land within one
22 (1) year from the date of acquiring the agricultural land or interest or notice of
23 the violation.

24 (2) (a) If the court finds that agricultural land has been purchased or acquired in
25 violation of Sections 1 to 5 of this Act, then the court shall declare the
26 agricultural land escheated to the state and order the sale of the
27 agricultural land in the manner provided by law for the judicial foreclosure

- 1 of a mortgage on real estate for default of payment. The proceeds of the sale
2 of the agricultural land pursuant to this paragraph through judicial
3 foreclosure shall be disbursed in the following order:
- 4 1. Payment of delinquent ad valorem taxes;
 - 5 2. Payment to mortgage and other lien holders, in the priority determined
6 by the court; and
 - 7 3. Deposit in the general fund.
- 8 (b) If the court finds that agricultural land has been leased in violation of
9 Sections 1 to 5 of this Act, then the court shall rescind the lease and it shall
10 be rendered null and void.
- 11 (3) If a nonresident alien, foreign business, foreign agent, trustee, or fiduciary
12 associated with the government of any proscribed country referenced in 22
13 C.F.R. sec. 126.1, as amended, divests and transfers title to real property that was
14 held in violation of Sections 1 to 5 of this Act, no subsequent title holder to the
15 real property shall be subject to civil liability, criminal liability, or judicial
16 foreclosure, unless the subsequent title holder is a nonresident alien, foreign
17 business, foreign agent, trustee, or fiduciary associated with the government of a
18 proscribed country referenced in 22 C.F.R. sec. 126.1, as amended.