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## Civil Rights & Judiciary Committee

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### HB 1412

**Brief Description:** Addressing foreign ownership of agricultural lands.

**Sponsors:** Representatives Shavers and Lekanoff.

**Brief Summary of Bill**

- Limits the statutory right of land ownership by non-citizens and non-nationals to natural persons.
- Restricts specific foreign entities from purchasing, acquiring, leasing, or holding any interest in agricultural land.
- Establishes an agency review process for agricultural land transactions.

**Hearing Date:** 2/14/23

**Staff:** John Burzynski (786-7133).

**Background:**

Transactions and Interests in Land.

Washington law governs transactions and interests in land within the state. Persons who are not citizens or nationals of the United States have a statutory right to acquire and hold land in Washington, or rights or interests in land in Washington, and may convey, mortgage, and devise land in Washington as if the person were a native citizen of Washington or the United States.

Washington's Constitution and laws previously imposed various restrictions on foreign land ownership. These restrictions were repealed in 1966 and 1967.

At least 13 other states have enacted various restrictions on foreign ownership of land or agricultural land, subject to a number of exceptions.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

### Agricultural Foreign Investment Disclosure Requirements.

The federal Agricultural Foreign Investment Disclosure Act (AFIDA) provides that any foreign person who acquires or transfers any interest, other than a security interest, in agricultural land must submit a report to the Secretary of Agriculture within 90 days of the acquisition or transfer.

Federal regulations define "agricultural land," in part, as land in the United States used for forestry production and land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production, except land not exceeding 10 acres in the aggregate, if the annual gross receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed \$1,000.

Each six months, the Secretary of Agriculture must transmit to each state department of agriculture a copy of each AFIDA report submitted in the prior six months which involved agricultural land located in the state.

### The Department of Agriculture.

The Washington Department of Agriculture (Department) is a state agency. The Director of the Department must exercise all powers and perform of all duties relating to a number of subjects, including, in relevant part, land utilization for agricultural purposes. Additionally, the Director must exercise all powers and perform all duties prescribed by law relating to horticulture, and horticultural plants and products, and must enforce and supervise the administration of all laws relating to horticulture, horticultural products, and horticultural interests.

### The Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition, and unfair or deceptive acts or practices in trade or commerce. If a person is injured in their business or property by a violation of the CPA, the person may bring a civil action to enjoin further violations and recover actual damages, costs, and reasonable attorney's fees. In addition, the court may award treble damages up to \$25,000. The Attorney General may also bring an action in the name of the state or on behalf of persons residing in the state, against any person to enjoin violations of the CPA and obtain restitution. The Attorney General may also seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA.

### **Summary of Bill:**

#### Restrictions on Land Transactions.

The statutory right of non-citizens and non-nationals to acquire and hold land in Washington, or rights or interests in land in Washington, and convey, mortgage, and devise land in Washington, is limited to natural persons.

Beginning on August 1, 2023, foreign governments, foreign state-controlled enterprises, foreign business entities, and foreign-controlled domestic business entities (restricted foreign entities) are prohibited from purchasing, acquiring, leasing, or holding any interest in agricultural land in

Washington, except when expressly authorized by treaty. This restriction does not apply to interests in agricultural land acquired by a restricted foreign entity before August 1, 2023.

A transfer of interest in agricultural land in violation of this restriction is void, constitutes a gross misdemeanor, and is actionable under the Consumer Protection Act (CPA). In addition to conventional CPA remedies, a prevailing plaintiff is entitled to: (1) statutory damages equal to the sale or market value of the land; (2) disgorgement of any funds obtained from unlawful purchase, sale, ownership, or control of the land; (3) a court order invalidating the purchase and sale of the land; (4) a court order requiring forfeiture, transfer, or sale of the land to the state or another qualifying owner; and (5) any other equitable relief deemed appropriate by the court.

#### Department of Agriculture Review.

Beginning on January 1, 2024, the Department of Agriculture (Department) must review and approve all agricultural land sales in Washington. No purchase or sale of agricultural land is valid unless reviewed and approved by the Department. The Department may only approve the transaction if it finds by a preponderance of the evidence that the buyer is not prohibited from buying the land by the foregoing restrictions. The buyer has the burden of proof. If the Department denies approval of the transaction, the buyer may seek review in Superior Court. The Department is authorized to adopt rules to implement the agricultural land transaction review process.

#### Defined Terms.

"Agricultural land" means land in Washington used for forestry production and land in Washington currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production, except land not exceeding 10 acres in the aggregate if the annual gross receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed \$1,000.

"Controlling interest" means possession of more than 50 percent of the ownership interests in an entity, or an ownership interest of 50 percent or less if the persons holding such interest actually direct the business and affairs of the entity without the consent of any other party.

"Foreign business entity" means a corporation, professional corporation, nonprofit corporation, limited liability company, partnership, limited partnership, or similar entity that is organized under the laws of another country.

"Foreign-controlled domestic business entity" means a corporation, professional corporation, nonprofit corporation, limited liability company, partnership, limited partnership, or similar entity that is organized under the laws of any state, territory, or possession of the United States, and which is directly or indirectly subject to the controlling interest of one or more foreign governments, foreign business entities, or nonresident aliens.

"Foreign government" means the governing authority of a foreign state and does not include the government of the United States; the states, territories, or possessions of the United States; or

federally recognized Indian tribes.

"Foreign state-controlled enterprise" means a business enterprise, however denominated, in which a foreign government has a direct or indirect controlling interest.

"Nonresident alien" means a natural person who is not a United States citizen, national, or resident. For purposes of this definition, a United States resident is a natural person who is not a United States citizen or national, and who has lived in the United States for at least six months of the preceding year and intends to reside in the United States indefinitely.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, Section 2(3) of the bill is null and void unless funded in the budget.