

State Regulation of Foreign Ownership of U.S. Land: January to June 2023

July 28, 2023

State and [federal](#) lawmakers have expressed interest in legislative options to address the potential national security and economic implications of foreign ownership of U.S. land. During the first six months of 2023, at least 15 states enacted legislation regulating foreign ownership of real property. A group of plaintiffs filed a [legal challenge](#) to one state law—Florida’s Senate Bill 264 ([SB 264](#))—arguing that it violates their constitutional rights, does not comport with the federal [Fair Housing Act](#), and is preempted by federal law. This Sidebar (1) outlines the recent state legislation on foreign ownership of real property; (2) discusses SB 264 and the lawsuit challenging it; and (3) examines considerations for Congress.

Many State Legislatures Enacted or Proposed Laws Regulating Foreign Ownership of U.S. Land in 2023

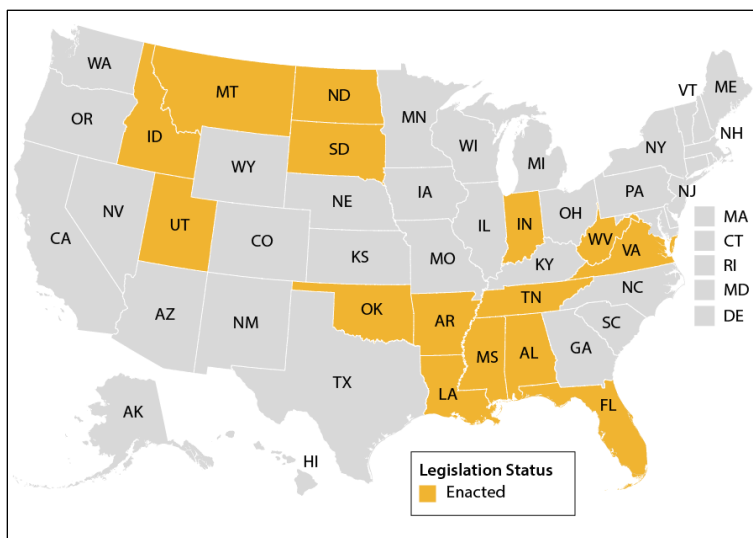
Between January and June 2023, [Alabama](#), [Arkansas](#), [Florida](#), [Idaho](#), [Indiana](#), [Louisiana](#), [Mississippi](#), [Montana](#), North Dakota ([HB 1135](#) and [SB 2371](#)), [Oklahoma](#), [South Dakota](#), [Tennessee](#), [Utah](#), [West Virginia](#), and [Virginia](#) enacted legislation regulating foreign ownership of U.S. land. During this same period, state lawmakers introduced bills in more than 20 other states that would regulate or restrict foreign ownership of real property if enacted.

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Figure I. States that Enacted Restrictions on Foreign Ownership of U.S. Land Between January and June 2023



Sources: 2023 Ala. Laws 332; 2023 Ark. Acts 636; 2023 Fla. Sess. Law Serv. ch. 2023-33 (West); 2023 Idaho Sess. Laws ch. 251; 2023 Ind. Legis. Serv. P.L. 118-2023 (West); 2023 La. Acts 464; 2023 Miss. Laws HB 280; 2023 Mont. Laws ch. 434; 2023 N.D. Laws. H.B. 1135; 2023 N.D. Laws S.B. 2371; 2023 Okla. Sess. Law Serv. ch. 327 (West); 2023 S.D. Laws ch. 169; 2023 Tenn. Pub. Acts ch. 369; 2023 Utah Laws ch. 61; 2023 W. Va. Acts. ch. 310.

Recent State Laws and Legislative Proposals Differ in Their Restrictions

State laws and legislative proposals differ in their approaches and requirements. For example, some states enacted information-gathering laws that [mandate disclosure](#) of, or [require studies on](#), foreign ownership of U.S. land. Others [laws](#) directly [prohibit](#) certain transactions and may [require divestiture](#) of foreign-owned land. Some restrictions apply only to [agricultural land](#), others to land near [military installations](#) or [critical infrastructure](#), and others to [all real property](#) within the state.

Laws and legislative proposals also vary as to which groups are subject to land ownership restrictions. Some seek to regulate real property transactions with individuals and entities from a [list of named countries](#). Others aim to govern purchases by [all non-U.S. citizens](#). A third set [addresses](#) purchases by individuals and entities from countries [identified](#) on lists maintained under federal law, such as the International Traffic in Arms Regulations ([Tables 1 and 2](#) of 22 C.F.R. § 126); the [foreign adversaries](#) list generated under [Executive Order 13873](#) and its implementing regulations; [sanctions lists](#) maintained by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury; or [countries of particular concern](#) designated by the U.S. Secretary of State, among other federal frameworks.

SB 264 Creates Two Sets of Restrictions on Land Ownership in Florida

Florida's recent law, [SB 264](#) (to be codified at Florida Statutes §§ 692.201–.205), creates two sets of land ownership restrictions. The first set applies to [foreign principals](#) connected with [foreign countries of concern](#) (defined as China, Russia, Iran, North Korea, Cuba, the Venezuelan regime of Nicolás Maduro, and Syria). Foreign principals are defined as the foreign governments themselves, certain corporate and political bodies, and individuals domiciled in the countries of concern who are not U.S. citizens or lawful permanent residents. Individuals and entities in these groups cannot acquire or own agricultural land in Florida or real property within ten miles of a military installation or critical infrastructure facility in the state.

SB 264's [second set](#) of restrictions applies only to certain individuals and entities connected with the People's Republic of China (PRC)—the PRC itself, certain political bodies and individual members of the PRC or the Communist Party of China, companies organized under PRC law or that have their principal place of business there, and individuals domiciled in the PRC who are not U.S. citizens or lawful permanent residents. These PRC-connected individuals and entities cannot purchase any real property in Florida, absent an exception.

Both sets of restrictions exempt *de minimis* investments in some securities or companies registered with the Securities and Exchange Commission. Individuals with nontourist visas or who have been granted asylum may also purchase one parcel up to two acres in size that is not within five miles of a military installation. Preexisting land owners that acquired their property before SB 264 became effective can continue to own their parcels, but they cannot buy additional land unless permitted by law. SB 264 [requires](#) all foreign principals—both existing owners and new purchasers—to register land ownership with state officials if the parcel is within ten miles of a military installation or critical infrastructure. Some PRC-connected individuals and entities [must register](#) regardless of the parcel's location.

SB 264 Has Been Challenged on Constitutional and Other Grounds

In May 2023, a group of PRC citizens and a Florida corporation [challenged](#) SB 264 under several federal laws. Plaintiffs in the case, *Shen v. Simpson*, include four PRC citizens, lawful residents of the United States and Florida with nonimmigrant visas. [Each](#) says that they have lived in Florida for four or five years and owns or plans to buy residential property. [One plaintiff](#), for example, says that she has contracted for construction of a home she may now be unable to buy, as the Florida law will take effect before it is complete. A [fifth plaintiff](#) is a real estate company primarily serving Chinese-speaking clients that claims it stands to lose business under the new law's restrictions.

Plaintiffs [allege](#) violations of the [Equal Protection Clause](#) of the Fourteenth Amendment. In particular, they allege that the Florida law targets them on the basis of [race, alienage, and national origin](#), which the Equal Protection Clause prohibits outside of narrow circumstances. Plaintiffs [also allege](#) violations of the Fourteenth Amendment's [Due Process Clause](#), which generally requires adequate procedures and opportunity to contest the loss of rights or property. The Florida law's restrictions, [they maintain](#), are too ambiguous to comply with due process.

Plaintiffs bring statutory claims as well. Citing its ban on national origin discrimination, plaintiffs [seek](#) relief under the Fair Housing Act, [42 U.S.C. § 3604](#). The Act applies to housing and land for housing and protects anyone aggrieved by a violation—including sellers, buyers, and other transaction participants.

Finally, plaintiffs [allege](#) that several fields of federal law preempt SB 264. They argue SB 264 interferes with federal law underpinning [OFAC sanctions](#) and the Committee on Foreign Investment in the United States ([CFIUS](#)), which has authority to review the national security implications of some foreign investment in the United States. Plaintiffs also contend the Florida law exceeds [constitutional limits](#) on states' powers over foreign affairs and foreign commerce.

The United States Supported the Challenge to SB 264

The U.S. [Department of Justice](#) has filed a [Statement of Interest](#) in the case supporting the plaintiffs' motion for a preliminary injunction and arguing that the Fair Housing Act bars SB 264. The statute declares invalid "[any law of a State](#)" that permits or requires a discriminatory housing practice. In addition, the [United States argues](#), SB 264 violates the Equal Protection Clause, because it discriminates based on alienage and national origin without justification. While the federal government [has more leeway](#) in regulating alienage, the [United States explains](#), state [classifications singling out aliens](#) must be narrowly tailored in pursuit of a compelling government interest. The United States maintains that the law "[will not advance the State's purported goal of increasing public safety](#)," as Florida has not identified

“any legitimate connection between protecting the State” and barring individuals of certain nationalities from owning real property. Plaintiffs, the [United States points out](#), are not members of the PRC government or of the Communist Party of China and are not representatives of their country of origin.

Several state attorneys general have also filed an amicus brief in the case in support of SB 264, [arguing](#) that the Florida law classifies based on domicile, not alienage or national origin, and that states have broad police powers to [control](#) landownership.

Considerations for Congress

Some commentators and Members of the [118th Congress](#) have called for increased federal scrutiny of foreign ownership of U.S. land due to concerns over issues including national security, economic competitiveness, and the absence of U.S. citizens’ reciprocal right to purchase land in some foreign countries. Currently, no federal law comprehensively regulates all foreign purchases of U.S. real property.

One area of congressional interest has been in foreign ownership of U.S. agricultural land. The Agricultural Foreign Investment Disclosure Act of 1978 ([AFIDA](#)), discussed in this [CRS In Focus](#), requires foreign investors to disclose their interests in U.S. [agricultural land](#). The AFIDA framework does not empower the federal government to block purchases or require divestment of agricultural land, even if the foreign ownership is detrimental to U.S. interests. In [FY2022](#) and [FY2023](#) appropriations provisions, Congress built upon AFIDA’s framework to require the U.S. Department of Agriculture to expand its reporting and to facilitate transparency with respect to foreign ownership of U.S. agricultural land.

In contrast to AFIDA, the [authorities](#) underlying CFIUS, examined in this [In Focus](#), allow the executive branch to prohibit or impose divestiture of some foreign purchases of U.S. land or to mitigate the national security risks associated with those transactions. While CFIUS has transaction-review authority, its geographic jurisdiction is limited to [covered real estate](#), which is defined by proximity to U.S. [military installations](#), airports, and other [commercial ports](#).

Several bills introduced in the 118th Congress would build on the AFIDA and CFIUS authorities. Some proposals would [expand](#) AFIDA reporting mandates or [increase penalties](#) for [nondisclosure](#). Others would [give](#) CFIUS [jurisdiction](#) over [broader](#) categories of [land](#). For example, the Senate [voted](#) to include a provision in the proposed National Defense Authorization Act for Fiscal Year 2024 (FY2024 NDAA) that would [expand](#) CFIUS’s authority to review certain foreign investments in agricultural land and in U.S. businesses engaged in agriculture or biotechnology related to agriculture. The proposed FY2024 NDAA provision would also [require the President to prohibit](#) some foreign investment in agriculture-related land or businesses by individuals and entities connected with the PRC, Russia, Iran, and North Korea. Other proposals in the 118th Congress would [expand](#) both AFIDA and CFIUS authorities. Another category of bills would [create](#) new stand-alone prohibitions on purchases of U.S. land by [some](#) or [all](#) foreign individuals and entities.

Some [observers](#) and [Members of Congress](#) have expressed concern that state-level restrictions on foreign ownership risk discriminating against people of certain backgrounds or national origins. From before the inception of the PRC government, people of Asian origin, ethnicity, and ancestry, including those with ties to China, have historically been subject to discriminatory [state](#), local, and [federal](#) laws. Some laws [involved](#) restrictions on [landownership](#). The Supreme Court’s early equal protection jurisprudence, dating back to 1886, [addressed](#) facially neutral ordinances aimed at restricting Chinese business properties based on owners’ “[race and nationality](#).”

Congress could consider using its power to [regulate foreign commerce](#) to enact legislation that preempts state laws regulating foreign ownership of land in the United States. For example, the Preemption of Real Property Discrimination Act ([H.R. 3697](#)), introduced in the 118th Congress, would preempt state laws that

restrict land purchases based on citizenship. Additional background on preemption principles is available in this [CRS Report](#).

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