

ARKANSAS SENATE
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of Senate Bill No. 702

"AN ACT TO ALLOW CONFISCATION OF WATER WELL RIGS, VEHICLES, AND OTHER
PROPERTY USED OR INTENDED TO VIOLATE ARKANSAS CODE § 17-50-104. "

Amendment No. 1 to Senate Bill No. 702.

Amend Senate Bill No. 702 as originally introduced:

Page 3, delete lines 4 through 36, and page 4, delete lines 1 and 2, and substitute the following:

"17-50-404.

(a) The following are subject to forfeiture upon the initiation of a civil proceeding filed by the prosecuting attorney and when so ordered by the circuit court in accordance with this subchapter:

(1) Contraband property used or intended to be used in the violation of § 17-50-104;

(2) The proceeds gained from the violation of § 17-50-104;

(3) Personal property acquired with proceeds gained from the violation of § 17-50-104;

(4)(A) All conveyances, including vehicles and rigs, which are used or intended for use to facilitate the violation of § 17-50-104.

(B) No conveyance used as a common carrier by any person in business as a common carrier is subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.

(C) No conveyance is subject to forfeiture under this subchapter by reason of any act or omission established by the owners to have been committed or omitted without the owners' knowledge or consent.

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party or parties;

(5) All materials including pumping equipment, casing, piping, motors, and other equipment used or intended for use in violation of § 17-50-104;

(6)(A) Everything of value furnished, or intended to be furnished in exchange for violation of § 17-50-104, or all profits, proceeds, or property, excluding real property, traceable to such an exchange.

(B) It may be presumed that the property described in subdivision (a)(6)(A) was acquired with proceeds gained from the violation of § 17-50-104 and is subject to forfeiture; and

(7) Property used in the violation of § 17-50-104 which has



title of ownership with two (2) parties on the title or a cosigner is subject to forfeiture if one (1) party on the title uses the property in violation of § 17-50-104 or receives titled property as the proceeds of the violation, even if the second party claims that he or she did not have knowledge or involvement in the violation.

17-50-405.

(a)(1) The prosecuting attorney of the judicial district within whose jurisdiction the property sought to be forfeited is seized shall promptly proceed against the property by filing in the circuit court having jurisdiction of such property a petition for an order to show cause why the court should not order forfeiture of such property.

(2) The petition shall set forth:

(A) A statement that the action is brought pursuant to § 17-50-404;

(B) The law enforcement agency bringing the action;

(C) A description of the property sought to be forfeited;

(D) A statement that on or about a date certain the property was used or intended to be used in a criminal act constituting violation of § 17-50-104 or that the property was purchased or otherwise obtained as a result of commission of the violation;

(E) A statement detailing the facts in support of forfeiture; and

(F) A list of all persons known to the law enforcement agency, after diligent search and inquiry, who may claim an ownership interest in the property by title or registration or by virtue of a lien allegedly perfected in the manner prescribed by law.

(b)(1) Upon receipt of a petition complying with the requirements of subsection (a) of this section, the circuit judge of the court having jurisdiction shall issue an order to show cause setting forth a statement that this subchapter is the controlling law.

(2) In addition, the order shall set a date at least forty-one (41) days after the date of first publication of the order pursuant to subsection (c) of this section for all persons claiming an interest in the property to file the pleadings as they desire as to why the court should not order the forfeiture of the property to the law enforcement agency seeking forfeiture of the property.

(3) The court shall further order that all persons who do not appear on that date are deemed to have defaulted and waived any claim to the subject property.

(c)(1) The prosecuting attorney shall give notice of the forfeiture proceedings by:

(A) Causing to be published a copy of the order to show cause twice each week for two (2) consecutive weeks in a newspaper having general circulation in the county where the property is located, with the last publication being not less than five (5) days before the show cause hearing; and

(B) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property, or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, if:

(i) The property is of a type for which title or

registration is required by law;

(ii) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(iii) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

(2) The law enforcement agency shall be obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, the agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interests in the property shall not be applicable.

(d) At the hearing on the matter, the petitioner shall by a preponderance of the evidence establish that the property is subject to forfeiture as provided in § 17-50-404.

(e) The final order of forfeiture by the circuit court shall perfect in the law enforcement agency all rights, title, and interest in and to the property and shall relate back to the date of the seizure.

(f) Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable.

(g) Upon filing the petition, the prosecuting attorney for the judicial district may also seek such protective orders as necessary to prevent the transfer, encumbrance, or other disposal of any property named in the petition.”

AND

Page 4, line 4, delete “17-50-405” and substitute “17-50-406”

AND

Page 4, line 23, delete “17-50-406” and substitute “17-50-407”

AND

Page 4, line 23, delete "17-50-405" and substitute "17-50-406"

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Critcher

LDH/MHF - 031120030953

MHF338

Secretary