

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

SENATE BILL 702

4
5 By: Senator Critcher
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7

For An Act To Be Entitled

8
9 AN ACT TO ALLOW CONFISCATION OF WATER WELL RIGS,
10 VEHICLES, AND OTHER PROPERTY USED OR INTENDED TO
11 VIOLATE ARKANSAS CODE § 17-50-104; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14
15 AN ACT TO ALLOW CONFISCATION OF WATER
16 WELL RIGS, VEHICLES, AND OTHER PROPERTY
17 USED OR INTENDED TO VIOLATE ARKANSAS
18 CODE § 17-50-104.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code Title 17, Chapter 50, is amended to add an
25 additional subchapter to read as follows:

26 17-50-401. This subchapter may be known and cited as the "Arkansas
27 Water Well Rig Confiscation Act".
28

29 17-50-402. It has been found by the Arkansas General Assembly that:

30 (1) Certain persons continuously violate Arkansas law requiring
31 that they first obtain the proper registration, licensure, and training for
32 construction of water wells, and that such persons do not have the required
33 bond to protect well owners;

34 (2) Construction of water wells by those persons is a threat to
35 the general health, safety, and welfare because the Commission on Water Well
36 Construction does not have knowledge of their actions and has no means of



1 holding them accountable for failure to develop water in an orderly,
 2 sanitary, reasonable, and safe manner; and

3 (3) Because those persons pose a great threat to the people of
 4 Arkansas, the Commission on Water Well Construction must have the ability to
 5 obtain the forfeiture of the property of violators.

6
 7 17-50-403. As used in this subchapter, unless the context otherwise
 8 requires:

9 (1) "Commission" means the Commission on Water Well Construction
 10 which was created for administration and enforcement of the Arkansas Water
 11 Well Construction Act, § 17-50-101, et seq.;

12 (2) "Contraband property" means property of any nature,
 13 including personal, tangible, or intangible, but not real property that is
 14 used or intended to be used in violation of § 17-50-104;

15 (3)(A) "Pumping equipment" means all machinery and parts of
 16 pumps such as deep well turbine pumps with right angle gear drive, vertical
 17 hollow shaft motors, jet pumps and motors, submersible pumps and motors, and
 18 other parts and fittings installed or attached to the well.

19 (B) "Pumping equipment" does not include cooling units,
 20 horizontal electric motors, heat pump circulating pipe, and stationary diesel
 21 or gas engines;

22 (4) "Rig" means any power driven, percussion, rotary, digging,
 23 jetting, direct push, vibrating, hydrofracturing, or augering machine used in
 24 the construction, alteration, or abandonment of water wells, or any hoist or
 25 machine used in installing or removing pumps from wells with the lifting
 26 capacity of one thousand (1,000) pounds or more; and

27 (5)(A) "Water well" means any excavation that is drilled,
 28 redrilled, cored, bored, washed, driven, dug, jetted, or otherwise
 29 artificially constructed for the purpose of locating, acquiring, diverting,
 30 or artificially recharging ground water.

31 (B)(i) "Water well" includes excavations made for the
 32 purpose of exchanging the geothermal energy found in the earth as heat pump
 33 wells as defined in § 17-50-103.

34 (ii) "Water well" does not include an excavation
 35 made for the purpose of obtaining or prospecting for oil, natural gas,
 36 minerals, or products of mining or quarrying, or for inserting media to

1 repressure oil or natural gas-bearing formations, or for storing petroleum,
2 natural gas, or other products.

3
4 17-50-404. (a) The following property is subject to forfeiture under
5 this subchapter:

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

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

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

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

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

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

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

22 (5) All materials including pumping equipment, casing, piping,
23 motors, and other equipment used or intended for use in violation of § 17-50-
24 104;

25 (6) Everything of value furnished, or intended to be furnished,
26 or traded, or used as payment, or invested for anything of value in return
27 for the violation of § 17-50-104; and

28 (7) Property used in the violation of § 17-50-104 which has
29 title of ownership with two (2) parties on the title or a cosigner, if one
30 (1) party on the title uses the property in violation of § 17-50-104 or
31 receives titled property as the proceeds of the violation, even if the second
32 party claims that the second party did not have knowledge or involvement in
33 the violation.

34 (b)(1) It may be presumed that the property identified in subdivision
35 (6)(A) of this section was acquired with proceeds gained from the violation
36 of § 17-50-104 and is subject to forfeiture.

1 (2) Real property is not subject to forfeiture under this
 2 subchapter.

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 4 17-50-405. If a law enforcement agency desires to sell property
 5 forfeited to it under § 17-50-404, the law enforcement agency shall:

6 (1) Publish at least twice a week for two (2) consecutive weeks
 7 in a newspaper having general circulation in the county notice of the sale,
 8 including the time, place, conditions of the sale, and a description of the
 9 property to be sold;

10 (2) Send a copy of the notice of the sale to each person having
 11 ownership of or a security interest in the property by certified mail, return
 12 receipt requested, or in the manner provided in Rule 4 of the Arkansas Rules
 13 of Civil Procedure, if:

14 (A) The property is of a type for which title or
 15 registration is required by law;

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

18 (C) The property is subject to a security interest
 19 perfected in accordance with the Uniform Commercial Code; and

20 (3) Dispose of the property at public auction to the highest
 21 bidder for cash without appraisal.

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 23 17-50-406. (a) The proceeds of any sale under § 17-50-405 shall be
 24 applied as follows:

25 (1) To payment of the balance due on any lien preserved by the
 26 court in the forfeiture proceedings;

27 (2) To payment of the cost incurred by the seizing agency in
 28 connection with the storage, maintenance, security, and forfeiture of the
 29 property;

30 (3) To payment of costs incurred by the court;

31 (4) To payment of the costs incurred by the prosecuting attorney
 32 or attorney for the law enforcement agency to which the property is forfeited
 33 or to the commission in investigating and developing the case; and

34 (5) The remaining proceeds shall be equally divided between the
 35 commission to be used in furtherance of the commission's activities into the
 36 law enforcement agency to which the property is forfeited.

1 (b) If more than one (1) law enforcement agency is substantially
2 involved in effecting a forfeiture under § 17-50-404, the circuit court
3 having jurisdiction over the forfeiture proceeding shall equitably distribute
4 the law enforcement agency portion of the property among the law enforcement
5 agencies.

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7 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that improper water well
9 construction is injurious to the public peace, health, and safety; that the
10 state must, without undue delay, implement new enforcement procedures; and
11 that this act accomplishes that purpose. Therefore, an emergency is declared
12 to exist and this act being immediately necessary for the preservation of the
13 public peace, health, and safety shall become effective on:

14 (1) The date of its approval by the Governor;

15 (2) If the bill is neither approved nor vetoed by the Governor,
16 the expiration of the period of time during which the Governor may veto the
17 bill; or

18 (3) If the bill is vetoed by the Governor and the veto is
19 overridden, the date the last house overrides the veto.

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