

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
4

As Engrossed: S3/17/03

A Bill

Act 855 of 2003
SENATE BILL 702

5 By: Senator Critcher
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7

For An Act To Be Entitled

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 AN ACT TO ALLOW CONFISCATION OF WATER
15 WELL RIGS, VEHICLES, AND OTHER PROPERTY
16 USED OR INTENDED TO VIOLATE ARKANSAS
17 CODE § 17-50-104.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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.

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

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

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

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

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

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

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

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

24 (5) All materials including pumping equipment, casing, piping,
25 motors, and other equipment used or intended for use in violation of § 17-50-
26 104;

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

30 (B) It may be presumed that the property described in
31 subdivision (a)(6)(A) was acquired with proceeds gained from the violation of
32 § 17-50-104 and is subject to forfeiture; and

33 (7) Property used in the violation of § 17-50-104 which has
34 title of ownership with two (2) parties on the title or a cosigner is subject
35 to forfeiture if one (1) party on the title uses the property in violation of
36 § 17-50-104 or receives titled property as the proceeds of the violation,

1 even if the second party claims that he or she did not have knowledge or
2 involvement in the violation.

3
4 17-50-405.

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

10 (2) The petition shall set forth:

11 (A) A statement that the action is brought pursuant to §
12 17-50-404;

13 (B) The law enforcement agency bringing the action;

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

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

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

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

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

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

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

1 subject property.

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

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

9 (B) Sending a copy of the petition and order to show cause
10 by certified mail, return receipt requested, to each person having ownership
11 of or a security interest in the property, or in the manner provided in Rule
12 4 of the Arkansas Rules of Civil Procedure, if:

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

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

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

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

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

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

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

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

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1 17-50-406. If a law enforcement agency desires to sell property
2 forfeited to it under § 17-50-404, the law enforcement agency shall:

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

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

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

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

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

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

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20 17-50-407. (a) The proceeds of any sale under § 17-50-406 shall be
21 applied as follows:

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

24 (2) To payment of the cost incurred by the seizing agency in
25 connection with the storage, maintenance, security, and forfeiture of the
26 property;

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

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

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

34 (b) If more than one (1) law enforcement agency is substantially
35 involved in effecting a forfeiture under § 17-50-404, the circuit court
36 having jurisdiction over the forfeiture proceeding shall equitably distribute

1 the law enforcement agency portion of the property among the law enforcement
2 agencies.

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

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

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

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

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18 */s/ Critcher*

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21 *APPROVED: 3/28/2003*

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