

Stricken language would be deleted from and underlined language would be added to present law.
Act 174 of the Fiscal Session

State of Arkansas
94th General Assembly
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As Engrossed: S4/24/24
A Bill

SENATE BILL 79

By: Senators Irvin, *J. Bryant*

By: Representative J. Moore

For An Act To Be Entitled

TO AMEND ARKANSAS LAW CONCERNING DIGITAL ASSET MINING BUSINESSES; TO AMEND THE ARKANSAS DATA CENTERS ACT OF 2023; TO AMEND ARKANSAS LAW TO PROVIDE FOR THE *PERMITTING AND REGULATION OF DIGITAL ASSET MINING BUSINESSES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

TO AMEND THE ARKANSAS DATA CENTERS ACT OF 2023; TO PROVIDE FOR THE REGULATION OF DIGITAL ASSET MINING BUSINESSES; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 14-1-602(b), concerning legislative intent and findings for the Arkansas Data Centers Act of 2023, is amended to read as follows:

(b) Through the enactment of this subchapter, the General Assembly intends to:

~~(1) Recognize~~ recognize that data centers create jobs, pay taxes, and provide general economic value to local communities and this state; ~~and~~

~~(2) Clarify the guidelines needed to protect data asset miners from discriminatory industry-specific regulations and taxes.~~



SECTION 2. Arkansas Code § 14-1-605(a), concerning prohibiting a local government from imposing ordinances or zoning regulations on a digital asset mining business with the intent to discriminate against the digital asset mining business, is amended to read as follows:

(a) Except as provided by subsection (d) of this section, a local government shall not:

~~(1) Enact or adopt an ordinance, policy, or action that limits the sound decibels generated from home digital asset mining other than the limits set for sound pollution generally;~~

~~(2) Impose a different requirement for a digital asset mining business than is applicable to any requirement for a data center;~~

~~(3) Rezone rezone an area in which a digital asset mining business is located without complying with applicable state law and local zoning ordinances; or~~

~~(4) Rezone an area with the intent or effect of discriminating against a digital asset mining business.~~

SECTION 3. Arkansas Code Title 14, Chapter 1, Subchapter 6, is amended to add an additional section to read as follows:

14-1-606. Ownership of digital asset mining business by prohibited foreign-party-controlled business prohibited – Definitions – Penalty – Reporting.

(a) As used in this section:

(1) "Interest" means an ownership interest of greater than zero percent (0%);

(2) "Prohibited foreign-party-controlled business" means a digital asset mining business in which a prohibited foreign party owns an interest; and

(3) "Prohibited foreign party" means:

(A) A citizen, resident, or agent of a country subject to § 126.1 of the International Traffic in Arms Regulations, 22 C.F.R. § 120.1 et seq., as existing on January 1, 2024;

(B) A foreign government formed within a country subject to § 126.1 of the International Traffic in Arms Regulations, 22 C.F.R. § 120.1 et seq., as existing on January 1, 2024;

(C) A party other than an individual or a government that

is created or organized under the laws of a foreign government within a country subject to § 126.1 of the International Traffic in Arms Regulations, 22 C.F.R. § 120.1 et seq., as existing on January 1, 2024;

(D) Any party other than an individual or a government:

(i) That is created or organized under the laws of any state; and

(ii) In which a significant interest or substantial control is directly or indirectly held or is capable of being exercised by:

(a) An individual referred to in subdivision (a)(3)(A) of this section;

(b) A foreign government referred to in subdivision (a)(3)(B) of this section;

(c) A party referred to in subdivision (a)(3)(C) of this section; or

(d) A combination of the individuals, parties, or governments referred to in this subdivision (a)(3)(D)(ii);

(E) An Entity of Particular Concern designated by the United States Department of State; or

(F) An agent, trustee, or other fiduciary of a person or entity enumerated in subdivisions (a)(3)(A)-(E) of this section.

(b)(1) A prohibited foreign party shall not acquire or hold by grant, purchase, devise, descent, or otherwise any interest in a digital asset mining business in this state.

(2) A person shall not acquire or hold a digital asset mining business as an agent, trustee, or other fiduciary for a prohibited foreign-party-controlled business.

(c)(1) A prohibited foreign-party-controlled business in operation before the effective date of this act shall have three hundred sixty-five (365) calendar days from the effective date of this act for the prohibited foreign party to divest all interest in the digital asset mining business.

(2) If a prohibited foreign party fails to divest all interest in the digital asset mining business under subdivision (c)(1) of this section, the Attorney General may commence an action in a circuit court with proper jurisdiction under subsection (e) of this section.

(d) Upon request of a person or upon receipt of information that leads the Attorney General to believe that a violation of this section may exist,

the Attorney General may conduct an investigation that includes without limitation:

(1) Receiving sworn statements; and

(2) Issuing subpoenas to compel the:

(A) Testimony of witnesses subpoenaed before him or her;

and

(B) Production of records and other documents under § 25-16-705.

(e)(1) If as a result of an investigation under subsection (d) of this section the Attorney General concludes that a violation of this section has occurred, the Attorney General may order a prohibited foreign party to divest all interest in the digital asset mining business within three hundred sixty-five (365) calendar days.

(2) If the prohibited foreign party fails to divest all interest in the digital asset mining business within three hundred sixty five (365) calendar days, the Attorney General may commence an action in a circuit court with proper jurisdiction over the digital asset mining business.

(3)(A) If the circuit court finds that a violation of this section has occurred, the circuit court shall issue an order for the digital asset mining business to be sold through judicial foreclosure.

(B) The proceeds of the sale under subdivision (e)(3)(A) of this section shall be disbursed to the lienholders, in order of priority, except for liens that under the terms of the sale are to remain.

(C) If the assets of the digital asset mining business include real property, the Attorney General shall promptly record a copy of the following in the local land records:

(i) Upon commencement, notice of the pendency of the action under subdivision (c)(2) or subdivision (e)(2) of this section; and

(ii) The order for the sale of the digital asset mining business under subdivision (e)(3)(A) of this section.

(3) The Attorney General may pursue other remedies in an action brought under subdivision (c)(2) or subdivision (e)(2) of this section, including without limitation:

(A) A civil penalty not to exceed up to one million dollars (\$1,000,000) or twenty-five percent (25%) of the fair market value, on the date of the assessment of the civil penalty, of the prohibited foreign

party's interest in the digital asset mining business for the failure to divest of all interest in the digital asset mining business within three hundred sixty-five (365) calendar days as required under this section;

(B) Court costs;

(C) Prejudgment interest and postjudgment interest at the maximum rates permitted by law; and

(D) Reasonable attorney's fees.

(4) In addition to the remedies under subdivision (e)(3) of this section, the Attorney General may pursue treble damages against a digital asset mining business if the digital asset mining business:

(A) Is held in violation of this section;

(B) Is ordered to pay a civil penalty under subdivision (e)(3)(A) of this section; and

(C) Fails to pay a civil penalty under subdivision (e)(3)(A) of this section within the scope of the order of the circuit court.

(5) The approval of a digital asset mining business by a local government or the receipt by a digital asset mining business of a permit or other authorization from the state to operate shall not be a defense to a cause of action brought under subdivision (c)(2) or subdivision (e)(2) of this section.

(f) Civil penalties and damages received by the Attorney General under this section shall be distributed as follows:

(1) Fifty percent (50%) to the Oil and Gas Commission Fund, § 19-6-410; and

(2) Fifty percent (50%) to the Attorney General to be used in the same manner as provided in § 25-16-718.

(g) A prohibited foreign-party-controlled business shall report the composition of its ownership to the Attorney General.

(h) Title to real property is not invalid due to a violation of this section by any former owner of the real property.

SECTION 4. Arkansas Code, Title 23, is amended to add an additional chapter to read as follows:

CHAPTER 119 - DIGITAL ASSET MINING BUSINESSES

23-119-101. Legislative intent – Findings - Purpose.

(a) This chapter establishes the standards and criteria for the permitting and regulation of digital asset mining businesses.

(b) The General Assembly finds:

(1) Digital asset mining businesses represent a new and emerging industry that presents significant challenges for the citizens of Arkansas, including without limitation:

(A) Significant noise emissions;

(B) Massive consumption of power;

(C) The usage of large quantities of water that could potentially threaten resources for citizens and future economic development opportunities; and

(D) Potential issues involving cybersecurity.

(2) While the State of Arkansas welcomes new businesses and economic growth, the General Assembly likewise has a responsibility to ensure that the operations of new industries do not negatively impact the public peace, health, and safety or otherwise damage the well-being of the citizens of the state;

(3) When an industry presents harm to the public peace, health, and safety, it has been the practice of the General Assembly to provide for regulation of that industry to ensure that the industry operates successfully while not harming the citizens of the state and its natural resources; and

(4) Based upon the challenges presented by digital asset mining businesses, it is necessary to regulate digital asset mining businesses as provided in this chapter to provide a regulatory framework for the safe operation of this new, emerging industry.

(c) The purpose of this chapter is to:

(1) Promote, preserve, and protect the public peace, health, and safety through effective permitting and regulation of digital asset mining businesses;

(2) Provide for the powers and duties of the Oil and Gas Commission relating to the permitting and regulation of digital asset mining businesses; and

(3) Prescribe penalties for violations of this chapter.

23-119-102. Definitions.

As used in this chapter:

(1) "Blockchain network" means a group of computers operating and processing together to execute a consensus mechanism to agree upon and verify data in a digital record for the purpose of generating digital assets;

(2) "Digital assets" means cryptocurrency, virtual currency, and natively electronic assets, including without limitation stable coins, nonfungible tokens, and other digital-only assets, that confer economic rights or powers;

(3) "Digital asset mining business" means a group of computers working at a single site that consumes more than one megawatt (1 MW) of electrical energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network; and

(4) "Local government" means a county, a city of the first class, a city of the second class, or an incorporated town.

23-119-103. Permit – Application.

(a) A digital asset mining business shall not operate in Arkansas without a valid permit from the Oil and Gas Commission under this chapter.

(b) The commission shall establish the application for a permit for a digital asset mining businesses to operate.

(c) The issuance of a digital asset mining business permit shall be contingent upon compliance with all applicable state laws, including without limitation the Arkansas Data Centers Act of 2023, § 14-1-601 et seq.

23-119-104. Rules.

The Oil and Gas Commission shall promulgate rules to implement this chapter, including without limitation rules establishing requirements for:

(1) Permitting;

(2) Application for a permit;

(3) Renewal of a permit;

(4) The requirements and terms for a permit; and

(5) The establishment and operation of a digital asset mining business.

23-119-105. Enforcement.

(a) The Oil and Gas Commission shall have jurisdiction of and

authority over all persons and property necessary to administer and enforce effectively:

(1) This chapter; and

(2) The Arkansas Data Centers Act of 2023, § 14-1-601 et seq.

(b) Upon receipt of a complaint under subsection (d) of this section, the commission may make inquiries it deems proper relating to its duties to administer and enforce this chapter and the Arkansas Data Centers Act of 2023, § 14-1-601 et seq., including without limitation:

(1) Making reasonable investigations and inspections;

(2) Examining properties, leases, papers, books, and records;

(3) Holding hearings;

(4) Requiring the keeping of records and the making of reports;

and

(5) Taking such action as may be reasonably necessary to enforce this chapter.

(c) Upon receipt of a complaint under subsection (d) of this section, the commission may make, after hearing and notice, such reasonable orders as necessary from time to time in the proper administration and enforcement of this chapter and the Arkansas Data Centers Act of 2023, § 14-1-601 et seq.

(d)(1) An individual or legal entity may file a complaint with the commission relating to the compliance of digital asset mining businesses with state law, the requirements and terms of a permit, or the rules of the commission.

(2) Upon receipt of a complaint, the commission may:

(A) Investigate the complaint; and

(B) Assess penalties in response to any identified noncompliance.

(e) The commission shall promulgate rules establishing:

(1) The procedures for ensuring compliance with state law, the requirements and terms of a permit, and rules of the commission; and

(2)(A) Penalties for failure to comply with state law, the requirements and terms of a permit, or rules of the commission, including without limitation:

(i) Financial penalties; and

(ii) The suspension or revocation of a permit issued under this chapter.

(B) Financial penalties under this subdivision (e)(2) shall not exceed five thousand dollars (\$5,000) per day of a violation.

(f) This chapter does not:

(1) Prohibit a local government from adopting one (1) or more ordinances, resolutions, or other appropriate legislative enactments to regulate digital asset mining businesses that:

(A) Address areas of regulation that are not otherwise addressed by federal law, state law, or the rules of the commission; and

(B) Are not inconsistent with federal law, state law, or the rules of the commission; and

(2) Prevent a local government from enforcing an ordinance, resolution, or other appropriate legislative enactment regulating digital asset mining businesses that is not inconsistent with federal law, state law, or the rules of the commission.

SECTION 5. Arkansas Code § 19-6-140 is amended to read as follows:

19-6-410. Oil and Gas Commission Fund.

The Oil and Gas Commission Fund shall consist of those special revenues as specified in § 19-6-301(62), ~~and~~ (111), and (275) and § 14-1-606, there to be used for:

(1) The maintenance, operation, and improvement required by the Oil and Gas Commission in carrying out the functions, powers, and duties as set out in § 15-72-101 et seq. and § 23-119-101 et seq.;

(2) Payment of expenses of the Office of the State Geologist under § 15-71-107(b)(2)(B); or

(3) Other duties imposed by law upon the commission.

SECTION 6. Arkansas Code § 19-6-301 is amended to add an additional subdivision to read as follows:

(275) Digital asset mining business penalties under § 23-119-101 et seq.;

SECTION 7. DO NOT CODIFY. TEMPORARY LANGUAGE. APPLICATION FOR INITIAL PERMITS.

(a) Within ninety (90) days of the effective date of the initial rules promulgated under § 23-119-104, an individual or legal entity operating one

(1) or more digital mining asset businesses in Arkansas shall apply for a permit for each digital asset mining business operated by the individual or legal entity in Arkansas.

(b) This act does not prohibit a digital asset mining business from operating:

(1) Before the effective date of the initial rules promulgated under § 23-119-104;

(2) During the ninety-day period to apply for a permit under subsection (a) of this section; and

(3) While the Oil and Gas Commission is considering the digital asset mining business's application for a permit.

(c) A digital asset mining business shall cease operations if:

(1) The digital asset mining business is operating on the effective date of the initial rules promulgated under § 23-119-104 and fails to apply for a permit in the ninety-day period to apply for a permit under subsection (a) of this section; or

(2) The digital asset mining business's application for a permit under subsection (a) of this section is denied.

SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that digital asset mining businesses present significant threats to the public peace, health, and safety, including without limitation significant noise emissions, massive power consumption, the use of large quantities of water that potentially threatens water resources, and potential issues with cybersecurity; that the continuous noise emitted by digital asset mining businesses threatens the public peace, health, and safety as it risks potential damage to the hearing and quality of life of the citizens of this state; that in light of these threats it is imperative that the General Assembly regulate by permit digital asset mining businesses to protect the public peace, health, and safety; and that this act should become effective at the earliest opportunity to begin the regulatory process and protect the citizens of the state from any harmful actions related to digital asset mining businesses. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

/s/Irvin

APPROVED: 5/3/24