

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Fiscal Session, 2024

As Engrossed: S4/23/24
A Bill

SENATE BILL 78

By: Senators J. Bryant, *Irvin*

By: Representative McClure

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS DATA CENTERS ACT OF 2023; TO CREATE REQUIREMENTS FOR NOISE REDUCTION IN THE OPERATION OF A DIGITAL ASSET MINING BUSINESS; TO CLARIFY THE ABILITY OF AN ARKANSAS RESIDENT TO ENGAGE IN HOME DIGITAL ASSET MINING; TO PROHIBIT FOREIGN-PARTY-CONTROLLED OWNERSHIP OF A DIGITAL ASSET MINING BUSINESS IN ARKANSAS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS DATA CENTERS ACT OF 2023; TO PROHIBIT FOREIGN-PARTY-CONTROLLED OWNERSHIP OF A DIGITAL ASSET MINING BUSINESS; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 14-1-603(10), concerning the definition of "ordinance" under the Arkansas Data Centers Act of 2023, is amended to read as follows:

(10) "Ordinance" means an ordinance, resolution, or other appropriate legislative enactment of a legislative body ~~that~~

~~(A) Prohibits an individual from operating a business from a residence; or~~

~~(B) Requires an individual to obtain approval before~~



~~operating a business from a residence;~~

SECTION 2. Arkansas Code § 14-1-604(a), concerning requirements that a digital asset mining business shall comply with to operate in Arkansas, is amended to read as follows:

(a) A digital asset mining business may operate in this state if the digital asset mining business complies with:

- ~~(1) State law concerning business guidelines and tax policies;~~
- ~~(2)(1) Any ordinance concerning operations and safety ordinance;~~
- ~~(3)(2) Any rule or rate for utility service provided by or on behalf of a public entity; and~~
- ~~(4)(3) State and federal employment laws law.~~

SECTION 3. Arkansas Code § 14-1-604(b), concerning requirements that a digital asset mining business shall comply with, is amended to add additional subdivisions to read as follows:

(3) Apply noise-reduction techniques, including without limitation:

(A) Using liquid cooling or submerged cooling;

(B)(i) Fully enclosing the envelope.

(ii)(a) As used in subdivision (b)(3)(B)(i) of this section, "fully enclosing the envelope" means enfolding the envelope where noise from the operation of a digital asset mining business is directly produced around all sides, including above and below the equipment producing the noise, with material that is reasonably calculated by industry standards to reduce noise emissions to a level that is acceptable to a reasonable person under similar circumstances.

(b) Except as provided in subdivision (b)(3)(B)(ii)(c) of this section, "fully enclosing the envelope" does not include utilizing a passively cooled premanufactured container without additionally enclosing the system in a complete envelope.

(c) A digital asset mining business may use a passively cooled premanufactured container without additionally enclosing the system in a complete envelope if the digital asset mining business locates or relocates under subdivision (b)(3)(C) of this section; or

(C) Upon approval by the local government, locating or

relocating to:

(i) A minimum of two thousand feet (2,000') from the nearest residential or commercial use structure; or

(ii) An area zoned for industrial use or an otherwise approved use.

(4)(A) A person who owns land within two thousand feet (2,000') of the nearest property line of a digital asset mining business may commence an action in a circuit court with proper jurisdiction over the digital asset mining business to enforce the noise reduction techniques required under subdivision (b)(3) of this section.

(B) A person who prevails in an action commenced under subdivision (b)(4)(A) of this section may be awarded reasonable attorney's fees and costs.

SECTION 4. Arkansas Code § 14-1-604, concerning requirements that a digital asset mining business shall comply with, is amended to add an additional subsection to read as follows:

(f) A local government shall not pass an ordinance that:

(1) Prohibits an individual from engaging in home digital asset mining; or

(2) Requires an individual to obtain approval from a local government before engaging in home digital asset mining.

SECTION 5. 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 6. 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 7. Arkansas Code § 19-6-410 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 § 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 other applicable law;

(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 8. DO NOT CODIFY. Applicability.

A digital asset mining business in operation before the effective date of this act shall be in full compliance with § 14-1-604(b)(3) no later than ninety (90) days following the effective date of this act.

SECTION 9. EMERGENCY CLAUSE. It is found and determined by the

General Assembly of the State of Arkansas that increased circulation of digital currency and adoption of digital transformation have led to an influx of digital asset mining businesses in Arkansas in recent years; that digital asset mining businesses have potential to generate excessive noise and that without adequate regulation, digital asset mining businesses can place a strain on, and reduce the quality of life of, residents and communities near them; and that growth of this business sector has been capitalized upon by foreign corporations and other foreign entities and aliens that pose potential threats to the welfare and safety of Arkansas and its residents. 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/J. Bryant