

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011

# A Bill

SENATE BILL 331

4  
5 By: Senator Files

## For An Act To Be Entitled

8 AN ACT TO CLARIFY THE EXEMPTION FROM SALES AND USE  
9 TAX FOR REPLACEMENTS OF MANUFACTURING MACHINERY AND  
10 EQUIPMENT THAT IMPROVE, MODERNIZE, AND EXPAND  
11 EXISTING FACILITIES; TO DECLARE AN EMERGENCY; AND FOR  
12 OTHER PURPOSES.

## Subtitle

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15 TO CLARIFY THE EXEMPTION FROM SALES AND  
16 USE TAX FOR REPLACEMENTS OF MANUFACTURING  
17 MACHINERY AND EQUIPMENT THAT IMPROVE,  
18 MODERNIZE, AND EXPAND EXISTING FACILITIES  
19 AND TO DECLARE AN EMERGENCY.  
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22  
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24  
25 SECTION 1. Arkansas Code § 26-52-402(a)(2), concerning the sales tax  
26 exemption for manufacturing machinery and equipment, is amended to read as  
27 follows:

28 (2)(A)(i) Machinery purchased to replace existing machinery and  
29 used directly in producing, manufacturing, fabricating, assembling,  
30 processing, finishing, or packaging of articles of commerce at manufacturing  
31 or processing plants or facilities in this state will be exempt under this  
32 subdivision (a)(2).

33 (ii) Machinery purchased to replace existing  
34 machinery includes machinery and equipment described in either subdivision  
35 (a)(2)(B) or (a)(2)(C) of this section.

36 (B)(i) As used in subdivision (a)(2)(A) of this section,



1 “machinery purchased to replace existing machinery” means that substantially  
 2 all of the machinery and equipment required to perform an essential function  
 3 is physically replaced with new machinery.

4 (ii) As used in subdivision (a)(2)(B)(i) of this  
 5 section, "substantially" is intended to exclude routine repairs and  
 6 maintenance and partial replacements that do not improve efficiency or extend  
 7 the useful life of the entire machine, but it is not intended to mean that  
 8 foundations and minor components that can be economically adapted, rebuilt,  
 9 or refurbished must be completely replaced when replacement would be more  
 10 expensive or impracticable than adapting, rebuilding, or refurbishing the old  
 11 foundation or minor components.

12 (C)(i) As used in subdivision (a)(2)(A) of this section,  
 13 "machinery purchased to replace existing machinery" also means partial  
 14 replacements, additions or enhancements of machinery or equipment that:

15 (a) Improve efficiency or extend the useful  
 16 life of an entire machine as installed and utilized immediately before the  
 17 replacements, additions or enhancements were made;

18 (b) Modernize old, inefficient, or  
 19 technologically obsolete machinery or equipment; or

20 (c) Economically or physically expand existing  
 21 manufacturing or processing facilities within this state.

22 (ii) As used in subdivision (a)(2)(C)(i) of this  
 23 section, “partial replacements, additions, or enhancements” is intended to  
 24 exclude routine repairs and maintenance of machinery or equipment and partial  
 25 replacements that do not meet the requirements of subdivision (a)(2)(C)(i) of  
 26 this section.

27 (D) It is the intent of this subdivision (a)(2) to provide  
 28 the exemptions in subdivision (a)(1) of this section and this subdivision  
 29 (a)(2) as incentives to encourage the location of new manufacturing plants in  
 30 Arkansas, the expansion of existing manufacturing plants in Arkansas, and the  
 31 modernization of existing manufacturing plants in Arkansas through the  
 32 replacement of old, inefficient, or technologically obsolete machinery and  
 33 equipment;

34  
 35 SECTION 2. Arkansas Code Section 26-53-114(a)(2), concerning the  
 36 compensating use taxation of manufacturing machinery and equipment, is

1 amended to read as follows:

2 (2)(A)(i) Machinery purchased to replace existing machinery ~~in~~  
3 ~~its entirety~~ and used directly in producing, manufacturing, fabricating,  
4 assembling, processing, finishing, or packaging of articles of commerce at  
5 manufacturing or processing plants or facilities in this state will be exempt  
6 under this section.

7 (ii) Machinery used to replace existing machinery  
8 includes machinery and equipment described in either subdivision (a)(2)(B) or  
9 (a)(2)(C) of this section.

10 (B)(i) As used in subdivision (a)(2)(A) of this section,  
11 "machinery purchased to replace existing machinery" means that substantially  
12 all of the machinery and equipment required to perform an essential function  
13 is physically replaced with new machinery.

14 (ii) As used in subdivision (a)(2)(B)(i) of this  
15 section "substantially" is intended to exclude routine repairs and  
16 maintenance and partial replacements that do not improve efficiency or extend  
17 the useful life of the entire machine, but it is not intended to mean that  
18 foundations and minor components ~~which that~~ can be economically adapted,  
19 rebuilt, or refurbished must be completely replaced when replacement would be  
20 more expensive or impracticable than adapting, rebuilding, or refurbishing  
21 the old foundation and minor components; ~~and.~~

22 (C)(i) As used in subdivision (a)(2)(A) of this section,  
23 "machinery purchased to replace existing machinery" also means partial  
24 replacements, additions, or enhancements of machinery or equipment that:

25 (a) Improve efficiency or extend the useful  
26 life of an entire machine as installed and utilized immediately before the  
27 replacements, additions or enhancements were made;

28 (b) Modernize old, inefficient, or  
29 technologically obsolete machinery or equipment; or

30 (c) Economically or physically expand existing  
31 manufacturing or processing facilities within this state.

32 (ii) As used in subdivision (a)(2)(C)(i) of this  
33 section, "partial replacements, additions, or enhancements" is intended to  
34 exclude routine repairs and maintenance of machinery or equipment and partial  
35 replacements that do not meet the requirements of subdivision (a)(2)(C)(i) of  
36 this section.

1                   (D) It is the intent of this subdivision (a)(2) to provide  
 2 the exemptions in subdivision (a)(1) of this section and this subdivision  
 3 (a)(2) as incentives to encourage the location of new manufacturing plants in  
 4 Arkansas, expansion of existing manufacturing plants in Arkansas, and  
 5 modernization of existing manufacturing plants in Arkansas through the  
 6 replacement of old, inefficient, or technologically obsolete machinery and  
 7 equipment; and

8                   (3) Machinery and equipment required by state or federal law or  
 9 regulations to be installed and utilized by manufacturing or processing  
 10 plants or facilities or cities or towns in this state to prevent or reduce  
 11 air or water pollution or contamination ~~which~~ that might otherwise result  
 12 from the operation of the plants or facility or city or town.

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 14                   SECTION 3. Emergency Clause. It is found and determined by the General  
 15 Assembly that differences of opinion have developed between the Department  
 16 of Finance and Administration and Arkansas manufacturers concerning the  
 17 meaning of important sections of the manufacturing machinery and equipment  
 18 exemption, including particularly the exemption for the purchase and  
 19 installation of machinery and equipment to modernize and improve the  
 20 efficiency of existing machinery and equipment or to expand production or  
 21 create new jobs that may not require the replacement of machines in their  
 22 entirety; that it is critical to encourage manufacturers to modernize and  
 23 retool their plants as economically as possible in order to remain  
 24 competitive and preserve Arkansas jobs; and that clarifications to confirm  
 25 the intent and purpose of the manufacturing machinery and equipment exemption  
 26 are appropriate. Therefore, an emergency is declared to exist and this act  
 27 being immediately necessary for the preservation of the public peace, health,  
 28 and safety shall become effective on:

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

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

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