

1 State of Arkansas *As Engrossed: S4/12/13 S4/16/13 S4/18/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

SENATE BILL 791

4

5 By: Senators B. Sample, Files, Caldwell, E. Cheatham, J. Dismang, J. English, Hester, Hickey, Holland,  
6 J. Hutchinson, J. Key, B. King, U. Lindsey, Maloch, B. Pierce, Rapert, G. Stubblefield, Teague, J. Woods,  
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8 By: Representatives Alexander, D. Altes, C. Armstrong, E. Armstrong, Baine, Ballinger, Baltz, Barnett,  
9 Biviano, Bragg, Branscum, Broadaway, Carnine, Catlett, Clemmer, Copenhaver, Cozart, Dale,  
10 Deffenbaugh, J. Dickinson, Dotson, C. Douglas, D. Douglas, J. Edwards, Eubanks, Farrer, Ferguson,  
11 Fielding, Fite, Gillam, Gossage, Hammer, Harris, Hawthorne, Hickerson, Hillman, Hobbs, Hodges,  
12 Holcomb, Hopper, House, Jett, Kerr, Kizzia, Lampkin, Lea, Leding, Lenderman, Linck, Love, Lowery, S.  
13 Malone, Mayberry, McCrary, McElroy, McGill, McLean, D. Meeks, S. Meeks, Miller, Murdock, B.  
14 Overbey, Payton, Perry, Ratliff, Rice, Richey, Scott, Shepherd, Slinkard, Steel, T. Thompson, Vines, W.  
15 Wagner, Wardlaw, Westerman, D. Whitaker, B. Wilkins, Williams, Womack, Wren, Wright

16

17

## For An Act To Be Entitled

18

AN ACT TO REDUCE THE SALES AND USE TAX ON NATURAL GAS  
19 AND ELECTRICITY USED BY MANUFACTURERS; AND FOR OTHER  
20 PURPOSES.

21

22

23

## Subtitle

24

*TO REDUCE THE SALES AND USE TAX ON  
25 NATURAL GAS AND ELECTRICITY USED BY  
26 MANUFACTURERS.*

27

28

29

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

30

31

*SECTION 1. Arkansas Code § 26-52-319(a)-(c), concerning the sales tax  
32 on natural gas and electricity used by manufacturers, is amended to read as  
33 follows:*

34

*(a)(1)(A) Beginning July 1, ~~2007~~ 2014, in lieu of the gross receipts  
35 or gross proceeds tax levied in §§ 26-52-301 and 26-52-302, there is levied  
36 an excise tax on the gross receipts or gross proceeds derived from the sale*



1 of natural gas and electricity to a manufacturer for use directly in the  
2 actual manufacturing process at the rate of ~~four and three eighths percent~~  
3 ~~(4.375%)~~ one percent (1%).

4 ~~(2) Beginning July 1, 2008, the tax rate levied in subdivision~~  
5 ~~(a)(1) of this section shall be imposed at the rate of three and seven-~~  
6 ~~eighths percent (3.875%).~~

7 ~~(3)(A) Beginning July 1, 2009, the tax rate levied in~~  
8 ~~subdivision (a)(1) of this section shall be imposed at the rate of three and~~  
9 ~~one eighth percent (3.125%).~~

10 ~~(B)(i) The Director of the Department of Finance and~~  
11 ~~Administration shall monitor the amount of tax savings received by all~~  
12 ~~taxpayers as a result of the reduction in the tax rate from that levied in §§~~  
13 ~~26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this~~  
14 ~~section.~~

15 ~~(ii) When the director determines that the amount of~~  
16 ~~tax savings resulting from the determination described in subdivision~~  
17 ~~(a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-~~  
18 ~~148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a~~  
19 ~~fiscal year, the director shall not process any further refund claims through~~  
20 ~~a refund process during the fiscal year for taxpayers seeking to claim the~~  
21 ~~reduced tax rate provided by this section. The amount of twenty-seven million~~  
22 ~~dollars (\$27,000,000) is intended to cover the accumulated but unclaimed~~  
23 ~~reduction of sales and use tax on natural gas and electricity as provided by~~  
24 ~~Acts 2007, No. 185, as well as the additional reduction provided by Acts~~  
25 ~~2009, No. 695.~~

26 ~~(iii) If the director determines that discontinuing~~  
27 ~~refund payments as provided in subdivision (a)(3)(B)(ii) of this section is~~  
28 ~~insufficient to prevent the amount of tax savings from exceeding twenty-seven~~  
29 ~~million dollars (\$27,000,000) during a fiscal year, the director may decline~~  
30 ~~to accept any amended return filed by a taxpayer to claim an overpayment~~  
31 ~~resulting from the reduced tax rate provided by this section for a period~~  
32 ~~other than the period for which a tax return is currently due.~~

33 ~~(C)(i) Refund requests and amended returns filed with the~~  
34 ~~director to claim the overpayment resulting from the reduced rate in~~  
35 ~~subdivision (a)(3)(A) of this section shall be processed in the order they~~  
36 ~~are received by the director. A taxpayer that does not receive a refund after~~

1 ~~the refund and amended return process has ceased under subdivision (a)(3)(B)~~  
2 ~~of this section shall be given priority to receive a refund during the~~  
3 ~~subsequent fiscal year. The unpaid refunds from the prior fiscal year shall~~  
4 ~~be processed before any refund claims filed in the current fiscal year to~~  
5 ~~claim the benefit of this section.~~

6 ~~(ii) The statute of limitations for refunds and~~  
7 ~~amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to~~  
8 ~~allow the payment of a refund under the process provided in subdivision~~  
9 ~~(a)(3)(C)(i) of this section.~~

10 ~~(4)(A) Beginning July 1, 2011, the tax rate levied in~~  
11 ~~subdivision (a)(1) of this section shall be imposed at the rate of two and~~  
12 ~~five-eighths percent (2.625%).~~

13 ~~(B)(i) The Director of the Department of Finance and~~  
14 ~~Administration shall monitor the amount of tax savings received by all~~  
15 ~~taxpayers as a result of the reduction in the tax rate from that levied in §§~~  
16 ~~26-52-301 and 26-52-302 to that levied in subdivision (a)(4)(A) of this~~  
17 ~~section.~~

18 ~~(ii) When the director determines that the amount of~~  
19 ~~tax savings resulting from the determination described in subdivision~~  
20 ~~(a)(4)(B)(i) of this section plus any use tax savings described in § 26-53-~~  
21 ~~148(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000) during a~~  
22 ~~fiscal year, the director shall not process any further refund claims through~~  
23 ~~a refund process during the fiscal year for taxpayers seeking to claim the~~  
24 ~~reduced tax rate provided by this section. The amount of twenty-seven million~~  
25 ~~dollars (\$27,000,000) is intended to cover the accumulated but unclaimed~~  
26 ~~reduction of sales and use tax on natural gas and electricity as provided by~~  
27 ~~this section.~~

28 ~~(iii) If the director determines that discontinuing~~  
29 ~~refund payments as provided in subdivision (a)(4)(B)(ii) of this section is~~  
30 ~~insufficient to prevent the amount of tax savings from exceeding twenty-seven~~  
31 ~~million dollars (\$27,000,000) during a fiscal year, the director may decline~~  
32 ~~to accept any amended return filed by a taxpayer to claim an overpayment~~  
33 ~~resulting from the reduced tax rate provided by this section for a period~~  
34 ~~other than the period for which a tax return is currently due.~~

35 ~~(C)(i) Refund requests and amended returns filed with the~~  
36 ~~director to claim the overpayment resulting from the reduced rate in~~

1 ~~subdivision (a)(4)(A) of this section shall be processed in the order they~~  
2 ~~are received by the director. A taxpayer that does not receive a refund~~  
3 ~~after the refund and amended return process has ceased under subdivision~~  
4 ~~(a)(4)(B) of this section shall be given priority to receive a refund during~~  
5 ~~the subsequent fiscal year. The unpaid refunds from the prior fiscal year~~  
6 ~~shall be processed before any refund claims filed in the current fiscal year~~  
7 ~~to claim the benefit of this section.~~

8 ~~(ii) The statute of limitations for refunds and~~  
9 ~~amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to~~  
10 ~~allow the payment of a refund under the process provided in subdivision~~  
11 ~~(a)(4)(C)(i) of this section.~~

12 (B)(i) Beginning July 1, 2015, the gross receipts or gross  
13 proceeds tax levied in §§ 26-52-301 and 26-52-302 and this section shall be  
14 levied at a rate of zero percent (0%) on the sale of natural gas and  
15 electricity to a manufacturer for use directly in the actual manufacturing  
16 process.

17 (ii) However, the sale of natural gas and  
18 electricity to a manufacturer for use directly in the actual manufacturing  
19 process shall remain subject to the excise tax of one-eighth of one percent  
20 (1/8 of 1%) levied in Amendment 75 to the Arkansas Constitution and the  
21 temporary excise tax of one-half percent (1/2%) levied in Amendment 91 to the  
22 Arkansas Constitution.

23 ~~(5) (2)~~ The taxes levied in this subsection shall be distributed  
24 as follows:

25 (A) Seventy-six and six-tenths percent (76.6%) of the tax,  
26 interest, penalties, and costs received by the ~~director~~ Director of the  
27 Department of Finance and Administration shall be deposited as general  
28 revenues;

29 (B) Eight and five-tenths percent (8.5%) of the tax,  
30 interest, penalties, and costs received by the director shall be deposited  
31 into the Property Tax Relief Trust Fund; and

32 (C) Fourteen and nine-tenths percent (14.9%) of the tax,  
33 interest, penalties, and costs received by the director shall be deposited  
34 into the Educational Adequacy Fund.

35 ~~(6)(A) (3)(A)~~ The excise tax levied in this section applies only  
36 to natural gas and electricity sold for use directly in the actual

1 manufacturing process.

2 (B) Natural gas and electricity sold for any other purpose  
3 ~~shall be~~ are subject to the full gross receipts or gross proceeds tax levied  
4 under §§ 26-52-301 and 26-52-302.

5 ~~(7)~~ (4) The excise tax levied in this section shall be  
6 collected, reported, and paid in the same manner and at the same time as is  
7 prescribed by law for the collection, reporting, and payment of all other  
8 Arkansas gross receipts taxes.

9 (b) As used in this section, "manufacturer" means a:

10 (1) Manufacturer classified within sectors 31 through 33 or  
11 sector 115111 of the North American Industry Classification System, as in  
12 effect on January 1, 2011; or

13 (2) Generator of electric power classified within sector 22 of  
14 the North American Industry Classification System, as in effect on January 1,  
15 2011, that uses natural gas to operate a new or existing generating facility  
16 that uses combined-cycle gas turbine technology.

17 (c)(1) Except as otherwise provided in ~~subdivision (e)(2)(G) of this~~  
18 ~~section~~ this subsection, the tax rate under subsection (a) of this section  
19 does not apply to a manufacturer as defined in subdivision (b)(2) of this  
20 section.

21 (2) In lieu of the tax rate under subsection (a) of this  
22 section, the excise tax rate levied on the gross receipts or gross proceeds  
23 derived from the sale of natural gas and electricity to a manufacturer as  
24 defined in subdivision (b)(2) of this section to operate a new or existing  
25 facility that uses combined-cycle gas turbine technology is as follows:

26 (A) Beginning January 1, 2012, five and ~~one-eighths~~ one-  
27 eighth percent (5.125%);

28 (B) Beginning January 1, 2013, four and ~~one-eighths~~ one-  
29 eighth percent (4.125%); ~~and~~

30 (C) Beginning January 1, 2014, two and five-eighths  
31 percent (2.625%); ~~and~~

32 (D) Beginning January 1, 2015, one percent (1%).

33 ~~(3)(A) The amount of tax savings described in subdivision~~  
34 ~~(a)(4)(B)(i) of this section does not include any tax savings received by a~~  
35 ~~manufacturer as defined in subdivision (b)(2) of this section.~~

36 ~~(B) Manufacturers as defined in subdivision (b)(2) of this~~

1 ~~section are not subject to the dollar limitations on refunds and amended~~  
2 ~~returns stated in subsection (a) of this section.~~

3 ~~(4) (3) The taxes levied in this subsection shall be distributed~~  
4 ~~in the same manner as set out stated in subsection (a) of this section.~~

5  
6 SECTION 2. Arkansas Code § 26-53-148(a)-(c), concerning the  
7 compensating use tax on natural gas and electricity used by manufacturers,  
8 are amended to read as follows:

9 (a)(1)(A) Beginning July 1, ~~2007~~ 2014, in lieu of the tax levied in §§  
10 26-53-106 and 26-53-107, there is levied an excise tax on the sales price of  
11 natural gas and electricity purchased by a manufacturer for use directly in  
12 the actual manufacturing process at the rate of ~~four and three-eighths~~  
13 ~~percent (4.375%)~~ one percent (1%).

14 ~~(2) Beginning July 1, 2008, the tax rate levied in subdivision~~  
15 ~~(a)(1) of this section shall be imposed at the rate of three and seven-~~  
16 ~~eighths percent (3.875%).~~

17 ~~(3)(A) Beginning July 1, 2009, the tax rate levied in~~  
18 ~~subdivision (a)(1) of this section shall be imposed at the rate of three and~~  
19 ~~one-eighth percent (3.125%).~~

20 ~~(B)(i) The Director of the Department of Finance and~~  
21 ~~Administration shall monitor the amount of tax savings received by all~~  
22 ~~taxpayers as a result of the reduction in the tax rate from that levied in §§~~  
23 ~~26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this~~  
24 ~~section.~~

25 ~~(ii) When the director determines that the amount of~~  
26 ~~tax savings resulting from the determination described in subdivision~~  
27 ~~(a)(3)(B)(i) of this section plus any gross receipts tax savings described in~~  
28 ~~§ 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)~~  
29 ~~during a fiscal year, the director shall not process any further refund~~  
30 ~~claims through a refund process during the fiscal year for taxpayers seeking~~  
31 ~~to claim the reduced tax rate provided by this section. The amount of twenty-~~  
32 ~~seven million dollars (\$27,000,000) is intended to cover the accumulated but~~  
33 ~~unclaimed reduction of sales and use tax on natural gas and electricity as~~  
34 ~~provided by Acts 2007, No. 185, as well as the additional reduction provided~~  
35 ~~by Acts 2009, No. 695.~~

36 ~~(iii) If the director determines that discontinuing~~

~~refund payments as provided in subdivision (a)(3)(B)(ii) of this section is insufficient to prevent the amount of tax savings from exceeding twenty seven million dollars (\$27,000,000) during a fiscal year, the director may decline to accept any amended return filed by a taxpayer to claim an overpayment resulting from the reduced tax rate provided by this section for a period other than the period for which a tax return is currently due.~~

~~(C)(i) Refund requests and amended returns filed with the director to claim the overpayment resulting from the reduced rate in subdivision (a)(3)(A) of this section will be processed in the order they are received by the director. A taxpayer that does not receive a refund after the refund and amended return process has ceased under subdivision (a)(3)(B) of this section shall be given priority to receive a refund during the subsequent fiscal year. The unpaid refunds from the prior fiscal year shall be processed before any refund claims filed in the current fiscal year to claim the benefit of this section.~~

~~(ii) The statute of limitations for refunds and amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(3)(C)(i) of this section.~~

~~(4)(A) Beginning July 1, 2011, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of two and five eighths percent (2.625%).~~

~~(B)(i) The Director of the Department of Finance and Administration shall monitor the amount of tax savings received by all taxpayers as a result of the reduction in the tax rate from that levied in §§ 26-53-106 and 26-53-107 to that levied in subdivision (a)(4)(A) of this section.~~

~~(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(4)(B)(i) of this section plus any gross receipts tax savings described in § 26-52-319(a)(4)(B) would reach twenty seven million dollars (\$27,000,000) during a fiscal year, the director shall not process any further refund claims through a refund process during the fiscal year for taxpayers seeking to claim the reduced tax rate provided by this section. The amount of twenty seven million dollars (\$27,000,000) is intended to cover the accumulated but unclaimed reduction of sales and use tax on natural gas and electricity as~~

1 ~~provided by this section.~~

2 ~~(iii) If the director determines that discontinuing~~  
3 ~~refund payments as provided in subdivision (a)(4)(B)(ii) of this section is~~  
4 ~~insufficient to prevent the amount of tax savings from exceeding twenty seven~~  
5 ~~million dollars (\$27,000,000) during a fiscal year, the director may decline~~  
6 ~~to accept any amended return filed by a taxpayer to claim an overpayment~~  
7 ~~resulting from the reduced tax rate provided by this section for a period~~  
8 ~~other than the period for which a tax return is currently due.~~

9 ~~(C)(i) Refund requests and amended returns filed with the~~  
10 ~~director to claim the overpayment resulting from the reduced rate in~~  
11 ~~subdivision (a)(4)(A) of this section will be processed in the order they are~~  
12 ~~received by the director. A taxpayer that does not receive a refund after the~~  
13 ~~refund and amended return process has ceased under subdivision (a)(4)(B) of~~  
14 ~~this section shall be given priority to receive a refund during the~~  
15 ~~subsequent fiscal year. The unpaid refunds from the prior fiscal year shall~~  
16 ~~be processed before any refund claims filed in the current fiscal year to~~  
17 ~~claim the benefit of this section.~~

18 ~~(ii) The statute of limitations for refunds and~~  
19 ~~amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to~~  
20 ~~allow the payment of a refund under the process provided in subdivision~~  
21 ~~(a)(4)(C)(i) of this section.~~

22 (B)(i) Beginning July 1, 2015, the compensating use tax  
23 levied in §§ 26-53-106 and 26-53-107 and this section shall be levied at a  
24 rate of zero percent (0%) on natural gas and electricity purchased by a  
25 manufacturer for use directly in the actual manufacturing process.

26 (ii) However, natural gas and electricity purchased  
27 by a manufacturer for use directly in the actual manufacturing process shall  
28 remain subject to the excise tax of one-eighth of one percent (1/8 of 1%)  
29 levied in Amendment 75 to the Arkansas Constitution and the temporary excise  
30 tax of one-half percent (1/2%) levied in Amendment 91 to the Arkansas  
31 Constitution.

32 ~~(5) (2) The taxes levied in this subsection shall be distributed~~  
33 ~~as follows:~~

34 (A) ~~Seventy-six and six-tenths percent (76.6%) of the tax,~~  
35 ~~interest, penalties, and costs received by the ~~director~~ Director of the~~  
36 ~~Department of Finance and Administration shall be deposited as general~~



1 revenues;

2 (B) Eight and five-tenths percent (8.5%) of the tax,  
3 interest, penalties, and costs received by the director shall be deposited  
4 into the Property Tax Relief Trust Fund; and

5 (C) Fourteen and nine-tenths percent (14.9%) of the tax,  
6 interest, penalties, and costs received by the director shall be deposited  
7 into the Educational Adequacy Fund.

8 ~~(6)(A)~~ (3)(A) The excise tax levied in this section applies only  
9 to natural gas and electricity purchased for use directly in the actual  
10 manufacturing process.

11 (B) Natural gas and electricity purchased for any other  
12 purpose shall be subject to the full compensating use tax levied under §§ 26-  
13 53-106 and 26-53-107.

14 ~~(7)~~ (4) The excise tax levied in this section shall be  
15 collected, reported, and paid in the same manner and at the same time as is  
16 prescribed by law for the collection, reporting, and payment of all other  
17 Arkansas compensating use taxes.

18 (b) As used in this section, "manufacturer" means a:

19 (1) Manufacturer classified within sectors 31 through 33 or  
20 sector 115111 of the North American Industry Classification System, as in  
21 effect on January 1, 2011; or

22 (2) Generator of electric power classified within sector 22 of  
23 the North American Industry Classification System, as in effect on January 1,  
24 2011, that uses natural gas to operate a new or existing generating facility  
25 that uses combined-cycle gas turbine technology.

26 (c)(1) Except as otherwise provided in ~~subdivision (e)(2)(C) of this~~  
27 ~~section~~ this subsection, the tax rate under subsection (a) of this section  
28 does not apply to a manufacturer as defined in subdivision (b)(2) of this  
29 section.

30 (2) In lieu of the tax rate under subsection (a) of this  
31 section, the excise tax rate levied on the sales price of natural gas and  
32 electricity purchased by a manufacturer as defined in subdivision (b)(2) of  
33 this section to operate a new or existing facility that uses combined-cycle  
34 gas turbine technology is as follows:

35 (A) Beginning January 1, 2012, five and ~~one-eighths~~ one-  
36 eighth percent (5.125%);

1 (B) Beginning January 1, 2013, four and ~~one-eighths~~ one-  
2 eighth percent (4.125%); ~~and~~

3 (C) Beginning January 1, 2014, two and five-eighths  
4 percent (2.625%); ~~and~~

5 (D) Beginning January 1, 2015, one percent (1%).

6 ~~(3)(A) The amount of tax savings described in subdivision~~  
7 ~~(a)(4)(B)(i) of this section does not include any tax savings received by a~~  
8 ~~manufacturer as defined in subdivision (b)(2) of this section.~~

9 ~~(B) Manufacturers as defined in subdivision (b)(2) of this~~  
10 ~~section are not subject to the dollar limitations on refunds and amended~~  
11 ~~returns stated in subsection (a) of this section.~~

12 ~~(4) (3)~~ (3) The taxes levied in this subsection shall be distributed  
13 in the same manner as ~~set out~~ stated in subsection (a) of this section.

14  
15 SECTION 3. Arkansas Code § 19-5-1103(b), concerning the Property Tax  
16 Relief Trust Fund, is amended to read as follows:

17 (b) The fund shall consist of such revenues as generated by §§ 26-52-  
18 302(c), 26-52-317(c)(1)(B), ~~26-52-319(a)(3)(B)~~ 26-52-319(a)(2)(B), 26-53-  
19 107(c), 26-53-145(c)(1)(B), ~~26-53-148(a)(3)(B)~~ 26-53-148(a)(2)(B), 26-56-  
20 201(g)(1)(C), and 26-56-224(c)(2); ~~and~~ and shall be used for such purposes as set  
21 out in § 26-26-310.

22  
23 SECTION 4. Arkansas Code § 19-5-1227(b)(3), concerning the moneys  
24 included in the Educational Adequacy Fund, is amended to read as follows:

25 (3) The revenues generated by §§ 26-52-302(d), 26-52-316, 26-52-  
26 317(c)(1)(C), ~~26-52-319(a)(3)(G)~~ 26-52-319(a)(2)(C), 26-53-107(d), 26-53-  
27 145(c)(1)(C), ~~26-53-148(a)(3)(G)~~ 26-53-148(a)(2)(C), 26-56-201(g)(1)(B), 26-  
28 56-224(c)(3), and 26-57-1002(d)(1)(A)(ii); and

29  
30 SECTION 5. Arkansas Code § 19-6-201(59), concerning the enumeration of  
31 general revenues, is amended to read as follows:

32 (59) Seventy-six and six-tenths percent (76.6%) of the tax,  
33 interest, penalties, and costs received on excise taxes levied on the gross  
34 receipts or gross proceeds derived from the sale of natural gas and  
35 electricity to a manufacturer for use directly in the actual manufacturing  
36 process, § ~~26-52-319(a)(3)(A)~~ 26-52-319(a)(1)(A);

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*SECTION 6. Arkansas Code § 19-6-201(61), concerning the enumeration of general revenues, is amended to read as follows:*

*(61) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received on excise taxes levied on the sales price of natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process, § ~~26-53-148(a)(3)(A)~~ 26-53-148(a)(1)(A);*

*SECTION 7. EFFECTIVE DATE. This act is effective on and after July 1, 2014.*

*/s/B. Sample*