

1 State of Arkansas
2 91st General Assembly
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4
5 By: Representative Jett
6

A Bill

HOUSE BILL 1682

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS TAX PROCEDURE ACT
9 CONCERNING BUSINESS CLOSURES; TO PROVIDE THAT A
10 BUSINESS CLOSURE ORDER ACTS AS AN INJUNCTION
11 PROHIBITING FURTHER BUSINESS OPERATION; TO PROVIDE
12 THAT A TAXPAYER WHO OWNS A BUSINESS SUBJECT TO A
13 BUSINESS CLOSURE ORDER MAY SEEK A COURT ORDER TO
14 CONTINUE OPERATIONS DURING AN APPEAL OF A BUSINESS
15 CLOSURE ORDER; TO PERMIT THE DIRECTOR OF THE
16 DEPARTMENT OF FINANCE AND ADMINISTRATION TO ENFORCE
17 CLOSURE OF A BUSINESS WHILE AN APPEAL OF A BUSINESS
18 CLOSURE ORDER IS PENDING; AND FOR OTHER PURPOSES.

Subtitle

21 TO AMEND THE ARKANSAS TAX PROCEDURE ACT
22 CONCERNING BUSINESS CLOSURES; AND TO
23 PROVIDE THAT A BUSINESS CLOSURE ORDER
24 ACTS AS AN INJUNCTION PROHIBITING FURTHER
25 BUSINESS OPERATION UNLESS OTHERWISE
26 PROVIDED BY A COURT.
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29
30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

31
32 SECTION 1. Arkansas Code § 26-18-1002, concerning administrative
33 hearings regarding a business closure under the Arkansas Tax Procedure Act,
34 is amended to add an additional subsection to read as follows:

35 (j) A decision of the hearing officer to sustain the director's
36 decision to close the business of the noncompliant taxpayer is effective



1 twenty (20) days after the date of the decision and, except as provided under
 2 § 26-18-1003, acts as an injunction prohibiting further operation of the
 3 business.

4
 5 SECTION 2. Arkansas Code § 26-18-1003 is amended to read as follows:
 6 26-18-1003. Judicial relief.

7 ~~(a)(1) If the decision of the hearing officer under § 26-18-1002 is to~~
 8 ~~affirm the closure of the business, the decision shall be submitted in~~
 9 ~~writing and delivered by the United States Postal Service or by hand to the~~
 10 ~~noncompliant taxpayer. As used in this section:~~

11 (1) "Administrative decision" means a decision issued under §
 12 26-18-1002 to affirm the director's decision to close the business of a
 13 noncompliant taxpayer;

14 (2) "Business" means a business subject to an administrative
 15 decision;

16 (3) "Business closure order" means a notice of closure issued by
 17 the director under § 26-18-1001.

18 ~~(2) The (b)(1) A noncompliant taxpayer may seek judicial relief from~~
 19 ~~the an administrative decision by filing suit within twenty (20) calendar~~
 20 ~~days of the date of the administrative decision.~~

21 ~~(b)(1) (2) Jurisdiction for a suit under this section to contest~~
 22 ~~a determination of the Director of the Department of Finance and~~
 23 ~~Administration shall be in the Pulaski County Circuit Court or the circuit~~
 24 ~~court of the county where the noncompliant taxpayer resides or has his or her~~
 25 ~~principal place of business, where the matter shall be tried de novo.~~

26 ~~(2)(A) If the circuit court finds that the business closure~~
 27 ~~order was appropriately issued by the director, the circuit court shall issue~~
 28 ~~an injunction prohibiting the further operation of the business against the~~
 29 ~~noncompliant taxpayer.~~

30 ~~(B) In the event that a business subject to an injunction~~
 31 ~~issued by the circuit court as provided in this subchapter continues in~~
 32 ~~operation, upon conviction, any person responsible for the decision to~~
 33 ~~operate the business after the issuance of the injunction shall be guilty of~~
 34 ~~a Class A misdemeanor.~~

35 ~~(3) An appeal may be made from the circuit court to the~~
 36 ~~appropriate appellate court, as provided by law.~~

1 (c)(1)(A) A noncompliant taxpayer shall not operate a business after
 2 twenty (20) calendar days from issuance of an administrative decision unless
 3 the noncompliant taxpayer obtains an order from the circuit court staying the
 4 effect of the administrative decision.

5 (B) An order of a circuit court to stay the effect of an
 6 administrative decision may be revoked if the director provides proof that
 7 the taxpayer has failed to timely file returns for or make full payment of
 8 the taxes identified in § 26-18-1001(a) after the date suit is filed under
 9 this section.

10 (2) If a noncompliant taxpayer fails to obtain an order staying
 11 the effect of the administrative decision or if an order staying the effect
 12 of the administrative decision is later revoked, the director shall follow
 13 the procedures in §§ 26-18-1004 and 26-18-1005 to enforce the closure of the
 14 business pending the outcome of the suit filed under this section.

15 (d) The noncompliant taxpayer or the director may file an appeal of
 16 the circuit court decision to the appropriate appellate court as provided by
 17 law.

18 (e)(1) If a circuit court issues an order under this section affirming
 19 a business closure order, the order of the circuit court shall constitute an
 20 injunction prohibiting further operation of the business.

21 (2) In order to operate a business while an appeal is pending
 22 under subsection (d) of this section, a noncompliant taxpayer shall obtain an
 23 order from the appellate court staying the decision of the circuit court.

24 ~~(e) (f)~~ The procedures established by this section are the sole
 25 methods for seeking judicial relief from ~~a written~~ an administrative decision
 26 ~~to close the business of a noncompliant taxpayer.~~

27 ~~(d) The decision to close the business of a noncompliant taxpayer will~~
 28 ~~be final.~~

29 ~~(1) If the noncompliant taxpayer fails to:~~

30 ~~(A) Request an administrative hearing under § 26-18-1002;~~

31 ~~or~~

32 ~~(B) Seek judicial relief under this section; or~~

33 ~~(2) Upon the final decision of a circuit court or an appellate~~
 34 ~~court.~~

35 ~~(e)(1) It is unlawful for a business to continue in operation after a~~
 36 ~~business closure order is issued that is:~~

1 ~~(A) Upheld on appeal under this subchapter; or~~
 2 ~~(B) Not appealed by the noncompliant taxpayer under this~~
 3 ~~subchapter.~~

4 (g) A noncompliant taxpayer shall not continue to operate a business
 5 if:

6 (1) The noncompliant taxpayer fails to seek judicial relief from
 7 a business closure order under this section;

8 (2) The noncompliant taxpayer fails to obtain a stay of the
 9 effect of a business closure order under subsections (c) and (e) of this
 10 section; or

11 (3) A business closure order is upheld on an appeal filed under
 12 subsection (d) of this section.

13 ~~(2)~~ (h) Upon conviction, any person responsible for the decision to
 14 operate ~~the~~ a business in violation of this subchapter ~~shall be~~ is guilty of
 15 a Class A misdemeanor.

16
 17 SECTION 3. EFFECTIVE DATE. Sections 1 and 2 of this act are effective
 18 on the first day of the calendar quarter following the effective date of this
 19 act.