

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

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

HOUSE BILL 1682

By: Representative Jett

## For An Act To Be Entitled

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

## Subtitle

TO AMEND THE ARKANSAS TAX PROCEDURE ACT CONCERNING BUSINESS CLOSURES; AND TO PROVIDE THAT A BUSINESS CLOSURE ORDER ACTS AS AN INJUNCTION PROHIBITING FURTHER BUSINESS OPERATION UNLESS OTHERWISE PROVIDED BY A COURT.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~or~~

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

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

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

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

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

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

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

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

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

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