

April 18, 2012

TO THE MISSISSIPPI SENATE:

GOVERNOR'S VETO MESSAGE FOR SENATE BILL 2675

I am returning Senate Bill 2675: "AN ACT TO PROVIDE A METHOD FOR THE CLOSURE OF BUSINESSES IN MISSISSIPPI FOR THE FAILURE OF A TAXPAYER TO FILE A TAX RETURN, FAILURE TO PAY A FINALLY DETERMINED TAX LIABILITY AND/OR FAILURE TO CEASE OPERATION OF A BUSINESS AFTER A LICENSE, PERMIT OR OTHER AUTHORIZATION TO OPERATE THE BUSINESS HAS BEEN REVOKED BY THE MISSISSIPPI DEPARTMENT OF REVENUE; TO PROVIDE NOTICE TO TAXPAYERS THAT FAILURE TO MEET CERTAIN CONDITIONS WILL RESULT IN THE CLOSURE OF THE TAXPAYER'S BUSINESS; TO PROVIDE THAT IF CLOSURE OF THE TAXPAYER'S BUSINESS IS AUTHORIZED UNDER ANY OF THE CIRCUMSTANCES PROVIDED FOR IN THIS ACT AND NOTICE HAS BEEN GIVEN, THE COMMISSIONER OF REVENUE MAY ORDER THE CLOSURE OF THE BUSINESS AND PLACE A LOCK ON ALL ENTRANCES TO THE BUSINESS OR OTHERWISE SECURE THE BUSINESS SO THAT THE BUSINESS IS PHYSICALLY INACCESSIBLE AND MAY NOT BE OPERATED; TO REQUIRE THE COMMISSIONER OF REVENUE TO AFFIX A CLOSURE ORDER TO ALL ENTRANCES OF THE BUSINESS; TO AUTHORIZE THE DISCLOSURE OF CERTAIN INFORMATION; TO PROVIDE THE MANNER IN WHICH CLOSURE MAY BE AVOIDED AND TO PROVIDE FOR THE REOPENING OF A CLOSED BUSINESS; TO AMEND SECTIONS 27-3-73, 27-7-83, 27-13-57, 27-65-81 AND 27-77-15, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES" without my approval, and assign the following reasons for my veto.

After full consideration, I am vetoing Senate Bill 2675, which grants the Department of Revenue (DOR) broad authority to shutter any business that DOR believes has failed to file any tax return required by state law. The bill appears to be a well-intentioned effort to enforce the tax laws and require all businesses to bear their fair share of the tax burden. And I do understand that DOR has encountered difficulty at times in collecting delinquent taxes owed by some cash-based businesses with little in the way of assets that can be readily seized to satisfy their debts. Nonetheless, this bill grants DOR too broad an authority to padlock small businesses without due process, and in this current economy, we must do all that we can to protect small businesses from the threat of overreaching by the government. The prospect of a ruinous business closure could be used to coerce a small business owner into paying taxes and penalties he does not owe and is a real threat to citizens' liberty to earn an honest living. Therefore, I urge DOR to continue to utilize the ample tax collection remedies already available to it, and I urge DOR and the Legislature to continue to study the issue of delinquent cash-based businesses in search of a more narrowly tailored solution to any problems that persist.

The first stated "purpose of this Act is to provide a method for the closure of businesses in Mississippi for failure of a taxpayer in Mississippi to file a tax return . . ." §2. To that end, the bill grants DOR unfettered "discretion" to "order the closure of the business of a taxpayer . . . following the failure of the taxpayer to file a tax return . . ." §4. Prior to shutting the taxpayer's business, DOR need only send the taxpayer notice "via . . . regular mail." §5(2). DOR may then close the business "ten (10) calendar days from the date of the notice," apparently even if the taxpayer never actually receives the notice. §5(3) & §6(1)(a). At that point, DOR may "place a lock on all entrances to the business . . . so that the business is physically inaccessible." §6(1)(a). DOR shall also "affix a closure order to all entrances of the business," clearly accusing the taxpayer of violating the tax laws, even if he has not yet been proven guilty of any violation. §6(2)(a). Any person who is deemed to have interfered with the padlocking of the business, or who subsequently reenters the business without DOR approval, is subject to a fine and up to six months' imprisonment in the county jail. §6(1)(b) & §6(5)(a).

While the taxpayer is allowed to appeal the closure, to do so he must file the appeal within 20 days, his defenses on appeal are limited, he may not contest the alleged underlying tax liability, and he must post a potentially significant bond or else his appeal "shall be dismissed . . . with prejudice." §8. As a practical matter, he must also incur the significant expense of hiring a lawyer knowledgeable about tax matters to represent him. Such obstacles may well prove prohibitive for many small business owners.

The bill makes clear that DOR "shall not be liable for inventory spoilage," "any loss of business income," or any other damages resulting from the shutdown of the business, apparently even if the closure is later determined to have been in error. §6(6) & §6(7). In addition, DOR is granted broad power

to disclose the business closure or impending closure to anyone it "determines has a legitimate need to know," and "[a]ny taxpayer information disclosed . . . shall not be subject to confidentiality laws" to which DOR is ordinarily subject. §6(8), §6(9), & §6(10).

I submit that it is questionable at best whether the above-described procedures, penalties, and threat of ruinous, uncompensated losses comply with the right to due process of law—including the right to fair notice and an opportunity to be heard—guaranteed by both our State and Federal Constitutions. Moreover, I am certain that this bill is unnecessary, both because DOR already possesses ample remedies for enforcing the tax laws and collecting taxes owed, and because other states have addressed any need for additional remedies through more measured approaches.

For example, with respect to DOR's existing authority, under current state law an unpaid sales tax assessment may be enrolled as a judgment lien against the taxpayer's property, and DOR may issue a warrant requiring the county sheriff to "immediately seize any property of the taxpayer named in the warrant." Miss. Code Ann. §27-65-63 (1972). Failure to file a tax return also subjects a taxpayer to possible criminal penalties, including imprisonment, as well as forfeiture of essential business licenses. *Id.*, §27-65-27 & §27-65-85. Such remedies and penalties far exceed those available to any private creditor and should be sufficient for the State's purposes.

With respect to other states that have dealt with this issue, I note that Arkansas, for example, has taken a more reasonable approach. Its tax officials cannot pursue business closure until a "noncompliant taxpayer" fails to file a tax return or remit sales taxes "three (3) times within any consecutive twenty-four-month period." Ark. Code Ann. §26-18-1001. Under Arkansas law, the state must provide the taxpayer with written notice following the second failure that a third failure may result in closure of the business. *Id.* Critically, Arkansas law also grants the taxpayer a right to both administrative and judicial review of the closure order before the business can be finally closed. See *id.*, §26-18-1002 & §26-18-1003. See also, e.g., 23 Va. Admin. Code § 10-20-141 ("Padlocking may occur only after the Department of Taxation has attempted other methods of collecting the delinquent taxes.").

Notably, legislation substantively identical to the Arkansas statute was introduced in both houses of our own Legislature several years ago, see H.B. 1255 (2005 Regulation Session) and S.B. 2741 (2005 Regular Session), but both bills died in committee. If DOR and the Legislature conclude in the future that additional tax collection remedies are in fact necessary, I urge the Legislature to consider and debate such a measured approach once again.

In summary, Senate Bill 2675 threatens governmental overreaching against small businesses and the liberty of Mississippi citizens, and it is unnecessary in light of powerful remedies already available to DOR and the more reasonable approaches adopted by other states. While I recognize that the issue of collecting delinquent taxes from cash-based businesses can pose problems, I urge DOR and the Legislature to continue to study this issue and seek a solution that is more narrowly tailored to these problems. For these reasons, I must veto Senate Bill 2675.

Respectfully submitted,

PHIL BRYANT
GOVERNOR