



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB5796

Introduced 11/10/2020, by Rep. Mark Batinick - Ryan Spain - Grant Wehrli - Thomas M. Bennett, Patrick Windhorst, et al.

#### SYNOPSIS AS INTRODUCED:

20 ILCS 3305/7.1 new

Amends the Illinois Emergency Management Agency Act by creating the Fair Business Treatment Law. Provides that if the Governor issues a proclamation declaring a disaster under the Act or an executive order relating to the same disaster for which the proclamation was issued, and the proclamation or executive order includes one or more restrictions upon the retail sale of goods or services within Illinois, the restriction must be enforced so as not to favor any one industry classification of persons engaged in the business of selling tangible personal property at retail over any other industry classification of such persons. Requires the Illinois Emergency Management Agency to develop a protocol for the fair enforcement of proclamations declaring a disaster under the Act. Requires the Agency, in developing and maintaining the protocol, to consult with relevant private sector stakeholders, including representatives of the Illinois retail sales industry. Effective immediately.

LRB101 21320 CPF 72494 b

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Emergency Management Agency Act is  
5 amended by adding Section 7.1 as follows:

6 (20 ILCS 3305/7.1 new)

7 Sec. 7.1. Fair Business Treatment Law.

8 (a) This Section may be referred to as the Fair Business  
9 Treatment Law.

10 (b) The General Assembly finds that in March 2020, and in  
11 the following months of calendar year 2020, the people of the  
12 State of Illinois faced a virus that causes a contagious  
13 disease named COVID-19. The global pandemic caused by this  
14 virus led to significant deaths, illnesses, and economic  
15 disruption throughout Illinois. The Governor of Illinois  
16 responded to the COVID-19 pandemic by issuing a series of  
17 emergency executive orders, commencing with Executive Order  
18 2020-3 and continued through following executive orders. These  
19 executive orders were described as efforts to reduce contagion  
20 and diminish the ability of the virus that causes COVID-19 to  
21 pass from person to person within Illinois.

22 The General Assembly: (i) recognizes the need for emergency  
23 management authority powers to deal with a disaster of a

1 magnitude such as that caused by COVID-19 in the year 2020; but  
2 on the other hand (ii) sharply opposes the use of emergency  
3 management authority powers to draw distinctions between  
4 groups and sectors of retail businesses, and between persons  
5 engaged in the business of selling tangible personal property  
6 at retail.

7 For example, within the North American Industry  
8 Classification System, the retailing of shoes and footwear is  
9 classified as industry classification #4482. At the same time,  
10 the retailing of goods and services provided by a pharmacist is  
11 classified as industry classification #44611. If, at any time,  
12 an emergency relating to contagious disease is declared by  
13 executive authority, including, but not limited to, a  
14 declaration under the Illinois Emergency Management Agency  
15 Act, this declaration may order the closure of nonessential  
16 businesses. As one example of businesses that may be ordered  
17 closed, a closure order may affect businesses defined as  
18 operating within industry classification #4482. These are  
19 persons engaged in the business of selling tangible personal  
20 property at retail that concentrate on shoe retailing. At the  
21 same time, the same declaration may declare an exception to the  
22 closure order for business establishments that are defined as  
23 engaged in essential businesses. These essential businesses  
24 are classified, for the purpose of an emergency order, as  
25 including a group of persons engaged in the business of selling  
26 tangible personal property at retail that are legally

1 distinguished from other such groups. "Essential businesses"  
2 may be classified as including pharmaceutical care, goods, and  
3 professional services. A classification of this type was set  
4 forth and enforced in calendar year 2020 by Executive Order  
5 2020-10 and succeeding executive orders.

6 The General Assembly finds that if: (i) an essential  
7 business is allowed to remain open; (ii) the essential  
8 business's physical business model also includes the retailing  
9 of goods within sectors other than those defined as essential;  
10 and (iii) the essential business's entire place of business is  
11 allowed to remain open, then market activity will shift from  
12 nonessential businesses to firms classified as enjoying the  
13 status of being an essential business.

14 The General Assembly finds that this distinction between  
15 essential businesses and nonessential businesses threatens  
16 Illinois jobs. The General Assembly finds that the outcome of  
17 any distinction between so-called essential businesses and  
18 so-called nonessential businesses is to allow essential  
19 businesses to enjoy and maintain a strategic advantage over  
20 nonessential businesses at a level that may threaten the jobs  
21 of Illinois workers and the survival of Illinois persons  
22 engaged in the business of selling tangible personal property  
23 at retail.

24 The legislative intent of this Section is to reduce the  
25 inequality created by the process described in this subsection  
26 (b), and in its place to create equality between persons

1 engaged in the business of selling tangible personal property  
2 at retail.

3 (c) As used in this Section:

4 "Industry classification" means classifications under the  
5 North American Industry Classification System (NAICS) as  
6 maintained within the United States.

7 "Person engaged in the business of selling tangible  
8 personal property at retail" means both a purchaser and a  
9 delivering supplier maintaining a place of business in this  
10 State, as required by the particular context.

11 (d) If the Governor issues a proclamation declaring a  
12 disaster under this Act or an executive order relating to the  
13 same disaster for which the proclamation was issued, and the  
14 proclamation or executive order includes one or more  
15 restrictions upon the retail sale of goods or services within  
16 Illinois, including, but not limited to, the activities of  
17 persons engaged in the business of selling tangible personal  
18 property at retail falling under paragraphs (9) and (12) of  
19 Section 7 of this Act, the restriction must be enforced in such  
20 a way as not to favor any one industry classification of  
21 persons engaged in the business of selling tangible personal  
22 property at retail over any other industry classification of  
23 such persons.

24 (e) The Illinois Emergency Management Agency shall  
25 develop, by administrative rule, a protocol for the fair  
26 enforcement of a proclamation declaring a disaster under this

1 Act or an executive order relating to the same disaster for  
2 which the proclamation was issued. The protocol shall: (1)  
3 operate across industry classifications; (2) create equal  
4 treatment for all industry classifications involving the  
5 retail sale of goods or services; and (3) apply to all persons  
6 engaged in the business of selling tangible personal property  
7 at retail. In developing and maintaining the protocol, the  
8 Agency shall consult with relevant private sector  
9 stakeholders, including, but not limited to, representatives  
10 of the Illinois retail sales industry.

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.