



# Adopted in House Comm. on May 28, 2008

09500SB0801ham001

LRB095 05480 HLH 51442 a

1 AMENDMENT TO SENATE BILL 801

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 801 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Retailers' Occupation Tax Act is amended by  
5 changing Section 2a as follows:

6 (35 ILCS 120/2a) (from Ch. 120, par. 441a)

7 Sec. 2a. It is unlawful for any person to engage in the  
8 business of selling tangible personal property at retail in  
9 this State without a certificate of registration from ~~the~~ the  
10 Department. Application for a certificate of registration  
11 shall be made to the Department upon forms furnished by it.  
12 Each such application shall be signed and verified and shall  
13 state: (1) the name and social security number of the  
14 applicant; (2) the address of his principal place of business;  
15 (3) the address of the principal place of business from which  
16 he engages in the business of selling tangible personal

1 property at retail in this State and the addresses of all other  
2 places of business, if any (enumerating such addresses, if any,  
3 in a separate list attached to and made a part of the  
4 application), from which he engages in the business of selling  
5 tangible personal property at retail in this State; (4) the  
6 name and address of the person or persons who will be  
7 responsible for filing returns and payment of taxes due under  
8 this Act; (5) in the case of a corporation, the name, title,  
9 and social security number of each corporate officer; (6) in  
10 the case of a limited liability company, the name, social  
11 security number, and FEIN number of each manager and member;  
12 and (7) such other information as the Department may reasonably  
13 require. The application shall contain an acceptance of  
14 responsibility signed by the person or persons who will be  
15 responsible for filing returns and payment of the taxes due  
16 under this Act. If the applicant will sell tangible personal  
17 property at retail through vending machines, his application to  
18 register shall indicate the number of vending machines to be so  
19 operated; and thereafter, he shall notify the Department by  
20 January 31 of the number of vending machines which such person  
21 was using in his business of selling tangible personal property  
22 at retail on the preceding December 31.

23 The Department may deny a certificate of registration to  
24 any applicant if the owner, any partner, any manager or member  
25 of a limited liability company, or a corporate officer of the  
26 applicant, is or has been the owner, a partner, a manager or

1 member of a limited liability company, or a corporate officer,  
2 of another retailer that is in default for moneys due under  
3 this Act.

4 Every applicant for a certificate of registration  
5 hereunder shall, at the time of filing such application,  
6 furnish a bond from a surety company authorized to do business  
7 in the State of Illinois, or an irrevocable bank letter of  
8 credit or a bond signed by 2 personal sureties who have filed,  
9 with the Department, sworn statements disclosing net assets  
10 equal to at least 3 times the amount of the bond to be required  
11 of such applicant, or a bond secured by an assignment of a bank  
12 account or certificate of deposit, stocks or bonds, conditioned  
13 upon the applicant paying to the State of Illinois all moneys  
14 becoming due under this Act and under any other State tax law  
15 or municipal or county tax ordinance or resolution under which  
16 the certificate of registration that is issued to the applicant  
17 under this Act will permit the applicant to engage in business  
18 without registering separately under such other law, ordinance  
19 or resolution. The Department shall fix the amount of such  
20 security in each case, taking into consideration the amount of  
21 money expected to become due from the applicant under this Act  
22 and under any other State tax law or municipal or county tax  
23 ordinance or resolution under which the certificate of  
24 registration that is issued to the applicant under this Act  
25 will permit the applicant to engage in business without  
26 registering separately under such other law, ordinance or

1 resolution. The amount of security required by the Department  
2 shall be such as, in its opinion, will protect the State of  
3 Illinois against failure to pay the amount which may become due  
4 from the applicant under this Act and under any other State tax  
5 law or municipal or county tax ordinance or resolution under  
6 which the certificate of registration that is issued to the  
7 applicant under this Act will permit the applicant to engage in  
8 business without registering separately under such other law,  
9 ordinance or resolution, but the amount of the security  
10 required by the Department shall not exceed three times the  
11 amount of the applicant's average monthly tax liability, or  
12 \$50,000.00, whichever amount is lower.

13 No certificate of registration under this Act shall be  
14 issued by the Department until the applicant provides the  
15 Department with satisfactory security as herein provided for.

16 Upon receipt of the application for certificate of  
17 registration in proper form, and upon approval by the  
18 Department of the security furnished by the applicant, the  
19 Department shall issue to such applicant a certificate of  
20 registration which shall permit the person to whom it is issued  
21 to engage in the business of selling tangible personal property  
22 at retail in this State. The certificate of registration shall  
23 be conspicuously displayed at the place of business which the  
24 person so registered states in his application to be the  
25 principal place of business from which he engages in the  
26 business of selling tangible personal property at retail in

1 this State.

2 No certificate of registration issued to a taxpayer who  
3 files returns required by this Act on a monthly basis shall be  
4 valid after the expiration of 5 years from the date of its  
5 issuance or last renewal. The expiration date of a  
6 sub-certificate of registration shall be that of the  
7 certificate of registration to which the sub-certificate  
8 relates. A certificate of registration shall automatically be  
9 renewed, subject to revocation as provided by this Act, for an  
10 additional 5 years from the date of its expiration unless  
11 otherwise notified by the Department as provided by this  
12 paragraph. Where a taxpayer to whom a certificate of  
13 registration is issued under this Act is in default to the  
14 State of Illinois for delinquent returns or for moneys due  
15 under this Act or any other State tax law or municipal or  
16 county ordinance administered or enforced by the Department,  
17 the Department shall, not less than 120 days before the  
18 expiration date of such certificate of registration, give  
19 notice to the taxpayer to whom the certificate was issued of  
20 the account period of the delinquent returns, the amount of  
21 tax, penalty and interest due and owing from the taxpayer, and  
22 that the certificate of registration shall not be automatically  
23 renewed upon its expiration date unless the taxpayer, on or  
24 before the date of expiration, has filed and paid the  
25 delinquent returns or paid the defaulted amount in full. A  
26 taxpayer to whom such a notice is issued shall be deemed an

1 applicant for renewal. The Department shall promulgate  
2 regulations establishing procedures for taxpayers who file  
3 returns on a monthly basis but desire and qualify to change to  
4 a quarterly or yearly filing basis and will no longer be  
5 subject to renewal under this Section, and for taxpayers who  
6 file returns on a yearly or quarterly basis but who desire or  
7 are required to change to a monthly filing basis and will be  
8 subject to renewal under this Section.

9 The Department may in its discretion approve renewal by an  
10 applicant who is in default if, at the time of application for  
11 renewal, the applicant files all of the delinquent returns or  
12 pays to the Department such percentage of the defaulted amount  
13 as may be determined by the Department and agrees in writing to  
14 waive all limitations upon the Department for collection of the  
15 remaining defaulted amount to the Department over a period not  
16 to exceed 5 years from the date of renewal of the certificate;  
17 however, no renewal application submitted by an applicant who  
18 is in default shall be approved if the immediately preceding  
19 renewal by the applicant was conditioned upon the installment  
20 payment agreement described in this Section. The payment  
21 agreement herein provided for shall be in addition to and not  
22 in lieu of the security required by this Section of a taxpayer  
23 who is no longer considered a prior continuous compliance  
24 taxpayer. The execution of the payment agreement as provided in  
25 this Act shall not toll the accrual of interest at the  
26 statutory rate.

1           A certificate of registration issued under this Act more  
2 than 5 years before the effective date of this amendatory Act  
3 of 1989 shall expire and be subject to the renewal provisions  
4 of this Section on the next anniversary of the date of issuance  
5 of such certificate which occurs more than 6 months after the  
6 effective date of this amendatory Act of 1989. A certificate of  
7 registration issued less than 5 years before the effective date  
8 of this amendatory Act of 1989 shall expire and be subject to  
9 the renewal provisions of this Section on the 5th anniversary  
10 of the issuance of the certificate.

11           If the person so registered states that he operates other  
12 places of business from which he engages in the business of  
13 selling tangible personal property at retail in this State, the  
14 Department shall furnish him with a sub-certificate of  
15 registration for each such place of business, and the applicant  
16 shall display the appropriate sub-certificate of registration  
17 at each such place of business. All sub-certificates of  
18 registration shall bear the same registration number as that  
19 appearing upon the certificate of registration to which such  
20 sub-certificates relate.

21           If the applicant will sell tangible personal property at  
22 retail through vending machines, the Department shall furnish  
23 him with a sub-certificate of registration for each such  
24 vending machine, and the applicant shall display the  
25 appropriate sub-certificate of registration on each such  
26 vending machine by attaching the sub-certificate of

1 registration to a conspicuous part of such vending machine.

2 Where the same person engages in 2 or more businesses of  
3 selling tangible personal property at retail in this State,  
4 which businesses are substantially different in character or  
5 engaged in under different trade names or engaged in under  
6 other substantially dissimilar circumstances (so that it is  
7 more practicable, from an accounting, auditing or bookkeeping  
8 standpoint, for such businesses to be separately registered),  
9 the Department may require or permit such person (subject to  
10 the same requirements concerning the furnishing of security as  
11 those that are provided for hereinbefore in this Section as to  
12 each application for a certificate of registration) to apply  
13 for and obtain a separate certificate of registration for each  
14 such business or for any of such businesses, under a single  
15 certificate of registration supplemented by related  
16 sub-certificates of registration.

17 Any person who is registered under the "Retailers'  
18 Occupation Tax Act" as of March 8, 1963, and who, during the  
19 3-year period immediately prior to March 8, 1963, or during a  
20 continuous 3-year period part of which passed immediately  
21 before and the remainder of which passes immediately after  
22 March 8, 1963, has been so registered continuously and who is  
23 determined by the Department not to have been either delinquent  
24 or deficient in the payment of tax liability during that period  
25 under this Act or under any other State tax law or municipal or  
26 county tax ordinance or resolution under which the certificate



1 of registration that is issued to the registrant under this Act  
2 will permit the registrant to engage in business without  
3 registering separately under such other law, ordinance or  
4 resolution, shall be considered to be a Prior Continuous  
5 Compliance taxpayer. Also any taxpayer who has, as verified by  
6 the Department, faithfully and continuously complied with the  
7 condition of his bond or other security under the provisions of  
8 this Act for a period of 3 consecutive years shall be  
9 considered to be a Prior Continuous Compliance taxpayer.

10 Every Prior Continuous Compliance taxpayer shall be exempt  
11 from all requirements under this Act concerning the furnishing  
12 of security as a condition precedent to his being authorized to  
13 engage in the business of selling tangible personal property at  
14 retail in this State. This exemption shall continue for each  
15 such taxpayer until such time as he may be determined by the  
16 Department to be delinquent in the filing of any returns, or is  
17 determined by the Department (either through the Department's  
18 issuance of a final assessment which has become final under the  
19 Act, or by the taxpayer's filing of a return which admits tax  
20 that is not paid to be due) to be delinquent or deficient in  
21 the paying of any tax under this Act or under any other State  
22 tax law or municipal or county tax ordinance or resolution  
23 under which the certificate of registration that is issued to  
24 the registrant under this Act will permit the registrant to  
25 engage in business without registering separately under such  
26 other law, ordinance or resolution, at which time that taxpayer

1 shall become subject to all the financial responsibility  
2 requirements of this Act and, as a condition of being allowed  
3 to continue to engage in the business of selling tangible  
4 personal property at retail, shall be required to post bond or  
5 other acceptable security with the Department covering  
6 liability which such taxpayer may thereafter incur. Any  
7 taxpayer who fails to pay an admitted or established liability  
8 under this Act may also be required to post bond or other  
9 acceptable security with this Department guaranteeing the  
10 payment of such admitted or established liability.

11 No certificate of registration shall be issued to any  
12 person who is in default to the State of Illinois for moneys  
13 due under this Act or under any other State tax law or  
14 municipal or county tax ordinance or resolution under which the  
15 certificate of registration that is issued to the applicant  
16 under this Act will permit the applicant to engage in business  
17 without registering separately under such other law, ordinance  
18 or resolution.

19 Any person aggrieved by any decision of the Department  
20 under this Section may, within 20 days after notice of such  
21 decision, protest and request a hearing, whereupon the  
22 Department shall give notice to such person of the time and  
23 place fixed for such hearing and shall hold a hearing in  
24 conformity with the provisions of this Act and then issue its  
25 final administrative decision in the matter to such person. In  
26 the absence of such a protest within 20 days, the Department's

1 decision shall become final without any further determination  
2 being made or notice given.

3 With respect to security other than bonds (upon which the  
4 Department may sue in the event of a forfeiture), if the  
5 taxpayer fails to pay, when due, any amount whose payment such  
6 security guarantees, the Department shall, after such  
7 liability is admitted by the taxpayer or established by the  
8 Department through the issuance of a final assessment that has  
9 become final under the law, convert the security which that  
10 taxpayer has furnished into money for the State, after first  
11 giving the taxpayer at least 10 days' written notice, by  
12 registered or certified mail, to pay the liability or forfeit  
13 such security to the Department. If the security consists of  
14 stocks or bonds or other securities which are listed on a  
15 public exchange, the Department shall sell such securities  
16 through such public exchange. If the security consists of an  
17 irrevocable bank letter of credit, the Department shall convert  
18 the security in the manner provided for in the Uniform  
19 Commercial Code. If the security consists of a bank certificate  
20 of deposit, the Department shall convert the security into  
21 money by demanding and collecting the amount of such bank  
22 certificate of deposit from the bank which issued such  
23 certificate. If the security consists of a type of stocks or  
24 other securities which are not listed on a public exchange, the  
25 Department shall sell such security to the highest and best  
26 bidder after giving at least 10 days' notice of the date, time

1 and place of the intended sale by publication in the "State  
2 Official Newspaper". If the Department realizes more than the  
3 amount of such liability from the security, plus the expenses  
4 incurred by the Department in converting the security into  
5 money, the Department shall pay such excess to the taxpayer who  
6 furnished such security, and the balance shall be paid into the  
7 State Treasury.

8 The Department shall discharge any surety and shall release  
9 and return any security deposited, assigned, pledged or  
10 otherwise provided to it by a taxpayer under this Section  
11 within 30 days after:

12 (1) such taxpayer becomes a Prior Continuous  
13 Compliance taxpayer; or

14 (2) such taxpayer has ceased to collect receipts on  
15 which he is required to remit tax to the Department, has  
16 filed a final tax return, and has paid to the Department an  
17 amount sufficient to discharge his remaining tax  
18 liability, as determined by the Department, under this Act  
19 and under every other State tax law or municipal or county  
20 tax ordinance or resolution under which the certificate of  
21 registration issued under this Act permits the registrant  
22 to engage in business without registering separately under  
23 such other law, ordinance or resolution. The Department  
24 shall make a final determination of the taxpayer's  
25 outstanding tax liability as expeditiously as possible  
26 after his final tax return has been filed; if the

1 Department cannot make such final determination within 45  
2 days after receiving the final tax return, within such  
3 period it shall so notify the taxpayer, stating its reasons  
4 therefor.

5 (Source: P.A. 90-491, eff. 1-1-98; 91-357, eff. 7-29-99.)".