

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.

New Rules

■ USE TAX

The DEPARTMENT OF REVENUE adopted amendments to Use Tax (86 IAC 150; 43 Ill Reg 1714), effective 11/1/19, implementing provisions of Public Act 100-587. The PA and the rulemaking implement new standards (Wayfair nexus) based on the U.S. Supreme Court decision in *South Dakota vs. Wayfair, Inc.* for determining whether an out of State retailer (remote seller) must collect and pay Illinois use tax on sales to Illinois purchasers. Beginning 10/1/18, remote sellers whose gross receipts from Illinois purchasers total \$100,000 or more, or complete 200 or more separate sales transactions with Illinois purchasers, in any 12-month period achieve Wayfair nexus and become subject to Illinois use tax even if they do not have a physical presence in Illinois. Remote sellers must determine on a quarterly

basis whether they have met either of these selling thresholds in the previous 12 months. If the seller has met either threshold, the seller must begin collecting use tax and file returns for the subsequent year. The rulemaking also clarifies criteria for determining whether a remote seller has a physical presence in Illinois (thereby establishing nexus regardless of the number or amount of Illinois sales made), gives examples of transactions that meet or do not meet Wayfair nexus criteria, and explains how to determine tax collection obligation if Wayfair nexus applies. Out of state retailers who make sales in Illinois, and Illinois residents or businesses who purchase items from these retailers, are affected by this rulemaking.

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Proposed Rulemakings

■ PARKING TAX

The DEPARTMENT OF REVENUE proposed a new Part titled Parking Excise Tax (86 IAC 195; 43 Ill Reg 13242) implementing provisions of Public Act 101-31 that impose a tax on the use of paid parking spaces in parking areas or garages. Effective 1/1/20, a tax of 6% of the purchase price of spaces paid for on an hourly, daily, or weekly basis and 9% of the purchase price for spaces paid for on a monthly or annual basis will be imposed. All non-governmental entities that collect payment for parking or storage of motor vehicles, recreational vehicles or other self-propelled vehicles are subject to this tax, unless they operate 3 or fewer spaces. Third parties who contract with governmental entities to operate parking areas or

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NEW RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.
PROPOSED RULES: Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.
PEREMPTORY RULES: Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.
■ Designates rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.
QUESTIONS/COMMENTS: Submit mail, email or phone calls to the agency personnel listed below each summary.
RULE TEXT: Available on the Secretary of State (www.cyberdriveillinois.com) and General Assembly (www.ilga.gov) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

New Rules

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Questions/requests for copies: Jerilynn Troxell Gorden, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

SUBSTITUTE TEACHERS

The STATE BOARD OF EDUCATION adopted amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 43 Ill Reg 4963), effective 10/29/19, implementing two Public Acts that concern licensure and recruitment of substitute teachers. The rulemaking implements PA 100-596, which establishes short-term substitute teaching licenses that are valid only through 6/30/23, and clarifies that persons who already hold valid and active educator licenses and have completed at least an associate degree may serve as short-term substitute teachers without also having to obtain the short-term substitute license. A short-term substitute may be employed for no more than 5 consecutive days per licensed

teacher under contract. The rulemaking also implements PA 100-813, which allows school districts to use recruitment firms to supplement their recruitment of substitute teachers. All school districts that seek permission from SBE to use recruitment firms for substitutes must verify that they have not been able to find an adequate number of substitute teachers and have exhausted all other efforts to recruit substitute teachers. Additionally, Chicago Public Schools must verify that existing substitute teachers have been given priority over those hired from recruiting firms and must file copies of all substitute teacher contracts with its Regional Office of Education. Local school districts are affected .

Questions/requests for copies: Azita Kakvand, SBE, 100 N. First St., Springfield IL 62777-0001, 217/782-6510, rules@isbe.net

PUBLIC INFORMATION

The DEPARTMENT ON AGING adopted amendments to the Part

titled Public Information, Rulemaking and Organization (2 IAC 725; 43 Ill Reg 13289), repealed the Part titled Access to Information of the Department on Aging (2 IAC 726; 43 Ill Reg 13300), and adopted a new Part titled Access to Records of the Department on Aging (2 IAC 726; 43 Ill Reg 13302), all effective 10/30/19. The Part 725 rulemaking updates information regarding the Department's organizational structure; sources of information on its rules, programs and policies; and its rulemaking process. The Part 726 rulemakings repeal outdated Freedom of Information Act rules and replace them with updated FOIA procedures for persons seeking public records from DonA.

Questions/requests for copies of the 3 DonA rulemakings: Tracey Trigillo, DonA, One Natural Resources Way, Suite 100, Springfield IL 62702-1271, 217/785-3346.

Proposed Rulemakings

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garages are subject to the tax, as are property owners who regularly sell more than 3 parking spaces at a time to attendees of events (e.g., fairs, sporting events) unless these sales are "isolated or occasional". Examples of the application of the tax are outlined. Those affected by this rulemaking include small businesses and non-profit entities who sell or lease

parking spaces for any purpose or event, including annual events.

SALES TAX EXEMPTIONS

DOR also proposed amendments to Retailers' Occupation Tax (86 IAC 130; 43 Ill Reg 13190), implementing various Public Acts. The rulemaking expands the sales tax exemption for manufacturing machinery and equipment to include items purchased for

graphic arts production; updates and explains what items are considered "machinery and equipment" exempt from tax; and establishes a sales tax exemption for items used in the construction and operation of data centers that have been granted certificates of exemption by the Department of Commerce and Economic Opportunity. Small businesses

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Proposed Rulemakings

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engaged in manufacturing or graphic arts production are affected.

■ FUEL & CIGARETTE TAXES

DOR proposed amendments to the Part titled County Motor Fuel Tax (86 IAC 695; 43 Ill Reg 13276) implementing PA 101-32. The rulemaking extends the authority to impose county motor fuel taxes to Lake and Will counties (currently, DuPage, Kane, and McHenry counties). The allowable county fuel tax rate is raised from a maximum of 4 cents per gallon to between 4 and 8 cents per gallon, with automatic annual increases tied to inflation. DOR also proposed an amendment to Cigarette Use Tax Act (86 IAC 450; 43 Ill Reg 13266) implementing PA 101-31, which raised the State cigarette tax by \$1 per pack. Small businesses that sell cigarettes

anywhere in Illinois or motor fuel in the affected counties will be affected by these rulemakings.

Questions/requests for copies/ comments on the 4 DOR rulemakings through 12/30/19: Richard S. Wolters (Parts 130, 195 and 450) or Samuel J. Moore (Part 695), DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

■ DRUG DISTRIBUTION

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to the Part titled Wholesale Drug Distribution Licensing Act (68 IAC 1510; 43 Ill Reg 13160) implementing Public Act 101-420. The Act and this rulemaking extend the licensing, storage, handling and recordkeeping requirements that currently apply to wholesale drug distributors to third-party logistics

providers (entities that contract with drug manufacturers to provide or coordinate warehousing, distribution, and other services, without claiming any ownership of the drugs or responsibility for their disposition). Applicants for licensure as third-party logistics providers will be subject to the same liability insurance, bond requirements, license application and annual renewal fees (both \$200), and fees for changes of ownership (\$200) or changes of name or address (\$100) as wholesale distributors. Wholesale drug distributors and third-party logistics providers are affected by this rulemaking.

Questions/requests for copies/ comments through 12/30/19: Craig Cellini, DFPR, 320 W. Washington St., 2nd Fl., Springfield IL 62786, 217/785-0813, fax 217/557-4451.

JCAR Meeting Action

At its 11/12/19 meeting, the Joint Committee on Administrative Rules approved the following actions:

SUSPENSION

With regard to the emergency rule of the Illinois Gaming Board titled Video Gaming (General) (11 IAC 1800) adopted 11/8/19, JCAR objected to and suspended the rule because IGB has failed to adequately show the existence of an emergency that warrants immediate adoption of the rule changes without the public comment and review opportunities afforded by the use of proposed rulemaking. JCAR finds that this use of emergency rulemaking constitutes a threat to the public interest. (A summary of this emergency rule will appear in next week's *Illinois Register* and Flinn Report.)

EXTENSIONS

JCAR and the listed agencies agreed to extend the Second Notice periods for the following rulemakings an additional 45 days. These rulemakings will be considered again at the 12/17/19 meeting.

Illinois Gaming Board, Video Gaming (General) (11 IAC 1800; 43 Ill Reg 9209 and 43 Ill Reg 9312) and Riverboat Gambling (86 IAC 3000; 43 Ill Reg 9315)

State Board of Education, Early Childhood Block Grant (23 IAC 235; 43 Ill Reg 2343)

Department of Insurance, Mistake in Benefit under Article 3 and Article 4 Pensions (50 IAC 4450; 43 Ill Reg 6242)

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at the December 17, 2019 JCAR meeting. Other items not published in the *Illinois Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

DEPT OF FINANCIAL & PROFESSIONAL REGULATION

Illinois Public Accounting Act (68 IAC 1420; 43 Ill Reg 10233) proposed 9/20/19

Real Estate Appraiser Licensing (68 IAC 1455; 43 Ill Reg 10260) proposed 9/20/19

Physician Assistant Practice Act of 1987 (68 IAC 1350; 43 Ill Reg 7335) proposed 7/5/19

GUARDIANSHIP & ADVOCACY COMMISSION

Human Rights Authority (59 IAC 310; 43 Ill Reg 8610) proposed 8/16/19

DEPT OF HEALTHCARE & FAMILY SERVICES

Medical Assistance Programs (89 IAC 120; 43 Ill Reg 7599) proposed 7/12/19

DEPT OF REVENUE

Liquor Control Act (86 IAC 420; 43 Ill Reg 9334) proposed 9/6/19

SECRETARY OF STATE

Illinois State Library, Government Documents Section (23 IAC 3020; 43 Ill Reg 10404) proposed 9/20/19

Illinois State Library Grant Programs (23 IAC 3035; 43 Ill Reg 10408) proposed 9/20/19

Public Library Non-Resident Services (23 IAC 3050; 43 Ill Reg 10430) proposed 9/20/19

Joint Committee on Administrative Rules

Senator Don Harmon, *co-chair*
Senator Kimberly Lightford
Senator Tony Muñoz
Senator Sue Rezin
Senator Paul Schimpf
Senator Chuck Weaver

Representative Tom Demmer
Representative Michael Halpin
Representative Frances Ann Hurley
Representative Steven Reick
Representative André Thapedi
Representative Keith Wheeler, *co-chair*

Vicki Thomas
Executive Director