

Executive Orders Regarding COVID - 19:

Executive Summary

COVID – 19 Disaster proclamation and emergency measures

On March 9, 2020 the Governor issued a proclamation pursuant to Section 7 of the Illinois Emergency Management Agency Act (20 ILCS 3305/7) declaring all counties in the State of Illinois to be a disaster area. A disaster, as defined by the Act (20 ILCS 3305/4), can be:

“an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism”

Specifically, the Governor declared the disaster to be a public health emergency which is defined, in relevant part, to be an occurrence or imminent threat of an illness or health condition that:

(a) is believed to be caused by any of the following:

...

(ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; ... and

(b) poses a high probability of any of the following harms:

(i) a large number of deaths in the affected population;

(ii) a large number of serious or long-term disabilities in the affected population;
or

(iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

With the disaster proclamation, Section 7 grants the Governor, for a period not to exceed 30 days, 14 emergency powers. COVID -19 Executive Order No. 2 (limiting public gatherings)

and COVID -19 Executive Orders Nos. 3 & 4 (closing schools) cited the Governor's emergency powers, granted by Section 7:

(1) To suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.

(8) To control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.

(12) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services; and perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population.

COVID -19 Executive Order No. 5, closing restaurants and bars and prohibiting gatherings of 50 or more people, cited the emergency powers, granted by Section 7:

(1) To suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.

(2) To utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State.

(3) To transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs.

(8) To control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.

There is no case law interpreting Section 7.

The Emergency Management Agency Act gives the Governor the power to suspend statutes prescribing procedures **for conduct of State business or orders, rules and regulations of any State agency.** The Act does not, however, give the Governor the authority to create new regulations.

Therefore, enforcement mechanisms for the Governor's Executive Orders must either be found in the Emergency Management Act or in existing statutes or regulations. The State Liquor Commission has the power to suspend or revoke an on premise consumption retailer's license for a "violat[ing] any provision of [the Liquor Control Act] or any rule or regulation issued pursuant thereto". Since the Governor's Executive Orders are made pursuant to Emergency Management Agency Act and not the Liquor Control Act, a violation of them is not a violation of the Liquor Control Act or its rules that would allow the Commission to suspend or revoke a license.

However, when Illinois Liquor Control Commission was asked if they thought they had the authority to suspend/revoke a retailer's license if they operate in violation of the Governor's shut down order, they stated that: "It would more than likely be a fine. Not a suspension or revocation at this point. The primary authority for the shutdown is through IEMA for the Governor's Order." The Commission was asked for clarification on that statement and has yet to respond.

The Illinois Department of Public Health has been reviewing their powers to revoke or suspend licenses for establishments that sell and serve food and drink if they do not comply with the Governor's Executive Orders. Their response is that the Executive Order has not expanded the Department's statutory authority. Whether their current authority to suspend or revoke licenses due to health code violations will possibly be construed in a manner that will treat serving and selling food and drink as not up to health codes during these closures is open to interpretation.

As far as extending the provisions contained in the Executive Orders, the Illinois Emergency Management Agency clarified that any new Executive Order will need a new proclamation from the Governor. The Agency is still working on whether a new proclamation can continue to be enforced by the previous Executive Orders or if new Executive Orders will be needed. The Agency plans to make the information available to the public as soon as they can, and will continue to work with staff on updates.

Comparable worldwide measures – 3/17 Update

The response has varied greatly from state to state and country to country. A significant number of businesses have made the decision themselves to close some of their stores, but government action on retail has been very limited so far. In regard to places that serve food and drink, a number of states have closed bars and limited restaurants to half capacity or takeout service. Below is the list as of Tuesday, March 17, 2020.

France – Restaurants, cafes, movie theaters, nightclubs

Italy – Retailers (except food shops), pharmacies

Spain – Restaurants, bars, hotels, non-essential retail outlets

State Closures

California – Bars, nightclubs, wineries, breweries, restaurants at 50%

Colorado – Bars, restaurants, gyms, theaters, casinos

Connecticut – Restaurants, bars, casinos, gyms, movie theatres

Illinois – Bars, restaurants
Indiana – Bars, nightclubs, restaurants
Kentucky – Bars, restaurants
Maryland – Restaurants, bars, theatres, gyms
Massachusetts – Bars, restaurants
Michigan – Bars, restaurants
New Jersey – Restaurants, bars, casinos, gyms, movie theatres
New York – Restaurants, bars, casinos, gyms, movie theatres
Ohio – Bars, restaurants
Oregon – Bars, restaurants
Pennsylvania – non-essential businesses, restaurants
Rhode Island – Bars, restaurants, coffee shops
Washington – Bars, restaurants, entertainment & recreational facilities

Cities

DC – Bars, restaurants, gyms, theatres
LA – Bars, nightclubs, entertainment venues, gyms
Miami – Restaurants, bars
San Francisco – All non-essential businesses, stay home order