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Illinois End of Session Report is A Mixed Bag for Hardware Retailers

By Alec Laird, MHA Illinois Lobbyist and Vice President, Government Relations for the Illinois Retail Merchants Association

The spring session came to end in with the passage of a state budget for fiscal year 2025 (July 1, 2024-June 30, 2025). Totaling over $53 billion in spending and over $800 million in new revenues, the budget met the Governor's goal of being balanced making it the sixth consecutive balanced budget. Included in the new revenues were capping the retail discount extending the sunset on the net operating loss deduction cap, increases to the sports and video gaming terminal taxes, as well as various fund shifts. There are various tax credit increases for child care, local journalism, live theater, music and musicians, and student loan payments to name a few as well as incentives for things like quantum computing.

Budget Specifics— The Fiscal Year 2025 General Funds budget plan reflects projected revenues of $53.281 billion and expenditures of $53.070 billion. The budget raises $526 million by extending a cap on tax-deductible business losses at $500,000; $101 million by instituting a cap of $1,000 per month on the amount retail stores may keep for their expenses in holding back state sale taxes; and $235 million more from increased sports wagering taxes and on video gambling on a sliding scale from 20% to 40%.

Economic Development monies includes but is not limited to the following:

- $30 million for the Fast-Track Workforce program to provide employee screening, recruitment, and job training development to employers;
- $25 million for competitive business development capital grants to expand, rehabilitate, or relocate private business to Illinois;
- $20 million in capital funding to continue the Illinois Works Construction Pre-apprenticeship Program;
- $10 million for the Illinois Grocery Initiative to address food insecurity faced by millions of Illinoisans living in food deserts;
- $10 million in continued funding for Clean Energy Career and Technical Education pilot initiative to assist high schools with developing curriculum and programming that supports electric vehicle manufacturing technical education;
- $5 million for retail workforce development;
- $2.5 million in continued funding for the Office of Outdoor Recreation to promote tourism at destinations around the state and grow the outdoor recreation economy of Illinois; and
- $2 million in continued funding for rural economic development, intended to connect communities and improve access to state and federal aid through outreach or technical assistance from rural navigators.

Capital and Transportation Funding includes but is not limited to the following:

$500 million for new quantum-related investments

$139 million to DCEO for economic improvement programs, including:

- $50 million to Prime Sites
- $40 million for Sites Development
- $25 million for public infrastructure
- $24 million to Manufacturing Training Academies

$900 million for maintenance and modernization of Department of Corrections facilities
$575 million for deferred maintenance and construction at higher education facilities - helps to finish priority campus projects from Rebuild Illinois across the state.

- $450 million for universities
- $125 million for community colleges

$157 million for additional funding to support construction of the new DPH laboratory in the Chicago area and rehabilitation of the Carbondale laboratory
$513 million for increasing costs of deferred maintenance and construction at state facilities to finish out Rebuild Illinois priority projects like the State Armory
$100 million to DCFS for a multi-year capital grant program to improve capacity for youth placement by increasing bed capacity systemwide
Department of Transportation capital budget includes:

- $5.3 billion for the Fiscal Year 2025 Road Program.
    - Includes approximately $4.2 billion in pay-as-you-go revenue and $1.1 billion in bond funds.
    - Largest annual Road Program in state history
- Provides $400 million in new appropriation authority for local projects in economically distressed areas.
- Includes $149 million in new appropriation authority for the National Electric Vehicle Infrastructure (NEVI) program and $45 million for associated match.

ENVIRONMENT

Battery EPR—A bill to manage the life cycle of rechargeable batteries passed the General Assembly. Senate Bill 3686 (Sen. David Koehler, D/Rep. Sharon Chung, D) requires battery producers to fund and participate in a statewide stewardship program to boost recycling rates for portable and medium format batteries of a certain weight. Producers would also be required to conduct educational outreach around the importance of battery recycling.

Retail participation in the program is voluntary and reflects the programs established in the electronics, paint, and pharmaceutical acts that have passed in the recent years.

P.A. Awaiting Signature; Effective Date: January 1, 2025

Fluorescent Light Phase-Out—HB 2363 (Rep. Nick Smith, D/Sen. Adriane Johnson, D) creates the Clean Lighting Act and prohibits the sale of certain fluorescent lights that contain mercury in Illinois. Advocates for the legislation argue that by phasing out fluorescent bulbs in favor of

efficient LED bulbs, states can avert a needless health risk, save families and business money on utility bills, and curb greenhouse gas emissions.

MHA requested two provisions for the legislation: (1) a sell through provision to 2026; and an (2) exemption for lights that do not have commercially viable LED alternative until 2028. There is also a provision that makes it clear that the legislation does not impact utility energy savings programs.

P.A. Awaiting Signature; Effective Date: January 1, 2025 and January 1, 2028

LABOR

Employer Free Speech Restrictions—SB 3649 (Sen. Robert Peters, D/ Rep. Marcus Evans, D) creates the Worker Freedom of Speech Act and limits the constitutionally protected employment and religious free speech rights of employers, violates the Supremacy Clause of the United States Constitution, and violates the Religious Freedom Restoration Act.

For nearly 75 years, the National Labor Relations Board (NLRB) has held that mandatory group meetings are a lawful exercise of employer free-speech rights. This longstanding support dates back to its 1948 decision in *Babcock & Wilcox*, which issued just one year after Congress amended Section 8(c) of the National Labor Relations Act (NLRA) to incorporate employer free-speech protections. The Supremacy Clause of the United States Constitution requires that state laws must yield to federal law when Congress has intended to regulate an entire field of law, or when state laws and federal law directly conflict.

Additionally, under *Burwell v. Hobby Lobby* the U.S. Supreme Court held that Hobby Lobby and other companies with just a few owners – so-called “closely held companies” – do not lose their religious liberties when they go into business. The Court held that Congress intended for the Religious Freedom Restoration Act to be read as applying to corporations since they are composed of individuals who use them to achieve desired ends. As such, SB 3649’s restrictions on religious conduct violates the religious liberties of private companies.

For the aforementioned reasons, the few states that have passed similar laws have (1) refused to enforce the law (Oregon), (2) have been enjoined from enforcing by the courts (Wisconsin), (3) are being actively sued (Minnesota and Connecticut), or is in the process of being sued (New York).

During SB 3649’s initial hearing, MHA testified to the constitutional issues and requested that if Illinois lawmakers are going to pass the unconstitutional legislation, at the very least the Private Right of Action (“PRA”) should be removed from the legislation. The legislation was subsequently amended that doubles down on the unconstitutionality of the language. Not only did they not remove the PRA, the amendment allows “interested parties” to file PRA’s against businesses. "Interested party" means an organization that monitors or is attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory

requirements. So any union or other random “organization” that is unrelated to the employer or employee may sue Illinois business through a PRA.

Additionally, unions exempted themselves from the legislation in the most recent amendment. So they are free to do what they are attempting to make illegal for everyone else.

P.A. Awaiting Signature; Effective Date: January 1, 2025

Electronic Pay Stubs—SB 3208 (Sen. Karina Villa, D/ Rep. Dagmara Avelar, D) restates current law and applies physical pay stub requirements to electronic pay stubs.

P.A. Awaiting Signature; Effective Date: January 1, 2025

Workers’ Compensation—Stakeholders were notified that the Illinois Workers’ Compensation Commission is running short of operating funds by $1.7 million. This, despite the fact they assured they had the funds to pay the increased salaries for arbitrators and commissioners that were approved a few years ago. Those individuals had not received increases for many, many years. An agreement between labor and business has been reached to approve a one-year increase to cover the next fiscal year. It also includes changes proposed by the Illinois Department of Insurance to make it easier to after employers and insurance agents who provide or use fraudulent workers’ compensation insurance certificates.

P.A. 103-0590; Effective Date: June 5, 2024

Paid Leave Rules—The Joint Committee on Administrative Rules (JCAR) approved the Illinois Department of Labor's (IDOL) paid leave rules. The Illinois Paid Leave for All Workers Act (hereinafter the “Act”) requires businesses to provide five days of paid leave to employees and the employees may use the leave for any reason. The Act included a provision that plainly states that an employer who provides any type of paid leave policy that satisfies the minimum amount (5 days) of leave is not required to modify the policy if the policy offers an employee the option, at the employee's discretion, to take paid leave for any reason (Section 20(b)).

IDOL's rules goes beyond this language and applies this to "pre-existing" policies implemented prior to January 1, 2024. Section 20 (b) does not include limiting language such as “existing” or “pre-existing”. It applies to an employer who *provides* a paid leave policy. This includes past, present, and future paid leave policies. Additionally, Section 5(c) uses the phrase “*adopt or retain*” in regards to any paid leave plans. Again, from a statutory construction perspective this applies to current or future plans.

More concerning is that IDOL's rules eliminate vacation and PTO polices. IDOL's rules require ANY paid leave policy, including but not limited to vacation and PTO policies that are implemented after January 1, 2024 to be subject to the requirements of this Act.

Vacation and PTO are currently subject to the Wage Payment and Collection Act. That Act defines leave under those policies as "monetary equivalent". Meaning an employer has to pay out those policies and are subject to wage theft and other employee protections.

Under IDOL's interpretation, ANY policy, vacation time or PTO, that are implemented after January 1st are now governed by the Paid Leave Act and subject to the above provision. As a consequence, employers are no longer required to pay out the "monetary equivalent" of PTO and Vacation Time. These policies would now be considered "paid leave under this Act".

Corporate attorneys are risk adverse. More liability exists under the Wage Payment and Collection Act. Employers will immediately stop offering PTO and Vacation time and reclassify these policies in order to avoid the liability under the Wage Payment and Collection Act. This interpretation de-incentivizes and discourages these policies.

TAX

Retail Discount—After several decades of nearly annual struggle to protect the Retail Discount, thru Republican and Democratic governors, this year MHA's fight to keep Illinois' discount from being capped, reduced or eliminated has come to an end. Despite informational campaigns year-after-year an inflection point arrived this year. The pressures included but were not limited to a desire by policy-makers to make local governments whole as a result of getting rid of the 1% tax on groceries, meet increased spending pressures, and balance the budget without directly increasing general taxes.

Governor JB Pritzker's proposal to cap the discount at $1,000 per month per entity ($12,000 per year) was ultimately adopted. This change takes effect for tax returns due on or after January 1, 2025.

P.A. 103-0592; Effective Date: January 1, 2025

Interchange Fee Prohibition on Tax & Gratuities—MHA was able to secure passage of legislation allowing retailers the option of having VISA/MasterCard remove the fees they charge on the sales tax portion of every electronic transaction. While states like Tennessee and Florida paved the way, Illinois became the first state to do so. This is even more important as Illinois' own US Senator Richard Durbin (D) pursues federal regulation of the fees charged by processors. While these changes will require changes to point-of-sale and accounting systems, in the long-run they provide significant cost-control opportunities for retailers. Further, they provide significant impetus to Senator Durbin's efforts. The financial institutions made wild, last-minute claims in an effort to derail the agreement. Examples included they can't do it even though they already do it for business-to-business transactions. In the end, legislators saw thru the myths. This provision takes effect July 1, 2025.

P.A. 103-0592; Effective Date: July 1, 2025

Grocery Tax—For a year amidst the pandemic, the state removed the 1% tax on groceries (food not for immediate consumption). This year, the Governor proposed permanently removing the 1% tax. In short, **beginning January 1, 2026**, there will no longer be a 1% state tax on groceries defined as *"...food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, candy, and food that has been prepared for immediate consumption".* These monies were remitted to the state but distributed by IDOR to local governments. The repeal creates a $350 million cost pressure for local governments. In exchange, the Governor and Assembly gave local governments a way to recoup their loss in addition to the local portion of the retail discount. In addition, municipalities will be allowed to re-enact the 1% tax on groceries by ordinance, as opposed to referendum, if they so choose but not before January 1, 2026 when the state's 1% tax comes off. Additionally, in Cook County a 1.25% sales tax is applied to the purchase of tangible personal property to support the Regional Transportation Authority (RTA). Under the provisions of HB 3144, groceries is being added to the 1.25%.

This tax exemption does not include alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, candy, and food that has been prepared for immediate consumption.

P.A. Awaiting Signature; Effective Date: January 1, 2026

Leveling the Playing Field Loophole—SB 3362 closes a loop-hole MHA warned about when Illinois originally adopted MHA's initiative to require out-of-state retailers to collect and remit Illinois sales taxes. As an example, out-of-state companies looking to avoid collecting these taxes do things like opening a token sales office. SB 3362 closes that loophole. This will mean an additional $300-$400 million in revenue to the state. This is in addition to the $1 billion the original act is already generating.

P.A. Awaiting Signature; Effective Date: January 1, 2025