

# **2008 CASE REPORT**

**(and cumulative report of Illinois statutes held unconstitutional)**



**Legislative Reference Bureau  
112 State Capitol  
Springfield, Illinois 62706  
(217) 782-6625**

**November 2008**

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Executive Director: Richard C. Edwards

Principal Attorneys: Nicole H. Truong and Wayne G. Hedenschoug

Senior Attorneys: Jean A. McCay, David R. Johnson, and Andrea M. Creek

Staff Attorneys: Robert Cohen, Konjit Gomar, Heather Harding, Rebecca Johnson,  
Andrew Kang, Ronald Michel, Allen Oehlert, Michael Rosenquist, James Stivers, and  
Andrew Tessman



State of Illinois  
**LEGISLATIVE REFERENCE BUREAU**  
112 State House, Springfield, IL 62706-1300  
Phone: 217/782-6625

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To the Honorable Members of the General Assembly:

This is the Legislative Reference Bureau's annual review of decisions of the Federal Courts, the Illinois Supreme Court, and the Illinois Appellate Court as required by Section 5.05 of the Legislative Reference Bureau Act, 25 ILCS 135/5.05.

The Bureau's staff attorneys screened all court decisions and prepared the individual case summaries. A cumulative report of statutes held unconstitutional, prepared by the Bureau's staff attorneys, is included. The entire report was edited and compiled by senior attorney Jean McCay.

Respectfully submitted,

Richard C. Edwards  
Executive Director



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## **INTRODUCTION TO PART 1**

Part 1 of this 2008 Case Report contains summaries of recent court decisions and is based on a review of court decisions published since the summer of 2007 in advance sheets through the following:

1. Illinois Official Reports advance sheet No. 15 (July 15, 2008).
2. Federal Reporter advance sheet No. 31 (August 4, 2008).
3. Federal Supplement advance sheet No. 31 (August 4, 2008).
4. Supreme Court Reporter advance sheet No. 18 (July 15, 2008).

**PART 1**  
**SUMMARIES OF RECENT COURT DECISIONS**

**STATE OFFICIALS AND EMPLOYEES ETHICS ACT – PUNITIVE DAMAGES**

*The Act authorizes punitive, as well as compensatory, damages for violation of its whistleblower retaliation prohibitions.*

In *Maes v. Folberg*, 531 F.Supp.2d 956 (N.D.Ill. 2007), a State university employee sought punitive damages from her supervisor for the supervisor's retaliation against her as a workplace whistleblower. Section 15-25 of the State Officials and Employees Ethics Act (5 ILCS 430/15-25) sets forth a specifically incomplete list of remedies a court may impose upon such a defendant. Punitive damages are not included in the list. In an earlier ruling in the case (*Maes v. Folberg*, 504 F.Supp.2d 339 (N.D.Ill. 2007)), the court interpreted the statute as permitting only compensatory damages because it focused on the Section's authorization to award all remedies necessary to make the wronged State employee whole. The court corrected this earlier interpretation by reading the rest of the statute. Section 25 also authorizes the awarding of all remedies necessary to prevent future violations of the Act's whistleblower retaliation prohibitions, and punitive damages impart the threat and deterrence that may achieve that goal.

**DEPOSIT OF STATE MONEYS ACT – ILLINOIS PENSION CODE – SUDAN ACT**

*The prohibition against the investment of State funds in relation to Sudan, subsequently repealed, was preempted by federal law and violated the foreign commerce clause of the United States Constitution.*

In *National Foreign Trade Council, Inc. v. Giannoulis*, 523 F.Supp.2d 731 (N.D.Ill. 2007), a trade organization, 8 municipal pension funds, and 8 beneficiaries of public pension funds brought suit against the State Treasurer and Attorney General, challenging the constitutionality of Public Act 94-79, known as the Illinois Act to End Atrocities and Terrorism in the Sudan (Sudan Act) and effective January 27, 2006. The Sudan Act amended the Deposit of State Moneys Act (15 ILCS 520/22.5 and 520/22.6) and the Illinois Pension Code (40 ILCS 5/1-110.5) to prohibit certain investments of State funds in any forbidden entity, that is, the government of Sudan and companies doing business in or with Sudan. The court's holding indicates that the Sudan Act's amendment of the Deposit of State Moneys Act (i) is preempted by federal law because of its lack of flexibility, extended geographic reach, and impact on foreign entities; and (ii) interferes with the federal government's ability to conduct foreign affairs because it has a magnified effect in that the Act is targeted at only one country. The court's holding also indicates that the Sudan Act's amendment of the Illinois Pension Code violates the foreign commerce clause of the United States Constitution (U.S. Const., Art. I, Sec. 8) because the amendment does not fall under the market participant exception because it impacts local political subdivisions and the amendment, as drafted, is not severable. Public Act 95-521, effective August 28, 2007, removed and repealed the statutory provisions constituting the Sudan Act. Public Act 95-521 redefines "forbidden entity";

provides for certain exemptions; applies only to State retirement systems and not local political subdivisions; and provides certification requirements for Illinois finance entities that are severable.

### **PROPERTY TAX CODE – NEW RATE REFERENDUM**

*The term “new rate” in the Property Tax Extension Limitation Law refers to taxes newly authorized by statute, rather than taxes newly imposed by the taxing body.*

In *Acme Markets, Inc. v. Callanan*, 378 Ill.App.3d 676 (3<sup>rd</sup> Dist. 2008), the plaintiff taxpayer objected to a property tax levy imposed by Will County for the purpose of paying for the operations of the Will County detention facility. The levy, authorized by Section 5 of the County Shelter Care and Detention Home Act (55 ILCS 75/5), was imposed by the county board in every year between 1997 and 2001. It was never submitted for referendum approval. The plaintiff argued that the levy was a “new rate”, which required a referendum under Section 18-190 of the Property Tax Extension Limitation Law (PTELL) of the Property Tax Code (35 ILCS 200/18-190 (West 2004)). In reaching its decision against the plaintiff, the appellate court examined several previous cases, including *In re Application of the Du Page County Collector for the Year 1992* (or *1212 Associates*), 288 Ill.App.3d. 480 (1997) and *Allegis Realty Investors v. Novak*, 356 Ill.App.3d 887 (2005). In *1212 Associates*, which involved a prior version of PTELL, the court determined that the words “new rate” were modified by the phrase “authorized by statute”; therefore, a “new rate” was defined as those taxes newly authorized by statute, rather than taxes newly imposed by the taxing body. However, in *Allegis Realty*, the court questioned its decision in *1212 Associates*, based on the legislative history of Section 18-190. The appellate court in *Acme Markets* ultimately followed the reasoning in *1212 Associates* and found that “new rates” are those taxes newly authorized by statute, rather than taxes newly imposed by the taxing body. Because the Will County levy was not a “new rate”, it was not subject to the PTELL referendum requirement.

### **ILLINOIS PENSION CODE – DISABILITY CERTIFICATION**

*The requirement that 3 physicians certify a police officer’s disability pension claim does not mean that all 3 physicians must find the applicant disabled.*

In *Wade v. N. Chicago Police Pension Bd.*, 226 Ill.2d 485 (2007), a former police officer appealed the denial of a line-of-duty disability pension by the City of North Chicago Police Pension Board. Section 3-115 of the Illinois Pension Code (40 ILCS 5/3-115 (West 2002)) provides that a disability pension may not be granted unless 3 physicians selected by the pension board certify the disability. Two of the 3 physicians certified the plaintiff as disabled. The plaintiff argued that the board improperly interpreted the Section to require that all 3 examining physicians certify him as disabled. The Illinois Second District Appellate Court in this case ruled that the plain language of Section 3-115 requires that all 3 physicians certify the plaintiff as disabled, while the Illinois First District Appellate Court in *Barry v. Retirement Board of the Firemen’s Annuity and Benefit Fund of Chicago*, 357 Ill.App.3d 749 (2005), interpreted a similar provision in Section 4-112 of the Code (40 ILCS 5/4-112) as requiring that the 3

physicians certify only that they examined the pension applicant with respect to disability. Here, the Illinois Supreme Court reversed the lower court's ruling that all 3 physicians must certify that a pension applicant is disabled and held that the physicians' reports' are for the purpose of addressing the issue of disability. The decision regarding disability is for the board, not for any individual physician.

### **ILLINOIS PENSION CODE - REFUNDS AND ANNUITIES**

*To receive a fireman's widow's annuity, a widow must repay, with interest, any survivor's refund paid to the fireman's estate, even though the repayment requirement is not specified by statute.*

In *Fleming v. Retirement Board*, 373 Ill.App.3d 432 (1<sup>st</sup> Dist. 2007), the widow of a deceased fireman appealed the ruling of the Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago that if she wished to receive a widow's annuity pursuant to subsection (B) of Section 6-142 of the Illinois Pension Code (40 ILCS 5/6-142 (West 2004)), then she must repay the refund, with interest, that was paid to her husband's estate. The appellate court held that although subsection (B) of Section 6-142 does not contain specific repayment language, it would follow logically to require that the widow repay the refund with interest in order to receive a widow's annuity.

### **ILLINOIS MUNICIPAL CODE – ELIGIBILITY FOR OFFICE**

*A person's statutory ineligibility to hold elective municipal office because of indebtedness to the municipality also disqualifies the person as a candidate for that office.*

In *Cinkus v. Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200 (2008), the petitioner filed nomination papers to be a candidate for village trustee. After an objection to the nomination was filed, the municipal officers electoral board for the village found that the petitioner was ineligible for candidacy because he was ineligible for elective municipal office under subsection (b) of Section 3.1-10-5 of the Illinois Municipal Code (65 ILCS 5/3.1-10-5 (West 2004)) due to his indebtedness to the village for a judgment from a \$100 disorderly conduct citation. The trial court reversed the board's decision because it was contrary to law, arbitrary and capricious, violative of due process, and against the manifest weight of the evidence. The appellate court affirmed the board's decision. Although no Illinois court had previously addressed the eligibility of a candidate who is in arrears of a tax or other indebtedness, the appellate court examined several prior cases involving the eligibility of convicted felons to run for elective office, a prohibition that also appears in subsection (b) of Section 3.1-10-5. The court reasoned that when the legislature uses identical language to prescribe identical provisions, absent any contrary intent, the only logical conclusion to be drawn is that the legislature intended the 2 provisions to have the same meaning and to be interpreted identically. Because a prior felony conviction is a bar to a candidate's eligibility to run for office, it follows that the legislature intended the candidate's indebtedness to be a bar as well. The Illinois Supreme Court agreed. It pointed out that the Election Code's prescribed language of the required statement of candidacy, that the candidate *is* qualified to hold office, is expressed in the present tense and, thus, indicates the legislative intent

that a candidate must meet the office's eligibility requirements at the time of his or her candidacy.

### **ILLINOIS INSURANCE CODE - ARBITRATION AWARD**

*Provision allowing a court to award punitive damages when an insurance company's liability on a policy is disputed also permits an arbitration panel resolving the same issue to award those damages.*

In *Beatty v. The Doctors' Co.*, 374 Ill.App.3d 558 (5<sup>th</sup> Dist. 2007), the defendant insurance company appealed an arbitration award that included, among other punitive damages, a penalty under Section 155 of the Illinois Insurance Code (215 ILCS 5/155 (West 2004)). The defendant argued that the arbitration award was erroneously granted under Section 155. Section 155 provides that in any action wherein there is at issue the liability of a company on a policy of insurance, *a court* may allow an additional award not to exceed 60% of the amount that the plaintiff is entitled to recover against the insurance company or \$60,000. Illinois common law (*American Service Insurance Co. v. Passarelli*, 323 Ill.App.3d 587 (2001)) states that claims under Section 155 must be made by way of complaint in the trial court and not in an arbitration proceeding. The court upheld the arbitration panel's award of \$60,000 as penalty under Section 155 in pertinent part because the statutory claim was previously made in the plaintiff's amended complaint at trial and because the parties had agreed to binding arbitration of the matters raised in the plaintiff's amended complaint.

### **ILLINOIS UNDERGROUND UTILITY FACILITIES DAMAGE PREVENTION ACT - EXCAVATION**

*Saw-cutting of concrete pavement constitutes excavation under the Act.*

In *Quality Saw & Seal, Inc. v. ICC*, 374 Ill.App.3d 776 (2<sup>nd</sup> Dist. 2007), a contractor hired to perform full-depth saw-cutting of concrete pavement and curbs appealed from a decision by the Illinois Commerce Commission that the contractor violated subsection (d) of Section 4 of the Illinois Underground Utility Facilities Damage Prevention Act (220 ILCS 50/4 (West 2004)). Subsection (d) requires that a person engaged in non-emergency excavation give prior notice to the owner of underground utility facilities located near the excavation area. The Commission ruled that subsection (d) applied to the contractor because concrete pavement qualifies as "earth, rock, or other material" and saw-cutting is "excavation" pursuant to Section 2.3 of the Act (220 ILCS 50/2.3 (West 2004)). The court interpreted the statutory language as unambiguous, and affirmed the decision of the Commission that the legislature intended (i) to include concrete pavement as part of Section 2.3 and (ii) that the contractor was engaged in the activity of excavation.

### **LIQUOR CONTROL ACT OF 1934 – LICENSEE PROXIMITY TO CHURCH**

*The minimum 100-foot distance required between a liquor licensee and a church is measured from the licensee's property line, not from the licensee's building.*

In *Daley v. Lakeview Billiard Café, Inc.*, 373 Ill.App.3d 377 (1<sup>st</sup> Dist. 2007), a business was denied a liquor license because the applicant's location violated subsection (a) of Section 6-11 of the Liquor Control Act of 1934 (235 ILCS 5/6-11 (West 2002)), which prohibits a licensee within 100 feet of a church. The statute provides that the 100 feet shall be measured to the nearest part of any building used for worship services or educational programs, and not to the property boundaries, but is silent as to where the measurement begins on an applicant's property. The applicant measured from the nearest portion of the building to be used for the applicant's business, rather than from its property line. Before its present wording, the statute specified that the distance was to be measured from property line to property line. The court ruled that the legislature intended that the proper measurement of distance begins at the property line of the applicant. If the General Assembly had wanted a different starting point for the measurement, it could have established one, just as it had changed the ending point to "the nearest part of any building used for worship services or educational programs and not to property boundaries".

#### **LIQUOR CONTROL ACT OF 1934 - SALE TO MINORS**

*A minor, as well as an adult, is a "person" prohibited from selling, giving, or delivering alcohol to a minor.*

In *People v. Christopherson*, 377 Ill.App.3d 752 (2<sup>nd</sup> Dist. 2007), the defendant, a 17-year-old, gave beer to another minor who died in a one-car accident after consuming the alcohol. The defendant was convicted of violating subsection (a)(iii) of Section 6-16 of the Liquor Control Act of 1934 (235 ILCS 5/6-16 (West 2004)), which prohibits a person from selling, giving, or delivering alcohol to another person under the age of 21 years. The defendant asserted that subsection (a)(iii) did not apply to her because the word "person" was not intended to include minors. The court rejected that interpretation, holding that the legislature intended the word "person" to have its ordinary meaning and that it was not meant to exclude minors.

#### **ILLINOIS VEHICLE CODE - BLOOD TEST RULES**

*The General Assembly's delegation of authority to the Department of State Police to adopt standards for blood tests does not include adoption of a rule requiring disinfection of a subject's skin before testing.*

In *People v. Bair*, 379 Ill.App.3d 51 (1<sup>st</sup> Dist. 2008), the defendant appealed her conviction for driving under the influence of alcohol. She alleged that the trial court erred in allowing the results of a blood-alcohol test performed at a hospital. The defendant claimed the blood test violated an Illinois statute requiring compliance with the Illinois Administrative Code because her physician failed to disinfect her skin prior to drawing a blood sample, as then required by the Illinois Administrative Code (20 Ill. Adm. Code §1286.320(c)). The legislature delegated authority to the Department of State Police to promulgate standards for blood tests under Section 11-501.2 of the Illinois Vehicle Code (625 ILCS 5/11-501.2 (West 2004)). The appellate court found that the purpose of Section 11-501.2 is to ensure reliable test results. The court held the Department

exceeded the authority delegated to it under Section 11-501.2, as the disinfection requirement was unrelated to the validity of the blood test (the requirement was for the subject's well-being). The physician's failure to comply with the administrative rule did not invalidate the admission of the defendant's blood-alcohol test results because the rule was invalid.

### **ILLINOIS VEHICLE CODE - BLOOD ALCOHOL TEST ADMISSIBILITY**

*The reporting of a driver's blood alcohol content test results to the Secretary of State as a "zero-tolerance" DUI violation does not determine whether the testing was performed under the zero-tolerance statute or under the Code's general DUI provisions.*

In *People v. Pieper*, 379 Ill.App.3d 205 (2<sup>nd</sup> Dist. 2008), the defendant argued that the State was precluded from using his blood alcohol content (BAC) test result in a criminal prosecution because the police reported his BAC test result to the Secretary of State under Section 11-501.8 of the Illinois Vehicle Code (625 ILCS 5/11-501.8 (West 2006)), the "zero-tolerance" statute that provides for summary suspension of the driver's license of a person under age 21 driving with a BAC over 0.00. Subsection (f) of Section 11-501.8 provides that the results of BAC testing performed under that Section are not admissible in a criminal proceeding. Subsection (c) of Section 11-501.1 of the Code (625 ILCS 5/11-501.1 (West 2006)), on the other hand, provides that the results of BAC testing performed under Section 11-501.1 are admissible in a criminal proceeding. The court held that the reporting of a zero-tolerance violation under Section 11-501.8 is irrelevant to whether the BAC testing was done pursuant to Section 11-501.8 or Section 11-501.1 and thus to whether the test result is admissible in a DUI prosecution. If the test was connected to an arrest for DUI and the defendant was warned in accordance with Section 11-501.1, then the test will be deemed administered under Section 11-501.1, even if the defendant was also subject to testing under Section 11-501.8. In a situation where Section 11-501.1 and Section 11-501.8 overlap, testing may be conducted under both provisions, but, pursuant to Section 11-501.1, the result is admissible in a prosecution for DUI.

### **ILLINOIS VEHICLE CODE - FALSE OR SECRET COMPARTMENT IN A MOTOR VEHICLE**

*The prohibition against a person owning or operating a motor vehicle that he or she knows to contain a false or secret compartment violates the due process requirements of the United States and Illinois constitutions.*

In *People v. Carpenter*, 228 Ill.2d 250 (2008), a defendant convicted of violating Section 12-612 of the Illinois Vehicle Code (625 ILCS 5/12-612 (West 2004)) challenged the constitutionality of that statute. Subsection (a) of Section 12-612 makes it unlawful for any person to own or operate a motor vehicle that he or she knows to contain a "false or secret compartment", defined in subsection (b) of that Section as "any enclosure that is intended and designed to be used to conceal, hide, and prevent discovery by law enforcement officers of the false or secret compartment or its contents, and which is integrated into a vehicle". Subsection (b) further provides that a person's intention to use a false or secret compartment to conceal its contents from a law enforcement officer may

be inferred from factors “including but not limited to” the discovery of “a person, firearm, controlled substance, or other contraband” within the compartment or evidence of the previous placement of one or more of the listed items in the compartment. The Illinois Supreme Court held that Section 12-612 violates the due process provisions of the United States and State constitutions (U.S. Const., Amends. V and XIV and ILCON Art. I, Sec. 2). While the statute was intended to serve the public interest in stopping the use of false or secret compartments to conceal guns, narcotics, and other contraband, its provisions are overly broad and, as here, punish innocent conduct because the concealed item need not be illegal.

### **ILLINOIS VEHICLE CODE - BLOCKED CROSSING**

*The prohibition against a train blocking a grade crossing for more than 10 minutes without moving is preempted by federal law and violates the United States Constitution.*

In *Eagle Marine v. Union Pacific R.R.*, 227 Ill.2d 377 (2008), businesses were successful in having a railroad permanently enjoined from obstructing a grade crossing for more than 10 minutes pursuant to subsection (1)(b) of Section 18c-7402 of the Illinois Vehicle Code (625 ILCS 5/18c-7402 (West 2004)). That subsection prohibits a rail carrier from permitting a train, railroad car, or engine to block a road-highway grade crossing for more than 10 minutes unless the train, car, or engine is moving or the circumstances causing the obstruction are beyond the carrier’s control. The Illinois Supreme Court directed that the injunction be dissolved because the statute is preempted by federal railroad law and violates the commerce clause of the United States Constitution (U.S. Const., Art. I, Sec. 8).

### **CRIMINAL CODE OF 1961 - HOME INVASION**

*The premises where a married couple lived but that have since been vacated by the husband are no longer the husband’s “dwelling place”, despite the lack of a judicial order barring his entry.*

In *People v. Howard*, 374 Ill.App.3d 705 (1<sup>st</sup> Dist. 2007), the defendant was convicted of felony home invasion of his wife’s town house. Section 12-11 of the Criminal Code of 1961 (720 ILCS 5/12-11 (West 2002)), the home invasion statute, prohibits the unlawful entry into the “dwelling place of another”. Subsection (a) of that Section specifies that a dwelling place includes premises in which the defendant maintains a tenancy interest but from which dwelling place the defendant has been barred by an order of protection, dissolution judgment, or similar order. The defendant contended that the town house was his dwelling place because he was still married and there was no court order barring him from entering. The court held that when the defendant entered his wife’s home, he no longer lived there, had moved out, had surrendered his key and taken his belongings, had no permission to enter, had never been named in the lease, and never had a tenancy interest, and thus he did enter the “dwelling place of another”.

### **CRIMINAL CODE OF 1961 – HOME INVASION INJURY**

*Psychological, as well as physical, injury satisfies the injury element of the offense of home invasion.*

In *People v. Hudson*, 228 Ill.2d 181 (2008), the defendant entered another’s home without authorization while naked from the waist down; he advanced toward a startled 16-year-old resident and fled after struggling with her. She suffered psychological trauma from the incident. The defendant was convicted of home invasion under subsection (a)(2) of Section 12-11 of the Criminal Code of 1961 (720 ILCS 5/12-11 (West 2004)), which requires the intentional causing of injury. The defendant argued that subsection (a)(2) requires physical injury. The Illinois Supreme Court disagreed, finding that psychological injury is sufficient to satisfy the statute’s injury element. Subsection (a)(5) of Section 12-11 prohibits unauthorized entry into another’s residence and the discharge of a firearm that causes great bodily harm to another. “Bodily harm” requires physical injury, but the term “injury” includes emotional damage. The court noted that when the General Assembly uses different words in the same statute, different meanings are intended.

### **CRIMINAL CODE OF 1961 – THEFT FROM PERSON**

*Theft of property from the person includes theft of property from the presence of the person.*

In *People v. Pierce*, 226 Ill.2d 470 (2007), the defendant challenged the modified jury instructions given at trial that defined the offense of theft from the person to include the taking from the “presence” of the person. Section 16-1 of the Criminal Code of 1961 (720 ILCS 5/16-1 (West 2004)) refers only to theft of property from the person. The court held that while the legislature could have included the phrase “or presence” in the theft statute, it was unnecessary to do so because in Illinois the well-defined meaning of “from the person” includes a taking from the presence of a person.

### **CRIMINAL CODE OF 1961 - UNLAWFUL USE OF RECORDED SOUNDS**

*Prosecution for unlawful use of recorded sounds or images is preempted by the federal Copyright Act of 1976.*

In *People v. Williams*, 376 Ill.App.3d 875 (1<sup>st</sup> Dist. 2007), a defendant who was convicted of unlawful use of recorded sounds or images under subdivision (a)(2) of Section 16-7 of the Criminal Code of 1961 ((720 ILCS 5/16-7 (West 2004)) argued that his conviction was preempted by federal copyright law. Subdivision (a)(2) provides that a person commits unlawful use of recorded sounds or images when he or she intentionally, knowingly, or recklessly sells, offers for sale, advertises for sale, uses, or causes to be used for profit any recorded sound or image without the consent of the owner. The court held that Section 301 of the federal Copyright Act of 1976 (17 U.S.C. 301) preempts a prosecution under subdivision (a)(2) of Section 16-7 of the Criminal Code of 1961 because Congress intended that Section 301 be construed as a broad, express preemption of both civil and criminal actions for copyright infringement under state law, and subdivision (a)(2) does not require any additional element that qualitatively distinguishes it from the federal copyright infringement provision.

### **CRIMINAL CODE OF 1961 - DISPROPORTIONATE PENALTIES**

*The sentence enhancement for armed robbery with a firearm violated the constitutional prohibition against disproportionate penalties when compared to the maximum sentence for armed violence predicated on robbery with a dangerous weapon, until rectified by Public Act 95-688.*

In *People v. Hauschild*, 226 Ill.2d 63 (2007), the Illinois Supreme Court determined the constitutionality of the armed robbery penalty under Section 18-2 of the Criminal Code of 1961 (720 ILCS 5/18-2 (West 2000)). The defendant was convicted under subsection (a)(2) of that Section of armed robbery with a firearm. Subsection (b) requires that the 6-year to 30-year sentence for that Class X felony must be enhanced by 15 years because of the presence of the firearm, resulting in a possible 45-year maximum sentence. The proportionate penalties clause of the Illinois Constitution (ILCON Art. I, Sec. 11), as interpreted by the Illinois Supreme Court, requires that criminal offenses with identical elements must have proportionate penalties. The court found that the elements of armed violence predicated on robbery with a dangerous weapon (720 ILCS 5/33A-2 (West 2000)), which may include a firearm, were identical to those of armed robbery with a firearm but resulted in a lesser maximum sentence of 30 years. For that reason, the enhance sentence for armed robbery with a firearm was unconstitutional. Public Act 95-688, effective October 23, 2007, redefined the offense of armed violence to exclude as a predicate any offense that carries a mandatory sentence enhancement for use of a firearm; the 2 offenses at issue no longer have identical elements and are not compared under the constitution's proportionate penalties clause.

### **CRIMINAL CODE OF 1961 - WEAPON ENCLOSED IN A CASE**

*A weapon in the center console of an automobile is considered enclosed in a case for purposes of the statutory exception to the offense of aggravated unlawful use of a weapon.*

In *People v. Diggins*, 379 Ill.App.3d 994 (3<sup>rd</sup> Dist. 2008), the defendant was convicted of aggravated unlawful use of weapons under Section 24-1.6 of the Criminal Code of 1961 (720 ILCS 5/24-1.6 (West 2004)). At trial, he was precluded from arguing that his firearms were in the center console of an automobile and, accordingly, in a "case" or "other container" within the meaning of subsection (c)(iii) of Section 24-1.6. Subsection (c)(iii) provides that a person is not guilty of aggravated unlawful use of a weapon if that weapon is unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid firearm owner's identification card. In reversing the conviction, the appellate court concluded that the center console of a vehicle is a case as intended by the legislature in providing exceptions to the aggravated unlawful use of weapons statute. In its analysis, the court determined that if the legislature had intended for the word "case" to be limited to portable containers, the statute would define the word accordingly.

### **CRIMINAL CODE OF 1961 – OBSTRUCTING SERVICE OF PROCESS**

*A nurse's verbal suggestions, without physical resistance, to a police officer seeking to serve process on the nurse's patient does not constitute obstruction of service of process.*

In *Shipman v. Hamilton*, 520 F.3d 775 (7<sup>th</sup> Cir. 2008), the plaintiff filed a federal civil rights action alleging that her rights under the Fourth and Fourteenth Amendments of the United States Constitution (U.S. Const., Amends. IV and XIV) were violated when she was arrested for obstructing service of process under Section 31-3 of the Criminal Code of 1961 (720 ILCS 5/31-3). The plaintiff was the only registered nurse on duty on the floor at the hospital where the patient for whom the defendant officer demanded to serve process was located. The plaintiff pointed to the room where the patient was located. The plaintiff told the officer that she needed to consult the doctor in charge of the patient and that the doctor should be present before the officer served process to the patient. The officer then arrested the plaintiff, contending that she had impeded the service of process on the patient by requesting that the doctor be present before he served process and by refusing to give the officer her name. The defendant argued that the offense of obstructing service of process does not require an act of physical resistance. The defendant argued that a reasonable police officer could believe that the offense of obstructing service of process could be committed simply by any action or inaction that might impede, hinder, or delay the performance of the officer's duties. The federal court of appeals rejected the defendant's argument. It held that the officer could have walked into the patient's room and served the process, that the plaintiff's action was only a suggestion that the officer wait for the doctor, and that a reasonable officer would not have believed that he had grounds to arrest the plaintiff for obstructing service of process.

### **CRIMINAL CODE OF 1961 - OFFICIAL MISCONDUCT**

*A violation of the Illinois Constitution can serve as a predicate unlawful act for the offense of official misconduct.*

In *People v. Howard*, 228 Ill.2d 428 (2008), the defendant, the mayor of Pekin, was convicted of official misconduct related to his use of a city credit card. The charges were based upon subsection (a) of Section 1 of Article VII of the Illinois Constitution (ILCON Art. VII, Sec. 1), which provides that public funds, property, or credit shall be used only for public purposes. The defendant asserted that the indictment was insufficient because that constitutional provision cannot serve as a predicate unlawful act for the offense of official misconduct. The Illinois Supreme Court held that a violation of the Illinois Constitution can serve as a predicate unlawful act for the offense of official misconduct. The official misconduct statute, Section 33-3 of the Criminal Code of 1961 (720 ILCS 5/33-3 (West 2004)), provides that a public officer commits misconduct when that public officer, acting in his or her official capacity and with the intent to obtain a personal advantage, performs an act in excess of his or her lawful authority. The court rejected the defendant's argument that the Illinois Constitution is not a law for the purpose of the official misconduct statute. The Illinois Supreme Court held that the Illinois Constitution is the supreme law of the State. The court also rejected the defendant's argument that Section 1-3 of the Criminal Code of 1961 (720 ILCS 5/1-3 (West 2004)), which states that no conduct constitutes an offense unless it is described as an offense in the Code or

in another statute of the State, supported his position. A conviction for official misconduct can be predicated on acts not specifically described in the Code.

### **CODE OF CRIMINAL PROCEDURE OF 1963 - FORM OF CHARGE**

*The Code protects an amendment of a charging instrument against dismissal for violation of the defendant's right to a speedy trial.*

In *People v. Davis*, 373 Ill.App.3d 351 (1<sup>st</sup> Dist. 2007), the defendant was charged with one count of sexual assault and subsequently agreed to several continuances prior to trial. After the expiration of the 120-day speedy trial period, the charge was amended to add a second count seeking enhanced sentencing based on the defendant's prior conviction. The defendant was convicted on both counts and appealed, arguing that the State's authority to add the second count was precluded by his right to a speedy trial. Subsection (c) of Section 111-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3 (West 2002)) provides that if the State intends to seek an enhanced sentence based on the defendant's prior conviction, the charge must state the prior conviction and the State's intention. Subsection (c-5) specifies information that must be contained in the charge or in other written notification when an enhanced sentence is sought based on a fact other than a prior conviction. Subsection (d) permits the State at any time before trial to amend a charging instrument to conform to the requirements of Section 111-3. The latter sentence of subsection (d) states that nothing in the Code's speedy trial provisions "precludes such an amendment or written notification in accordance with subsection (c-5) of this Section". The defendant claimed that, because the legislature did not expressly identify subsection (c) in that latter sentence, a charge amendment based on a prior conviction is necessarily precluded from the protection provided to subsection (c-5) against speedy trial dismissals. The court refuted the defendant's argument and stated that, pursuant to subsection (c), written notification is not required when a sentence is enhanced based on a prior conviction. The court went on to state that "the legislature expressly included the phrase 'in accordance with subsection (c-5)' to modify the requirement of written notification, not to limit the protection of amendments pursuant to subsection (c) against speedy trial dismissals".

### **CODE OF CRIMINAL PROCEDURE OF 1963 - IMMIGRATION ADVISEMENT**

*The Code provision that the court advise a defendant of the immigration consequences of the charge before accepting a plea of guilty, guilty but mentally ill, or nolo contendere is directory, not mandatory.*

In *People v. Bilelegne*, 381 Ill.App.3d 292 (1<sup>st</sup> Dist. 2008), the defendant pled guilty to 2 counts of misdemeanor domestic battery. After conviction, he sought to withdraw his plea because, among other things, the trial court failed to inquire as to his citizenship and failed to advise him as required by statute that conviction might result in his deportation. Section 113-8 of the Code of Criminal Procedure of 1963 (725 ILCS 5/113-8 (West 2006)) requires a trial court to advise a defendant of the immigration consequences of a criminal charge before the court accepts a plea of guilty, guilty but mentally ill, or nolo contendere. The defendant was a legal permanent resident of the United States but not a citizen. A conviction for domestic battery carries the possibility

of deportation for a non-citizen. After reviewing the legislative history of Section 113-8, the appellate court found that it was not mandatory for the trial court to advise a defendant of the possible consequence of deportation. The court also found the immigration admonishment in Section 113-8 to be directory, because the Section does not prescribe a consequence for a trial court's failure to advise a defendant. The court held that the defendant was not entitled to withdraw his guilty plea.

### **CODE OF CRIMINAL PROCEDURE OF 1963 - HEARSAY EXCEPTION**

*The Code's hearsay exception for statements of a sexual abuse victim under 13 years old applies when the victim is unavailable to testify because of his or her fear, inability to communicate, or incompetence.*

In *People v. Stechly*, 225 Ill.2d 246 (2007), the defendant was convicted of committing predatory criminal sexual assault of a child, criminal sexual assault, and aggravated criminal sexual abuse against his girlfriend's daughter. Evidence admitted at his trial had included 3 out-of-court statements by the victim to her mother, to a nurse/clinical specialist in charge of the child abuse team at the hospital where the victim was examined, and to her school's social worker. Section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 1998)) permits an exception to the rule against hearsay evidence for statements of sexual abuse victims under the age of 13. The defendant argued that the admission of such statements violated his right under the Sixth Amendment of the United States Constitution (U.S. Const., Amend. VI) to confront the witness. Subsequent to the defendant's conviction, the United States Supreme Court in *Crawford v. Washington*, 541 U.S. 36 (2004), held that the testimonial hearsay statements of a witness who is absent from trial may not be admitted against a criminal defendant unless the witness is unavailable to testify and the defendant had a prior opportunity for cross-examination. The Illinois Supreme Court, in analyzing whether these statements made by the child victim were testimonial, ruled that they must have been made in solemn fashion and must have been intended to establish a particular fact. In order for a statement to have been intended to establish a particular fact, the objective circumstances must have led a reasonable person to conclude that his or her statement could be used against the defendant. The Illinois Supreme Court held that the statements made to the nurse and school social worker, who were mandated reporters for reporting child abuse to law enforcement, were testimonial and inadmissible because the purpose of their interrogations was to obtain information to pass to law enforcement authorities. The statements made to the victim's mother were not testimonial and were admissible because when she inquired about what happened to her child, she did not know that the child was a victim of a criminal act. The victim's mother was not, at the time of the child's statement to her, acting as an agent of law enforcement attempting to gather evidence for a future prosecution. The Illinois Supreme Court also held that, in cases of child witnesses, the legislature intended that Section 115-10 applies to child witnesses who are unavailable to testify because of fear, inability to communicate in a courtroom setting, or incompetence.

### **CODE OF CRIMINAL PROCEDURE OF 1963 – POST-TRIAL MOTION**

*A post-conviction motion for fingerprint or forensic testing not available at the time of trial may not be granted to a defendant who pled guilty.*

In *People v. O'Connell*, 227 Ill.2d 31 (2007), the Illinois Supreme Court was presented with an issue of first impression when a defendant who pled guilty at trial later filed a motion to allow DNA testing pursuant to Section 116-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3 (West 2002)). Section 116-3 allows a defendant to make a motion for fingerprint or forensic testing that was not available at the time of trial. The court held that, as a matter of law, defendants who plead guilty may not avail themselves of Section 116-3. A Section 116-3 motion requires a defendant to show that the evidence was not subject to the requested test at the time of trial because the test was not available.

### **UNIFIED CODE OF CORRECTIONS - NOT GUILTY BY REASON OF INSANITY**

*A finding of not guilty by reason of insanity is an acquittal not subject to appellate review.*

In *People v. Harrison*, 226 Ill.2d 427 (2007), a defendant adjudicated not guilty by reason of insanity under Section 5-2-4 of the Unified Code of Corrections (730 ILCS 5/5-2-4 (West 2002)) challenged whether a verdict of not guilty by reason of insanity may be appealed. The defendant alleged that a verdict of not guilty by reason of insanity is actually a finding of guilty but mentally ill. A finding of guilty but mentally ill may be appealed. The Illinois Supreme Court found that a verdict of not guilty by reason of insanity is substantially different from a verdict of guilty but mentally ill. A defendant adjudicated as not guilty by reason of insanity is not guilty of a crime, while a defendant adjudicated as guilty but mentally ill is criminally responsible for a crime. The Illinois Supreme Court held a verdict of not guilty by reason of insanity is an acquittal and, thus, not subject to appellate review.

### **UNIFIED CODE OF CORRECTIONS - REVOCATION OF SUPERVISION**

*A probation officer lacks statutory authority to file a petition to revoke court supervision.*

In *People v. Kellems*, 373 Ill.App.3d 1129 (4<sup>th</sup> Dist. 2007), the defendant pled guilty to driving under the influence of alcohol, and the trial court sentenced him to 18 months' court supervision. Subsequently, the defendant's probation officer filed a petition to revoke the defendant's supervision, alleging that the defendant violated provisions of the supervision order. The defendant sought to dismiss the petition to revoke his supervision on the grounds that a probation officer does not have the authority to file such a petition and that only the State's Attorney has that authority. Section 5-6-4 of the Unified Code of Corrections (730 ILCS 5/5-6-4 (West 2004)) is silent as to who may file the petition. The trial court rejected the defendant's motion to dismiss, found that he violated the terms of his supervision, and entered a judgment of conviction. The appellate court held that a probation officer lacks authority to file a petition to revoke supervision; therefore the trial court lacked authority to consider the probation officer's petition. The appellate court concluded that if the legislature intended anyone other than

the State's Attorney to file a petition to revoke supervision, it could have said so. The legislature has not chosen to explicitly empower probation officers with such authority.

### **SEX OFFENDER REGISTRATION ACT - MOTIVATION**

*The requirement that a person who commits aggravated kidnapping of a minor without sexual motivation must register as a sex offender does not violate that person's constitutional right to due process.*

In *People v. Johnson*, 225 Ill.2d 573 (2007), the defendant was convicted of aggravated kidnapping of a minor and required to register as a non-parent sex offender under the Sex Offender Registration Act (730 ILCS 150/ (West 2000)) because aggravated kidnapping of a minor is one of the enumerated non-sexual offenses against a person younger than 18 years of age that trigger the registration requirement. He charged that the statute as applied to him violated his constitutional right to due process of law. The appellate court held that his offense was not sexually motivated and, thus, the statute requiring the defendant to register as a sex offender denied him due process. As a cure of unconstitutionality, the General Assembly passed Public Act 94-945, effective June 27, 2006, which added the requirement that the offense be sexually motivated. The Illinois Supreme Court, however, found no due process violation because no fundamental right was at issue. Also, the statute could survive scrutiny under the rational basis test because the State had a legitimate interest in aiding law enforcement and protecting children by requiring registration of non-parents who commit violent crimes against the young that might lead to sex offenses; it is not for the courts to question the wisdom of that choice.

### **CODE OF CIVIL PROCEDURE - INTERVENTION**

*The Code's provisions governing intervention apply to taxing districts seeking to intervene in tax objection cases filed in the circuit court.*

In *Madison Two Associates v. Pappas*, 227 Ill.2d 474 (2008), the city of Chicago and the Chicago board of education sought leave to intervene in several Cook County tax objection cases concerning assessed valuation that were pending in the circuit court. Section 2-408 of the Code of Civil Procedure (735 ILCS 5/2-408 (West 2002)) governs intervention, but the circuit court never determined whether the city and board satisfied the Section's criteria for intervention; it denied leave in the belief that Section 2-408 does not apply to tax objection proceedings. Subsection (b) of Section 1-108 of the Code (735 ILCS 5/1-108 (West 2002)) provides that Article II of the Code applies to matters of procedure that are not regulated by other statutes. The tax collector argued that Section 2-408 should not apply to tax objection proceedings involving assessment valuation issues regulated by the Property Tax Code (35 ILCS 200/). The Illinois Supreme Court ruled that Section 2-408 did apply and held that taxing districts have a right to petition for leave to intervene in tax objection cases filed in the circuit court. In doing so, the Illinois Supreme Court rejected the collector's arguments that permitting intervention would infringe on the State's Attorney's constitutional and statutory authority to defend assessments and would "clog" tax objection suits with additional parties. The court also reasoned that subsection (b) of Section 1-108 was already in existence at the time the Property Tax Code was enacted. Therefore, the General Assembly must have intended

tax objection intervention matters to be governed by Article II of the Code of Civil Procedure.

### **CODE OF CIVIL PROCEDURE - EXPERT WITNESS**

*A person engaged in actual medical practice 40% of his or her time may reasonably be considered in active practice for the purpose of qualifying as an expert medical witness.*

In *Lopez v. Northwestern Memorial Hospital*, 375 Ill.App.3d 637 (1<sup>st</sup> Dist. 2007), the plaintiffs argued that the testimony of a licensed medical professional who spent 60% of her time on administrative duties and only 40% of her time in actual medical practice should not be considered testimony of an expert witness. Section 8-2501 of the Code of Civil Procedure (735 ILCS 5/8-2501) establishes the standards for an expert medical witness. The plaintiffs contended that the witness was not in “active practice”. The court, however, held that, because the term “active practice” is not defined in the Code, the reasonable person test was applicable. No evidence existed to show that a reasonable person would not have allowed the expert testimony of a witness engaged in actual practice at least 40% of his or her time.

### **CODE OF CIVIL PROCEDURE – REINSURANCE INTERMEDIARY**

*A reinsurance intermediary is not an insurance producer, registered firm, or limited insurance representative for purposes of the 2-year limitation on insurance policy actions against those entities.*

In *BCS Insurance Co. v. Guy Carpenter & Co., Inc.*, 490 F.3d 597 (7<sup>th</sup> Cir. 2007), the plaintiff insurance company appealed a federal district court decision that placed the defendant reinsurance intermediary within the purview of the insurance producers limitations provision of Section 13-214.4 of the Code of Civil Procedure (735 ILCS 5/13-214.4). That Section mandates that any action against an “insurance producer, registered firm, or limited insurance representative” concerning any policy of insurance must be brought within 2 years after the date that the claim accrues. The federal appellate court concluded that Section 13-214.4 does not apply to reinsurance intermediaries. The court based its reasoning in part on the *amicus curiae* brief of the Illinois Attorney General. The Attorney General noted that the terms “insurance” and “reinsurance” are used discretely in Illinois law and that a reinsurance agreement is not a policy of insurance; accordingly, a reinsurance intermediary is not considered an insurance producer, limited insurance representative, or registered firm under Section 13-214.4.

### **FRAUDS ACT - NO PREEXISTING DEBT RULE**

*The Act’s requirement that a promise must be in writing in order to be enforceable is not waived when the debt predates the promise.*

In *Rosewood Care Center, Inc. v. Caterpillar, Inc.*, 226 Ill.2d 559 (2007), Caterpillar argued that its alleged oral promise to pay for skilled nursing services provided to its employee by the plaintiff was unenforceable because the promise was not in writing as required by Section 1 of the Frauds Act (740 ILCS 80/1 (West 2004)). The

appellate court applied a “preexisting debt rule” and concluded that because Caterpillar’s alleged promise was made before the debt came into existence, it was not subject to the Frauds Act. The Illinois Supreme Court, however, held that there is no “preexisting debt rule” in Illinois. Neither the language of the Frauds Act nor the Act’s underlying purpose requires or supports an additional requirement that a debt exist before a promise to pay is made in order for the Frauds Act’s writing requirement to apply.

#### **WHISTLEBLOWER ACT - COMMON LAW RIGHT OF ACTION**

*The Act’s denial of an individual’s right of action for retaliatory discharge for reporting illegal activities to his or her superior does not preempt or repeal the individual’s right to a common law action for the discharge.*

In *Callahan v. Edgewater Care & Rehabilitation Center*, 374 Ill.App.3d 630 (1<sup>st</sup> Dist. 2007), the plaintiff claimed that an order of the circuit court dismissing her common law retaliatory discharge action on the grounds of preemption by the Whistleblower Act (740 ILCS 174/ (West 2004)) was in error. The appellate court found that the common law right of action of an employee discharged in retaliation for reporting illegal activities to his or her superior when the discharge violated a clearly mandated public policy stands on its own and is in no way preempted or repealed by the Whistleblower Act, either explicitly or implicitly. The fact that individuals discharged in retaliation for reporting illegal activities to their superiors have no right of action under the Act does not compel the conclusion that they have no right of action at all.

#### **WHISTLEBLOWER REWARD AND PROTECTION ACT - CAUSE OF ACTION**

*A cause of action for making a false statement to get a false or fraudulent claim paid or approved by the State does not require having submitted a false or fraudulent claim.*

In *Illinois Health Facilities Authority v. Morgan Stanley Dean Witter and Co.*, 381 Ill.App.3d 823 (1<sup>st</sup> Dist. 2008), the plaintiffs alleged that one of the defendants violated the Whistleblower Reward and Protection Act in that it knowingly made a false verification report to the Illinois Health Facilities Authority misrepresenting the true yield of Treasury bonds it held in escrow, which caused the Authority to pay the other defendant’s fraudulent, “marked-up” price for the bonds. Section 3 of the Act (740 ILCS 175/3 (West 2006)) provides that a person who “knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State” is liable to the State for a civil penalty. The court held that the Act does not require that a defendant have submitted a false or fraudulent claim to be liable for making a false statement to get such a claim paid or approved. The court also held that the Act does not set forth a cause of action for aiding and abetting a violation of the Act.

#### **ADOPTION ACT - CHILD SUPPORT OBLIGATION**

*The mere availability of a child for adoption because of the termination of parental rights does not relieve the parent of the obligation to support the child.*

In *Dept. of Healthcare and Family Services v. Warner*, 227 Ill.2d 223 (2008), a parent alleged that, under Section 17 of the Adoption Act (750 ILCS 50/17 (West 2004)), the termination of his parental rights ended his obligation to pay child support. Section 17 of the Adoption Act provides that, after the entry of an order terminating parental rights, the natural parents of a child “sought to be adopted” are relieved of their parental obligations. The Illinois Supreme Court found that “sought to be adopted” does not mean merely that a child is available for adoption. A child must be or have been in the process of being adopted for there to be a termination of a natural parent’s child support obligation. The parent here was not relieved of his child support obligation, notwithstanding the termination of his parental rights, because his children were not “sought to be adopted”.

### **ILLINOIS DOMESTIC VIOLENCE ACT OF 1986 - FAMILY MEMBER**

*The Act’s definition of a family member as a person related by prior marriage includes a person related by collateral affinity.*

In *Benjamin v. McKinnon*, 379 Ill.App.3d 1013 (4<sup>th</sup> Dist. 2008), the plaintiff sought an order of protection against the defendants. The defendants were the former father-in-law and former brother-in-law of the plaintiff’s son. The defendants argued that these relationships were not intended within the definition of “family or household member” in Section 103 of the Illinois Domestic Violence Act of 1986 (750 ILCS 60/103 (West 2006)). The Act provides that a family member includes a person related by prior marriage. The court held that related by marriage is synonymous with related by affinity. The court further held that there is “direct affinity”, which is the relationship of a spouse to the other spouse’s blood relatives, and “collateral affinity”, which is the relationship of a spouse’s relatives to the other spouse’s blood relatives. The defendants were the plaintiff’s relatives by collateral affinity. A liberal interpretation of the relationship of prior marriage is supported by Section 102 of the Act (750 ILCS 60/102 (West 2006)), which states that the Act shall be liberally construed and applied to promote its underlying purposes.

### **RELIGIOUS FREEDOM RESTORATION ACT - EMINENT DOMAIN**

*The Act does not limit the city of Chicago’s eminent domain authority to relocate cemeteries and graves for the expansion of O’Hare International Airport.*

In *St. John’s United Church of Christ v. City of Chicago*, 502 F.3d 616 (7<sup>th</sup> Cir. 2007), a church argued that Section 30 of the Religious Freedom Restoration Act (775 ILCS 35/30) violates the First Amendment’s free exercise clause and the Fourteenth Amendment’s equal protection clause (U.S. Const., Amends. I and XIV). Section 30 provides that nothing in the Act limits the city of Chicago’s authority to exercise its eminent domain powers to relocate cemeteries or graves (including those located on the church’s property) for the purpose of expanding O’Hare International Airport. The federal court of appeals held that Section 30 does not violate the United States Constitution. Section 30 is facially neutral and is a statute of general applicability that does not target religious cemeteries.

### **CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT – SMOKING HAZARDS CLAIM**

*The Act's application to cigarette manufacturers for failure to warn of the hazards of smoking is preempted by federal law.*

In *Espinosa v. Philip Morris USA, Inc.*, 500 F.Supp.2d 979 (N.D.Ill. 2007), a smoker sued cigarette manufacturers, alleging that the manufacturers violated the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/) by deceptively, unlawfully, and fraudulently refraining from informing consumers of the health risks of smoking. The federal district court held that the Federal Cigarette Labeling and Advertising Act preempted the smoker's claims brought under the Consumer Fraud and Deceptive Business Practices Act.

### **DAY AND TEMPORARY LABOR SERVICES ACT - LIQUIDATED DAMAGES**

*Wage requirements of the Illinois Wage Payment and Collection Act are incorporated into the Day and Temporary Labor Services Act for purposes of liquidated damages upon violation.*

In *Arrez v. Kelly Services, Inc.*, 522 F.Supp.2d 997 (N.D.Ill. 2007), the federal district court interpreted the Day and Temporary Labor Services Act as authorizing liquidated damages for certain violations of the Illinois Wage Payment and Collection Act (820 ILCS 115/). The plaintiffs were temporary workers who sued their temporary services agency for its failure to pay them their earned vacation and holiday pay in accordance with the Illinois Wage Payment and Collection Act. Subsection (a)(1) of Section 95 of the Day and Temporary Labor Services Act (820 ILCS 175/95) grants a day or temporary worker a right of action for a violation "under this Act" and authorizes the award of all owed compensation, plus liquidated damages, when the complaint is a wage and hour violation. Because the Act does not define a wage and hour violation, the court agreed with the plaintiffs that an ambiguity exists as to which violations justify the award of liquidated damages. When a statute is ambiguous, deference is given to the interpretation adopted by the State agency charged with its implementation or enforcement. The Department of Labor's rules require that all wage payments under the Act must be in compliance with all laws relating to wages contained in chapter 820 of the Illinois Compiled Statutes. The wage provisions of the Illinois Wage Payment and Collection Act, including the requirement that an employee's final compensation include all earned vacation and holiday pay, are in that way incorporated into the Day and Temporary Labor Services Act, and the defendant's violation of that requirement entitled the plaintiffs to liquidated damages. The General Assembly's recognition of the special vulnerability of day and temporary workers to the abuse of their labor rights justifies granting liquidated damages to only that category of employees.

**INTRODUCTION TO PART 2**

Part 2 of this 2008 Case Report contains all the Illinois statutes that LRB research has found that have been held unconstitutional and remain in the Illinois Compiled Statutes without having been changed in response to the holding of unconstitutionality.

**PART 2**  
**CUMULATIVE REPORT OF STATUTES HELD UNCONSTITUTIONAL AND  
 NOT AMENDED OR REPEALED IN RESPONSE TO THE HOLDING OF  
 UNCONSTITUTIONALITY**

**GENERAL PROVISIONS**

**5 ILCS 315/** (West 1992). **Illinois Public Labor Relations Act.** Application of the Act by the State Labor Relations Board to employees of the Illinois Supreme Court violated the separation of powers doctrine by infringing upon the court's administrative and supervisory powers granted under the Illinois Constitution, Art. VI, Sec. 18. *Administrative Office of the Illinois Courts v. State and Municipal Teamsters, Chauffeurs and Helpers Union, Local 726, International Brotherhood of Teamsters, AFL-CIO*, 167 Ill.2d 180 (1995).

**5 ILCS 350/2** (P.A. 89-688). **State Employee Indemnification Act.** Provision amended by P.A. 89-688 is unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Foster*, 316 Ill.App.3d 855 (4<sup>th</sup> Dist. 2000), and *People v. Burdunice*, 211 Ill.2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under "Criminal Procedure" and "Corrections".)

**ELECTIONS**

**10 ILCS 5/2A-1 and 5/2A-9** (P.A. 89-719). **Election Code.** (See *Cincinnati Insurance Co. v. Chapman*, 181 Ill.2d 65 (1997), reported in this Part 2 of this Case Report under "Courts", concerning the inseparability of unconstitutional provisions of the Judicial Redistricting Act of 1997 enacted by P.A. 89-719.)

**10 ILCS 5/7-10.** **Election Code.** Provision (Ill. Rev. Stat., ch. 46, par. 7-10) that requires candidates for ward committeeman in the city of Chicago to meet higher nomination petition signature requirements than candidates for township committeeman in Cook County violates the equal protection clause by burdening the right of individuals to associate for the advancement of political beliefs and the right of voters to cast their votes effectively by creating a geographical classification substantially injuring the voters and candidates of the city of Chicago despite less burdensome alternatives. *Smith v. Board of Election Commissioners of the City of Chicago*, 587 F.Supp. 1136 (N.D.Ill. 1984) and *Gjersten v. Board of Election Commissioners for the City of Chicago*, 791 F.2d 472 (7<sup>th</sup> Cir. 1986).

**10 ILCS 5/7-10.1** (Ill. Rev. Stat. 1971, ch. 46, par. 7-10.1). **Election Code.** In the Article concerning nominations by political parties, the form for a petition or certificate of

nomination contains a loyalty oath. The loyalty oath provision was held unconstitutional as vague and overly broad, violating the U.S. Constitution, Amendments I and XIV. *Communist Party of Illinois v. Ogilvie*, 357 F.Supp. 105 (N.D.Ill. 1972).

**10 ILCS 5/7A-1** (West 2004). **Election Code.** The statutory deadline for Illinois Supreme, Appellate, and Circuit Judges to file declarations of candidacy to succeed themselves in office (the first Monday in December before the general election preceding the expiration of their terms of office) impermissibly conflicts with the deadline for filing those declarations to seek judicial retention established in Section 12 of Article VI of the Illinois Constitution (ILCON Art. VI, Sec. 12), which is 6 months before the general election preceding the expiration of their terms of office. *O'Brien v. White*, 219 Ill.2d 86 (2006).

**10 ILCS 5/10-2. Election Code.** In the Article concerning the making of nominations in certain other cases, a provision (Ill. Rev. Stat. 1941, ch. 46, par. 291) prohibits a political organization or group from being qualified as a political party and assigned a place on the ballot if the organization or group is associated, directly or indirectly, with Communist, Fascist, Nazi, or other un-American principles and engages in activities or propaganda designed to teach subservience to the political principles and ideals of foreign nations or the overthrow by violence of the federal or State constitutional form of government. The provision is unconstitutionally vague, lacking the definiteness required in a statute affecting the rights of a political group to appeal to the electorate. Identical language is used in a similar context in 10 ILCS 5/7-2 and 5/8-2. *Feinglass v. Reinecke*, 48 F.Supp. 438 (N.D.Ill. 1942).

Provision (Ill. Rev. Stat. 1989, ch. 46, par. 10-2) regarding establishment of a new political party is invalid to the extent it requires more signatures to form a new political party in a multidistrict subdivision than it does for a statewide new political party. Violates the U.S. Constitution, Amendments I and XIV. *Norman v. Reed*, 112 S.Ct. 698 (1992).

**10 ILCS 5/10-5** (Ill. Rev. Stat. 1989, ch. 46, par. 10-5). **Election Code.** Prohibition against new party candidates in one political subdivision from using the same party name as that of a party in a different subdivision is broader than necessary to protect the State's interest in prohibiting candidates from adopting the name of a political party with which they are not affiliated. Violates Amendments I and XIV of the U.S. Constitution. *Norman v. Reed*, 112 S.Ct. 698 (1992).

## EXECUTIVE BRANCH

**20 ILCS 505/5** (Ill. Rev. Stat., ch. 23, par. 5005). **Children and Family Services Act.**

**225 ILCS 10/2.05 and 10/2.17** (Ill. Rev. Stat., ch. 23, pars. 2212.05 and 2212.17). **Child Care Act of 1969.**

Provisions of the Children and Family Services Act and the Child Care Act of 1969 that deny AFDC-FC (foster care) payments to foster parents who are related to the foster children they care for conflict with the Social Security Act and are unconstitutional as violating that Act and therefore the supremacy clause of the U.S. Constitution. *Youakim v. Miller*, 431 F.Supp. 40 (N.D.Ill. 1976).

The transition schedule provided by Section 5 of the Children and Family Services Act for discontinuing foster care payments to any foster family homes other than licensed foster family homes violates the due process rights of pre-approved and approved foster family homes guaranteed by the U.S. Constitution, Amend. XIV. *Youakim v. McDonald*, 71 F.3d 1274 (7<sup>th</sup> Cir. 1995).

## LEGISLATURE

**25 ILCS 115/1** (Ill. Rev. Stat. 1991, ch. 63, par. 14). **General Assembly Compensation Act.** Amendatory changes made to this Section by P.A. 86-27 provide for annual, lump sum additional payments to certain legislators in leadership positions. Because P.A. 86-27 further provided that the pay raises were to be effective retroactively, the legislation is unconstitutional to the extent it allowed for a change in a legislator's salary during the term for which he or she was elected. *Rock v. Burris*, 139 Ill.2d 494 (1990).

**25 ILCS 120/5.5** (West 2002). **Compensation Review Act.** Section denying the fiscal year 2003 cost-of-living adjustment to the salaries of State officials (previously recommended by the Compensation Review Board and not disapproved by the General Assembly) is unconstitutional with respect to salaries of State judges because it violates the Illinois Constitution's separation of powers clause (ILCON Art. II, Sec. 1) and prohibition against decreasing a judge's salary during his or her term (ILCON Art. VI, Sec. 14). *Jorgensen v. Blagojevich*, 211 Ill.2d 286 (2004).

## FINANCE

**30 ILCS 5/3-1** (West 2000). **Illinois State Auditing Act.** Requirement that the Auditor General perform compliance and management audits of various Chicago airports exceeds the Auditor General's authority under subsection (b) of Section 3 of Article VIII of the Illinois Constitution (ILCON Art. VIII, Sec. 3) to audit public funds of the State, because the airports' funds are not appropriated by the General Assembly but are derived from user fees and federal grants. *City of Chicago v. Holland*, 206 Ill.2d 480 (2003).

**30 ILCS 105/5.400** (P.A. 88-680). **State Finance Act.** Provision added by P.A. 88-680 is unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill.App.3d 235 (3<sup>rd</sup> Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2<sup>nd</sup> Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2<sup>nd</sup> Dist.

1999), and *People v. Cervantes*, 189 Ill.2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Courts” and “Corrections” and in Part 3 of this Case Report under “Criminal Offenses”.)

**30 ILCS 560/** (Ill. Rev. Stat. 1981, ch. 48, par. 269 *et seq.*). **Public Works Preference Act.** Act is completely unconstitutional because it requires that only Illinois laborers may be used for building public works, which violates the privileges and immunities clause of the U.S. Constitution. *People ex rel. Bernardi v. Leary Construction Co., Inc.*, 102 Ill.2d 295 (1984).

**30 ILCS 805/8.18** (P.A. 88-669). **State Mandates Act.** Provisions added by P.A. 88-669, effective November 29, 1994, are unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, 94-1017, and 94-1074 re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 2 of this Case Report under “Revenue” and “Special Districts”.)

## REVENUE

**35 ILCS 5/203** (Ill. Rev. Stat. 1979, ch. 120, par. 2-203). **Illinois Income Tax Act.** Department of Revenue’s construction of provision that any corporation which is a member of an affiliated group of corporations filing a consolidated federal income tax return, incurring a net operating loss on a separate Illinois income tax return basis, be deemed to have made the election provided in the Internal Revenue Code (that is, to relinquish the entire carryback period and only carry forward the loss) violates the uniformity of taxation clause of Article IX, Section 2 of the Illinois Constitution as to corporate taxpayers of an affiliated group which files a consolidated federal income tax return reflecting a net operating loss, which operating loss the parent company does not elect to carry forward. *Searle Pharmaceuticals, Inc. v. Department of Revenue*, 117 Ill.2d 454 (1987).

**35 ILCS 200/20-180 and 200/20-185. Property Tax Code.** Provisions (formerly part of the Uncollectable Tax Act, Ill. Rev. Stat. 1981, ch. 120, pars. 891 and 891.1) that allow a municipality to cancel bonds and use moneys collected for similar projects after revenues that were specified to secure the bonds are deemed uncollectable are an unconstitutional impairment of contractual obligations. *George D. Hardin, Inc. v. Village of Mt. Prospect*, 99 Ill.2d 96 (1983).

**35 ILCS 520/** (Ill. Rev. Stat. 1989, ch. 120, par. 2151 *et seq.*). **Cannabis and Controlled Substances Tax Act.** Statute is invalid and cannot be applied if the defendant has been convicted of criminal charges involving the same contraband. Violates the double

jeopardy provisions of the U.S. and Illinois constitutions. *Department of Revenue of Montana v. Kurth*, 114 S.Ct. 1937 (1994).

**35 ILCS 520/9, 520/10, 520/14.1, 520/15, 520/16, 520/19, and 520/23** (P.A. 88-669). **Cannabis and Controlled Substances Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, are unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, 94-1017, and 94-1074 re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 2 of this Case Report under “Finance” and “Special Districts”.)

**35 ILCS 635/20** (West 1998). **Telecommunications Municipal Infrastructure Maintenance Fee Act.** Application of the Act’s municipal infrastructure maintenance fee, imposed upon telecommunications providers to compensate a municipality for access to public rights-of-way, equally to wireless telecommunications providers that do not own or operate equipment on public rights-of-way as to landline telecommunications providers that do own or operate equipment on public rights-of-way violates the uniformity clause of Section 2 of Article IX of the Illinois Constitution. *Primeco Personal Communications, L. P. v. Illinois Commerce Commission*, 196 Ill.2d 70 (2001).

## PENSIONS

**40 ILCS 5/5-128 and 5/5-167.1** (Ill. Rev. Stat. 1989, ch. 108 1/2, pars. 5-128 and 5-167.1). **Illinois Pension Code.** Amendatory changes in P.A. 86-272, which fix a police officer's pension as of the date of withdrawal from service rather than attainment of age 63, result in a taking of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution when applied to retired police officers whose pensions consequently decreased. *Miller v. Retirement Board of Policemen's Annuity and Benefit Fund of the City of Chicago*, 329 Ill.App.3d 589 (1<sup>st</sup> Dist. 2002).

## TOWNSHIPS

**60 ILCS 1/65-35** (Ill. Rev. Stat. 1967, ch. 53, par. 55.6). **Township Code.** Provision that allows a 2% commission on all moneys collected by a township collector to be deposited into the township treasury and to be used for local, rather than countywide, purposes is an unconstitutional violation of the uniformity of taxation clause of the Illinois Constitution. *Flynn v. Kucharski*, 45 Ill.2d 211 (1970).

## MUNICIPALITIES

**65 ILCS 5/10-2.1-6** (Ill. Rev. Stat. 1977, ch. 24, par. 10-2.1-6). **Illinois Municipal Code.** Provision that prohibits appointing a person with a limb amputated to the police or fire department for anything but clerical or radio operator duties violates the

Illinois Constitution, which prohibits discrimination against persons with a physical handicap. *Melvin v. City of West Frankfort*, 93 Ill.App.3d 425 (5<sup>th</sup> Dist. 1981).

**65 ILCS 5/11-13-1** (Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1). **Illinois Municipal Code.** Statute authorizing a municipality to exercise zoning powers extraterritorially (that is, within a 1½-mile area contiguous to the municipality) was amended by P.A. 77-1373 (approved August 31, 1971) to add, as a permitted purpose of zoning regulation, the preservation of historically, architecturally, or aesthetically important features. P.A. 77-1373 also provided: “This amendatory Act of 1971 does not apply to any municipality which is a home rule unit.”. Because a municipality has extraterritorial zoning authority only as granted by the legislature and not under its home rule powers, that added sentence, if valid, creates the incongruous situation of non-home rule municipalities being able to zone extraterritorially while home rule municipalities cannot. The sentence creates an unconstitutional classification and is void. (The court apparently read “this amendatory Act of 1971” to refer to the entire Section rather than to just the statement of purpose added by P.A. 77-1373.) *City of Carbondale v. Van Natta*, 61 Ill.2d 483 (1975).

### SPECIAL DISTRICTS

**70 ILCS 705/14.14** (West 1992). **Fire Protection District Act.** Provision permitting disconnection of territory in a non-home rule municipality in a county with a population between 500,000 and 750,000 is unconstitutional as special legislation because the population limit is an arbitrary classification. *In re Petition of Village of Vernon Hills*, 168 Ill.2d 117 (1995).

**70 ILCS 705/19a** (Ill. Rev. Stat. 1983 Supp., ch. 127½, par. 38.2a). **Fire Protection District Act.** Provision permitting transfer of territory in counties with a population of more than 600,000 but less than 1,000,000 is special legislation because the population limit is an arbitrary classification. *In re Belmont Fire Protection District*, 111 Ill.2d 373 (1986).

**70 ILCS 805/18.6d** (P.A. 88-669). **Downstate Forest Preserve District Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, are unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, 94-1017, and 94-1074 re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 2 of this Case Report under “Finance” and “Revenue”.)

### SCHOOLS

**105 ILCS 5/1B-20** (West 1994). **School Code.** Provision that authorizes a State Board of Education-appointed financial oversight panel to remove members of a local school board from office and does not require that the members be given notice of or a hearing on the removal charges is unconstitutional as applied to members who were not given notice or a hearing because that lack of notice or hearing violates the members' procedural due process rights. *East St. Louis Federation of Teachers v. East St. Louis School District*, 178 Ill.2d 399 (1997).

**105 ILCS 5/3-1** (Ill. Rev. Stat., ch. 122, par. 3-1). **School Code.** Provision requiring candidate for office of regional superintendent to have taught at least 2 of previous 4 years in Illinois is unconstitutional as a violation of the equal protection clause because the statute is not rationally related to the State's interest of ensuring that candidates be familiar with the School Code and other Illinois school regulations. *Hammond v. Illinois State Board of Education*, 624 F.Supp. 1151 (S.D.Ill. 1986).

**105 ILCS 5/24-2. School Code.** This Section provides that Good Friday is a legal school holiday and that teachers and other school employees shall not be required to work on legal holidays. The Good Friday provision promotes one religion over another and violates the establishment clause of the U.S. Constitution. *Metzl v. Leininger*, 57 F.3d 618 (7<sup>th</sup> Cir. 1995).

## HIGHER EDUCATION

**110 ILCS 310/1** (P.A. 89-5, eff. 1-1-96). **University of Illinois Trustees Act.** A portion of Section 1 removing elected trustees from office midterm in order to create an appointed board violates the right to vote guaranteed by the Illinois Constitution, Art. III, Sec. 18. *Tully v. Edgar*, 171 Ill.2d 297 (1996).

## FINANCIAL REGULATION

**205 ILCS 105/1-6 and 105/1-10.10** (Ill. Rev. Stat. 1957, ch. 32, pars. 706 and 710). **Illinois Savings and Loan Act.** Provisions authorizing a savings and loan association to obtain and maintain insurance on its withdrawable capital by the FSLIC or another federal instrumentality or federally chartered corporation violates the Illinois Constitution because it deprives both savings and loan associations and private insurance companies of their freedom to contract and it deprives private insurance companies of property without due process. There is no indication that a federally chartered corporation is more financially sound or better able to insure the accounts than a private corporation authorized to do business in Illinois and under the supervision of the Director of Insurance. (P.A. 86-137 amended the Act to add the FDIC as an eligible insurance corporation; P.A. 93-271 removed the FSLIC; but neither P.A. mentioned private insurers.) *City Savings Association v. International Guaranty and Insurance Co.*, 17 Ill.2d 609 (1959).

## INSURANCE

**215 ILCS 5/143.01** (Ill. Rev. Stat. 1985, ch. 73, par. 755.01). **Illinois Insurance Code.** Subsection (b) of Section 143.01 prohibits the invocation of a vehicle insurance policy provision excluding coverage for bodily injury to members of the insured's family when the driver is not a member of the insured's household and further provides that the prohibition shall apply to any action filed on or after the effective date of the subsection (that is, the effective date of P.A. 83-1132, which added Section 143.01 to the Code). Retroactive application of the subsection to insurance policies issued before the effective date of P.A. 83-1132 constitutes an impairment of the obligation of contracts in violation of Section 10 of Article I of the Illinois Constitution. *Prudential Property & Casualty Insurance Co. v. Scott*, 161 Ill.App.3d 372 (4<sup>th</sup> Dist. 1987).

## UTILITIES

**220 ILCS 5/8-402.1. Public Utilities Act.** Requirements that Illinois utilities, in complying with federal Clean Air Act amendments, take into account the need to use Illinois coal, preserve the Illinois coal industry, and install pollution control devices in order to burn Illinois coal are too great a burden on interstate commerce. *Alliance for Clean Coal v. Craig*, 840 F.Supp. 554 (N.D.Ill. 1993).

**220 ILCS 5/10-201** (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 10-201). **Public Utilities Act.** Provisions relating to review of decisions by the Illinois Commerce Commission are unconstitutional to the extent that the procedures for direct review conflict with Supreme Court Rule 335 (for instance, subsection (e)(i) gives priority over other cases before the court and is an unwarranted intrusion into the court's power to control its docket). *Consumers Gas Co. v. Ill. Commerce Comm.*, 144 Ill.App.3d 229 (5<sup>th</sup> Dist. 1986).

## PROFESSIONS AND OCCUPATIONS

**225 ILCS 10/2.05 and 10/2.17** (Ill. Rev. Stat., ch. 23, pars. 2212.05 and 2212.17). **Child Care Act of 1969.** Provisions that deny AFDC-FC (foster care) payments to foster parents who are related to the foster children they care for conflict with the Social Security Act and are unconstitutional as violating that Act and therefore the supremacy clause of the U. S. Constitution. *Youakim v. Miller*, 431 F.Supp. 40 (N.D.Ill. 1976). (This case is also reported in this Part 2 of this Case Report under "Executive Branch".)

**225 ILCS 25/31** (Ill. Rev. Stat. 1987, ch. 111, par. 2332). **Illinois Dental Practice Act.** Provision stating that, during review of a suspension under the Administrative Review Law, the suspension shall remain in full force and effect prohibits courts from exercising their inherent equitable powers to issue stays. To this extent, the Section is unconstitutional. (P.A. 88-184 limits the provision to acts or omissions related to direct patient care and states that as a matter of public policy suspension may not be stayed

pending final resolution.) *Ardt v. Ill. Dept. of Professional Regulation*, 154 Ill.2d 138 (1992).

**225 ILCS 60/26** (West Supp. 1999). **Medical Practice Act of 1987.** Ban on a licensee's use of testimonials to entice the public violates the First and Fourteenth Amendments to the U.S. Constitution by disproportionately prohibiting all truthful speech for the State's goal of regulating the medical profession. *Snell v. Department of Professional Regulation*, 318 Ill.App.3d 972 (4<sup>th</sup> Dist. 2001).

## LIQUOR

**235 ILCS 5/6-16** (West 2000). **Liquor Control Act of 1934.** Subsection (c), which makes it a Class A misdemeanor if a person knowingly permits the departure of an intoxicated minor from a gathering at the person's residence of which the person has knowledge and at which the person knows a minor is illegally possessing or consuming liquor, is unconstitutionally vague in violation of the 14<sup>th</sup> Amendment of the U.S. Constitution because it fails to provide a person with notice as to how to avoid violating the subsection. *People v. Law*, 202 Ill.2d 578 (2002).

**235 ILCS 5/7-5 and 5/7-9** (Ill. Rev. Stat. 1967, ch. 43, pars. 149 and 153). **Liquor Control Act of 1934.** Provision permitting liquor licensees in a municipality of less than 500,000 inhabitants whose licenses are revoked by the local liquor control commissioner and who appeal the revocations to the Illinois Liquor Control Commission to resume the operation of their businesses pending decisions by the Commission but not affording licensees in municipalities of 500,000 or more inhabitants who appeal revocations of their licenses to the License Appeal Commission a similar privilege is unconstitutional as a violation of the special legislation provision of the 1870 Illinois Constitution. (Article IV, Section 13 of the 1970 Constitution prohibits the General Assembly from passing special legislation when a general law can be made applicable.) There is no rational basis for the different treatment of licensees based upon differences in the population of the municipalities where the licensed premises are located. Absent legislative modification of the offending provision, licensees in all municipalities must be permitted to resume operation during the pendency of an administrative appeal from the order of a local liquor control commissioner. *Johnkol, Inc. v. License Appeal Commission*, 42 Ill.2d 377 (1969).

**235 ILCS 5/8-1** (Ill. Rev. Stat. 1985, ch. 43, par. 158). **Liquor Control Act of 1934.** The Department of Revenue taxed wine coolers and certain low-alcohol drinks at different rates pursuant to its interpretation of the Section 8-1 tax classification system. Because there is no real and substantial difference between wine coolers made by adding wine to fruit juices and the low-alcohol drinks made by adding distilled alcohol, the provision violates the uniformity clause of Section 2 of Article IX of the Illinois Constitution to the extent the provision does not provide for the equal taxation of wine

coolers and the low-alcohol drinks. *Federated Distributors, Inc. v. Johnson*, 125 Ill.2d 1 (1988).

**235 ILCS 5/9-2. Liquor Control Act of 1934.** Provision (Ill. Ann. Stat. 1990, ch. 43, par. 167) permitting a precinct in a city with a population exceeding 200,000 to vote a single “licensed establishment” dry is an unconstitutional violation of due process because the procedural safeguards inherent in an election to vote the entire precinct dry (also permitted under the statute) are not present. P.A. 88-613 subsequently amended the provision to substitute “street address” for “licensed establishment”. *87 So. Rothschild Liquor Mart v. Kozubowski*, 752 F.Supp. 839 (N.D.Ill. 1990).

Provision permitting a precinct in a city with a population exceeding 200,000 to prohibit by referendum the sale of alcoholic beverages at a particular street address is an unconstitutional deprivation of the liquor licensee’s property without due process because due process forbids voters passing judgment on an existing business. *Club Misty, Inc. v. Laski*, 208 F.3d 615 (7<sup>th</sup> Cir. 2000).

## PUBLIC AID

**305 ILCS 5/5-13** (West 2002). **Illinois Public Aid Code.** Provision permitting the State to recover the amount of medical assistance payments to an individual from the estate of the individual’s surviving spouse violates the supremacy clause of Article VI of the United States Constitution because the federal Social Security Act prohibits such recovery unless a state expands the definition of the individual’s estate beyond its probate law concept, which Illinois has done only with respect to medical assistance recipients who have long term care insurance. *Hines v. Department of Public Aid*, 221 Ill.2d 222 (2006).

## MENTAL HEALTH

**405 ILCS 5/3-806** (West Supp. 1995). **Mental Health and Developmental Disabilities Code.** Provisions allowing a civil commitment hearing to take place without the respondent when the respondent has not voluntarily, intelligently, and knowingly waived his or her right to be present violate the due process clause of the U.S. Constitution. *In re Barbara H.*, 288 Ill.App.3d 360 (2<sup>nd</sup> Dist. 1997). While affirming in part and reversing in part on other grounds, the Illinois Supreme Court declined to review the provision's constitutionality in *In re Barbara H.*, 183 Ill.2d 482 (1998).

## NUCLEAR SAFETY

**420 ILCS 15/** (Ill. Rev. Stat., ch. 111½, par. 230.1 *et seq.*). **Spent Nuclear Fuel Act.** Act is unconstitutional because (i) by banning the storage and shipment for storage of spent nuclear fuel in Illinois merely because the spent fuel or its shipment originated out of State, the Act arbitrarily burdens interstate commerce in violation of the commerce clause (U.S. Constitution, Art. I, Sec. 8) and (ii) the federal Atomic Energy Act preempts state regulation of the storage and shipment for storage of spent nuclear fuel, and Illinois' Spent Nuclear Fuel Act therefore violates the supremacy clause (U.S. Constitution, Art.

VI, cl. 2). *People of the State of Illinois v. General Electric Co.*, 683 F.2d 206 (7<sup>th</sup> Cir. 1982).

## PUBLIC SAFETY

**430 ILCS 70/** (Ill. Rev. Stat. 1983, ch. 38, par. 85-1 *et seq.*). **Illinois Public Demonstrations Law.** The entire Act is unconstitutional because the term “principal law enforcement officer”, used throughout the Act, is impermissibly vague. *People v. Bossie*, 108 Ill.2d 236 (1985).

## VEHICLES

**625 ILCS 5/4-102** (West 1996). **Illinois Vehicle Code.** Provisions punishing unauthorized tampering with or damaging, moving, or entry of a vehicle, without requiring a criminal mental state, impose absolute liability for unintended conduct in violation of the due process guarantees of the 14<sup>th</sup> Amendment to the U.S. Constitution and Art. I, Sec. 2 of the Illinois Constitution. *In re K.C.*, 186 Ill.2d 542 (1999).

**625 ILCS 5/4-103.2** (West 2000). **Illinois Vehicle Code.** Subsection (b)’s inference that a person exercising unexplained possession of a stolen or converted automobile is presumed to know the car is stolen or converted, regardless of the remote date of its theft or conversion, violates the due process guarantee of Section 2 of Article I of the Illinois Constitution as applied to the possessor of special mobile equipment because the same extensive ownership records and procedures that justify the presumption for automobile possession do not exist for special mobile equipment. *People v. Greco*, 204 Ill.2d 400 (2003).

**625 ILCS 5/4-209** (Ill. Rev. Stat., ch. 95½, par. 4-209). **Illinois Vehicle Code.** Provision for post-tow notice by U.S. mail to owner of impounded abandoned vehicle more than 7 years old is unconstitutional. Due process requires notice by certified mail, return receipt requested, for all vehicles. *Kohn v. Mucia*, 776 F.Supp. 348 (N.D.Ill. 1991).

**625 ILCS 5/6-208.1** (P.A. 89-203). **Illinois Vehicle Code.** Provision amended by P.A. 89-203 is unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although P.A. 89-203 also amended Section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501), those changes to Section 11-501 were removed by Public Act 93-800, effective January 1, 2005.) *People v. Wooters*, 188 Ill.2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under “Criminal Offenses”, “Corrections”, and “Civil Procedure”.)

**625 ILCS 5/8-105.** **Illinois Vehicle Code.** Provision of 1923 motor vehicle law that surety bond of owner of motor vehicle used for transportation of passengers becomes a

lien on real estate scheduled in the bond, without providing for discharge of the lien, is unconstitutional because arbitrarily discriminatory and unreasonable. The provision is continued in the Illinois Vehicle Code. *Weksler v. Collins*, 317 Ill. 132 (1925).

**625 ILCS 5/12-612** (West 2004). **Illinois Vehicle Code.** Statute that makes it unlawful for a person to own or operate a motor vehicle that the person knows to contain a false or secret compartment, and that provides that the person's intent to use the compartment to conceal its contents from a law enforcement officer may be inferred from the nature of the contents, violates the due process guarantees of the federal and State constitutions (U.S. Const., Amends. V and XIV and ILCON Art. I, Sec.2) because it is too broad and potentially punishes innocent behavior. *People v. Carpenter*, 228 Ill.2d 250 (2008).

**625 ILCS 5/18c-7402** (West 2004). **Illinois Vehicle Code.** Subsection (1)(b), which prohibits a rail carrier from permitting a train, railroad car, or engine to block a road-highway grade crossing for more than 10 minutes unless the train, car, or engine is moving or the circumstances causing the obstruction are beyond the carrier's control, is preempted by federal railroad law and violates the commerce clause of the United States Constitution (U.S. Const., Art. I, Sec. 8). *Eagle Marine v. Union Pacific R.R.*, 227 Ill.2d 377 (2008).

## COURTS

**705 ILCS 21/** (West 1996). **Judicial Redistricting Act of 1997.** Entire Act, enacted by P.A. 89-719, is unconstitutional because (i) provisions dividing the First Judicial District into 3 subdistricts for election of Supreme Court judges and splitting judicial circuits between 2 or more judicial districts violate Article VI of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Cincinnati Insurance Co. v. Chapman*, 181 Ill.2d 65 (1997).

**705 ILCS 25/1** (P.A. 89-719). **Appellate Court Act.** (See *Cincinnati Insurance Co. v. Chapman*, 181 Ill.2d 65 (1997), reported in this Part 2 of this Case Report under "Courts", concerning the inseverability of unconstitutional provisions of the Judicial Redistricting Act of 1997 enacted by P.A. 89-719.)

**705 ILCS 205/6** (West 1992). **Attorney Act.** Provision that allows a circuit court judge to suspend an attorney from the practice of law is an unconstitutional encroachment on the Supreme Court's exclusive authority to regulate and discipline attorneys in Illinois. *In re General Order of March 15, 1993*, 258 Ill.App.3d 13 (1<sup>st</sup> Dist. 1993).

**705 ILCS 405/1-15** (West 1992). **Juvenile Court Act of 1987.** Provision that requires a lack of notice claim to be presented before the adjudicatory hearing begins is unconstitutional as an infringement of due process and interferes with the powers of reviewing courts guaranteed by the separation of powers clause. *In re C.R.H.*, 163 Ill.2d 263 (1994).

**705 ILCS 405/5-4, 405/5-14, 405/5-19, 405/5-23, 405/5-33, and 405/5-34** (P.A. 88-680). **Juvenile Court Act of 1987.** Provisions amended by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill.App.3d 235 (3<sup>rd</sup> Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2<sup>nd</sup> Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2<sup>nd</sup> Dist. 1999), and *People v. Cervantes*, 189 Ill.2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Finance” and “Corrections” and in Part 3 of this Case Report under “Criminal Offenses”.)

## CRIMINAL OFFENSES

**720 ILCS 5/9-1** (Ill. Rev. Stat. 1987, ch. 38, par. 9-1). **Criminal Code of 1961.** P.A. 84-1450, which amended the homicide statute, provides that “this amendatory Act of 1986 shall only apply to acts occurring on or after January 1, 1987”. Because P.A. 84-1450 does not contain an effective date provision, however, it did not take effect until July 1, 1987, and its retroactive application to January 1, 1987 is a violation of the constitutional prohibitions against *ex post facto* laws. P.A. 84-1450 may be applied only prospectively from the date it became effective, July 1, 1987. *People v. Shumpert*, 126 Ill.2d 344 (1989).

**720 ILCS 5/10-2** (West 2000). **Criminal Code of 1961.** Subsection (b), which authorizes a 15-year sentence enhancement for committing the offense of aggravated kidnapping while armed with a firearm, violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11) because the resulting penalty is harsher than the penalty for armed violence, which contains the same elements. *People v. Baker*, 341 Ill.App.3d 1083 (4<sup>th</sup> Dist. 2003).

**720 ILCS 5/10-5** (Ill. Rev. Stat. 1989, ch. 38, par. 10-5). **Criminal Code of 1961.** Child abduction statute is unconstitutional as applied to the natural father of a child. The parents were not married and there was no paternity action, but the parents had lived together 4½ years and the father had supported the child. Applying the statute to the natural father would deprive him of equal protection of the law. *People v. Morrison*, 223 Ill.App.3d 176 (3<sup>rd</sup> Dist. 1991).

**720 ILCS 5/10-5** (West 1998). **Criminal Code of 1961.** Under the child abduction statute (intentionally luring or attempting to lure a child under 16 years of age into specified locations without the consent of the child’s parent or guardian for other than a lawful purpose), subsection (b)(10)’s provision that such a luring or attempted luring is prima facie evidence of other than a lawful purpose creates a *per se* unconstitutional, but severable, mandatory presumption that denies due process by shifting the burden of proof to the defendant. *People v. Woodrum*, 223 Ill.2d 286 (2006).

**720 ILCS 5/10-5.5** (West 1994). **Criminal Code of 1961.** The provision of the unlawful visitation interference statute prohibiting the imposition of civil contempt sanctions under the Illinois Marriage and Dissolution of Marriage Act after a conviction for unlawful visitation interference is an undue infringement on the court’s inherent powers under the separation of powers provision of Article II, Section 1 of the Illinois Constitution. *People v. Warren*, 173 Ill.2d 348 (1996).

**720 ILCS 5/11-6, 5/11-6.5, and 5/32-10** (P.A. 89-203). **Criminal Code of 1961.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill.2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under “Vehicles”, “Corrections”, and “Civil Procedure”.)

**720 ILCS 5/11-20.1** (West Supp. 2001). **Criminal Code of 1961.** Clause (f)(7) of Section 11-20.1 violates the First Amendment of the U.S. Constitution by including within the definition of “child”, for child pornography purposes, computer generated images of children that are not depictions of actual children. *People v. Alexander*, 204 Ill.2d 472 (2003).

**720 ILCS 5/12-6** (Ill. Rev. Stat. 1983, ch. 38, par. 12-6). **Criminal Code of 1961.** Provision of intimidation statute making it an offense to threaten to commit any crime no matter how minor or insubstantial is unconstitutional as being overbroad in violation of the First Amendment to the United States Constitution. *U.S. ex rel. Holder v. Circuit Court of the 17<sup>th</sup> Judicial Circuit*, 624 F.Supp. 68 (N.D.Ill. 1985).

**720 ILCS 5/12-21.6** (West 2002). **Criminal Code of 1961.** Subsection (b)’s mandatory rebuttable presumption that leaving a child age 6 years or younger unattended in a motor vehicle for more than 10 minutes endangers the life or health of the child violates the due process clauses of the federal and State constitutions (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2). *People v. Jordan*, 218 Ill.2d 255 (2006).

**720 ILCS 5/12A-1, 5/12A-5, 5/12A-10, 5/12A-15, 5/12A-20, 5/12A-25, 5/12B-1, 5/12B-5, 5/12B-10, 5/12B-15, 5/12B-20, 5/12B-25, 5/12B-30, and 5/12B-35** (P.A. 94-315). **Criminal Code of 1961.** The Violent Video Games Law and the Sexually Explicit Video Games Law, which establish criminal penalties for (i) selling or renting violent or sexually explicit video games to minors, (ii) allowing such games to be purchased using a self-check-out electronic scanner, and (iii) failing to label such games in a specified manner, violate the First Amendment to the U.S. Constitution (U.S. Const., Amend I) because (1) the definition of a violent video game is vague and there is no showing that the violent content is directed at inciting or producing imminent lawless action and (2) the statutes do not provide for consideration of the whole content of a sexually explicit video or for consideration of the value of that video. *Entertainment Software Association v. Blagojevich*, 404 F.Supp.2d 1051 (N.D.Ill. 2005). The State appealed the decision with respect to only the Sexually Explicit Video Games Law (720 ILCS 5/Art. 12B); the ruling of unconstitutionality was upheld in *Entertainment Software Association v. Blagojevich*, 469 F.3d 641 (7<sup>th</sup> Cir. 2006).

**720 ILCS 5/16-7** (West 2004). **Criminal Code of 1961.** Subdivision (a)(2), the unlawful use of recorded sounds or images, is preempted by Section 301 of the federal Copyright Act of 1976 (17 U.S.C. 301) because the State statute does not require any additional element that qualitatively distinguishes it from the federal copyright infringement provision. *People v. Williams*, 376 Ill.App.3d 875 (1<sup>st</sup> Dist. 2007).

**720 ILCS 5/16A-4** (West 2000). **Criminal Code of 1961.** Retail theft provision that a person who conceals and removes merchandise from a retail store without paying for it “shall be presumed” to do so intentionally creates an unconstitutional mandatory presumption that denies the trier of fact the discretion of determining that an item was removed inadvertently or thoughtlessly. *People v. Taylor*, 344 Ill.App.3d 929 (1<sup>st</sup> Dist. 2003), and *People v. Butler*, 354 Ill.App.3d 57 (1<sup>st</sup> Dist. 2004).

**720 ILCS 5/18-2** (West 2000). **Criminal Code of 1961.** The 25-year to natural life sentence enhancement required under subsection (b) of the Class X felony penalty for armed robbery based on discharging a firearm and causing great bodily harm violates the proportionate penalty requirement of the Illinois Constitution (ILCON Art. I, Sec. 11) when compared to the lesser sentence for the equivalent offense of armed violence predicated on robbery with a category I weapon (which includes a firearm) under Section 33A-2 of the Code (720 ILCS 5/33A-2). *People v. Harvey*, 366 Ill.App.3d 119 (1<sup>st</sup> Dist. 2006).

**720 ILCS 5/18-4** (West 2002). **Criminal Code of 1961.** Sentencing range of 21 to 45 years’ imprisonment for aggravated vehicular hijacking while carrying a firearm under subsection (a)(2) is harsher than the sentencing range of 15 to 30 years’ imprisonment for armed violence with a category I weapon predicated upon vehicular

hijacking, an offense with identical elements, and thus violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). *People v. Andrews*, 364 Ill.App.3d 253 (2<sup>nd</sup> Dist. 2006).

**720 ILCS 5/25-1** (Ill. Rev. Stat., ch. 38, par. 25-1). **Criminal Code of 1961.** Provision of mob action offense that prohibits the assembly of 2 or more persons to do an unlawful act is unconstitutional for violating due process and the First Amendment because it (i) is too vague to give reasonable notice of the prohibited conduct or adjudicatory standards and (ii) is so overbroad as to allow the arbitrary suppression of non-criminal conduct. *Landry v. Daley*, 280 F.Supp. 938 (N.D.Ill. 1968).

**720 ILCS 5/33A-2 and 5/33A-3. Criminal Code of 1961.** Penalties for armed violence predicated on certain offenses are unconstitutionally disproportionate to penalties for other offenses.

Armed violence predicated on unlawful restraint. Penalty (a Class X felony) is disproportionate to penalty for aggravated unlawful restraint (a Class 3 felony) under 720 ILCS 5/10-3.1 (West 1992). *People v. Murphy*, 261 Ill.App.3d 1019 (2<sup>nd</sup> Dist. 1994).

Armed violence predicated on robbery committed with a category I weapon. Minimum term of imprisonment of 15 years is disproportionate to minimum term of imprisonment (6 years) for robbery committed with a handgun under 720 ILCS 5/18-2 (West 1994). *People v. Lewis*, 175 Ill.2d 412 (1996).

Armed violence predicated on aggravated vehicular hijacking and armed robbery. Minimum term of imprisonment of 15 years is disproportionate to minimum terms of imprisonment (7 years and 6 years, respectively) for aggravated vehicular hijacking under 720 ILCS 5/18-4 (West 1994) and armed robbery under 720 ILCS 5/18-2 (West 1994). Public Act 95-688, effective October 23, 2007, amended 720 ILCS 5/33A-2 to remove from the definition of armed violence any offense that makes possession or use of a dangerous weapon an aggravated version of the offense, thus eliminating armed robbery under 720 ILCS 5/18-2. Aggravated vehicular hijacking, however, may be committed under 720 ILCS 5/18-4 with aggravating factors other than possession or use of a dangerous weapon. *People v. Beard*, 287 Ill.App.3d 935 (1<sup>st</sup> Dist. 1997).

**720 ILCS 5/37-4** (Ill. Rev. Stat. 1985, ch. 38, par. 37-4). **Criminal Code of 1961.** Defining as a public nuisance any building used in the sale of obscene material and permitting injunctive relief against use of a building for one year is unconstitutional in its application to adult bookstores that sell sexually explicit materials. These provisions create a system of prior restraint but do not define the length of the period during which an alleged nuisance can be restrained prior to full judicial review and make no provision for prompt final determination of the matter. *People v. Sequoia Books, Inc.*, 127 Ill.2d 271 (1989).

**720 ILCS 250/16** (West 2002). **Illinois Credit Card and Debit Card Act.** Provision that possession of 2 or more counterfeit credit or debit cards by someone other than the purported card issuer is prima facie evidence of the possessor's intent to defraud or of the possessor's knowledge that the cards are counterfeit creates an unconstitutional mandatory presumption of the intent or knowledge that is an element of a violation of the Act. *People v. Miles*, 344 Ill.App.3d 315 (2<sup>nd</sup> Dist. 2003).

**720 ILCS 510/2 and 510/11** (Ill. Rev. Stat. 1983, ch. 83, pars. 81-22 and 81-31). **Illinois Abortion Law of 1975.** Provisions making nonprescription sale of abortifacients and prescription or administration of abortifacients without informing the recipient a misdemeanor are unconstitutional because they incorporate a definition of "fetus" in which a fetus is classified as a human being from fertilization until death and thus intrude upon the medical discretion of the attending physician and impose the State's theory of when life begins upon the physician's patient, impermissibly infringing upon a woman's right of private decision-making in matters relating to contraception. *Charles v. Daley*, 749 F.2d 452 (7<sup>th</sup> Cir. 1984).

**720 ILCS 513/10. Partial-birth Abortion Ban Act.** Act's prohibition against the performance of partial-birth abortions unconstitutionally violates the Fourteenth Amendment to the U.S. Constitution because it lacks an exception for preservation of the health of the mother and unduly burdens a woman's right to choose an abortion. *Hope Clinic v. Ryan*, 249 F.3d 603 (7<sup>th</sup> Cir. 2001).

**720 ILCS 570/315. Illinois Controlled Substances Act.** Prohibition against advertising controlled substances to the public by name violates the commercial speech protection of the First Amendment and the commerce clause of Art. I, Sec. 8 of the U.S. Constitution when applied to the federally approved national advertising campaign of the developer of a Schedule IV controlled substance. *Knoll Pharmaceutical Co. v. Sherman*, 57 F.Supp.2d 615 (N.D.Ill. 1999).

**720 ILCS 590/1. Discrimination in Sale of Real Estate Act.** Prohibition against person knowingly soliciting an owner of residential property to sell or list the property after the person has been given notice that the owner does not desire to be solicited unconstitutionally restricts a real estate broker's freedom of speech. *Pearson v. Edgar*, 153 F.3d 397 (7<sup>th</sup> Cir. 1998).

## CRIMINAL PROCEDURE

**725 ILCS 5/106D-1** (West 2000). **Code of Criminal Procedure of 1963.** Section authorizing the court to allow a defendant to personally appear at a pre-trial or post-trial proceeding via closed-circuit television violates an accused person's right under Section 8 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 8) to appear at criminal

proceedings, as applied to a defendant who appeared at his guilty plea proceeding via closed-circuit television without his written consent. *People v. Stroud*, 208 Ill.2d 398 (2004).

**725 ILCS 5/110-4** (West 2000). **Code of Criminal Procedure of 1963.** Subsection (b), which prohibits bail for a person charged with a capital offense or an offense for which a sentence of life imprisonment may be imposed until the person demonstrates at a hearing that proof of his or her guilt is not evident and presumption of his or her guilt is not great, violates the due process clauses of Section 2 of Article I of the Illinois Constitution by depriving the accused of a presumption of innocence. *People v. Purcell*, 201 Ill.2d 542 (2002).

**725 ILCS 5/110-6.2** (Ill. Rev. Stat. 1989, ch. 38, par. 110-6.2). **Code of Criminal Procedure of 1963.** Bail provision permits a court, after a hearing, to deny bail if the court determines that certain facts exist, such as proof evident or presumption great that the defendant committed the offense, the offense requires imprisonment, or the defendant poses a real threat to others. Provision is unconstitutional as a violation of the separation of powers clause of the Illinois Constitution because it limits the court's authority to set bail and imposes conditions not found in Supreme Court Rule 609 concerning bail. *People v. Williams*, 143 Ill.2d 477 (1991).

**725 ILCS 5/114-9** (Ill. Rev. Stat. 1973, ch. 38, par. 114-9). **Code of Criminal Procedure of 1963.** Subsection (c) of Section 114-9, which provides that the State is not required to include rebuttal witnesses in lists of prosecution witnesses given to the defense, is unconstitutional. Previously, Section 114-14, which required the defense to provide notice of an alibi defense to the prosecution upon request, was held unconstitutional by *People v. Fields*, 59 Ill.2d 516 (1974). These rulings came after the U.S. Supreme Court, in *Wardius v. Oregon*, 412 U.S. 470 (1973), held that the due process clause of the 14th Amendment to the U.S. Constitution forbids enforcement of alibi disclosure rules unless the defense has reciprocal discovery rights. Subsection (c) of Section 114-9 has not been amended since these decisions. (Section 114-14 was repealed in 1979 by P.A. 81-290.) *People ex rel. Carey v. Strayhorn*, 61 Ill.2d 85 (1975).

**725 ILCS 5/115-10** (West 2000). **Code of Criminal Procedure of 1963.** Provision allowing the hearsay testimony of a non-testifying child under age 13 about sexual assault and abuse violates the defendant's right to confront witnesses under the Sixth Amendment to the U.S. Constitution, despite the statute's requirement that the court must find the statements reliable. *In re E.H.*, 355 Ill.App.3d 564 (1<sup>st</sup> Dist. 2005), and *In re Rolandis G.*, 352 Ill.App.3d 776 (2<sup>nd</sup> Dist. 2004).

**725 ILCS 5/115-15** (West 1998). **Code of Criminal Procedure of 1963.** Provision granting prima facie evidence status to laboratory tests of controlled substances in certain criminal prosecutions unless the defendant, within 7 days after receiving the test report, demands the testimony of the person who signed the report violates the confrontation clauses of the Sixth Amendment to the U.S. Constitution and Art. I, Sec. 8 of the Illinois Constitution. *People v. McClanahan*, 191 Ill.2d 127 (2000).

**725 ILCS 5/122-8** (Ill. Rev. Stat. 1984 Supp., ch. 38, par. 122-8). **Code of Criminal Procedure of 1963.** Provision requiring that all post-conviction proceedings be conducted by a judge who was not involved in the original proceeding that resulted in conviction violates the separation of powers clause of the Illinois Constitution and also is contrary to a Supreme Court Rule concerning judicial administration and therefore violates Article VI, Section 16 of the Illinois Constitution. *People v. Joseph*, 113 Ill.2d 36 (1986).

**725 ILCS 207/30** (West 1998). **Sexually Violent Persons Commitment Act.** Subsection (c), which prohibits a person who is the subject of a commitment petition under the Act from presenting his or her own expert testimony if the person failed to cooperate with a State-conducted evaluation but which does not prohibit the State from presenting expert testimony based upon an examination of the person's records, violates the due process guarantees of the Fourteenth Amendment to the U.S. Constitution and Section 2 of Article I of the Illinois Constitution as applied to a person against whom the State does present testimony. *In re Detention of Kortte*, 317 Ill.App.3d 111 (2<sup>nd</sup> Dist. 2000), and *In re Detention of Trevino*, 317 Ill.App.3d 324 (2<sup>nd</sup> Dist. 2000).

**725 ILCS 240/10** (P.A. 89-688). **Violent Crime Victims Assistance Act.** Provision amended by P.A. 89-688 is unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Foster*, 316 Ill.App.3d 855 (4<sup>th</sup> Dist. 2000), and *People v. Burdunice*, 211 Ill.2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under "General Provisions" and "Corrections".)

## CORRECTIONS

**730 ILCS 5/3-6-3** (Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3). **Unified Code of Corrections.** Provisions added by P.A. 88-311 making certain inmates, previously eligible to receive good-conduct credit toward early release increased by a multiplier, ineligible for the credit multiplier because they were convicted of criminal sexual assault, felony criminal sexual abuse, aggravated criminal sexual abuse, or aggravated battery with a firearm, as well as related inchoate offenses, violates the *ex post facto* provisions of Section 10 of Article I of the United States Constitution and Section 16 of Article I of the Illinois Constitution by curtailing the opportunity for an earlier release. *Barger v. Peters*, 163 Ill.2d 357 (1994).

**730 ILCS 5/3-7-2, 5/5-5-3, 5/5-6-3, 5/5-6-3.1, and 5/5-7-1** (P.A. 89-688). **Unified Code of Corrections.** Provisions amended by P.A. 89-688 are unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although Public Act 89-688 also amended Sections 3-2-2, 3-5-1, 3-7-6, and 3-8-7 of the Unified Code of Corrections (730 ILCS 5/3-2-2, 5/3-5-1, 5/3-7-6, and 5/3-8-7), identical changes were made to Sections 3-2-2 and 3-5-1 by Public Act 89-689, effective December 31, 1996, Section 3-7-6 was completely rewritten by Public Act 90-85, effective July 10, 1997, and the changes to Section 3-8-7 were re-enacted by Public Act 93-272, effective July 22, 2003.) *People v. Foster*, 316 Ill.App.3d 855 (4<sup>th</sup> Dist. 2000), and *People v. Burdunice*, 211 Ill.2d 264 (2004). (These cases are also reported in this Part 2 of this Case Report under “General Provisions” and “Criminal Procedure”.)

**730 ILCS 5/3-10-11** (P.A. 88-680). **Unified Code of Corrections.** Provision amended by P.A. 88-680 is unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill.App.3d 235 (3<sup>rd</sup> Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2<sup>nd</sup> Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2<sup>nd</sup> Dist. 1999), and *People v. Cervantes*, 189 Ill.2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Finance” and “Courts” and in Part 3 of this Case Report under “Criminal Offenses”.)

**730 ILCS 5/5-4-1 and 5/5-8-1** (Ill. Rev. Stat. 1979, ch. 38, pars 1005-4-1 and 1005-8-1). **Unified Code of Corrections.** Two provisions providing that, in imposing a sentence for a felony conviction, a judge “shall” specify reasons for his or her sentencing determination are constitutional, as held here, when “shall” is construed in that context to be permissive rather than mandatory. By contrast, if “shall” is interpreted to reflect a mandatory intent, the provisions would unconstitutionally infringe upon the inherently separate power of the judiciary. *People v. Davis*, 93 Ill.2d 155 (1982).

**730 ILCS 5/5-5-3.2** (West 1998). **Unified Code of Corrections.** Subdivision (b)(4)(i), which authorizes a sentencing court to increase the punishment for a felony based upon the victim’s age, violates the Sixth Amendment to the U.S. Constitution to the extent the jury was not specifically charged with finding the victim’s age. *People v. Thurow*, 318 Ill.App.3d 128 (3<sup>rd</sup> Dist. 2001); although the appellate court’s decision was reversed in part, the holding of unconstitutionality was affirmed in *People v. Thurow*, 203 Ill.2d 352 (2003).

**730 ILCS 5/5-5-6, 5/5-6-3.1, and 5/5-8-1** (P.A. 89-203). **Unified Code of Corrections.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution.

*People v. Wooters*, 188 Ill.2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under “Vehicles”, “Criminal Offenses”, and “Civil Procedure”.)

**730 ILCS 5/5-5-7** (P.A. 89-7). **Unified Code of Corrections.** (See *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), reported in this Part 2 of this Case Report under “Civil Procedure” and “Civil Liabilities”, concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

**730 ILCS 5/5-6-3.1** (Ill. Rev. Stat. 1977, ch. 38, par. 1005-6-3.1). **Unified Code of Corrections.** Provision concerning incidents and conditions of supervision that provides that a disposition of supervision is a final order for the purposes of appeal is unconstitutional and void as an attempt to regulate appellate court jurisdiction. *People v. Tarkowski*, 100 Ill.App.3d 153 (2<sup>nd</sup> Dist. 1981).

**730 ILCS 5/5-8-1** (West 1996) **Unified Code of Corrections.** Subsection (a)(1)(c)(ii), which mandates life imprisonment for multiple murder, violates the proportionate penalty clause of Section 11 of Article I of the Illinois Constitution when applied to a juvenile convicted on a theory of accountability whose only participation was to serve as lookout because the statute does not consider the defendant’s age or extent of culpability. *People v. Miller*, 202 Ill.2d 328 (2002).

**730 ILCS 140/3** (P.A. 88-680). **Private Correctional Facility Moratorium Act.** Provisions amended by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill.App.3d 235 (3<sup>rd</sup> Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2<sup>nd</sup> Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2<sup>nd</sup> Dist. 1999), and *People v. Cervantes*, 189 Ill.2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Finance” and “Courts” and in Part 3 of this Case Report under “Criminal Offenses”.)

**730 ILCS 175/** (P.A. 88-680). **Secure Residential Youth Care Facilities Licensing Act.** Provisions enacted by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill.App.3d 235 (3<sup>rd</sup> Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2<sup>nd</sup> Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2<sup>nd</sup> Dist. 1999), and *People v. Cervantes*, 189 Ill.2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Finance” and “Courts” and in Part 3 of this Case Report under “Criminal Offenses”.)

## CIVIL PROCEDURE

**735 ILCS 5/2-402, 5/2-604.1, 5/2-621, 5/2-623, 5/2-624, 5/2-1003, 5/2-1107.1, 5/2-1109, 5/2-1115.05, 5/2-1115.1, 5/2-1115.2, 5/2-1116, 5/2-1117, 5/2-1205.1, 5/2-1702, 5/2-2101, 5/2-2102, 5/2-2103, 5/2-2104, 5/2-2105, 5/2-2106, 5/2-2106.5, 5/2-2107, 5/2-2108, 5/2-2109, 5/8-802, 5/8-2001, 5/8-2003, 5/8-2004, 5/13-213, 5/13-214.3, and 5/13-217 (P.A. 89-7). Code of Civil Procedure.**

P.A. 89-7, a comprehensive revision of the law relating to personal injury actions, is unconstitutional in its entirety because (i) provisions limiting compensatory damages for noneconomic injuries, changing contribution by joint tortfeasors, abolishing joint and several liability, and mandating unlimited disclosure of a plaintiff's medical records during discovery are arbitrary, are special legislation in violation of Section 13 of Article IV of the Illinois Constitution, or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. The provisions of 735 ILCS 5/2-622 and 5/8-2501, amended by Public Act 89-7, were re-enacted and changed by Public Act 94-677, effective August 25, 2005. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

**735 ILCS 5/2-1003 (West 1996). Code of Civil Procedure.** Provision waiving a party's privilege of confidentiality with health care providers when he or she alleges a claim for bodily injury or disease is unconstitutional because, by requiring disclosure of all information, it encroaches upon the authority of the judiciary (Supreme Court Rule 201 requires disclosure of only relevant information) and is an unreasonable invasion of privacy. *Kunkel v. Walton*, 179 Ill.2d 519 (1997).

**735 ILCS 5/3-103 (West 1994). Code of Civil Procedure.** Provision allowing amendment of a complaint for administrative review of a police or firefighter disciplinary decision of a municipality of 500,000 or less population in order to add a police or fire chief as a defendant, while not allowing similar amendment of a similar complaint against a municipality of more than 500,000 population, is special legislation in violation of Section 13 of Article IV of the Illinois Constitution. *Lacny v. Police Board of the City of Chicago*, 291 Ill.App.3d 397 (1<sup>st</sup> Dist. 1997).

**735 ILCS 5/12-1006 (Ill. Rev. Stat., ch. 110, par. 12-1006). Code of Civil Procedure.** Enforcement of judgments provisions concerning exemption for retirement plans is completely unconstitutional as preempted by the federal Bankruptcy Code. *In re Kazi, Bkrcty*, 125 B.R. 981 (S.D.Ill. 1991), and others.

**735 ILCS 5/13-202.1 (West 1992). Code of Civil Procedure.** Limitations provision, added by P.A. 87-941, which purports to revive a damage suit by the murder victim's estate against the murderer after the 2-year statute of limitations had run, violates

due process protections afforded to defendants in civil tort cases. *Sepmeyer v. Holman*, 162 Ill.2d 249 (1994).

**735 ILCS 5/15-1508 and 5/15-1701** (P.A. 89-203). **Code of Civil Procedure.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill.2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**735 ILCS 5/20-104** (West 1998). **Code of Civil Procedure.** Section authorizing a private citizen to recover damages from someone who has defrauded a governmental unit when the appropriate governmental official has been notified and has declined to act violates Section 1 of Article II of the Illinois Constitution to the extent it purports to confer standing upon a private citizen to initiate action in a case in which the State is the real interested party because neither the legislature nor the judiciary may deprive the Attorney General of his or her inherent power to direct the legal affairs of the State. *Lyons v. Ryan*, 201 Ill.2d 529 (2002), and, when a unit of local government was the real interested party, *County of Cook ex rel. Rifkin v. Bear Stearns & Co., Inc.*, 215 Ill.2d 466 (2005).

**735 ILCS 5/21-103** (West 1998). **Code of Civil Procedure.** Subsection (b), which requires notice by publication of a petition to change a minor’s name, is unconstitutional as applied to a noncustodial parent who was not given actual notice of a petition by the custodial parent to change their child’s surname. *In re Petition of Sanjuan-Moeller*, 343 Ill.App.3d 202 (2<sup>nd</sup> Dist. 2003).

## CIVIL LIABILITIES

**740 ILCS 100/3.5, 100/4, and 100/5** (P.A. 89-7). **Joint Tortfeasor Contribution Act.** P.A. 89-7, a comprehensive revision of the law relating to personal injury actions, is unconstitutional in its entirety because (i) provisions limiting compensatory damages for noneconomic injuries, changing contribution by joint tortfeasors, abolishing joint and several liability, and mandating unlimited disclosure of a plaintiff’s medical records during discovery are arbitrary, are special legislation in violation of Section 13 of Article IV of the Illinois Constitution, or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

**740 ILCS 110/9 and 110/10** (P.A. 89-7). **Mental Health and Developmental Disabilities Confidentiality Act.** (See *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), reported in this Part 2 of this Case Report under “Civil Procedure” and under “Civil Liabilities”, concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

**740 ILCS 110/10** (Ill. Rev. Stat. 1991, ch. 91½, par. 810). **Mental Health and Developmental Disabilities Confidentiality Act.** Provisions concerning what records of a patient or therapist may be disclosed is unconstitutional to the extent that the Section provides that "any order to disclose or not disclose shall be considered a final order for purposes of appeal and shall be subject to interlocutory appeal". This provision usurps the Supreme Court's rule-making power with respect to appealability of nonfinal judgments. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill.2d 205 (1994).

**740 ILCS 130/2 and 130/3** (P.A. 89-7). **Premises Liability Act.** (See *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

### CIVIL IMMUNITIES

**745 ILCS 10/6A-101 and 10/6A-105** (P.A. 89-7). **Local Governmental and Governmental Employees Tort Immunity Act.** (See *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

**745 ILCS 25/2, 25/3, and 25/4** (Ill. Rev. Stat. 1967, ch. 122, pars. 822, 823, and 824). **Tort Liability of Schools Act.** Provisions concerning notice of injury and limitation period for commencing action are invalid as to both public and nonprofit private schools. Enactment of the Local Governmental and Governmental Employees Tort Immunity Act eliminated the unconstitutional discrepancy between notice-of-injury provisions applicable to various units of local government (see *Lorton v. Brown County School Dist.*, 35 Ill.2d 362 (1966), reported in Part 3 of this Case Report under "Civil Immunities"), but because that Act does not apply to private schools, the notice and limitation provisions of the Tort Liability of Schools Act (which groups public schools and nonprofit private schools together in the same classification) could not be fairly applied to nonprofit private schools. *Cleary v. Catholic Diocese of Peoria*, 57 Ill.2d 384 (1974).

**745 ILCS 25/5** (Ill. Rev. Stat. 1959 and 1965, ch. 122, par. 825). **Tort Liability of Schools Act.** Provision of subsection (A) limiting recovery in each separate cause of action against a public school district to \$10,000 is unconstitutional because it is arbitrarily formulated. *Treece v. Shawnee Community School District*, 39 Ill.2d 136 (1968).

Provision of subsection (B) limiting recovery in each separate cause of action against a nonprofit private school to \$10,000 is unconstitutional because it is purely arbitrary as compared with the liability of other governmental units and institutions. *Haymes v. Catholic Bishop of Chicago*, 41 Ill.2d 336 (1968).

## FAMILIES

**750 ILCS 5/501.1** (West 1992). **Illinois Marriage and Dissolution of Marriage Act.** “Dissolution action stay” provision is an unconstitutional violation of substantive due process because, in providing for a stay on disposing of any property by either party in a divorce, the statute unfairly restrains the disposition of non-marital property as well as marital property. *Messenger v. Edgar*, 157 Ill.2d 162 (1993).

**750 ILCS 5/607** (West 2002). **Illinois Marriage and Dissolution of Marriage Act.** Paragraph (1.5) of subsection (b), which authorizes a court to grant petitions for step-parents’ visitation privileges when in the child’s best interests or welfare, unconstitutionally places the petitioner on equal footing with the parent in the determination of those interests. *In re Marriage of Engelkens*, 354 Ill.App.3d 790 (3<sup>rd</sup> Dist. 2004).

**750 ILCS 50/1** (West 1998). **Adoption Act.** Subdivision D(m-1)’s presumption of parental unfitness based on a judicial finding that a child has spent at least 15 of 22 consecutive months in foster care violates due process guarantees of the Fourteenth Amendment to the U.S. Constitution and Section 2 of Article I of the Illinois Constitution by failing to consider periods of foster care unattributable to the parent’s inability to care for the child. *In re H.G.*, 197 Ill.2d 317 (2001).

**750 ILCS 50/1** (West 1998). **Adoption Act.** Failure to appoint legal counsel for an indigent person for an adoption proceeding that would terminate his or her parental rights violates the equal protection guarantees of the Fourteenth Amendment to the U.S. Constitution and Section 2 of Article I of the Illinois Constitution when the State had chosen not to seek unfit parent status against an indigent woman but had achieved its goal through an adoption proceeding brought by the parties awarded custody of the child. *In re Adoption of K.L.P.*, 198 Ill.2d 448 (2002).

## PROPERTY

**765 ILCS 1025/15** (West 1998). **Uniform Disposition of Unclaimed Property Act.** Provision that the State Treasurer “may” return to the owner of unliquidated stock the dividends earned on that stock while held by the State as abandoned property is a taking without just compensation in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution and Section 15 of Article I of the Illinois Constitution. *Canel v. Topinka*, 212 Ill.2d 311 (2004).

## BUSINESS TRANSACTIONS

**815 ILCS 205/4.1a** (West 2004). **Interest Act.** Provision that limits a lender's non-interest mortgage charges to 3% when the mortgage's interest rate exceeds 8% is preempted by the federal Depository Institutions Deregulation and Monetary Control Act of 1980 and thus violates the supremacy clause of the United States Constitution (U.S. Const. Art. VI, cl. 2). *U.S. Bank National Association v. Clark*, 216 Ill.2d 334 (2005).

**815 ILCS 505/.** **Consumer Fraud and Deceptive Business Practices Act.** The Act's application to cigarette manufacturers for failure to warn of the hazards of smoking is preempted by the federal Cigarette Labeling and Advertising Act. *Espinosa v. Philip Morris USA, Inc.*, 500 F.Supp.2d 979 (N.D.Ill. 2007).

**815 ILCS 505/4** (Ill. Rev. Stat. 1983, ch. 121½, par. 264). **Consumer Fraud and Deceptive Business Practices Act.** Provision authorizing Attorney General to issue subpoenas is unconstitutional as applied to person compelled to travel 350-mile round trip without reimbursement because it is arbitrary and unduly burdensome. *People v. McWhorter*, 113 Ill.2d 374 (1986).

**815 ILCS 505/10a** (P.A. 87-1140 and P.A. 89-144). **Consumer Fraud and Deceptive Business Practices Act.** Subsections (a), (f), (g), and (h) constitute special legislation in violation of Section 13 of Article IV of the Illinois Constitution because they limit and restrict consumers' claims with respect only to automobile dealers (penalties for a consumer's failure to settle a claim, limitation on punitive damages, and notice to a dealer before filing suit). *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill.2d 12 (2003).

**815 ILCS 505/10b** (P.A. 89-7). **Consumer Fraud and Deceptive Business Practices Act.** (See *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

**815 ILCS 515/3** (West 1994). **Home Repair Fraud Act.** The statute creates a mandatory rebuttable presumption of intent or knowledge upon the finding of certain predicate facts. The presumption relieves the State of the burden of persuasion on the element of intent or knowledge in violation of due process guarantees of the U.S. and Illinois constitutions. *People v. Watts*, 181 Ill.2d 133 (1998).

## EMPLOYMENT

**820 ILCS 10/1 Collective Bargaining Successor Employer Act.** Act is preempted by the federal Labor Management Relations Act and the National Labor Relations Act and therefore violates the supremacy clause of the U.S. Constitution. *Commonwealth Edison Co. v. International Brotherhood of Electrical Workers*, 961 F.Supp. 1169 (N.D.Ill. 1997).

**820 ILCS 30/. Employment of Strikebreakers Act.** Act, which imposes criminal penalties upon an employer who knowingly contracts with a day and temporary labor service agency for the provision of replacement workers in the event of a strike or lockout, is preempted by the federal National Labor Relations Act and thus violates the supremacy clause of the United States Constitution (U.S. Const., Art. VI, cl. 2). *Caterpillar Inc. v. Lyons*, 318 F.Supp.2d 703 (C.D.Ill. 2004).

**820 ILCS 30/2 (P.A. 93-375). Employment of Strikebreakers Act.** Provision prohibiting an employer from contracting with day and temporary labor service agencies for replacement labor during a strike or lockout is preempted by the National Labor Relations Act, which permits employment of day and temporary workers at such times, and thus violates the supremacy clause of the United States Constitution (U.S. Const. Art. VI, cl. 2). *520 Michigan Ave. Associates v. Devine*, 433 F.3d 961 (7<sup>th</sup> Cir. 2006).

**820 ILCS 135/2.1 and 135/2.2 (P.A. 87-1174). Burial Rights Act.** Provisions concerning religiously required interments during labor disputes are preempted by the federal National Labor Relations Act because they infringe on the right of cemetery workers to strike and authorize injunctions and fines against striking unions. *Cannon v. Edgar*, 33 F.3d 880 (7<sup>th</sup> Cir. 1994).

**820 ILCS 240/2 (Ill. Rev. Stat. 1953, ch. 48, par. 252). Industrial Home Work Act.** Provision prohibiting the processing of metal springs by home workers is unconstitutional as an unreasonable restraint on and regulation of business, not being in the interest of the public welfare as required for the proper exercise of the State's police power. *Figura v. Cummins*, 4 Ill.2d 44 (1954).

**820 ILCS 305/5 (P.A. 89-7). Workers' Compensation Act.** (See *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

**820 ILCS 310/5 (P.A. 89-7). Workers' Occupational Diseases Act.** (See *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), reported in this Part 2 of this Case

Report under “Civil Procedure” and under “Civil Liabilities”, concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

**820 ILCS 405/602** (Ill. Rev. Stat. 1981, ch. 48, par. 602). **Unemployment Insurance Act.** The “held in abeyance” provision of paragraph B, which postpones payment of unemployment benefits to people in legal custody or on bail for a work-related felony or theft until the charges are resolved, violates the supremacy clause of the United States Constitution because the provision conflicts with sections of the federal Social Security Act that require administrative methods “reasonably calculated” to ensure prompt payment and an opportunity for a fair hearing for individuals whose claims for unemployment compensation are denied. *Jenkins v. Bowling*, 691 F.2d 1225 (7<sup>th</sup> Cir. 1982).

### **INTRODUCTION TO PART 3**

Part 3 of this 2008 Case Report contains Illinois statutes that are representative of (i) statutes that were held unconstitutional and then changed in response to the holding of unconstitutionality or (ii) statutes that were construed in a particular way in order to avoid a holding of unconstitutionality. Part 3 does not include every such statute. Part 3 includes statutes that (i) currently appear or formerly appeared in the Illinois Compiled Statutes or appeared in an Act that was replaced by an Act that currently appears in the Illinois Compiled Statutes and (ii) may have some instructional value concerning the requirement that statutes not violate the United States Constitution or the Illinois Constitution.

**PART 3**  
**EXAMPLES OF**  
**STATUTES HELD UNCONSTITUTIONAL**  
**AND THEN AMENDED OR REPEALED**

**GENERAL PROVISIONS**

**5 ILCS 420/4A-106** (Ill. Rev. Stat. 1971 Supp., ch. 127, par. 604A-106). **Illinois Governmental Ethics Act.** Provisions of Act authorizing the Secretary of State to render advisory opinions on questions concerning the Article of the Act relating to the disclosure of economic interests and to hire legal counsel for those purposes were unconstitutional because they encroached upon duties and powers of the Attorney General that are inherent in that office under Article V, Section 15 of the Illinois Constitution. The unconstitutional provisions were subsequently deleted by P.A. 78-255. *Stein v. Howlett*, 52 Ill.2d 570 (1972).

**ELECTIONS**

**10 ILCS 5/1A-3, 5/1A-5, and 5/1A-7.1** (Ill. Rev. Stat. 1973, ch. 46, pars. 1A-3, 1A-5, and 1A-7.1). **Election Code.** Method used to select members of State Board of Elections, involving appointments by the Governor from nominees designated by the General Assembly, violated Illinois Constitution prohibition against legislative appointment of executive branch officers. Method used to resolve a tie vote of the State Board of Elections, involving disqualification of one Board member whose name was selected by lot, violated due process and the Illinois Constitution prohibition against a political party having a majority of members of the Board. P.A. 80-1178 deleted the provisions concerning legislative nominees for Board membership and repealed the provision concerning resolution of a tie vote. *Walker v. State Board of Elections*, 65 Ill.2d 543 (1976).

**10 ILCS 5/7-5 and 5/7-12** (Ill. Rev. Stat., ch. 46, pars. 7-5 and 7-12). **Election Code.** Provisions directing that no primary election be held if, for each office to be filled by election, the election would be uncontested were unconstitutional because they violated the equal protection clause by preventing electors from voting for write-in candidates. P.A. 84-698 amended the provisions to provide that a primary election shall be held when a person who intends to become a write-in candidate for an uncontested office files a written statement or notice of intent with the proper election official. *Lawlor v. Chicago Board of Election Com'rs*, 395 F.Supp. 692 (N.D.Ill. 1975).

**10 ILCS 5/7-10** (Ill. Rev. Stat. 1971, ch. 46, par. 7-10). **Election Code.** Provisions prohibiting a person from signing a nominating petition or being a candidate of a political party for public office if the person had requested a primary ballot of

another political party at a primary election held within 2 years of the date on which the nominating petition must be filed were held to violate the right of free political association under the U.S. Constitution, Amendments I and XIV. Standards governing party changes by candidates may and should be more restrictive than those relating to voters generally, but the restrictions on candidates were not severable from the invalid provisions. P.A. 86-1348 deleted the 2-year restriction on changes of party by persons signing nominating petitions and by candidates. *Sperling v. County Officers Electoral Board*, 57 Ill.2d 81 (1974).

**10 ILCS 5/7-10** (Ill. Rev. Stat., ch. 46, par. 7-10). **Election Code.** (See *People ex rel. Chicago Bar Ass'n v. State Bd. of Elections*, 136 Ill.2d 513 (1990), reported in this Part 3 of this Case Report under “Courts”, concerning legislation subdividing the First Appellate District and the Circuit of Cook County.)

**10 ILCS 5/7-42** (Laws 1910 Sp. Sess., p. 50). **Election Code.** Provision of 1910 Act that allowed an employee to leave work for 2 hours without any deduction in salary or wages to vote in a primary election was unconstitutional because it deprived an employer of his or her property without due process. The provision prohibiting a deduction in salary or wages was not continued in the 1927 Act that replaced the 1910 Act, and the current Election Code does not contain such a provision. *McAlpine v. Dimick*, 326 Ill. 240 (1927).

**10 ILCS 5/7-43** (Ill. Rev. Stat., ch. 46, par. 7-43). **Election Code.** Provision prohibiting a person from voting in a political party primary if the person voted in another political party's primary in the preceding 23 months was held to substantially burden that person's right to vote in derogation of Article I, Section 2 of the U.S. Constitution. The court also found the “23 month rule” to be a significant incursion on a person's right of free association and declared the provision null and void. Public Act 95-699, effective November 9, 2007, removed the offending provision. *Kusper v. Pontikes*, 94 S.Ct. 303 (1973).

**10 ILCS 5/7-43, 5/10-3, and 5/10-4.** **Election Code.** Provisions prohibiting a person who signed an independent candidate's nominating petition from voting in the primary, requiring more petition signatures for an independent candidate than for a partisan candidate for the same office, and requiring independent and partisan candidates to file petitions at the same time to appear on the ballot at different elections so severely restricted an independent candidate's ballot access as to burden the right to political association of the candidate and his petition signers under the First and Fourteenth Amendments to the United States Constitution. Public Act 95-699, effective November 9, 2007, amended Sections 7-43, 10-3, and 10-6 of the Election Code (10 ILCS 5/7-43, 5/10-3, and 5/10-6) to remove the prohibition against an independent candidate petition signer voting in the primary, decrease the number of signatures required on an

independent candidate's petition, and move the deadline for filing an independent candidate's petition closer to the general election. *Lee v. Keith*, 463 F.3d 763 (7<sup>th</sup> Cir. 2006).

**10 ILCS 5/7-59** (Ill. Rev. Stat., ch. 46, par. 7-59). **Election Code.** Provision excluding from office a write-in candidate in a primary election who received a majority of the votes cast because he or she did not receive at least as many write-in votes as the number of signatures required on a petition for nomination for that office was an unconstitutional violation of the right to freedom of association as expressed by voting. P.A. 84-658 and P.A. 86-867 changed the statute to bar from office only a write-in candidate in a primary election who receives less votes than any person on the ballot. *Foster v. Kusper*, 587 F.Supp. 1194 (N.D.Ill. 1984).

**10 ILCS 5/8-10. Election Code.** Provision granting incumbents priority in ballot positions violated the 14<sup>th</sup> Amendment to U.S. Constitution. A subsequent amendment completely removed the offending provision. *Netsch v. Lewis*, 344 F.Supp. 1280 (N.D.Ill. 1972).

**10 ILCS 5/10-3** (Ill. Ann. Stat. 1978 Supp., ch. 46, par. 10-3). **Election Code.** Provision requiring more than 25,000 petition signatures for an independent candidate for less than statewide office, when 25,000 was the number needed for statewide office, was unconstitutional as a violation of the 14<sup>th</sup> Amendment to the U.S. Constitution. P.A. 81-926 lowered the number of signatures needed. *Socialist Workers Party v. Chicago Board of Election Commissioners*, 99 S.Ct. 983 (1977).

**10 ILCS 5/17-15** (Hurd's Statutes 1917, p. 1350). **Election Code.** Provision that required employers to pay employees for the 2 hours employers were required to allow employees to be absent from work to vote on election day was void as an unreasonable abridgment of the right to contract for labor. Although a citizen has a constitutional right to vote, he or she does not have a constitutional right to be paid to exercise the right to vote. The requirement to pay employees during their absence while voting was removed by Laws 1963, p. 2532. *People v. Chicago, Milwaukee and St. Paul Railway Co.*, 306 Ill. 486 (1923).

**10 ILCS 5/19-9 and 5/19-10. Election Code.** Code's failure to provide an absent voter with timely notice of and a hearing on the rejection of his or her absentee ballot denied due process under the Fifth and Fourteenth Amendments to the U.S. Constitution. Public Act 94-1000, effective July 3, 2006, repealed Section 19-9 and amended Section 19-8 of the Code (10 ILCS 5/19-8) to require that an election authority, before the close of the period for counting provisional ballots, notify an absentee voter that his or her ballot was rejected, why it was rejected, and that the voter may appear

before a panel of election judges to show cause why the ballot should not be rejected. *Zessar v. Helander*, 2006 WL 573889, Docket No. 05C 1917, opinion filed March 13, 2006.

**10 ILCS 5/23-1.4 and 5/23-1.10** (Ill. Rev. Stat. 1981, ch. 46, pars. 23-1.4 and 23-1.10). **Election Code.** Provisions granting a 3-judge panel authority to hear election contests violated the Illinois Constitution because it altered the basic character of the circuit courts by creating a new court. P.A. 86-873 repealed the offending provisions. *In re Contest of Election for Governor*, 93 Ill.2d 463 (1983).

**10 ILCS 5/25-11** (Ill. Rev Stat. 1973, ch. 46, par. 25-11). **Election Code.** Provision added by P.A. 79-118 for filling vacancies on the county board and in other county offices that transferred the authority to fill the vacancies from the county board to the county central committee of the political party of the person creating the vacancy was an unconstitutional delegation of power because the power to appoint was delegated to private citizens not accountable to the public. P.A. 80-940 changed the provision to provide that vacancies shall be filled by appointment by the county board chairman with the advice and consent of the county board. *People ex rel. Rudman v. Rini*, 64 Ill.2d 321 (1976).

**10 ILCS 5/29-14** (Ill. Rev. Stat. 1983, ch. 46, par. 29-14). **Election Code.** Provision that prohibited publication of unattributed political literature was a violation of the First Amendment. P.A. 90-737 repealed Section 29-14 but replaced it with Section 9-9.5 (10 ILCS 5/9-9.5), a similar prohibition against publication and distribution of unattributed political literature. *People v. White*, 116 Ill.2d 171 (1987).

## EXECUTIVE OFFICERS

**15 ILCS 335/14B** (West 1998). **Illinois Identification Card Act.** The Class 4 felony penalty for the offense of knowingly possessing a fraudulent identification card, which includes a mandatory minimum fine or community service, was disproportionate to the Class 4 felony penalty for the more serious offense of knowingly possessing a fraudulent identification card with aggravating elements, which did not include mandatory minimums, in violation of the proportionate penalties requirement of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). P.A. 94-701, effective June 1, 2006, reclassified the offense of knowingly possessing a fraudulent identification card with aggravating elements as a Class 3 felony. *People v. Pizano*, 347 Ill.App.3d 128 (1<sup>st</sup> Dist. 2004).

**15 ILCS 520/22.5 and 520/22.6. Deposit of State Moneys Act.** Public Act 94-79, effective January 27, 2006 and known as the “Sudan Act”, which prohibited the investment of State moneys in relation to Sudan, was preempted by federal law and violated the

foreign commerce clause of the United States Constitution (U.S. Const., Art. I, Sec. 8). Public Act 95-521, effective August 28, 2007, repealed the Sudan Act. *National Foreign Trade Council, Inc. v. Giannoulis*, 523 F.Supp.2d 731 (N.D.Ill. 2007). (This case is also reported in this Part 3 of this Case Report under “Pensions”.)

### EXECUTIVE BRANCH

**20 ILCS 1128/ (P.A. 88-669). Illinois Geographic Information Council Act.** Act created by P.A. 88-669, effective November 29, 1994, was unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-961, effective June 27, 2006, re-enacted the Illinois Geographic Information Council Act. P.A. 92-790, 93-205, 93-1046, 94-794, 94-986, 94-1017, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Finance”, “Revenue”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**20 ILCS 3505/. Illinois Development Finance Authority Act.** Provision of a former Act, the Illinois Industrial Development Authority Act, that required \$500,000 to be transferred to a special fund and that the sum should be considered “always appropriated” for the purpose of guaranteeing repayment of bonds violated the constitutional prohibition against pledging the credit of the State and was an unconstitutional continuing appropriation. P.A. 81-454 repealed the Illinois Industrial Development Authority Act and enacted what became the Illinois Development Finance Authority Act without continuing the offending provision in the new Act. *Bowes v. Howlett*, 24 Ill.2d 545 (1962).

**20 ILCS 3850/ (P.A. 88-669). Illinois Research Park Authority Act.** Act created by P.A. 88-669, effective November 29, 1994, was unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 93-205, effective January 1, 2004, repealed the Illinois Research Park Authority Act. P.A. 92-790, 93-1046, 94-794, 94-961, 94-986, 94-1017, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Finance”, “Revenue”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

### FINANCE

**30 ILCS 340/0.01, 340/1, 340/1.1, 340/2, and 340/3 (P.A. 88-669). Casual Deficit Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 93-1046, effective October 15, 2004, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 94-794, 94-

961, 94-986, 94-1017, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Revenue”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”).)

## REVENUE

**35 ILCS 5/203, 5/502, 5/506.5, 5/917, and 5/1301** (P.A. 88-669). **Illinois Income Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”).)

**35 ILCS 105/2** (Ill. Rev. Stat. 1985, ch. 120, par. 439.2). **Use Tax Act.**

**35 ILCS 120/1** (Ill. Rev. Stat. 1985, ch. 120, par. 440). **Retailers’ Occupation Tax Act.** Provisions that persons in the business of repairing items of personal property by adding or incorporating other items of personal property shall be deemed to be in the business of selling personal property at retail and not in a service occupation violated the uniformity of taxation provisions of the Illinois Constitution because they attempted to include within a class persons who in fact were not within the class. Laws 1963, pages 1582 and 1600 deleted the offending provisions. *Central Television Service v. Isaacs*, 27 Ill.2d 420 (1963).

**35 ILCS 105/2 and 105/9** (P.A. 88-669). **Use Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”).)

**35 ILCS 105/3-5** (Ill. Rev. Stat. 1985, ch. 120, par. 439.3). **Use Tax Act.**

**35 ILCS 120/2-5** (Ill. Rev. Stat. 1985, ch. 120, par. 441). **Retailers’ Occupation Tax Act.**

Provisions that exempted from use tax and retailers' occupation tax all money and medallions issued by a foreign government except those issued by South Africa were unconstitutional because the disapproval of foreign political and social policies was not a reasonable basis for a tax classification and the power to conduct foreign affairs belonged exclusively to the federal government. The offending provisions were subsequently removed by P.A. 85-1135. *Springfield Rare Coin Gallery v. Johnson*, 115 Ill.2d 221 (1986).

Provisions that made proceeds of sales to the State or local governmental units exempt from use tax and retailers' occupation tax violated the uniformity of taxation requirement of the Illinois Constitution because they discriminated against the federal government. Laws 1961, pages 2312 and 2314 deleted the offending provisions. *People ex rel. Holland Coal Co. v. Isaacs*, 22 Ill.2d 477 (1961).

**35 ILCS 105/3-40** (Ill. Rev. Stat. 1985, ch. 120, par. 439.3). **Use Tax Act.** Definition of gasohol, which applied to the Retailers' Occupation Tax Act as well, that provided for a sales tax preference to gasohol containing ethanol distilled in Illinois violated the commerce clause. The preference was deleted by P.A. 85-1135. *Russell Stewart Oil Co. v. State*, 124 Ill.2d 116 (1988).

**35 ILCS 110/2** (Ill. Rev. Stat. 1967, ch. 120, par. 439.32). **Service Use Tax Act.**

**35 ILCS 115/2** (Ill. Rev. Stat. 1967, ch. 120, par. 439.102). **Service Occupation Tax Act.**

1967 amendments, which designated 4 limited subclasses of servicemen who were subject to the tax, were an unconstitutional denial of due process and equal protection because there was no reasonable difference between the 4 subclasses of servicemen subject to the tax and those servicemen not subject to the tax. Several Sections in each Act were held unconstitutional because the court found the provisions of the amendatory Acts inseverable. Subsequent amendments corrected the problem. *Fiorito v. Jones*, 39 Ill.2d 531 (1968).

**35 ILCS 110/9** (P.A. 88-669). **Service Use Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under "Executive Branch", "Finance", "Gaming", "Liquor", "Public Health", "Vehicles", "Criminal Offenses", and "Corrections".)

**35 ILCS 115/9** (P.A. 88-669). **Service Occupation Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because

P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”).)

**35 ILCS 120/3 and 120/11** (P.A. 88-669). **Retailers’ Occupation Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”).)

**35 ILCS 120/5a, 120/5b, and 120/5c** (Ill. Rev. Stat. 1961, ch. 120, pars. 444a, 444b, and 444c). **Retailers’ Occupation Tax Act.** Provisions (i) permitting the Department of Revenue to file with the circuit clerk a final assessment or jeopardy assessment and requiring the clerk to immediately enter judgment for that amount and (ii) affording the taxpayer an opportunity to be heard only after entry of the judgment violated due process and attempted to circumvent the courts in violation of the separation of powers clause of the Illinois Constitution. Subsequent amendments corrected the problem. *People ex rel. Isaacs v. Johnson*, 26 Ill.2d 268 (1962).

**35 ILCS 130/1** (Ill. Rev. Stat. 1947, ch. 120, par. 453.1). **Cigarette Tax Act.** Provision that an individual who in any year brought more than 10 cartons of cigarettes into the State for consumption was a “distributor” of cigarettes was unconstitutional as violative of due process and the commerce clause of the U.S. Constitution. The definition of “distributor” was subsequently changed to remove the unconstitutional text. *Johnson v. Daley*, 403 Ill. 338 (1949).

**35 ILCS 130/10b** (P.A. 88-669). **Cigarette Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A.

88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**35 ILCS 135/20** (P.A. 88-669). **Cigarette Use Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**35 ILCS 200/9-185. Property Tax Code.** Provision of prior Act (Ill. Rev. Stat. 1965, ch. 120, par. 508a) that indirectly required the owner of real property taken by eminent domain to pay the real estate taxes for the period after the petition for condemnation was filed until the compensation award was deposited was an unconstitutional taking of property without compensation. The Property Tax Code, which succeeded the repealed Revenue Act of 1939, now provides that real property is exempt from taxation as of the date the condemnation petition is filed. *Board of Jr. College District 504 v. Carey*, 43 Ill.2d 82 (1969).

**35 ILCS 200/15-85. Property Tax Code.**

Tax exemption for property used for “mechanical” purposes (Ill. Rev. Stat. 1983, ch. 120, par. 500.10) was unconstitutional because it exceeded the scope of exemptions permitted under Article IX, Section 6 of the Illinois Constitution. P.A. 88-455 repealed the Revenue Act of 1939 and replaced it with the Property Tax Code, and the offending provision was not continued in the Code. *Bd. of Certified Safety Professionals of the Americas, Inc. v. Johnson*, 112 Ill.2d 542 (1986).

Tax exemption for property used for “philosophical” purposes (Ill. Rev. Stat. 1953, ch. 120, par. 500) was unconstitutional because it exceeded the scope of exemptions permitted under the Illinois Constitution. P.A. 88-455 repealed the Revenue Act of 1939 and replaced it with the Property Tax Code, and the offending provision was not continued in the Code. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956).

**35 ILCS 200/15-172** (P.A. 88-669). **Property Tax Code.** Provisions added by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-794, effective May 22, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, 94-1017, and 94-

1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**35 ILCS 250/20** (P.A. 88-669). **Longtime Owner-Occupant Property Tax Relief Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**35 ILCS 505/1.16, 505/13a.3, 505/13a.4, 505/13a.5, 505/13a.6, 505/15, and 505/16** (P.A. 88-669). **Motor Fuel Tax Law.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**35 ILCS 610/11** (P.A. 88-669). **Messages Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**35 ILCS 615/11** (P.A. 88-669). **Gas Revenue Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-

1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**35 ILCS 620/11** (P.A. 88-669). **Public Utilities Revenue Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

**35 ILCS 630/15** (P.A. 88-669). **Telecommunications Excise Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

## PENSIONS

**40 ILCS 5/1-110.5. Illinois Pension Code.** Public Act 94-79, effective January 27, 2006 and known as the “Sudan Act”, which prohibited the investment of State moneys in relation to Sudan, was preempted by federal law and violated the foreign commerce clause of the United States Constitution (U.S. Const., Art. I, Sec. 8). Public Act 95-521, effective August 28, 2007, repealed the Sudan Act. *National Foreign Trade Council, Inc. v. Giannoulis*, 523 F.Supp.2d 731 (N.D.Ill. 2007). (This case is also reported in this Part 3 of this Case Report under “Executive Officers”.)

**40 ILCS 5/6-210.1** (Ill. Rev. Stat. 1989, ch. 108 ½, par. 6-210.1). **Illinois Pension Code.** Requiring Chicago fire department paramedics transferred from Chicago municipal pension fund to Chicago firemen’s fund to tender refunds from the Chicago municipal fund, plus interest, to Chicago firemen’s fund in order to retain service credits diminished vested pension rights of paramedics unable to produce refund money plus interest and violated the Illinois Constitution’s prohibition against diminishing pension rights. P.A. 89-

136 amended Section 6-210.1 to permit payment of refunds plus interest through payroll deductions. *Collins v. Board of Trustees of Firemen's Annuity and Benefit Fund of Chicago*, 226 Ill.App.3d 316 (1<sup>st</sup> Dist. 1992).

**40 ILCS 5/18-125** (Ill. Rev. Stat. 1981, ch. 108½, par. 18-125). **Illinois Pension Code.** Amendment of Judicial Article provision that changed the definition of salary base used to compute retirement benefits from the salary on the last day of service to the average salary over the last year of service unconstitutionally reduced or impaired retirement benefits of judges in service on or before effective date of amendment. P.A. 86-273 rewrote the provision to define "final average salary" according to the date of termination of service. *Felt v. Board of Trustees of Judges Retirement System*, 107 Ill.2d 158 (1985).

## COUNTIES

(See *People ex rel. Rudman v. Rini*, 64 Ill.2d 321 (1976), reported in this Part 3 of this Case Report under "Elections", in relation to filling vacancies on the county board and in other county offices.)

**55 ILCS 5/4-5001. Counties Code.** Provision of predecessor Act (Ill. Rev. Stat. 1979, ch. 53, par. 37) in relation to compensation of sheriffs and other county officers that allowed the sheriff of a first or second class county a percentage commission on all sales of real and personal property made by virtue of a court judgment violated the Illinois Constitution prohibition against basing fees of local governmental officers on funds collected. P.A. 82-204 replaced the percentage commission provisions with a schedule of fees in dollar amounts. *Cardinal Savings & Loan Ass'n v. Kramer*, 99 Ill.2d 334 (1984).

**55 ILCS 5/4-12001. Counties Code.** Provision of predecessor Act (Ill. Rev. Stat. 1977, ch. 53, par. 71) in relation to compensation of sheriffs and other county officers that allowed the sheriff of a third class county a percentage commission on all sales of real and personal property made by virtue of an execution or a court judgment violated the Illinois Constitution prohibition against basing fees of local governmental officers on funds collected. P.A. 81-473 replaced the percentage commission provisions with a schedule of fees in dollar amounts. *DeBruyn v. Elrod*, 84 Ill.2d 128 (1981).

**55 ILCS 5/4-12003. Counties Code.** Successive amendments to predecessor Act (Ill. Rev. Stat. 1983, ch. 53, par. 73; now Section 4-12003 of the Counties Code), which increased the fee for issuance of a marriage license to \$25 from \$15 and thereafter to \$40 from \$25 and which required the county clerk who collected the fee to pay the amount of the increase into the Domestic Violence Shelter and Service Fund for use in funding the administration of domestic violence shelters and service programs, violated the due process guarantees of Article I, Section 2 of the Illinois Constitution

because the increased portion of the fee (i) constituted an arbitrary tax on the issuance of marriage licenses that bore no reasonable relation to the public interest in sheltering and serving victims of domestic violence and (ii) imposed a direct impediment to the exercise of the fundamental right to marry without supporting a sufficiently important State interest warranting that intrusion. P.A. 84-180 deleted the unconstitutional provisions from the Section that is now Section 4-12003 of the Counties Code, as well as identical provisions (affecting counties of the first and second class) that formerly were contained in a section of the law that is now Section 4-4001 of the Counties Code. *Boynton v. Kusper*, 112 Ill.2d 356 (1986).

**55 ILCS 5/5-1002. Counties Code.** Provision of predecessor Act (Ill. Rev. Stat. 1963, ch. 34, par. 301.1) immunizing counties from liability for personal injuries, property damage, and death caused by the negligence of its agents was a violation of the Illinois Constitution prohibition against special legislation because it made legislative classifications based on the form of a governmental unit instead of making the classifications based on the similarity of functions. The provision was repealed by Laws 1967, p. 3786. *Hutchings v. Kraject*, 34 Ill.2d 379 (1966).

**55 ILCS 5/5-1120** (P.A. 89-203). **Counties Code.** Provision added by P.A. 89-203 was unconstitutional because P.A. 89-203 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. Public Act 94-154, effective July 8, 2005, re-enacted the provision of Section 5-1120 added by P.A. 89-203. *People v. Wooters*, 188 Ill.2d 500 (1999). (This case is also reported in Part 2 of this Case Report under “Vehicles”, “Criminal Offenses”, “Corrections”, and “Civil Procedure”.)

## MUNICIPALITIES

**65 ILCS 5/11-13-3. Illinois Municipal Code.** Provision of predecessor Zoning Act authorizing a local zoning board of appeals to vary or modify application of zoning regulations or provisions of zoning ordinances in the case of “practical difficulties” or “unnecessary hardships” was an unconstitutional delegation of legislative authority because the statute offered no guidance to the board in determining what constituted practical difficulties or unnecessary hardships. Laws 1933, p. 288 deleted the offending provision. *Welton v. Hamilton*, 344 Ill. 82 (1931).

**65 ILCS 5/11-31-1** (Ill. Rev. Stat. 1971, ch. 24, par. 11-31-1). **Illinois Municipal Code.** Provision that excepted home rule units from the application of a power granted to certain county boards to demolish hazardous buildings was unconstitutional special legislation because the legislative classification did not provide a reasonable basis for differentiating between the types of governmental units that could benefit from the application of the demolition powers. The provision was subsequently removed by P.A. 84-1102. *City of Urbana v. Houser*, 67 Ill.2d 268 (1977).

## SPECIAL DISTRICTS

**70 ILCS 915/6** (Ill. Rev. Stat. 1981, ch. 111½, par. 5009). **Medical Center District Act.** Provision authorizing the Medical Center Commission to conduct a hearing and make a finding as to whether restrictions on property use had been violated so as to cause property to revert to the Commission was an unconstitutional violation of due process because the Commission had an interest in the outcome of the proceeding. P.A. 83-858 changed the provision to provide that the Commission must file suit for a determination of whether the property should revert to it. *United Church of the Medical Center v. Medical Center Commission*, 689 F.2d 693 (7<sup>th</sup> Cir. 1982).

**70 ILCS 2205/1, 2205/5, 2205/7, 2205/8, 2205/17, 2205/27b, 2205/27c, 2205/27d, 2205/27e, 2205/27f, and 2205/27g** (Ill. Rev. Stat. 1973 Supp., ch. 42, pars. 247, 251, 253, 254, 263, 273b, 273c, 273d, 273e, 273f, and 273g). **Sanitary District Act of 1907.** P.A. 77-2819 (i) added Sections 27b through 27g to the Act to provide that a sanitary district lying in 2 counties and having an equalized assessed valuation of \$100,000,000 or more on the effective date of the amendatory Act was divided “for more effective administrative and fiscal control” into 2 separate districts and (ii) made related changes in other Sections of the Act. P.A. 77-2819 was unconstitutional special legislation because there was no reason for not extending the same advantages of “more effective administrative and fiscal control” to those 2-county districts that reached the minimum valuation level at a time after the effective date of the amendatory Act. Sections 27b through 27g were repealed by P.A. 81-290, and the related provisions added to other Sections of the Act by P.A. 77-2819 were subsequently deleted. *People ex rel. East Side Levee and Sanitary District v. Madison County Levee and Sanitary District*, 54 Ill. 442 (1973).

## SCHOOLS

**105 ILCS 5/7-7** (Ill. Rev. Stat. 1961, ch. 122, par. 7-7). **School Code.** Provision of the School Code requiring that an appeal from an administrative decision of a county board of school trustees had to be filed within 10 days after the date of service of a copy of the board’s decision, while all other administrative review actions under the Code had to be filed within 35 days, violated the Illinois Constitution because there was no reasonable basis for the distinction. The period was changed to 35 days by Laws 1963, p. 3041. *Board of Education of Gardner School District v. County Board of School Trustees of Peoria County*, 28 Ill.2d 15 (1963).

**105 ILCS 5/14-7.02** (Ill. Rev. Stat. 1977, ch. 122, par. 14-7.02). **School Code.** Provision that the school district in which a handicapped child resided must pay the actual cost of tuition charged the child by a non-public school or special education facility to which the child was referred or \$2,500, whichever was less, deprived the child of a tuition-free education through the secondary level in violation of Section 1 of Article X of the Illinois Constitution. P.A. 80-1405 amended the statute to increase the dollar

limit to \$4,500 and to provide for the school district's payment of costs in excess of that amount if approved by the Governor's Purchased Care Review Board. *Elliot v. Board of Education of the City of Chicago*, 64 Ill.App.3d 229 (1<sup>st</sup> Dist. 1978).

**105 ILCS 5/17-2.11a** (P.A. 86-4, amending Ill. Rev. Stat. 1987, ch. 122, par. 17-2.11a). **School Code.** After the appellate court interpreted a provision concerning the maximum allowable interest rate on school bonds, P.A. 86-4 amended that provision to retroactively provide for a maximum rate greater than that construed by the appellate court. The amendment violated the separation of powers principle of the Illinois Constitution. The legislature may prospectively change a judicial construction of a statute if it believes that the judicial interpretation was at odds with the legislative intent, but it may not effect a change in the judicial construction by a later declaration of what it had originally intended. (The legislature also may pass a curative Act to validate bonds that a court has found were issued in a manner not authorized by the legislature.) P.A. 87-984 repealed Section 17-2.11a. *Bates v. Bd. of Education*, 136 Ill.2d 260 (1990).

**105 ILCS 5/Art. 34** (Ill. Rev. Stat. 1989, ch. 122, par. 34-1.01 *et seq.*). **School Code.** 1988 amendments concerning Chicago school reform were unconstitutional because the voting scheme for the election of the local school councils violated equal protection guarantees (one-person-one-vote principles). Subsequent amendments corrected the voting scheme problem and were upheld in federal court. *Fumarolo v. Chicago Board of Education*, 142 Ill.2d 54 (1990).

## HIGHER EDUCATION

**110 ILCS 947/105. Higher Education Student Assistance Act.** Provision of predecessor Act (Ill. Rev. Stat. 1987, ch. 122, par. 30-15.12) requiring the Illinois State Scholarship Commission (the predecessor of the Illinois Student Assistance Commission) to file all lawsuits on delinquent and defaulted student loans "in the County of Cook where venue shall be deemed to be proper" was so arbitrary and unreasonable as to deprive defendants of their property or liberty in violation of the due process guarantees of the U.S. and Illinois constitutions. The provision was amended by P.A. 86-1474, which added language authorizing a defendant to request and a court to grant a change of venue to the county of defendant's residence and requiring the Commission to move the court for a change of venue if a defendant, within 30 days of service of summons, files a written request by mail with the Commission to change venue. *Williams v. Ill. State Scholarship Comm'n*, 139 Ill.2d 24 (1990).

**110 ILCS 1015/17** (Ill. Rev. Stat. 1969, ch. 144, par. 1317). **Illinois Educational Facilities Authority Act.** Provision that authorized political subdivisions to loan public money to finance construction for religious educational institutions was unconstitutional because it created too much potential for a subdivision's excessive entanglement with

religion. P.A. 78-399 removed the unconstitutional provision. *Cecrle v. Educational Facilities Authority*, 52 Ill.2d 312 (1972).

## FINANCIAL REGULATION

**205 ILCS 405/1** (Ill. Rev. Stat. 1955, ch. 16½, par. 31). **Currency Exchange Act.** Provision that exempted American Express Co. money orders from the regulation of the Act was an unconstitutional violation of equal protection guarantees. The provision was deleted by Laws 1957, p. 2332. *Morey v. Doud*, 77 S.Ct. 1344 (1957).

**205 ILCS 405/4. Currency Exchange Act.** Provision of a predecessor Act required that an application for a license to do business as a community currency exchange contain certain specified information and “such other information as the Auditor [of Public Accounts] may require”. The provision was unconstitutionally vague because it did not prescribe the actual qualifications necessary for licensure and left the Auditor without any restraint in interpreting the phrase. The current Act does not contain the offending provision. *McDougall v. Lueder*, 389 Ill. 141 (1945).

**205 ILCS 645/3** (Ill. Rev. Stat. 1985, ch. 17, par. 2710). **Foreign Banking Office Act.** Provision that imposed an annual nonreciprocal license fee of \$50,000 on foreign banks that did not provide reciprocal licensing authority to Illinois State or national banks violated the supremacy clause of the U.S. Constitution because it conflicted with the federal International Banking Act and the National Bank Act. P.A. 88-271 deleted the nonreciprocal license fee provision. *National Commercial Banking Corp. of Australia v. Harris*, 125 Ill.2d 448 (1988).

## INSURANCE

**215 ILCS 5/. Illinois Insurance Code.** Former Section 401a of the Code (Ill. Rev. Stat. 1975, ch. 73, par. 1013a) regulating medical malpractice insurance rates on policies in existence on a certain date but not on policies written after that date was unconstitutional special legislation because it was as important to regulate the initial rate for a new medical malpractice insurance policy as to regulate the rate for an existing policy. P.A. 81-288 repealed the Section. *Wright v. Central DuPage Hospital Ass’n*, 63 Ill.2d 313 (1976). (This case is also reported in this Part 3 of this Case Report under “Civil Procedure”.)

**215 ILCS 5/409** (West 1992). **Illinois Insurance Code.** Premium-based tax imposed upon foreign insurance companies for the privilege of doing business in Illinois but not imposed upon similar companies incorporated in Illinois violated the uniformity of taxation clause of Section 2 of Article IX of the Illinois Constitution. P.A. 90-583 imposes the premium-based privilege tax upon all companies doing business in Illinois

regardless of where incorporated. *Milwaukee Safeguard Insurance v. Selcke*, 179 Ill.2d 94 (1997).

**215 ILCS 5/Art. XXXV** (repealed) (Ill. Rev. Stat. 1971, ch. 73, pars. 1065.150 through 1065.163). **Illinois Insurance Code.** Provisions of former Article XXXV of the Code were unconstitutional. Provision limiting damages recoverable in actions for accidental injuries arising out of use of motor vehicles but requiring that only insurance policies for private passenger automobiles must provide coverage affording benefits to certain injured persons was impermissible special legislation because it resulted in different legislative treatment of persons injured by different vehicles. Provision requiring arbitration of certain cases arising out of auto accidents violated constitutional right to trial by jury. Provision for *de novo* review of arbitration award by the circuit court violated constitutional provision that circuit courts have original jurisdiction of all justiciable matters and the power to review administrative actions as provided by law. Provision requiring losing litigant in compulsory arbitration to pay arbitrator's fees violated constitutional prohibition against fee officers in the judicial system. P.A. 78-1297 repealed Article XXXV. *Grace v. Howlett*, 51 Ill.2d 478 (1972).

## UTILITIES

**220 ILCS 10/9** (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 909). **Citizens Utility Board Act.** Provisions requiring a utility to include in its billing statements information provided by the Citizens Utility Board with which the utility disagreed infringed upon the utility's freedom of speech in violation of the U.S. Constitution, Amendment I. P.A. 85-879 replaced the entire Section with provisions requiring State agencies to include in their mailings information furnished by the Citizens Utility Board. *Central Illinois Light Co. v. Citizens Utility Bd.*, 827 F.2d 1169 (7<sup>th</sup> Cir. 1987).

## PROFESSIONS AND OCCUPATIONS

**225 ILCS 41/. Funeral Directors and Embalmers Licensing Code.** Provision of the Funeral Directors and Embalmers Licensing Act of 1935 (Ill. Rev. Stat. 1955, ch. 111 ½, par. 73.4) requiring a funeral director to be a holder of a certificate of registration as a registered embalmer violated the due process clause of the Illinois Constitution because the interest of the public did not justify the partial merger of their activities by requiring that a funeral director have the knowledge, skill, and training of an embalmer before he or she can direct a funeral. The provision was deleted by Laws 1959, p.1518. The 1935 Act was repealed by P.A. 87-966, which created the Funeral Directors and Embalmers Licensing Code. Article 10 of the new Code (225 ILCS 41/Art. 10) creates a combined funeral director and embalmer license. *Gholson v. Engle*, 9 Ill.2d 454 (1956).

**225 ILCS 100/21. Illinois Podiatric Medical Practice Act of 1987.** Provision that limited advertising by a podiatric physician to certifications approved by the Council on Podiatric Medical Education violated the First Amendment of the U.S. Constitution as

applied to a podiatric physician who advertised that he had been certified by a board other than the Council on Podiatric Medical Education if the physician's statements were not actually or potentially misleading and served the public interest and the certification originated from a bona fide certifying board. P.A. 90-76 changed the provision to limit advertising to certifications approved by the Podiatric Medical Licensing Board in accordance with the rules for the administration of the Act. *Tsatsos v. Zollar*, 943 F.Supp. 945 (N.D.Ill. 1996).

**225 ILCS 446/75** (225 ILCS 445/14 (West 1992)). **Private Detective, Private Alarm, Private Security, and Locksmith Act of 1993.** Provision that required an applicant for a private alarm contracting license to have worked as a full-time supervisor, manager, or administrator at a licensed private alarm contracting agency for 3 years out of the 5 years immediately preceding the application for a license was invalid because it conferred upon the regulated industry monopolistic control over entry into the private alarm contracting trade. P.A. 88-363 recodified the Act and added a provision that 3 years of work experience at an unlicensed entity which satisfies standards of alarm industry competence shall meet the requirements for eligibility for licensing as an alternative to working for 3 years at a licensed private alarm contracting agency. P.A. 89-85 added language giving partial credit toward the 3-year employment requirement to applicants who have met certain educational requirements. *Church v. State of Illinois*, 164 Ill.2d 153 (1995).

**225 ILCS 455/18. Real Estate License Act of 1983.** Provision of predecessor Act (Ill. Rev. Stat. 1981, ch. 111, par. 5732), continued in 1983 Act, that prohibited real estate brokers from offering inducements to potential customers was unconstitutional as violating free speech guarantees and because it did not advance the State's interest in consumer protection. P.A. 84-1117 deleted the offending provision. *Coldwell Banker Residential Real Estate Services v. Clayton*, 105 Ill.2d 389 (1985).

## GAMING

**230 ILCS 30/2, 30/4, 30/5, 30/5.1, 30/6, 30/7, 30/8, 30/10, 30/11, and 30/12** (P.A. 88-669). **Charitable Games Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-986, effective June 30, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-1017, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under "Executive Branch", "Finance", "Revenue", "Liquor", "Public Health", "Vehicles", "Criminal Offenses", and "Corrections".)

## LIQUOR

**235 ILCS 5/7-9** (Ill. Rev. Stat. 1991, ch. 43, par. 153). **Liquor Control Act of 1934.** In Section concerning appeals from orders of local liquor commissions, provisions denying *de novo* review by the State Commission in the case of appeals from municipalities with a population between 100,000 and 500,000 but requiring *de novo* review in the case of other municipalities violated the Illinois Constitution's prohibition against special legislation. There was no rational basis for the difference in treatment accorded municipalities with a population between 100,000 and 500,000 (of which there were only 2 in the State) and municipalities with a population less than 100,000. P.A. 77-674 deleted the provision denying *de novo* review in the case of appeals from municipalities with a population between 100,000 and 500,000 and provided instead that in the case of appeals from home rule municipalities with a population under 500,000 (rather than municipalities with a population between 100,000 and 500,000) the appeal was limited to a review of the official record of the local proceedings. *Shepard v. Illinois Liquor Control Comm'n*, 43 Ill.2d 187 (1969).

**235 ILCS 5/8-9** (P.A. 88-669). **Liquor Control Act of 1934.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under "Executive Branch", "Finance", "Revenue", "Gaming", "Public Health", "Vehicles", "Criminal Offenses", and "Corrections".)

## WAREHOUSES

**240 ILCS 40/. Grain Code.** Provisions of former Grain Dealers Act (Ill. Rev. Stat. 1987, ch. 111, par. 306) and former Illinois Grain Insurance Act (Ill. Rev. Stat. 1987, ch. 114, par. 704) requiring federally licensed grain warehousemen located in Illinois to either join the Illinois Grain Insurance Fund or provide financial protection for claimants equal to the protection afforded under the Illinois Grain Insurance Act violated the supremacy clause of the U.S. Constitution because they were in conflict with and preempted by the United States Warehouse Act. Subsequently, P.A. 87-262 removed the unconstitutional language from the Grain Dealers Act. Thereafter, both that Act and the Illinois Grain Insurance Act were repealed by P.A. 89-287 and replaced by the Grain Code (under which participation by federal warehousemen in the Illinois Grain Insurance Fund is made permissive under cooperative agreements that are permitted by federal law). *Demeter, Inc. v. Werries*, 676 F.Supp. 882 (C.D.Ill. 1988).

## PUBLIC AID

**305 ILCS 5/10-2** (West 1992). **Illinois Public Aid Code.** Provision (i) requiring parents to contribute to the support of a child age 18 through 20 who receives aid and resides with the parents and (ii) exempting parents of a child in the same age group who receives aid but does not live with his or her parents was unconstitutional as a denial of equal protection. The court, while voiding the parental support provision, upheld the remainder of the Section regarding liability for support between spouses and the responsibility for support by other relatives. P.A. 92-876 replaced the provision with the requirement that parents are severally liable for an unemancipated child under age 18, or an unemancipated child age 18 or over who attends high school, until the child is 19 or graduates from high school, whichever is earlier. *Jacobson v. Department of Public Aid*, 171 Ill.2d 314 (1996).

**305 ILCS 5/11-30. Illinois Public Aid Code.** Provision that a public aid applicant who received public aid within the previous 12 months in another state in a lower amount than the aid Illinois would provide was ineligible for public aid in Illinois for the first 12 months of residency beyond the amount received in the former state violated the equal protection guarantee of the Fourteenth Amendment of the U.S. Constitution for an aid applicant who had received a lower amount in her former state of Alabama. P.A. 92-111 repealed the provision. *Hicks v. Peters*, 10 F.Supp.2d 1003 (N.D.Ill. 1998).

## PUBLIC HEALTH

**410 ILCS 230/4-100** (Ill.Rev.Stat. 1981, ch. 111½, par. 4604-100). **Problem Pregnancy Health Services and Care Act.** Provision prohibiting the Department of Public Health from making grants to nonprofit entities that provide abortion referral or counseling services was unconstitutional: (i) it violated due process because it disqualified entities that agreed not to use the State funds for those particular services and (ii) it violated the First Amendment by imposing a content-based restriction on the information available for a woman's childbirth decision. P.A. 83-51 amended the statute to enable the entities to receive the grants if they did not use the funds for abortion referral or counseling services. *Planned Parenthood Association v. Kempiners*, 568 F.Supp. 1490 (N.D.Ill. 1983).

**410 ILCS 315/2c** (P.A. 88-669). **Communicable Diseases Prevention Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 92-790, effective August 6, 2002, repealed the changes made by P.A. 88-669. P.A. 93-205, 93-1046, 94-794, 94-961, 94-986, 94-1017, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under "Executive Branch", "Finance", "Revenue", "Gaming", "Liquor", "Vehicles", "Criminal Offenses", and "Corrections".)

## ENVIRONMENTAL SAFETY

**415 ILCS 5/4** (Ill. Rev. Stat. 1975, ch. 111½, par. 1004). **Environmental Protection Act.** Provision that it was the duty of the EPA to investigate violations of the Act and to prepare and present enforcement actions before the Pollution Control Board violated Article V, Section 15 of the Illinois Constitution, which provides that the Attorney General is “the legal officer of the State” and thus is the only officer empowered to represent the people in any proceeding in which the State is the real party in interest. P.A. 81-219 deleted the offending provision and limited the EPA’s duty to investigating violations of the Act and regulations and issuing administrative citations. *People ex rel. Scott v. Briceland*, 65 Ill.2d 485 (1976).

**415 ILCS 5/25** (Ill. Rev. Stat. 1977, ch. 111½, par. 1025). **Environmental Protection Act.** Provision exempting a motor racing event from noise standards if the event was endorsed by one of several designated private organizations was an unconstitutional delegation of legislative power to a private group. P.A. 82-654 deleted the offending provision. *People v. Pollution Control Board*, 83 Ill.App.3d 802 (1<sup>st</sup> Dist. 1980).

**415 ILCS 5/33 and 5/42** (Ill. Rev. Stat. 1971, ch. 111½, pars. 1033 and 1042). **Environmental Protection Act.** Provisions allowing the Pollution Control Board to impose money penalties not to exceed \$10,000 for a violation of the Act or regulations or an order of the Board were an unconstitutional delegation of legislative power because the provisions failed to provide the Board with any standards to guide it in imposing penalties. The provisions also were an unconstitutional delegation of judicial power because the Board could impose discretionary fines, a distinctly judicial act. P.A. 78-862 amended the statute to allow the Board to impose “civil penalties” instead of “money penalties”. *Southern Illinois Asphalt Co. v. Environmental Protection Agency*, 15 Ill.App.3d 66 (5<sup>th</sup> Dist. 1973).

## PUBLIC SAFETY

**430 ILCS 65/2** (West 1994). **Firearm Owners Identification Card Act.** (See *People v. Davis*, 177 Ill.2d 495 (1997), reported in this Part 3 of this Case Report under “Corrections”, concerning the disproportionality of penalties for possession of a firearm in violation of the Firearm Owners Identification Card Act and unlawful use of a firearm by a felon.)

## ROADS AND BRIDGES

**605 ILCS 5/9-112** (Ill. Rev. Stat. 1965, ch. 121, par. 9-112). **Illinois Highway Code.** Provision authorizing local authorities to permit advertising on public highways with no guidelines was an unlawful delegation of legislative authority. P.A. 76-793 deleted the provision. *City of Chicago v. Pennsylvania R. Co.*, 41 Ill.2d 245 (1968).

## VEHICLES

**625 ILCS 5/.** **Illinois Vehicle Code.** Provision in former Uniform Motor Vehicle Anti-theft Act (repealed) providing for an increased registration fee for certain cars purchased in another state was an unconstitutional burden on interstate commerce. Laws 1957, p. 2706 repealed the former Act. *Berger v. Barrett*, 414 Ill. 43 (1953).

**625 ILCS 5/4-107** (Ill. Rev. Stat. 1979, ch. 95½, par. 4-107). **Illinois Vehicle Code.** Provision that a vehicle was considered contraband if the vehicle ID number could not be identified was an unconstitutional denial of due process when applied to a buyer who bought a vehicle from a dealer and the title to the vehicle had an ID number that matched the ID number on the dashboard, but the number was false and it was impossible to determine the confidential vehicle ID number. P.A. 83-1473 added an exception for a person who acquires a vehicle without knowledge that the ID number has been removed, altered, or destroyed. *People v. One 1979 Pontiac Grand Prix Automobile*, 89 Ill.2d 506 (1982).

**625 ILCS 5/5-401.2.** **Illinois Vehicle Code.** Provision (Ill. Rev. Stat. 1981, ch. 95½, par. 5-401) authorizing warrantless administrative searches of records and business premises of auto parts dealers was unconstitutional because it did not provide for the regularity and neutrality required by the 4th Amendment to the U.S. Constitution. P.A. 83-1473 repealed Section 5-401 of the Code and replaced it with new Section 5-401.2, which does not contain the offending provision. *People v. Krull*, 107 Ill.2d 107 (1985).

**625 ILCS 5/5-401.2** (West 1996). **Illinois Vehicle Code.** Provision that made the knowing failure by certain licensees to maintain records of the acquisition and disposition of vehicles a Class 2 felony was an unconstitutional violation of due process because the criminalization of an innocent record-keeping error was not a reasonable means of preventing the trafficking of stolen vehicles and parts. P.A. 92-773 reduced the failure to a Class B misdemeanor and made the failure with intent to conceal the identity or origin of a vehicle or its essential parts or with intent to defraud the public in the transfer or sale of vehicles or their essential parts a Class 2 felony. *People v. Wright*, 194 Ill.2d 1 (2000).

**625 ILCS 5/6-107** (Ill. Rev. Stat. 1969, ch. 95½, par. 6-107). **Illinois Vehicle Code.** Provision requiring parent's or guardian's consent for driver's license for an unmarried emancipated minor under age 21 but not for a married emancipated minor under that age was arbitrary discrimination against unmarried emancipated minors. P.A. 77-2805 reduced the age limit to 18 but kept the distinction. Without expressing an opinion as to the validity of the amended provision, the court noted that there may be justifications for applying such a classification to minors under age 18. *People v. Sherman*, 57 Ill.2d 1 (1974).

**625 ILCS 5/6-205** (Ill. Rev. Stat. 1987, ch. 95½, par. 6-205). **Illinois Vehicle Code.** Provision requiring the Secretary of State to revoke a sex offender's driver's license denied the offender due process because there was no relationship to the public interest when a vehicle was not used in the offense. P.A. 85-1259 deleted the offending provision. *People v. Lindner*, 127 Ill.2d 174 (1989).

**625 ILCS 5/6-301.2** (Ill. Rev. Stat. 1991, ch. 95½, par. 6-301.2). **Illinois Vehicle Code.** Provision that punished distribution of a fraudulent driver's license as a Class B misdemeanor but punished the lesser included offense of possessing a fraudulent driver's license as a Class 4 felony violated the Illinois Constitution's due process and proportionality of penalties clauses. P.A. 89-283, effective January 1, 1996, retained the penalties and changed the offense from distributing fraudulent driver's licenses to distributing information about the availability of fraudulent driver's licenses. *People v. McGee*, 257 Ill.App.3d 229 (1<sup>st</sup> Dist. 1993).

**625 ILCS 5/7-205** (Ill. Rev. Stat. 1970 Supp., ch. 95½, par. 7-205). **Illinois Vehicle Code.** Provision of "Safety Responsibility Law" within the Code that permitted the suspension of a driver's license without a pre-suspension hearing violated due process. P.A. 77-1910 replaced the offending provision with a requirement that the Secretary of State cause a hearing to be held to determine whether a driver's license should be suspended. P.A. 83-1081 deleted the requirement that the Secretary of State cause a hearing to be held and instead provided that a driver be given an opportunity to request a hearing before suspension of his or her driver's license. *Pollion v. Lewis*, 332 F.Supp. 777 (N.D.Ill. 1971).

**625 ILCS 5/11-1419.01, 5/11-1419.02, and 5/11-1419.03** (P.A. 88-669). **Illinois Vehicle Code.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under "Executive Branch", "Finance", "Revenue", "Gaming", "Liquor", "Public Health", "Criminal Offenses", and "Corrections".)

## COURTS

**705 ILCS 25/1** (Ill. Rev. Stat., ch. 37, par. 25). **Appellate Court Act.**

**705 ILCS 35/2 and 35/2e** (repealed) (Ill. Rev. Stat., ch. 37, pars. 72.2 and 72.2e (repealed)). **Circuit Courts Act.**

**705 ILCS 40/2** (Ill. Rev. Stat., ch. 37, par. 72.42). **Judicial Vacancies Act.**

**705 ILCS 45/2** (Ill. Rev. Stat., ch. 37, par. 160.2). **Associate Judges Act.**

P.A. 86-786 amendatory provisions were unconstitutional because (i) the subdividing of the First Appellate District for judicial elections beyond the divisions made by the Illinois Constitution violated the Constitution and (ii) the subdividing of the Circuit of Cook County, while not unconstitutional by itself, was inseverable from the invalid appellate court provisions. P.A. 86-1478 deleted the offending changes made by P.A. 86-786 and restored the law as it existed before P.A. 86-786, stating that its purpose was to conform the law to the Supreme Court's opinion. *People ex rel. Chicago Bar Ass'n v. State Bd. of Elections*, 136 Ill.2d 513 (1990).

**705 ILCS 35/2c** (Ill. Rev. Stat. 1987, ch. 37, par. 72.2c). **Circuit Courts Act.**

Provision requiring a circuit judge to be a resident of a particular county within a (multiple-county) circuit and yet be elected at large from within that circuit violated subsection (a) of Section 7 and Section 11 of Article VI of the Illinois Constitution by creating a hybrid variety judgeship that was not contemplated by the Constitution's drafters. The Section was amended by P.A. 87-410 to remove the provision in question, as well as a similar provision relating to the election of judges in another circuit. *Thies v. State Board of Elections*, 124 Ill.2d 317 (1988).

**705 ILCS 105/27.1 and 105/27.2** (Ill. Rev. Stat. 1981, ch. 25, par. 27.1 and Ill. Rev. Stat. 1982 Supp., ch. 25, par. 27.2). **Clerks of Courts Act.** Provisions requiring circuit clerks to collect a special \$5 filing fee from petitioners for dissolution of marriage to fund shelters and services for domestic violence victims unreasonably interfered with persons' access to the courts, were an arbitrary use of the State's police power, and made an unreasonable or arbitrary classification for tax purposes by imposing a tax to fund a general welfare program only on members of a designated class. P.A. 83-1539 deleted the offending provision from Section 27.1, and P.A. 83-1375 deleted the offending provision from Section 27.2. *Crocker v. Finley*, 99 Ill.2d 444 (1984).

**705 ILCS 405/2-28** (West 1998). **Juvenile Court Act of 1987.** Portion of subsection (3) that granted an automatic appeal of a court order changing a child's permanency goal violated Section 6 of Article VI of the Illinois Constitution, which assigns to the Illinois Supreme Court the power to establish procedures for appealing non-final judgments. Public Act 95-182, effective August 14, 2007, deleted the offending provision. *In re Curtis B.*, 203 Ill.2d 53 (2002), *In re D.D.H.*, 319 Ill.App.3d 989 (5<sup>th</sup> Dist. 2001), *In re C.B.*, 322 Ill.App.3d 1011 (4<sup>th</sup> Dist. 2001), and *In re T.B.*, 325 Ill.App.3d 566 (3<sup>rd</sup> Dist. 2001).

**705 ILCS 405/5-33** (repealed) (West 1996). **Juvenile Court Act of 1987.** Act's silence as to a jury trial for a minor at least 13 years old adjudicated delinquent for first degree murder and committed to the Department of Corrections until age 21 without parole for 5 years was an unconstitutional denial of equal protection guarantees as

applied to a 13-year-old whose jury trial request was denied. P.A. 90-590 repealed the offending Section and added Section 5-810, which allows a jury trial in certain circumstances. *In re G.O.*, 304 Ill.App.3d 719 (1<sup>st</sup> Dist. 1999).

## CRIMINAL OFFENSES

**720 ILCS 5/11-20.1** (P.A. 88-680). **Criminal Code of 1961.** Provisions amended by P.A. 88-680 were unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-54 re-enacted the changes in Section 11-20.1 made by P.A. 88-680. *People v. Dainty*, 299 Ill.App.3d 235 (3<sup>rd</sup> Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2<sup>nd</sup> Dist. 1999), and *People v. Edwards*, 304 Ill.App.3d 250 (2<sup>nd</sup> Dist. 1999). (These cases are also reported in Part 2 of this Case Report under “Finance”, “Courts”, and “Corrections”).

**720 ILCS 5/12-18** (Ill. Rev. Stat. 1981, ch. 38, par. 12-18). **Criminal Code of 1961.** Provision that a person may not be charged by his or her spouse with the offense of criminal sexual abuse or aggravated criminal sexual abuse was an unconstitutional violation of equal protection and due process. P.A. 88-421 deleted the offending provision. *People v. M.D.*, 231 Ill.App.3d 176 (2<sup>nd</sup> Dist. 1992).

**720 ILCS 5/16-1** (Ill. Rev. Stat. 1989, ch. 38, par. 16-1). **Criminal Code of 1961.** Theft provision that prohibited obtaining control over property in custody of law enforcement agency that was explicitly represented as being stolen was unconstitutional on its face because it did not require a culpable mental state. P.A. 89-377 rearranged the list of elements of the offense to make it clear that the offense requires that a person “knowingly” obtain control over the property. *People v. Zaremba*, 158 Ill.2d 36 (1994).

**720 ILCS 5/17B-1, 5/17B-5, 5/17B-10, 5/17B-15, 5/17B-20, 5/17B-25, and 5/17B-30** (P.A. 88-680). **Criminal Code of 1961.** WIC Fraud Article added by P.A. 88-680 was unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-155 re-enacted the WIC Fraud Article of the Code. *People v. Dainty*, 299 Ill.App.3d 235 (3<sup>rd</sup> Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2<sup>nd</sup> Dist. 1999), and *People v. Edwards*, 304 Ill.App.3d 250 (2<sup>nd</sup> Dist. 1999). (These cases are also reported in Part 2 of this Case Report under “Finance”, “Courts”, “Criminal Offenses”, and “Corrections”).

**720 ILCS 5/18-2** (West 2000). **Criminal Code of 1961.** Subsection (b)’s 15-year sentence enhancement for armed robbery committed under subsection (a)(2) with a firearm resulted in a penalty greater than that for armed violence predicated on robbery with a dangerous weapon (720 ILCS 5/33A-2), in violation of the proportionate penalty requirement of the Illinois Constitution (ILCON Art. I, Sec.11) for offenses with identical elements. Public Act 95-688, effective October 23, 2007, redefined armed violence to

exclude as a predicate any offense that carries a mandatory sentence enhancement for use of a firearm. *People v. Hauschild*, 226 Ill.2d 63 (2007).

**720 ILCS 5/20-1.1** (Ill. Rev. Stat. 1983, ch. 38, par. 20-1.1). **Criminal Code of 1961.**

Item (1) of subsection (a) provided that a person committed aggravated arson when the person knowingly damaged a structure by means of fire or explosive and the person knew or reasonably should have known that someone was present in the structure. This provision was unconstitutional because the underlying conduct that was supposed to be enhanced by the aggravated arson statute was not necessarily criminal in nature. *People v. Johnson*, 114 Ill.2d 69 (1986).

Item (3) of subsection (a) provided that a person committed aggravated arson when the person damaged a structure by means of fire or explosive and a fireman or policeman was injured. This provision was unconstitutional because it failed to require a culpable intent. *People v. Wick*, 107 Ill.2d 62 (1985).

P.A. 84-1100 amended the statute to add “in the course of committing arson” after “A person commits aggravated arson when”, thereby adding the requirement of a criminal purpose or intent.

**720 ILCS 5/21.1-2** (Ill. Rev. Stat. 1977, ch. 38, par. 21.1-2). **Criminal Code of 1961.** Provision making peaceful picketing of “a place of employment involved in a labor dispute” exempt from general prohibition against picketing a residence was a denial of equal protection because it accorded preferential treatment to the expression of views on one particular subject: dissemination of information about labor disputes was unrestricted, but discussion of other issues was restricted. P.A. 81-1270 deleted the exception for picketing at “a place of employment involved in a labor dispute”. *Carey v. Brown*, 100 S.Ct. 2286 (1980).

**720 ILCS 5/24-1.1** (West 1994). **Criminal Code of 1961.** (See *People v. Davis*, 177 Ill.2d 495 (1997), reported in this Part 3 of this Case Report under “Corrections”, concerning the disproportionality of penalties for possession of a firearm in violation of the Firearm Owners Identification Card Act and unlawful use of a firearm by a felon.)

**720 ILCS 5/24-5** (West 2002). **Criminal Code of 1961.** Subsection (b), which provided that possession of a firearm with a defaced identification mark was prima facie evidence that the possessor committed the offense of knowingly or intentionally defacing identification marks on a firearm, created an unconstitutional mandatory rebuttable presumption of guilt. P.A. 93-906, effective August 11, 2004, eliminated the language conveying prima facie evidentiary status to possession of a defaced firearm. *People v. Quinones*, 362 Ill.App.3d 385 (1<sup>st</sup> Dist. 2005).

**720 ILCS 5/26-1** (Ill. Rev. Stat. 1973, ch. 38, par. 26-1). **Criminal Code of 1961.** Provision that a person commits disorderly conduct when he or she makes a telephone call with the intent to annoy another was impermissibly broad because it applied to any call made with the intent to annoy, including those that might not provoke a breach of the peace. P.A. 80-795 deleted the offending provision. *People v. Klick*, 66 Ill.2d 269 (1977).

**720 ILCS 5/31A-1.1 and 5/31A-1.2** (P.A. 89-688). **Criminal Code of 1961.** Provisions amended by P.A. 89-688 were unconstitutional because P.A. 89-688 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although Public Act 89-688 also amended Section 8-1.1 of the Criminal Code of 1961 (720 ILCS 5/8-1.1), identical changes were made to that Section by Public Act 89-689, effective December 31, 1996.) P.A. 94-1017, effective July 7, 2006, re-enacted the changes made to Section 31A-1.1 by P.A.s 89-688 and 94-556 and to Section 31A-1.2 by P.A.s 89-688, 90-655, 91-357, and 94-556. *People v. Foster*, 316 Ill.App.3d 855 (4<sup>th</sup> Dist. 2000), and *People v. Burdunice*, 211 Ill.2d 264 (2004). (These cases are also reported in Part 2 of this Case Report under “General Provisions”, “Criminal Procedure”, and “Corrections”.)

**720 ILCS 5/33A-1, 5/33A-2, and 5/33A-3** (P.A. 88-680). **Criminal Code of 1961.** Provisions amended by P.A. 88-680 were unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-404 provided that should P.A. 88-680 be declared unconstitutional as violative of the single-subject rule, it was the General Assembly’s intent that P.A. 91-404 re-enact the changes made by P.A. 88-680 in Article 33A of the Code. *People v. Dainty*, 299 Ill.App.3d 235 (3<sup>rd</sup> Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2<sup>nd</sup> Dist. 1999), and *People v. Edwards*, 304 Ill.App.3d 250 (2<sup>nd</sup> Dist. 1999). (These cases are also reported in Part 2 of this Case Report under “Finance”, “Courts”, and “Corrections”.)

**720 ILCS 5/33A-2 and 5/33A-3. Criminal Code of 1961.** Penalties for armed violence predicated on certain offenses were unconstitutionally disproportionate to penalties for other offenses.

Penalty for armed violence (a Class X felony) was disproportionate to penalty for aggravated kidnapping other than for ransom under 720 ILCS 5/10-2 (a Class 1 felony) because the elements for both offenses are the same. P.A. 89-707 amended Section 10-2 to provide that aggravated kidnapping, whether or not for ransom, is a Class X felony. *People v. Christy*, 139 Ill.2d 132 (1990).

Armed violence predicated on robbery committed with a category I weapon. Minimum term of imprisonment of 15 years was disproportionate to minimum term of imprisonment (6 years) for robbery committed with a handgun under 720 ILCS 5/18-2 (West 1994). *People v. Lewis*, 175 Ill.2d 412 (1996).

Armed violence predicated on aggravated vehicular hijacking and armed robbery. Minimum term of imprisonment of 15 years was disproportionate to minimum terms of imprisonment (7 years and 6 years, respectively) for aggravated vehicular hijacking under

720 ILCS 5/18-4 (West 1994) and armed robbery under 720 ILCS 5/18-2 (West 1994). *People v. Beard*, 287 Ill.App.3d 935 (1<sup>st</sup> Dist. 1997).

Public Act 95-688, effective October 23, 2007, amended 720 ILCS 5/33A-2 to remove from the definition of armed violence any offense that makes possession or use of a dangerous weapon an element of the offense or an aggravated version of the offense, thus eliminating robbery committed with a handgun under 720 ILCS 5/18-2, armed robbery under 720 ILCS 5/18-2, and some forms of aggravated vehicular hijacking. Aggravated vehicular hijacking, however, may be committed under 720 ILCS 5/18-4 with aggravating factors other than possession or use of a dangerous weapon.

**720 ILCS 5/36-1** (P.A. 88-669). **Criminal Code of 1961.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1017, effective July 7, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Revenue”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, and “Corrections”.)

**720 ILCS 125/2** (West 1996). **Hunter Interference Prohibition Act.** Prohibition against disrupting a person engaged in lawfully taking a wild animal for the purpose of preventing the taking was a content-based regulation of speech in violation of the First Amendment of the United States Constitution. P.A. 90-555 eliminated the offending subsection. *People v. Sanders*, 182 Ill.2d 524 (1998).

**720 ILCS 150/5.1** (West 1992). **Wrongs to Children Act.** Provision creating the offense of permitting the sexual abuse of a child, one element of which was the failure to take reasonable steps to prevent the abuse, violated the due process guarantees of Amendments V and XIV of the U.S. Constitution and Art. I, Sec. 2 of the Illinois Constitution by failing to warn as to what was prohibited and failing to provide clear guidelines for enforcement. P.A.s 89-462 and 91-696 amended the provision to add to the list of persons subject to the statute, to add to the list of acts by which a person committed the offense, and to change the penalty from a Class A misdemeanor to a Class 1 felony. P.A. 92-827 rewrote the entire Section, replacing the offending element with having actual knowledge of and permitting sexual abuse of the child or permitting the child to engage in prostitution. *People v. Maness*, 191 Ill.2d 478 (2000).

**720 ILCS 510/2, 510/3, 510/5, 510/7, 510/8, 510/9, 510/10, and 510/11** (Ill. Rev. Stat. 1976, ch. 38, pars. 81-22, 81-23, 81-25, 81-27, 81-28, 81-29, 81-30, and 81-31). **Illinois Abortion Law of 1975.** Substantial portions of the Act were unconstitutional because they violated the due process clause of the U. S. Constitution.

The definition of “criminal abortion” was vague; physicians were not given fair warning of what information they had to provide to pregnant women; spousal and parental consent requirements unduly infringed on a pregnant woman’s rights; the requirement for additional physician consultations bore no relationship to the needs of the patient or fetus; there was no provision for notice and an opportunity to contest the termination of parental rights; the ban on saline abortions removed a necessary alternative procedure; and required reports of abortions as fetal deaths failed to preserve a woman’s right to confidentiality. P.A. 81-1078 made numerous changes in the Act in response to the findings of unconstitutionality. *Wynn v. Carey*, 599 F.2d 193 (7<sup>th</sup> Cir. 1979).

**720 ILCS 515/3, 515/4, and 515/5** (repealed) (Ill. Rev. Stat. 1978, ch. 38, pars. 81-53, 81-54, and 81-55). **Illinois Abortion Parental Consent Act of 1977.** Provision defining “abortion” was unconstitutionally vague, and criminal penalty provision based on that definition was therefore also unconstitutional. Provision for a 48-hour waiting period and parental consent were unconstitutional violations of the federal equal protection clause because they were underinclusive in that they excluded married minors and overinclusive in that they included mature, emancipated minors. P.A. 89-18 repealed the Illinois Abortion Parental Consent Act of 1977 (as well as the Parental Notice of Abortion Act of 1983) and replaced them with the Parental Notice of Abortion Act of 1995 (750 ILCS 70/), which excludes married or emancipated minors. Enforcement of the 1995 Act is presently restrained by a federal court. *Wynn v. Carey*, 599 F.2d 193 (7<sup>th</sup> Cir. 1979).

**720 ILCS 520/4** (repealed) (Ill. Rev. Stat., ch. 38, par. 81-64). **Parental Notice of Abortion Act of 1983.** Requirement of a 24-hour waiting period after notifying parent of minor’s decision to have an abortion was unconstitutional as unduly burdening the minor’s right to an abortion in the absence of a compelling state interest. P.A. 89-18 repealed the Parental Notice of Abortion Act of 1983 (as well as the Illinois Abortion Parental Consent Act of 1977) and replaced them with the Parental Notice of Abortion Act of 1995 (750 ILCS 70/), which provides for a 48-hour waiting period. Enforcement of the 1995 Act is presently restrained by a federal court. *Zbaraz v. Hartigan*, 763 F.2d 1532 (7<sup>th</sup> Cir. 1985).

**720 ILCS 570/201** (Ill. Rev. Stat. 1973, ch. 56½, par. 1201). **Illinois Controlled Substances Act.** Provision authorizing the Director of Law Enforcement to add or delete substances from the schedules of controlled substances by issuing rules having the immediate effect of law failed to provide constitutionally required due notice to persons affected by such a rule. P.A. 79-454 added provisions requiring publication of a determination to add or delete a substance, allowing time for filing objections to such a determination, and requiring a hearing before issuance of a rule. *People v. Avery*, 67 Ill.2d 182 (1977).

**720 ILCS 600/2 and 600/3** (Ill. Rev. Stat. 1985, ch. 56½, pars. 2102 and 2103). **Drug Paraphernalia Control Act.** Provisions were unconstitutionally vague because they

required scienter on the part of a retailer in the definition Section but allowed for constructive knowledge on the part of the retailer in the penalty Section. P.A. 86-271 amended the penalty Section to delete the constructive knowledge provision. *People v. Monroe*, 118 Ill.2d 298 (1987).

## CRIMINAL PROCEDURE

**725 ILCS 5/108-8** (West 1994). **Code of Criminal Procedure of 1963.** Subsection authorizing a “no-knock” search warrant based on the mere existence of firearms on the premises resulted in an unreasonable search and seizure in violation of the United States and Illinois constitutions. P.A. 90-456 amended the Code to base issuance of “no-knock” warrants on the reasonable belief that weapons may be used or evidence may be destroyed if entry is announced. *People v. Wright*, 183 Ill.2d 16 (1998).

**725 ILCS 5/109-3** (Ill. Rev. Stat. 1967, ch. 38, par. 109-3). **Code of Criminal Procedure of 1963.** Provision that an order of suppression of evidence entered at a preliminary hearing was not an appealable order violated provision of Illinois Constitution granting the Supreme Court the power to provide by rule for appeals. P.A. 79-1360 deleted the offending provision. *People v. Taylor*, 50 Ill.2d 136 (1971).

**725 ILCS 5/110-7** (Ill. Rev. Stat. 1971, ch. 38, par. 110-7). **Code of Criminal Procedure of 1963.** Provision that required the cost of appointed legal counsel to be reimbursed from a defendant’s bail deposit violated the due process and equal protection clauses of the U.S. and Illinois constitutions because other defendants who did not post bail were not required to reimburse the costs of their appointed counsel. P.A. 83-336 removed the provision. *People v. Cook*, 81 Ill.2d 176 (1980).

**725 ILCS 5/115-10** (P.A. 89-428). **Code of Criminal Procedure of 1963.** P.A. 89-428 included a provision amending the Code of Criminal Procedure of 1963 permitting, in a prosecution for a physical or sexual act perpetrated on a child under age 13, the admission of certain out-of-court statements by the child victim. The entire Public Act was unconstitutional because it violated the single-subject requirement of the Illinois Constitution. P.A. 90-786 amended Section 115-10 to allow such statements provided they are made before the victim attains age 13 or within 3 months after commission of the offense, whichever occurs later. *Johnson v. Edgar*, 176 Ill.2d 499 (1997).

**725 ILCS 150/9** (Ill. Rev. Stat. 1991, ch. 56½, par. 1679). **Drug Asset Forfeiture Procedure Act.** Provision depriving a claimant in a forfeiture proceeding of a jury trial was unconstitutional. P.A. 89-404 deleted the language that required forfeiture hearings to be heard by the court without a jury. *People ex rel. O'Malley v. 6323 North LaCrosse Ave.*, 158 Ill.2d 453 (1994).

## CORRECTIONS

**730 ILCS 5/. Unified Code of Corrections.** Former provision of Code (Ill. Rev. Stat. 1973, ch. 38, par. 1005-2-1) requiring a criminal defendant to bear the burden of proof that he or she was unfit to stand trial was a denial of due process in violation of the Illinois Constitution. P.A. 81-1217 repealed the offending provision. *People v. McCullum*, 66 Ill.2d 306 (1977).

**730 ILCS 5/3-6-3** (P.A. 89-404). **Unified Code of Corrections.** P.A. 89-404, including amendments to the Code's "truth-in-sentencing" provisions, violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.'s 89-462, 90-592, and 90-593 re-enacted the Code's "truth-in-sentencing" provisions. *People v. Reedy*, 186 Ill.2d 1 (1999).

**730 ILCS 5/3-7-6, 5/3-12-2, and 5/3-12-5** (P.A. 88-669). **Unified Code of Corrections.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1017, effective July 7, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under "Executive Branch", "Finance", "Revenue", "Gaming", "Liquor", "Public Health", "Vehicles", and "Criminal Offenses".)

**730 ILCS 5/5-4-1 and 5/5-8-1** (Ill. Rev. Stat. 1979, ch. 38, pars. 1005-4-1 and 1005-8-1). **Unified Code of Corrections.** Provisions requiring that in felony cases a trial or sentencing judge "shall specify on the record" or "shall set forth" the reasons for imposing or that led to imposition of the sentence must be construed as permissive or directory and subject to waiver by a defendant who fails to request a statement of reasons for a particular sentence or to object at the sentencing hearing to the omission of such a statement. Were those provisions construed to be mandatory, they would dictate the actual content of a judge's pronouncement of sentence in violation of Article VI, Section 1 and Article II, Section 1 of the Illinois Constitution. *People v. Davis*, 93 Ill.2d 155 (1982).

**730 ILCS 5/5-4-3** (West 1994). **Unified Code of Corrections.** Requirement that an incarcerated sex offender, ordered by the court to provide a blood specimen, must be punished with contempt when the prisoner is deliberately uncooperative violated the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution. P.A. 90-793 punishes the deliberate actions as a Class A misdemeanor. *Murneigh v. Gainer*, 177 Ill.2d 287 (1997).

**730 ILCS 5/5-5-3** (West Supp. 1995). **Unified Code of Corrections.** Designation of possession of a firearm in violation of the Firearm Owners Identification Card Act as a nonprobationable Class 3 felony, as compared to the designation of unlawful use of a firearm by a felon as a probationable Class 3 felony, violated the prohibition against disproportionate penalties in Section 11 of Article I of the Illinois Constitution. Public Act 94-72, effective January 1, 2006, amended Section 5-5-3 of the Unified Code of Corrections to designate unlawful use of a firearm by a felon as a nonprobationable Class 3 felony. *People v. Davis*, 177 Ill.2d 495 (1997).

**730 ILCS 5/5-5-4.1** (Ill. Rev. Stat. 1979, ch. 38, par. 1005-5-4.1). **Unified Code of Corrections.** The statute purported to alter the standard of review of a sentence imposed by a trial judge and authorized a court of review to enter any sentence that the trial judge could have entered. This conflicted with Supreme Court Rule 615(b)(4). The statute was invalid because it constituted an undue infringement by the legislature on the powers of the judiciary. Although the legislature may enact laws governing judicial practice that do not unduly infringe on inherent judicial powers, if a Supreme Court Rule conflicts with a statute, the Rule prevails. Subsequently, P.A. 83-344 removed the offending language. *People v. Cox*, 82 Ill.2d 268 (1980).

**730 ILCS 150/2** (West 2000). **Sex Offender Registration Act.** Including a conviction of aggravated kidnapping among the sex offenses that trigger registration as a sex offender unconstitutionally violated the substantive due process rights of an offender when applied to a defendant without a history of sex offenses whose crime was without sexual motivation or purpose. P.A. 94-945, effective June 27, 2006, added the requirement that the offense was sexually motivated. *People v. Johnson*, 363 Ill.App.3d 356 (1<sup>st</sup> Dist. 2006).

## CIVIL PROCEDURE

**735 ILCS 5/. Code of Civil Procedure.** Provision of “An Act to revise the law in relation to medical practice” (P.A. 79-960; Ill. Rev. Stat. 1975, ch. 70, par. 101) that limited recovery in cases involving injuries arising from medical, hospital, or other healing art malpractice to \$500,000 permitted or denied recovery on an arbitrary basis, thus granting a special privilege in violation of Article IV, Section 13 of the Illinois Constitution. P.A. 81-288 repealed the offending provision.

Provision of predecessor Act (Ill. Rev. Stat. 1975, ch. 110, pars. 58.2 through 58.10) establishing medical review panels to hear malpractice claims unconstitutionally delegated judicial functions to non-judicial personnel. Provision establishing malpractice claim review procedure as a condition to a jury trial violated the constitutional right to a trial by jury. P.A. 81-288 repealed the offending provisions. *Wright v. Central DuPage Hospital Ass’n*, 63 Ill.2d 313 (1976). (This case is also reported in this Part 3 of this Case Report under “Insurance”.)

**735 ILCS 5/. Code of Civil Procedure.** Former provisions of Code (Ill. Rev. Stat. 1985, ch. 110, pars. 2-1012 through 2-1020) requiring, as a prerequisite to trial in a healing art malpractice case, that a panel composed of a circuit judge, a practicing attorney, and a health-care professional convene and make a determination regarding liability and, if liability is found, damages violated the Illinois Constitution's grant of judicial power solely to the courts because the statute was an attempt by the legislature to create new courts. The offending provisions were repealed by P.A. 86-1028. *Bernier v. Burris*, 113 Ill.2d 219 (1986).

**735 ILCS 5/2-622 and 5/8-2501.** (P.A. 89-7). **Code of Civil Procedure.** Provisions concerning physician affidavits and expert witnesses in healing arts malpractice actions were unconstitutional due to their inseparability, despite inclusion of a severability clause, from P.A. 89-7, which is unconstitutional in its entirety. P.A. 90-579, effective May 1, 1998, in amending 735 ILCS 5/2-622, included language added by P.A. 89-7 without specifying an intentional re-enactment, which was deemed a valid resurrection of P.A. 89-7 in *Cargill v. Czelatdtko*, 353 Ill.App.3d 654 (4<sup>th</sup> Dist. 2004). P.A. 94-677, effective August 25, 2005, specifically re-enacted and changed 735 ILCS 5/2-622 and 5/8-2501. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

**735 ILCS 5/12-701** (Ill. Rev. Stat. 1991, ch. 110, par. 12-701). **Code of Civil Procedure.** The statute required the court clerk to issue a summons to a person commanding the person to appear in court as a nonwage garnishee after a judgment creditor filed an affidavit. The statute violated due process because it did not require a judgment debtor to be given notice and an opportunity to be heard. P.A. 87-1252 added the requirement that a garnishment notice be provided to the judgment debtor and gave a judgment debtor the right to request a hearing. *E.J. McKernan Co. v. Gregory*, 268 Ill.App.3d 383 (2<sup>nd</sup> Dist. 1994); *Jacobson v. Johnson*, 798 F.Supp. 500 (C.D.Ill. 1991).

**735 ILCS 5/13-208. Code of Civil Procedure.** Pre-Code limitations provision (Ill. Rev. Stat. 1975, ch. 83, par. 19) concerning the effect an absence from the State had on personal actions was an unconstitutional violation of equal protection guarantees because the statute applied only to Illinois residents. The unconstitutional provision was not continued in the Code of Civil Procedure in 1982. *Haughton v. Haughton*, 76 Ill.2d 439 (1979).

## CIVIL LIABILITIES

**740 ILCS 10/. Illinois Antitrust Act.** The 1893 antitrust Act was unconstitutional because of a discrimination in favor of agricultural products or livestock in the hands of the producer or raiser exempting them from the prohibition against recovery of the price of articles sold by any trust or combination in restraint of trade or competition in violation of

the Act. In 1965, the 1893 Act was repealed by the Illinois Antitrust Act, which did not contain a provision such as that which had been held unconstitutional. *Connolly v. Union Server Pipe Co.*, 22 S.Ct. 431 (1902).

**740 ILCS 180/1 and 180/2** (P.A. 89-7). **Wrongful Death Act.** Provisions amended by P.A. 89-7, a comprehensive revision of the law relating to personal injury actions that was unconstitutional in its entirety, despite inclusion of a severability clause, were inseverable. P.A. 91-380 re-enacted the changes made in the Wrongful Death Act by P.A. 89-7. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997). (This case is also reported in Part 2 of this Case Report under “Civil Procedure” and “Civil Liabilities”, concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

### CIVIL IMMUNITIES

**745 ILCS 25/3 and 25/4** (Ill. Rev. Stat. 1963, ch. 122, pars. 823 and 824). **Tort Liability of Schools Act.** Provisions requiring that written notice of injury be filed with the proper school authority within 6 months after the date of the injury and requiring dismissal of an action for failure to file the notice were unconstitutional special legislation. There was no reason why a failure to file such a notice in relation to an injury on school property should bar a recovery while a failure to file such a notice in relation to an injury on property of another governmental unit would not bar a recovery. Enactment of the Local Governmental and Governmental Employees Tort Immunity Act eliminated the discrepancy between notice-of-injury provisions applicable to various units of local government. *Lorton v. Brown County School Dist.*, 35 Ill.2d 362 (1966). (See also *Cleary v. Catholic Diocese of Peoria*, 57 Ill.2d 384 (1974), reported in Part 2 of this Case Report under “Civil Immunities”.)

### FAMILIES

**750 ILCS 5/203 and 5/208** (Ill. Rev. Stat. 1973, ch. 89, pars. 3, 3.1, and 6). **Illinois Marriage and Dissolution of Marriage Act.** The statute allowed males to marry without parental consent at age 21 and females at age 18. The age requirement for males and females was also different for marriage with parental consent and marriage by court order. This was held to be a violation of Section 18 of Article 1 of the Illinois Constitution prohibiting discrimination on the basis of sex. Subsequently, the statute was amended by P.A. 78-1297 to make the ages the same for males and females. *Phelps v. Bing*, 58 Ill.2d 32 (1974).

**750 ILCS 5/401** (Ill. Rev. Stat. 1977, ch. 40, par. 401). **Illinois Marriage and Dissolution of Marriage Act.** Amendatory language in P.A. 82-197 that retroactively validated all judgments for dissolution of marriage reserving questions of child custody or support, maintenance, or disposition of property, regardless of whether appropriate circumstances existed for the reservation of those questions, violated the separation of

powers clause of the Illinois Constitution. The legislature was attempting to retroactively alter or overrule the appellate court's interpretation of the statute (that is, that appropriate circumstances must exist before a trial court may reserve those questions). The legislature may alter only for future cases the appellate court's interpretation of statutes. P.A. 83-247 deleted the offending provisions and provided that a trial court may enter a judgment for dissolution of marriage reserving certain issues upon agreement of the parties or upon the motion of either party and a finding by the court that appropriate circumstances exist. *In re Marriage of Cohn*, 93 Ill.2d 190 (1982).

**750 ILCS 5/607** (West 1998). **Illinois Marriage and Dissolution of Marriage Act.** Authorization to grant grandparent visitation when that visitation is in the best interest of the child was unconstitutional as applied to a child both of whose parents objected to grandparent visitation. P.A. 93-911, effective January 1, 2005, amended the provision to condition the visitation petition upon the parent's unreasonable denial of visitation and to establish a rebuttable presumption that a fit parent's visitation decisions are not harmful to the child's mental, physical, or emotional health. *Lulay v. Lulay*, 193 Ill.2d 455 (2000).

**750 ILCS 5/607** (West 2000). **Illinois Marriage and Dissolution of Marriage Act.** Paragraphs (1) and (3) of subsection (b), which authorized reasonable visitation to a minor child's grandparents, great-grandparents, or siblings when it is in the child's best interest and (i) the child's parents do not permanently or indefinitely co-habit or (ii) one of the child's parents is dead, violated the Fourteenth Amendment to the United States Constitution by interfering with a parent's fundamental right to determine the care, custody, and control of his or her child. P.A. 93-911, effective January 1, 2005, removed the offending paragraphs and added language to condition the visitation petition upon the parent's unreasonable denial of visitation (and the existence of other factors such as one parent being deceased or parental non-co-habitation) and to establish a rebuttable presumption that a fit parent's visitation decisions are not harmful to the child's mental, physical, or emotional health. *Wickham v. Byrne*, 199 Ill.2d 309 (2002).

**750 ILCS 45/8. Illinois Parentage Act of 1984.** Provision of predecessor Paternity Act (Ill. Rev. Stat. 1981, ch. 40, par. 1354) that, with certain exceptions, no action could be brought under the Act later than 2 years after the birth of the child violated the equal protection clause of the 14<sup>th</sup> Amendment because it did not afford illegitimate children a reasonable opportunity to bring an action and secure child support. P.A. 83-1372 repealed the Paternity Act and replaced it with the Illinois Parentage Act of 1984, which provides that an action under the Act must be brought within 2 years after the child reaches the age of majority. *Jude v. Morrissey*, 117 Ill.App.3d 782 (1<sup>st</sup> Dist. 1983).

**750 ILCS 45/11. Illinois Parentage Act of 1984.** Provisions of predecessor Act on Blood Tests to Determine Paternity and Paternity Act (Ill. Rev. Stat. 1981, ch. 106<sup>3/4</sup> ,

pars. 1, 55, and 56) that contemplated that the decision to submit to a blood test was within a defendant's discretion were an invalid exercise of the legislative power because they conflicted with a court's power under Supreme Court Rules to order discovery and to compel compliance with discovery orders. P.A. 83-1372 repealed the Paternity Act and replaced it with the Illinois Parentage Act of 1984, which provides that if a party refuses to submit to ordered blood tests, the court may resolve the question of paternity against that party or otherwise enforce its order. *People ex rel. Coleman v. Ely*, 71 Ill.App.3d 701 (1<sup>st</sup> Dist. 1979).

**750 ILCS 45/. Illinois Parentage Act of 1984.**

**750 ILCS 50/8** (Ill. Rev. Stat. 1969, ch. 4, par. 9.1-8). **Adoption Act.**

Provision of predecessor to Illinois Parentage Act of 1984 (Paternity Act; Ill. Rev. Stat. 1969, ch. 106<sup>3</sup>/<sub>4</sub>, par. 62) and provision of Adoption Act that (i) denied the putative father of an illegitimate child the custody of his child absent his attempt to legally adopt the child and (ii) allowed an adoption to be finalized without the consent of the father of an illegitimate child were unconstitutional. P.A. 78-854 deleted the offending provision of the Adoption Act, and P.A. 81-290 repealed the offending provision of the Paternity Act. *People ex rel. Slawek v. Covenant Children's Home*, 52 Ill.2d 20 (1972).

**750 ILCS 50/1** (West 1998). **Adoption Act.** Subdivision D(f)'s mandatory irrebuttable presumption of parental unfitness due to a criminal conviction resulting from the death of a child due to physical abuse, while allowing the State to present evidence as to the best interests of the child in question, unconstitutionally denied equal protection of the law to a mother in an action to terminate her parental rights because of her first degree murder of her other child. P.A. 94-939, effective January 1, 2007, made the presumption rebuttable by clear and convincing evidence. *In re S.F.*, 359 Ill.App.3d 63 (1<sup>st</sup> Dist. 2005).

**750 ILCS 50/1** (West 2002). **Adoption Act.** Subsection (D)(q)'s irrebuttable presumption of the unfitness of a parent convicted of aggravated battery, heinous battery, or attempted murder of any child:

(1) Violated State and federal constitutional equal protection guarantees (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2) because subsection (D)(i) of the same Section created only a rebuttable presumption of the unfitness of a parent who commits first or second degree murder of any person, which are no less serious offenses. *In re D.W.*, 214 Ill.2d 289 (2005).

(2) Violated State and federal constitutional equal protection and due process guarantees (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2) because it too broadly affected parents who, due to the time or circumstances of their offense or their rehabilitation, may not threaten the State's interest in the safety and welfare of children. *In re Amanda D.*, 349 Ill.App.3d 941 (2<sup>nd</sup> Dist. 2004).

P.A. 94-939, effective January 1, 2007, amended Section 1 of the Adoption Act by removing subsection (D)(q) and by changing subsection (D)(i) to include predatory sexual

assault of a child, heinous battery of a child, and aggravated battery of a child among a parent's crimes that create a rebuttable presumption of his or her parental unfitness.

**750 ILCS 65/1** (Ill. Rev. Stat. 1980, ch. 40, par. 1001). **Rights of Married Persons Act.** Provision prohibiting a husband or wife from suing the other for a tort to the person committed during the marriage denied equal protection in violation of the 14<sup>th</sup> Amendment to the U.S. Constitution because it was not rationally related to the purpose of maintaining marital harmony. P.A.'s 82-569, 82-621, 82-783, and 84-1305 amended the offending provision by adding an exception for intentional torts. P.A. 85-625 deleted the exception and provided instead that a husband or wife may sue the other for a tort committed during the marriage. *Moran v. Beyer*, 734 F.2d 1245 (7<sup>th</sup> Cir. 1984).

## ESTATES

**755 ILCS 5/2-2** (West 1994). **Probate Act of 1975.** Provision permitting mothers but not fathers to inherit by intestate succession from their illegitimate children unlawfully discriminated on basis of gender in violation of equal rights clause of Illinois Constitution. P.A. 90-803 changed Section 2-2 to permit eligible parents to inherit by intestate succession from their illegitimate children; an eligible parent is one who, during the child's lifetime, acknowledged the child, established a parental relationship with the child, and supported the child. *In re Estate of Hicks*, 174 Ill.2d 433 (1996).

## PROPERTY

**765 ILCS 705/1. Lessor's Liability Act.** Provision in predecessor Act (Ill. Rev. Stat. 1967, ch. 80, par. 15) that prohibited the enforcement of a lease provision that exempted a non-governmental landlord from liability for the landlord's negligence as a violation of public policy was held unconstitutional as special legislation because of the exclusion of governmental landlords. The Act was subsequently replaced with the Lessor's Liability Act, which contained similar provisions but without the governmental exemption. *Sweney Gasoline & Oil Co. v. Toledo P. & W. R. Co.*, 42 Ill.2d 265 (1969).

**765 ILCS 1025/14 and 1025/25** (Ill. Rev. Stat. 1961, ch. 141, pars. 114 and 125). **Uniform Disposition of Unclaimed Property Act.** Provision that required an insurance company to pay to State of Illinois unclaimed amounts payable under insurance policies to persons whose last known address was in Illinois failed to protect the company from multiple payments to other states and denied the company its property without due process. The Act was amended in 1963 to add provisions concerning proceedings in another state with respect to unclaimed property that has been paid or delivered to the State of Illinois. *Metropolitan Life Ins. Co. v. Knight*, 210 F.Supp. 78 (S.D.Ill. 1962).

## HUMAN RIGHTS

**775 ILCS 5/. Illinois Human Rights Act.** Provision of predecessor Act creating a Commission on Human Relations (Ill. Rev. Stat. 1969, ch. 127, par. 214.4-1) required the Commission to cause lists of homeowners in an “area” who did not wish to sell their homes to be mailed to realtors “known or believed” to be soliciting homeowners in that “area”. The provision was an unconstitutional delegation of arbitrary powers to an administrative agency because (i) “area” was not defined and no standards were given for the agency to follow in designating “areas” and (ii) no standards were given for establishing a basis on which a “belief” concerning a realtor’s solicitation activities may be formed. P.A. 81-1216 repealed the Act creating a Commission on Human Relations and replaced it with the Illinois Human Rights Act without continuing the offending provision in the new Act. (P.A. 80-920 had previously deleted related provisions, concerning notice from the Human Relations Commission, from what is now the Discrimination in Sale of Real Estate Act, 720 ILCS 590/.) *People v. Tibbitts*, 56 Ill.2d 56 (1973).

**775 ILCS 5/9-102** (Ill. Rev. Stat. 1980 Supp., ch. 68, par. 9-102). **Illinois Human Rights Act.** Provision creating new cause of action for a charge of an unfair employment practice that was properly filed with the Fair Employment Practices Commission prior to March 30, 1978 and that was barred by lapse of time, and not similarly favoring those whose claims were filed after March 30, 1978, violated the special legislation provision of Article IV, Section 13 of the Illinois Constitution and the due process and equal protection clauses of Article I, Section 2 of the Illinois Constitution. P.A. 84-1084 repealed this provision. *Wilson v. All-Steel, Inc.*, 87 Ill.2d 28 (1981).

## **BUSINESS ORGANIZATIONS**

**805 ILCS 5/15.65. Business Corporation Act of 1983.** Provision of predecessor Act (Ill. Rev. Stat. 1955, ch. 32, par. 157.138) allowing imposition of franchise tax on foreign corporation authorized to do business in Illinois that was engaged exclusively in interstate business within Illinois violated the commerce clause of the U.S. Constitution. The provision was amended by Laws 1959, p. 25 and Laws 1959, p. 2123 to provide that the franchise tax shall be imposed on a business for the privilege of exercising its authority to transact business in Illinois rather than for simply being authorized to transact business in this State. *Sinclair Pipeline Co. v. Carpentier*, 10 Ill.2d 295 (1957).

## **BUSINESS TRANSACTIONS**

**815 ILCS 350/. Fraudulent Sales Act.** Provision of predecessor Act (Smith’s Stat. 1931, p. 2602) authorizing municipal clerk to issue a license to hold a sale covered by the Act if the clerk was satisfied from the license application that the proposed sale was of the character the applicant desired to conduct and advertise was an unconstitutional delegation of legislative power to an administrative official. It did not define or describe the different types of sales designated as requiring a license and gave

the clerk unwarranted discretion in determining whether the facts set out in a license application brought the proposed sale within the terms of the statute. The Act was subsequently repealed. The Fraudulent Sales Act specifies the information that must be contained in an application for a license to conduct a sale covered by the Act and provides that the clerk shall issue a license “upon receipt of an application giving fully and completely the [required] information”. *People v. Yonker*, 351 Ill. 139 (1932).

**815 ILCS 710/4 and 710/12** (West 1992). **Motor Vehicle Franchise Act.** Provision allowing a court to be the initial arbiter of the propriety of establishing an additional or relocated franchise violated the separation of powers clause of the Illinois Constitution because it delegated to the courts matters that are for legislative or administrative determination. P.A. 89-145 deleted the offending provision. *Fields Jeep-Eagle v. Chrysler Corp.*, 163 Ill.2d 462 (1994).

## EMPLOYMENT

**820 ILCS 40/** (Ill. Rev. Stat. 1984 Supp., ch. 48, par. 2001 *et seq.*). **Personnel Record Review Act.** The Act was held unconstitutionally vague because it was not clear with reasonable certainty which records were exempt from inspection by an employee and which records were subject to inspection. The Section concerning records exempt from inspection was subsequently amended by P.A. 85-1393 and P.A. 85-1424 to specify certain employee-related materials. The Attorney General issued an opinion (Ill. Atty. Gen. Op. No. 92-005) that the Act is now constitutional. *Spinelli v. Immanuel Lutheran Evangelical Congregation*, 118 Ill.2d 389 (1987).

**820 ILCS 130/2 and 130/10a** (Ill. Rev. Stat. 1961, ch. 48, pars. 39s-2 and 39s-10a). **Prevailing Wage Act.** Provision prohibiting allocation of motor fuel tax funds to public bodies if a certificate of compliance with the Act is not filed by the public body requesting approval of a public works project violated the Illinois Constitution's prohibition against amending a Section of a law (in this case, certain Sections of the Motor Fuel Tax Act and the Illinois Highway Code) without inserting the full text of the Section amended. The Section of the Act containing that provision was subsequently repealed by Laws 1965, p. 3508. Another Section of the Act extending application of the Act to employees of public bodies when engaged in new construction (as opposed to maintenance work) violated the equal protection clauses of the federal and Illinois constitutions. That and other Sections of the Act were thereafter substantially rewritten to correct the problem. *City of Monmouth v. Lorenz*, 30 Ill.2d 60 (1963).

**820 ILCS 130/2** (Ill. Rev. Stat. 1951, ch. 48, par. 39s-2). **Prevailing Wage Act.** Provision defining the “prevailing rate of wages” in a locality as the wages under a collective bargaining agreement in effect in the locality and covering wages for work of a similar character was an unconstitutional delegation of legislative power to private

parties. Laws 1957, p. 2662 deleted the offending provision. *Bradley v. Casey*, 415 Ill. 564 (1953).

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