

2013 CASE REPORT

(and cumulative report of Illinois statutes held unconstitutional)



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

December 2013

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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 under the guidance of the Editorial Board, is included.

Respectfully submitted,

James W. Dodge
Executive Director

QUICK GUIDE TO RECENT COURT DECISIONS

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INTRODUCTION TO PART 1

Part 1 of this 2013 Case Report contains summaries of recent court decisions and is based on a review, in the summer and fall, of federal court, Illinois Supreme Court, and Illinois Appellate Court decisions published from the summer of 2012 to the summer of 2013.

PART 1
SUMMARIES OF RECENT COURT DECISIONS

FREEDOM OF INFORMATION ACT – PUBLIC RECORDS

A communication that concerns business and community interests and that is prepared by, prepared for, used by, received by, possessed by, or controlled by an individual city council member while a quorum of the members of the council acts in its official capacity as a public body qualifies as a public record, even if that communication is sent or received from the member's personal electronic device.

In *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, the Illinois Appellate Court was asked to decide whether the Circuit Court of Sangamon County erred when it upheld the Public Access Counselor's binding opinion that text and e-mail messages that pertained to city business and were sent or received from a city council member's personal electronic device during a city council meeting qualified as public records for the purposes of the Freedom of Information Act. Section 2 of the Freedom of Information Act ("Act") (5 ILCS 140/2(c) (West 2010)) defines public records as "all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." The city argued that communications by individual city council members on privately owned electronic devices did not qualify as public records because individual council members did not qualify as a public body under the Act. The Attorney General argued that a communication was a public record if it was sent or received on a personal electronic device during a city council meeting and pertained to the transaction of public business. While conceding that an individual city council member generally did not qualify as a public body for the purposes of the Act, the appellate court ultimately agreed with the Attorney General, holding that the term "public records" included any communications that concerned business and community interests (as opposed to private affairs) and that were prepared by, prepared for, used by, received by, possessed by, or controlled by an individual city council member while a quorum of the members of the council acted in its official capacity as a public body. In closing, the appellate court also noted that if the General Assembly intends for communications pertaining to public business to and from an individual city council member's personal electronic device to be subject to the Act in every case, it should so specify.

FREEDOM OF INFORMATION ACT – REQUESTS FOR ELECTRONIC RECORDS

If it is feasible for a public body to provide a copy of a record in an electronic file format used by a specific computer program format, then the public body may not disable features of the electronic file that it provides in response to a request.

In *Fagel v. Department of Transportation*, 2013 IL App (1st) 121841, the Illinois Appellate Court was asked to decide whether the Circuit Court of Cook County erred when it determined that the Illinois Department of Transportation failed to comply with an individual's FOIA request by providing him with a locked version of an Excel spreadsheet when he initially asked for "an electronic version [of the spreadsheet] in Excel format sent via e-mail" but subsequently requested an "unlocked copy" of that information. Section 6 of the Freedom of Information Act ("Act") (5 ILCS 140/6 (West 2010)) provides, in pertinent part, that "[w]hen a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester." The Department asserted that it complied with Section 6 of the Act by providing the requester with an Excel file containing the data he sought, and denied his subsequent request for an "unlocked copy" of the spreadsheet because it simply contained the same information as the locked version. The requester, however, claimed that the Department had a duty under the plain language of Section 6 of the Act to produce an unlocked version of the Excel spreadsheet. Ultimately, the appellate court agreed with the requester, holding that a request for information in Excel format "necessarily encompassed the production of the information in a manner that would allow . . . [the requester] to fully exercise the functions of the Excel program with regard to the document." Moreover, the court pointed out that the Department regularly maintained an unlocked version of the Excel spreadsheet in its ordinary course of business but had not provided the requester with that information despite the portion of Section 6 that requires a public record to be provided "in the format in which it is maintained" if it is not feasible to provide a copy of the record in the format requested by the requester. For those reasons, the appellate court affirmed the decision of the circuit court. In closing, however, the appellate court stated that it ". . . share[d] in the circuit court and the Department's concerns that providing the public with access to unlocked electronic copies of public records has the potential risks of manipulation or misuse of that information" and called upon the General Assembly to "address any resulting problems expeditiously."

ILLINOIS PUBLIC LABOR RELATIONS ACT – TIMELINESS OF HEARING

The Illinois Labor Relations Board is not divested of its jurisdiction to consider a petition for representation by a labor organization by failing to conclude its hearing on that petition before the expiration of the 120-day deadline set forth in the Act.

In *Secretary of State v. Illinois Labor Relations Board*, 2012 IL App (4th) 111075, the Illinois Appellate Court was asked to consider whether the Illinois Labor Relations Board's failure to conclude a hearing process on a petition for representation by a labor organization within 120 days after its filing divested the Board of its jurisdiction to consider the petition. Subsection (a-5) of Section 9 of the Illinois Public Labor Relations Act (5 ILCS 315/9 (a-5) (West 2010)) states, in pertinent part: "If a hearing is necessary to resolve any issues of representation under this Section, the Board shall conclude its hearing process and issue a certification of the entire appropriate unit not later than 120 days after the date the petition was filed. The 120-day period may be extended one or more times by the agreement of all parties to a hearing to a date certain." The plaintiff, the Secretary of State, argued that the time limitation in subsection (a-5) of Section 9 was mandatory and divested the Board of jurisdiction to consider the petition if it did not conclude its hearing process and issue a certification within the time specified by subsection (a-5). The defendant labor organization and Illinois Labor Relations Board responded that the limitation was merely directory and that the Board retained jurisdiction over the petition beyond the 120-day period. Ultimately, the appellate court sided with the defendants, holding that the time limitation was directory. It reasoned that by adding the limitation, the General Assembly intended to protect employees from having their interests unfairly compromised by the tremendous delays in the process of cases, and that those interests would be significantly hampered if a labor organization was required to file a new petition each time the 120-day deadline passed.

STATE EMPLOYEE INDEMNIFICATION ACT – LITIGATION EXPENSES

An elected State official who is alleged to have committed intentional, willful, or wanton misconduct in the scope of his or her employment is not entitled to representation under the Act by the Attorney General or to payment of litigation expenses as they are incurred.

In *McFatridge v. Madigan*, 2013 IL 113676, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred when it determined that subsection (b) of Section 2 of the State Employee Indemnification Act (5 ILCS 350/2(b) (West 2010)) required the State to pay the litigation expenses of an elected State official, even though the Attorney General had determined that the official was eligible neither to be represented

by the State nor to have those expenses paid due to his alleged intentional, willful, or wanton misconduct. The first paragraph of subsection (b) of Section 2 requires the Attorney General to decline to defend, or withdraw his or her representation of, a State employee where one of three conditions exist: (1) there is an actual or potential conflict of interest, in which case the employee is entitled to payment by the State of his or her reasonable attorney's fees, court costs, and litigation expenses as they are incurred; (2) the act or omission which gave rise to the claim was not within the scope of the employee's State employment, in which case the State does not pay the employee's attorney's fees and expenses as they are incurred; or (3) the act or omission which gave rise to the claim was intentional, willful or wanton misconduct, in which case the State does not pay the employee's attorney's fees and expenses as they are incurred. However, if the Attorney General's refusal to defend the employee is based on the second or third condition, and a court or jury later finds that the act or omission was both within the scope of employment and was not intentional, willful, or wanton misconduct, the employee shall be indemnified by the state for his or her damages and reasonable attorney's fees, court costs, and litigation expenses. The second paragraph of subsection (b) provides that, in the event that a defendant is an elected state official, he or she may retain his or her own attorney, provided that the choice of attorney is "reasonably acceptable to the Attorney General. That paragraph also provides that, "in such case the State *shall pay* the elected State official's court costs, litigation expenses, and attorneys' fees, to the extent approved by the Attorney General as reasonable, *as they are incurred.*" The plaintiffs argued, and the Illinois Appellate Court held in the case below, that the only portion of subsection (b) that applied to elected State officials was the second paragraph, which specifically referred to State officials and appeared to unconditionally grant them a right to repayment. In this case, however, the Illinois Supreme Court overruled that decision. It reasoned that both the first and second paragraphs of subsection (b) applied to elected State officials, and it interpreted the second paragraph of subsection (b) as simply entitling an elected official to choose his or her own defense counsel and to have his or her reasonable attorney's fees and expenses paid by the State *as they are incurred* (emphasis added). However, in this case, because the complaint against the official alleged intentional, willful, or wanton misconduct, the Illinois Supreme Court determined that the State official had no clear right to the relief requested and, on that basis, overruled the Illinois Appellate Court and dismissed with prejudice the plaintiff's petition for mandamus.

ILLINOIS GOVERNMENTAL ETHICS ACT – ECONOMIC INTERESTS

A candidate for a municipal election who files his or her statement of economic interests in the improper location but who files with his or her nominating papers a receipt indicating where the statement of economic interests was erroneously filed substantially complies with the requirements of the Illinois Governmental Ethics Act and the Election Code.

In *Atkinson v. Roddy*, 2013 IL App (2d) 130139, the Illinois Appellate Court was asked to decide whether the Circuit Court of DuPage County erred when it affirmed the decision of a municipal electoral board to overrule objections made against the nomination papers of candidates for municipal office who filed their statements of economic interests in the county in which they resided, rather than in the county in which the principal office of the municipality was located. Section 4A-106 of the Illinois Governmental Ethics Act ("Act") (5 ILCS 420/4A-106 (West 2010)) requires statements of economic interest of certain municipal officials to be filed "with the county clerk of the county in which the principal office of the unit of local government with which the person is associated is located." Because the candidates filed their statements of economic interest in the incorrect location, the petitioner argued that the candidates' names should be struck from the ballot. The candidates, however, argued that by filing their statements of economic interests, they had substantially complied with the Act's filing requirements. After determining that the case was moot as to the losing candidate, the appellate court ultimately sided with the remaining candidate. The court reasoned that by filing a copy of a receipt indicating where she had filed her statement of economic interests with her nominating papers, the candidate sufficiently notified the public of where to locate information concerning her financial dealings and, thus, her error did not impair the integrity of the electoral process or prevent a fair and open election. Under those circumstances, the court concluded that substantial compliance with the Act was sufficient.

ELECTION CODE – POLITICAL COMMITTEES

A provision requiring a political committee to forward a statement of organization to the State Board of Elections "immediately" upon completion of organization is directory and not mandatory.

In *Sutton v. Cook County Officers Electoral Board*, 2012 IL App (1st) 122528, the Illinois Appellate Court was asked to decide whether the circuit court erred when it affirmed the Cook County Officers Electoral Board's holding that the failure of a political organization to file a statement of organization until over 3 months after nominating a candidate for office does not invalidate the committee's nomination under Section 8-5 of the Election Code (10 ILCS 5/8-5 (West 2010)). Section 8-5 of the Election Code provides

that "[i]mmediately upon completion of organization, the chairman shall forward to the State Board of Elections the names and addresses of the chairman and secretary of the committee." The objecting voter argued that the nomination was invalid because the committee had not timely filed its statement of organization. The Board approved Page's candidacy, and the circuit court affirmed the Board's order approving the nomination. The appellate court affirmed the decision of the circuit court, holding that the requirement that the organization filing be submitted immediately is directory and not mandatory. The court reasoned that the statute does not provide for sanctions or prohibit further action in the case of noncompliance. Further, the court determined that the right the provision is designed to protect would not be injured by a directory reading. Finally, the court noted that although the information was not forwarded to the State Board of Elections until after the organization made its nomination, the statement of organization nevertheless was filed within the 180-day period for organization set forth in Section 8-5.

ELECTION CODE – POLITICAL COMMITTEES

The Code's financial disclosure requirements are not facially vague or overbroad.

In *Center for Individual Freedom v. Madigan*, 697 F.3d 464 (7th Cir. 2012), the United States Court of Appeals for the Seventh Circuit was asked to decide whether provisions of Section 9-10 of the Election Code ("Code") (10 ILCS 5/9-10) requiring financial disclosure by political committees, including ballot initiative committees, are facially vague or overbroad, and thus unconstitutional. The plaintiff wished to engage in issue advocacy in Illinois; however, its concerns about being classified as a "political committee" and being subject to the financial disclosure requirements associated with that classification had prevented it from doing so. The plaintiff argued that the financial disclosure provisions of Section 9-10 are facially vague and overbroad and that they violate the First and Fourteenth Amendments to the United States Constitution (U.S. CONST. amend. I & XIV). The appellate court disagreed and affirmed the decision of the district court. In doing so, the court applied exacting scrutiny to the disclosure requirements, and examined whether the disclosure requirements are substantially related to a sufficiently important governmental interest. In its analysis, the court pointed out that the United States Supreme Court had previously upheld disclosure requirements set forth in the Federal Election Campaign Act of 1971 (FECA). Because many of the Code's disclosure requirements are identical to the requirements set forth in FECA, the court addressed only those aspects of the Code that differ from FECA: namely, the Code's applicability to ballot initiative committees and its regulation of political organizations that exceed dollar-limit spending thresholds. The court found that disclosure laws related to ballot-initiative committees are substantially related to the State's interest in educating voters during ballot initiative campaigns, especially since, during a ballot initiative campaign, "voters act as legislators, while interest groups . . . act as lobbyists." The court characterized the burdens disclosure requirements may have on First Amendment rights as "modest." Judge Posner

concurrent in part and dissented in part, arguing that the following provisions of the Code are too vague and place undue limits on the plaintiff's freedom of speech: (1) the provision providing that a transfer of funds from one political committee to another political committee constitutes a contribution is vague because the recipient political committee might not know that the donor qualifies as a political committee; (2) the requirement that an electioneering communication be made with the "knowledge" of the candidate is vague because knowledge can be acquired in many ways and does not always require the express communication of the advertiser; (3) the provision concerning when Internet communications are "made" is vague because an ad posted on one website could be copied and posted on a different website; and (4) payments and expenditures made "in connection with" an election is vague because speech supporting or opposing a policy associated with a candidate could be interpreted by voters as being made on behalf of or in opposition to that candidate.

ELECTION CODE – SPECIAL ELECTIONS

Independent and new party candidates were granted a preliminary injunction with respect to their claims that an abbreviated signature-gathering period for the April 9, 2013 special election violated their First Amendment rights to freedom of association and speech, as well as their rights under the Equal Protection Clause.

In *Jones v. McGuffage*, 921 F. Supp. 2d 888 (N.D.Ill. 2013), the United States District Court for the Northern District of Illinois was asked by independent and new party candidates for the congressional seat vacated by Jesse Jackson Jr. to determine whether Public Act 97-1124, which added subsection (b) to Section 25-7 of the Election Code (10 ILCS 5/25-7(b) (West 2012)) to provide for a special primary election to be held on February 26, 2013 and a special general election to be held on April 9, 2013, facially and as applied violated the plaintiffs' rights to freedom of association and speech under the First Amendment and their equal protection rights under the Fourteenth Amendment. Public Act 97-1124 applied only to vacancies occurring less than 60 days following the 2012 general election. Petitions of independent and new party candidates were due to the State Board of Elections by February 4, 2013. As a result, the plaintiffs were required to obtain the same number of signatures they would have been required to obtain prior to the enactment of Public Act 97-1124, but the time period for collecting those signatures was reduced by one-third. The plaintiffs argued that because Public Act 97-1124 violated the plaintiffs' constitutional rights, the court should issue a preliminary injunction placing the candidates' names on the ballot for the special election or, alternatively, reducing the number of signatures required for ballot access. The State argued that special elections are unique, and that the State has an interest in timely filling a vacancy. Although the court agreed that the State has an interest in the timing of the special election, it nevertheless held that the plaintiffs had introduced enough evidence to show that the 5% signature requirement could

not reasonably be met by the plaintiffs during this particular signature-gathering period. In addressing the plaintiffs' likelihood of success on the merits, the district court weighed the constitutional rights of political association and voting against the State's interest in fairly and quickly filling a vacancy. The district court noted that the United States Supreme Court has applied strict scrutiny to ballot access restrictions that constitute a "severe burden," requiring those restrictions to be narrowly drawn to advance a state interest of compelling importance. Although the district court did not find that the ballot access restrictions from Public Act 97-1124 were "severe," the court noted that the 5% signature requirement was coupled with a reduced time period for obtaining signatures, and that the signature-gathering period occurred during the winter months when the weather is often inclement and there are few outdoor public events. Because of this, the court reasoned that the "flexible approach" to evaluating ballot access restrictions required the State to offer an increased justification for the new burdens associated with the abbreviated signature-gathering period. Ultimately, the court used its equitable powers to adjust the signature requirement to "reflect the balance of interests on both sides." It reduced the number of required signatures to a number based on the number of signatures required in a redistricting year, adjusted by the reduced signature-gathering period.

CRIMINAL IDENTIFICATION ACT – SEALING OF CRIMINAL RECORDS

The Act does not authorize the sealing of a police report documenting a person's sex offender registration following a juvenile adjudication.

In *Duncan v. People ex rel. Brady*, 2013 IL App (3d) 120044, the Illinois Appellate Court was asked to consider whether the circuit court erred when it sealed, under Section 5.2 of the Criminal Identification Act ("Act") (20 ILCS 2630/5.2(c)(1) (West 2010)) police records generated by the petitioner's compliance with his obligation to register as a sex offender after a juvenile adjudication. Subdivision (c)(1) of Section 5.2 of the Criminal Identification Act authorizes the sealing of criminal records of adults and of minors prosecuted as adults. Subdivisions (c)(2)(A) through (F) of Section 5.2 contains a list of records eligible to be sealed. This list includes arrests and charges not initiated by arrest that have resulted in various dispositions, including dismissal, acquittal, or conviction, and excludes certain records from eligibility for sealing, such as records of sex offenses. The State argued that the records of the petitioner's compliance with registration requirements did not reflect arrests or charges not initiated by arrest against the petitioner. The petitioner argued that the State's reading of the statute was overly narrow, and pointed out that even though his juvenile adjudication was not readily apparent to prospective employers, the registration records related to the adjudication were, and these caused him difficulties in obtaining employment. The appellate court ruled in favor of the State, holding that the legislature clearly did not intend for records of sexual offenses to be sealed. The court

sympathized with the frustration of the petitioner, but reasoned that neither the letter nor the spirit of the Act authorized the sealing of records that are indicia of the underlying sex offense that are not arrests or charges not initiated by arrest.

ILLINOIS INCOME TAX ACT – NET LOSSES

The separate company accounting method, not the combined apportionment method, applies to preapportionment elements of a taxpayer's base income.

In *AT&T Teleholdings v. Department of Revenue*, 2012 IL App (1st) 110493, the plaintiff appealed a circuit court judgment affirming a decision of the Department of Revenue ("Department") that reduced the amount of a refund based on the carry back of a net capital loss suffered by the plaintiff's parent corporation. The parties disagreed over the apportionment method that applies to net capital losses. The plaintiff argued that net capital losses should be apportioned using the combined apportionment method, in which shares of a net capital loss are allocated to each member of a unitary business group based on that member's sales or gross receipts. In an audit of the plaintiff's income tax returns, however, the Department used the separate company accounting method, which allocates a portion of the net capital loss only to those members of the unitary business group that actually reported a loss. The plaintiff argued that the Department's use of the separate accounting method conflicts with subsection (e) of Section 304 of the Illinois Income Tax Act (35 ILCS 5/304 (West 2002)), which requires unitary business groups to apportion their business income using the combined apportionment method, and subdivision (b)(2) of Section 1401 of the Illinois Income Tax Act (35 ILCS 5/1401(b)(2) (West 2002)), which states that taxpayers that are members of the same unitary business group shall be treated as one taxpayer. The Illinois Appellate Court disagreed with the plaintiff and upheld the decision of the circuit court, reasoning that net capital losses are a preapportionment element of each member's base income. The court recognized that the Illinois Income Tax Act is silent on the manner in which members of a unitary business group are to allocate preapportionment elements of their income; however, the court noted that the Department's use of the separate accounting method is consistent with its own rules and with applicable Treasury regulations. The court also rejected the plaintiff's argument that the Department's use of the separate accounting method violates the due process and commerce clauses contained in Article I and the Fourteenth Amendment, respectively, of the United States Constitution (U.S. CONST. art. I, § 8; U.S. CONST. amend. XIV). Although there are limits on the State's authority to tax income that cannot be attributed to the taxpayer's activities in the State, the plaintiff failed to establish that the net capital gains taxed by Illinois were not generated in this State.

PROPERTY TAX CODE – OPEN SPACE

Land that conserves a landscaped area may be granted open space valuation, even if the land contains an improvement, if there is a substantial nexus between the improvement and the landscaped area.

In *Lake County Board of Review v. Illinois Property Tax Appeal Board*, 2013 IL App (2d) 120429, the Illinois Appellate Court was asked to determine whether the Property Tax Appeal Board erred in its decision in granting open space status to several parcels of land owned by a private golf club under Section 10-155 of the Property Tax Code (35 ILCS 200/10-155 (West 2006)). The Property Tax Appeal Board ("PTAB") had previously denied open space status to some of those parcels, but the Illinois Appellate Court vacated that decision, set forth its interpretation of Section 10-155, and remanded so that the PTAB could make additional findings in accordance with that decision. *Onwentsia Club v. Illinois Property Tax Appeal Board*, 2011 IL App (2d) 100388. On remand, the PTAB granted open space status to many of the parcels in question, and the Lake County Board of Review appealed. On appeal, the Illinois Appellate Court found that the PTAB's application of Section 10-155 granting open space status was too broad, holding that there must be a substantial nexus between the improvement and the landscaped area. Although the court had previously held that land that conserves a landscaped area, such as a golf course, may be granted open space valuation even if it contains an improvement, the court noted that in this case, it did not mean to suggest that any relationship between an improvement and a golf course would suffice to qualify the land for open space valuation. The court reasoned that such a reading would enable taxpayers to create tax shelters in which any parcel of property connected with a golf course could qualify for open space valuation; it would also run afoul of the rule that tax exemptions are to be construed narrowly and in favor of taxation. The court determined that improvements with mixed uses must be assessed in light of the particular facts and circumstances surrounding that particular improvement.

TAX DELINQUENCY AMNESTY ACT – AUDIT

A taxpayer is subject to a double interest penalty for failure to pay delinquent income taxes during the amnesty period set forth in the Act, even if the past due amounts were the result of a federal audit conducted after the amnesty period had ended.

In *Metropolitan Life Insurance Company v. Hamer*, 2013 IL 114234, the Illinois Supreme Court considered the question of whether a double interest penalty should be assessed against a taxpayer under Section 3-2 of the Uniform Penalty and Interest Act (35 ILCS 735/3-2 (West 2008)), for failure to pay delinquent income taxes during the amnesty period set forth in the Tax Delinquency Amnesty Act ("Amnesty Act") (35 ILCS 745/10

(West 2008)), if the past due amounts were discovered during a federal audit conducted after the amnesty period had ended. The Amnesty Act establishes an amnesty period that ran from October 1 through November 17, 2003. If, during the amnesty period, the taxpayer paid “all taxes due” for the taxable period between June 30, 1983 and July 1, 2002, the Illinois Department of Revenue (“Department”) would abate and not seek to collect any interest or penalties for those taxes and would not seek civil or criminal prosecution of the taxpayer. However, if the taxpayer failed to satisfy a tax liability that was eligible for amnesty by the end of the amnesty period, the taxpayer would be subject to a double interest penalty. The plaintiff timely filed its income tax returns for taxable years 1998 and 1999. In 2000, the IRS began an audit of the plaintiff’s income tax returns, which was not completed until 2004. The audit resulted in an increase in the plaintiff’s federal and State income tax liability. The Department then assessed a double interest penalty against the plaintiff for the additional liability. The plaintiff filed a complaint for an injunction and for a declaratory judgment, arguing that it should not be subject to the double interest penalty because the Amnesty Act does not require the taxpayer to pay an unknown tax liability. The plaintiff also argued that the double interest penalty violated its right to substantive due process. The Department argued that Section 601(a) of the Illinois Income Tax Act (35 ILCS 5/601(a) (West 2004)) requires the taxpayer to pay any tax due “on or before the date for filing a return for tax period, without assessment, notice, or demand.” The circuit court ruled in favor of the plaintiff, and the Illinois Appellate Court affirmed with one justice dissenting. The Illinois Supreme Court, however, agreed with the Department, holding that the ordinary meaning of the phrase “all taxes due” in the Amnesty Act refers to “all taxes that are due based upon properly reportable income at the time the taxpayer’s tax return is required to be filed.” The Illinois Supreme Court also found that the double interest provision does not violate substantive due process because the penalty bears a reasonable relationship to the State’s legitimate interest in raising revenue. Furthermore, the court noted that the Department’s rules allowed taxpayers to avoid the double interest penalty by making a good faith estimate of their tax liability.

ILLINOIS PENSION CODE – AUTOMATIC ANNUAL INCREASES

A participant in a Downstate Police Pension Fund who qualifies for the 3% non-compounded automatic annual increase under subsection (d) of Section 3-114.1 is also eligible for the 3% non-compounded automatic annual increase under subsection (c) of Section 3-111.1.

In *Gutraj v. Board of Trustees of the Police Pension Fund of the Village of Grayslake*, 2013 IL App (2d) 121163, the Illinois Appellate Court was asked to decide whether the Circuit Court of Lake County erred when it determined that a retired downstate police officer who was receiving a disability pension was eligible for a non-compounded

3% automatic annual increase under subsection (c) of Section 3-111.1 of the Illinois Pension Code (40 ILCS 5/3-111.1(c) (West 2012)), as well as a non-compounded 3% automatic increase under subsection (d) of Section 3-114.1 of the Code (40 ILCS 5/3-114.1(d) (West 2012)). Subsection (c) of Section 3-111.1 grants a 3% non-compounded automatic annual increase to any police officer who retires on disability or is retired for disability, beginning in the January after he or she attains age 60 and in each year thereafter. Subsection (d) of Section 3-114.1 grants an annual 3% non-compounded automatic annual increase to any disabled police officer who was receiving a pension on February 1, 2001, who files with the Fund, within 30 days after February 1, 2001 (and annually thereafter) a written application containing certain information, who has 7 years of creditable service, and who has been receiving that pension for a period which, when added to the officer's total service credit, equals at least 20 years. The plaintiff argued that he was entitled to both automatic annual increases because he satisfied the conditions prerequisite to their receipt. The Board, however, argued that the automatic annual increases were mutually exclusive. Ultimately, the appellate court agreed with the plaintiff, holding that the plain language of the statute contained nothing that made the automatic annual increases exclusive. Furthermore, the court pointed out that portions of the affected provisions demonstrated the General Assembly's knowledge of how to make the provisions exclusive if it had desired to do so.

ILLINOIS PENSION CODE – REQUIRED CONTRIBUTION TO FUND

The Board of Education of the City of Chicago is required to calculate its annual required contributions to the Teachers' Pension and Retirement Fund of Chicago based on actual contributions made by the State, rather than on certified projections of anticipated State contributions.

In *Board of Trustees of the Public School Teachers' Pension and Retirement Fund of Chicago v. Board of Education of the City of Chicago*, 2012 IL App (1st) 112756, the Illinois Appellate Court was asked to decide whether the Circuit Court of Cook County erred when it determined that the Board of Education's Fiscal Year 2010 required contribution to the Chicago Teachers' Pension Fund under Section 17-129 of the Illinois Pension Code (40 ILCS 5/17-129 (West 2008)) was an amount certified by the Fund based on estimated State contributions, rather than an amount calculated based on actual State contributions to the Fund. Subsection (c) of Section 17-129 of the Code requires the Fund "[a]nnually, on or before February 28 . . . [to] certify to the Board of Education the amount of the required Board of Education contribution for the coming fiscal year." The Board of Education asserted that its required contribution to the Fund for Fiscal Year 2010 was simply the amount certified, by the Fund, in accordance with Section 17-129, in a letter to the Board dated February 19, 2009. The Fund disagreed, arguing that the Board was

required to make its employer contribution to the Fund for Fiscal Year 2010 based on actual contributions received from the State of Illinois, which could not be ascertained until well after the February 28 deadline. Ultimately, a majority of the appellate court agreed with the Fund, holding that the Board's required contribution under Section 17-129 must be calculated based on actual, rather than estimated, State contributions. The majority reasoned that the Fund's certification on February 19, 2009 did not make the Board's required contribution immutable. If the case were otherwise decided, the majority reasoned, the Fund would have been required to certify the Board's required contribution, which was offset by the State's contribution, without knowing the actual amount of that offset. This, the majority held, could not have been the intent of the General Assembly. A dissenting justice, however, asserted that the plain language of Section 17-129 required the Fund to annually certify the Board's required contribution by February 28 and contained no provisions authorizing subsequent adjustment of the certified amount.

ILLINOIS MUNICIPAL CODE – OWNER OF REAL ESTATE

The seller under an installment land sale contract may be considered to be an “owner” of property and therefore responsible for certain demolition fees under the Code.

In *City of Decatur v. Ballinger*, 2013 IL App (4th) 120456, the Illinois Appellate Court was asked to determine whether the trial court erred when it found the defendant liable for the city's demolition costs on properties subject to an installment land sale contract under subsection (a) of Section 11-31-1 of the Illinois Municipal Code (65 ILCS 5/11-31-1(a) (West 2006)). Subsection (a) of Section 11-31-1 provides, in relevant part, “The cost of the demolition, repair, enclosure, or removal incurred by the municipality . . . is recoverable from the owner or owners of the real estate.” The subsection does not define the term “owner.” On appeal, the defendant argued that he no longer held an ownership interest in the properties as of the time he entered into an installment land sale contract with the buyers. The city argued that the term “owner” means any person with an estate, right of redemption, or other interest in the land, thereby making the defendant the owner of the properties. The appellate court ultimately agreed with the city, reasoning that the defendant retained ownership because: (1) the defendant would not convey title to the properties until the buyers performed the conditions contained in the agreement; (2) the agreement provided that the defendant retained the right to enforce the agreement and gave him the right to reenter and regain possession of the premises if the agreement was not complied with; and (3) the defendant had the right to pay taxes, special assessments, insurance premiums, or repair bills for the properties in the event that the buyers failed to do so.

ILLINOIS TRUST AND PAYABLE ON DEATH ACCOUNTS ACT – CHANGE IN BENEFICIARY

A written instrument changing the beneficiary of a payable on death is effective, even if the financial institution does not accept the instrument before the holder's death.

In *Fairfield National Bank v. Chansler*, 2013 IL App (5th) 110530, the Illinois Appellate Court was asked to decide whether the circuit court erred when it ruled that a designated beneficiary of a payable on death account had not been properly changed under subsection (a) of Section 4 of the Illinois Trust and Payable on Death Accounts Act (205 ILCS 625/4(a) (West 2010)) due to the death of the holder before the bank accepted the instruments changing the beneficiary. Subsection (a) of Section 4 provides, in relevant part, that “[a]ny holder during his or her lifetime may change any of the designated beneficiaries to own the account at the death of the last surviving holder without the knowledge or consent of any other holder or the designated beneficiaries by a written instrument accepted by the institution.” On appeal, one defendant argued that because the bank failed to accept the written instruments of change during the lifetime of the holder, the bank lacked the authority to accept the change in beneficiary. A second defendant argued that the bank was not required to accept the instrument during the holder’s life in order to make an effective change. The appellate court agreed with the second defendant, reversing the ruling of the circuit court and holding that “during his or her lifetime” applied to the execution of the written instrument by the holder, and not both the execution of the instrument and the acceptance by the bank. The court observed that subsection (a) is ambiguous because it uses the phrase “during his or her lifetime” and the past-tense verb “accepted,” but is structured as applying to the actions of the holder of the account and not the financial institution. To resolve the ambiguity, the court applied tools of statutory construction to determine that subsection (a) was intended to protect the intentions of the holder of the account, and not to set a bright-line time for the acceptance of written instruments by financial institutions. The court further noted that subsection (a) is structured as instruction to the holder of an account and not to financial institutions. Accordingly, the court construed subsection (a) to mean that acceptance by the bank before the death of the holder is not necessary to effectuate a change in beneficiary.

PUBLIC UTILITIES ACT – RETROACTIVE CONDITIONS

Certain amendatory provisions, which provide additional grounds on which the State can demand repayment of funds that subsidized the development of certain power-generating facilities, do not apply retroactively.

In *In re Resource Technology Corp.*, 721 F.3d 796 (7th Cir. 2013), the United States Court of Appeals for the Seventh Circuit considered whether the bankruptcy and district courts erred when they held that certain amendatory provisions to Section 8-403.1 of the Public Utilities Act (“Act”) (220 ILCS 5/8-403.1 (West 2009)), providing additional

grounds on which the State can demand repayment of tax subsidies designed to encourage the development of certain power-generating facilities, do not apply retroactively. Section 8-403.1 of the Act originally required subsidized facilities to repay the tax credits as soon as they retired all of the capital costs or indebtedness incurred to develop the power-generating facility. After a number of facilities failed before ever triggering these repayment conditions, the Act was amended in June 2006 by Public Act 94-836 to provide additional conditions that would trigger the obligation of a subsidized facility to repay the tax credits. In 2007, the State filed an administrative expense claim against the defendant, who had acquired liabilities for tax credits for the purchase of subsidized power. The State asserted that the amendments expanding the repayment conditions should be applied retroactively because the General Assembly never intended simply to forgive the subsidies that buyers had received. The defendant argued that there is a strong presumption against retroactivity in Illinois and that the amendments by Public Act 94-836 do not overcome it. The appellate court agreed with the defendants, affirming the decisions of the lower courts. The court reasoned that under Section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2009)), laws apply prospectively absent a clear indication of retroactive temporal reach. The court observed that the amendatory changes made by Public Act 94-836 did not clearly indicate that the new repayment conditions apply to tax subsidies awarded prior to the amendment and accordingly construed the changes to Section 8-403.1 prospectively.

ILLINOIS VEHICLE CODE – RESCINDING A LICENSE SUSPENSION

A driver who is convicted of driving with a suspended license may have the conviction vacated if the statutory suspension is rescinded after the driver received the citation.

In *People v. Elliott*, 2012 IL App (5th) 100584, the Illinois Appellate Court was asked to vacate a conviction for driving on a suspended license when the statutory suspension was rescinded after the traffic stop but before the conviction was entered. Subsection (a) of Section 6-303 of the Illinois Vehicle Code (625 ILCS 5/6-303(a) (West 2008)) provides that “any person who drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license, permit or privilege to do so or the privilege to obtain a driver's license or permit is revoked or suspended as provided by this Code . . . shall be guilty of a Class A misdemeanor.” Subsection (b) of Section 2-118.1 of the Illinois Vehicle Code (625 ILCS 5/2-118.1(b) (West 2008)) states “[w]ithin 90 days after the notice of statutory summary suspension or revocation served under Section 11-501.1, the person may make a written request for a judicial hearing in the circuit court of venue. . . . This judicial hearing, request, or process shall not stay or delay the statutory summary suspension or revocation. . . . Upon the conclusion of the judicial hearing, the circuit court shall sustain or rescind the statutory summary suspension or revocation and immediately notify the Secretary of State.” The

defendant argued that a rescission has the effect of retroactive erasure of a suspension. The State argued that the provision that a pending hearing on a petition to rescind shall not stay the effect of a suspension implies a legislative intent that suspensions be given full effect until proven invalid, and that retroactive application of the rescission would condone disregard of the law. The court agreed with the defendant and held that a statutory suspension that has been rescinded is void from the beginning as if it had never existed, and therefore the defendant's conviction for driving on a suspended license should be vacated. On January 30, 2013, the Illinois Supreme Court granted the State's Petition for Leave to Appeal the decision of the appellate court.

ILLINOIS VEHICLE CODE – OSCILLATING LIGHTS

Private security vehicles belonging to a private organization, company, or association that is not in the business of providing security services may use oscillating amber lights on their vehicles under the "security company" exception of the Code.

In *Poris v. Lake Holiday Property Owners Association*, 2013 IL 113907, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred in deciding that the security force of a private homeowners association is not a "security company" authorized to use oscillating amber lights under subdivision (b)(13) of Section 12-215 of the Illinois Vehicle Code (625 ILCS 5/12-215(b)(13) (West 2008)). Subdivision (b)(13) provides that "[t]he use of amber oscillating, rotating or flashing lights, whether lighted or unlighted, is prohibited except on . . . [v]ehicles used by a security company, alarm responder, or control agency . . ." The plaintiffs argued that the homeowner's association was not a company in the business of keeping people secure and free from danger. The plaintiffs also argued that the association's security forces were not a security company because they were not licensed under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 ("Private Detective Act") (225 ILCS 447/). The defendants argued that the legislative intent, as indicated by floor debates, was to allow any private security vehicle to use amber oscillating lights. The court agreed with the defendants, holding that private security vehicles fit the security company exception. The court reasoned that the General Assembly intended to include any private security vehicle, not just those of a company in the business of providing security services. The court also held that the association forces were not subject to the Private Detective Act's licensure requirements, as the Private Detective Act contains an exemption for security officers employed exclusively by one employer in connection with that employer's activities.

JUVENILE COURT ACT OF 1987 – AUTOMATIC TRANSFER

The automatic transfer provisions of the Act are constitutional, but a dissenting opinion makes an argument based on U.S. Supreme Court rulings that these provisions are unconstitutional.

In *People v. Pacheco*, 2013 IL App (4th) 110409, the Illinois Appellate Court was asked to decide whether the automatic transfer statute in the Juvenile Court Act of 1987 (705 ILCS 405/) violates the Eighth and Fourteenth Amendments to United States Constitution (U.S. CONST. amend. VIII; U.S. CONST. amend. XIV) and the proportionate penalties clause of the Illinois Constitution (ILL. CONST. art. I, § 11). The defendant, who was 15 years old at the time of the charged offense, was convicted of first degree murder by accountability and sentenced to 30 years imprisonment. Clause (1)(a)(i) of Section 5-130 of the Juvenile Court Act of 1987 (705 ILCS 405/5-130(1)(a)(i) (West 2008)) provides that the definition of “delinquent minor” shall not apply to any minor who at the time of the offense was at least 15 years of age and who is charged with first degree murder. The defendant was tried as an adult under this Section. Subsection (a) of Section 5-4.5-20 of the Unified Code of Corrections (730 ILCS 5/5-4.5-20(a) (West 2008)) provides that the sentencing range for first degree murder is 20 to 60 years. Clause (a)(2)(i) of Section 3-6-3 of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(2)(i) (West 2008)) provides that such a sentence may not be reduced through good conduct credit. As a result, the defendant was subject to a minimum 20-year prison sentence without the trial court being able to consider the defendant’s age or culpability. The defendant based his argument on 3 U.S. Supreme Court cases. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment of the United States Constitution (U.S. CONST. amend VIII) bars capital punishment for juvenile offenders. In *Graham v. Florida*, 560 U.S. 48 (2010), the Court held that a sentence of life without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. The Court stated that although the Eighth Amendment does not foreclose the possibility that persons convicted of non-homicide crimes committed before adulthood will remain behind bars for life, it does forbid states from making the judgment at the outset that those offenders will never be fit to reenter society. In *Miller v. Alabama*, 132 S.Ct. 2455 (2012), the Court held that the Eighth Amendment prohibits a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders, even those convicted of homicide offenses. According to the Court, a scheme that makes youth (and all that accompanies it) irrelevant to the imposition of the harshest prison sentence poses too great a risk of disproportionate punishment. The defendant argued that the automatic transfer of juveniles is unconstitutional, the automatic imposition of an adult sentence on these juveniles is unconstitutional, and that the juveniles’ automatic inability to receive good conduct credit is also unconstitutional. The State disagreed with this expansive argument and argued that it would be a great stretch to require legislatures and courts to treat youth

and adults differently in every respect and every step of the criminal process. The appellate court agreed with the State and upheld the constitutionality of the automatic transfer provisions. A dissenting opinion argued that the mandatory transfer of 15 and 16 year old juveniles to adult court is violative of the analysis set forth in *Miller*. The dissent stated that *Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.

JUVENILE COURT ACT OF 1987 – EXTENDED JURISDICTION JUVENILE PROSECUTION

The statutory 60-day timeline for the court to conduct a hearing on the State's motion to designate a proceeding as an extended jurisdiction juvenile proceeding is a directory, rather than mandatory, requirement.

In *In re M.I.*, 2013 IL 113776, the Illinois Supreme Court was asked to decide whether the statute requiring a hearing within 60 days on the State's motion to designate a proceeding as an extended jurisdiction juvenile proceeding was directory rather than mandatory. Subsection (2) of Section 5-810 of the Juvenile Court Act of 1987 (705 ILCS 405/5-810(2) (West 2008)) provides that when the State's Attorney files a written motion that a proceeding be designated an extended jurisdiction juvenile prosecution, the court shall commence a hearing within 30 days of the filing of the motion for designation, unless good cause is shown by the prosecution or the minor as to why the hearing could not be held within this time period. If the court finds good cause has been demonstrated, then the hearing shall be held within 60 days of the filing of the motion. In this case, the hearing on the State's motion for extended jurisdiction juvenile designation was held 98 days after the filing of the motion. The Respondent argued that the 60-day requirement was mandatory, making the adult sentence imposed upon him void. The State argued that the 60-day requirement is merely directory, and that an adult sentence resulting from a hearing held outside of the 60-day limit is not void. The court ruled in favor of the State, holding that statutes are mandatory if the General Assembly includes a particular consequence for failure to comply with the provision. The court reasoned that in the absence of such legislative intent, the statute is directory and no particular consequence flows from noncompliance. With respect to the mandatory/directory dichotomy, the court presumed that language issuing a procedural command to a government official indicates an intent to make the statute directory. The presumption is overcome and the provisions will be read as mandatory under either of 2 conditions: (1) when there is negative language prohibiting further action in the case of noncompliance, or (2) when the right that the provision is designed to protect would generally be injured under a directory reading. The court observed that subsection (2) of Section 5-810 lacks any negative language prohibiting

further action if the hearing is not held within 60 days or any other specific consequences for noncompliance with its 60-day limit. The court determined that Section 5-810 is not designed to protect any rights that would be generally injured by a directory reading of the statute and also noted that the use of the word “shall” in the statute is not determinative. Accordingly, the court ruled that the lower court’s failure to hold a hearing within the 60-day requirement did not void the defendant’s adult sentence.

CRIMINAL CODE OF 2012 – CRIMINAL SEXUAL ASSAULT

Holding a position of trust, supervision, or authority in relation to a criminal sexual assault victim does not depend on the duration of that trust, supervision, or authority.

In *People v. Feller*, 2012 IL App (3d) 110164, the Illinois Appellate Court was asked to determine whether the Circuit Court of Putnam County erred when it found the defendant guilty of criminal sexual assault and aggravated criminal sexual assault, due to the defendant’s position of trust and authority over the victim, pursuant to Section 11-1.20(a)(4) of the Criminal Code of 2012* (720 ILCS 5/11-1.20(a)(4) (West 2010)). Section 11-1.20(a)(4) states, in relevant part, that the accused commits criminal sexual assault if he or she commits an act of sexual penetration with a victim who was at least 13 years of age but under 18 years of age when the act was committed, and the accused was 17 years of age or older and held a position of trust, authority, or supervision in relation to the victim. At the time of the offense, the victim was 14 years of age and the accused was 31 years of age. While assisting the victim (who was blind) in swimming in a lake, the defendant sexually assaulted the victim. On appeal, the defendant argued that his conviction should be reversed because the evidence was insufficient to prove that he was in a position of trust, authority, or supervision in relation to the victim. The defendant also argued that the General Assembly did not contemplate that short-term offers of assistance, where the defendant was in a position of trust, authority, or supervision for only a short duration, could result in enhanced criminal liability. The Illinois Appellate Court disagreed and affirmed the defendant’s conviction. The court determined that for the purposes of the statute, whether a defendant was in a position of trust, supervision, or authority in relation to the victim does not depend on the duration of that trust, supervision, or authority. A dissenting opinion argued that the statutory reference to “a position of trust, authority or supervision in relation to the victim” did not apply to actions based on momentary assistance such as that which the defendant offered in this case.

* Effective January 1, 2013, the Criminal Code of 1961 was renamed the Criminal Code of 2012 by P.A. 97-1108. This Case Report uses "Criminal Code of 2012" in all instances. A conversion table for the Criminal Code re-write can be found online at <http://ilga.gov/commission/lrb/Criminal-Code-Rewrite-Conversion-Tables.pdf>

CRIMINAL CODE OF 2012 – EAVESDROPPING

The portion of the Code concerning eavesdropping is unconstitutional to the extent that it proscribes the recording of police officers while performing their public duties, in public places, speaking at a volume audible to the unassisted ear.

In *ACLU of Illinois v. Alvarez*, 2012 WL 6680341 (N.D. Ill.), the United States District Court for the Northern District of Illinois was instructed by the United States Court of Appeals for the Seventh Circuit to decide whether to grant a permanent injunction enjoining the Cook County State’s Attorney from prosecuting the ACLU under Sections 14-2(a)(1)(A) and 14-1(d) of the Criminal Code of 2012 (720 ILCS 5/14-2(a)(1)(A) and 720 ILCS 5/14-1(d) (West 2008)). Section 14-2(a)(1)(A) provides that “[a] person commits eavesdropping when he . . . [k]nowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording . . . any conversation unless he does so . . . with the consent of all of the parties to such conversation or electronic communication.” Section 14-1(d) broadly defines “conversation” as “any oral communication between 2 or more persons regardless of whether one or more of the parties intended their communication to be of a private nature.” The plaintiffs argued that the Eavesdropping Act violates the First Amendment as applied to an ACLU program designed to advance police accountability, in which an otherwise lawful recording is made of police officers performing their public duties, in public places, speaking at a volume audible to the unassisted ear. The State argued that the statute was needed to protect conversational privacy. The district court ultimately found that there are no public interest justifications for the Eavesdropping Act as it applies to the ACLU program, and concluded that the statute violates the First Amendment as applied to the ACLU.

CRIMINAL CODE OF 2012 – EAVESDROPPING – ARREST RECORDINGS

The destruction of a traffic stop and arrest recording does not merit the suppression of testimony relating to the traffic stop and arrest.

In *People v. Wachholtz*, 2013 IL App (4th) 110486, the Illinois Appellate Court was asked to decide whether the Circuit Court of Livingston County erred in denying the defendant’s motion to suppress an arresting officer’s testimony relating to the traffic stop under subsection (h-15) of Section 14-3 of the Criminal Code of 2012 (720 ILCS 5/14-3(h-15) (West 2010)) because the Illinois State Police Department destroyed the recording of the traffic stop and arrest. Subsection (h-15) of Section 14-3 provides, in relevant part, “[r]ecordings . . . shall be retained by the law enforcement agency that employs the peace officer who made the recordings for a storage period of 90 days, unless the recordings are made as a part of an arrest or the recordings are deemed evidence in any criminal, civil, or

administrative proceeding and then the recordings must only be destroyed upon a final disposition and an order from the court. Under no circumstances shall any recording be altered or erased prior to the expiration of the designated storage period.” The defendant argued that because the police violated the statute by destroying the recording, the arresting officer’s testimony regarding the traffic stop and arrest should be suppressed. The State conceded that the police violated the statute by destroying the recording; however, the State argued that the testimony should not have been suppressed because the requirement to preserve recordings is not mandatory, but rather directory. The appellate court ultimately agreed with the State and held that the officer’s testimony should not have been suppressed. The court reasoned that while the police violated the statute, the requirement is directory, rather than mandatory, because language of the statute provides no remedy for failure to comply with the provision.

CRIMINAL CODE OF 2012 – EAVESDROPPING – CIVIL REMEDIES

A civil remedy is neither explicitly nor implicitly available for eavesdropping upon electronic communications.

In *Shefts v. Petrakis*, 2013 WL 3187971 (C.D. Ill.), the United States District Court for the Central District of Illinois was asked to determine whether Section 14-6 of the Criminal Code of 2012 ("Code") (720 ILCS 5/14-6) provides a civil remedy for eavesdropping upon electronic communications. Section 14-6 entitles parties to "any conversation upon which eavesdropping is practiced" to certain civil remedies. The defendant argued that the Code does not provide a civil remedy with respect to electronic communications because separate definitions are provided for both "conversation" and "electronic communication" under Section 14-1 of the Code (720 ILCS 5/14-1) and Section 14-6 does not contain a reference to "electronic communications." The plaintiff, however, argued that the Code was ambiguous because the phrase "oral conversations" appeared in some places, rather than the statutorily-defined "conversations." In the alternative, the plaintiff argued that there exists an implied cause of action within the statute. The district court ultimately ruled in favor of the defendants, holding that the statute unambiguously excludes persons from obtaining a civil recovery for violations of the Code with respect to electronic communications. The court reasoned that given the Code's plain text and legislative history, it is apparent the General Assembly did not intend to create a private cause of action for eavesdropping upon electronic communications. The court further reasoned that the use of the term "oral conversations" evidenced an intent by the General Assembly to clarify the difference between a spoken conversation and a written electronic conversation. The court observed that "[the phrase] 'any conversation' cannot refer to both

'conversation' and 'electronic communications' since each term is separately defined. The legislature would have to say 'any conversation or [electronic] communications,' in order to convey the meaning the [p]laintiff suggests.” Moreover, the court found that it could not imply a civil cause of action, because when the General Assembly amended the criminal offense of eavesdropping, it did not concurrently expand the civil cause of action and “such exclusion was intentional.”

CRIMINAL CODE OF 2012 – THEFT

A person who conceals his or her identity in order to induce someone to enter into a contract with him or her may be guilty of theft by deception even when the victim of the alleged theft suffers no monetary loss.

In *People v. Haissig*, 2012 IL App (2d) 110726, the Illinois Appellate Court was asked to decide whether the Circuit Court of Lake County erred when it determined that a defendant can commit theft by deception by assuming an identity and then using that identity to enter into and fulfil a contract for services with another party without disclosing his or her true identity, even if the other party experiences no loss under the contract. Subsection (a) of Section 16-1 of the Criminal Code of 2012 (720 ILCS 5/16-1 (West 2000)) provides, in relevant part, “[a] person commits theft when he or she knowingly: (1) [o]btains or exerts unauthorized control over property of the owner; or (2) [o]btains by deception control over property of the owner. . . .” On appeal, the defendant argued that because the purported victim of the alleged theft received from the defendant all the services for which the parties contracted, the defendant could not be guilty of theft. The State argued that because the defendant used deception with the intent to permanently deprive the victim of the use or benefit of the funds, the defendant is guilty of theft regardless of any services provided by the defendant. The appellate court ultimately agreed with the State and the circuit court and held that the services that the defendant rendered had no bearing on whether the defendant knowingly and through deception accomplished the permanent deprivation of the use or benefit of those funds.

CRIMINAL CODE OF 2012 – ARMED ROBBERY

Sentencing enhancements for armed robbery were effectively cured when the General Assembly amended the statute concerning armed violence predicated on robbery and committed with a category I weapon.

In *People v. Blair*, 2013 IL 114122, the Illinois Supreme Court was asked to decide whether armed robbery sentencing enhancements under Section 18-2 of the Criminal Code of 2012 ("Code") (720 ILCS 5/18-2 (West 2008)), which had been previously held unconstitutional for violating the proportionate penalties requirements of the Illinois Constitution (ILL. CONST. art. I, § 11), were revived when the General Assembly amended other portions of the Code concerning armed violence. Section 18-2 of the Code contains a 15-year sentencing enhancement. Sections 33A-2 and 33A-3 (720 ILCS 5/33A-2 and 720 ILCS 5/33A-3 (West 2000)) provided a lesser penalty for the same actions by a defendant. The defendant argued that when the court found Section 18-2 unconstitutional, the statute was void *ab initio* and the sentencing enhancements remain invalid until the legislature reenacts the sentencing enhancements in the armed robbery statute. The State argued that the General Assembly revived the sentencing enhancement in the armed robbery statute when it amended the armed violence statute to change the elements of armed violence and remove the proportionate penalties defect that made the sentencing enhancements unconstitutional. The court ultimately agreed with the State, holding that the amendment to the armed violence statute revived the sentencing enhancements for armed robbery and the application of the enhanced penalty was not unconstitutional. The court observed that the General Assembly could have signaled its intent to revive the armed robbery sentencing enhancement by amending the armed violence statute and simultaneously reenacting the armed robbery sentencing provision, but concluded that it need not have done so because the case law determining that the sentencing provision was unconstitutional did not render it nonexistent, but merely unenforceable.

CRIMINAL CODE OF 2012 – FIREARMS

The prohibition on carrying a firearm outside of the home violates the right to bear arms enumerated in the Second Amendment of the United States Constitution.

In *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), the United States Court of Appeals for the Seventh Circuit was asked to decide whether the ban on carrying a loaded, immediately accessible gun outlined in Section 24-2 of the Criminal Code of 2012 (720 ILCS 5/24-1) violates the right to bear arms enumerated in the Second Amendment of the United States Constitution (U.S. CONST. amend. II). Section 24-2 forbids a person, with exceptions mainly for police and other security personnel, hunters, and members of target

shooting clubs, to carry a gun that is ready to use. The appellants argued that the Second Amendment creates a right to armed self-defense outside of the home and the statute is therefore unconstitutionally broad. The State argued that there is no generally recognized right to carry arms in public. The Seventh Circuit ultimately agreed with the appellants and held that the State must provide the courts with more than merely a rational basis for justifying the broad ban on the carrying of firearms outside of the home. The court mandated that the General Assembly pass new gun legislation consistent with the Second Amendment. On March 22, 2013, the Illinois Appellate Court issued a decision (*People v. Moore*, 2013 IL App. (1st) 110793) which declined to apply the holding of the Seventh Circuit to a different appellant. The Illinois Appellate Court found the Seventh Circuit's reasoning unpersuasive and noted that the defendant's status as a felon makes him ineligible to carry a handgun in any situation. On July 7, 2013, the Firearm Concealed Carry Act was signed into law (Public Act 98-63).

CODE OF CRIMINAL PROCEDURE OF 1963 – SPEEDY TRIAL

The State is entitled to seek a continuance of not more than 60 days to obtain specific evidence in a criminal prosecution, and may seek additional continuances of no more than 60 days to obtain different evidence.

In *People v. Lacy*, 2013 IL 113216, the Illinois Supreme Court was asked to decide whether an appellate court erred when it upheld the trial court's decision to grant the State two separate continuances related to two different witnesses, totaling more than 60 days, under subsection (c) of Section 103-5 of the Code of Criminal Procedure of 1963 ("Code") (725 ILCS 5/103-5(c) (West 2010)). Subsection (c) of Section 103-5 of the Code provides, "If the court determines that the State has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the State for not more than an additional 60 days." The defendant argued that because the statute states that the cause may be continued "for not more than an additional 60 days," the State may not be granted more than 60 days in total to obtain material evidence. The State countered by arguing that it was entitled to an unlimited number of continuances of up to 60 days each because the plain language of the statute sets no limits on the number of times a continuance may be granted. The court was not persuaded by either of the arguments, and instead reasoned that a natural reading of the statute is that the phrase "such evidence" refers to that evidence for which the State is seeking a continuance. Therefore, the court found that the State in this case was entitled to seek one continuance of not more than 60 days to obtain the testimony of the first witness, and a separate continuance of not more than 60 days to obtain the testimony of the second witness, since the two witnesses' testimony constituted different evidence. The court went on to state that had the General Assembly intended the meaning argued by the defendant, i.e., that the maximum time period under subsection (c) is 60 days in total, it could have easily said so, but did not. A

dissenting opinion argued that the phrase “not more than an additional 60 days” permits the State more than one continuance of 60 days past the expiration of the speedy trial period under the statute. The dissenting opinion noted, “Had the legislature wished to provide not more than one 60-day continuance for each witness and each item of evidence, it could easily have used language in the statute to make that clear. It did not and that omission is telling.”

CODE OF CRIMINAL PROCEDURE OF 1963 – TRIAL *IN ABSENTIA*

The statutory requirement that an absent defendant be appointed counsel does not apply to a defendant that is in custody and has waived his or her right both to counsel and to participate in the trial.

In *People v. Eppinger*, 2013 IL 114121, the Illinois Supreme Court was asked to determine whether a trial court is required by Section 115-4.1 of the Code of Criminal Procedure of 1963 ("Code") (725 ILCS 5/115-4.1(a) (West 2010)) to appoint counsel to represent an defendant in custody that has previously waived both the right to counsel and the right to appear at trial by refusing to leave his cell. Subsection (a) of Section 115-4.1 of the Code provides that “[w]hen a defendant . . . fails to appear for trial, at the request of the State and after the State has affirmatively proven through substantial evidence that the defendant is willfully avoiding trial, the court may commence trial in the absence of the defendant. . . . The absent defendant must be represented by retained or appointed counsel. . . . If trial had previously commenced in the presence of the defendant and the defendant willfully absents himself for two successive court days, the court shall proceed to trial.” The defendant argued that despite his valid waiver of his constitutional right to counsel, he was statutorily entitled to appointment of counsel when he refused to participate in the trial. The State argued that the statutory language does not refer to pro se defendants in custody, but rather defendants that have escaped custody or forfeited their bail bond, and that the intent of the statute is to guarantee the fairness of proceedings where the defendant’s waiver of his right to be present must be inferred from his absence. The State further argued that there was no uncertainty regarding the defendant’s waiver of the right to be present in this case, as the defendant was in custody, was present in the courtroom on the morning of the trial, and refused to leave his cell to attend his trial despite admonishments from the court that the trial could proceed without him. The court agreed with the State, holding that the requirement under Section 115-4.1 that counsel be appointed for an absent defendant does not apply to an in-custody defendant who has waived his or her right to participate in his or her trial. The court reasoned that the legislative history indicated the General Assembly was concerned with combating bail jumpers, that the General Assembly intended to prevent the degradation of evidence through indefinite suspension of prosecution, and that the statute was never intended to be used by in-custody defendants as a means to delay trial or

remove the trial judge's discretion when faced with a request for counsel after a previous waiver of the right to counsel.

CODE OF CRIMINAL PROCEDURE OF 1963 – POST-CONVICTION PETITIONS; CAUSE AND PREJUDICE

The Illinois Supreme Court invited the General Assembly to enact legislation that clarifies when or precisely how a successive post-conviction petitioner satisfies the requirements for showing cause and prejudice claims.

In *People v. Evans*, 2013 IL 113471, the Illinois Supreme Court was asked to determine whether the circuit court erred in denying the defendant's motion for leave to file a successive petition for relief under subsection (f) of Section 122-1 of the Code of Criminal Procedure of 1963 ("Code") (725 ILCS 5/122-1(f) (West 2008)). Subsection (f) of Section 122-1 of the Code provides, in relevant part, "Only one petition may be filed by a petitioner . . . without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure." The defendant argued that he only needed to assert an arguable claim of cause and prejudice for his motion to show cause and prejudice, which is the legal standard for first-stage post-conviction proceedings. The State argued that the defendant must actually demonstrate cause and prejudice rather than merely plead it. The court declined to address either argument, finding that the defendant asserted ignorance of the law as the "cause" of his failure to assert the claim; as a matter of law, ignorance of the law cannot be asserted as a cause. In dicta, however, the court strongly encouraged the General Assembly to clarify when or precisely how a successive post-conviction petitioner satisfies the requirements for cause and prejudice claims. A dissenting opinion noted that there is a clear split of authority among the appellate court districts on the legal standard to be applied to a motion under Section 122-1(f).

CODE OF CRIMINAL PROCEDURE OF 1963 – SUCCESSIVE POST-CONVICTION PETITIONS

A second post-conviction petition is not a successive post-conviction petition requiring leave of the court if the purpose of the first petition was to reinstate a defendant's direct appeal.

In *People v. Little*, 2012 IL App (5th) 100547, the Illinois Appellate Court was asked to determine whether the trial court erred when it treated the defendant's petition for post-conviction relief as a successive petition, thereby requiring leave of the court to file

under subsection (f) of Section 122-1 of the Code of Criminal Procedure of 1963 ("Code") (725 ILCS 5/122-1(f)(West 2006)). Subsection (f) of Section 122-1 provides, in relevant part, "Only one petition may be filed by a petitioner . . . without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure." The defendant argued that that the trial court and the State wrongly construed his second petition as "successive" because he had used his initial petition to reinstate his right to a direct appeal, forfeited through no fault of his own, and that he should be restored to the procedural posture he would have enjoyed had he been represented by effective counsel who had timely filed a notice of appeal. The State argued that the second petition should be treated as a successive petition, regardless of the reason for the first petition. The appellate court agreed with the defendant, holding that when a petitioner files a second petition after a direct appeal that is ordered in response to an earlier petition, the second petition is not successive for the purposes of the Code. The court reasoned that because the first petition was filed for the sole purpose of rescuing the defendant's right of appeal lost due to ineffective assistance of counsel, it was not a "true collateral attack" and should not be treated as such. In dicta, the court noted that similar situations could be avoided if, as is often already the case, the trial court orders the clerk of the court to file a notice of appeal on the defendant's behalf. The court further observed that once a timely notice of appeal has been filed for a defendant, he or she can subsequently decide whether to actually pursue the appeal or allow it to be dismissed for want of prosecution.

CODE OF CRIMINAL PROCEDURE OF 1963 – POST-CONVICTION PETITION DISMISSAL

To satisfy the 90-day statutory period for the dismissal of a post-conviction petition, the trial court must examine, sign, date, and file the order within that period.

In *People v. Perez*, 2013 IL App (2d) 110306, the Illinois Appellate Court was asked to determine whether the trial court erred when it dismissed the defendant's post-conviction petition and whether that dismissal order was timely under Section 122-2.1 of the Code of Criminal Procedure of 1963 ("Code") (725 ILCS 5/122-2.1 (West 2010)). Section 122-2.1 of the Code provides, in relevant part, "Within 90 days after the filing and docketing of each petition, the court shall examine such petition and enter an order thereon. . . . If . . . the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision." The defendant argued that in order to satisfy the 90-day statutory period for dismissal, the trial court must examine, sign, date, and file the order within that period. The State argued that the plain language of the statute does not require the clerk of the circuit court to file the trial court's written order within the statutory period.

The appellate court decided in favor of the defendant, finding that the filing itself completes the essential elements for effective court action, and, in this case, the trial court did not satisfy the requirements of Section 122-2.1. However, a dissenting opinion argued that the plain language of the statute requires a written order and that reading an additional filing requirement imposes a condition that the General Assembly did not enact.

UNIFIED CODE OF CORRECTIONS – JUVENILE SENTENCING CREDIT

A juvenile offender is entitled to sentencing credit for time spent in a county juvenile detention center treatment program.

In *In re Christopher P.*, 2012 IL App (4th) 100902, the Illinois Appellate Court was asked to consider whether the circuit court erred when it refused to grant a sentencing credit to a juvenile, who spent 117 days in a county juvenile detention center treatment program, under subsection (b) of Section 5-4.5-100 of the Unified Code of Corrections (730 ILCS 5/5-4.5-100(b) (West 2010)). Subsection (b) provides that with certain exceptions, an offender shall be given credit for the number of days spent in custody as a result of the offense for which the sentence was imposed. The respondent argued that the time he spent in the treatment program qualified as time spent in "detention" for which he was entitled to a sentence credit under Section 5-710 of the Juvenile Court Act of 1987 (705 ILCS 405/5-710 (West 2008)). The State argued, and the circuit court held, that the time a minor is in a treatment program is not considered time that the minor is "detained" as that term is defined by statute. The appellate court, ruling in favor of the respondent, held that a juvenile offender is entitled to sentencing credit for time spent in a county juvenile detention center treatment program. The court reasoned that because the Illinois Supreme Court has applied the broader adult sentencing requirements of Section 5-4.5-100 of the Unified Code of Corrections to juveniles, the respondent need only demonstrate that the treatment program qualifies as "custody" for sentencing credit purposes. The court noted that case law has defined custody for purposes of sentencing credit as the legal duty to submit to legal authority, which does not necessarily include actual confinement. The court observed that under the treatment program, the respondent was: (1) court-ordered to participate in the county-run program; (2) at the discretion of detention center officials, held longer than the scheduled 90-day period; (3) subject to solitary confinement for policy violations; (4) subject to strip searches upon his return to the program from home visits; (5) subject to freedom of movement restrictions by locked external and internal doors throughout the detention center; and (6) subject to the same policies and conditions as detention center residents. Consequently, the court determined that the respondent was entitled to sentencing credit for the 117 days spent in the treatment program.

UNIFIED CODE OF CORRECTIONS – MANDATORY LIFE SENTENCE

A statutory scheme that imposes a mandatory natural-life sentence on a minor is an unconstitutionally cruel and unusual punishment.

In *People v. Luciano*, 2013 IL App (2d) 110792, the Illinois Appellate Court was asked to decide whether a life without parole sentence was proper for a defendant who was convicted of murder for a second time at the age of 17 and sentenced pursuant to the mandatory life sentencing provisions taken together in subparagraph (c) of paragraph (1) of subsection (a) of Section 5-8-1 and subsection (d) of Section 3-3-3 of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(c)(i) (West 2010) and 730 ILCS 5/3-3-3 (West 2010)). The defendant argued that in light of *Miller v. Alabama*, 132 S.Ct. 2455 (2012), which held that a statutory scheme that imposed a mandatory natural-life sentence on a minor violated the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution (U.S. CONST. amend VIII), his mandatory life sentence is also unconstitutional. The State argued, in relevant part, that *Miller* is not retroactively applicable and that the sentencing provision is not unconstitutional under the proportionate penalties clause of the Illinois Constitution (ILL. CONST. art. I, § 11). The appellate court, in vacating the sentence, stated that at the time of the offense in this case, the Illinois sentencing scheme contained several provisions that acted together to impose a natural-life-without-parole sentence on the defendant. Citing *Miller*, the appellate court held that the United States Constitution prohibits a mandatory natural-life sentence for juvenile offenders. The court further reasoned that *Miller* is retroactively applicable to this case.

UNIFIED CODE OF CORRECTIONS – MANDATORY SUPERVISED RELEASE

The mandatory supervised release term for an individual who is sentenced as a Class X felon due to prior felony convictions shall be set according to the term statutorily required for a Class X felon, not the term required for the lesser underlying felony conviction.

In *People v. Davis*, 2012 IL App (5th) 100044, the Illinois Appellate Court was asked to determine whether the trial court erred when it imposed a 3-year mandatory supervised release ("MSR") term under subsection (d)(1) of Section 5-8-1 of the Unified Code of Corrections (730 ILCS 5/5-8-1(d)(1) (West 2008)) upon a defendant who had sufficient prior felony convictions to be sentenced as a Class X offender. Subsection (d)(1) of Section 5-8-1 of the Unified Code of Corrections provides that the MSR term for Class X felons is 3 years. The defendant argued that the MSR term should be calculated based upon the underlying felonies a defendant committed, not the sentence enhancement classification. The State argued that because the sentencing treatment of the defendant must be as one who has committed a Class X felony under the Code, a 3-year MSR term is

appropriate. The appellate court ruled in favor of the State, holding that the clear intent of the General Assembly was to treat certain repeat offenders as Class X felons which, in turn, makes the offenders subject to an MSR term appropriate for a Class X conviction.

UNIFIED CODE OF CORRECTIONS – LIFE IMPRISONMENT FOR MINORS

A sentence of life imprisonment without parole for a minor is not unconstitutional; however, Illinois courts must hold a sentencing hearing, at which a sentence other than natural life imprisonment is available for consideration, for every minor convicted of first degree murder.

In *People v. Morfin*, 2012 IL App (1st) 103568, the Illinois Appellate Court was asked to determine whether the circuit court erred when it dismissed the defendant's second or successive petition for relief from judgment that challenged his mandatory sentence of natural life imprisonment under subsection (a)(1)(c)(ii) of Section 5-8-1 of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2010)). Subsection (a)(1)(c)(ii) of Section 5-8-1 of the Unified Code of Corrections (currently 730 ILCS 5/5-4.5-20 (a)) sets forth sentencing for a first degree conviction. The defendant argued that because he was a minor at the time he committed the crime of first degree murder, the statute mandating natural life imprisonment is unconstitutional as applied to him under the prohibition against cruel and unusual punishment of the Eighth Amendment of the United States Constitution (U.S. CONST. amend. VIII). The State argued that nothing in federal or Illinois case law had categorically banned natural life imprisonment for minors convicted of murder and that the defendant was a minor, but not a juvenile, at the time of the commission of the crime. The court, citing the United States Supreme Court's opinion in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), held that while a sentence of life imprisonment without parole for a minor is not unconstitutional, Illinois courts must hold a sentencing hearing, at which a sentence other than natural life imprisonment is available for consideration, for every minor convicted of first degree murder.

SEX OFFENDER REGISTRATION ACT – JUVENILE DEFENDANTS

A juvenile defendant found “not not guilty” of aggravated criminal sexual assault and aggravated criminal sexual abuse at a discharge hearing is required to register as a sex offender.

In *In re S.B.*, 2012 IL 112204, the Illinois Supreme Court considered whether the appellate court erred when it reversed the circuit court's holding that a juvenile defendant, suffering from mild mental retardation and found “not not guilty” of aggravated criminal

sexual abuse following a discharge hearing, must register as a sex offender pursuant to subparagraph (d) of paragraph (1) of subsection (A) of Section 2 of the Sex Offender Registration Act ("Act") (730 ILCS 150/2(A)(1)(d) (West 2008)). Subdivision (A)(1)(d) of Section 2 of the Act defines a sex offender as "any person" who is charged with a sex offense who "is the subject of a finding not resulting in an acquittal" following a discharge hearing. The State maintained that the defendant was required to register because a discharge hearing was proper and he fell within the plain meaning of subdivision (A)(1)(d). The defendant argued that subdivision (A)(1)(d) did not apply to him because the discharge hearing conducted in his case was not specifically authorized under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 et seq. (West 2008)). Rather, the defendant argued, he is not subject to the Act's registration requirements because the Act only addresses juveniles who have been adjudicated delinquent (730 ILCS 150/2(A)(5); 730 ILCS 150/3-5 (West 2008)), and the defendant was not adjudicated delinquent. The court ruled in favor of the State, holding that a juvenile who is found "not not guilty" at a discharge hearing is required to register as a sex offender under the Act. The court acknowledged that the General Assembly neglected to address juveniles found "not not guilty" following a discharge hearing in the Act, and that despite the fact that the Act mentions only juveniles adjudicated delinquent, the General Assembly cannot have intended to exclude juveniles found "not not guilty" from its reach. The court held that the juvenile defendant's discharge hearing was therefore incorporated into the Juvenile Court Act of 1987 and was applicable in the juvenile proceeding, and that the defendant was required to register as a sex offender. A dissenting opinion declined to "reach so far as to extend the scope of the Sex Offender Registration Act and the Sex Offender Community Notification Law to minors who have been found unfit for adjudication" and emphasized that these are issues which should be addressed by the General Assembly and not the courts.

SEX OFFENDER REGISTRATION ACT – LOSS OF EMPLOYMENT

A registrant is not required to report loss of employment as a change in the person's place of employment.

In *People v. Kayer*, 2013 IL App (4th) 120028, the Illinois Appellate Court was asked to consider whether the trial court erred, when it convicted the defendant of unlawful failure to register employment change as a sex offender after he lost his job, under Section 6 of the Sex Offender Registration Act (730 ILCS 150/6 (West 2010)). Section 6 provides, in pertinent part, that "[i]f any other person required to register . . . changes his or her residence address, place of employment, telephone number, cellular telephone number, or school, he or she shall report in person, to the law enforcement agency with whom he or she last registered, his or her new address, change in employment, telephone number, cellular telephone number, or school. . . ." The defendant argued that his guilty plea and his conviction were void because Section 6 did not require him to report that he was no longer employed at his former place of employment and that the loss of his job did not constitute a "change" in his "place of employment" such that he was required to report it.

The State argued that a loss of employment should be classified as a change in the place of employment. The court vacated the defendant's conviction, holding that a registrant is not required to report loss of employment as a change in the place of employment. The court reasoned that a loss of employment equates to a change in employment status, but it does not equate to a change in the place of employment. The court went on to state that if the General Assembly intended to require sex offenders to report a loss of employment, it could have done so in plain language; but it did not.

CODE OF CIVIL PROCEDURE – SERVICE OF PROCESS

Abode service is accomplished if the summons and complaint are accepted by a member of the defendant's family, even if that individual does not reside with the defendant.

In *Central Mortgage Company v. Kamarauli*, 2012 IL App (1st) 112353, the Illinois Appellate Court was asked to consider whether the circuit court erred when it denied the defendant's motion to quash service of process under Section 2-203 of the Code of Civil Procedure ("Code") (735 ILCS 5/2-203 (West 2010)). Section 2-203 provides that service of process may be accomplished by leaving a copy of the summons and complaint at the defendant's usual place of abode with some person of the family or a person residing there aged 13 years or upwards. The defendant argued that abode service was not properly attained because the family member who accepted service at the defendant's home did not live in the household. The plaintiff argued that Section 2-203 required only that the person accepting the summons and complaint either be a family member or live in the household. The appellate court agreed with the plaintiff and affirmed the decision of the circuit court, holding that abode service is accomplished if the summons and complaint are accepted by a member of the defendant's family, even if that individual does not reside with the defendant. The court reasoned that when the legislature amended the statute by adding the phrase "or a person residing there," it created two separate categories of people who can accept substitute service. The court found that this amendment codified prior case law which held that people sharing a household could be considered "family" members for the purpose of the substitute service statute, even though they were not related by blood. The court further noted that by virtue of the family relationship and the presence of the person in the defendant's home, it is presumed that the person accepting the summons and complaint gave them to the defendant, thereby accomplishing the statute's purpose of giving the defendant notice of the action.

CODE OF CIVIL PROCEDURE – PROFESSIONAL FEES – DISSOLUTION CASES

Fees charged by a professional appointed under the Illinois Marriage and Dissolution of Marriage Act fall within the category of "costs" that, under the Code of Civil Procedure, must be paid by a petitioner who voluntarily dismisses without prejudice a petition to modify child custody.

In *In re Marriage of Tiballi*, 2013 IL App (2d) 120523, the Illinois Appellate Court was asked to consider whether the trial court erred when it held that a petitioner who voluntarily dismissed without prejudice a petition to modify child custody was, under subsection (a) of Section 2-1009 of the Code of Civil Procedure ("Code") (735 ILCS 5/2-1009(a) (West 2010)), required to pay all fees charged by a professional appointed under subsection (b) of Section 604 of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") (750 ILCS 5/604(b) (West Supp.2011)). Section 604 of the IMDMA authorizes the court to hire professional personnel and "allocate the costs and fees of the professional personnel between the parties based upon the financial ability of each party and any other criteria the court considers appropriate." Section 2-1009 of the Code provides that a plaintiff may, "at any time before trial or hearing begins, upon notice to each party who has appeared or each such party's attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause." The respondent argued that as used in Section 2-1009 of the Code, "costs" include fees charged by a professional under Section 604 of the IMDMA and therefore the petitioner should be made to pay 100% of the professional fees as a result of the voluntary dismissal of his petition. The petitioner argued that "costs," as contemplated by Section 2-1009, means filing fees, subpoena fees, and other court fees and should be distinguished from other litigation expenses such as attorney's fees and fees of professionals hired under Section 604 of the IMDMA. The court agreed with the respondent and held that the petitioner must pay the entirety of the professional fees. The court reasoned that the services of a professional under Section 604 is a judicial resource, not a private litigation resource, and are thus recoverable under Section 2-1009 of the Code. The court also noted that because the hiring of the professional is mandated by Section 604, the fees take on a "mandatory and nonnegotiable" character, which is shared by other costs such as filing and other court fees. A dissent was filed arguing for a more narrow and prescriptive definition of the term "costs" and listed a number of differences in the nature of the fees arising under Section 604 and other court costs identified by case law. The dissent argued that requiring a party who voluntarily dismisses a custody petition for legitimate and nonabusive reasons to bear the full cost of a professional appointed under Section 604 of the IMDMA is an unauthorized penalty, beyond the scope of what the General Assembly intended when it enacted Section 2-1009 of the Code.

CODE OF CIVIL PROCEDURE - STATUTE OF LIMITATIONS

A medical malpractice claim brought against a nursing home is subject to the 2-year statute of limitations instead of the 5-year statute of limitations, even though a nursing home is not one of the enumerated entities in the 2-year statute.

In *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL App (2d) 120957, the Illinois Appellate Court was asked to consider whether the trial court erred when it dismissed a claim for being filed outside the 2-year statute of limitations for medical malpractice under subsection (a) of Section 13-212 of the Code of Civil Procedure ("Code") (735 ILCS 5/13-212(a) (West 2010)). Section 13-212 provides a 2-year limitations period for "damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State." The plaintiff, who alleged in her original complaint that her husband died as a result of negligent care the nursing home provided, argued that because a nursing home is not one of the enumerated medical providers in Section 13-212, her claim was not subject to the 2-year limitations period under Section 13-212 and was instead subject to the omnibus 5-year statute of limitations in Section 13-205 of the Code (735 ILCS 5/13-205 (West 2010)). The defendant argued that the plaintiff's allegations should be subject to the 2-year period because her claim raised a medical care issue and Section 13-205 concerns medical malpractice claims. The appellate court agreed with the defendant, holding that claims against a nursing home which allege facts that constitute medical malpractice are subject to the 2-year period of limitations. In reaching its conclusion, the court noted case law which expands liability for medical malpractice to employees of the providers listed in Section 13-212 and makes health-maintenance organizations vicariously liable for the acts of their network doctors.

GENDER VIOLENCE ACT – NATURAL PERSON

A corporate entity is not a person for purposes of liability under the Act.

In *Flood v. Washington Square Restaurant, Inc.*, 2012 WL 6680345 (N.D. Ill.), the United States District Court for the Northern District of Illinois was asked a second time (the first time being in *Fleming v. Fireside West*, 2012 WL 6604642 (N.D. Ill.), 3 days prior to adjudicating this instant case) to determine whether the use of the term "person" under Section 10 of the Gender Violence Act ("Act") (740 ILCS 82/10 (West 2012)) applies to corporate entities as well as natural persons, thereby making business organizations civilly liable for acts of gender-related violence. Section 10 creates a civil cause of action for victims of gender-related violence "against a person or persons perpetrating that . . . violence. . . . '[P]erpetrating' means either personally committing the gender-related violence or personally encouraging or assisting the act or acts of gender-

related violence.” As the district court did in *Fleming v. Fireside West*, the court ruled that the use of the term “person” under Section 10 does not invoke a corporate entity, but only a natural person, thereby exempting corporate entities from civil liability under the Act. In support of its ruling, the court acknowledged that the rules of statutory construction under the Illinois Statute on Statutes (5 ILCS 70/1.05) create a “presumption that the term ‘person’ includes a corporation.” However, the court found that the specific context in which the term “person” is used under Section 10 “is sufficient to overcome [that] presumption” because under Section 10 “a person can be liable only for ‘personally committing the gender-related violence or personally encouraging or assisting the act or acts of gender-related violence’.” And even though, according to the court, the Statute on Statutes “leaves open the possibility of applying a word like ‘personally’ to corporations,” the court nevertheless found it inconceivable that a “corporation could ‘personally’ perpetrate an act of gender-related violence [because] . . . [c]orporations act only through their agents [making] it impossible for a corporation to ‘personally’ do anything.” The court found the use of the word “personally” dispositive on the issue of whether corporate entities can be held civilly liable for incidents of gender-related violence.

ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT – PROPERTY VALUATION DATE

In bifurcated dissolution of marriage proceedings, the date of dissolution, rather than the date of trial on ancillary issues, is the proper valuation date for marital property.

In *In re Marriage of Mathis*, 2012 IL 113496, the Illinois Supreme Court was asked to consider whether the appellate court erred when it held that under subsection (f) of Section 503 of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") (750 ILCS 5/503(f) (West 2010)), the appropriate date for valuation of marital property in bifurcated dissolution proceedings is a date which is as close as practicable to the date of trial of the ancillary issues. Section 503(f) of the IMDMA provides that in bifurcated proceedings, "the court, in determining the value of the marital and non-marital property for purposes of dividing the property, shall value the property as of the date of trial or some other date as close to the date of trial as is practicable." The petitioner argued that the phrase "date of trial" is ambiguous and should be construed to mean the date of the entry of the order for dissolution of marriage. The respondent argued that because Section 503 concerns the disposition of property, the "date of trial" that subsection (f) refers to is the date of trial on property distribution. The Illinois Supreme Court, in reversing the appellate court, agreed with the petitioner and held that the proper date for the valuation of property is the date of dissolution. The court reasoned that setting the valuation date after the date of dissolution "allows the case to drift indefinitely from continuance to continuance with the parties alternatively hoping the undivided marital property either increases or decreases in

value before their experts have to testify." The court further noted that throughout the history of the development of appellate court case law concerning the valuation of property, the General Assembly has not seen the need to amend subsection (f). A dissent was filed arguing that the majority's reliance on the doctrine of legislative acquiescence was unfounded because the date of valuation of property in bifurcated proceedings is a matter of first impression. The dissent further reasoned that there is no reason to believe that the General Assembly intended for subsection (f) to apply to a separate proceeding for the disposition of property when it was occasioned by an earlier *ex parte* dissolution, but not when it was the result of an agreement of the parties or the motion by one party.

ILLINOIS PARENTAGE ACT – NONBIOLOGICAL CO-PARENT RIGHTS

A nonbiological co-parent of a child conceived by artificial insemination has standing under the common law to bring a petition for parentage, custody, visitation, and child support.

In *In re T.P.S. and K.M.S.*, 2012 IL App (5th) 120176, the Illinois Appellate Court was asked to determine whether the circuit court erred when it found that a nonbiological co-parent lacked standing to seek parentage, custody, visitation, and child support under Section 601 of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") (750 ILCS 5/601 (West 2010)) or under the Illinois Parentage Act (750 ILCS 40/1 to 3 (West 2010)). Neither the IMDMA nor the Illinois Parentage Act contain provisions concerning same-sex couples who agree to artificially conceive and co-parent children, and then subsequently separate. The petitioner argued that she had standing under the common law to bring a petition for parentage, custody, visitation, and child support. The respondent argued, and the circuit court held, that the petitioner was neither an adoptive nor a biological parent of the children, and therefore had no standing to seek custody or visitation under IMDMA or the Illinois Parentage Act. The appellate court agreed with the petitioner, however, holding that the General Assembly did not intend to bar a common law action for child custody and visitation after an unmarried couple agrees to conceive a child by artificial insemination and the couple subsequently begins raising the child as coequal parents. In support of its holding, the appellate court relied on the Illinois Supreme Court's decision and analysis in *In re Parentage of M.J.*, 203 Ill.2d 526 (2003), noting (1) Illinois' public policy of recognizing "the right of every child to the physical, mental, emotional, and monetary support of his or her parents" even when only one of the couple is biologically related to the child; and (2) Illinois' "strong interest in protecting and promoting the welfare of its children." The court recognized that the IMDMA and Illinois Parentage Act do not contain express provisions relating to situations where a same-sex couple co-parent children conceived by artificial insemination. However, the court reasoned that "the best interests of children and society are served by recognizing that not

only may parental responsibility be imposed but also *parental rights* may be asserted based on conduct evincing actual consent to the artificial insemination procedure by the unmarried couple along with active participation by the nonbiological partner as a co-parent. To hold otherwise and deny common law claims for child custody and visitation under such circumstances is to deny the [child's] right to the physical, mental, and emotional support of two parents merely because his or her parentage falls outside the terms of [the Illinois Parentage Act]." Such a result, the appellate court opined, is contrary to Illinois' public policy and absent clear, express language, the court will not assume the General Assembly intended such a result.

ILLINOIS PARENTAGE ACT OF 1984 – VISITATION; BEST INTERESTS

Following a determination of parentage, a noncustodial parent is not entitled to visitation unless the visitation is in the best interests of the child.

In *In re Parentage of J.W.*, 2013 IL 114817, the Illinois Supreme Court was asked to determine whether the appellate court erred in its application of subdivision (a)(1) of Section 14 of the Illinois Parentage Act of 1984 (750 ILCS 45/14(a)(1) (West 2010)), when it applied the "serious endangerment" standard under Section 607(a) of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") (750 ILCS 5/607(a) (West 2010)) instead of the "best interests" standard under Section 602(a) (750 ILCS 5/602(a) (West 2010)) in reversing the trial court's denial of a biological father's petition for visitation privileges. Subdivision (a)(1) of Section 14 of the Illinois Parentage Act of 1984 provides that once paternity is established, visitation shall be determined "in accordance with the relevant factors set forth in the [IMDMA] and any other applicable law of Illinois, to guide the court in a finding in the best interests of the child." Section 607(a) of the IMDMA provides that a parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health. Section 602(a) provides a list of factors for the court to consider in determining the best interests of the child. The petitioner argued that because he had successfully established parentage, he was entitled to visitation absent a showing that such privileges would endanger seriously the child's physical, mental, moral, or emotional health. The respondent argued that visitation should not be awarded unless the court determines that doing so would be in the best interests of the child. The Illinois Supreme Court agreed with the respondent and overturned the appellate court's ruling, holding that the appropriate standard is the "best interests factors" list contained in Section 602(a) of the IMDMA. The court reasoned that the Section 607(a) serious endangerment standard is an "onerous" one most appropriate in a post-dissolution setting

where the court is concerned with ensuring that the child maintains a meaningful and continual relationship with both parents absent serious endangerment to the child. In contrast, the court opined, application of the Section 602(a) best interests factors list affords the court greater “flexibility to consider whether, and to what extent, [a] biological father [who has established paternity] may now exercise visitation rights with respect to the child.” Such flexibility is needed, the court reasoned, given the specific facts and circumstances in a paternity action “that may be relevant to whether visitation is in a child’s best interests.” According to the court, the plain language of Section 14(a)(1) of the Parentage Act contemplates such flexibility and would be greatly undercut by application of the Section 607(a) serious endangerment standard.

RESIDENTIAL REAL PROPERTY DISCLOSURE ACT – DEFECTS IN DOORS AND WINDOWS

As used in the Act, the term “walls” does not include doors and windows.

In *Kalkman v. Nedved*, 2013 IL App (3d) 120800, the Illinois Appellate Court was asked to determine if windows and doors are included within the statutory meaning of the term “walls” under Section 35 of the Residential Real Property Disclosure Act (“Act”) (765 ILCS 77/35) (West 2010)), thereby obligating sellers of residential real property to disclose known defects in a property’s windows or doors. Under Section 35, a seller of residential real property must disclose whether the seller is “aware of material defects in the walls or floors.” Because the term “walls” is not defined under the Act, the defendant argued that the term should be strictly construed and exclude windows and doors. The plaintiff argued against such a narrow interpretation, noting that the purpose of the Act “is to provide potential buyers with information about known defects in the home.” To best serve this purpose, the plaintiff argued, the term “walls” should be broadly interpreted to include windows and doors because “they serve the same purpose of walls—to divide and protect against the elements.” The appellate court disagreed with the plaintiff’s arguments, ruling that Section 35 is to be narrowly construed and that “a seller’s obligation to disclose defects in the property’s walls does not also include an obligation to disclose defects in the windows or doors.” In support of its ruling, the court relied on three prongs: (1) the plain and ordinary meaning of the term “walls” as ascertained from its dictionary definition; (2) the rule of statutory construction which says that a statute in derogation of common law must be strictly construed; and (3) the legal maxim that the “expression of one thing is the exclusion of another.” Given that Section 35 modifies the common law *caveat emptor* rule and must therefore be strictly construed using the plain and ordinary meaning of the term “walls,” the court opined that “it is not necessarily implied that windows and doors are included within the legislature’s concept of walls.” The court further noted that Section 35

enumerates only certain conditions that a seller of residential real property must disclose, and windows and doors are not expressly listed. The court concluded that the General Assembly did not intend for windows or doors to be covered by the disclosure report.

ILLINOIS HUMAN RIGHTS ACT – SOVEREIGN IMMUNITY

The Act contains no clear, unequivocal, or affirmative statement that the State waives its sovereign immunity for claims brought by State employees.

In *Lynch v. Department of Transportation*, 2012 IL App (4th) 111040, the Illinois Appellate court was asked to determine whether the circuit court erred when it dismissed the claims of State employees for violations of the Illinois Human Rights Act ("Act") (775 ILCS 5/1-101 *et seq.* (West 2010)). Under subsection (A) of Section 2-102 of the Act (775 ILCS 5/2-102(A) (West 2010)), it is a civil rights violation "[f]or any employer to refuse to hire, to segregate, or to act with respect to recruitment . . . or conditions of employment on the basis of unlawful discrimination or citizenship status." Subdivision (B)(1)(c) of Section 2-101 of the Act (775 ILCS 5/2-101(B)(1)(c) (West 2010)) provides that "employer" includes "[t]he State and any political subdivision, municipal corporation or other governmental unit or agency, without regard to the number of employees." The plaintiffs argued that the State effectively waived sovereign immunity when the General Assembly first enacted the Act in 1980 and defined "employer" to include State agencies, and that this initial waiver of sovereign immunity was still intact after the General Assembly amended the Act in 2008 to allow complainants to file their civil rights claims in circuit court. The State argued that the General Assembly did not clearly, unequivocally, or affirmatively waive the State's sovereign immunity in the 2008 amendment. The court agreed with the State, holding that the State never consented to be sued under the Act. The court reasoned that prior to the 2008 amendments, the Act gave jurisdiction to the Human Rights Commission to hear civil rights claims under the Act and, because sovereign immunity does not apply to administrative agencies, "the legislature would have had no reason to waive sovereign immunity" prior to the 2008 amendments. More importantly, the court did not find a clear, unequivocal, or affirmative waiver of the State's sovereign immunity in the 2008 amendments to the Act. The court acknowledged that "the [amendatory] language used by the legislature . . . is somewhat ambiguous," but nevertheless determined that such "ambiguity in the statute alone lends sufficient support for finding the legislature did not clearly, unequivocally, or affirmatively waive sovereign immunity."

ILLINOIS HUMAN RIGHTS ACT – LACK OF JURISDICTION

A complainant may not commence a civil action after his or her charge has been dismissed for lack of jurisdiction by the Director of the Illinois Department of Human Rights.

In *Demars-Evans v. Mikron Digital Imaging-Midwest, Inc.*, 2013 WL 3224588 (N.D. Ill.), the United States District Court was asked to determine whether the plaintiff was barred from commencing a civil action on her sexual harassment charges under the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*), when the charges were dismissed for lack of jurisdiction by the Director of the Illinois Department of Human Rights. The plaintiff, citing subdivision (C)(4) of Section 7A-102 (775 ILCS 5/7A-102(C)(4)), argued that because circuit court review is available after a complaint is dismissed for failure to attend a fact finding conference, the right to bring the claim in circuit court should be extended to situations where the complaint is dismissed for lack of jurisdiction. The defendant, however, argued that because circuit court review is also available where the complaint is dismissed for lack of substantial evidence under subdivision (D)(3) of Section 7A-102 (775 ILCS 5/7A-102(D)(3)), the court should not read another avenue for circuit court review that the General Assembly has not expressly provided. The court agreed with the defendant, holding that because the statute does not expressly authorize the commencement of a civil action after a complaint is dismissed for lack of jurisdiction, the action is barred. The court observed that the Illinois Human Rights Act is silent as to whether a complainant may bring a civil action after the complaint is dismissed for lack of jurisdiction, but provides for circuit court review in other situations. The court reasoned that if the General Assembly had intended to allow a complainant whose charges have been dismissed for lack of jurisdiction to be able to commence a civil action, it would have explicitly provided so in the statute.

UNIFORM COMMERCIAL CODE – STATUTE OF LIMITATIONS

The 3-year statute of limitations on actions for conversion of negotiable instruments is not tolled by the discovery rule unless the defendant fraudulently concealed the conversion.

In *Hawkins v. Nalick*, 2012 IL App (5th) 110553, the Illinois Appellate Court was asked to determine if the discovery rule applies to the 3-year statute of limitations on actions for conversion of negotiable instruments contained in subsection (g) of Section 3-118 of the Uniform Commercial Code (“Code”) ((810 ILCS 5/3-118(g) (West 2010)) in cases where there is no evidence of fraudulent concealment. Subsection (g) of Section 3-118 of the Code provides “[u]nless governed by other law regarding claims for indemnity

or contribution, an action . . . for conversion of an instrument, for money had and received, or like action based on conversion . . . must be commenced within 3 years after the cause of action accrues.” The plaintiff argued that this statute of limitations should be tolled by the discovery rule, which states that the statute does not begin running until the plaintiff knows or should reasonably know she has been injured, and that the General Assembly has incorporated the discovery rule into other sections of the Code. The defendants argued that the majority of other states do not apply the discovery rule to conversion of negotiable instruments, and that the General Assembly’s inclusion of the discovery rule in other sections of the Code but not in Section 3-118 shows an intent not to apply the discovery rule in cases involving the conversion of negotiable instruments. The court agreed with defendants, holding that the discovery rule should be applied only in cases where the conversion was fraudulently concealed by the defendant. The court reasoned that the Code should be interpreted with the goal of making the law uniform across jurisdictions and facilitating commerce by enforcing a defined period of liability.

CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT – ELEMENTS

Regardless of the means of deception employed, any claim under the Act must show that the defendant intended for a consumer to rely on the deceptive practice.

In *People ex rel. Madigan v. United Construction of America, Inc.*, 2012 IL App (1st) 120308, the Illinois Appellate Court was asked to certify on appeal whether, in a claim for misrepresentation of a material fact under Section 2 of the Consumer Fraud and Deceptive Business Practices Act (“Act”) (815 ILCS 505/2 (West 2010)), the plaintiff must show that the defendant intended for others to rely on the misrepresentation. Section 2 of the Act states “[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in . . . the 'Uniform Deceptive Trade Practices Act' . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.” The Attorney General argued that the grammatical structure of Section 2 indicates that claims for misrepresentation are distinct from claims involving concealment, omission, or suppression, and that only claims involving concealment, omission, or suppression of a material fact require proof that the defendant intended for a consumer to rely on that concealment, omission, or suppression. The defendant argued that any claim under Section 2 requires a showing of intent that others rely on the particular deceptive act. The court agreed with the defendant, holding that any claim under Section 2 of the Act

requires a showing of intent to induce reliance. The court reasoned that whether through active misrepresentation or passive omission, Section 2 is concerned with deceptive practices generally, and does not create separate claims based on the method of deception.

WORKERS' COMPENSATION ACT – MAILBOX RULE

The mailbox rule applies to parties seeking review of a decision by the Illinois Workers' Compensation Commission in circuit court.

In *Gruszczyk v. Illinois Workers' Compensation Commission*, 2013 IL 114212, the Illinois Supreme Court was asked to determine if the mailbox rule, under which a document is considered filed on the date it is mailed rather than on the date it is file-stamped, applies to a request for judicial review of an Illinois Workers' Compensation Commission ("Commission") decision under Section 19 of the Workers' Compensation Act ("Act") (820 ILCS 305/19(f)(1) (West 2008)). Subsection (f)(1) of Section 19 of the Act provides that "[a] proceeding for review shall be commenced within 20 days of the receipt of the decision of the Commission." The plaintiff argued that because parties are entitled to rely on the mailbox rule when seeking review of an arbitrator's decision before the Commission and when seeking review of a circuit court's decision before the appellate court, a party should be allowed to rely on the mailbox rule when seeking review of the Commission's decision before a circuit court. The defendant argued that nothing in Section 19(f) allows for the initiation of the review process by mail, that circuit court review of a Commission decision is a new action subject to a 20-day statute of limitations, and that prior court decisions prioritizing a statute of limitations on the commencement of an action over the application of the mailbox rule should apply. The court held that the mailbox rule does apply to a request for judicial review of a Commission decision. The court reasoned that Section 19(f) is a continuation of an action, not a new action with a statute of limitations, and noted that there is a legal trend in favor of the mailbox rule. The court further reasoned that Section 1.25 of the Statute on Statutes (5 ILCS 70/1.25) contains only a narrow exception, related to election law, to the mailbox rule. The court reasoned that the General Assembly was aware of the mailbox rule and made explicit exceptions in election law, yet chose not to make an explicit exception for seeking review of a Commission decision. The court observed that the priority given to statutes of limitations is due to concerns over notice to parties and staleness of claims, and noted that these concerns are moot in cases where a claim has already been before the Commission. Public Act 98-040, effective June 28, 2013, added a requirement to Section 19(f)(1) that a party seeking review of a Commission decision must file with the Commission a notice of intent to seek review in circuit court, and that no summons request may be filed and no summons issued by the court until the party seeking review demonstrates proof of filing of the notice of intent to seek review.

INTRODUCTION TO PART 2

Part 2 of this 2013 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 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 (4th 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.** Changes enacted by P.A. 89-719 were ruled unconstitutional by *Cincinnati Insurance Co. v. Chapman*, 181 Ill.2d 65 (1997), due to the inseparability of unconstitutional provisions of the Judicial Redistricting Act of 1997.

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 (7th 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 5/10-2. 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 (7th 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 (ILL. CONST. art. II, § 1) and prohibition against decreasing a judge's salary during his or her term (ILL. CONST. art. VI, § 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 (ILL. CONST. art. VIII, § 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 105/5.661 (30 ILCS 105/5.640 P.A. 94-677). **State Finance Act.** Section added by by Public Act 94-677 was ruled unconstitutional in *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010), due to the inseparability of other unconstitutional provisions.

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".)

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 (1st 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 (5th 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).

65 ILCS 5/11-13-2 (West 1996). **Illinois Municipal Code.** Statute's minimum constructive notice requirement for public hearings on proposed comprehensive zoning ordinances is unconstitutional as applied to affected property owners because procedural due process guarantees (U.S. CONST. amend. V and amend. XIV, § 1) require that the municipality's notice be reasonably calculated to inform affected property owners who may easily be notified by other means. *Passalino v. City of Zion*, 237 Ill.2d 118 (2010).

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. Section providing that Good Friday is a legal school holiday and that teachers and other school employees shall not be required to work on legal holidays promotes one religion over another and violates the establishment clause of the U.S. Constitution. *Metzl v. Leininger*, 57 F.3d 618 (7th Cir. 1995).

105 ILCS 20/1 (P.A. 95-680). **Silent Reflection and Student Prayer Act.** Provision requiring public school students to participate in the observation of a brief period of silence, for prayer or reflection, conducted by their teachers at the beginning of each school day violates the freedom of religion and due process guarantees of the First, Fifth, and Fourteenth Amendments to the U.S. Constitution because it is an endorsement of religion without a clearly secular purpose and is vague as to its implementation. *Sherman v. Township High School Dist. 214*, 594 F.Supp.2d 984 (N.D. Ill. 2009).

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. (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).

HEALTH FACILITIES

210 ILCS 45/3-606 and 45/3-607 (West 2006). **Nursing Home Care Act.** Provisions nullifying a nursing home resident's waiver of the right to commence action in circuit court are preempted by the Federal Arbitration Act (9 U.S.C. §1 *et seq.*) in accordance with the supremacy clause of the U.S. Constitution (U.S. CONST. art. VI, cl. 2). *Fosler v. Midwest Care Center II, Inc.*, 398 Ill.App.3d 563 (2nd Dist. 2010), *Carter v. SSC Odin Operating Co., LLC*, 237 Ill.2d 30 (2010).

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 (4th Dist. 1987).

215 ILCS 5/155.18, 5/155.18a, 5/155.19, and 5/1204 (P.A. 94-677). **Illinois Insurance Code.** Public Act 94-677, effective August 25, 2005, a comprehensive revision of the law relating to health care and medical malpractice actions, is unconstitutional in its entirety because (i) provisions limiting the recovery of damages for non-economic losses in medical malpractice actions violate the separation of powers principle of the Illinois Constitution (ILL. CONST. art. II, § 1) and (ii) other provisions are inseverable. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010).

UTILITIES

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 (5th 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 25/32 (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).

LIQUOR

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.** Section 8-1 was unconstitutional to the extent that the Department of Revenue taxed wine coolers and certain low-alcohol drinks at different rates in violation of 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 (7th 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 5/2-110 (West 1994). Mental Health and Developmental Disabilities Code. Provision authorizing a guardian, with the court’s approval, to provide informed consent for his or her ward to receive unusual, hazardous, or experimental services or psychosurgery that a non-ward may not receive without his or her own written and informed consent violates the due process guarantees of the federal and State constitutions (U.S. CONST. amend. XIV, § 1 and ILL. CONST. art. I, § 2) by permitting denial of a ward’s interest in choosing treatment without providing adequate safeguards. *In re Branning*, 285 Ill.App.3d 405 (4th Dist. 1996).

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 (2nd 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 (7th 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 14th 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 P.A. 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 5/18c-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, § 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.** Changes enacted by P.A. 89-719 were ruled unconstitutional by *Cincinnati Insurance Co. v. Chapman*, 181 Ill.2d 65 (1997), due to the inseverability of unconstitutional provisions of the Judicial Redistricting Act of 1997.

705 ILCS 55/ (West 2006). **Compulsory Retirement of Judges Act.** Automatic retirement of a supreme court, appellate, circuit, or associate judge at the conclusion of the term of office in which he or she attains the age of 75 is a denial of equal protection under the Illinois Constitution (ILL. CONST. art. I, § 2) because the Act applies to sitting judges but does not prohibit a person aged 75 years or older from seeking judicial office if that person has never been a judge or if that person attained age 75 while not in judicial office. *Maddux v. Blagojevich*, 233 Ill.2d 508 (2009).

705 ILCS 105/27.10 (P.A. 94-677). **Clerks of Courts Act.** Section added by Public Act 94-677 was ruled unconstitutional by *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010), due to the inseparability of other unconstitutional provisions.

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 (1st Dist. 1993).

ALTERNATIVE DISPUTE RESOLUTION

710 ILCS 45/ (P.A. 94-677). **Sorry Works! Pilot Program Act.** Addition of the Sorry Works! Pilot Program Act by enacted by Public Act 94-677 was ruled unconstitutional in *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010), due to the inseparability of other unconstitutional provisions.

CRIMINAL OFFENSES

720 ILCS 5/9-1 (Ill. Rev. Stat. 1987, ch. 38, par. 9-1). **Criminal Code of 2012.*** 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).

* Effective January 1, 2013, the Criminal Code of 1961 was renamed the Criminal Code of 2012 by P.A. 97-1108. This Case Report uses "Criminal Code of 2012" in all instances. A conversion table for the Criminal Code re-write can be found online at <http://ilga.gov/commission/lrb/Criminal-Code-Rewrite-Conversion-Tables.pdf>

720 ILCS 5/10-5 (Ill. Rev. Stat. 1989, ch. 38, par. 10-5). **Criminal Code of 2012.** 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.3rd 176 (3rd Dist. 1991).

720 ILCS 5/11-6, 5/11-6.5, and 5/32-10 (P.A. 89-203). **Criminal Code of 2012.** 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 2012.** 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 5/12A-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 2012.** The Violent Video Games Law and the Sexually Explicit Video Games Law, added by P.A. 94-315, violates 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 (7th Cir. 2006).

720 ILCS 5/14-2(a)(1)(A), 5/14-1(d) (West 2008). **Criminal Code of 2012.** The portion of the Code concerning eavesdropping is unconstitutional to the extent that it proscribes the recording of police officers while performing their public duties, in public places, speaking at a volume audible to the unassisted ear. *ACLU of Ill. v. Alvarez*, 2012 WL 6680341 (N.D. Ill.).

720 ILCS 5/16-30. Criminal Code of 2012. Because subdivision (a)(7) of Section 16G-15 does not require a culpable mental state beyond mere knowledge, its provisions criminalize a “wide array of wholly innocent conduct” and, thus, violate the due process guarantees of the State and federal constitutions (U.S. CONST., amends. V and XIV; ILL. CONST. art. I, § 2). *People v. Madrigal*, 241 Ill.2d 463 (2011)

720 ILCS 5/18-2 (West 2000). Criminal Code of 2012. 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 (ILL. CONST. art. I, § 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 (1st Dist. 2006) and *People v. Clemons*, 2012 IL 107821.

720 ILCS 5/37-4 (Ill. Rev. Stat. 1985, ch. 38, par. 37-4). Criminal Code of 2012. 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 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 (7th 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 (7th Cir. 2001).

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 (7th 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 (ILL. CONST. art. I, § 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 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 5/114-9 (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 (1st Dist. 2005), and *In re Rolandis G.*, 352 Ill.App.3d 776 (2nd 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 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 (2nd Dist. 2000), and *In re Detention of Trevino*, 317 Ill.App.3d 324 (2nd 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 (4th 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 5/3-3-3 and 5/5-8-1 (West 2010). **Unified Code of Corrections.** A statutory scheme that imposes a mandatory natural-life sentence on a minor results in an unconstitutionally cruel and unusual punishment. *People v. Luciano*, 2013 IL App (2d) 110792.

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 (4th 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 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2nd 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 5/5-5-3.2 (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 (3rd 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.** 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 (ILL. CONST. art. IV), or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution (ILL. CONST. art. II, § 1) and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

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 (2nd 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 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2nd 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 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), *People v. Edwards*,

304 Ill.App.3d 250 (2nd 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, 5/2-1205.1, 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, 5/13-213, 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 (ILL. CONST. art. IV), or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution (ILL. CONST. art. II, § 1) and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *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 (1st 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 (2nd 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 (ILL. CONST. art. IV), or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution (ILL. CONST. art. II, § 1) and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

740 ILCS 110/10 (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.** 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 (ILL. CONST. art. IV), or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution (ILL. CONST. art. II, § 1) and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

CIVIL IMMUNITIES

745 ILCS 10/6A-101 and 10/6A-105 (P.A. 89-7). **Local Governmental and Governmental Employees Tort Immunity 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 (ILL. CONST. art. IV), or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution (ILL. CONST. art. II, § 1) and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

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 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 (grouping public schools and nonprofit private schools together) 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).

745 ILCS 49/30 (P.A. 94-677). **Good Samaritan Act.** Public Act 94-677, effective August 25, 2005, a comprehensive revision of the law relating to health care and medical malpractice actions, is unconstitutional in its entirety because (i) provisions limiting the recovery of damages for non-economic losses in medical malpractice actions violate the separation of powers principle of the Illinois Constitution (ILL. CONST. art. II, § 1) and (ii) other provisions are inseverable. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010).

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 (3rd 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. *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.** 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 (ILL. CONST. art. IV), or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution (ILL. CONST. art. II, § 1) and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

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); *People v. Reimer*, 2012 IL App (1st) 101253.

EMPLOYMENT

820 ILCS 10/1 Collective Bargaining Successor Employer Act. Insofar as it applies to employers who are subject to the federal Labor Management Relations Act and the National Labor Relations Act, Act is preempted by those Acts 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 (7th Cir. 2006).

820 ILCS 105/4a. Minimum Wage Law. Section 4a's overtime provisions, as applied to interstate railways, are preempted by the federal Railway Labor Act. *Wisconsin Central Ltd. v. Shannon*, 539 F.3d 751 (7th Cir. 2008).

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 (7th Cir. 1994).

820 ILCS 140/3.1. One Day Rest in Seven Act. Required workplace conditions and enforcement provisions applicable only to hotel room attendants working in a county with a population greater than 3,000,000 are preempted by the federal National Labor Relations Act. *520 South Michigan Ave. Associates v. Shannon*, 549 F.3d 1119 (7th Cir. 2008).

820 ILCS 305/5 (P.A. 89-7). Workers' Compensation Act. Changes made to this Section by P.A. 89-7 were held unconstitutional by *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), due to inseparability of the unconstitutional provisions of that Act.

820 ILCS 310/5 (P.A. 89-7). Workers' Occupational Diseases Act. Changes made to this Section by P.A. 89-7 were held unconstitutional by *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997), due to inseparability of the unconstitutional provisions of that Act.

820 ILCS 405/602 Unemployment Insurance Act. Provision of paragraph B postponing 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 (7th Cir. 1982).

INTRODUCTION TO PART 3

Part 3 of this 2013 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 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 (ILL. CONST. art. VI, § 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). P.A. 94-98, eff. 7-1-05, added Section 2.5 to the Act, with the intent "to create a statutory framework to allow Illinois official court reporters to enjoy the same collective bargaining and other labor rights granted to other public employees."

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 (7th 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 5/7A-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 conflicted with the deadline for filing those declarations to seek judicial retention established in Section 12 of Article VI of the Illinois Constitution (ILL. CONST. art. VI, § 12), which is 6 months before the general election preceding the expiration of their terms of office. Public Act 96-886, effective January 1, 2011, amended the statute to conform with the Constitution's deadline, although the Public Act did not resolve the problem resulting from the deadline occurring after the general primary (the third Tuesday in March before the general election). *O'Brien v. White*, 219 Ill.2d 86 (2006).

10 ILCS 5/8-10. Election Code. Provision granting incumbents priority in ballot positions violated the 14th 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 5/9-2. Election Code. In the Article concerning the disclosure and regulation of campaign contributions and expenses, there is a provision that prohibits individuals and groups from forming more than one political action committee. This provision was held unconstitutional as applied to independent-expenditure-only political action committees. *Personal PAC v. McGuffage*, 858 F.Supp.2d 963 (N.D. Ill. 2012). This holding was codified by P.A. 97-766.

10 ILCS 5/9-8.5. Election Code. In the Article concerning the disclosure and regulation of campaign contributions and expenses, there is a provision that limits the amount of money a PAC may accept from an individual or group during an election cycle. This provision was held unconstitutional as applied to independent-expenditure-only political action committees. *Personal PAC v. McGuffage*, 858 F.Supp.2d 963 (N.D. Ill. 2012). This holding was codified by P.A. 97-766.

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 14th 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 (ILL. CONST. art. I, § 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 (1st 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, § 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 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 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2nd 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”.) Section 5.400 was repealed by Public Act 95-331.

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”.)

30 ILCS 560/ (Ill. Rev. Stat. 1981, ch. 48, par. 269 *et seq.*). **Public Works Preference Act.** Act was completely unconstitutional because it required that only Illinois laborers may be used for building public works, which violates the privileges and immunities clause of the U.S. Constitution. Public Act 96-929, effective June 16, 2010, repealed the Public Works Preference Act, although it retained and amended the similar Employment of Illinois Workers on Public Works Act (30 ILCS 570/). *People ex rel. Bernardi v. Leary Construction Co., Inc.*, 102 Ill.2d 295 (1984).

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).

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”).)

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). Section 20 was internally repealed on January 1, 2003.

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, § 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 (1st 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. *Cardunal 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 make a finding as to whether restrictions on property use had been violated 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 (7th 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 (1st 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 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). These requirements were repealed by P.A. 90-561.

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 (7th 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. 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 60/7, 60/22, 60/23, 60/24, 60/24.1, and 60/36 (P.A. 94-677). **Medical Practice Act of 1987.** Provisions amended by P.A. 94-677, effective August 25, 2005, were unconstitutional because P.A. 94-677 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 97-622, effective November 23, 2011, re-enacted the changes made by 94-677.

225 ILCS 60/26 (West Supp. 1999). **Medical Practice Act of 1987.** Provisions that ban a licensee's use of testimonials to entice the public violated 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 (4th Dist. 2001). Public Act 97-622, effective November 23, 2011, removed the provisions that banned the use of testimonials for those purposes.

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). These changes were carried over when the Act was again recodified by P.A. 93-438 as the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 (225 ILCS 447/15-10).

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/ (Ill. Rev. Stat. 1991, ch. 43, par. 153). **Liquor Control Act of 1934.** 235 ILCS 5/. Provisions authorizing in-state, but not out-of-state-brewers, to self-distribute violated the Commerce Clause. *Anheuser-Busch, Inc. v. Schnorf*, 738 F.Supp.2d 793 (N.D. Ill. 2010). P.A. 97-5, effective June 1, 2011, removed the unconstitutional distinction, created a craft brewer license, and allowed craft brewers to self-distribute beer in the State.

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 14th 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). P.A. 97-1049 added criteria specifying how to violate the provisions in question.

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).

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 (1st 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 (5th 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 (1st 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).

625 ILCS 5/12-612 (West 2004). **Illinois Vehicle Code.** Statute that made 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, violated the due process guarantees of the federal and State constitutions (U.S. CONST. amends. V and XIV and ILL. CONST. art. I, § 2) because it was too broad and potentially punished innocent behavior. Public Act 96-202, effective January 1, 2010, amended Section 12-612 to require that the person (i) own or operate the vehicle with criminal intent and (ii) know that the compartment is or has been used to conceal specified, prohibited firearms or controlled substances. *People v. Carpenter*, 228 Ill.2d 250 (2008).

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 (5th Dist. 2001), *In re C.B.*, 322 Ill.App.3d 1011 (4th Dist. 2001), and *In re T.B.*, 325 Ill.App.3d 566 (3rd Dist. 2001).

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 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2nd 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".) P.A. 90-590 repealed the offending Sections.

CRIMINAL OFFENSES

720 ILCS 5/10-5 (West 1998). **Criminal Code of 2012.*** Provision that made evidence of luring or attempted luring prima facie evidence of other than a lawful purpose created a *per se* unconstitutional, but severable, mandatory presumption that denied due process by shifting the burden of proof to the defendant. *People v. Woodrum*, 223 Ill.2d 286 (2006). P.A. 97-160 amended the provision to authorize the trier of fact to infer that luring or attempted luring is for other than an unlawful purpose.

* Effective January 1, 2013, the Criminal Code of 1961 was renamed the Criminal Code of 2012 by P.A. 97-1108. This Case Report uses "Criminal Code of 2012" in all instances. A conversion table for the Criminal Code re-write can be found online at <http://ilga.gov/commission/lrb/Criminal-Code-Rewrite-Conversion-Tables.pdf>

720 ILCS 5/10-5.5 (West 1994). **Criminal Code of 2012.** 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 was an undue infringement on the court's inherent powers under the separation of powers provision of Article II, Section 1 of the Illinois Constitution. Public Act 96-710, effective January 1, 2010, removed the offending provision. *People v. Warren*, 173 Ill.2d 348 (1996).

720 ILCS 5/11-20.1 (P.A. 88-680). **Criminal Code of 2012.** 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 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), and *People v. Edwards*, 304 Ill.App.3d 250 (2nd Dist. 1999). (These cases are also reported in Part 2 of this Case Report under "Finance", "Courts", and "Corrections".)

720 ILCS 5/12-6 (Ill. Rev. Stat. 1983, ch. 38, par. 12-6). **Criminal Code of 2012.** 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 17th Judicial Circuit*, 624 F.Supp. 68 (N.D.Ill. 1985). Public Act 96-1551, effective July 1, 2011, limited the applicability of this provision to felonies and Class A misdemeanors.

720 ILCS 5/12-18 (Ill. Rev. Stat. 1981, ch. 38, par. 12-18). **Criminal Code of 2012.** 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 (2nd Dist. 1992).

720 ILCS 5/12C-5. **Criminal Code of 2012.** 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 ILL. CONST. art. I, § 2). *People v. Jordan*, 218 Ill.2d 255 (2006). Public Act 97-1109, effective January 1, 2013, makes the presumption permissive rather than mandatory.

720 ILCS 5/16-1 (Ill. Rev. Stat. 1989, ch. 38, par. 16-1). **Criminal Code of 2012.** 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 5/16-7 (West 2004). **Criminal Code of 2012.** 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*, 235 Ill.2d 178 (2009). This Section was substantially re-written by P.A. 97-597.

720 ILCS 5/16A-4 (West 2000). **Criminal Code of 2012.** 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 (1st Dist. 2003), and *People v. Butler*, 354 Ill.App.3d 57 (1st Dist. 2004). Public Act 97-597, effective January 1, 2012, made the inference permissive rather than mandatory.

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 2012.** 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 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), and *People v. Edwards*, 304 Ill.App.3d 250 (2nd 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 2012.** 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 (ILL. CONST. art. I, § 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 2012.**

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 2012.** 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 2012.** (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 2012.** 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 (1st Dist. 2005).

720 ILCS 5/25-1 (Ill. Rev. Stat., ch. 38, par. 25-1). **Criminal Code of 2012.** Provision of mob action offense that prohibited the assembly of 2 or more persons to do an unlawful act was unconstitutional for violating due process and the First Amendment because it (i) was too vague to give reasonable notice of the prohibited conduct or adjudicatory standards and (ii) was so overbroad as to allow the arbitrary suppression of non-criminal conduct. Public Act 96-710, effective January 1, 2010, changed the offense to prohibit the knowing assembly of 2 or more persons with the intent to commit or facilitate the commission of a felony or misdemeanor. *Landry v. Daley*, 280 F.Supp. 938 (N.D.Ill. 1968).

720 ILCS 5/26-1 (Ill. Rev. Stat. 1973, ch. 38, par. 26-1). **Criminal Code of 2012.** 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 2012.** 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 2012 (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 (4th 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 2012.** 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 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), and *People v. Edwards*, 304 Ill.App.3d 250 (2nd Dist. 1999). (These cases are also reported in Part 2 of this Case Report under “Finance”, “Courts”, and “Corrections”.)

720 ILCS 5/36-1 (P.A. 88-669). **Criminal Code of 2012.** 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).

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 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 (2nd Dist. 2003). P.A. 96-1551, effective July 1, 2011, replaced the provision that created a mandatory presumption with a provision that authorized the trier of fact to infer that possession of 2 or more credit or debit cards is evidence of the possessor's intent to defraud or knowledge that the debit or credit cards had been altered or counterfeited. P.A. 96-1551 also moved the provision in question to 720 ILCS 5/17-41 (West 2011).

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 (7th 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 (7th 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 (7th 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 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). P.A. 97-334, effective January 1, 2012, repealed Section 315.

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 5/110-6.2 (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 violated the separation of powers clause of the Illinois Constitution because they limited the court's authority to set bail and imposed conditions not

found in Supreme Court Rule 609 concerning bail. *People v. Williams*, 143 Ill.2d 477 (1991). P.A. 96-1200, effective July 22, 2010, amended the provision to make the court's imposition of order's concerning post-conviction detention discretionary rather than mandatory.

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 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 violated the separation of powers clause of the Illinois Constitution and also was contrary to a Supreme Court Rule concerning judicial administration and therefore violated Article VI, Section 16 of the Illinois Constitution. Public Act 96-1200, effective July 22, 2010, repealed the offending provision. *People v. Joseph*, 113 Ill.2d 36 (1986).

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.** Two provisions providing that, in imposing a sentence for a felony conviction, a judge "shall" specify reasons for his or her sentencing determination were constitutional, as held here, when "shall" is construed in that context to be permissive rather than mandatory. By contrast, if "shall" were interpreted to reflect a mandatory intent, the provisions would unconstitutionally infringe upon the inherently separate power of the judiciary. Public Act 95-1052, effective July 1, 2009, removed the offending provision from Section 5-8-1. *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 (ILL. CONST. art. I, § 11). 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 conflicted with Supreme Court Rule 615(b)(4), and was thus invalid because it constituted an undue infringement by the legislature on the powers of the judiciary. 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 (1st 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. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997). 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. Public Act 90-579 was deemed a valid resurrection of P.A. 89-7 in *Cargill v. Czelatdko*, 353 Ill.App.3d 654 (4th Dist. 2004); *Cargill* was overruled by *O'Casek v. Children's Home and Aid Society of Illinois*, 229 Ill.2d 421 (2008). Public Act 94-677 specifically re-enacted and changed 735 ILCS 5/2-622 and 5/8-2501 but was later held unconstitutional in *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010). Public Act 97-1145 restored the provisions of these Sections to their status before the enactment of P.A. 89-7.

735 ILCS 5/2-622, 5/2-1704.5, 5/2-1706.5, 5/8-1901, and 5/8-2501 (P.A. 94-677). Code of Civil Procedure. Public Act 94-677, effective August 25, 2005, a comprehensive revision of the law relating to health care and medical malpractice actions, is unconstitutional in its entirety because (i) provisions limiting the recovery of damages for non-economic losses in medical malpractice actions violate the separation of powers principle of the Illinois Constitution (ILL. CONST. art. II, § 1) and (ii) other provisions are inseparable. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010). Public Act 97-1145 restored the provisions of these Sections to their status before the enactment of P.A. 94-677.

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 (2nd 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 in certain situations, 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. *Wickham v. Byrne*, 199 Ill.2d 309 (2002). P.A. 93-911 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.

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 14th 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 (1st 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. 106³/₄, 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 (1st 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. 106³/₄, 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 (1st 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 ILL. CONST. art. I, § 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 ILL. CONST. art. I, § 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 (2nd 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 14th 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 (7th 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 only claims of an unfair employment practice properly filed with the Fair Employment Practices Commission prior to 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. *Wilson v. All-Steel, Inc.*, 87 Ill.2d 28 (1981). P.A. 84-1084 repealed this provision.

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).

820 ILCS 185/. **Illinois Employee Classification Act.** Because the Act allows for the assessment of penalties and sanctions without providing a contractor with an opportunity for a hearing, it violates the minimum guarantees of due process required by the United States and Illinois Constitutions (U.S. CONST. amends. V and XIV; ILL. CONST. art. I, § 2). *Bartlow v. Shannon*, 399 Ill.App.3d 560 (5th Dist. 2010). P.A. 98-106 added notice and hearing provisions to this Act.

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). P.A. 97-416, effective August 16, 2011, repealed the Industrial Home Work Act.

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