2005 CASE REPORT

(and cumulative report of Illinois statutes held unconstitutional)

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To the Honorable Members of the General Assembly:

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

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

Respectfully submitted,

Richard C. Edwards
Executive Director

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INTRODUCTION TO PART 1

Part 1 of this 2005 Case Report contains summaries of recent court decisions and is based on a review of court decisions published since the summer of 2004 in advance sheets through the following:

1. Illinois Official Reports advance sheet No. 15 (July 20, 2005).
2. Federal Reporter advance sheet No. 31 (August 1, 2005).
3. Federal Supplement advance sheet No. 31 (August 1, 2005).
4. Supreme Court Reporter advance sheet No. 18 (July 15, 2005).

PART 1
SUMMARIES OF RECENT COURT DECISIONS

PROPERTY TAX CODE - EXEMPTIONS

The criteria for property tax exemptions may not be construed to grant exemptions on a more lenient basis than that required by the Illinois Constitution.

In *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273 (2004), a taxpayer that operated a retirement center for senior citizens challenged the Department of Revenue's denial of its application for a charitable-use property tax exemption. The taxpayer argued that it need not comply with the criteria for the exemption set forth in case law because that case law was intended to apply to an earlier version of the statute, and the taxpayer was entitled to the exemption because it met the statutory requirements for the exemption. Section 6 of Article IX of the Illinois Constitution (ILCON Art. IX, Sec. 6) permits the General Assembly to exempt property used exclusively for charitable purposes from taxation. Subsection (c) of Section 15-65 of the Property Tax Code (35 ILCS 200/15-65 (West 2000)) sets forth the requirements for a charitable-use tax exemption for old people's homes and other similar facilities. The Illinois Supreme Court rejected the taxpayer's argument and held that the taxpayer was required to comply with the criteria set forth in case law that interprets the constitutional requirements for property tax exemptions. The authority to exempt property is conferred by the Constitution, and, therefore, all constitutional criteria must be satisfied before property may be exempted. Consequently, the provisions of the Property Tax Code may not be construed to grant exemptions on a more lenient basis than that required by the Constitution.

ILLINOIS PENSION CODE - STATE UNIVERSITIES - RULE 2

Early retirement option contributions under the Code's State Universities Article are not "accumulated normal contributions" and are not used to calculate retirement benefits under Rule 2 provisions.

In *Mattis v. State Universities Retirement System*, 212 Ill. 2d 58 (2004), a retired law professor challenged the State Universities Retirement System's interpretation of the language of Rule 2 of subsection (a) of

Section 15-136 of the Illinois Pension Code (40 ILCS 5/15-136 (West 1992)) that contributions pursuant to Section 15-136.2 [(40 ILCS 5/15-136.2) the early retirement option (ERO)] are not "accumulated normal contributions". The General Assembly amended the relevant provisions of the Illinois Pension Code in Public Act 91-887, effective July 6, 2000, to specifically exclude contributions pursuant to Section 15-136.2 from the calculation and to specifically provide for calculation of Mattis' benefits (referring to the case by name). The amendments were declared unconstitutional on remand by the circuit court. The Illinois Supreme Court held that, under the definition of "accumulated normal contributions", the ERO contribution is not an accumulated normal contribution and should not be considered in the calculation of benefits under Rule 2. The Illinois Supreme Court did not rule on the constitutionality of the amendments.

PUBLIC UTILITIES ACT - STATUTORY CHARITABLE FOUNDATION

The statutory creation of a charitable foundation from certain assets of a utility does not make the foundation a State agency, and the State has no right to demand that the foundation turn over a portion of its assets to the State.

In *Illinois Clean Energy Community Foundation v. Filan*, 392 F. 3d 934 (7th Cir. 2004), a foundation created by Section 16-111.1 of the Public Utilities Act (220 ILCS 5/16-111.1) sought to enjoin the State from enforcing a demand that the foundation turn over $125,000,000 of its assets to the State. The court held that the foundation, while authorized by State statute, is not a State agency. Even though the State forced the transfer of property from a private entity (ComEd) to a charitable foundation, it did not destroy the private character of the property. The State does not "control" the foundation by virtue of appointing most of the foundation's trustees because the trustees owe a fiduciary duty to the foundation, not to the State; the court noted that if the State truly controlled the foundation, this lawsuit would not have been filed. Finally, the court found that the State could have reserved the right to confiscate the property of the foundation in the statute creating the foundation, but the State could not lawfully enlarge its regulatory power by taking property by device of amending an existing statute rather than in the enactment of a new statute.

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE – MEDICAL EXPERT

Due process requires a different level of independent medical expertise in a proceeding for the involuntary administration of psychotropic drugs than in a proceeding for involuntary commitment.

In *In re Robert S.*, 213 Ill. 2d 30 (2004), the respondent, who was found unfit to stand trial in a criminal proceeding, raised constitutional questions concerning the construction and application of Sections 2-107.1 and 3-804 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-107.1 and 5/3-804 (West 2000)). The respondent's treating psychiatrist filed a petition, which was granted, seeking the involuntary administration of psychotropic medication pursuant to Section 2-107.1. Section 3-804 provides that: "If the respondent is unable to obtain an examination, he may request that the court order an examination to be made by an impartial medical expert pursuant to Supreme Court Rules or by a qualified examiner, clinical psychologist or other expert". The respondent argued that the circuit court's decision to appoint, as an "impartial medical expert" pursuant to Section 3-804, a psychologist who was not qualified to conduct an examination violated his constitutional rights. The court held that when forced treatment with psychotropic drugs is sought pursuant to Section 2-107.1, medical expertise is required of the independent examiner. Section 3-804 should have been construed to require that the second opinion be given by a psychiatrist, who, unlike a psychologist, is qualified to prescribe medication. The court further held that the legislature intended Section 3-804 to apply in 2 different contexts: (1) proceedings for involuntary commitment, in which an examination by a "qualified examiner, clinical psychologist or other expert" may suffice for purposes of due process; and (2) proceedings for involuntary administration of drugs, in which only an examination by a "medical expert" can suffice for purposes of due process.

ILLINOIS VEHICLE CODE - HEARING ON STATUTORY SUMMARY SUSPENSION OF DRIVING PRIVILEGES

The requirement that a hearing on a petition for rescission of the statutory summary suspension of driving privileges be conducted within 30 days after the petition is filed is satisfied if the hearing is commenced but not completed within that time period.

In *People v. Cosenza*, 215 Ill. 2d 308 (2005), the State challenged an appellate court decision holding that a driver was entitled to rescission of the

summary suspension of his driving privileges for refusing to submit to testing for alcohol, drugs, or intoxicating compounds because a hearing on his petition to rescind the suspension was not completed within 30 days after the petition was filed. Subsection (b) of Section 2-118 of the Illinois Vehicle Code (625 ILCS 5/2-118 (West 2002)) provides that, if a person files a petition for rescission within 90 days of receiving notice that his or her driving privileges will be summarily suspended under Section 11-501.1 of the Code (625 ILCS 5/11-501.1), a hearing on the petition must be conducted within the next 30 days. The Illinois Supreme Court reversed the appellate court's finding that the provision required the hearing to be completed within the 30-day time limit. If the appeals court's interpretation of subsection (b) of Section 2-118 had been intended, the General Assembly would have used a word such as "concluded" or "finished" rather than "conducted" in the provision. The provision is analogous to the speedy trial statute, Section 103-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5 (West 2002)), which provides that a criminal defendant "shall be tried" within a specified period of time but has not been construed to require that the trial must be "concluded" within that time. The Supreme Court's reading of Section 2-118 of the Illinois Vehicle Code protects the defendant's due process right to a timely hearing while giving the State 30 days to prepare after the hearing has been requested.

ILLINOIS VEHICLE CODE - RESCISSION OF STATUTORY SUMMARY SUSPENSION

A defendant who has voluntarily dismissed a timely filed petition to rescind a statutory summary alcohol- or other-drug-related suspension of his or her driving privileges may refile the petition within one year after the date of voluntary dismissal.

In *People v. McClure*, 355 Ill. App. 3d 778 (3rd Dist. 2005), a defendant who had voluntarily dismissed his timely filed petition for rescission of his statutory summary alcohol or other drug related suspension of driving privileges under Section 11-501.1 of the Illinois Vehicle Code (625 ILCS 5/11-501.1 (West 2002)) argued that he should have been allowed to refile the petition within one year of the date of its voluntary dismissal under Section 13-217 of the Code of Civil Procedure (735 ILCS 5/13-217 (West 2002)). Subsection (b) of Section 2-118.1 of the Illinois Vehicle Code (625 ILCS 5/2-118.1 (West 2002)) provides that a person who has received notice that his or her driving privileges will be suspended under Section 11-501.1 may, within 90 days after being served with the notice, file

a written notice for a hearing on rescission of the suspension in the circuit court of venue. Subsection (b) of Section 2-118.1 further provides that the hearing "shall proceed in the court in the same manner as in other civil proceedings", and the Third District Appellate Court refused to follow a previous decision finding the provision to be ambiguous (*People v. Rodriguez*, 339 Ill. App. 3d 677 (2nd Dist. 2003)). A unanimous Third District panel held that the language of Section 13-217 of the Code of Civil Procedure allowing one year to refile a voluntarily dismissed action applies to a petition under Section 2-118.1. Section 13-217 has been held to apply to various causes of action whose statutes set a specific time limit for initial filings but not for refilings, and Section 2-118.1 contains no language that would indicate a contrary result in cases filed under that provision.

JUVENILE COURT ACT OF 1987 - WRITTEN FACTUAL BASIS FOR COURT DETERMINATION

The requirement that a court provide a written factual basis of its determination of parental unfitness or inability to care for a child for other than financial reasons is satisfied by oral findings on the record so long as the findings are explicit and advise the parties of the basis for the court's decision.

In *In re Madison H.*, 215 Ill. 2d 364 (2005), the parents of a child who was placed under the guardianship of the Department of Children and Family Services challenged the court order on the basis that the court did not provide a written factual basis for the determination as required by Section 2-27 of the Juvenile Court Act of 1987 (705 ILCS 405/2-27 (West 2002). The Illinois Supreme Court held that the requirement in subsection (1) of Section 2-27, that the court put in writing the factual basis for its finding, has the purpose of providing notice to the parties of the reasons forming the basis of the court's decision. Explicit oral findings, once transcribed, provide an equal opportunity to review the validity of the findings. Oral findings on the record will satisfy the requirements of Section 2-27 so long as the findings are explicit and advise the parties of the basis of the court's decision.

JUVENILE COURT ACT OF 1987 - TERMINATION OF PARENTAL RIGHTS

A preponderance of the evidence is the appropriate standard of proof for determination of the best interests of the child for purposes of a termination of parental rights.

In *In re D.T.*, 212 Ill. 2d 347 (2004), a parent challenged the circuit court's use of the "sound discretion" standard when it determined that termination of the parent's rights was in the best interests of the child. Section 2-29 of the Juvenile Court Act of 1987 (705 ILCS 405/2-29 (West 2000)) provides that there is a 2-part hearing process for the termination of parental rights. In subsection (2) of Section 2-29, the statute provides for a "clear and convincing evidence" standard for the unfitness hearing, the first part of the process. The statute does not set a standard for the second prong of the termination hearing, which determines the best interests of the child. The Illinois Supreme Court held that for the best-interests step of the termination hearing under Section 2-29, a preponderance of the evidence standard is appropriate.

UNIFORM ARBITRATION ACT - ATTORNEY FEES

Attorney fees in an action to enforce an arbitration award are not costs of disbursing the award.

In *International Federation of Professional and Technical Engineers, Local 153 v. Chicago Park District*, 349 Ill. App. 3d 546 (1st Dist. 2004), a union challenged the circuit court's order denying attorney fees when the union was granted summary judgment in a case involving an enforcement of an arbitration award. Section 14 of the Uniform Arbitration Act (710 ILCS 5/14 (West 2000)) permits the court to award costs of the application and disbursements. The appellate court held that the term "disbursements" does not include attorney fees. The court reasoned that Illinois does not permit the recovery of attorney fees unless specifically authorized by statute or an arbitration contract.

CRIMINAL CODE OF 1961 - CONSPIRACY

The maximum punishment for conspiracy to commit an unspecified offense such as forgery is that of a Class 4 felony, rather than the greater Class 3 felony of the underlying offense of forgery.

In *People v. Effler*, 349 Ill. App. 3d 217 (2nd Dist. 2004), the defendant was convicted of conspiracy to commit forgery and sentenced

under subsection (c) of Section 8-2 of the Criminal Code of 1961 (720 ILCS 5/8-2 (West 2000)) in accordance with the underlying offense, a Class 3 felony. Subsection (c) of Section 8-2 consists of 3 clauses: the first clause limits the maximum punishment for conspiracy to the maximum punishment for the underlying offense, the second clause enumerates the maximum punishment for conspiracy to commit certain offenses (which does not include forgery), and the third clause provides that conspiracy to commit any offense not enumerated shall not be sentenced in excess of a Class 4 felony. The court held that, except for the offenses enumerated in the subsection, the maximum punishment for conspiracy is the punishment for the underlying offense or a Class 4 felony, whichever is less.

CRIMINAL CODE OF 1961 - INDECENT SOLICITATION OF AN ADULT

The indecent solicitation of an adult statute violates the proportionate penalties clause of the Illinois Constitution and is unconstitutional in its entirety.

In *In re M.T.*, 352 Ill. App. 3d 131 (1st Dist. 2004), the respondent, a juvenile, was adjudicated delinquent for indecent solicitation of an adult under clause (a) (1) (ii) of Section 11-6.5 of the Criminal Code of 1961 (720 ILCS 5/11-6.5 (West 2000)) and following a dispositional hearing was sentenced to 30 days in a juvenile detention center and 18 months probation. The respondent contended that the indecent solicitation of an adult statute violates the proportionate penalties clause of the Illinois Constitution (ILCON Art. I, Sec. 11). The appellate court agreed. The indecent solicitation of an adult statute violates the proportionate penalties clause when compared to the indecent solicitation of a child statute (720 ILCS 5/11-6 (West 2000)). The indecent solicitation of a child statute, which additionally requires that the solicitation be accompanied by violence or threat of violence, regulates conduct that poses more of a threat to the public health and safety, yet the indecent solicitation of an adult statute carries harsher penalties. To punish a nonviolent solicitation more harshly than a violent one is disproportionate and unconstitutional. The court held that the indecent solicitation of an adult statute found in clause (a) (1) (ii) of Section 11-6.5 of the Criminal Code of 1961 is unconstitutional in its entirety.

CRIMINAL CODE OF 1961 - HARMFUL MATERIAL

Giving a minor a sealed envelope containing harmful material with instructions to deliver the envelope to the minor's father constitutes distribution of harmful material to a minor.

In *People v. Ward*, 215 Ill. 2d 317 (2005), the defendant was convicted of distributing harmful material to a minor in violation of Section 11-21 of the Criminal Code of 1961 (720 ILCS 5/11-21 (West 2000)). The defendant had placed harmful material in a taped envelope and had told the minor to deliver the envelope to her father. Clause (b)(3) of Section 11-21 defines "distribute" as the transfer of possession, with or without consideration. The statute does not define "possession". On appeal, the defendant contended that she had not transferred possession but only custody of the harmful material to the minor because the material was left with the minor for a limited and temporary purpose. The Illinois Supreme Court rejected the defendant's argument. The majority held that the plain meaning of the word "possession" is the act or condition of having in or taking into one's control or holding at one's disposal. When the defendant left the envelope with the minor child with instructions to give it to the minor's father, the defendant transferred control of the material. A dissent criticized the majority opinion because it held that the crime was completed by the mere transference of possession of a container holding harmful material and does not give consideration to the defendant's intent. The dissent stated that there was nothing in the statutory language to suggest that the legislature contemplated that the crime of distributing harmful material is committed when harmful material is "distributed" within a sealed container, a child is not the intended recipient, and the alleged offender has no intention that the harmful material be viewed by a minor.

CRIMINAL CODE OF 1961 - HOME INVASION

The enhanced sentence for home invasion while in possession of a firearm violates the proportionate penalties clause of the Illinois Constitution when compared to the more serious offense of aggravated battery with a firearm.

In *People v. Dryden*, 349 Ill. App. 3d 115 (2nd Dist. 2004), the defendant was convicted of home invasion under paragraph (a) (3) of Section 12-11 of the Criminal Code of 1961 (720 ILCS 5/12-11 (West 2000)) and sentenced to 21 years' imprisonment under subsection (c) of that Section. The sentence included a 15-year enhancement, which was triggered by his possession of a firearm during the commission of the home invasion.

The defendant challenged his conviction as violating the proportionate penalties clause of the Illinois Constitution (ILCON Art. I, Sec. 11). The appellate court, relying on the Illinois Supreme Court decision in *People v. Moss*, 206 Ill. 2d 503 (2003), held that the punishment for home invasion while possessing a firearm (21 to 45 years, including the 15-year sentence enhancement) is more severe than the punishment for aggravated battery with a firearm (6 to 30 years) under clause (a)(1) of Section 12-4.2 of the Criminal Code of 1961 (720 ILCS 5/12-4.2). Aggravated battery with a firearm requires that the firearm actually be discharged and an injury result whereas the home invasion crime requires only that a person possess a firearm and either threaten to use or actually use force. The appellate court held that shooting someone with a firearm is more serious than merely possessing a firearm, regardless of the circumstances under which the firearm is possessed. The defendant's sentence violated the proportionate penalties clause of the Illinois Constitution.

CRIMINAL CODE OF 1961 - CHILD ENDANGERMENT

The mandatory rebuttable presumption that leaving a child age 6 or younger unattended in a motor vehicle for more than 10 minutes endangers the life or health of the child unconstitutionally violates due process.

In *People v. Jordan*, 354 Ill. App. 3d 294 (1st Dist. 2004), a parent who was convicted of endangering the life or health of a child under subsection (b) of Section 12-21.6 of the Criminal Code of 1961 (720 ILCS 5/12-21.6 (West 2002)) challenged the constitutionality of that statute. Subsection (b) creates a rebuttable presumption that a person commits the offense of endangering the life or health of a child if he or she leaves a child 6 years of age or younger unattended in a motor vehicle for more than 10 minutes. The court held subsection (b) unconstitutional because it violates the due process clauses of the federal and State constitutions (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2). A mandatory rebuttable presumption that shifts the burden of persuasion to a defendant is *per se* unconstitutional because that presumption is inconsistent with the presumption of innocence. The court severed subsection (b) from Section 12-21.6, and therefore the offense of endangering the life or health of a child remains enforceable.

CODE OF CRIMINAL PROCEDURE OF 1963 - EXTRA-JUDICIAL STATEMENTS

The admission of a non-testifying minor's statements in a sexual assault trial does not violate the defendant's right of cross-examination when the minor's mother, not a government official, testifies as to the statements.

In *People v. R.F.*, 355 Ill. App. 3d 992 (5th Dist. 2005), the defendant challenged the constitutionality of the use of statements made out of court by his 3-year-old daughter concerning sexual assault. The appellate court held that a United States Supreme Court decision (*Crawford v. Washington*, 541 U.S. 36 (2004)) prohibited the use of the statements by a government official when the defendant did not have the ability to cross-examine the maker of the statements but that Section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2000)) permitted the mother of the child and wife of the defendant to testify as to what the child told her. A dissent argued that *Crawford* prohibits the use of any statement when the statement is not subject to cross-examination. The dissent found that the requirement in Section 115-10 that the statement be reliable in order to be admitted without the witness being available has been made unconstitutional by the holding in *Crawford* and under the confrontation clause of the federal constitution (U.S. Const., Amend. VI).

CODE OF CRIMINAL PROCEDURE OF 1963 - HEARSAY EXCEPTION

Provision allowing a grandmother to testify about her non-testifying minor grandchild's statements in an aggravated criminal sexual assault and abuse case violates the defendant's constitutional right to confront witnesses.

In *In re E.H.*, 355 Ill. App. 3d 564 (1st Dist. 2005), the defendant argued that her constitutional right to confront those testifying against her was violated when the trial court admitted the out-of-court statements of a minor to her testifying grandmother about certain sex acts that formed the basis of the complaint. These hearsay statements were admissible in the trial court under Section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2000)), which allows into evidence the out-of-court statements of a child under age 13, made to another person, if the court finds that the statements provide "sufficient safeguards of reliability" after considering the time, content, and circumstances of the statements. The court found that such a hearsay exception has been explicitly rejected by the

United States Supreme Court in *Crawford v. Washington*, 541 U.S. 36 (2004), which held that admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation. Section 115-10 creates an unconstitutional hearsay exception.

CODE OF CRIMINAL PROCEDURE OF 1963 - ADMISSIBILITY OF OUT-OF-COURT STATEMENTS

Permitting introduction of a testimonial out-of-court statement when the accused does not have an opportunity to cross-examine the declarant violates the confrontation clause of the United States Constitution.

In *In re Rolandis G.*, 352 Ill. App. 3d 776 (2nd Dist. 2004), the court held that, under *Crawford v. Washington*, 541 U.S. 36 (2004), Section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2002)) violates the confrontation clause of the United States Constitution (U.S. Const., Amend. VI) to the extent that it permits introduction of a testimonial out-of-court statement when the accused does not have an opportunity to cross-examine the declarant.

CODE OF CIVIL PROCEDURE - PUNITIVE DAMAGES

The prohibition against the award of punitive damages in a legal malpractice action does not bar the award of lost punitive damages from the underlying action.

In *Tri-G, Inc. v. Burke, Bosselman and Weaver*, 353 Ill. App. 3d 197 (2nd Dist. 2004), the plaintiff sought lost punitive damages as part of a recovery from the attorney whose negligent representation caused the dismissal of the plaintiff's fraud action against a financial institution. Section 2-1115 of the Code of Civil Procedure (735 ILCS 5/2-1115 (West 2002)) states that no punitive damages shall be allowed in a case in which the plaintiff seeks damages by reason of legal malpractice. In this case of first impression in Illinois, the court followed the majority of jurisdictions that have considered the issue. Characterizing the punitive damages that may have been awarded in the underlying fraud case as compensatory damages in the legal malpractice case, the court deemed the right to recover lost punitive damages as necessary to make the plaintiff whole with respect to the attorney's negligence. Section 2-1115 does not bar the award in a legal malpractice case of lost punitive damages from the underlying action.

CODE OF CIVIL PROCEDURE - EMINENT DOMAIN

The taking of private land by a city for use pursuant to a carefully considered development plan qualifies as a public use for purposes of the takings clause of the United States Constitution, even when the land will not be open in its entirety to use by the public.

In *Kelo v. City of New London, Conn.*, 125 S. Ct. 2655 (2005), private landowners challenged whether an eminent domain taking by the city of New London, Connecticut, for the redevelopment of the area was for public use when the city did not plan to open the land in its entirety to use by the general public. The takings clause of the Fifth Amendment to the United States Constitution (U.S. Const., Amend. V) requires that an eminent domain taking be for a public use. In a 5-4 decision, the United States Supreme Court held that the taking of a private landowner's property pursuant to a carefully considered development plan qualifies as a public use, even when the land in its entirety will not be open to the general public. The court reasoned that, in this case, Connecticut's municipal development statute authorized, as a "public use", the taking of land pursuant to an economic development project. The court further stated that the public purpose or public use may be for the project as a whole and not on a piecemeal basis for each individual landowner. The court noted that the holding in this case does not preclude a State from placing further restrictions on its exercise of the takings power.

Note: Section 15 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 15) prohibits the taking or damaging of private property for public use without just compensation determined by a jury as provided by law. Article VII of the Code of Civil Procedure (735 ILCS 5/Art. VII) governs eminent domain proceedings.

CODE OF CIVIL PROCEDURE - FORECLOSURE NOTICE

During the 90 days after entry of a possession order in a foreclosure action, the Mortgage Foreclosure Article's prohibition against an order for the removal of unknown occupants controls over the Forcible Entry and Detainer Article's authorization of an order to recover possession from unknown occupants.

In *Fairbanks Capital v. Coleman*, 352 Ill. App. 3d 550 (1st Dist. 2004), a property owner sought the recovery of possession of the property against unknown occupants pursuant to the Forcible Entry and Detainer Article of the Code of Civil Procedure (735 ILCS 5/Art. IX (West 2002)) less than 90 days after obtaining an order of foreclosure and possession for the premises pursuant to the Mortgage Foreclosure Article of the Code (735 ILCS 5/Art. XV (West 2002)). Section 9-104 of the Detainer Article (735 ILCS 5/9-104 (West 2002)) allows enforcement of possession orders against unknown or generically described occupants. Subsection (g) of Section 15-1508 of the Foreclosure Article (735 ILCS 5/15-1508 (West 2002)), on the other hand, prohibits the execution of a possession order that authorizes the removal of generically described persons from mortgaged premises for 90 days after entry of the order confirming the sale of the mortgaged premises. The court held that to the extent provisions of the Detainer Article conflict with the Foreclosure Article, the Foreclosure Article's provisions control. Therefore, while a claimant may seek possession in a detainer action against specifically named occupants at any time, his or her right to seek possession in a detainer action against generically named occupants on mortgaged property may be exercised only after 90 days have elapsed from the date of the initial order of possession in the foreclosure action.

CODE OF CIVIL PROCEDURE - LIEN ON CROPS

An amendment eliminating the requirement that a landlord file a financing statement to perfect a statutory landlord's lien on crops was procedural and may be applied retroactively.

In *Schweickert v. Ag Services of America, Inc.*, 355 Ill. App. 3d 439 (3rd Dist. 2005), landowners sought a declaratory judgment that their statutory landlord's lien under Section 9-316 of the Code of Civil Procedure (735 ILCS 5/9-316 (West 2002)) on crops grown on their land during the 2002 crop year had priority over a perfected security interest claimed by the institution that had loaned money to the landowners' lessee. Before July 1, 2001, Section 9-316 provided that the landlord's lien had priority over all other liens; effective July 1, 2001, the General Assembly amended Section

9-316 to require landlords to perfect their liens by filing a financing statement; effective August 21, 2002, the General Assembly again amended Section 9-316 to remove the requirement that the lien be perfected by filing a financing statement. The court held that (i) the 2002 amendment to Section 9-316 was a procedural, not a substantive, change, (ii) the 2002 amendment was silent as to its retroactive application, and (iii) application of the 2002 amendment did not have a retroactive impact and could be applied retroactively so that the landowners did not have to file a financing statement to perfect their liens.

GOOD SAMARITAN ACT - SERVICE WITHOUT FEE

Immunity for the negligent provision of emergency medical care without fee is ambiguous because the statute fails to define a "fee".

In *Henslee ex rel. Johnson v. Provena Hospitals*, 373 F. Supp. 2d 802 (N.D. Ill. 2005), the family of a woman sued the defendant doctor for his allegedly negligent treatment of the woman, who suffered brain damage and eventually died. The defendant argued that he was entitled to protection under Section 25 of the Good Samaritan Act (745 ILCS 49/25), which makes a good samaritan liable for willful and wanton conduct but not for negligence. Section 25 states that any medical person who "provides emergency care without fee to a person" is immune from liability due to negligence. The statute does not defines the term "without fee". The court found that an ambiguity exists as to the meaning of "fee" in Section 25. While the court acknowledged that the Illinois appellate courts have concluded that "without fee" means that a fee exists only when an invoice specifically lists the services rendered, it also stated that it was troubled by this interpretation because it captures only one side of a typical fee situation – the client being billed. A reasonable definition of "fee" would be a situation in which either a doctor is paid for his or her services or the client pays a bill for those services. Thus, a "fee" would exist when a doctor is paid for the emergency services he or she rendered. Here, the court found that even though it is clear that Illinois case law would shield the physician from any liability because the hospital never billed the patient for the physician's services, this conclusion would contradict the Act's purpose to establish "numerous protections for the generous and compassionate acts of its citizens who volunteer their time and talents to help others". The defendant was not a volunteer; he was paid for his services. The court predicted that defining "fee" to include a situation in which either a doctor is

paid for his or her services or the client pays a bill for those services is more consistent with how the Illinois Supreme Court would define the term.

ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT - CHILD REPRESENTATIVES

The prohibition against the appearance of a child representative as a witness is unconstitutional when the representative's report is admitted into evidence.

In *In re Marriage of Bates*, 212 Ill. 2d 489 (2004), a parent who lost custody of her child challenged the constitutionality of Section 506 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/506 (West 2002)) that prohibits the testimony of a child representative as a witness. The court held that paragraph (3) of subsection (a) of Section 506 violates the due process clauses of the federal and State constitutions (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2) as the statute was applied in this case. The trial court could not admit the child representative's report into evidence and then prohibit the cross-examination of the representative by the party adversely affected by the report. A parent has a fundamental liberty interest in the custody of his or her child, and due process requires the opportunity to cross-examine witnesses offered against a party. The application of the statute in this case created the risk of erroneous deprivation of rights; there was no burden on the State and it was not inimical to any governmental interest to allow the cross-examination.

Note: Public Act 94-640, effective January 1, 2006, amended paragraph (3) of subsection (a) of Section 506 of the Illinois Marriage and Dissolution of Marriage Act to prohibit a child representative from rendering an opinion, recommendation, or report to the court.

ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT - STEPPARENT VISITATION

The provision authorizing a court to grant petitions for stepparent visitation privileges when in the child's best interests or welfare is unconstitutional.

In *In re Marriage of Engelkens*, 354 Ill. App. 3d 790 (3rd Dist. 2004), a parent determined as unfit challenged the constitutionality of paragraph (1.5) of subsection (b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/607 (West 2002)), which authorizes a court to grant a stepparent's petition for visitation privileges if the court determines that to

do so would be in the child's best interests and welfare. The court held that paragraph (1.5) is unconstitutional on its face because it places the parent on equal footing with the opposing party in their attempts to convince the court that visitation is or is not in the child's best interest. The court found that placing a fit parent in that position could not pass constitutional muster. The court further held that a circuit court could not carve out a narrow exception to the unconstitutionality of the statute and apply the statute if the court found the parent unfit in proceedings on a petition for visitation. An unconstitutional statute is "void ab initio (as if it never existed from its inception)".

NON-SUPPORT PUNISHMENT ACT – MANDATORY PRESUMPTION

Federal child non-support statute's mandatory rebuttable presumption of willfulness is unconstitutional and identical to the mandatory rebuttable presumption in this State's Non-Support Punishment Act.

In *U.S. v. Morrow*, 368 F. Supp. 2d 863 (C.D. Ill. 2005), the defendant challenged the rebuttable mandatory presumption of Section 228(b) of the federal child nonsupport statute (18 U.S.C. 228), which has as its Illinois counterpart the Non-Support Punishment Act (750 ILCS 16/), by claiming that the presumption violates the due process clause of the Fifth Amendment to the United States Constitution (U.S. Const., Amend. V) because it relieves the government from proving all the elements of the Section 228(a)(3) offense. Section 228(a)(3) makes it an offense to "willfully fail to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 2 years or is greater than $10,000", while Section 228(a)(2) makes it a crime to "travel in interstate or foreign commerce with the intent to evade a support obligation, if such obligation has remained unpaid for a period longer than 1 year, or is greater than $5,000". Section 228(b) establishes that "the existence of a child support obligation that was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period". The due process clause mandates that the government bear the burden of proving beyond a reasonable doubt every essential element of the crime charged. The offense elements of the statute require the government to prove that the defendant failed to pay "willfully"; however, Section 228(b) allows a presumption that the defendant had the "ability to pay" his or her support obligations. According to the reasoning of the court, if a defendant had the

ability to pay, his or her failure to pay is in nearly every instance "willful". Thus, Section 228(b) redirects to the defendant the government's ultimate burden of persuasion, and not merely the burden of production, on the element of willfulness.

ADOPTION ACT - PARENTAL UNFITNESS

Irrebuttable presumption of parental unfitness for conviction of aggravated battery, heinous battery, or attempted murder of any child violates constitutional guarantees of equal protection.

In *In re D.W.*, 214 Ill. 2d 289 (2005), the respondent was found to be an unfit parent under subsection (D)(q) of Section 1 of the Adoption Act (750 ILCS 50/1 (West 2002)) for conviction for the attempted murder of her infant son. That provision creates an irrebuttable presumption of unfitness of a parent who has been criminally convicted of aggravated battery, heinous battery, or attempted murder of any child. The respondent challenged the constitutionality of the statute on the grounds that it denies her equal protection of the law because subsection (D)(i) of Section 1 of the Adoption Act creates a rebuttable presumption of depravity (a ground for unfitness) if the parent has been criminally convicted of at least 3 felonies or first or second degree murder. There is a rebuttable presumption that a person who murders a child is an unfit parent but there is a mandatory conclusive presumption that a parent convicted of aggravated battery or attempted murder of a child, offenses no more serious than murder, is an unfit parent. The Illinois Supreme Court held that there is no logic to the statutory scheme. The court held that there is no rational basis for treating persons subject to fitness proceedings under subsection (D)(q) differently from those facing the same proceedings under subsection (D)(i) and that subsection (D)(q) of Section 1 of the Adoption Act violates the equal protection guarantees of the United States and Illinois constitutions (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2).

ADOPTION ACT - PARENTAL UNFITNESS

Provision requiring that a parent be ruled unfit if convicted of any specified crime against any child is too broad to satisfy constitutional requirements of due process and equal protection.

In *In re Amanda D.*, 349 Ill. App. 3d 941 (2nd Dist. 2004), a parent ruled unfit under subsection (D)(q) of Section 1 of the Adoption Act (750 ILCS 50/1 (West 2002)) claimed that the provision is unconstitutional.

Subsection (D)(q) provides that a person is unfit if he or she has been convicted of the aggravated battery, heinous battery, or attempted murder of any child. The court held that subsection (D)(q) violates the due process and equal protection guarantees of the State and federal constitutions (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2). While intended to advance the State's compelling interest in the safety and welfare of children, subsection (D)(q) is unconstitutionally broad because it affects parents who may not threaten that interest. The provision fails to take into account such factors as the passage of time without a similar incident, the circumstances of the offense, and the parent's efforts at rehabilitation.

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT - INCOME ON ABANDONED PROPERTY

Authorization for the State Treasurer's refusal to pay to the owner of unliquidated stock the dividends earned on that stock while held as abandoned property results in an unconstitutional taking without just compensation.

In *Canel v. Topinka*, 212 Ill. 2d 311 (2004), the State Treasurer refused to return to the plaintiff the dividends issued on 288 shares of stocks owned by the plaintiff and held as abandoned property under the Uniform Disposition of Unclaimed Property Act, which gives the State custodial rights to abandoned property. Section 15 of that Act (765 ILCS 1025/15 (West 1998)) provides that income accruing on unliquidated stock "may" be paid to the owner. The Illinois Supreme Court held the Treasurer's refusal to return to an owner dividends accruing on stock while it is held by the State as abandoned property is an unconstitutional taking without just compensation under the Illinois Constitution (ILCON Art. I, Sec. 15) and the United States Constitution (U.S. Const., Amends. V and XIV).

WORKERS' OCCUPATIONAL DISEASES ACT – INTENTIONAL TORT

The Act allows an exception to its exclusivity rule for intentional torts that an employer commits against an employee.

In *Bogner v. Airco, Inc.*, 353 F. Supp. 2d 977 (C.D. Ill. 2005), the issue was whether the Workers' Occupational Diseases Act (820 ILCS 310/)) allows an exception to its exclusivity rule for intentional torts that an employer commits against an employee. The plain language of the Act contains no such exception and the Illinois Supreme Court has not been

faced with the question. The Illinois Supreme Court has held, however, that the Workers' Compensation Act (820 ILCS 305/), which is very similar in composition to the Workers' Occupational Diseases Act, does contain an exception for intentional torts. There are also several Illinois appellate court decisions that have found an intentional tort exception to the Workers' Occupational Diseases Act. Those appellate courts have not been persuaded that the legislative balance struck by the Act was meant to permit an employer who encourages, commands, or commits an intentional tort to use the Act as a shield against liability. For these reasons, the court in this case found that if the Illinois Supreme Court were faced with the question at issue, it would most likely find that there is an intentional tort exception to the Act. The court here so found, and it also found that the parameters of the exception require a specific finding that the defendant was substantially certain or knew with a strong probability that the injury would result from its actions.

INTRODUCTION TO PART 2

Part 2 of this 2005 Case Report contains all the Illinois statutes that LRB research has found that have been held unconstitutional and remain in the Illinois Compiled Statutes without having been changed in response to the holding of unconstitutionality.

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

GENERAL PROVISIONS

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

5 ILCS 350/2 (P.A. 89-688). **State Employee Indemnification Act.** Provision amended by P.A. 89-688 is unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Foster*, 316 Ill. App. 3d 855 (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 Offenses", "Criminal Procedure", and "Corrections".)

ELECTIONS

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

10 ILCS 5/7-10. Election Code. Provision (Ill. Rev. Stat., ch. 46, par. 7-10) that requires candidates for ward committeeman in the city of Chicago to meet higher nomination petition signature requirements than candidates for township committeeman in Cook County violates the equal protection clause

by burdening the right of individuals to associate for the advancement of political beliefs and the right of voters to cast their votes effectively by creating a geographical classification substantially injuring the voters and candidates of the city of Chicago despite less burdensome alternatives. *Smith v. Board of Election Commissioners of the City of Chicago*, 587 F. Supp. 1136 (N.D. Ill. 1984) and G*jersten 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 5/7-43 (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. *Kusper v. Pontikes*, 94 S. Ct. 303 (1973).

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 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, is disproportionate to the Class 4 felony penalty for the more serious offense of knowingly possessing a fraudulent identification card with aggravating elements, which does not include mandatory minimums, in violation of the proportionate penalties requirement of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). *People v. Pizano*, 347 Ill. App. 3d 128 (1st Dist. 2004).

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 (ILCON Art. II, Sec. 1) and prohibition against decreasing a judge's salary during his or her term (ILCON Art. VI, Sec. 14). *Jorgensen v. Blagojevich*, 211 Ill. 2d 286 (2004).

FINANCE

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

30 ILCS 105/5.400 (P.A. 88-680). **State Finance Act.** Provision added by P.A. 88-680 is unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (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", "Criminal Offenses", and "Corrections" and in Part 3 of this Case Report under "Criminal Offenses".)

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

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 200/22-45 (West 1994). **Property Tax Code.** Provision that limits the ways a party may contest the issuance of a tax deed to (i) appeal to the appellate court or (ii) seek certain statutory relief from judgment conflicts with Supreme Court Rule 303 and a court's inherent power to reconsider its judgments and orders for a period of 30 days. Thus, the statute violates the separation of powers doctrine and is unconstitutional. *In re Application of the County Collector*, 281 Ill. App. 3d 467 (2nd Dist. 1996).

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

PENSIONS

40 ILCS 5/5-128 and 5/5-167.1 (Ill. Rev. Stat. 1989, ch. 108 1/2, pars. 5-128 and 5-167.1). **Illinois Pension Code.** Amendatory changes in P.A. 86-

272, which fix a police officer's pension as of the date of withdrawal from service rather than attainment of age 63, result in a taking of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution when applied to retired police officers whose pensions consequently decreased. *Miller v. Retirement Board of Policemen's Annuity and Benefit Fund of the City of Chicago*, 329 Ill. App. 3d 589 (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).

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).

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 violates the members' procedural due process rights. *East St. Louis Federation of Teachers v. East St. Louis School District*, 178 Ill. 2d 399 (1997).

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

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

HIGHER EDUCATION

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

FINANCIAL REGULATION

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

INSURANCE

215 ILCS 5/143.01 (Ill. Rev. Stat. 1985, ch. 73, par. 755.01). **Illinois Insurance Code.** Subsection (b) of Section 143.01 prohibits the invocation of a vehicle insurance policy provision excluding coverage for bodily injury to members of the insured's family when the driver is not a member of the insured's household and further provides that the prohibition shall apply to any action filed on or after the effective date of the subsection (that is, the

effective date of P.A. 83-1132, which added Section 143.01 to the Code). Retroactive application of the subsection to insurance policies issued before the effective date of P.A. 83-1132 constitutes an impairment of the obligation of contracts in violation of Section 10 of Article I of the Illinois Constitution. *Prudential Property & Casualty Insurance Co. v. Scott*, 161 Ill. App. 3d 372 (4th Dist. 1987).

UTILITIES

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

220 ILCS 5/10-201 (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 10-201). **Public Utilities Act.** Provisions relating to review of decisions by the Illinois Commerce Commission are unconstitutional to the extent that the procedures for direct review conflict with Supreme Court Rule 335 (for instance, subsection (e)(i) gives priority over other cases before the court and is an unwarranted intrusion into the court's power to control its docket *Consumers Gas Co. v. Ill. Commerce Comm.*, 144 Ill. App. 3d 229 (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 25/31 (Ill. Rev. Stat. 1987, ch. 111, par. 2332). **Illinois Dental Practice Act.** Provision stating that, during review of a suspension under the Administrative Review Law, the suspension shall remain in full

force and effect prohibits courts from exercising their inherent equitable powers to issue stays. To this extent, the Section is unconstitutional. (P.A. 88-184 limits the provision to acts or omissions related to direct patient care and states that as a matter of public policy suspension may not be stayed pending final resolution.) *Ardt v. Ill. Dept. of Professional Regulation*, 154 Ill. 2d 138 (1992).

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

LIQUOR

235 ILCS 5/6-16 (West 2000). **Liquor Control Act of 1934.** Subsection (c), which makes it a Class A misdemeanor if a person knowingly permits the departure of an intoxicated minor from a gathering at the person's residence of which the person has knowledge and at which the person knows a minor is illegally possessing or consuming liquor, is unconstitutionally vague in violation of the 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).

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

the municipalities where the licensed premises are located. Absent legislative modification of the offending provision, licensees in all municipalities must be permitted to resume operation during the pendency of an administrative appeal from the order of a local liquor control commissioner. *Johnkol, Inc. v. License Appeal Commission*, 42 Ill. 2d 377 (1969).

235 ILCS 5/8-1 (Ill. Rev. Stat. 1985, ch. 43, par. 158). **Liquor Control Act of 1934.** The Department of Revenue taxed wine coolers and certain low-alcohol drinks at different rates pursuant to its interpretation of the Section 8-1 tax classification system. Because there is no real and substantial difference between wine coolers made by adding wine to fruit juices and the low-alcohol drinks made by adding distilled alcohol, the provision violates the uniformity clause of Section 2 of Article IX of the Illinois Constitution to the extent the provision does not provide for the equal taxation of wine coolers and the low-alcohol drinks. *Federated Distributors, Inc. v. Johnson*, 125 Ill. 2d 1 (1988).

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

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

MENTAL HEALTH

405 ILCS 5/3-806 (West Supp. 1995). **Mental Health and Developmental Disabilities Code**. Provisions allowing a civil commitment hearing to take place without the respondent when the respondent has not

voluntarily, intelligently, and knowingly waived his or her right to be present violate the due process clause of the U.S. Constitution. *In re Barbara H.*, 288 Ill. App. 3d 360 (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).

FISH

515 ILCS 5/5-25 (Ill. Rev. Stat. 1989, ch. 56, par. 2.4). **Fish and Aquatic Life Code.** It is a violation of due process to make it a Class 3 felony not to have a license in one's possession, or not to have a tag on a net, which are ordinarily misdemeanor offenses, for commercial fishermen who are otherwise fishing legally and taking over $300 worth of fish. *People v. Hamm*, 149 Ill. 2d 201 (1992).

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 5/4-104 (Ill. Rev. Stat. 1987, ch. 95½, par. 4-104). **Illinois Vehicle Code.** Provision that makes it a Class 2 felony for a motor vehicle owner to alter his or her own temporary registration permit is unconstitutional (i) as a violation of due process because it was not a reasonable penalty for the crime and (ii) as a violation of the proportionate penalties requirement because altering one's own registration permit cannot be equated with possession of a stolen motor vehicle, yet both offenses are classified as a Class 2 felony. *People v. Morris*, 136 Ill. 2d 157 (1990).

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

625 ILCS 5/6-208.1 (P.A. 89-203). **Illinois Vehicle Code.** Provision amended by P.A. 89-203 is unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although P.A. 89-203 also amended Section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501), those changes to Section 11-501 were removed by Public Act 93-800, effective January 1, 2005.) *People v. Wooters*, 188 Ill.

2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under "Criminal Offenses", "Corrections", and "Civil Procedure".)

625 ILCS 5/8-105. Illinois Vehicle Code. Provision of 1923 motor vehicle law that surety bond of owner of motor vehicle used for transportation of passengers becomes a lien on real estate scheduled in the bond, without providing for discharge of the lien, is unconstitutional because arbitrarily discriminatory and unreasonable. The provision is continued in the Illinois Vehicle Code. *Weksler v. Collins*, 317 Ill. 132 (1925).

COURTS

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

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

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

705 ILCS 405/1-15 (West 1992). **Juvenile Court Act of 1987.** Provision that requires a lack of notice claim to be presented before the adjudicatory hearing begins is unconstitutional as an infringement of due

process and interferes with the powers of reviewing courts guaranteed by the separation of powers clause. *In re C.R.H.*, 163 Ill. 2d 263 (1994).

705 ILCS 405/2-28 (West 1998). **Juvenile Court Act of 1987.** Portion of subsection (3) that grants an automatic appeal of a court order changing a child's permanency goal violates 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. *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", "Criminal Offenses", and "Corrections" and in Part 3 of this Case Report under "Criminal Offenses".)

CRIMINAL OFFENSES

720 ILCS 5/8-4 (West 2000). **Criminal Code of 1961.** Subsection (c)'s enhanced penalties for attempted first degree murder with a handgun violate the proportionate penalty clause of Section 11 of Article I of the Illinois Constitution because a defendant may receive a longer sentence if the victim survives than if the victim dies. *People v. Morgan*, 203 Ill. 2d 470 (2003).

720 ILCS 5/9-1 (Ill. Rev. Stat. 1987, ch. 38, par. 9-1). **Criminal Code of 1961.** P.A. 84-1450, which amended the homicide statute, provides that "this amendatory Act of 1986 shall only apply to acts occurring on or

after January 1, 1987". Because P.A. 84-1450 does not contain an effective date provision, however, it did not take effect until July 1, 1987, and its retroactive application to January 1, 1987 is a violation of the constitutional prohibitions against *ex post facto* laws. P.A. 84-1450 may be applied only prospectively from the date it became effective, July 1, 1987. *People v. Shumpert*, 126 Ill. 2d 344 (1989).

720 ILCS 5/10-2 (West 2000). **Criminal Code of 1961**. Subsection (b), which authorizes a 15-year sentence enhancement for commiting the offense of aggravated kidnapping while armed with a firearm, violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11) because the resulting penalty is harsher than the penalty tor armed violence, which contains the same elements. *People v. Baker*, 341 Ill. App. 3d 1083 (4th Dist. 2003), and *People v. Moss*, 206 Ill. 2d 503 (2003).

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

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

720 ILCS 5/11-6, 5/11-6.5, and 5/32-10 (P.A. 89-203). **Criminal Code of 1961.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This

case is also reported in this Part 2 of this Case Report under "Vehicles", "Corrections", and "Civil Procedure".)

720 ILCS 5/11-6.5 (West 2000). **Criminal Code of 1961**. Indecent solicitation of an adult (clause (a)(1)(ii)) is unconstitutional in its entirety by violating the proportionate penalties requirement of Section 11 of Article I of the Illinois Constitution. The offense is punishable more harshly than the offense of indecent solicitation of a child (720 ILCS 5/11-6), which requires violence or the threat of violence and poses a greater threat to public health and safety. *In re M.T.*, 352 Ill. App. 3d 131 (1st Dist. 2004).

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

720 ILCS 5/12-1.2 and 5/24-3.1 (P.A. 88-680). **Criminal Code of 1961.** 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", "Courts", and "Corrections" and in Part 3 of this Case Report under "Criminal Offenses".)

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

720 ILCS 5/12-11, 5/19-3, 5/33A-1, 5/33A-2, and 5/33A-3 (West 1996). **Criminal Code of 1961.** Penalty for committing armed violence based upon residential burglary with a Category I weapon is disproportionate to the penalty for committing the more serious offense of home invasion and violates Article I, Section 11 of the Illinois Constitution. P.A. 91-404 amended the Criminal Code of 1961 and the Unified Code of Corrections to increase the penalties for armed violence involving the discharge of a firearm and for home invasion with a firearm but did not alter the penalties for armed violence based upon residential burglary with a Category I weapon (without discharge of a firearm) or for home invasion without a firearm. *People v. Lombardi*, 184 Ill. 2d 462 (1998). (This case is also reported in this Part 2 of this Case Report under "Corrections".)

720 ILCS 5/12-11 (West 2000). **Criminal Code of 1961**. Subsection (c)'s 15-year sentence enhancement for the commission of home invasion while in possession of a firearm creates a penalty that is disproportionate to the penalty for the more serious offense of aggravated battery with a firearm under subsection (a)(1) of Section 12-4.2 of the Criminal Code of 1961 (720 ILCS 5/12-4.2), which requires discharge of the firearm and a resulting injury, and thus violates Section 11 of Article I of the Illinois Constitution. *People v. Dryden*, 349 Ill. App. 3d 115 (2nd Dist. 2004).

720 ILCS 5/12-21.6 (West 2002). **Criminal Code of 1961**. Subsection (b)'s mandatory rebuttable presumption that leaving a child age 6 years or younger unattended in a motor vehicle for more than 10 minutes endangers the life or health of the child violates the due process clauses of the federal and State constitutions (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2). *People v. Jordan*, 354 Ill. App. 3d 294 (1st Dist. 2004).

720 ILCS 5/16A-4 (West 2000). **Criminal Code of 1961**. Retail theft provision that a person who conceals and removes merchandise from a retail store without paying for it "shall be presumed" to do so intentionally creates an unconstitutional mandatory presumption that denies the trier of fact the discretion of determining that an item was removed inadvertently or

thoughtlessly. *People v. Taylor*, 344 Ill. App. 3d 929 (1st Dist. 2003), and *People v. Butler*, 354 Ill. App. 3d 57 (1st Dist. 2004).

720 ILCS 5/18-2 (West 2000). **Criminal Code of 1961.** Subsection (b)'s 15-year sentence enhancement for the Class X offense of armed robbery while in possession of a firearm violates the proportionate penalties requirement of Section 11 of Article I of the Illinois Constitution when compared to the more serious but less severely punishable Class X offense of armed violence predicated upon aggravated robbery. *People v. Walden*, 199 Ill. 2d 392 (2002), and *People v. Moss*, 206 Ill. 2d 503 (2003).

720 ILCS 5/18-4 (West 2000). **Criminal Code of 1961**. Provision authorizing a sentence enhancement for the offense of aggravated vehicular hijacking while in possession of a firearm, which results in a harsher penalty than the penalty for a more serious offense, violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). *People v. Moss*, 206 Ill. 2d 503 (2003).

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

720 ILCS 5/31A-1.1 and 5/31A-1.2 (P.A. 89-688). **Criminal Code of 1961.** 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 Section 8-1.1 of the Criminal Code of 1961 (720 ILCS 5/8-1.1), identical changes were made to that Section by Public Act 89-689, effective December 31, 1996.) *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”, “Criminal Procedure”, and “Corrections”.)

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

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

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

Armed violence predicated on aggravated vehicular highjacking and armed robbery. Minimum term of imprisonment of 15 years is disproportionate to minimum terms of imprisonment (7 years and 6 years, respectively) for aggravated vehicular highjacking under 720 ILCS 5/18-4 (West 1994) and armed robbery under 720 ILCS 5/18-2 (West 1994). *People v. Beard*, 287 Ill. App. 3d 935 (1st Dist. 1997).

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

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

720 ILCS 510/2 and 510/11 (Ill. Rev. Stat. 1983, ch. 83, pars. 81-22 and 81-31). **Illinois Abortion Law of 1975**. Provisions making nonprescription sale of abortifacients and prescription or administration of abortifacients without informing the recipient a misdemeanor are unconstitutional because they incorporate a definition of "fetus" in which a fetus is classified as a human being from fertilization until death and thus intrude upon the medical discretion of the attending physician and impose the State's theory of when life begins upon the physician's patient, impermissibly infringing upon a woman's right of private decision-making in matters relating to contraception. *Charles v. Daley*, 749 F. 2d 452 (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 570/315. Illinois Controlled Substances Act. Prohibition against advertising controlled substances to the public by name violates the commercial speech protection of the First Amendment and the commerce clause of Art. I, Sec. 8 of the U.S. Constitution when applied to the federally approved national advertising campaign of the developer of a Schedule IV controlled substance. *Knoll Pharmaceutical Co. v. Sherman*, 57 F. Supp. 2d 615 (N.D. Ill. 1999).

720 ILCS 590/1. Discrimination in Sale of Real Estate Act. Prohibition against person knowingly soliciting an owner of residential property to sell or list the property after the person has been given notice that the owner does not desire to be solicited unconstitutionally restricts a real estate broker's freedom of speech. *Pearson v. Edgar*, 153 F. 3d 397 (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 (ILCON Art. I, Sec. 8) to appear at criminal proceedings, as applied to a defendant who appeared at his guilty plea proceeding via closed-circuit television without his written consent. *People v. Stroud*, 208 Ill. 2d 398 (2004).

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

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

725 ILCS 5/114-9 (Ill. Rev. Stat. 1973, ch. 38, par. 114-9). **Code of Criminal Procedure of 1963**. Subsection (c) of Section 114-9, which provides that the State is not required to include rebuttal witnesses in lists of prosecution witnesses given to the defense, is unconstitutional. Previously, Section 114-14, which required the defense to provide notice of an alibi

defense to the prosecution upon request, was held unconstitutional by *People v. Fields*, 59 Ill. 2d 516 (1974). These rulings came after the U.S. Supreme Court, in *Wardius v. Oregon*, 412 U.S. 470 (1973), held that the due process clause of the 14th Amendment to the U.S. Constitution forbids enforcement of alibi disclosure rules unless the defense has reciprocal discovery rights. Subsection (c) of Section 114-9 has not been amended since these decisions. (Section 114-14 was repealed in 1979 by P.A. 81-290.) *People ex rel. Carey v. Strayhorn*, 61 Ill. 2d 85 (1975).

725 ILCS 5/115-10 (West 2000). **Code of Criminal Procedure of 1963**. Provision allowing the hearsay testimony of a non-testifying child under age 13 about sexual assault and abuse violates the defendant's right to confront witnesses under the Sixth Amendment to the U.S. Constitution, despite the statute's requirement that the court must find the statements reliable. *In re E.H.*, 355 Ill. App. 3d 564 (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 5/122-8 (Ill. Rev. Stat. 1984 Supp., ch. 38, par. 122-8). **Code of Criminal Procedure of 1963.** Provision requiring that all post-conviction proceedings be conducted by a judge who was not involved in the original proceeding that resulted in conviction violates the separation of powers clause of the Illinois Constitution and also is contrary to a Supreme Court Rule concerning judicial administration and therefore violates Article VI, Section 16 of the Illinois Constitution. *People v. Joseph*, 113 Ill. 2d 36 (1986).

725 ILCS 207/30 (West 1998). **Sexually Violent Persons Commitment Act.** Subsection (c), which prohibits a person who is the

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

725 ILCS 207/65 (West 2000). **Sexually Violent Persons Commitment Act.** Subsection (b)(1), which prohibits a committed person from attending his probable cause hearing, violates the person's due process right under the 14th Amendment of the U.S. Constitution because the State's financial and administrative burdens are not sufficiently compelling in light of the person's liberty interest. *People v. Botruff*, 331 Ill. App. 3d 486 (3rd Dist. 2002).

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", "Criminal Offenses", and "Corrections".)

CORRECTIONS

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

730 ILCS 5/3-7-2, 5/5-5-3, 5/5-6-3, 5/5-6-3.1, and 5/5-7-1 (P.A. 89-688). **Unified Code of Corrections.** Provisions amended by P.A. 89-688 are unconstitutional because P.A. 89-688 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. (Although Public Act 89-688 also amended Sections 3-2-2, 3-5-1, 3-7-6, and 3-8-7 of the Unified Code of Corrections (730 ILCS 5/3-2-2, 5/3-5-1, 5/3-7-6, and 5/3-8-7), identical changes were made to Sections 3-2-2 and 3-5-1 by Public Act 89-689, effective December 31, 1996, Section 3-7-6 was completely rewritten by Puublic Act 90-85, effective July 10, 1997, and the changes to Section 3-8-7 were re-enacted byPublic 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", "Criminal Offenses", 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", "Courts", and "Criminal Offenses" and in Part 3 of this Case Report under "Criminal Offenses".)

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

730 ILCS 5/5-5-3.2 (West 1998). **Unified Code of Corrections.** Subdivision (b)(4)(i), which authorizes a sentencing court to increase the punishment for a felony based upon the victim's age, violates the Sixth Amendment to the U.S. Constitution to the extent the jury was not specifically charged with finding the victim's age. *People v. Thurow*, 318 Ill. App. 3d 128 (3rd Dist. 2001).

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 fSection 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill. 2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under "Vehicles", "Criminal Offenses", and "Civil Procedure".)

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

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

730 ILCS 5/5-8-1 (West 1996). **Unified Code of Corrections.** Penalty for committing armed violence based upon residential burglary with a Category I weapon is disproportionate to the penalty for committing the more serious offense of home invasion and violates Article I, Section 11 of the Illinois Constitution. P.A. 91-404 amended the Criminal Code of 1961 and the Unified Code of Corrections to increase penalties for armed violence

involving the discharge of a firearm and for home invasion with a firearm but did not alter the penalties for armed violence based upon residential burglary with a Category I weapon (without discharge of a firearm) or for home invasion without a firearm. *People v. Lombardi*, 184 Ill. 2d 462 (1998). (This case is also reported in this Part 2 of this Case Report under "Criminal Offenses".)

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", "Courts", and "Criminal Offenses" 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", "Courts", and "Criminal Offenses" 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, 5/2-622, 5/2-623, 5/2-624, 5/2-1003, 5/2-1107.1, 5/2-1109, 5/2-1115.05, 5/2-1115.1, 5/2-1115.2, 5/2-1116, 5/2-1117, 5/2-1205.1, 5/2-1702, 5/2-2101, 5/2-2102, 5/2-2103, 5/2-2104, 5/2-2105, 5/2-2106, 5/2-2106.5, 5/2-2107, 5/2-2108, 5/2-2109, 5/8-802, 5/8-2001, 5/8-2003, 5/8-2004, 5/8-2501, 5/13-213, 5/13-214.3, and 5/13-217 (P.A. 89-7). **Code of Civil Procedure.**

P.A. 89-7, a comprehensive revision of the law relating to personal injury actions, is unconstitutional in its entirety because (i) provisions limiting compensatory damages for noneconomic injuries, changing contribution by joint tortfeasors, abolishing joint and several liability, and mandating unlimited disclosure of a plaintiff's medical records during discovery are arbitrary, are special legislation in violation of Section 13 of Article IV of the Illinois Constitution, or violate the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution and (ii) other provisions, despite inclusion of a severability clause, are inseverable. *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, Bkrtcy*, 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) .

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

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

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

740 ILCS 130/2 and 130/3 (P.A. 89-7). **Premises Liability Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this

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

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

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

Provision of subsection (B) limiting recovery in each separate cause of action against a nonprofit private school to $10,000 is unconstitutional because it is purely arbitrary as compared with the liability of other

governmental units and institutions. *Haymes v. Catholic Bishop of Chicago*, 41 Ill. 2d 336 (1968).

FAMILIES

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

750 ILCS 5/607 (West 2002). **Illinois Marriage and Dissolution of Marriage Act**. Paragraph (1.5) of subsection (b), which authorizes a court to grant petitions for stepparents' 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 Supp. 1999). **Adoption Act**. Subsection D(h)'s "other neglect or misconduct" standard for determining a parent's unfitness is unconstitutionally vague. *In re D.F.*, 321 Ill. App. 3d 211 (4th Dist. 2001).

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 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) Violates State and federal constitutional equal protection guarantees (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2) because subsection (D)(i) of the same Section creates 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) Violates State and federal constitutional equal protection and due process guarantees (U.S. Const., Amend. XIV and ILCON Art. I, Sec. 2) because it too broadly affects 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).

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

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

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

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

EMPLOYMENT

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

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

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

820 ILCS 310/5 (P.A. 89-7). **Workers' Occupational Diseases Act.** (See *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), reported in this Part 2 of this Case Report under "Civil Procedure" and under "Civil Liabilities", concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

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

INTRODUCTION TO PART 3

Part 3 of this 2005 Case Report contains Illinois statutes that are representative of (i) statutes that were held unconstitutional and then changed in response to the holding of unconstitutionality or (ii) statutes that were construed in a particular way in order to avoid a holding of unconstitutionality. Part 3 does not include every such statute. Part 3 includes statutes that (i) currently appear or formerly appeared in the Illinois Compiled Statutes or appeared in an Act that was replaced by an Act that currently appears in the Illinois Compiled Statutes and (ii) may have some instructional value concerning the requirement that statutes not violate the United States Constitution or the Illinois Constitution.

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

GENERAL PROVISIONS

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

ELECTIONS

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

10 ILCS 5/7-5 and 5/7-12 (Ill. Rev. Stat., ch. 46, pars. 7-5 and 7-12). **Election Code**. Provisions directing that no primary election be held if, for each office to be filled by election, the election would be uncontested were unconstitutional because they violated the equal protection clause by preventing electors from voting for write-in candidates. P.A. 84-698

amended the provisions to provide that a primary election shall be held when a person who intends to become a write-in candidate for an uncontested office files a written statement or notice of intent with the proper election official. *Lawlor v. Chicago Board of Election Com'rs*, 395 F. Supp. 692 (N.D. Ill. 1975).

10 ILCS 5/7-10 (Ill. Rev. Stat. 1971, ch. 46, par. 7-10). **Election Code**. Provisions prohibiting a person from signing a nominating petition or being a candidate of a political party for public office if the person had requested a primary ballot of another political party at a primary election held within 2 years of the date on which the nominating petition must be filed were held to violate the right of free political association under the U.S. Constitution, Amendments I and XIV. Standards governing party changes by candidates may and should be more restrictive than those relating to voters generally, but the restrictions on candidates were not severable from the invalid provisions. P.A. 86-1348 deleted the 2-year restriction on changes of party by persons signing nominating petitions and by candidates. *Sperling v. County Officers Electoral Board*, 57 Ill. 2d 81 (1974).

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

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

10 ILCS 5/7-59 (Ill. Rev. Stat., ch. 46, par. 7-59). **Election Code**. Provision excluding from office a write-in candidate in a primary election

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

10 ILCS 5/8-10. Election Code. Provision granting incumbents priority in ballot positions violated the 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 5/10-3 (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 5/23-1.4 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 BRANCH

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).

REVENUE

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 105/3-5 (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 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 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).

PENSIONS

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 diminshed 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 conduct a hearing and make a finding as to whether restrictions on property use had been violated so as to cause property to revert to the Commission was an unconstitutional violation of due process because the Commission had an interest in the outcome of the proceeding. P.A. 83-858 changed the provision to provide that the Commission must file suit for a determination of whether the property should revert to it. *United Church of the Medical Center v. Medical Center Commission*, 689 F. 2d 693 (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 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 because the interest of the public did not justify the partial merger of their activities by requiring that a funeral director have the knowledge, skill, and training of an embalmer before he or she can direct a funeral. The provision was deleted by Laws 1959, p.1518. The 1935 Act was repealed by P.A. 87-966, which created the Funeral Directors and Embalmers Licensing Code. Article 10 of the new Code (225 ILCS 41/Art. 10) creates a combined funeral director and embalmer license. *Gholson v. Engle,* 9 Ill. 2d 454 (1956).

225 ILCS 100/21. Illinois Podiatric Medical Practice Act of 1987. Provision that limited advertising by a podiatric physician to certifications approved by the Council on Podiatric Medical Education violated the First Amendment of the U.S. Constitution as applied to a podiatric physician who advertised that he had been certified by a board other than the Council on Podiatric Medical Education if the physician's statements were not actually or potentially misleading and served the public interest and the certification originated from a bona fide certifying board. P.A. 90-76 changed the provision to limit advertising to certifications approved by the Podiatric Medical Licensing Board in accordance with the rules for the administration of the Act. *Tsatsos v. Zollar*, 943 F. Supp. 945 (N.D. Ill. 1996).

225 ILCS 446/75 (225 ILCS 445/14 (West 1992)). **Private Detective, Private Alarm, Private Security, and Locksmith Act of 1993**. Provision that required an applicant for a private alarm contracting license to have worked as a full-time supervisor, manager, or administrator at a licensed private alarm contracting agency for 3 years out of the 5 years immediately preceding the application for a license was invalid because it conferred upon the regulated industry monopolistic control over entry into the private alarm contracting trade. P.A. 88-363 recodified the Act and added a provision that 3 years of work experience at an unlicensed entity which satisfies standards of alarm industry competence shall meet the requirements for eligibility for licensing as an alternative to working for 3

years at a licensed private alarm contracting agency. P.A. 89-85 added language giving partial credit toward the 3-year employment requirement to applicants who have met certain educational requirements. *Church v. State of Illinois*, 164 Ill. 2d 153 (1995).

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

LIQUOR

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

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).

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).

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

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

CRIMINAL OFFENSES

720 ILCS 5/11-20.1 (P.A. 88-680). **Criminal Code of 1961.** Provisions amended by P.A. 88-680 were unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-54 re-enacted the changes in Section 11-20.1 made by P.A. 88-680. *People v. Dainty*, 299 Ill. App. 3d 235 (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 5/12-18 (Ill. Rev. Stat. 1981, ch. 38, par. 12-18). **Criminal Code of 1961.** Provision that a person may not be charged by his or her spouse with the offense of criminal sexual abuse or aggravated criminal sexual abuse was an unconstitutional violation of equal protection and due process. P.A. 88-421 deleted the offending provision. *People v. M.D.*, 231 Ill. App. 3d 176 (2nd Dist. 1992).

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

720 ILCS 5/17B-1, 5/17B-5, 5/17B-10, 5/17B-15, 5/17B-20, 5/17B-25, and 5/17B-30 (P.A. 88-680). **Criminal Code of 1961.** WIC Fraud Article added by P.A. 88-680 was unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-155 re-enacted the WIC Fraud Article of the Code. *People v. Dainty*, 299 Ill. App. 3d 235 (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 5/20-1.1 (Ill. Rev. Stat. 1983, ch. 38, par. 20-1.1). **Criminal Code of 1961.**

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

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

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

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

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

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

720 ILCS 5/33A-1, 5/33A-2, and 5/33A-3 (P.A. 88-680). **Criminal Code of 1961.** Provisions amended by P.A. 88-680 were unconstitutional because P.A. 88-680 violated the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A. 91-404 provided that should P.A. 88-680 be declared unconstitutional as violative of the single-subject rule, it was the General Assembly's intent that P.A. 91-404 re-enact the changes made by P.A. 88-680 in Article 33A of the Code. *People v. Dainty*, 299 Ill. App. 3d 235 (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 5/33A-2 and 5/33A-3 (Ill. Rev. Stat. 1987, ch. 38, pars. 33A-2 and 33A-3). **Criminal Code of 1961.** Penalty for armed violence (a Class X felony) was disproportionate to penalty for aggravated kidnapping other than for ransom under 720 ILCS 5/10-2 (a Class 1 felony) because the elements for both offenses are the same. P.A. 89-707 amended Section 10-2 to provide that aggravated kidnapping, whether or not for ransom, is a Class X felony. *People v. Christy*, 139 Ill. 2d 132 (1990).

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 Amends. 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 commited the offense, and to change the penalty from a Class A misdemeanor to a Class 1 felony. P.A. 92-827 rewrote the entire Section, replacing the offending element with having actual knowledge of and permitting sexual abuse of the child or permitting the child to engage in prostitution. *People v. Maness*, 191 Ill. 2d 478 (2000).

720 ILCS 510/2, 510/3, 510/5, 510/7, 510/8, 510/9, 510/10, and 510/11 (Ill. Rev. Stat. 1976, ch. 38, pars. 81-22, 81-23, 81-25, 81-27, 81-28, 81-29, 81-30, and 81-31). **Illinois Abortion Law of 1975.** Substantial portions of the Act were unconstitutional because they violated the due process clause of the U. S. Constitution. The definition of "criminal abortion" was vague; physicians were not given fair warning of what information they had to provide to pregnant women; spousal and parental consent requirements unduly infringed on a pregnant woman's rights; the requirement for additional physician consultations bore no relationship to the needs of the patient or fetus; there was no provision for notice and an opportunity to contest the termination of parental rights; the ban on saline abortions removed a necessary alternative procedure; and required reports of abortions as fetal deaths failed to preserve a woman's right to confidentiality. P.A. 81-1078 made numerous changes in the Act in response to the findings of unconstitutionality. *Wynn v. Carey*, 599 F. 2d 193 (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 600/2 and 600/3 (Ill. Rev. Stat. 1985, ch. 56½, pars. 2102 and 2103). **Drug Paraphernalia Control Act.** Provisions were unconstitutionally vague because they required scienter on the part of a retailer in the definition Section but allowed for constructive knowledge on the part of the retailer in the penalty Section. P.A. 86-271 amended the penalty Section to delete the constructive knowledge provision. *People v. Monroe*, 118 Ill. 2d 298 (1987).

CRIMINAL PROCEDURE

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

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

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

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

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

CORRECTIONS

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

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

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

730 ILCS 5/5-4-3 (West 1994). **Unified Code of Corrections.** Requirement that an incarcerated sex offender, ordered by the court to

provide a blood specimen, must be punished with contempt when the prisoner is deliberately uncooperative violated the separation of powers doctrine of Section 1 of Article II of the Illinois Constitution. P.A. 90-793 punishes the deliberate actions as a Class A misdemeanor. *Murneigh v. Gainer*, 177 Ill. 2d 287 (1997).

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

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

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 5/12-701 (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 pf 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. A**mendatory language in P.A. 82-197 that retroactively validated all judgments for dissolution of marriage reserving questions of child custody or support, maintenance, or disposition of property, regardless of whether appropriate circumstances existed for the reservation of those questions, violated the separation of powers clause of the Illinois Constitution. The legislature was attempting to retroactively alter or overrule the appellate court's interpretation of the statute (that is, that appropriate circumstances must exist before a trial court may reserve those questions). The legislature may alter only for future cases the appellate court's interpretation of statutes. P.A. 83-247 deleted the offending provisions and provided that a trial court may enter a judgment for dissolution of marriage reserving certain issues upon agreement of the parties or upon the motion of either party and a finding by the court that appropriate circumstances exist. *In re Marriage of Cohn*, 93 Ill. 2d 190 (1982).

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

to the child's mental, physical, or emotional health. *Lulay v. Lulay*, 193 Ill. 2d 455 (2000).

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

750 ILCS 45/8. Illinois Parentage Act of 1984. Provision of predecessor Paternity Act (Ill. Rev. Stat. 1981, ch. 40, par. 1354) that, with certain exceptions, no action could be brought under the Act later than 2 years after the birth of the child violated the equal protection clause of the 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. 106¾ , 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. 106¾, 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 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 a charge of an unfair employment practice that was properly filed with the Fair Employment Practices Commission prior to March 30, 1978 and that was barred by lapse of time, and not similarly favoring those whose claims were filed after March 30, 1978, violated the special legislation provision of Article IV, Section 13 of the Illinois Constitution and the due process and equal protection clauses of Article I, Section 2 of the Illinois Constitution. P.A. 84-1084 repealed this provision. *Wilson v. All-Steel, Inc.*, 87 Ill. 2d 28 (1981).

BUSINESS ORGANIZATIONS

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

BUSINESS TRANSACTIONS

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

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

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

EMPLOYMENT

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

820 ILCS 130/2 and 130/10a (Ill. Rev. Stat. 1961, ch. 48, pars. 39s-2 and 39s-10a). **Prevailing Wage Act.** Provision prohibiting allocation of motor fuel tax funds to public bodies if a certificate of compliance with the Act is not filed by the public body requesting approval of a public works project violated the Illinois Constitution's prohibition against amending a Section of a law (in this case, certain Sections of the Motor Fuel Tax Act and the Illinois Highway Code) without inserting the full text of the Section amended. The Section of the Act containing that provision was subsequently repealed by Laws 1965, p. 3508. Another Section of the Act extending application of the Act to employees of public bodies when

engaged in new construction (as opposed to maintenance work) violated the equal protection clauses of the federal and Illinois constitutions. That and other Sections of the Act were thereafter substantially rewritten to correct the problem. *City of Monmouth v. Lorenz*, 30 Ill. 2d 60 (1963).

820 ILCS 130/2 (Ill. Rev. Stat. 1951, ch. 48, par. 39s-2). **Prevailing Wage Act**. Provision defining the "prevailing rate of wages" in a locality as the wages under a collective bargaining agreement in effect in the locality and covering wages for work of a similar character was an unconstitutional delegation of legislative power to private parties. Laws 1957, p. 2662 deleted the offending provision. *Bradley v. Casey*, 415 Ill. 564 (1953).

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