

2011 CASE REPORT

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



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December 2011

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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.

Respectfully submitted,

James W. Dodge
Executive Director

QUICK GUIDE TO RECENT COURT DECISIONS

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INTRODUCTION TO PART 1

Part 1 of this 2011 Case Report contains summaries of recent court decisions and is based on a review in the summer of 2011 of federal court, Illinois Supreme Court, and Illinois Appellate Court decisions published since the summer of 2010.

PART 1
SUMMARIES OF RECENT COURT DECISIONS

ILLINOIS NOTARY PUBLIC ACT – LIABILITY OF EMPLOYER OF NOTARY

The common law duty of an employer to supervise a notary public extends only as far as the duty to supervise that is established under the Illinois Notary Public Act.

In *Vancura v. Katris*, 238 Ill.2d 352 (2010), the appellant, an employer of a notary public, argued that the Illinois Notary Public Act foreclosed a common law claim that it had negligently supervised an employee-notary. The appellee, however, asserted that its common law claim should stand because it was based on the employer's negligence. The Illinois Supreme Court decided the case based in part on its reading of Section 7-102 of the Illinois Notary Public Act (5 ILCS 312/7-102 (West 1996)), which sets forth the conditions under which an employer of a notary public may be charged with official misconduct based on the actions of an employee-notary. In short, the court found that Section 7-102 conditioned the liability of an employer on his or her consent to the misconduct of an employee-notary and, in so doing, departed from the common law standard for vicarious liability, which ordinarily requires no proof of an employer's knowledge of, or consent to, the actions of an employee. Having determined that the Illinois Notary Public Act modified the common law standard of liability for employers of notaries public, the court held that the common law duty of an employer of a notary public extends only as far as the duty established under Section 7-102 of the Illinois Notary Public Act.

ELECTION CODE – VACANCIES IN NOMINATION

A resolution naming an individual to fill a vacancy in nomination must be transmitted to the certifying officer within 3 days after the individual is nominated.

In *Wisnasky-Bettorf v. Pierce*, 403 Ill.App.3d 1080 (5th Dist. 2010), the Illinois Appellate Court was asked to decide whether an established political party must file a resolution to fill a vacancy in nomination when no candidate's name appears on the primary ballot and no write-in candidate is nominated. That issue arose when the petitioner was nominated by the Republican Party to be a member of the board of review in St. Clair County. In the general primary election held on February 2, 2010, no candidate's name was printed on the Republican Party ballot for that office, and no person was nominated as a write-in candidate. The Republican Party's central committee nominated the petitioner on March 25, 2010, and filed a resolution and certificate of appointment with the county clerk on April 1, 2010. Subsequently, an objector filed a petition with the electoral board requesting that the petitioner's name not appear on the ballot for the general election because the resolution and certificate of appointment were not filed within 3 days after the vacancy in nomination was filled, as required under Section 7-61 of the Election Code (10 ILCS 5/7-61 (West 2008)). The board allowed the objection and ordered the petitioner's name removed from the ballot. The board's decision was affirmed by the circuit court. In this appeal, the appellate court addressed the effect of P.A. 96-809 and P.A. 96-848 on the resolution and 3-day filing requirements in Section 7-61. A majority of the court held that those Public Acts did not affect the

resolution and 3-day filing requirements. It reasoned that those amendments were intended to require the candidate to get “grassroots support” and were not intended to change the filing requirements that were otherwise applicable to the Party. In support of its decision, the majority noted that the legislature did not remove the language that requires a vacancy in nomination to be filled in accordance with the requirements of Section 7-61 and that the Party had actually filed a resolution to fill the vacancy, albeit in an untimely manner. A dissenting Justice, however, reasoned that Section 7-61 contained provisions relating to 2 distinct types of vacancies in nomination and that the resolution and 3-day filing requirements were not applicable when the name of no established political party candidate was printed on the consolidated primary ballot for a particular office and no person was nominated as a write-in candidate for that office.

The Illinois Supreme Court granted a petition for leave to appeal in this case on January 26, 2011.

ELECTION CODE – NOMINATION PETITIONS

Nomination petitions filed by candidates who run for office as members of a new political party are valid, even if they are inconsistent with the candidates’ statements of candidacy.

In *Lyons MVP Party v. Lyons, Illinois, Municipal Officers Electoral Board*, 407 Ill.App.3d 1004 (1st Dist. 2011), the Illinois Appellate Court was asked to decide whether nomination petitions filed by candidates who were running for office as members of a new political party were valid, even though those petitions were inconsistent with the candidates’ statements of candidacy. This issue arose when candidates for Lyons village trustee submitted nomination petitions stating that they were the candidates of a new political party, the MVP Party. However, the candidates’ statements of candidacy stated that the candidates were nonpartisan. An objector filed an objection with the electoral board, asserting that, because of this discrepancy, the petitions did not comply with the requirements for nomination petitions found in Sections 10-4 and 10-5 of the Election Code (10 ILCS 5/10-4 and 10-5 (West 2008)). The electoral board agreed, finding that the discrepancy between the statements and the petitions was not only inconsistent, confusing, and contradictory, but also violated Section 10-5 of the Election Code. On review, the appellate court held that there is nothing in the Election Code that requires candidates to state a party affiliation on their statements of candidacy. The court also determined that, because the error was found in the statement of candidacy rather than the nominating petitions, the voters signing the nominating petitions were able to identify accurately the party affiliation of the candidates. Therefore, the court reasoned, there was no basis for confusion with respect to the nominating petitions. As a result, the court reversed the electoral board’s decision and ordered the candidates’ names to be placed on the ballot.

PERSONNEL CODE – STATUS OF CONTRACTUAL EMPLOYEES

The status of contractual employees under the Personnel Code should be addressed by the General Assembly to avoid potential abuses in State hiring.

In *Behl v. Duffin*, 406 Ill.App.3d 1084 (4th Dist. 2010), the Illinois Appellate Court was asked to consider whether the Personnel Code applied to contractual employees. That issue arose when former contractual employees of the Department of Human Services filed a lawsuit claiming that they and other contractual employees were entitled to the benefits of the Personnel Code (20 ILCS 415/ (West 2008)) because the Code did not expressly exempt contractual employees from its provisions. The contractual employees sought *mandamus* and injunctive relief and claimed that the denial of benefits under the Personnel Code violated their equal protection and due process rights under the United States and Illinois Constitutions (U.S. Const., Amends. V and XIV; ILCON Art. I, Sec. 2). The appellate court affirmed the trial court's finding that the contractual employees' claims were moot, because one of the plaintiffs was later hired under the Personnel Code and the other plaintiff was no longer a contractual employee. The appellate court also held that the contractual employees failed to state claims for *mandamus*, injunctive relief, and equal protection and due process violations. Having dismissed the contractual employees' claims, the appellate court nevertheless noted that the failure of the Personnel Code to address the status of contractual employees could cause serious abuses in the process of hiring State employees and recommended that the General Assembly resolve the issue through legislation.

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ADMINISTRATIVE ACT – HEALTH CARE WORKER REGISTRY

The listing of a person on the health care worker registry is not a complete bar to that person's re-employment in a health care setting if he or she can be rehabilitated and is not likely to commit abuse or neglect in the future.

In *Department of Central Management Services v. American Federation of State, County, and Municipal Employees, Council 31*, 401 Ill.App.3d 1127 (5th Dist. 2010), the Department of Central Management Services challenged a circuit court decision upholding an arbitration award that (i) reinstated a health care worker who was discharged after intentionally striking a patient and (ii) removed the worker's name from the registry of healthcare workers who have abused or neglected a service recipient. The Department argued that the circuit court decision was contrary to "the explicit public policy against employing health care workers found to have abused residents" and violated Section 7.3 of the Mental Health and Developmental Disabilities Administrative Act (20 ILCS 1705/7.3 (West 2008)), which expressly prohibits the Department from hiring "a person, in any capacity, who is identified by the health care worker registry as having been subject of a substantiated finding of abuse or neglect of a service recipient." Nevertheless, the appellate court affirmed the circuit court decision. In so doing, the appellate court relied on *American Federation of State, County, and Municipal Employees v. State of Illinois*, 124 Ill.2d 246 (1988), a case in which the Illinois Supreme Court acknowledged the "long-standing principle that an employee's amenability to discipline is a factual determination which cannot be questioned or rejected by a reviewing court." Against that backdrop, the appellate court reasoned that it is

inappropriate to deny reinstatement based on a violation of public policy when an “arbitrator has expressly or by implication determined that an employee can be rehabilitated and is not likely to commit an act that violates public policy in the future.”

STATE FINANCE ACT – SPECIAL FUND TRANSFERS

The transfer of moneys from the Lawyers’ Assistance Program Fund and the Mandatory Arbitration Fund into the General Revenue Fund may violate the State constitution’s separation of powers.

In *Morawicz v. Hynes*, 401 Ill.App.3d 142 (1st Dist. 2010), the plaintiffs alleged that the transfer authorized by Section 8.45 of the State Finance Act (30 ILCS 105/8.45 (West 2006)) of certain amounts from the Lawyers’ Assistance Program Fund and the Mandatory Arbitration Fund into the General Revenue Fund violated the Illinois Constitution by creating an unreasonable or arbitrary tax classification. The trial court granted summary judgment on the plaintiffs’ claim on the grounds that Section 8.45, as applied to those 2 funds, violated the State constitution’s separation of powers clause (ILCON Art. II, Sec.1). The plaintiffs sought a preliminary injunction to prevent future sweeps of those funds, payment of interest accrued on those funds, and attorney’s fees. The trial court denied the plaintiffs’ request for the preliminary injunction, interest, and attorney’s fees. The appellate court affirmed the trial court’s denial of the injunction, interest, and attorney’s fees. However, the issue of the constitutionality of Section 8.45 was not appealed, and the appellate court did not address that issue¹ in its opinion.

PROPERTY TAX CODE – NOTICE OF SALE

The Code’s post-tax sale notice provisions must be complied with strictly.

In *In re Application of the County Treasurer and ex officio County Collector of Cook County, Illinois*, 2011 IL App (1st) 101,966, a property owner failed to pay property taxes on her property in the amount of \$1,383.50. The petitioner, Glohry, L.L.C., filed an application for a tax deed, which was denied by the trial court. The trial court found that the notice given to the property owner under Section 22-5 of the Property Tax Code (35 ILCS 200/22-5) was insufficient because the redemption date contained in that notice was incorrect. On appeal, the petitioner argued that substantial compliance with the provisions of Section 22-5 was sufficient. The Illinois Appellate Court disagreed, finding that the post-sale notice provisions required strict compliance. In reaching its conclusion, the Court looked to the plain language of Section 22-5, which states that the purchaser shall deliver notice to the county clerk “in order to be entitled to a tax deed.” The Court reasoned that the fact that the consequences of failing to comply were so clearly stated indicated that strict compliance was necessary. The Court also looked to the legislative history of the statute and found that the purpose of Section 22-5 was to give the tax assessee additional notice conveying all of the information necessary to redeem the property. Therefore, allowing substantial compliance, rather than strict

¹ On December 3, 2007, the appellate court entered an order striking the appeal from its docket because the appeal involved a finding of unconstitutionality of a portion of a state statute, which requires an appeal to be taken directly to the Illinois Supreme Court. On March 4, 2008, however, the Illinois Supreme Court entered an order transferring the appeal to the appellate court pursuant to Supreme Court Rule 365.

compliance, would have, according to the court, contravened the intent of the legislature. Because the petitioner failed to strictly comply with Section 22-5, the Illinois Appellate Court found that the trial court properly denied the petitioner's application and petition for a tax deed.

PROPERTY TAX CODE – NOTICE OF INTERESTED PARTIES

A devisee is an interested party and has a right to notice of tax sale proceedings under the Code.

In *In re County Treasurer and ex officio County Collector of Lake County*, 403 Ill.App.3d 985 (2nd Dist. 2010), the son of a deceased property owner and the estate of that late property owner objected to a trial court order granting possession of a parcel of property to an entity that had been assigned that property by a purchaser at a tax sale. The objectors argued that the trial court erred by granting a tax deed to the property before a take notice had been served on all interested parties (specifically a daughter who lived out of State), as required under Section 22-10 of the Property Tax Code (35 ILCS 200/22-10 (West 2008)). However, the assignee claimed that the daughter was merely a legatee of her mother's estate who held no interest in the subject property and that the only interested party was the estate of the late property owner. The objectors countered, claiming that the daughter was an heir to her mother's estate and, therefore, an interested party. In its decision, the appellate court pointed out that the daughter was neither a legatee (because she stood to take real, as well as personal, property) nor an heir (because she stood to take through a will rather than due to intestacy). It also recognized that prior to its decision there was "no precise authority as to whether a devisee of real property . . . ha[d] an interest sufficient to mandate notice under [S]ection 22-10 of the Code. Nevertheless, the court reasoned that other courts had held that devisees of real property have an interest sufficient to redeem property (*In re Application of the County Treasurer & ex officio County Collector*, 396 Ill.App.3d 541 (2nd Dist 2009)), that devisees have rights of ownership under the Probate Act, and that, once a will is admitted to probate, it is considered valid for vesting title in the devisees (*In re Estate of Stokes*, 225 Ill.App.3d 834 (4th Dist. 1992)). For those reasons, the court ultimately decided that a devisee has an interest in property sufficient to require notification under Section 22-10 of the Property Tax Code.

COUNTIES CODE – DRUG-COURT AND CHILDRENS-ADVOCACY-CENTER ASSESSMENTS

The drug-court and children's-advocacy-center assessments under the Code are "fines," which must be imposed by judicial act, because they do not compensate the State for costs incurred as a result of the prosecution of a defendant.

In *People v. Folks*, 406 Ill.App.3d 300 (4th Dist. 2010), the appellant, a criminal defendant who pled guilty to unlawful use of a weapon by a felon and aggravated battery, challenged the imposition of a \$10 drug-court assessment and a \$15 children's-advocacy-center assessment by a circuit clerk under Section 5-1101 of the Counties Code (55 ILCS 5/5-1101(d-5) and (f-5) (West 2008)). The appellant argued that the circuit clerk lacked the authority to impose those assessments because they were fines, which must be

imposed by judicial act, and not fees, which may be imposed by a circuit clerk. The court agreed with the appellant, finding that, although the drug-court and children's-advocacy-center assessments are identified as fees in statute, they are, in fact, "fines" because neither compensates the State for costs incurred as a result of the prosecution of a defendant. As a result, the appellate court subsequently concluded that the circuit court lacked the authority to impose the assessments, but it reimposed them against the appellant after deciding that doing so was mandated by statute. Most importantly, however, the court called on the legislature to conduct a "comprehensive . . . revision" of the assessment of fines, fees, and costs currently under statute, including the \$5-per-day credit for time spent in custody prior to sentencing (725 ILCS 5/110-14 (West 2008)). The court noted that a "morass of fines, fees and costs created by the legislature" exist and that "the wording of much of the legislative language would seem to indicate that the clerk is responsible for assessing and/or collecting not only fees and costs, but also fines." Also problematic, the court noted, are "recent cases which have recharacterized many fees as fines, thereby eliminating the clerk's authority to impose the assessments." Such confusion and complexity, the court opined, renders the task of calculating and properly applying fines and fees in statute, an "immensely difficult" one requiring greater clarity on the matter.

SCHOOL CODE – SERVICE ANIMALS

A dog trained to perform tasks for the benefit of an elementary school student with autism qualifies as a service animal under the School Code, even if those benefits are not educational and even if the dog does not respond to the child's commands.

In *K.D. ex rel. Nichelle D. v. Villa Grove Community Unit School District No. 302 Board of Education*, 403 Ill.App.3d 1062 (4th Dist. 2010), the appellant, a school district, challenged a trial court's determination that a dog used by the appellee's autistic child qualified as a service animal within the meaning of Section 14-6.02 of the School Code (105 ILCS 5/14-6.02 (West 2008)), as well as the court's order requiring the school district to allow the dog to accompany the child while at school. Section 14-6.02 of the School Code provides that "[s]ervice animals such as guide dogs, signal dogs[,] or any other animal individually trained to perform tasks for the benefit of a student with a disability shall be permitted to accompany that student at all school functions, whether in or outside the classroom." The school district argued that the dog did not meet the School Code's definition of "service animal" because the dog brought no tangible educational benefit to the child, was inadequately trained, and was not responsive to the child's commands. The appellate court, however, affirmed the lower court decision, noting that the dog benefited the disabled child, even if those benefits were not necessarily recognizable educational benefits. It also pointed out that the "plain meaning of 'accompany' does not encompass 'control,'" and that it is, therefore, possible for a dog to accompany a child, within the meaning of the Code, without being under the child's control.

NURSING HOME CARE ACT – FEDERAL PREEMPTION

The provisions of the Act that prohibit a nursing home resident or his or her representative from waiving the right to a jury trial or the right to commence an action do not provide a basis for revoking an arbitration agreement that impairs those rights and that is otherwise enforceable under the Federal Arbitration Act.

In *Carter v. SSC Odin Operating Co., LLC*, 237 Ill.2d 30 (2010), the plaintiff, an administrator of the estate of a nursing home resident, filed a two-count complaint against the operator of the nursing home in which the resident died. The operator moved to compel arbitration of those claims, relying on Section 2 of the Federal Arbitration Act (FAA) and an arbitration agreement signed by the resident waiving her right to a jury trial. Section 2 of the FAA makes arbitration agreements involving interstate commerce “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C.A. § 2 (West 2008). To avoid arbitration, the administrator asserted that the arbitration agreement was contrary to Illinois public policy because it violated Sections 3-606 and 3-607 of the Nursing Home Care Act (210 ILCS 45/3-606 and 3-607 (West 2006)), which prohibit a nursing home resident or his or her representative from waiving either the right to commence an action or the right to a jury trial in cases involving nursing home care. In short, the plaintiff contended that, because the public policy considerations behind the anti-waiver provisions of Sections 3-606 and 3-607 were a defense to contract enforcement in Illinois, it followed that they were “grounds as exist at law . . . for the revocation of any contract” sufficient to negate conflict preemption under Section 2 of the FAA. The trial court agreed, denying the motion to compel arbitration on the basis that doing so would violate public policy. The Fifth District appellate court affirmed the trial court’s decision, and the Illinois Supreme Court denied the operator’s petition for leave to appeal. However, after the Second District appellate court reached the opposite conclusion on the same issue, the Illinois Supreme Court subsequently granted the operator’s motion for reconsideration. The Illinois Supreme Court began its analysis of this issue by pointing out that the FAA preempts Illinois law to the extent that Illinois law conflicts with the FAA. The court then examined several decisions of the Supreme Court of the United States in which state laws were preempted because of conflicts with the FAA. The court compared those provisions to the anti-waiver provisions of the Nursing Home Care Act and concluded that the anti-waiver provisions of the Nursing Home Care Act, like the other statutory provisions, required the resolution of claims in non-arbitral forums and were, thus, preempted by the FAA. Moreover, the court reasoned that because Sections 3-606 and 3-607 of the Nursing Home Care Act apply only to contracts concerning nursing care, those provisions could not, like fraud, qualify as generally applicable contract defenses that negate preemption under the FAA.

ILLINOIS INSURANCE CODE – POLICY CANCELLATION

The cancellation of an insurance policy by a premium finance company does not take effect unless the insurer has also given the required notice to the Secretary of State.

In *American Home Assurance Co. v. Taylor*, 402 Ill.App.3d 549 (1st Dist. 2010), an automobile insurer contested a trial court decision granting summary judgment on a cross-claim to a purported insurer of a medical transport vehicle. The conflict between

the insurers arose after a medical transport vehicle purportedly insured by one insurer collided with an automobile insured by the other. The purported insurer of the medical transport vehicle argued that it had no duty to defend the medical transport company because its policy with that company was cancelled by a premium finance company exercising a power of attorney that authorized it to terminate the policy if the medical transport company failed to pay the required premiums. The automobile insurer, on the other hand, argued that a claim could not be made out against its uninsured motorist policy because the policy of the purported insurer of the medical transport vehicle's policy was still in place as a result of its noncompliance with the requirements of Section 513a11 of the Illinois Insurance Code (215 ILCS 5/513a11(d) (West 2006)) and Section 8-110 of the Illinois Vehicle Code (625 ILCS 5/8-110 (West 2006)). Section 513a11 of the Illinois Insurance Code requires a premium finance company to contact the Secretary of State before cancelling a policy, and Section 8-110 of the Illinois Vehicle Code requires an insurance company to notify the Secretary of State in the event that a policy of insurance is "cancelled by the issuing company". However, the insurer of the medical transport vehicle asserted that Section 513a11 did not apply because the insurer was not a premium finance company and that Section 8-110 did not apply because the premium finance company had cancelled the policy. Nevertheless, the court construed Section 8-110 of the Illinois Vehicle Code and Section 513a11 of the Illinois Insurance Code *in pari materia*, reasoning that Section 8-110 of the Illinois Vehicle Code required notice to be given to the Secretary of State and that Section 513a11 made applicable any statutory provision requiring pre-cancellation notice to be given to a governmental agency.

LIQUOR CONTROL ACT OF 1934 – OUT-OF-STATE BREWERS

The provisions in the Act that allowed in-state brewers, but not out-of-state brewers, to self-distribute their products violated the Commerce Clause of the United States Constitution prior to their amendment.

In *Anheuser-Busch, Inc. v. Schnorf*, 738 F.Supp.2d 793 (N.D. Ill. 2010), an out-of-state brewer filed a lawsuit challenging provisions of the Liquor Control Act of 1934 that authorized in-state brewers to distribute their own products while requiring out-of-state brewers to distribute their products through in-state distributors. Under Section 5-1 of the Liquor Control Act of 1934 (235 ILCS 5/5-1 (West 2006)), in-state brewers could distribute beer to retailers in Illinois after obtaining an importing distributor's license or a distributor's license. Out-of-state brewers, however, could not hold an importing distributor's license or a distributor's license because Section 1-3.15 of the Liquor Control Act of 1934 (235 ILCS 5/1-3.15 (West 2006)) specifically excluded non-resident dealers from the definition of "distributor". As a result, in-state brewers could self-distribute if they obtained a distributor's license, but out-of-state brewers could not self-distribute. The out-of-state brewer filed a motion for partial summary judgment seeking a declaration that the Act violated the Commerce Clause of the United States Constitution. The District court agreed and held that there was no legitimate local purpose that justified allowing in-state brewers to self-distribute while prohibiting out-of-state brewers from self-distributing. The court reasoned that withdrawing the self-distribution privilege from in-state brewers was the appropriate remedy, but it stayed enforcement of its ruling until March 31, 2011 in order to give the General Assembly an opportunity to remedy the

constitutional defect in the statute. On May 31, 2011, the court extended the stay until (1) the Governor signed Senate Bill 754 into law, or (2) July 28, 2011, whichever occurred first. On June 1, 2011, Public Act 97-5 (Senate Bill 754) became law. Public Act 97-5 created a craft brewer license and allowed craft brewers, and only craft brewers, to self-distribute their beers.

LIQUOR CONTROL ACT OF 1934 – DAY CARE CENTERS

The Act's prohibition on the sale of liquor by a licensee on a property that is within 100 feet of any school does not apply to day care centers, which do not qualify as schools under the Act.

In *Bailey v. Illinois Liquor Control Commission*, 405 Ill.App.3d 550 (1st Dist. 2010), the executive director of a day care center appealed a decision by a local liquor commissioner to issue a liquor license to a store adjacent to a day care center. The appellant argued that the issuance of the liquor license violated subsection (a) of Section 6-11 of the Liquor Control Act (235 ILCS 5/6-11(a) (West 2006)), which prohibits the sale of liquor by a licensee on any property that is within 100 feet of any school other than an institution of higher learning. Although the Liquor Control Act of 1934 does not define "school," the court noted that day care centers are not considered schools under the School Code and that when the legislature in the past has wanted to impose a distance restriction involving day care centers, it has explicitly done so. In addition, the court observed that the day care center was not funded directly by the Illinois State Board of Education and was not recognized or accredited as a school by the Illinois State Board of Education. As a result, the court held that the day care center was not a school within the meaning of the Liquor Control Act of 1934 and affirmed the Liquor Control Commission's decision.

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE – INVOLUNTARY ADMISSION PETITIONS

The Code's 24-hour filing period for involuntary-admission petitions begins on the date a new petition is presented to the facility director and not necessarily on the date of the patient's original physical entry into the facility.

In *In re Andrew B.*, 237 Ill.2d 340 (2010), the respondent was involved in a series of commitment proceedings after he voluntarily admitted himself to a State mental health center. On two occasions, the trial court ordered the mental health center to discharge the respondent after the State voluntarily dismissed two emergency admission petitions it had filed against the respondent. In spite of the discharge orders, the mental health center failed to release the respondent. The trial court subsequently ordered the respondent involuntarily admitted after the State filed and maintained a third emergency admission petition. The respondent appealed the trial court's order on the grounds that the third petition was not timely filed in accordance with Section 3-611 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-611 (West 2006)), which requires a mental health facility to file an involuntary-admission petition within 24 hours after a patient is admitted to a facility. Since the respondent had admitted himself to the center 3 months before the State filed its third and final petition, the respondent argued the

petition was untimely filed. The appellate court upheld the trial court's order, and the Illinois Supreme Court affirmed noting that Section 3-611's "reference to 'admission' is not always limited to the individual's original physical entry" and that when an admitted person "requires additional care and treatment following entry of a discharge order, [S]ection 3-611's 24-hour filing period logically begins when a new petition is presented to the facility director, as opposed to the date of his original physical entry into the facility." The court also rejected the respondent's argument that the State cannot file a new involuntary-admission petition against a patient who has been ordered discharged until after the patient has been physically released from the facility. In support of its holding, the court applied the plain meaning of Sections 3-601 and 3-602 of the Code, noting that such a requirement does not exist. In spite of its holding, the court expressed concern over the State's ability to repeatedly file and dismiss involuntary-admission petitions, "resulting in the indefinite confinement of an individual without a court's examination of the matter." The court urged the General Assembly to revisit the matter to ensure that the State is adhering to the Code's procedural safeguards, which are meant to protect the liberty interests of mental health patients.

HUMANE CARE FOR ANIMALS ACT – AGGRAVATED CRUELTY

The State must prove that a person intended to seriously injure or kill a companion animal in order to convict him or her of aggravated animal cruelty.

In *People v. Primbas*, 404 Ill.App.3d 297 (3rd Dist. 2010), the appellant, a criminal defendant who was convicted of aggravated cruelty to a companion animal, appealed his conviction, arguing that the State was required, but failed, to prove beyond a reasonable doubt that he intended to cause the death of a companion animal. Section 3.02 of the Humane Care for Animals Act (510 ILCS 70/3.02 (West 2006)) states: "No person may intentionally commit an act that causes a companion animal to suffer serious injury or death." The State construed Section 3.02 as requiring evidence only that the defendant intentionally committed an act that resulted in a companion animal's serious injury or death. The appellant-defendant construed Section 3.02 of the Humane Care for Animals Act as requiring the State to prove that he intended to seriously injure or kill the companion animal. The trial court adopted the State's position, concluding that, in order to violate Section 3.02, a person must only "intend the act that causes the harm". However, the appellate court followed an earlier decision in which it determined that "the scope of punishable conduct [under Section 3.02] is limited by the individual's specified intent to cause the companion animal to suffer serious injury or death." Nevertheless, the appellate court found that there was sufficient evidence to convict the defendant even under this more exacting standard, so it affirmed the judgment of the trial court.

LIVESTOCK MANAGEMENT FACILITIES ACT – IMPLIED PRIVATE RIGHT OF ACTION

There is not an implied private right of action under the Livestock Management Facilities Act.

In *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill.App.3d 669 (2nd Dist. 2010), the appellant, a homeowners' association that challenged the siting of a

mega-dairy in its community, argued, among other things, that the trial court erred when it denied them standing to sue. The Livestock Facilities Management Act (510 ILCS 77/ (West 2008)) contains no explicit language granting a private right of action. However, the appellants asserted that if parties like them could not enforce legislative limitations on the Department of Agriculture's ability to grant permits to construct livestock facilities through an implied private right of action, then no one could. Nevertheless, the appellate court affirmed the decision of the trial court, holding that it was inappropriate to imply a private right of action because (i) the legislature had granted the Department of Agriculture broad discretion and to imply a private right of action would disturb that regulatory scheme and (ii) adequate remedies for the violation of the Act already exist under the Act and through other statutory and common law causes of action.

ILLINOIS VEHICLE CODE – SUSPENSION FOR UNDERAGE DRINKING

The mandatory suspension of driving privileges for underage drinking does not violate due process, even if the underage drinking does not involve the use of a vehicle.

In *People v. Boeckmann*, 238 Ill.2d 1 (2010), the Illinois Supreme Court reversed a trial court decision holding that subdivision (a)(43) of Section 6-206 of the Illinois Vehicle Code (625 ILCS 5/6-206(a)(43) (West 2008)) violated the due process requirements of the State and federal constitutions (U.S. Const., Amends. V and XIV; ILCON Art. I, Sec. 2). The court held that the statute, which requires the Secretary of State to suspend the driving privileges of a person who receives court supervision for a violation of the underage consumption of alcohol provision of the Liquor Control Act of 1934 (235 ILCS 5/6-20(e) (West 2008)), is a reasonable means of promoting a legitimate public interest in deterring the consumption of alcohol by minors. A majority of the Illinois Supreme Court reasoned that even when a vehicle is not involved in the commission of an offense, there is a reasonable relationship between underage drinking and the ability to safely operate a vehicle. However, the dissent argued that subdivision (a)(43) of Section 6-206 is unconstitutional under *People v. Lindner*, 127 Ill.2d 174 (1989), in which the Illinois Supreme Court held that if a vehicle was not involved in the commission of an offense, then suspending driving privileges because of that offense violates the due process requirements of the State and federal constitutions.

ILLINOIS VEHICLE CODE – DUI

Prior to the enactment of Public Act 95-578, the Code contained an ambiguity regarding the appropriate sentence to impose if a person was convicted of DUI for a sixth time.

In *People v. Maldonado*, 402 Ill. App. 3d 1068 (2nd Dist. 2010), the appellant, a criminal defendant who was sentenced as a Class X felon after his sixth DUI conviction, asserted that his sentence should be reduced to a Class 4 felony. The defendant claimed that P.A. 94-114, which raised the penalty for a sixth or subsequent DUI under Section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501 (West 2006)) from a Class 2 felony to a Class X felony, was implicitly repealed by P.A. 94-116 and P.A. 94-963, because neither of those later-enacted Public Acts contained the language added by P.A. 94-114. After concluding that the absence of the language from P.A. 94-114 was

irrelevant, the court directed its attention to the irreconcilability of the changes made to Section 11-501 by P.A. 94-114 and P.A. 94-116. P.A. 94-114 added subsection (c-16), which provided that a sixth or subsequent DUI is a Class X felony. P.A. 94-116 added subdivision (c-1)(4), which provided that a fifth or subsequent DUI was a Class 1 felony. To resolve this ambiguity, the court applied the rule of lenity and held that the proper charge was a Class 1 felony. P.A. 95-578 subsequently amended Section 11-501 to cure this ambiguity. Under the revised Section 11-501, a fifth violation of the DUI provisions is a Class 1 felony, and a sixth or subsequent violation is a Class X felony.

ILLINOIS VEHICLE CODE – SPEED-DETECTING DEVICES

When determining whether an electronic speed-detecting device is being impermissibly used within 500 feet of a sign that reduces the speed limit in a municipality, the relevant distance is the distance from the sign to the vehicle that is having its speed measured.

In *City of Rockford v. Custer*, 404 Ill. App. 3d 197 (2nd Dist. 2010), the defendant challenged the admission of radar results that captured the speed of his vehicle while it was within 500 feet of a sign that reduced the speed limit in a municipality from 35 to 30 miles per hour. The defendant claimed that admission of such evidence was barred by Section 11-604(b) of the Illinois Vehicle Code (625 ILCS 5/11-604(b) (West 2008)), which provides in pertinent part that “[e]lectronic speed-detecting devices shall not be used within 500 feet beyond any such sign in the direction of travel; if so used in violation of this Section evidence obtained thereby shall be inadmissible in any prosecution for speeding.” The City of Rockford argued that the evidence was properly admitted because the radar device was more than 500 feet away from the sign. The appellate court reversed, holding that the 500-foot rule applied to the location of the vehicle rather than the location of the radar device. The court reasoned that the legislative intent underlying the 500-foot rule was to give a driver time to adjust to the speed limit before subjecting him or her to radar detection. The dissent argued that the prohibition on radar use applied only to speed limits deviating from the default limit set under subsection (c) of Section 11-601 of the Code (625 ILCS 5/11-601(c) (West 2008)). The dissent reasoned that, under subsection (c) of Section 11-601, the maximum speed limit for all vehicles within urban districts is 30 miles per hour and, since the sign in this case was a 30 mile-per-hour sign, the 500-foot rule did not apply.

CRIMINAL CODE OF 1961 – SENTENCE ENHANCEMENT

The mandatory 15-year sentence enhancement for aggravated kidnapping while armed with a firearm violates the proportionate penalties clause of the Illinois Constitution.

In *People v. Gibson*, 403 Ill.App.3d 942 (2nd Dist. 2010), the appellant, a criminal defendant who had been convicted of aggravated kidnapping, challenged his conviction, arguing that it violated the proportionate penalties clause of the Illinois Constitution (ILCON Art. I, Sec. 11). A sentence violates the proportionate penalties clause of the Illinois Constitution if the sentence for an offense is greater than the sentence for another offense with identical elements. In this case, the defendant was

convicted of aggravated kidnapping under Section 10-2 of the Criminal Code of 1961 (720 ILCS 5/10-2 (West 2006)). Section 10-2 provides that “a person is guilty of aggravated kidnapping if he “[c]ommits the offense of kidnapping while armed with a firearm.” Aggravated kidnapping is punished as a “Class X felony for which 15 years shall be added to the term of imprisonment.” When so enhanced, the sentencing range for aggravated kidnapping is 21 to 45 years. The appellant in this case was sentenced to 12 years plus a 15-year enhancement, or a total of 27 years, on each count. However, aggravated kidnapping has the same elements as armed violence predicated on kidnapping under Section 33A-2 of the Criminal Code of 1961 (720 ILCS 5/33A-2 (West 2006)), yet armed violence predicated on kidnapping is punishable by only 15 to 30 years in prison. Because aggravated kidnapping while armed with a firearm and armed violence predicated on kidnapping are identical offenses with disproportionate sentencing ranges, the appellate court ruled that the 15-year enhancement for aggravated kidnapping while armed with a firearm violated the proportionate penalties clause of the Illinois Constitution. The court remanded the case for resentencing in accordance with the statute as it existed prior to the enactment of P.A. 91-404. Prior to P.A. 91-404, aggravated kidnapping was a Class X felony with a sentencing range of 6 to 30 years.

CRIMINAL CODE OF 1961 – SENTENCE ENHANCEMENT

The mandatory 15-year sentence enhancement for aggravated criminal sexual assault while armed with a firearm violates the proportionate penalties clause of the Illinois Constitution.

In *People v. Pelo*, 404 Ill.App.3d 839 (4th Dist. 2010), the appellant argued that the mandatory 15-year sentence enhancement for aggravated criminal sexual assault while armed with a knife or firearm under Section 12-14 of the Criminal Code of 1961 (720 ILCS 5/12-14 (West 2006)) violated the proportionate penalties clause of the Illinois Constitution (ILCON Art. I, Sec. 11) because it carried a greater penalty than an offense with substantially identical elements: armed violence with a category I or II weapon predicated upon criminal sexual assault under Section 33A-2 of the Code (720 ILCS 5/33A-2(a) (West 2006)). A sentence violates the proportionate penalties clause if a penalty for one offense is harsher than the penalty for a separate offense with identical elements. The court noted that the plain language of the 2 statutory provisions demonstrated that their elements could be distinct from one another. For example, the court pointed out that aggravated criminal sexual assault predicated on the use of a dangerous weapon other than a firearm is completed if a defendant *threatens* [emphasis added] to use the weapon, while not actually armed with it, whereas armed violence predicated upon criminal sexual assault requires proof that a defendant was actually armed with the weapon. Nevertheless, the elements of aggravated criminal sexual assault predicated on the use of a firearm are met when one “commits a criminal sexual assault *while armed* with a firearm,” and the elements of armed violence with a category I weapon predicated upon criminal sexual assault are met when one “commits criminal sexual assault *while armed* with a category I weapon” (such as a firearm). Because the elements of aggravated criminal sexual assault while armed with a firearm and armed violence with a category I weapon predicated upon criminal sexual assault are identical, the court reasoned that the imposition of an additional 15-year sentence enhancement for

aggravated criminal sexual assault while armed with a firearm violated the proportionate penalties clause of the Illinois Constitution.

CRIMINAL CODE OF 1961 – IDENTITY THEFT LAW

It violates the due process guarantees of the State and federal constitutions to make it a crime for a person to knowingly use any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without his or her permission.

In *People v. Madrigal*, 241 Ill.2d 463 (2011), the appellee, a criminal defendant who was indicted on one count of identity theft under subdivision (a)(7) of Section 16G-15 of the Criminal Code of 1961 (720 ILCS 5/16G-15(a)(7) (West 2008)), sought to uphold a circuit court decision dismissing the indictment on the basis that the cited portion of the Code violated the due process guarantees of the State and federal constitutions (U.S. Const., Amends V and XIV; ILCON Art. I, Sec. 2). The appellee argued that subdivision (a)(7) of Section 16G-15 was unconstitutional because it did not require a culpable mental state beyond mere knowledge and, thus, potentially punished wholly innocent conduct. Section 16G-15 provided, in pertinent part, that “[a] person commits the offense of identity theft when he or she *knowingly* . . . uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person.” The Illinois Supreme Court pointed out that subdivisions (a)(1) through (a)(5) of Section 16G-15 imposed a penalty only when there was a bad act, knowledge, and a criminal purpose but that subdivision (a)(7) required no showing of a criminal purpose and criminalized wholly innocent situations. For example, the court mentioned, that a husband who called a repair shop for his wife, without her prior express permission, to inquire about her car would be seeking information in violation of subdivision (a)(7) of Section 16G-15. The court reasoned that because subdivision (a)(7) of Section 16G-15 lacked a culpable mental state it criminalized a “wide array of wholly innocent conduct” and, as a result, violated the due process guarantees of the State and federal constitutions. As an aside, the court noted that subdivision (a)(6) also appeared to suffer from the same infirmity, but the court made no ruling concerning that provision because it was not at issue in the case. The Illinois Supreme Court recommended that the legislature consider changing the statutory language in order to remedy the provision. Although P.A. 97-597 will repeal Section 16G-15 on January 1, 2012, the language that troubled the court will remain after that date at Section 16-30 of the Criminal Code of 1961 (720 ILCS 5/16-30).

CRIMINAL CODE OF 1961 – FIREARMS

A majority of the court determined that the Code's provisions regulating the unlawful use of a firearm are constitutional; however, the dissent asserted that those provisions are unconstitutional under the U.S. Supreme Court's decision in District of Columbia v. Heller.

In *People v. Aguilar*, 408 Ill.App.3d 136 (1st Dist. 2011), the appellate court applied the heightened level of intermediate scrutiny to Section 24-1.6 of the Criminal Code of 1961 (720 ILCS 5/24-1.6 (West 2008)), which had been amended by P.A. 96-742, and determined that it was constitutional. The court reasoned that the unlawful use of a weapon ("UUAW") statute was substantially related to the important government objective of mitigating the inherent dangers posed to police officers and the general public by firearms. The defendant also challenged the constitutionality of Section 24-3.1 relating to unlawful possession of firearms (720 ILCS 5/24-3.1 (West 2008)), but the court did not reach the issue because the defendant had not been sentenced for his conviction under that statute and his conviction for UUAW had not been reversed. The dissent argued that when subjected to intermediate scrutiny in accordance with the recently decided *District of Columbia v. Heller*, 554 U.S. 570 (2008), the UUAW statute is unconstitutional. The dissent reasoned that the *Heller* decision holds that the Second Amendment protects the right of every citizen to have firearms available for self-defense and that a person's Second Amendment right to bear arms is not restricted to an individual's home. The dissent found the restrictions imposed by the UUAW statute were overbroad and did not proportionally fit the interests served by the statute.

The Illinois Supreme Court granted a petition for leave to appeal in this case on May 25, 2011.

CRIMINAL CODE OF 1961 – MONEY LAUNDERING

As used in the Code's provision concerning money laundering, the term "proceeds" means "profits" not "receipts".

In *People v. Universal Public Transportation*, 401 Ill.App.3d 179 (1st Dist. 2010), the appellant, Universal Public Transportation ("UPT"), challenged the conviction of one of its agents for money laundering under Section 29B-1 of the Criminal Code of 1961 (720 ILCS 5/29B-1 (West 2000)). In support of its appeal, UPT noted that the money laundering conviction of a high managerial agent at UPT was vacated on appeal and her individual case remanded to the trial court based on the appellate court's reliance on the holding in *United States v. Santos*, 533 U.S. 507 (2008). In *Santos*, the United States Supreme Court held that the term "proceeds" under the federal money laundering statute is ambiguous and could mean receipts or profits. The *Santos* court subsequently opted to adopt the "more defendant-friendly 'profits' definition" when interpreting the term "proceeds". Following *Santos*, the appellate court vacated the money laundering conviction of UPT's agent, holding that the trial court "erred when it used evidence of UPT's receipts . . . rather than profits"

CRIMINAL CODE OF 1961 – OBSTRUCTING A PEACE OFFICER

The refusal to produce a driver's license and proof of insurance upon demand of an officer does not, on its own, constitute obstruction of a peace officer under the Code.

In *People v. Bohannon*, 403 Ill.App.3d 1074 (5th Dist. 2010), the defendant was stopped at a random vehicle checkpoint by a police officer and refused the officer's demand to produce a driver's license and proof of insurance. The defendant was charged by information with obstructing a police officer under Section 31-1 of the Criminal Code of 1961 (720 ILCS 5/31-1 (West 2006)), but this charge was dismissed by the circuit court. The State appealed that decision, but the appellate court held that, by itself, a refusal to produce a driver's license and proof of insurance upon demand of an officer does not constitute obstruction of a peace officer. The appellate court noted that the defendant could be charged for the actual offenses of failing to display the requested documents under the Illinois Vehicle Code, but the defendant did not impede the officers' ability to perform their duties, resist being taken into custody, obstruct the towing of his vehicle, or provide misleading information. As a result, the appellate court affirmed the circuit court's order to dismiss the charge of obstructing a peace officer.

CRIMINAL CODE OF 1961 – OBSTRUCTING JUSTICE

Throwing contraband over a privacy fence while in view of the police does not qualify as obstructing justice under the Code.

In *People v. Comage*, 241 Ill.2d 139 (2011), the Illinois Supreme Court held that a criminal defendant did not conceal a crack pipe and push rod, within the meaning of the obstructing justice provision in Section 31-4 of the Criminal Code of 1961 (720 ILCS 5/31-4(a)(West 2006)), when he threw those items over a privacy fence while being pursued on foot by police. The police observed the defendant throw the items. The items were out of the officers' sight for only a brief period of time, and the officers were able to retrieve the items within 20 seconds after the defendant abandoned the items. In reaching its conclusion, the court first looked to the plain and ordinary meaning of the word "conceal." The court also reviewed a line of cases from Illinois and other jurisdictions holding that temporarily removing contraband from the sight of police officers is not sufficient, in itself, to constitute concealment. The court reasoned that a contrary holding would lead to an absurd result because it would permit a charge of obstructing justice every time contraband was not in plain view of the officers. However, the court also looked to *People v. Brake*, 336 Ill.App.3d 464 (2nd Dist. 2003), an appellate court decision upholding a defendant's conviction for obstructing justice when the actions of the defendant materially impeded the officer's investigation. Because the defendant in the instant case did not materially impede the officer's investigation, the court held that he did not conceal the contraband within the meaning of Section 31-4 of the Code. Justices Thomas, Garman, and Karmerier dissented, reasoning that the majority was adding an additional requirement of materiality to the obstructing justice statute when the plain and unambiguous language of the statute required only (i) the intent to prevent or obstruct apprehension or prosecution and (ii) concealment.

UNIFIED CODE OF CORRECTIONS – INTRASTATE DETAINERS - NOTICE

The Code’s intrastate detainer notice-by-mail provisions do not currently contain safeguards requiring the State to actually receive the required notice of demand for a speedy trial.

In *People v. Mullins*, 404 Ill.App.3d 922 (4th Dist. 2010), the State appealed the circuit court's granting of a criminal defendant's motion for discharge on speedy trial grounds. A defendant in custody on unrelated charges may assert his or her right to a speedy trial only if he or she files a demand for a trial according to the requirements found in the intrastate detainers statute provisions of Section 3-8-10 of the Unified Code of Corrections (730 ILCS 5/3-8-10). Once filed, a defendant has a statutory right to a speedy trial within 160 days after the demand. The State argued that it never received notice of the defendant's demand because the defendant did not provide a proper mailing address for the State's Attorney and that the State's Attorney did not actually receive the defendant's demand. However, the appellate court found that the defendant's demand was forwarded by the circuit clerk to the State and also noted that Section 3-8-10 does not require proof of receipt of the demand by the State. As a result, the appellate court found that the criminal defendant properly asserted his right to a speedy trial and that he was not given a trial within the required 160 days. The appellate court affirmed the circuit court's dismissal of the charges against the defendant. Finally, the appellate court noted that the notice-by-mail requirements of Section 3-8-10 are a matter within the legislature's prerogative and that currently those provisions do not contain safeguards requiring the State to actually receive the required notice.

UNIFIED CODE OF CORRECTIONS – DNA ANALYSIS FEE

The Code authorizes a trial court to order the taking, analysis, and indexing of a qualifying offender's DNA, and the payment of the analysis fee, only if that defendant is not currently registered in the DNA database.

In *People v. Marshall*, 242 Ill.2d 285 (2011), the Illinois Supreme Court was asked whether, under Section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2008)), a trial court has the authority to order a criminal defendant to submit a DNA sample and pay a DNA analysis fee when that defendant has already submitted a DNA sample and paid the DNA analysis fee following an earlier conviction. Section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (a), (j) (West 2008)) provides, in pertinent part, that “[a]ny person . . . convicted or found guilty of any offense classified as a felony under Illinois law . . . shall, regardless of the sentence or disposition imposed, be required to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police . . .” and “. . . pay an analysis fee of \$200”. The Court began its analysis by acknowledging the split in authorities among the appellate courts, pointing out that some courts interpreted Section 5-4-3 to require submission of a sample and fee after each qualifying conviction while others determined that the purpose for the collection of samples and the payment of the fee was achieved after the collection of one sample. According to the court, the trouble arose because the “legislature did not address the issue of successive qualifying convictions in [S]ection 5-4-3 . . .” and, thus, created a statutory ambiguity. Having so found, the court reasoned that the statutory purpose for the collection of DNA samples and the imposition of the DNA analysis fee was achieved by

requiring a single specimen of DNA to be taken from each qualified person rather than by requiring the submission of multiple and duplicative DNA samples from an offender who already submitted samples after a prior conviction. As a result, the court held that “[S]ection 5-4-3 authorizes a trial court to order the taking, analysis and indexing of a qualifying offender's DNA, and the payment of the analysis fee only where that defendant is not currently registered in the DNA database.” The changes made to Section 5-4-3 by P.A. 96-426 very likely resolved the ambiguity dealt with by the court in this case.

UNIFIED CODE OF CORRECTIONS – PRESENTENCE CREDIT

For the purposes of calculating good conduct credit under the Code, the date the defendant is sentenced is counted as the first day of the defendant’s sentence and not as a day of presentence custody.

In *People v. Williams*, 239 Ill.2d 503 (2011), the defendant, who was sentenced to 6 years in the Illinois Department of Corrections, appealed the circuit court’s calculation of presentence credit, arguing that the day of sentencing should be included in the court’s calculation of the term of imprisonment under Section 5-4.5-100 of the Unified Code of Corrections (730 ILCS 5/5-4.5-100 (West 2008)). The State argued that the Department, not the circuit court, should include the day of sentencing as a day of sentence in its calculation of good conduct credit under Section 3-6-3 of the Unified Code of Corrections (730 ILCS 5/3-6-3 (West 2008)). The State argued that because Section 5-8-5 of the Unified Code of Corrections (730 ILCS 5/5-8-5 (West 2008)) provides that the defendant enters the custody of the Department upon the entry of the sentencing judgment, the day of sentencing should not be included as a day of presentence custody under Section 5-4.5-100. The Illinois Supreme Court agreed with the State’s argument, further noting that the defendant’s sentence begins on the day of sentencing because Section 5-4.5-100 provides that the defendant’s sentence begins on the day that the Department takes the defendant into its custody. Because a single day may be counted only once for the defendant’s good conduct credit, the day of sentencing cannot also be counted as a day of presentence custody. The court held, therefore, that the date the defendant is sentenced is counted as the first day of the defendant’s sentence and not as a day of presentence custody.

UNIFIED CODE OF CORRECTIONS – PENALTY ENHANCEMENT

The date of conviction for purposes of the Code’s Class X felony enhancement provision means the date of entry of the sentencing order and not the date the defendant pled guilty to the offense.

In *People v. Holmes*, 405 Ill.App.3d 179 (3rd Dist. 2010), the defendant was convicted of unlawful delivery of a controlled substance under subdivision (c)(2) of Section 401 of the Illinois Controlled Substances Act (720 ILCS 570/401(c)(2) (West 2006)). That statute provides that a violation is a Class 1 felony. Class 1 felonies carry a term of imprisonment between 4 and 15 years. The trial court found defendant eligible for an enhanced sentence and sentenced the defendant to 20 years incarceration. Class X felonies carry a term of imprisonment between 6 and 30 years. That sentencing

enhancement provision, clause (c)(8) of Section 5-5-3 of the Unified Code of Corrections (730 ILCS 5/5-5-3 (West 2006))(now subsection (b) of Section 5-4.5-95 of that Code (730 ILCS 5-4.5-95), states that if a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now classified as a Class 2 or greater felony, then that defendant shall be sentenced as a Class X offender. In addition, that provision does not apply unless: (1) the first felony was committed after February 1, 1978 (the effective date of P.A. 80-1099); (2) the second felony was committed after conviction on the first; and (3) the third felony was committed after conviction on the second. On appeal, the defendant acknowledged that he had one qualifying conviction prior to committing the instant offense, a 2002 burglary conviction, but he disputed that he had committed 2 qualifying offenses at the time he committed the instant offense. The defendant pled guilty to the charge on October 1, 2007 and committed the instant offense on October 23, 2007. On February 11, 2008, the court sentenced the defendant to 7 years incarceration for the earlier offense. The trial court considered that offense the defendant's second qualifying offense. The appellate court held that the date of conviction is the date of entry of the sentencing order. For a defendant to be eligible for a Class X sentence, the Code requires that he or she be convicted of 2 qualifying offenses before committing the instant offense. The appellate court held that defendant's plea of guilty in that case did not qualify as a "conviction" as contemplated by clause (c) (8) of Section 5-5-3. Therefore, the Class X sentencing mandate was not triggered, and the appellate court concluded that the trial court lacked authority to sentence the defendant as a Class X offender.

UNIFIED CODE OF CORRECTIONS – CONSECUTIVE SENTENCES

The Code permits the imposition of a consecutive term of imprisonment following a natural life sentence.

In *People v. Petrenko*, 237 Ill.2d 490 (2010), the defendant was convicted of one count of first degree murder and one count of residential burglary. The circuit court sentenced him to a term of natural life in prison for the first degree murder conviction and a consecutive term of 10 years in prison for the residential burglary. On appeal, the defendant argued that his 10-year sentence for residential burglary must be modified to run concurrently, rather than consecutively, with his natural life term. The defendant relied on *People v. Palmer*, 218 Ill.2d 148 (2006). In *Palmer*, the defendant was sentenced to 7 consecutive natural life terms for the conviction of 7 separate Class X felonies. Prior to sentencing, the State filed a petition to have him declared a habitual criminal under the Habitual Criminal Act, Article 33B of the Criminal Code of 1961 (now subsection (a) of Section 5-4.5-95 of the Unified Code of Corrections (730 ILCS 5/5-4.5-95)). The trial court granted the petition. In *Palmer*, the Illinois Supreme Court ruled that the trial court erred in ordering the defendant's natural life sentences to run consecutively. That court held that the Habitual Criminal Act is a separate sentencing scheme from that set forth in the Unified Code of Corrections and that defendants sentenced under that Act are not subject to the consecutive sentencing provisions found in subsection (a) of Section 5-8-4 of the Unified Code of Corrections (730 ILCS 5/5-8-4 (West 2000)). In this case, the defendant was not sentenced under the Habitual Criminal

Act but under subsection (a) of Section 5-8-4 of the Unified Code of Corrections. The Illinois Supreme Court held that the legislature has the power to determine the appropriate punishment for criminal conduct and the judiciary is bound to fashion sentences within the parameters set forth by the legislature. The court held that the legislature has determined that the imposition of consecutive natural life sentences serves a legitimate public policy goal, and, even if its effect is purely symbolic, it is within the purview of the legislature to make that determination.

UNIFIED CODE OF CORRECTIONS – MANDATORY SUPERVISED RELEASE

The imposition of an enhanced mandatory supervised release term under the Code must be predicated on a prior conviction and not on 2 acts arising from one incident.

In *People v. Anderson*, 402 Ill.App.3d 186 (3rd Dist. 2010), the defendant pled guilty to 2 counts of aggravated criminal sexual abuse arising out of the same incident. At the sentencing hearing, the trial court sentenced the defendant to concurrent terms of 4 years imprisonment and ordered an enhanced 4-year period of mandatory supervised release to follow the prison term, because the defendant was being sentenced on 2 counts of aggravated criminal sexual abuse. Subdivision (d)(5) of Section 5-8-1 of the Unified Code of Corrections (720 ILCS 5/5-8-1(d)(5)(West 2006)) provides that, subject to earlier termination under Section 3-3-8 of the Code, the parole or mandatory supervised release term shall be: “. . . if the victim is under 18 years of age, for a second or subsequent offense of aggravated criminal sexual abuse or felony criminal sexual abuse, 4 years, at least the first 2 years of which the defendant shall serve in an electronic home detention program” The defendant contended that the trial court erred in imposing the 4-year term of mandatory supervised release under that provision. The appellate court, relying on previous cases that held that the enhancement of a sentence based upon a second or subsequent offense must be predicated on a prior conviction, vacated the defendant's 4-year term of mandatory supervised release and remanded the case for further proceedings. Although those cases involved enhancement of an incarceration term or enhancement of a crime from a misdemeanor to felony, the appellate court found that distinguishing characteristic irrelevant because mandatory supervised release is also a penal consequence of an individual's conviction.

UNIFIED CODE OF CORRECTIONS – REVOCATION OF FINES

Petitions for the revocation of fines under the Code are free-standing, collateral actions that may be filed more than 30 days after the entry of judgment.

In *People v. Mingo*, 403 Ill.App.3d 968 (2nd Dist. 2010), a criminal defendant contested a trial court's denial of his petition for the revocation of certain fines. On appeal, the State argued that the trial and appellate courts lacked jurisdiction to consider the defendant's petition because it was filed more than 30 days after judgment was entered. Section 5-9-2 of the Unified Code of Corrections (730 ILCS 5/5-9-2 (West 2008)) governs petitions for the revocation of fines and provides: "Except as to fines established for violations of Chapter 15 of the Illinois Vehicle Code, the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of

payment." After examining this provision, the appellate court concluded that petitions for the revocation of fines are free-standing, collateral actions that the trial court may consider even if filed more than 30 days after a judgment is entered. The appellate court reasoned that the legislature could have, but did not, include a temporal limitation in Section 5-9-2, and it also pointed out that if a Section 5-9-2 petition had to be filed within 30 days, then it would essentially duplicate a motion to reduce sentence and, thus, render Section 5-9-2 surplusage.

CODE OF CIVIL PROCEDURE – SUBSTITUTION FOR CAUSE

A judge has no duty to automatically refer a petition for substitution for cause unless specified threshold requirements for that petition are met.

In *In re Estate of Wilson*, 238 Ill.2d 519 (2010), the Illinois Supreme Court was asked to decide whether a circuit court judge who was the subject of a petition for substitution for cause under subdivision (a)(3) of Section 2-1001 of the Code of Civil Procedure (735 ILCS 5/2–1001(a)(3) (West 2006)) was required to refer that petition to another judge for hearing automatically, upon the filing of the petition, even when the petition, on its face, failed to comply with certain threshold procedural and substantive requirements. Section 2-1003 provides, in pertinent part, that "[e]very application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. . . . Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition. . . ." The lower appellate court majority reasoned that the statutory provision cited above clearly and unambiguously required, without condition or equivocation, for the action to be transferred for hearing before another member of the judiciary after the petitioner had asserted his or her rights under the Code. In that court's view, even the issue of compliance with the Code's threshold requirements was properly addressed by a judge whose impartiality was not in dispute. Although the majority of the Illinois Supreme Court recognized that statutes like this one are to be construed liberally to promote substitution, it reasoned that a party's right to have a petition for substitution heard by another judge is not automatic, holding that a judge has no duty to automatically refer a petition for judicial substitution to another judge unless specified statutory and judicially recognized threshold requirements for that petition are met. The concurring Justices, however, interpreted the statute in much the same way as the majority of the appellate court, reasoning that the plain language of the statute made no reference to threshold requirements and should not be interpreted "to authorize an Illinois judge accused of bias or prejudice in a civil proceeding to control the disposition of the petition seeking substitution of judge for cause."

CODE OF CIVIL PROCEDURE – HOLDOVER TENANTS

When calculating damages under a provision of the Code that requires a holdover tenant to pay double the yearly value of the lands, the court must use the net rental value of the lands, rather than the gross rental value of the lands.

In *Rexam Beverage Can Company v. Bolger*, 620 F.3d 718 (7th Cir. 2010), the Court of Appeals was asked to decide, among other things, how damages were to be calculated against a holdover tenant under Section 9-202 of the Code of Civil Procedure (735 ILCS 5/9-202 (West 2010)). Section 9-202 provides, in relevant part, that a holdover tenant " . . . shall, for the time the landlord or rightful owner is so kept out of possession, pay to the person so kept out of possession, . . . at the rate of double the yearly value of the lands . . ." After acknowledging that the issue was one of first impression, the Court of Appeals reasoned that on its face Section 9-202 appeared to award ". . . landlords double the yearly value of the lands, not the value of the lands plus utilities, insurance, and taxes." This reading was buttressed, the court pointed out, by the dictionary definitions of "annual value": "[t]he net yearly income derivable from a given piece of property," or "[o]ne year's rental value of property, less the costs and expenses of maintaining the property." For these reasons, the Court of Appeals held that the net rental value of the lands, rather than the gross rental value of the lands, was the appropriate measure of damages under Section 9-202. On that basis, it remanded the case to the district court for the recalculation of damages.

SURETIES ACT – APPLICABILITY TO GUARANTORS

The protections afforded to sureties under the Act do not necessarily apply to guarantors.

In *J.P. Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill.2d 455 (2010), the Illinois Supreme Court was asked to decide whether Section 1 of the Sureties Act (740 ILCS 155/1 (West 2000)) applied to guarantors. Section 1 provides that "[w]hen any person is bound . . . as surety for another for the payment of money [and] . . . apprehends that his principal is likely to become insolvent or to remove himself from the state, without discharging the contract, if a right of action has accrued on the contract, he may, in writing, require the creditor to sue forthwith upon the same; and unless such creditor, within a reasonable time and with due diligence, commences an action thereon, and prosecutes the same to final judgment and proceeds with the enforcement thereof, the surety shall be discharged . . ." In this case, the guarantor of a loan sought protection from a lender's claim under Section 1 of the Sureties Act. The trial court denied the assertion made by the guarantor and granted summary judgment to the lender. The Illinois Supreme Court held that the General Assembly did not intend the term "surety" to include guarantors and, therefore, that the protections afforded sureties in the Sureties Act were not applicable to guarantors. The court explained that a suretyship differs from a guaranty in that a suretyship is a primary obligation to see that a debt is paid, while a guaranty is a collateral undertaking, which means that it is an obligation, in the alternative, to pay the debt if the principal does not pay.

LOCAL GOVERNMENTAL AND GOVERNMENTAL EMPLOYEES TORT IMMUNITY ACT - STATUTE OF LIMITATIONS

A claim of an alleged sexual assault by a treating physician does not arise out of patient care for the purposes of the Act's 2-year statute of repose. Kaufmann v. Schroeder.

In *Kaufmann v. Schroeder*, 241 Ill.2d 194 (2011), the Illinois Supreme Court was asked to decide whether claims brought by a patient against a community hospital were time-barred by the 1-year statute of limitations in subsection (a) of Section 8-101 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/8-101(a) (West 2006)). The appellant challenged lower court decisions holding that the 1-year statute of limitations applied to her claims by arguing that, because her claims arose out of patient care at the hospital, the 2-year statute of repose in subsection (b) of Section 8-101 of that Act applied instead of the 1-year statute of limitations in subsection (a) of that Section. Subsection (a) of Section 8-101 provides: "No civil action other than an action described in subsection (b) may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued." Subsection (b) of that Section provides, in pertinent part: "No action for damages for injury or death against any local public entity or public employee, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of those dates occurs first . . ." A majority of the court affirmed the judgments of the lower courts, holding that the 1-year statute of limitations applied because the patient's injuries did not arise out patient care. According to the majority, the plaintiff's claims did not arise out of patient care because the patient's injuries resulted from an alleged sexual assault by the treating physician and not from the provision of patient care. However, members of the dissent asserted that the "assault undoubtedly had its 'origin in' or was 'incidental to' [the physician's] . . . medical care and treatment of plaintiff" because the physician was the plaintiff's obstetrician-gynecologist and had allegedly committed the sexual assault while the plaintiff was sedated during an unnecessary exam.

LOCAL GOVERNMENTAL AND GOVERNMENTAL EMPLOYEES TORT IMMUNITY ACT – LOCAL PUBLIC ENTITY

The Bi-State Development Agency of the Illinois-Missouri Metropolitan District qualifies as a local public entity under the Act.

In *Hubble v. Bi-State Development Agency of the Illinois-Missouri Metropolitan District*, 238 Ill.2d 262 (2010), a motorist who was injured in a collision with a bus operated by the Bi-State Development Agency filed a vicarious liability action against the bi-state agency. The agency sought to dismiss the action by arguing (i) that the 1-year statute of limitations under subsection (a) of Section 8-101 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/8-101(a) (West 2006)) applied because the agency qualified as a local public entity under Section 1-206 of that Act (745 ILCS 10/1-206 (West 2006)) and (ii) that the action had been filed more than

one year after the collision and was, thus, time barred. The Illinois Supreme Court held that the agency was a not-for-profit corporation organized for the purpose of conducting public business, within the meaning of the Act's definition of a local public entity; that the agency was a local governmental body within the definition of a local public entity; and that the one-year statute of limitations did not impose an improper burden without the concurrence of the other signatory states to the bi-state development agency.

PROBATE ACT OF 1975 – SLAYER STATUTE

A person who kills another but is found not guilty by reason of insanity is barred by the Act from recovering any assets from the estate of his or her victim.

In *Dougherty v. Cole*, 401 Ill.App.3d 341 (4th Dist. 2010), the Illinois Appellate Court was asked to decide whether a son who suffered a psychotic episode, killed his mother, was charged with first degree murder, but was subsequently found not guilty by reason of insanity was barred by the Slayer Statute—that is, Section 2-6 of the Probate Act of 1975 (755 ILCS 5/2-6 (West 2008))—from recovering any assets from his mother's estate. Section 2-6 provides, in pertinent part, that "[a] person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death" The decedent's son argued that Section 2-6 did not apply to the criminally insane. The decedent's daughter, however, argued that Section 2-6 applied because the son, despite his insanity, had acted intentionally. The trial court sided with the daughter, holding that the mother's murder was not justifiable and that the son, though suffering from a delusion, intended to kill his mother. As a result, the trial court determined that Section 2-6 barred the son from recovering from his mother's estate. The appellate court affirmed the decision of the trial court. It reasoned that P.A. 83-271 removed "convicted" and subsequently barred a person from taking from a decedent's estate if that person had "intentionally or unjustifiably" caused the death of the decedent. That change, according to the court, evidenced the General Assembly's intent to extend the bar on the prohibition on taking "to acquitted, insane killers who killed intentionally and unjustifiably."

MECHANICS LIEN ACT – DISTRIBUTION OF FORECLOSURE PROCEEDS

The Act prioritizes a lien creditor with respect to the value of its improvements and a prior incumbrancer with respect to the value of the land at the time the contract with the lien holder was made.

In *LaSalle Bank National Association v. Cypress*, 242 Ill.2d 231 (2011), the Illinois Supreme Court was asked to decide how foreclosure sale proceeds should be distributed between a mortgagee and mechanics lien claimants when: (i) the mortgage predated the liens, (ii) the foreclosure sale proceeds were insufficient to satisfy all claims, and (iii) the mortgagee paid for several improvements to a property through construction loan disbursements under Section 16 of the Mechanics Lien Act (770 ILCS 60/16 (West 2006)). Section 16 provides, in pertinent part, that "upon questions arising between incumbrancers and lien creditors, all previous incumbrances shall be preferred to the extent of the value of the land at the time of making of the contract, and the lien creditor shall be preferred to the value of the improvements erected on said premises." A

majority of the lower appellate court reasoned that Section 16 entitled mechanics lien claimants to be preferred to the added value of all lienable improvements on the land made subsequent to the time the mortgage was entered into. It reasoned that, by creating two groups, lien creditors and incumbrancers, and subsequently giving the lien creditor, singular, priority with respect to the value of improvements, plural, that Section 16 unambiguously gives as few as one lien creditor preference to the value of *all* improvements erected on the premises after the date that the mortgage attached. However, a majority of the Illinois Supreme Court held (i) that Section 16 had traditionally been interpreted to give each mechanics lien claimant priority only to the extent of the increased value of the property due to *that claimant's* improvements on the property and (ii) that the enhanced value of the property attributable to a contractors' work was to be applied to the satisfaction of the mortgage. In their dissent, the dissenting Justices reasoned, however, that by using the value of the property attributable to the contractors' work to satisfy the mortgage, the majority improperly treated the lenders as lien creditors.

PREVAILING WAGE ACT – PRIVATE ENTITY FINANCING

A private entity that avails itself of financing with bonds issued under the Act must pay prevailing wages pursuant to the Act.

In *McKinley Foundation at University of Illinois v. Illinois Department of Labor*, 404 Ill.App.3d 1115 (4th Dist. 2010), the appellate court determined that a private entity that availed itself of financing with bonds issued under the Illinois Finance Authority Act was required to pay prevailing wages pursuant to the Prevailing Wage Act (820 ILCS 130/ (West 2011)). The court made this determination by looking at legislative history after recognizing two reasonable interpretations of how the provision concerning such bond financing applied or did not apply to private entities. The first interpretation the court recognized followed the inclusion of all projects financed with such bonds as “public works” in Section 2 of the Act to conclude that such a public work is governed by the Act. The second interpretation recognized that the legislature expanded “public works” with the bond amendment to Section 2, but did not provide a similar expansion to the definition of a “public body,” therefore excluding a bond financed project by an entity not considered to be a public body. The court concluded after reviewing legislative history that the legislature intended to expand the coverage of the Act to projects constructed by entities benefiting from such financing, even if the entity itself is not a traditional public body.

EMPLOYEE CLASSIFICATION ACT – DUE PROCESS

The Act and associated regulations do not provide an accused with a meaningful hearing or the minimum guarantees of due process prior to the Illinois Department of Labor finding a violation of the Act.

In *Bartlow v. Shannon*, 399 Ill.App.3d 560 (5th Dist. 2010), the appellate court addressed an interlocutory appeal of a denial of a motion for a temporary restraining order. In appealing that denial, the claimant alleged that the Illinois Employee Classification Act, 820 ILCS 185/ (West 2011), allows for the assessment of penalties

and sanctions without providing a contractor with an opportunity for a hearing and, thus, violates due process. The appellate court agreed saying that neither the Act nor the regulations appear to provide an accused with a meaningful hearing, or the minimum guarantees of due process, as required by the United States and Illinois Constitutions (U.S. Const., Amends. V and XIV; ILCON Art. I, Sec. 2), prior to the Illinois Department of Labor finding a violation of the Act. The court also noted that the Act and regulations were drafted in a way that the Department is not required to comply with the Illinois Administrative Procedure Act (5 ILCS 100/ (West 2011)), which requires agencies to adopt rules establishing procedures for contested case hearings. The court failed to directly address the constitutionality of the law by focusing on the interlocutory appeal and remanded to the circuit court for a proper hearing.

WORKERS' COMPENSATION ACT – DULY APPOINTED MEMBER- POLICE

The Act applies to a recruit of a police department who has not been formally admitted to the responsibilities and privileges of that department.

In *Dodaro v. Illinois Workers' Compensation Commission*, 403 Ill.App.3d 538 (1st Dist. 2010), the appellate court reviewed a ruling by the Workers' Compensation Commission that allowed a Chicago police academy recruit to be eligible for benefits under the Workers' Compensation Act (820 ILCS 305/ (West 2011)) holding that such recruits did not fall under the Section 1 exclusion, which prohibits "any duly appointed member of a police department in any city whose population exceeds 200,000" from being classified as an employee under the Act. *See* 820 ILCS 305/1(b)1 (West 2011); *See also* P.A. 097-0268 (increases population minimum from 200,000 to 500,000). The court noted that the plain language of the exclusion does not exempt recruits or trainees. The court attempted to find the legislature's intent of who qualifies as a "duly appointed member of a police department", noting that the Act does not define the word "member." Using the dictionary definition of "member," the court concluded that the legislature intended the exclusion to apply to individuals who have been formally admitted to the responsibilities and privileges of the Chicago police department. Applying the fact that recruits are not considered police officers in all respects, except for treatment in regards to the police pension fund, the court concluded that the Commission's determination that the statutory exclusion did not apply to the recruit was not clearly erroneous.

PUBLIC SAFETY EMPLOYEE BENEFITS ACT – COVERAGE

A required training exercise was reasonably believed to be an emergency for the purposes of benefit continuation eligibility under the Act because the conditions present during the exercise simulated an actual fire rescue and the term "emergency" is broad enough to encompass urgent situations that arise spontaneously during the course of a firefighter's duties.

In *Lemmenes v. Orland Fire Protection District*, 399 Ill.App.3d 644 (1st Dist. 2010), the appellee maintained that he and his family were entitled to health insurance coverage pursuant to the Public Safety Employee Benefits Act (820 ILCS 320/10(b) (West 2006)) from an injury sustained in a training exercise that involved the rescue a trapped firefighter in an abandoned industrial building. The appellants argued that the

appellee should not continue to receive coverage under the Act because the injury occurred in response to a training exercise and not an emergency. The court reasoned that the dictionary defines “emergency” as “a situation that is urgent and calls for immediate action.” The court also reasoned that the training exercise was a simulation of a “live fire situation” and that the appellee was required to attend the exercise and respond as if it was an actual emergency. Furthermore, the firefighters who participated in the exercise arrived with emergency warning lights activated, in full emergency gear, and had their masks blacked out to simulate an actual fire rescue. Additionally, the court noted that the plain and ordinary language of the Act did not show that the legislature intended to restrict emergency situations to a specific kind, nor did it intend to classify training exercises as an exception to the ordinary meaning. The court held that because the training exercise required a sense of urgency that called for immediate action upon the appellee, and that the use of the term “emergency” in the Act is broad enough to encompass urgent situations that arise spontaneously during the course of a firefighter’s duties, the appellee and his family were entitled to health insurance coverage under the Public Safety Employee Benefits Act.

UNEMPLOYMENT INSURANCE ACT – ACADEMIC TERM

The Act does not apply to academic personnel who have been assigned a reduced amount of teaching during a summer academic term compared to previous years because the summer academic term is between successive terms and is, therefore, not an academic term for the purposes of the Act.

In *Kilpatrick v. Illinois Department of Employment Security*, 401 Ill.App.3d 90 (1st Dist. 2010), the plaintiff challenged the ruling that the plaintiff was precluded from unemployment benefits under Section 612 of the Unemployment Insurance Act (820 ILCS 405/612 (West 2008)), which governs academic personnel, because while employed as an adjunct professor, the plaintiff was assigned a reduced amount of hours of teaching during the summer academic term compared to previous summers of employment. The plaintiff argues that summer terms are not “between successive terms”, which would make the plaintiff ineligible for unemployment benefits, but in fact, the summer term is an academic term and since the plaintiff applied for unemployment benefits during an academic term, the summer term, the plaintiff is then entitled to the unemployment benefits under Section 612. The defendants argued that the summer academic term does not fall under the designated school calendar and with an expectation of returning to teach in the fall term the plaintiff is between academic terms and is therefore ineligible for unemployment benefits during the summer academic term. The court agreed with the defendants that the legislature could not have intended for some teachers to receive unemployment benefits during the summer while others, who without a summer teaching job or income, would not be eligible for unemployment benefits and held that the plaintiff was “between successive terms” with an expectation of returning to teach in the fall and was not eligible for unemployment benefits under Section 612 of the Unemployment Insurance Act.

INTRODUCTION TO PART 2

Part 2 of this 2011 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 Procedure" and "Corrections".)

ELECTIONS

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

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

10 ILCS 5/7-10.1 (Ill. Rev. Stat. 1971, ch. 46, par. 7-10.1). **Election Code.** In the Article concerning nominations by political parties, the form for a petition or certificate of nomination contains a loyalty oath. The loyalty oath provision was held unconstitutional as

vague and overly broad, violating the U.S. Constitution, Amendments I and XIV. *Communist Party of Illinois v. Ogilvie*, 357 F.Supp. 105 (N.D.Ill. 1972).

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

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

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

EXECUTIVE BRANCH

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

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

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

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

LEGISLATURE

25 ILCS 115/1 (Ill. Rev. Stat. 1991, ch. 63, par. 14). **General Assembly Compensation Act.** Amendatory changes made to this Section by P.A. 86-27 provide for annual, lump sum additional payments to certain legislators in leadership positions. Because P.A. 86-27 further provided that the pay raises were to be effective retroactively, the legislation is unconstitutional to the extent it allowed for a change in a legislator's salary during the term for which he or she was elected. *Rock v. Burriss*, 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" and "Corrections" and in Part 3 of this Case Report under "Criminal Offenses".)

30 ILCS 105/5.661 (30 ILCS 105/5.640 P.A. 94-677). **State Finance Act.** (See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010), reported in this Part 2 of this Case Report under "Civil Procedure", concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure enacted by P.A. 94-677, effective August 25, 2005.)

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

REVENUE

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

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

35 ILCS 520/ (Ill. Rev. Stat. 1989, ch. 120, par. 2151 *et seq.*). **Cannabis and Controlled Substances Tax Act.** Statute is invalid and cannot be applied if the defendant has been convicted of criminal charges involving the same contraband. Violates the double jeopardy provisions of the U.S. and Illinois constitutions. *Department of Revenue of Montana v. Kurth*, 114 S.Ct. 1937 (1994).

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

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

PENSIONS

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

TOWNSHIPS

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

MUNICIPALITIES

65 ILCS 5/10-2.1-6 (Ill. Rev. Stat. 1977, ch. 24, par. 10-2.1-6). **Illinois Municipal Code.** Provision that prohibits appointing a person with a limb amputated to the police or fire department for anything but clerical or radio operator duties violates the Illinois Constitution, which prohibits discrimination against persons with a physical handicap. *Melvin v. City of West Frankfort*, 93 Ill.App.3d 425 (5th Dist. 1981).

65 ILCS 5/11-13-1 (Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1). **Illinois Municipal Code.** Statute authorizing a municipality to exercise zoning powers extraterritorially (that is, within a 1½-mile area contiguous to the municipality) was amended by P.A. 77-1373 (approved August 31, 1971) to add, as a permitted purpose of zoning regulation, the preservation of historically, architecturally, or aesthetically important features. P.A. 77-1373 also provided: "This amendatory Act of 1971 does not apply to any municipality which is a home rule unit." Because a municipality has extraterritorial zoning authority only as granted by the legislature and not under its home rule powers, that added sentence, if valid, creates the incongruous situation of non-home rule municipalities being able to zone extraterritorially while home rule municipalities

cannot. The sentence creates an unconstitutional classification and is void. (The court apparently read “this amendatory Act of 1971” to refer to the entire Section rather than to just the statement of purpose added by P.A. 77-1373.) *City of Carbondale v. Van Natta*, 61 Ill.2d 483 (1975).

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

SPECIAL DISTRICTS

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

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

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

SCHOOLS

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

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

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

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

HIGHER EDUCATION

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

FINANCIAL REGULATION

205 ILCS 105/1-6 and 105/1-10.10 (Ill. Rev. Stat. 1957, ch. 32, pars. 706 and 710). **Illinois Savings and Loan Act.** Provisions authorizing a savings and loan association to obtain and maintain insurance on its withdrawable capital by the FSLIC or another federal instrumentality or federally chartered corporation violates the Illinois Constitution because it deprives both savings and loan associations and private insurance companies of their freedom to contract and it deprives private insurance companies of property without due process. 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).

HEALTH FACILITIES

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

INSURANCE

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

215 ILCS 5/155.18, 5/155.18a, 5/155.19, and 5/1204 (P.A. 94-677). **Illinois Insurance Code.** (See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010), reported in this Part 2 of this Case Report under "Civil Procedure", concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure enacted by P.A. 94-677, effective August 25, 2005.)

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).

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).

PUBLIC AID

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

MENTAL HEALTH

405 ILCS 5/2-110 (West 1994). **Mental Health and Developmental Disabilities Code.** Provision authorizing a guardian, with the court’s approval, to provide informed consent for his or her ward to receive unusual, hazardous, or experimental services or psychosurgery that a non-ward may not receive without his or her own written and informed consent violates the due process guarantees of the federal and State constitutions (U.S. Const., Amend. XIV, Sec.1 and ILCON Art. I, Sec. 2) by

permitting denial of a ward's interest in choosing treatment without providing adequate safeguards. *In re Branning*, 285 Ill.App.3d 405 (4th Dist. 1996).

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

NUCLEAR SAFETY

420 ILCS 15/ (Ill. Rev. Stat., ch. 111½, par. 230.1 *et seq.*). **Spent Nuclear Fuel Act.** Act is unconstitutional because (i) by banning the storage and shipment for storage of spent nuclear fuel in Illinois merely because the spent fuel or its shipment originated out of State, the Act arbitrarily burdens interstate commerce in violation of the commerce clause (U.S. Constitution, Art. I, Sec. 8) and (ii) the federal Atomic Energy Act preempts state regulation of the storage and shipment for storage of spent nuclear fuel, and Illinois' Spent Nuclear Fuel Act therefore violates the supremacy clause (U.S. Constitution, Art. VI, cl. 2). *People of the State of Illinois v. General Electric Co.*, 683 F.2d 206 (7th Cir. 1982).

PUBLIC SAFETY

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

VEHICLES

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

625 ILCS 5/4-103.2 (West 2000). **Illinois Vehicle Code.** Subsection (b)'s inference that a person exercising unexplained possession of a stolen or converted automobile is presumed to know the car is stolen or converted, regardless of the remote date of its theft or conversion, violates the due process guarantee of Section 2 of Article I of the Illinois Constitution as applied to the possessor of special mobile equipment because the same extensive ownership records and procedures that justify the

presumption for automobile possession do not exist for special mobile equipment. *People v. Greco*, 204 Ill.2d 400 (2003).

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

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

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

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

COURTS

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

705 ILCS 25/1 (P.A. 89-719). **Appellate Court Act.** (See *Cincinnati Insurance Co. v. Chapman*, 181 Ill.2d 65 (1997), reported in this Part 2 of this Case Report under

“Courts”, concerning the inseverability of unconstitutional provisions of the Judicial Redistricting Act of 1997 enacted by P.A. 89-719.)

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

705 ILCS 105/27.10 (P.A. 94-677). **Clerks of Courts Act.** (See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010), reported in this Part 2 of this Case Report under “Civil Procedure”, concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure enacted by P.A. 94-677, effective August 25, 2005.)

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

ALTERNATIVE DISPUTE RESOLUTION

710 ILCS 45/ (P.A. 94-677). **Sorry Works! Pilot Program Act.** (See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010), reported in this Part 2 of this Case Report under “Civil Procedure”, concerning the inseverability of unconstitutional provisions of the Code of Civil Procedure enacted by P.A. 94-677, effective August 25, 2005.)

CRIMINAL OFFENSES

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

720 ILCS 5/10-2 (West 2000). **Criminal Code of 1961.** Subsection (b), which authorizes a 15-year sentence enhancement for committing the offense of aggravated kidnapping while armed with a firearm, violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11) because the resulting penalty is harsher than the penalty for armed violence, which contains the same elements. *People v. Baker*, 341 Ill.App.3d 1083 (4th Dist. 2003) and *People v. Gibson*, 403 Ill.App.3d 942 (2nd Dist. 2010).

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

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

720 ILCS 5/12-6 (Ill. Rev. Stat. 1983, ch. 38, par. 12-6). **Criminal Code of 1961.** Provision of intimidation statute making it an offense to threaten to commit any crime no matter how minor or insubstantial is unconstitutional as being overbroad in

violation of the First Amendment to the United States Constitution. *U.S. ex rel. Holder v. Circuit Court of the 17th Judicial Circuit*, 624 F.Supp. 68 (N.D.Ill. 1985).

720 ILCS 5/12-14. Criminal Code of 1961. The mandatory 15-year sentence enhancement for aggravated criminal sexual assault while armed with a firearm violates the proportionate penalties clause of the Illinois Constitution when compared to the lesser sentence for the equivalent offense of armed violence predicated on criminal sexual assault under Section 33A-2 of the Code (720 ILCS 5/33A-2) . *People v. Pelo*, 404 Ill.App.3d 839 (4th Dist. 2010).

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

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

720 ILCS 5/16-7 (West 2004). **Criminal Code of 1961.** Subdivision (a)(2), the unlawful use of recorded sounds or images, is preempted by Section 301 of the federal Copyright Act of 1976 (17 U.S.C. 301) because the State statute does not require any additional element that qualitatively distinguishes it from the federal copyright infringement provision. *People v. Williams*, 235 Ill.2d 178 (2009).

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 5/16G-15. Criminal Code of 1961. Because subdivision (a)(7) of Section 16G-15 does not require a culpable mental state beyond mere knowledge, its provisions criminalize a “wide array of wholly innocent conduct” and, thus, violate the due process guarantees of the State and federal constitutions (U.S. Const., Amends. V and XIV; ILCON Art. I, Sec. 2). *People v. Madrigal*, 241 Ill.2d 463 (2011)

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

720 ILCS 5/18-4 (West 2002). Criminal Code of 1961. Sentencing range of 21 to 45 years’ imprisonment for aggravated vehicular hijacking while carrying a firearm under subsection (a)(2) is harsher than the sentencing range of 15 to 30 years’ imprisonment for armed violence with a category I weapon predicated upon vehicular hijacking, an offense with identical elements and, thus, violates the proportionate penalties clause of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). *People v. Andrews*, 364 Ill.App.3d 253 (2nd Dist. 2006).

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 hijacking and armed robbery. Minimum term of imprisonment of 15 years is disproportionate to minimum terms of imprisonment (7 years and 6 years, respectively) for aggravated vehicular hijacking under 720 ILCS 5/18-4 (West 1994) and armed robbery under 720 ILCS 5/18-2 (West 1994). Public Act 95-688, effective October 23, 2007, amended 720 ILCS 5/33A-2 to remove

from the definition of armed violence any offense that makes possession or use of a dangerous weapon an aggravated version of the offense, thus eliminating armed robbery under 720 ILCS 5/18-2. Aggravated vehicular hijacking, however, may be committed under 720 ILCS 5/18-4 with aggravating factors other than possession or use of a dangerous weapon. *People v. Beard*, 287 Ill.App.3d 935 (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 510/2 and 510/11 (Ill. Rev. Stat. 1983, ch. 83, pars. 81-22 and 81-31). **Illinois Abortion Law of 1975.** Provisions making nonprescription sale of abortifacients and prescription or administration of abortifacients without informing the recipient a misdemeanor are unconstitutional because they incorporate a definition of “fetus” in which a fetus is classified as a human being from fertilization until death and thus intrude upon the medical discretion of the attending physician and impose the State’s theory of when life begins upon the physician’s patient, impermissibly infringing upon a woman’s right of private decision-making in matters relating to contraception. *Charles v. Daley*, 749 F.2d 452 (7th Cir. 1984).

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

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

CRIMINAL PROCEDURE

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

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

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

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

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

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

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

CORRECTIONS

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

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

730 ILCS 5/3-10-11 (P.A. 88-680). **Unified Code of Corrections.** Provision amended by P.A. 88-680 is unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not

all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill.App.3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill.2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Finance” and “Courts” and in Part 3 of this Case Report under “Criminal Offenses”.)

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

730 ILCS 5/5-5-6, 5/5-6-3.1, and 5/5-8-1 (P.A. 89-203). **Unified Code of Corrections.** Provisions amended by P.A. 89-203 are unconstitutional because P.A. 89-203 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. *People v. Wooters*, 188 Ill.2d 500 (1999). (This case is also reported in this Part 2 of this Case Report under “Vehicles”, “Criminal Offenses”, and “Civil Procedure”.)

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

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

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

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

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

CIVIL PROCEDURE

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

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

735 ILCS 5/2-622, 5/2-1704.5, 5/2-1706.5, 5/8-1901, and 5/8-2501 (P.A. 94-677). **Code of Civil Procedure.** Public Act 94-677, effective August 25, 2005, a comprehensive revision of the law relating to health care and medical malpractice actions, is unconstitutional in its entirety because (i) provisions limiting the recovery of damages for non-economic losses in medical malpractice actions violate the separation of powers

principle of the Illinois Constitution (ILCON Art. II, Sec. 1) and (ii) other provisions are inseverable. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010).

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), and, when a unit of local government was the real interested party, *County of Cook ex rel. Rifkin v. Bear Stearns & Co., Inc.*, 215 Ill.2d 466 (2005).

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

CIVIL LIABILITIES

740 ILCS 100/3.5, 100/4, and 100/5 (P.A. 89-7). **Joint Tortfeasor Contribution Act.** P.A. 89-7, a comprehensive revision of the law relating to personal injury actions, is unconstitutional in its entirety because (i) provisions limiting compensatory damages for noneconomic injuries, changing contribution by joint tortfeasors, abolishing joint and several liability, and mandating unlimited disclosure of a plaintiff's medical records during discovery are arbitrary, are special legislation in violation of Section 13 of Article IV of the Illinois Constitution, 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 inseparability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

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

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

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

745 ILCS 49/30 (P.A. 94-677). **Good Samaritan Act.** (See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217 (2010), reported in this Part 2 of this Case Report under “Civil Procedure”, concerning the inseparability of unconstitutional provisions of the Code of Civil Procedure enacted by Public Act 94-677, effective August 25, 2005.)

FAMILIES

750 ILCS 5/501.1 (West 1992). **Illinois Marriage and Dissolution of Marriage Act.** “Dissolution action stay” provision is an unconstitutional violation of substantive due process because, in providing for a stay on disposing of any property by either party in a

divorce, the statute unfairly restrains the disposition of non-marital property as well as marital property. *Messenger v. Edgar*, 157 Ill.2d 162 (1993).

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

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

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

PROPERTY

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

BUSINESS TRANSACTIONS

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

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

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

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

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

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

EMPLOYMENT

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

820 ILCS 30/ **Employment of Strikebreakers Act.** Act, which imposes criminal penalties upon an employer who knowingly contracts with a day and temporary

labor service agency for the provision of replacement workers in the event of a strike or lockout, is preempted by the federal National Labor Relations Act and thus violates the supremacy clause of the United States Constitution (U.S. Const., Art. VI, cl. 2). *Caterpillar Inc. v. Lyons*, 318 F.Supp.2d 703 (C.D.Ill. 2004).

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

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

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

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

820 ILCS 185/. Illinois Employee Classification Act. Because the Act allows for the assessment of penalties and sanctions without providing a contractor with an opportunity for a hearing, it violates the minimum guarantees of due process required by the United States and Illinois Constitutions (U.S. Const., Amends. V and XIV; ILCON Art. I, Sec. 2). *Bartlow v. Shannon*, 399 Ill.App.3d 560 (5th Dist. 2010).

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

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

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

INTRODUCTION TO PART 3

Part 3 of this 2011 Case Report contains Illinois statutes that are representative of (i) statutes that were held unconstitutional and then changed in response to the holding of unconstitutionality or (ii) statutes that were construed in a particular way in order to avoid a holding of unconstitutionality. Part 3 does not include every such statute. Part 3 includes statutes that (i) currently appear or formerly appeared in the Illinois Compiled Statutes or appeared in an Act that was replaced by an Act that currently appears in the Illinois Compiled Statutes and (ii) may have some instructional value concerning the requirement that statutes not violate the United States Constitution or the Illinois Constitution.

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

GENERAL PROVISIONS

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

ELECTIONS

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

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

10 ILCS 5/7-10 (Ill. Rev. Stat. 1971, ch. 46, par. 7-10). **Election Code.** Provisions prohibiting a person from signing a nominating petition or being a candidate of a political party for public office if the person had requested a primary ballot of another political party at a primary election held within 2 years of the date on which the nominating petition must be filed were held to violate the right of free political

association under the U.S. Constitution, Amendments I and XIV. Standards governing party changes by candidates may and should be more restrictive than those relating to voters generally, but the restrictions on candidates were not severable from the invalid provisions. P.A. 86-1348 deleted the 2-year restriction on changes of party by persons signing nominating petitions and by candidates. *Sperling v. County Officers Electoral Board*, 57 Ill.2d 81 (1974).

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

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

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

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

candidate's petition closer to the general election. *Lee v. Keith*, 463 F.3d 763 (7th Cir. 2006).

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

10 ILCS 5/7A-1 (West 2004). **Election Code.** The statutory deadline for Illinois Supreme, Appellate, and Circuit Judges to file declarations of candidacy to succeed themselves in office (the first Monday in December before the general election preceding the expiration of their terms of office) impermissibly conflicted with the deadline for filing those declarations to seek judicial retention established in Section 12 of Article VI of the Illinois Constitution (ILCON Art. VI, Sec. 12), which is 6 months before the general election preceding the expiration of their terms of office. Public Act 96-886, effective January 1, 2011, amended the statute to conform with the Constitution's deadline, although the Public Act did not resolve the problem resulting from the deadline occurring after the general primary (the third Tuesday in March before the general election). *O'Brien v. White*, 219 Ill.2d 86 (2006).

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

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

10 ILCS 5/17-15 (Hurd's Statutes 1917, p. 1350). **Election Code.** Provision that required employers to pay employees for the 2 hours employers were required to allow employees to be absent from work to vote on election day was void as an unreasonable abridgment of the right to contract for labor. Although a citizen has a constitutional right to vote, he or she does not have a constitutional right to be paid to

exercise the right to vote. The requirement to pay employees during their absence while voting was removed by Laws 1963, p. 2532. *People v. Chicago, Milwaukee and St. Paul Railway Co.*, 306 Ill. 486 (1923).

10 ILCS 5/19-9 and 5/19-10. Election Code. Code's failure to provide an absent voter with timely notice of and a hearing on the rejection of his or her absentee ballot denied due process under the Fifth and Fourteenth Amendments to the U.S. Constitution. Public Act 94-1000, effective July 3, 2006, repealed Section 19-9 and amended Section 19-8 of the Code (10 ILCS 5/19-8) to require that an election authority, before the close of the period for counting provisional ballots, notify an absentee voter that his or her ballot was rejected, why it was rejected, and that the voter may appear before a panel of election judges to show cause why the ballot should not be rejected. *Zessar v. Helander*, 2006 WL 573889, Docket No. 05C 1917, opinion filed March 13, 2006.

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

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

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

EXECUTIVE OFFICERS

15 ILCS 335/14B (West 1998). **Illinois Identification Card Act.** The Class 4 felony penalty for the offense of knowingly possessing a fraudulent identification card, which includes a mandatory minimum fine or community service, was disproportionate to

the Class 4 felony penalty for the more serious offense of knowingly possessing a fraudulent identification card with aggravating elements, which did not include mandatory minimums, in violation of the proportionate penalties requirement of Section 11 of Article I of the Illinois Constitution (ILCON Art. I, Sec. 11). P.A. 94-701, effective June 1, 2006, reclassified the offense of knowingly possessing a fraudulent identification card with aggravating elements as a Class 3 felony. *People v. Pizano*, 347 Ill.App.3d 128 (1st Dist. 2004).

15 ILCS 520/22.5 and 520/22.6. Deposit of State Moneys Act. Public Act 94-79, effective January 27, 2006 and known as the “Sudan Act”, which prohibited the investment of State moneys in relation to Sudan, was preempted by federal law and violated the foreign commerce clause of the United States Constitution (U.S. Const., Art. I, Sec. 8). Public Act 95-521, effective August 28, 2007, repealed the Sudan Act. *National Foreign Trade Council, Inc. v. Giannoulis*, 523 F.Supp.2d 731 (N.D.Ill. 2007). (This case is also reported in this Part 3 of this Case Report under “Pensions”.)

EXECUTIVE BRANCH

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

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

20 ILCS 3850/ (P.A. 88-669). Illinois Research Park Authority Act. Act created by P.A. 88-669, effective November 29, 1994, was unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 93-205, effective January 1, 2004, repealed the Illinois Research Park Authority Act. P.A. 92-790, 93-1046, 94-794, 94-961, 94-986, 94-1017,

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

FINANCE

30 ILCS 340/0.01, 340/1, 340/1.1, 340/2, and 340/3 (P.A. 88-669). **Casual Deficit Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 93-1046, effective October 15, 2004, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 94-794, 94-961, 94-986, 94-1017, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Revenue”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

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

REVENUE

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

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

35 ILCS 120/1 (Ill. Rev. Stat. 1985, ch. 120, par. 440). **Retailers’ Occupation Tax Act.** Provisions that persons in the business of repairing items of personal property by adding or incorporating other items of personal property shall be deemed to be in the business of selling personal property at retail and not in a service occupation violated the

uniformity of taxation provisions of the Illinois Constitution because they attempted to include within a class persons who in fact were not within the class. Laws 1963, pages 1582 and 1600 deleted the offending provisions. *Central Television Service v. Isaacs*, 27 Ill.2d 420 (1963).

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

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

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

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

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

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

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

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

1967 amendments, which designated 4 limited subclasses of servicemen who were subject to the tax, were an unconstitutional denial of due process and equal protection

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

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

35 ILCS 115/9 (P.A. 88-669). **Service Occupation Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

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

35 ILCS 120/5a, 120/5b, and 120/5c (Ill. Rev. Stat. 1961, ch. 120, pars. 444a, 444b, and 444c). **Retailers’ Occupation Tax Act.** Provisions (i) permitting the Department of Revenue to file with the circuit clerk a final assessment or jeopardy assessment and requiring the clerk to immediately enter judgment for that amount and (ii)

affording the taxpayer an opportunity to be heard only after entry of the judgment violated due process and attempted to circumvent the courts in violation of the separation of powers clause of the Illinois Constitution. Subsequent amendments corrected the problem. *People ex rel. Isaacs v. Johnson*, 26 Ill.2d 268 (1962).

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

35 ILCS 130/10b (P.A. 88-669). **Cigarette Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

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

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

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

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

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

35 ILCS 200/15-172 (P.A. 88-669). **Property Tax Code.** Provisions added by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-794, effective May 22, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, 94-1017, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

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

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

Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”).)

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

35 ILCS 615/11 (P.A. 88-669). **Gas Revenue Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”).)

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

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

“Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

PENSIONS

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

40 ILCS 5/6-210.1 (Ill. Rev. Stat. 1989, ch. 108 ½, par. 6-210.1). **Illinois Pension Code.** Requiring Chicago fire department paramedics transferred from Chicago municipal pension fund to Chicago firemen’s fund to tender refunds from the Chicago municipal fund, plus interest, to Chicago firemen’s fund in order to retain service credits diminished vested pension rights of paramedics unable to produce refund money plus interest and violated the Illinois Constitution’s prohibition against diminishing pension rights. P.A. 89-136 amended Section 6-210.1 to permit payment of refunds plus interest through payroll deductions. *Collins v. Board of Trustees of Firemen’s Annuity and Benefit Fund of Chicago*, 226 Ill.App.3d 316 (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 60/7, 60/22, 60/23, 60/24, 60/24.1, and 60/36 (P.A. 94-677). **Medical Practice Act of 1987.** Provisions amended by P.A. 94-677, effective August 25, 2005, were unconstitutional because P.A. 94-677 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 97-622, effective November 23, 2011, re-enacted the changes made by 94-677.

225 ILCS 60/26 (West Supp. 1999). **Medical Practice Act of 1987.** Provisions that ban a licensee's use of testimonials to entice the public violated the First and Fourteenth Amendments to the U.S. Constitution by disproportionately prohibiting all truthful speech for the State's goal of regulating the medical profession. *Snell v. Department of Professional Regulation*, 318 Ill.App.3d 972 (4th Dist. 2001). Public Act 97-622, effective November 23, 2011, removed the provisions that banned the use of testimonials for those purposes.

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

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

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

GAMING

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

LIQUOR

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

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

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

WAREHOUSES

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

PUBLIC AID

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

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

PUBLIC HEALTH

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

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

ENVIRONMENTAL SAFETY

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

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

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

PUBLIC SAFETY

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

ROADS AND BRIDGES

605 ILCS 5/9-112 (Ill. Rev. Stat. 1965, ch. 121, par. 9-112). **Illinois Highway Code.** Provision authorizing local authorities to permit advertising on public highways

with no guidelines was an unlawful delegation of legislative authority. P.A. 76-793 deleted the provision. *City of Chicago v. Pennsylvania R. Co.*, 41 Ill.2d 245 (1968).

VEHICLES

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

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

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

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

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

applying such a classification to minors under age 18. *People v. Sherman*, 57 Ill.2d 1 (1974).

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

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

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

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

625 ILCS 5/12-612 (West 2004). **Illinois Vehicle Code.** Statute that made it unlawful for a person to own or operate a motor vehicle that the person knows to contain a

false or secret compartment, and that provides that the person's intent to use the compartment to conceal its contents from a law enforcement officer may be inferred from the nature of the contents, violated the due process guarantees of the federal and State constitutions (U.S. Const., Amends. V and XIV and ILCON Art. I, Sec.2) because it was too broad and potentially punished innocent behavior. Public Act 96-202, effective January 1, 2010, amended Section 12-612 to require that the person (i) own or operate the vehicle with criminal intent and (ii) know that the compartment is or has been used to conceal specified, prohibited firearms or controlled substances. *People v. Carpenter*, 228 Ill.2d 250 (2008).

COURTS

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

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

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

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

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

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

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

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

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

705 ILCS 405/5-33 (repealed) (West 1996). **Juvenile Court Act of 1987.** Act's silence as to a jury trial for a minor at least 13 years old adjudicated delinquent for first degree murder and committed to the Department of Corrections until age 21 without parole for 5 years was an unconstitutional denial of equal protection guarantees as applied to a 13-year-old whose jury trial request was denied. P.A. 90-590 repealed the offending Section and added Section 5-810, which allows a jury trial in certain circumstances. *In re G.O.*, 304 Ill.App.3d 719 (1st Dist. 1999).

CRIMINAL OFFENSES

720 ILCS 5/10-5 (West 1998). **Criminal Code of 1961.** Provision that made evidence of luring or attempted luring prima facie evidence of other than a lawful purpose created a *per se* unconstitutional, but severable, mandatory presumption that denied due process by shifting the burden of proof to the defendant. *People v. Woodrum*, 223 Ill.2d 286 (2006). P.A. 97-160, effective January 1, 2012, amended the provision in question to authorize the trier of fact to infer that luring or attempted luring is for other than an unlawful purpose.

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

720 ILCS 5/11-20.1 (P.A. 88-680). **Criminal Code of 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”, 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 5/18-2 (West 2000). **Criminal Code of 1961.** Subsection (b)’s 15-year sentence enhancement for armed robbery committed under subsection (a)(2) with a firearm resulted in a penalty greater than that for armed violence predicated on robbery with a dangerous weapon (720 ILCS 5/33A-2), in violation of the proportionate penalty requirement of the Illinois Constitution (ILCON Art. I, Sec.11) for offenses with identical elements. Public Act 95-688, effective October 23, 2007, redefined armed violence to exclude as a predicate any offense that carries a mandatory sentence enhancement for use of a firearm. *People v. Hauschild*, 226 Ill.2d 63 (2007).

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

Item (1) of subsection (a) provided that a person committed aggravated arson when the person knowingly damaged a structure by means of fire or explosive and the person knew or reasonably should have known that someone was present in the structure. This provision was unconstitutional because the underlying conduct that was supposed to

be enhanced by the aggravated arson statute was not necessarily criminal in nature. *People v. Johnson*, 114 Ill.2d 69 (1986).

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

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

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

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

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

720 ILCS 5/25-1 (Ill. Rev. Stat., ch. 38, par. 25-1). **Criminal Code of 1961.** Provision of mob action offense that prohibited the assembly of 2 or more persons to do an unlawful act was unconstitutional for violating due process and the First Amendment because it (i) was too vague to give reasonable notice of the prohibited conduct or adjudicatory standards and (ii) was so overbroad as to allow the arbitrary suppression of non-criminal conduct. Public Act 96-710, effective January 1, 2010, changed the offense to prohibit the knowing assembly of 2 or more persons with the intent to commit or facilitate the commission of a felony or misdemeanor. *Landry v. Daley*, 280 F.Supp. 938 (N.D.Ill. 1968).

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

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

720 ILCS 5/33A-1, 5/33A-2, and 5/33A-3 (P.A. 88-680). **Criminal Code of 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”, and “Corrections”).

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

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

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

Armed violence predicated on aggravated vehicular hijacking and armed robbery. Minimum term of imprisonment of 15 years was disproportionate to minimum terms of

imprisonment (7 years and 6 years, respectively) for aggravated vehicular hijacking under 720 ILCS 5/18-4 (West 1994) and armed robbery under 720 ILCS 5/18-2 (West 1994). *People v. Beard*, 287 Ill.App.3d 935 (1st Dist. 1997).

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

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

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

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

720 ILCS 250/16 (West 2002). **Illinois Credit Card and Debit Card Act.** Provision that possession of 2 or more counterfeit credit or debit cards by someone other than the purported card issuer is prima facie evidence of the possessor’s intent to defraud or

of the possessor's knowledge that the cards are counterfeit creates an unconstitutional mandatory presumption of the intent or knowledge that is an element of a violation of the Act. *People v. Miles*, 344 Ill.App.3d 315 (2nd Dist. 2003). P.A. 96-1551, effective July 1, 2011, replaced the provision that created a mandatory presumption with a provision that authorized the trier of fact to infer that possession of 2 or more credit or debit cards is evidence of the possessor's intent to defraud or knowledge that the debit or credit cards had been altered or counterfeited. P.A. 96-1551 also moved the provision in question to 720 ILCS 5/17-41 (West 2011).

720 ILCS 510/2, 510/3, 510/5, 510/7, 510/8, 510/9, 510/10, and 510/11 (Ill. Rev. Stat. 1976, ch. 38, pars. 81-22, 81-23, 81-25, 81-27, 81-28, 81-29, 81-30, and 81-31). **Illinois Abortion Law of 1975.** Substantial portions of the Act were unconstitutional because they violated the due process clause of the U. S. Constitution. The definition of "criminal abortion" was vague; physicians were not given fair warning of what information they had to provide to pregnant women; spousal and parental consent requirements unduly infringed on a pregnant woman's rights; the requirement for additional physician consultations bore no relationship to the needs of the patient or fetus; there was no provision for notice and an opportunity to contest the termination of parental rights; the ban on saline abortions removed a necessary alternative procedure; and required reports of abortions as fetal deaths failed to preserve a woman's right to confidentiality. P.A. 81-1078 made numerous changes in the Act in response to the findings of unconstitutionality. *Wynn v. Carey*, 599 F.2d 193 (7th Cir. 1979).

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

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

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

720 ILCS 570/315. Illinois Controlled Substances Act. Prohibition against advertising controlled substances to the public by name violates the commercial speech protection of the First Amendment and the commerce clause of Art. I, Sec. 8 of the U.S. Constitution when applied to the federally approved national advertising campaign of the developer of a Schedule IV controlled substance. *Knoll Pharmaceutical Co. v. Sherman*, 57 F.Supp.2d 615 (N.D.Ill. 1999). P.A. 97-334, effective January 1, 2012, repealed Section 315.

720 ILCS 600/2 and 600/3 (Ill. Rev. Stat. 1985, ch. 56½, pars. 2102 and 2103). **Drug Paraphernalia Control Act.** Provisions were unconstitutionally vague because they required scienter on the part of a retailer in the definition Section but allowed for constructive knowledge on the part of the retailer in the penalty Section. P.A. 86-271 amended the penalty Section to delete the constructive knowledge provision. *People v. Monroe*, 118 Ill.2d 298 (1987).

CRIMINAL PROCEDURE

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

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

725 ILCS 5/110-6.2 (Ill. Rev. Stat. 1989, ch. 38, par. 110-6.2). **Code of Criminal Procedure of 1963.** Bail provision permits a court, after a hearing, to deny bail if the court determines that certain facts exist, such as proof evident or presumption great that the defendant committed the offense, the offense requires imprisonment, or the defendant poses a real threat to others. Provision violated the separation of powers clause of the Illinois Constitution because they limited the court's authority to set bail and imposed conditions not found in Supreme Court Rule 609 concerning bail. *People v. Williams*, 143 Ill.2d 477 (1991). P.A. 96-1200, effective July 22, 2010, amended the provision to make the court's imposition of order's concerning post-conviction detention discretionary rather than mandatory.

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

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

725 ILCS 5/122-8 (Ill. Rev. Stat. 1984 Supp., ch. 38, par. 122-8). **Code of Criminal Procedure of 1963.** Provision requiring that all post-conviction proceedings be conducted by a judge who was not involved in the original proceeding that resulted in conviction violated the separation of powers clause of the Illinois Constitution and also was contrary to a Supreme Court Rule concerning judicial administration and therefore violated Article VI, Section 16 of the Illinois Constitution. Public Act 96-1200, effective July 22, 2010, repealed the offending provision. *People v. Joseph*, 113 Ill.2d 36 (1986).

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

CORRECTIONS

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

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

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

730 ILCS 5/5-4-1 and 5/5-8-1 (Ill. Rev. Stat. 1979, ch. 38, pars 1005-4-1 and 1005-8-1). **Unified Code of Corrections.** Two provisions providing that, in imposing a sentence for a felony conviction, a judge "shall" specify reasons for his or her sentencing determination were constitutional, as held here, when "shall" is construed in that context to be permissive rather than mandatory. By contrast, if "shall" were interpreted to reflect a mandatory intent, the provisions would unconstitutionally infringe upon the inherently separate power of the judiciary. Public Act 95-1052, effective July 1, 2009, removed the offending provision from Section 5-8-1. *People v. Davis*, 93 Ill.2d 155 (1982).

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

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

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

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

CIVIL PROCEDURE

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

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

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

735 ILCS 5/2-622 and 5/8-2501 (P.A. 89-7). **Code of Civil Procedure.** Provisions concerning physician affidavits and expert witnesses in healing arts malpractice actions were unconstitutional due to their inseparability, despite inclusion of a severability clause, from P.A. 89-7, which is unconstitutional in its entirety. P.A. 90-579, effective May 1, 1998, in amending 735 ILCS 5/2-622, included language added by P.A. 89-7 without specifying an intentional re-enactment. Public Act 90-579 was deemed a valid resurrection of P.A. 89-7 in *Cargill v. Czelatdtko*, 353 Ill.App.3d 654 (4th Dist. 2004); *Cargill* was overruled by *O'Casek v. Children's Home and Aid Society of Illinois*, 229 Ill.2d 421 (2008). Public Act 94-677, effective August 25, 2005, specifically re-enacted and changed 735 ILCS 5/2-622 and 5/8-2501. *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997).

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

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

CIVIL LIABILITIES

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

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

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

CIVIL IMMUNITIES

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

FAMILIES

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

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

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

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

750 ILCS 5/607 (West 2000). **Illinois Marriage and Dissolution of Marriage Act.** Paragraphs (1) and (3) of subsection (b), which authorized reasonable visitation to a minor child's grandparents, great-grandparents, or siblings 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. 106^{3/4} ,

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

750 ILCS 45/. Illinois Parentage Act of 1984.

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

Provision of predecessor to Illinois Parentage Act of 1984 (Paternity Act; Ill. Rev. Stat. 1969, ch. 106³/₄, par. 62) and provision of Adoption Act that (i) denied the putative father of an illegitimate child the custody of his child absent his attempt to legally adopt the child and (ii) allowed an adoption to be finalized without the consent of the father of an illegitimate child were unconstitutional. P.A. 78-854 deleted the offending provision of the Adoption Act, and P.A. 81-290 repealed the offending provision of the Paternity Act. *People ex rel. Slawek v. Covenant Children's Home*, 52 Ill.2d 20 (1972).

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

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

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

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

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

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

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

ESTATES

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

PROPERTY

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

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

HUMAN RIGHTS

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

775 ILCS 5/9-102 (Ill. Rev. Stat. 1980 Supp., ch. 68, par. 9-102). **Illinois Human Rights Act.** Provision creating new cause of action for 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).

820 ILCS 240/2 (Ill. Rev. Stat. 1953, ch. 48, par. 252). **Industrial Home Work Act.** Provision prohibiting the processing of metal springs by home workers is unconstitutional as an unreasonable restraint on and regulation of business, not being in the interest of the public welfare as required for the proper exercise of the State's police power. *Figura v. Cummins*, 4 Ill.2d 44 (1954). P.A. 97-416, effective August 16, 2011, repealed the Industrial Home Work Act.

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