

2012 CASE REPORT

(and cumulative report of Illinois statutes held unconstitutional)



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

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

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To the Honorable Members of the General Assembly:

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

The Bureau's staff attorneys screened all court decisions and prepared the individual case summaries. A cumulative report of statutes held unconstitutional, prepared by the Bureau's staff attorneys under the guidance of the Editorial Board, is included.

Respectfully submitted,

James W. Dodge
Executive Director

QUICK GUIDE TO RECENT COURT DECISIONS

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INTRODUCTION TO PART 1

Part 1 of this 2012 Case Report contains summaries of recent court decisions and is based on a review, in the summer and fall, of federal court, Illinois Supreme Court, and Illinois Appellate Court decisions published from the summer of 2011 to the summer of 2012.

PART 1
SUMMARIES OF RECENT COURT DECISIONS

ELECTION CODE — POLITICAL ACTION COMMITTEES

Imposing contribution limits on independent-expenditure-only political action committees and prohibiting the establishment and maintenance of more than one of those entities violates the First Amendment.

In *Personal PAC v. McGuffage*, 858 F.Supp.2d 963 (N.D. Ill. 2012), the plaintiff, a pro-choice political action committee (PAC), sought injunctive relief against members of the Illinois State Board of Elections to prevent the enforcement of subsection (d) of Section 9-8.5 of the Election Code (10 ILCS 5/9-8.5(d) (West 2012)), which limits the amount of money a PAC may accept from an individual or group during an election cycle, and subsection (d) of Section 9-2 of the Election Code (10 ILCS 5/9-2(d) (West 2012)), which prohibits individuals and groups from forming more than one PAC. The plaintiff argued that these regulations violated the First Amendment of the United States Constitution (U.S. Const., Amend. I) by restricting the amount of money it could spend to engage in political speech. The district court found that these provisions were unconstitutional as applied to the plaintiff and granted a permanent injunction prohibiting their enforcement against independent-expenditure-only PACs. In reaching its conclusion, the court looked to *Citizens United v. FEC*, 558 U.S. 310 (2010), in which the United States Supreme Court held that the government's interest in preventing corruption cannot justify restrictions on independent expenditures, and *Wisconsin Right to Life State Political Action Committee v. Barland*, 664 F.3d 139 (7th Cir. 2011), in which the United States Court of Appeals for the Seventh Circuit held that there was no valid government interest sufficient to impose restrictions on contributions to independent-expenditure-only PACs. Although the defendants in *McGuffage* argued that *Citizens United* could be distinguished, the district court disagreed and explained that it lacked the authority to modify Supreme Court or Seventh Circuit precedent. Nevertheless, the district court emphasized that its ruling in *McGuffage* was narrow in as much as it prohibited the State Board of Elections from enforcing the provisions against only independent-expenditure-only PACs, not other entities.

DISABLED PERSONS REHABILITATION ACT — PERSONAL ASSISTANTS

Personal assistants who provide in-home care through a Medicaid-waiver program administered by the Department of Human Services are public employees for the purposes of collective bargaining, and a non-member of an organization that serves as the exclusive bargaining representative of those employees may be compelled to pay fair share fees to support non-ideological activities that are germane to that organization's representation of non-members during collective bargaining.

In *Harris v. Quinn*, 656 F.3d 692 (7th Cir. 2011), the United States Court of Appeals for the Seventh Circuit was asked to decide whether the United States District Court for the Northern District of Illinois erred when it dismissed a lawsuit brought by personal assistants employed through a Department of Human Services program who, as non-union members, objected to paying fair share fees to a union that served as their exclusive bargaining representative. Subsection (f) of Section 3 of the Disabled Persons Rehabilitation Act (20 ILCS 2405/3 (West 2012)) and subsection (n) of Section 3 of the Illinois Public Labor Relations Act (5 ILCS 315/3 (West 2012)) designate personal care attendants and personal assistants working in the Department of Human Services' Home Services Program as public employees for the purposes of collective bargaining and, as a result, authorize the exclusive bargaining representative of those employees to enter into a fair share agreement with the employer, requiring even non-members of the exclusive bargaining representative to pay union dues for collective-bargaining-related costs. The plaintiffs, who provide services to disabled individuals through the in-home care program administered by the Department, argued that the fair share fee requirement violated the First Amendment of the United States Constitution (U.S. Const., Amend. I) by compelling them to associate with, and speak through, an exclusive bargaining representative. In support of this argument, the plaintiffs asserted that they could not be compelled to financially support collective bargaining with the State under any circumstances because they were employed by individual benefit recipients, not the State. The appellate court rejected the plaintiffs' claim. After establishing that the Supreme Court had long approved collective bargaining agreements that compel even dissenting, non-union members to financially support the costs of collective bargaining representation, the appellate court determined that the plaintiffs were, in fact, State employees. Though the appellate court noted that the Disabled Persons Rehabilitation Act's designation of personal assistants as State employees solely for purposes of collective bargaining was not sufficient to establish an employment relationship, the court examined the ordinary meaning of the term "employer" and found that the State was the actual employer of the personal assistants because it controlled all of the economic aspects of employment. Accordingly, the court held that the State could compel the personal assistants, as public employees, to pay fair share fees required under the terms of a collective bargaining agreement entered into between the State and the exclusive bargaining representative. On November 29, 2011, a petition for writ of certiorari was filed by the plaintiffs. On June 29, 2012, the United States Supreme Court invited the Solicitor General to file a brief in the case expressing the views of the United States. As of December 7, 2012, the Solicitor General had not yet filed his brief.

PROPERTY TAX CODE — OPEN SPACE VALUATION

Improved portions of a private golf club, including a clubhouse, swimming pool, stable, and parking lot, qualify as open space for property tax purposes.

In *Onwentisa Club v. Illinois Property Tax Appeal Board*, 2011 IL App (2d) 100388, the petitioner, a private golf club, appealed a decision of the Property Tax Appeal Board (PTAB) denying open-space status to certain improved portions of the

petitioner's land. The Illinois Appellate Court found that PTAB erred when it concluded that improvements to the Onwentisa Club, including a clubhouse, swimming pool, stable, and parking lot, could not qualify for open space valuation. In doing so, the court looked to the plain language of subsection (d) of Section 10-155 of the Property Tax Code (35 ILCS 200/10-155 (West 2006)), which provides that property is entitled to open-space valuation if it "conserves landscaped areas, such as public or private golf courses." The court noted that "land that *conserves* a landscaped area" has a broader meaning than "land that *is* a landscaped area." The court also considered the statute's specific exceptions to open space valuation, including an exception for property that is used primarily for residential purposes and an exception for commercial water retention dams. If any improvement to property would cause land to be ineligible for open-space status, then, the court reasoned, those provisions would be mere surplusage. Finally, the court noted that the definition of "property" in Section 1-130 of the Property Tax Code (35 ILCS 200/1-130 (West 2006)) included buildings, structures, and improvements, and it pointed out that there is no indication in the Property Tax Code that the legislature intended to deviate from that definition.

PROPERTY TAX CODE — PTELL — ANNEXATION

Territory not subject to the Property Tax Extension Limitation Law (PTELL) becomes subject to PTELL when annexed into a taxing district that is subject to PTELL.

In *Board of Education of Auburn Community Unit School District No. 10 v. Department of Revenue*, 242 Ill.2d 272 (2011), the Illinois Supreme Court was asked to determine whether the Property Tax Extension Limitation Law (PTELL) (35 ILCS 200/18-185 *et seq.* (West 2006)) continued to apply to all portions of Auburn Community Unit School District No. 10 after certain territory located in a county that had not previously considered a PTELL referendum was annexed into the District. Both the District and the Department of Revenue agreed that PTELL did not specifically address this issue. The Illinois Supreme Court held that the entire District, including the newly annexed portions, were subject to PTELL. It reasoned that the annexation did not create a new district, but simply changed the boundaries of the existing district. The court examined Section 18-213 of the Property Tax Code (35 ILCS 200/18-213 (West 2006)) and determined that it did not provide a means for reexamining an existing district's PTELL status. The court then looked to Section 18-214 of the Property Tax Code (35 ILCS 200/18-214 (West 2006)), which provides the exclusive mechanism for making PTELL inapplicable to a non-home rule taxing district, and it determined that those removal requirements had not been met. For those reasons, the court held that PTELL continued to apply to the entire District, including the newly annexed territory.

TAX DELINQUENCY AMNESTY ACT — DOUBLE INTEREST PENALTY

A taxpayer that avails itself of amnesty under the Act may or may not be subject to a double interest penalty for delinquent taxes that were first discovered during an audit conducted after the expiration of the amnesty period.

In *Metropolitan Life Insurance Co. v. Hamer*, 2012 IL App (1st) 110400, the defendants-appellants Department of Revenue, Director of Revenue, and State Treasurer appealed an Illinois circuit court summary judgment in favor of the plaintiff-appellee taxpayer, Metropolitan Life Insurance Company, after the plaintiff filed suit seeking declaratory and injunctive relief, claiming that it had been improperly charged a statutory double interest penalty for failing to pay, during a tax delinquency amnesty period, all of the taxes that had been due. The Illinois Appellate Court considered the question of whether a double interest penalty should be assessed against a taxpayer under Section 3-2 of the Uniform Penalty and Interest Act (35 ILCS 735/3-2 (West 2008)) for failure to pay delinquent income taxes during the amnesty period set forth in Section 10 of the Tax Delinquency Amnesty Act (Amnesty Act) (35 ILCS 745/10 (West 2008)) if the past due amounts were discovered during a State or federal audit conducted after the amnesty period ended.

The Amnesty Act provided amnesty to taxpayers who paid, during the amnesty period, which ran from October 1, 2003 through November 15, 2003, any tax owed for any taxable period from June 30, 1983 to July 1, 2002. Under the Amnesty Act, taxpayers were required to pay the delinquent taxes in full during the amnesty period. Section 10 of the Amnesty Act provided that, upon payment by a taxpayer of “all taxes due” for the taxable period, the Department shall abate and not seek to collect any interest or penalties and shall not seek prosecution for any taxpayer for the period of time for which amnesty has been granted. However, subsection (f) of Section 3-2 of the Amnesty Act established a double interest penalty for those taxpayers that had a tax liability eligible for amnesty but did not pay the liability during the amnesty period. The Department of Revenue argued that the phrase “all taxes due” in Section 10 of the Amnesty Act referred to the amount the taxpayer actually owed for the taxable year, even if not discovered by the taxpayer until a later date. The Department also argued that its own emergency rules required taxpayers who were under audit to make a “good faith estimate” of their tax liability. The taxpayer argued that the phrase “all taxes due” applied only to those amounts that the taxpayer knew were due and owing during the amnesty period and not to unknown amounts discovered during a subsequent audit.

Although the Illinois Appellate Court noted that the Amnesty Act did not define the phrase “all taxes due,” the court ultimately agreed with the taxpayer and found that the taxpayer could not have participated in the amnesty program because the taxpayer did not know that it owed additional taxes during the amnesty period. The court also found that the Department’s administrative rules exceeded the legislative intent behind the Amnesty Act and the actual statutory language found in the Act. Justice Hoffman dissented, reasoning, like the Department of Revenue, that under subsection (a) of Section 601 of the Illinois Income Tax Act (35 ILCS 5/601(a)), income taxes are “due” on or before the date fixed for the filing of the taxpayer’s return.

Interestingly, in a more recent decision, *Marriott Intern. Inc. v. Hamer*, 2012 IL App (1st) 111406, a different panel of the First District Illinois Appellate Court reached the same conclusion as Justice Hoffman and the opposite conclusion of the *Metropolitan Life Insurance* court, holding that the statutory double interest penalty applied because the phrase “all taxes due” in the Tax Delinquency Amnesty Act meant “those taxes that are due on the date the tax return for that year is to be filed, irrespective of whether the Department of Revenue or the taxpayer is aware of their existence and irrespective of whether the Department has issued a formal assessment.”

SCHOOL CODE — SCHOOL FINANCE AUTHORITIES

A school finance authority may not cancel a financially troubled school district’s lease agreement with a third party without complying with the cancellation terms in that agreement.

In *Innovative Modular Solutions v. Hazel Crest School District 152.5*, 2012 IL 112052, the Illinois Supreme Court was asked to decide whether a school finance authority could cancel portable classroom leases pursuant to paragraph (2) of Section 1F-25 of the School Code (105 ILCS 5/1F-25(2) (West 2004)) without complying with those leases’ cancellation terms requiring payment of a cancellation fee. Paragraph (2) of Section 1F-25 of the School Code authorizes a school finance authority to make, cancel, modify, and execute contracts, leases, subleases, and all other instruments or agreements for the management of a financially troubled school district’s finances. The appellant, a lessor of portable classrooms, argued that, even though paragraph (2) of Section 1F-25 of the School Code permitted the finance authority to cancel a school district’s contract, the cancellation had to be consistent with the contractual terms agreed to by the parties. In contrast, the school district and the finance authority argued that paragraph (2) of Section 1F-25 of the School Code permitted the finance authority to cancel the contract unilaterally, regardless of the contract’s cancellation terms. The Illinois Supreme Court agreed with the appellant and construed the School Code consistently with basic principles of contract law, permitting the finance authority to cancel a school district’s contract with a third party where the cancellation was consistent with the terms of the contract. Accordingly, the court determined that the School Code did not allow the finance authority to cancel the school district’s leases without complying with the terms of the leases requiring payment of a cancellation fee.

SCHOOL CODE — TRANSPORTATION OF STUDENTS

A school district is not required to provide transportation for nonpublic school students on days that the public schools are not in session.

In *C.E. v. Board of Education of East St. Louis School District No. 189*, 2012 IL App (5th) 110390, the Illinois Appellate Court was asked to decide whether the Circuit Court of St. Clair County erred when it granted the motion for summary judgment of a

school district that asserted that it had no duty under Section 29-4 of the School Code (105 ILCS 5/29–4 (West 2006)) to provide transportation to nonpublic school students on days that it was not in session. Section 29-4 of the School Code provides that, with certain geographic restrictions, the school board of any school district that provides any school bus or conveyance for transporting pupils to and from the public schools shall afford transportation, without cost, for children who attend a charter school or any school other than a public school in the district. The appellate court began its analysis by noting that the statute is silent concerning the issue of a school district’s obligation to provide transportation for nonpublic school students on days that the public schools were not in session. Nevertheless, the court found that the purpose of Section 29-4 was to provide transportation to nonpublic school students on the same basis as to public school students while minimizing costs and maximizing convenience and efficiency. For that reason, the court held that the school district was not required to provide transportation for nonpublic school students on days that the public schools were not in session.

SCHOOL CODE — CHICAGO TEACHERS — RIGHT TO BE REHIRED

The Code does not give laid-off tenured teachers in Chicago a substantive right to be rehired after an economic layoff or a right to certain procedures during the rehiring process.

In *Chicago Teachers Union, Local No. 1 v. Board of Education of Chicago*, 2012 IL 112566, the Illinois Supreme Court was asked by the United States Court of Appeals for the Seventh Circuit to decide whether Section 34-84 and item (31) of Section 34-18 of the School Code (105 ILCS 5/34-84 and 34-18(31) (West 2010)) gave laid-off tenured teachers in Chicago public schools the right to be rehired after an economic layoff or granted them any procedural rights during the rehiring process. The teachers union asserted that the affected teachers had permanent appointments under paragraph (31) of Section 34-18 and Section 34-84 of the School Code and that they could be laid off only with recall rights. Paragraph (31) of Section 34-18 of the School Code authorizes the city board of education to promulgate rules governing layoffs and recalls, and it also provides certain criteria that the city board of education must consider when formulating those rules. Section 34-84 of the School Code provides in relevant part that appointments of teachers become permanent after 3 years. The Illinois Supreme Court concluded that neither paragraph (31) of Section 34-18 nor Section 34-84 of the School Code, considered separately or together, gave the laid-off tenured teachers either a substantive right to be rehired after an economic layoff or a right to certain procedures during the rehiring process. Instead, the court reasoned that those provisions of the Code merely required the Chicago Board of Education to take certain factors into account if the Board promulgated rules concerning recall procedures. Moreover, the court noted that the General Assembly’s removal of layoff and recall procedures from Section 34-84 of the Code, pursuant to a 1995 amendment, eliminated any substantive right to rehire that may have previously arisen from Section 34-84 for tenured Chicago teachers. However, two judges dissented, opining that the majority opinion gave insufficient weight to the term “permanent” in Section 34-84 of the School Code and that laid-off tenured teachers

maintained a property interest in or, to use the majority's terminology, a statutory right to, continued employment under that Section of the Code. The dissenting opinion also urged the General Assembly, in the absence of action from the Chicago Board of Education, to clarify the recall rights of tenured Chicago teachers, as it had for tenured teachers elsewhere in Illinois.

SCHOOL CODE — TENURE ELIGIBILITY

Employment as a full-time-basis substitute teacher does not count towards tenure accrual.

In *Harbaugh v. Board of Educ. of City of Chicago*, 815 F.Supp.2d 1026 (N.D. Ill. 2011), a plaintiff teacher brought an action in State court against a school board and its chief executive officer alleging that she was unlawfully terminated from her employment as a teacher. The defendant school board subsequently removed the case to the United States District Court for the Northern District of Illinois to consider the issue of whether the teacher's time of employment by the school district was tenure-eligible pursuant to the tenure provisions of the School Code. Section 34-84 of the School Code (105 ILCS 5/34-84 (West 2011)) provides, in relevant part, that appointments and promotions of teachers shall be made for merit only, and after satisfactory service for a probationary period of 4 years with respect to probationary employees who are first employed as full-time teachers in the public school system of the district on or after January 1, 1998, after which period appointments of teachers shall become permanent, subject to removal for cause. The plaintiff argued that because she was employed by the school board as a full-time teacher for the statutorily required 4 years, she attained tenured status pursuant to the tenure provisions of the School Code and was, therefore, entitled to notice and a hearing before termination. The school board argued that the plaintiff did not in fact achieve tenured status because she worked, during the first of the 4 years at issue, as a full-time-basis substitute teacher, which was not a tenure-eligible position. In its analysis, the court distinguished the term "teacher" from the term "probationary employees employed as full-time teachers." The court noted that the School Code did not specifically address the question of whether a teacher may count her time as a full-time-basis substitute teacher toward her requisite 4-year probationary period. Nevertheless, the court stated that the result advocated for by the plaintiff was exactly the result that the tenure provisions of the Code were designed to eliminate: the protection of the jobs of those without tenure, or on probationary status, at the potential expense of those who had earned such status. Accordingly, the court concluded that the plaintiff's time as a full-time-basis substitute teacher did not count towards her tenure accrual.

HOSPITAL LICENSING ACT — EX PARTE COMMUNICATIONS

The provisions of the Act that prohibit legal counsel for a hospital from having ex parte communications with non-employees and non-agents after being served with a healing arts malpractice complaint do not specify whether the relevant time for

determining agency or employment status is the time of the alleged malpractice or the time of the proposed ex parte contact.

In *Wallace ex rel. E.Y. v. United States*, 2012 WL 1441402 (N.D. Ill.), the United States District Court for the Northern District of Illinois was asked to decide whether a hospital was authorized under Section 6.17 of the Hospital Licensing Act (210 ILCS 85/6.17 (West 2008)) to conduct *ex parte* interviews with several treating physicians for the purpose of preparing them for potential discovery depositions. Subsection (e-5) of Section 6.17 states that “after a complaint for healing art malpractice is served upon the hospital or its agents or employees, members of the hospital’s medical staff who are not actual or alleged agents, employees, or apparent agents of the hospital may not communicate with legal counsel for the hospital or with risk management of the hospital concerning the claim alleged in the complaint for healing art malpractice against the hospital except with patient’s consent or in discovery” In this case, the plaintiffs opposed the defendant hospital’s motion to conduct the *ex parte* interviews, arguing that subsection (e-5) did not permit *ex parte* discussions with medical staff who were not agents or employees of the hospital at the time of the proposed *ex parte* discussions. However, the defendant hospital argued that subsection (e-5) barred only post-suit *ex parte* discussions with medical staff who were not agents or employees of the hospital at the time of the alleged malpractice. Ultimately, the court declined to decide the motion based on these arguments. Instead, the court concluded on other grounds that, in this case, subsection (e-5) did not bar the requested *ex parte* interviews irrespective of whether the relevant time for determining agency or employment status was the time of the alleged malpractice or the time of the proposed *ex parte* contact. Nevertheless, in the course of reaching that decision, the court asserted that subsection (e-5) presented a “thorny question of interpretation” because it did not clearly specify whether the relevant time for determining agency or employment status was the time of the alleged malpractice or the time of the proposed *ex parte* contact.

ILLINOIS INSURANCE CODE — AUTOMOBILE POLICY RECISSION

The effective date of an automobile insurance policy triggers the start of the time period in which an insurer can move to rescind a policy.

In *Standard Mutual Insurance Co. v. Jones*, 2012 IL App (4th) 110526, the appellant auto insurer appealed a trial court decision barring it from rescinding an insurance policy after bringing an action for rescission against its insureds for failing to disclose that a minor child was living with them when they applied for an automobile insurance policy with the insurer. Section 154 of the Illinois Insurance Code (215 ILCS 5/154 (West 2008)) provides that an insurance company cannot rescind certain kinds of policies or policy renewals once the policy has been in effect for one year or one policy term, whichever is less. The appellant auto insurer argued that Section 154 did not act as an absolute bar to an insurer’s right to rescission but rather simply required the insurer to bring a rescission action within one year or one full policy period after discovering the misrepresentation. The appellate court disagreed with the appellant auto insurer’s

interpretation of Section 154 and concluded that the effective date of the policy, not the discovery of the misrepresentation, triggered the start of the time period in which an insurer can move to rescind a policy.

ILLINOIS HEALTH BENEFITS EXCHANGE LAW

The federal Patient Protection and Affordable Care Act's individual mandate is a constitutional exercise of Congress's taxing powers, and the Act's Medicaid expansion is constitutional as a state option but not as a mandate.

In *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566 (2012), several plaintiffs challenged the constitutionality of the federal Patient Protection and Affordable Care Act of 2010 (ACA). The ACA expanded coverage under federal health care programs, such as Medicaid, created programs to reform health care delivery, such as the Medicare Shared Savings Program, and required individuals to maintain minimal essential health care coverage beginning in 2014. To determine whether the ACA was constitutional, the Court considered four issues. The first issue was whether the Anti-Injunction Act applied and, if so, whether it precluded individuals from suing the federal government to stop a tax from being assessed or collected. The Court held that the Anti-Injunction Act did not apply as a procedural bar and that the law could be challenged before the penalty for failing to purchase insurance was imposed. The second issue was whether the individual mandate was constitutional. Although the court concluded that Congress could not compel individuals to purchase health insurance using its Commerce Clause powers, the Court held that Congress could compel individuals to purchase health insurance coverage by using its taxing powers to impose a penalty or tax on individuals who did not purchase that coverage. The third issue was whether the individual mandate provisions were severable from the other provisions of the ACA, even though the ACA did not have a severability clause. The Court held that this issue was moot because the individual mandate was upheld. The fourth issue that the Court considered was the constitutionality of the Medicaid expansion, specifically whether Congress unconstitutionally coerced the states into agreeing to expand Medicaid by threatening to withhold federal Medicaid funding. The Court held that the Medicaid expansion was Constitutional as a state option but not as a mandate and that a state could not be penalized for choosing to continue with its existing Medicaid program.

SURFACE COAL MINING LAND CONSERVATION AND RECLAMATION ACT — CITIZEN SUITS

The Administrative Review Law provides the exclusive route for circuit court review of the terms of a mining permit issued by the Department of Natural Resources.

In *Citizens Opposing Pollution v. ExxonMobile Coal U.S.A.*, 2012 IL 111286, the Illinois Supreme Court was asked to decide whether a citizen suit may be brought under subsection (a) of Section 8.05 of the Surface Coal Mining Land Conservation and

Reclamation Act (225 ILCS 720/8.05(a) (West 2008)) to challenge site conditions at a coal mine reclaimed in accordance with permits approved by the Department of Natural Resources. Two portions of the Act are germane to this question. Subsection (a) of Section 8.05 of the Act provides that “[a]ny person . . . may commence a civil action on his own behalf to compel compliance with this Act against any governmental instrumentality or agency which is alleged to be in violation of the provisions of this Act or any rule, order or permit issued under this Act” Section 8.10 of the Act provides that “[a]ll final administrative decisions of the Department under . . . [the] Act shall be subject to judicial review pursuant to the Administrative Review Law except that the remedies created by this Act are not excluded or impaired by any provision of the Administrative Review Law.” The defendants argued that Section 8.10 of the Act prohibited judicial review except as provided under the Administrative Review Law. However, the plaintiffs argued that they were entitled to bring an action under Section 8.05 “whenever site conditions do not comply with the Mining Act,” because Section 8.10 expressly states that remedies created under the Act are not to be “excluded or impaired by the Administrative Review Law.” The Illinois Supreme Court ultimately disagreed with the plaintiffs, holding that Section 8.10 and subsection (a) of Section 8.05, when construed *in pari materia*, required the administrative review process to be the exclusive route for judicial review of permitting decisions. If those provisions were interpreted otherwise, the court reasoned, permittees would not be able to rely on Department permits, and reviewing courts would not be able to benefit from a developed administrative record.

LIQUOR CONTROL ACT OF 1934 — PARENTAL APPROVAL

A provision of the Act that permits a minor to consume alcohol in a home under a parent’s direct supervision does not apply if the parent does not supervise the amount and type of alcohol consumed by the minor and is not aware of the minor’s whereabouts.

In *People v. Finkenbinder*, 2011 IL App (2d) 100901, the Illinois Appellate Court was asked to decide whether a 19-year-old defendant who drank at home with his mother’s permission could be convicted of consuming alcohol while under the age of 21 under Section 6-20 of the Liquor Control Act of 1934 (235 ILCS 5/6-20 (West 2008)). Subsection (e) of Section 6-20 provides an exception to the general prohibition on underage drinking if a minor consumes alcohol with the permission of a parent and under the direct supervision of the parent in the privacy of a home. The defendant argued that he could not be found guilty of underage consumption of alcohol because he had been granted permission by his mother to consume alcohol at a family party. Nevertheless, the State argued that the statutory exemption should not apply in the defendant’s case for the following reasons: (1) the defendant and his mother were not in the same room the entire time that he consumed beer; (2) the defendant consumed shots of alcohol outside his mother’s presence; and (3) the defendant was found walking in his neighborhood at about 3 a.m., when a police officer stopped and arrested him for underage drinking. The trial court ultimately accepted the State’s argument and concluded that the defendant did not fall within the exception under Section 6-20 because he was not under the direct

supervision of his mother upon leaving his home. The appellate court affirmed the trial court decision, holding that, although the statute does not define “direct supervision,” the exception in Section 6-20 did not apply because the evidence showed that the defendant’s mother did not know how much he drank, or type of alcohol he drank, and that he had left his home. However, for a fuller understanding of the court’s holding in this case, see also *People v. Haase*, 2012 IL App (2d) 110220, a decision in which the appellate court further explained its interpretation of the exemption in subsection (e) of Section 6-20.

ENVIRONMENTAL PROTECTION ACT — CITIZEN STANDING

Adversely affected persons do not, except in a very limited set of circumstances, have standing under the Act to contest orders of the Illinois Pollution Control Board granting site-specific adjusted standards.

In *Sierra Club v. Illinois Pollution Control Board*, 2011 IL 110882, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred when it determined that several community groups had standing under the Environmental Protection Act to challenge an Illinois Pollution Control Board order granting a site-specific adjusted standard that excluded incinerator ash from regulation as a hazardous waste. Section 28.1 of the Act (415 ILCS 5/28.1 (West 2008)) governs adjusted standards and authorizes judicial review of those standards under Section 41 of the Act. Section 41 of the Act (415 ILCS 5/41 (West 2008)), in turn, grants standing to “[a]ny party to a Board hearing, any person who filed a complaint on which a hearing was denied, any person who has been denied a variance or permit under th[e] Act, any party adversely affected by a final order or determination of the Board, and any person who participated in the public comment process” and provides, in its last sentence, that “[r]eview of any rule or regulation promulgated by the Board . . . may . . . be had as provided in Section 29 of th[e] Act.” However, unlike Section 41, Section 29 of the Act (415 ILCS 5/29 (West 2008)) grants standing to “[a]ny person adversely affected or threatened by any rule or regulation of the Board.” On appeal, the community groups argued that they had standing under Section 29 to contest the order granting the adjusted standard because the adjusted standard was in the nature of a site-specific rule or regulation. The waste disposal company, on the other hand, asserted that the groups lacked standing under Section 29 (because the adjusted standard was not a rule or regulation) and Section 41 (because the groups did not fall within the classes of entities granted standing under that provision). Ultimately, a majority of the Illinois Supreme Court found that the procedure for granting an adjusted standard was quasi-adjudicative in nature and not subject to the provisions of the Illinois Administrative Procedure Act that ordinarily apply to rulemakings. For that reason, the majority concluded that the order granting the standard was not a rule or regulation that could be contested by any adversely affected person and that the community groups lacked standing to challenge the Board order. In a thoughtful dissent, however, Justice Theis reasoned that an adjusted standard is simply a specific regulation that applies in lieu of a general regulation and that when the Board creates those rules it is acting in a quasi-legislative or rulemaking capacity. For that reason, she and Justice Kilbride would have granted standing to the groups and reached the merits of the case.

ILLINOIS VEHICLE CODE — EFFECT OF MULTIPLE REVOCATIONS

The fact that a person's driving abstract shows a subsequent revocation of driving privileges has no effect on the person's aggravated driving with a revoked or suspended license case, unless his or her driving privileges had been restored at the time of the subsequent revocation.

In *People v. Heritsch*, 2012 IL App (2d) 090719, the Illinois Appellate Court was asked to decide whether a person whose license had been revoked multiple times but never reinstated could be convicted of aggravated driving with a revoked or suspended license under subsection (d-5) of Section 6-303 of the Illinois Vehicle Code (625 ILCS 5/6-303(d-5) (West 2008)) if the person's original revocation was not related to driving under the influence (DUI). Subsection (d-5) provides enhanced penalties for a person convicted of a fifteenth or subsequent violation of driving with a revoked or suspended license if the revocation or suspension was for DUI. The defendant's license had been originally revoked for a reason other than DUI and had never been reinstated. However, the defendant was later arrested for, and convicted of, DUI, and his driving privileges were revoked again as a result of that conviction. The State argued that because the defendant's driving abstract reflected both revocations and the more recent of the two had been for DUI, the enhanced penalties in subsection (d-5) applied. The defendant, however, argued that, for purposes of subsection (d-5), the first revocation was the one that was relevant because once the defendant's driving privileges had been revoked a first time, they could not be re-revoked unless his license had first been reinstated. In other words, the second revocation had no effect because at the time he had no driving privileges to revoke. The court agreed with the defendant, holding that because subsection (d-5) speaks of "*the* revocation or suspension," effect can only be given to the first revocation. The court observed that the legislature could have used inclusive language, such as "*any* revocation," but had declined to do so.

ILLINOIS VEHICLE CODE — MATERIAL OBSTRUCTION

A police officer has probable cause to stop a vehicle if that officer believes that an air freshener hanging from the rearview mirror of the vehicle obstructs the view of the driver in violation of the Code.

In *People v. Price*, 2011 IL App (4th) 110272, the Illinois Appellate Court was asked to determine whether a trial court erred when it determined that a police officer had probable cause to stop a vehicle after observing a candle-shaped air freshener hanging from the vehicle's rearview mirror. Subsection (c) of Section 12-503 of the Illinois Vehicle Code (625 ILCS 5/12-503(c) (West 2010)) provides that "No person shall drive a motor vehicle with any objects placed or suspended between the driver and the front windshield, rear window, side wings or side windows immediately adjacent to each side of the driver which materially obstructs the driver's view." The Illinois Appellate Court affirmed the trial court's ruling, noting that the police officer who testified at trial did not pull the defendant over simply because he had an air freshener hanging from the rearview

mirror. Rather, the appellate court pointed out that the record indicated that the police officer had a good view of the air freshener and testified to specific facts, including the size and position of the air freshener, as to why he believed it constituted a material obstruction. Nevertheless, a dissenting justice reasoned that the materiality of the obstruction was the key to resolving whether the stop by the police officer violated the Fourth Amendment, that the State was burdened with proving materiality, and that it was impossible for the trial court to make a materiality determination without seeing the offending air freshener and without observing the object hanging from the rearview mirror. The dissenting justice also believed that the statute was being abused to achieve traffic stops where no other probable cause existed. For that reason, the dissenting justice would have determined that the police officer did not have probable cause to make the arrest.

CYCLE RIDER SAFETY TRAINING ACT — SWEEP OF FUNDS

Moneys in the Cycle Rider Safety Training Fund, a trust fund outside the State treasury, may be transferred by legislative action into the General Revenue Fund.

In *A.B.A.T.E. of Illinois, Inc. v. Quinn*, 2011 IL 110611, the Illinois Supreme Court was asked to decide whether Section 6 of the Cycle Rider Safety Training Act (625 ILCS 35/6 (West 1994)), as amended by Public Act 87-838, prevented future legislatures from sweeping funds from the Cycle Rider Safety Training Fund (CRSTF) into the General Revenue Fund (GRF). Section 6 provides that the CRSTF is a trust fund outside the State treasury funded by a portion of motorcycle registrations and that moneys in the fund may be used only to administer the Cycle Rider Safety Training Act or for related purposes. Section 6 further provides that “the Department [of Transportation] may accept any federal, State, or private moneys for deposit into the Fund.” Public Act 87-838 also struck a provision permitting the regular transfer of moneys out of the CRSTF into the Road Fund and a provision permitting a one-time sweep of funds into the GRF. After funds were transferred out of the CRSTF pursuant to Public Acts 93-32 and 93-839, the plaintiffs filed suit, arguing that when the CRSTF was designated a “trust fund outside the State treasury,” the legislature created an irrevocable trust with the beneficiaries holding a vested interest in the contents of the Fund. The plaintiffs further argued that because the funds in the CRSTF never entered the State treasury, they were not public funds and that to sweep the CRSTF would constitute an unlawful taking. The court disagreed, holding that the funds in the CRSTF were public funds and subject to the actions of future legislatures. The court noted that the moneys in the CRSTF came from motorcycle registration and licensing fees and not from a surcharge paid separate from the registration fee. As such, the court reasoned that the moneys were State revenue and, therefore, public funds. The court further reasoned that because the funds were public funds when they went into the CRSTF, the legislature would have violated its constitutional duty if it used the funds to create vested rights in private individuals. The court concluded that, because one legislature cannot bind a future legislature, any limitation on the transfer of moneys in the CRSTF upon future legislatures would place an unconstitutional restraint on the legislature’s plenary power. However, a dissenting

justice argued that, because the enabling legislation for the CRSTF and other special funds permitted the comingling of license and registration fees, private donations, and federal grants, any sweeps of moneys out of the fund should not be declared constitutional without additional fact-finding. The dissenting opinion noted that the court had previously held that federal moneys were not Illinois public funds, and the dissent called upon the legislature to amend Section 6 of the Cycle Rider Safety Training Act to allow restricted sweeps of public funds, excluding sweeps of private donations and federal grant moneys.

JUVENILE COURT ACT OF 1987 — JUVENILE ADJUDICATION

The Act prevents a defendant's juvenile adjudication from being entered into evidence, unless the defendant opens the door to its admission by attempting to mislead the jury about his or her criminal background while testifying.

In *People v. Villa*, 2011 IL 110777, the Illinois Supreme Court was asked to decide whether a juvenile adjudication for burglary was admissible into evidence for impeachment purposes under subdivision (1)(c) of Section 5-150 of the Juvenile Court Act of 1987 (705 ILCS 405/5-150(1)(c) (West 2010)). Subdivision (1)(c) provides that juvenile adjudications “shall be admissible . . . in criminal proceedings in which anyone who has been adjudicated delinquent . . . is to be a witness including the minor or defendant if he or she testifies, and then only for purposes of impeachment and pursuant to the rules of evidence for criminal trials.” The defendant argued that his juvenile adjudication was inadmissible, citing *People v. Montgomery*, 47 Ill. 2d 510 (1971), a case in which the Illinois Supreme Court held that juvenile adjudications may be admitted only to impeach witnesses other than the accused. The defendant claimed that if the General Assembly had wanted to depart from *Montgomery*, then it could have deleted the words “pursuant to the rules of evidence for criminal trials” from Section 5-150. The State, however, argued that the language of the statute, particularly the words “including the minor or defendant if he or she testifies,” and other applicable case law permitted the entrance into evidence of a juvenile adjudication if the defendant had testified. Nevertheless, the Illinois Supreme Court held that the defendant’s juvenile adjudication was inadmissible under the Act and reversed the conviction. The court reasoned that *Montgomery* and its progeny were controlling on the issue of admissibility of juvenile adjudications under Section 5-150 and that the General Assembly had not amended Section 5-150 or otherwise indicated its intention to depart from *Montgomery* despite having had ample opportunity to do so. For those reasons, the court concluded that a defendant who chooses to testify may be impeached with a juvenile adjudication under Section 5-150, but only in accordance with the rules of evidence for criminal trials. Because the rules of evidence currently do not allow a defendant who testifies to be impeached with a juvenile adjudication unless the defendant “opens the door” to such impeachment, the court reversed the defendant’s conviction and remanded the case for a new trial. In a dissenting opinion, however, Justice Thomas reasoned that Section 5-150 was clear and unambiguous on its face and, when applied as written, authorized the admission into evidence of the defendant’s juvenile adjudication. Justice Thomas further

analyzed in detail the applicable case law and the legislative history concerning Section 5-150 and concluded that the Act should have been applied to allow the juvenile adjudication into evidence.

JUVENILE COURT ACT OF 1987 — EXTENDED JUVENILE JURISDICTION

The timeframe established by the Act for filing a petition to designate a proceeding as an extended jurisdiction juvenile prosecution is directory, not mandatory, because the Act does not specify any negative consequence for the violation of that requirement.

In re M.I., 2011 IL App (1st) 100865, involved a juvenile who was charged with firearm offenses. Although the State filed a motion under Section 5-810 of the Juvenile Court Act of 1987 (705 ILCS 405/5-810 (West 2008)) to have the proceeding declared an extended jurisdiction juvenile (EJJ) prosecution shortly after the defendant's arrest, the State delayed the hearing on that motion for more than 90 days. The Juvenile Court Act of 1987 provides that a hearing on an EJJ motion shall commence within 30 days of the filing of the motion, unless good cause is shown for a delay; if the court finds that good cause exists for the delay, then the hearing shall be held within 60 days of the filing of the motion. The defendant argued that subsection (2) of Section 5-810 is mandatory and that the trial court was without the authority to designate the proceeding an EJJ case, because the court hearing did not begin until well after the 30-day and 60-day timeframes. The State argued that the delayed hearing was valid because the statutory deadlines were only directory. The Fifth Division of the Illinois Appellate Court for the First District agreed with the State. The court reasoned that the statute did not include any negative consequence if a court acts after the stated time. Specifically, the court stated that the statute did not prohibit the trial court from conducting a hearing after the 30-day or 60-day timeframe, nor did it provide for a negative result, such as the dismissal of the State's motion to designate the proceeding as an EJJ prosecution. Nevertheless, other courts have reached different conclusions. For example, in *In re Omar M.*, 2012 IL App (1st) 100866, the Sixth Division of the Illinois Appellate Court of the First District declined to follow the Fifth Division's decision. In any event, the defendant in *In re M.I.* petitioned the Illinois Supreme Court for leave to appeal, and that petition was granted by the court on March 28, 2012.

CRIMINAL CODE OF 1961 — AGGRAVATED KIDNAPPING

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

In *People v. Herron*, 2012 IL App (1st) 090663, the Illinois Appellate Court was asked to decide whether the sentence of a defendant convicted of aggravated kidnapping under Section 10-2 of the Criminal Code of 1961 (720 ILCS 5/10-2 (West 2006)) violated the proportionate penalties clause of the Illinois Constitution (ILCON Art. I, Sec.

11). Under Section 10-2 of the Code, a person commits aggravated kidnapping if he or she commits the offense of kidnapping while armed with a firearm. The penalty for commission of that offense is 6 to 30 years in prison with a mandatory 15-year sentencing enhancement. Under Section 33A-2 and 33A-3 of the Criminal Code of 1961 (720 ILCS 5/33A-2, 33A-3 (West 2006)), a person commits the offense of armed violence predicated on kidnapping when he or she kidnaps a person while armed with a dangerous weapon. The penalty for the commission of that offense is 15 to 30 years in prison. The defendant argued that the 15-year sentencing enhancement under Section 10-2 of the Code should be vacated because the elements of aggravated kidnapping were identical to those of armed violence predicated on kidnapping. The State agreed that the sentencing enhancement was unconstitutional but asked the court to remand the case to the trial court for resentencing rather than vacating the sentencing enhancement. The court held that the 15-year sentencing enhancement for aggravated kidnapping violated the proportionate penalties clause of the Illinois Constitution. For that reason, it vacated the defendant's entire sentence and remanded the case to the trial court for resentencing. Section 33A-2 of the Code was amended by Public Act 95-688 to eliminate aggravated kidnapping as a predicate felony for armed violence and to exclude from the crime of armed violence any offense that made the possession or use of a dangerous weapon either an element of the base offense, an aggravated or enhanced version of the offense, or a mandatory sentencing factor that increased the sentencing range.

CRIMINAL CODE OF 1961 — CHILD PORNOGRAPHY

The provisions of the Code that prohibit the photographing of sexual activity of a person under age 18 are constitutional as applied to a defendant who recorded himself engaging in consensual sexual activity with his girlfriend, who had reached the age of consent under Illinois law.

In *People v. Hollins*, 2012 IL 112754, the Illinois Supreme Court was asked to decide whether to uphold the conviction of a defendant, who made a video recording of himself and his 17-year-old girlfriend having consensual sexual intercourse, under the child pornography statute, Section 11-20.1 of the Criminal Code of 1961 (720 ILCS 5/11-20.1 (West 2008)). Section 11-20.1 prohibits the photographing of sexual conduct involving any child whom the photographer knows or reasonably should know to be under the age of 18. The defendant appealed, challenging the constitutionality of the child pornography statute as applied to him. The defendant argued that the age of consent in Illinois is generally 17 and that the sexual conduct that occurred with his 17-year-old girlfriend was legal. The Illinois Supreme Court rejected the defendant's argument and affirmed the defendant's conviction. The court reasoned that the statute's requirement that a person be 18 or older to engage in the memorialization of a sexual act had a rational relationship to the legitimate purpose of preventing the sexual abuse or exploitation of children and that the statute's age requirement was neither arbitrary nor discriminatory. The dissent relied upon *U.S. v. Stevens*, 130 S.Ct. 1577 (2010), which held that child pornography must record actual sexual abuse of child victims. The dissent reasoned that there was nothing unlawful about the production of the photographs taken

by the defendant because the sexual conduct between the defendant and his girlfriend was entirely legal. The dissent concluded that the photographs were not child pornography as defined by the United States Supreme Court. The Supreme Court of the United States denied the defendant's petition for writ of certiorari on November 5, 2012.

CRIMINAL CODE OF 1961 — AGGRAVATED BATTERY

Property that is not open to the public but that is government-owned is public property for the purposes of the Code's aggravated battery provisions.

In *People v. Hill*, 409 Ill. App. 3d 451, (4th Dist. 2011), the Illinois Appellate Court was asked to decide whether to affirm the conviction of a defendant charged with aggravated battery under subdivision (b)(8) of Section 12-4 of the Criminal Code of 1961 (720 ILCS 5/12-4(b)(8) (West 2006)) for knowingly causing bodily harm to another in a public property, the Macon County jail. The defendant argued that the State failed to prove him guilty of aggravated battery because in order for the State to obtain a conviction for aggravated battery under subdivision (b)(8), it had to prove, among other things, that the battery took place on public property. The defendant argued that the location of the incident, a county jail, was not public property because it was not open to the public. The defendant pointed out that members of the general public were not allowed admittance to the jail's housing units, and he claimed that the county jail was not, therefore, public property. The State, on the other hand, argued that the property was owned by the government and that ownership was sufficient to meet the public property requirement. The defendant relied on *People v. Ojeda*, 397 Ill. App. 3d 285 (2d Dist. 2009). In that case, the Illinois Appellate Court held that property was not public property solely because it was funded by local taxpayers. Instead, the *Ojeda* court held that the "public property" was property that was accessible to the public for the public's use. The *Hill* court declined to follow the *Ojeda* court, noting that nothing in the Code indicated that the General Assembly meant for the plain and ordinary meaning of "public property" to be anything other than government-owned property. The court further noted that the county jail was property used for the public purpose of housing inmates. On that basis, the court affirmed the defendant's conviction.

CRIMINAL CODE OF 1961 — EAVESDROPPING

The expansive reach of the Illinois eavesdropping statute is hard to reconcile with basic speech and press freedoms, does not serve the important governmental interest of protecting conversational privacy, and may, for those reasons, impermissibly burden First Amendment rights.

In *ACLU of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir. 2012), the United States Court of Appeals for the Seventh Circuit was asked to decide whether the First Amendment to the United States Constitution (U.S. Const. Amend. I) prevented Illinois prosecutors from enforcing Section 14-2 of the Criminal Code of 1961 (720 ILCS 5/14-2

(West 2012)), which bars the recording of “all or any part of any conversation” unless all parties consent to the recording. The plaintiff filed the suit seeking declaratory and injunctive relief barring the Cook County State’s Attorney from enforcing Section 14-2 of the Code, which the plaintiff argued barred audio recording that it intended to carry out in connection with its police accountability program. The plaintiff intended to implement the program by openly recording police officers without their consent when: (1) the officers were performing their public duties; (2) the officers were in public places; (3) the officers were speaking at a volume audible to the unassisted human ear; and (4) the manner of recording was otherwise lawful. The plaintiffs argued that Section 14-2 of the Code was unconstitutional as applied to them because it banned, with certain exceptions, all audio recording of any oral communication absent the consent of the parties, regardless of whether the communication was private or was intended to be private. The appellate court held that the plaintiffs had a strong chance of success on the merits of their First Amendment claim. The court observed that the expansive reach of the eavesdropping statute is hard to reconcile with basic speech and press freedoms. The court reasoned that Section 14-2 of the Code restricted an expressive medium used for the preservation and dissemination of information and ideas, particularly information and ideas related to the operation of government. The court further found that the law’s sanction was directly leveled against the expressive element of an expressive activity and burdened First Amendment rights directly. The court found that, when applied to the facts of this case, Section 14-2 of the Code did not serve the important governmental interest of protecting conversational privacy. The court remanded the case to the district court with instructions to grant the preliminary injunction, holding that applying the statute to the circumstances alleged was likely unconstitutional. The United States Supreme Court denied the defendant’s petition for writ of certiorari on November 26, 2012.

CRIMINAL CODE OF 1961 — IDENTITY THEFT

To convict a defendant of identity theft, the State must prove that the defendant knew that the fraudulently used personal identifying information belonged to another person.

In *People v. Hernandez*, 2012 IL App (1st) 092841, the Illinois Appellate Court was asked whether to affirm the conviction of a defendant convicted of identity theft under Section 16G-15 of the Criminal Code of 1961 (720 ILCS 5/16G-15 (West 2008)) (now Section 16-30 of the Criminal Code of 1961 (720 ILCS 5/16-30)). Section 16-30 provides that a person commits identity theft when he or she knowingly uses the personal identifying information, including a social security number or personal identification document, of another person to fraudulently obtain credit, money, goods, services, or other property. On appeal, the defendant contended that the State had failed to prove that she was guilty beyond a reasonable doubt because the State had not proved that she knew the social security number she used to purchase a vehicle belonged to another person. The State argued that it needed only to prove that the defendant knowingly used personal identifying information that was not her own, not that the defendant knew the information

belonged to another person. The appellate court held that the adverb “knowingly” in Section 16-30 modified both the verb “uses” and the subsequent phrase “of another person.” The court noted that Section 4-3 of the Criminal Code of 1961 (720 ILCS 5/4-3 (West 2012)) concerned mental states generally and provided: “(i)f the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element.” The court reasoned that because the word “knowingly” in Section 16-30 immediately preceded a colon and was positioned before all of the elements of the offense, the mental state of knowingly applied to all of the subsequently listed elements of the offense, including the phrase “of another person.” For that reason, the Illinois Appellate Court vacated the judgment of the circuit court and remanded the case for a new trial.

CRIMINAL CODE OF 1961 — ARMED ROBBERY

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

In *People v. Clemons*, 2012 IL 107821, the defendant was convicted of armed robbery while armed with a firearm under Section 18-2 of the Criminal Code of 1961 (720 ILCS 5/18-2 (West 2006)), which carried a sentence of 6 to 30 years, plus a 15-year sentencing enhancement for use of a firearm. The defendant was sentenced to 25 years. The defendant appealed, asking the Illinois Supreme Court to vacate the sentence and remand the case for resentencing on the grounds that the sentence violated the proportionate penalties clause of the Illinois Constitution (ILCON Art. I, Sec. 11). The defendant argued that the armed violence statute, Section 33A-2 of the Criminal Code of 1961 (720 ILCS 5/33A-2 (West 2000)), provided that a person commits armed violence when, while armed with a dangerous weapon, he commits any felony defined by Illinois law. At the time the defendant committed the crime, the statute did not exclude robbery as a predicate felony for armed violence. The defendant contended that Section 18-2 of the Code was unconstitutional under the identical elements test because the sentence for armed robbery while armed with a firearm under Section 18-2 of the Code was more severe than the penalty for the identical offense of armed violence predicated on robbery with a category I or category II weapon. The State argued that the identical elements test should be abandoned because it is not supported by constitutional text, invades the power of the legislature, and is unworkable. The Illinois Supreme Court rejected the State's argument and held that the defendant must be sentenced to a range of 6 to 30 years, which was in accordance with the armed robbery statute as it existed prior to the adoption of the enhanced sentencing provisions. In a concurring opinion, Chief Justice Kilbride agreed that the identical elements test should be preserved but posited that, rather than striking the entire enhanced sentencing statute as unconstitutional and remanding for sentencing under the prior version of the statute, it would be appropriate to remand with instructions that the trial court resentence the defendant from a sentencing range that consists of the identical overlapping sentence range of the applicable statutes, in this case 21 to 30 years. Public Act 95-688, which was passed after the Illinois Supreme Court

decided *People v. Hauschild*, 226 Ill. 2d 63 (2007), which previously held Section 18-2 unconstitutional on proportionality grounds, amended Section 33A-2 to eliminate robbery as predicate felony for armed violence and to exclude from the crime of armed violence any offense that makes the possession or use of a dangerous weapon either an element of the base offense, an aggravated or enhanced version of the offense, or a mandatory sentencing factor that increases the sentencing range. However, Public Act 95-688 did not re-enact the sentencing enhancement for armed robbery under Section 18-2. A split in the authorities among the appellate courts exists concerning the validity of the sentencing enhancement under Section 18-2. See *People v. Gillespie*, 2012 IL App (4th) 110151 (holding that Section 18-2 has not been validly reenacted); *People v. Brown*, 2012 IL App (5th) 100452 (holding that Public Act 95-688 successfully revived the Section 18-2 sentencing enhancement); and *People v. Malone*, 2012 IL App (1st) 110517 (declining to follow *Gillespie*).

CRIMINAL CODE OF 1961 — POSSESSION OF A WEAPON BY A FELON

The provisions of the Code that prohibit the unlawful possession of a weapon by a felon allow for multiple convictions based upon the possession of a single, loaded firearm.

In *People v. Anthony*, 2011 IL App (1st) 091528-B, the Illinois Appellate Court was asked to decide whether to affirm the conviction of a defendant who was convicted of two counts of unlawful possession of a weapon by a felon under Section 24-1.1 of the Criminal Code of 1961 (720 ILCS 5/24-1.1 (West 2008)). Section 24-1.1 of the Code prohibits a felon or a person in the custody of the Department of Corrections from possessing “any firearm or any firearm ammunition” in certain situations. The two counts of unlawful possession of a weapon were based upon possession of a handgun and possession of the firearm ammunition inside the handgun. On appeal, the defendant contended that one of his convictions for unlawful possession of a weapon should be vacated because the legislature did not intend to permit multiple convictions based upon the possession of a single, loaded firearm. Nevertheless, the appellate court held that the plain and unambiguous language of Section 24-1.1 of the Code allowed for multiple convictions based upon simultaneous possession of a firearm and firearm ammunition. The court noted that Section 24-1.1 provides that the “possession of each firearm or firearm ammunition in violation of this Section constitutes a single and separate violation.” The court further reasoned that the statute contained no exception for situations in which the ammunition was loaded inside the handgun. However, a dissenting judge reasoned that Section 24-1.1 of the Code was ambiguous. The dissenting judge observed that, in other weapons laws, the legislature had drawn distinctions between a loaded firearm, an unloaded firearm where the ammunition was immediately accessible, and an unloaded firearm, but, the judge noted, no comparable distinction was drawn in subsection (e). The dissenting judge further noted that the term “ammunition” was patently ambiguous because it could be interpreted as either singular or plural. The dissenting judge reasoned that if the statute could be interpreted to give rise to two offenses for a loaded handgun, it could also be interpreted to create a separate offense for

each round of ammunition in the firearm or in any attached clip. The dissent concluded that the ambiguity in the statute had to be resolved in the defendant's favor.

ILLINOIS CONTROLLED SUBSTANCES ACT — DEFINITION OF “SCHOOL”

A preschool is not a school for the purposes of the Act.

In *People v. Young*, 2011 IL 111886, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred when it: (1) determined that a preschool was not a school for the purposes of the Illinois Controlled Substances Act and (2) thereafter reduced a defendant's conviction from “delivery of a controlled substance within 1,000 feet of a school” to “delivery of a controlled substance.” Subdivision (b)(2) of Section 407 of the Illinois Controlled Substances Act (720 ILCS 570/407(b)(2) (West 2006)) provides that “[a]ny person who violates . . . subsection (d) of Section 401 of the Act in any school . . . or within 1,000 feet of the real property comprising any school . . . is guilty of a Class 1 felony, the fine for which shall not exceed \$250,000 . . .” The State argued that the Illinois Appellate Court erred when it determined that, for the purposes of the Act, a preschool is not a school. The Illinois Supreme Court began its analysis of that issue by pointing out that the term “school” is not defined in the Act and could be interpreted to include an “endless number of possible educational facilities.” It noted, however, that in *People v. Goldstein*, 204 Ill.App.3d 1041 (1990), the Illinois Appellate Court was faced with the same issue and interpreted the term “school” to mean “any public or private elementary or secondary school, community college, college, or university,” based on the General Assembly's use of that definition in the same Public Act in which penalties were increased for violations of the Illinois Controlled Substances Act occurring on or around school grounds. The Illinois Supreme Court reasoned that, since the *Goldstein* decision, the General Assembly “had ample opportunity to amend the statute to broaden the meaning of ‘school’ had it seen fit to do so” but had not done so. As a result, the court concluded that the term “school,” as used in the Act, had acquired a settled meaning through judicial construction by the *Goldstein* court. For that reason, it unanimously affirmed the Illinois Appellate Court's decision that, for the purposes of the Illinois Controlled Substances Act, a preschool is not a school. As of the writing of this summary, Section 102 of the Illinois Controlled Substances Act has not been amended to add a definition of the term “school.”

CODE OF CRIMINAL PROCEDURE OF 1963 — SPEEDY TRIAL

The State may be granted only one 60-day continuance in a defendant's speedy trial term under the Code as a result of the unavailability of material evidence that the State reasonably believes it can later obtain.

In *People v. Lacy*, 2011 IL App (5th) 100347, the Illinois Appellate Court was asked to decide whether the Circuit Court of Jackson County erred when it determined that the State was entitled to only one 60-day continuance in a defendant's speedy trial

term under subsection (c) of Section 103-5 of the Criminal Code of 1963 (725 ILCS 5/103-5(c) (West 2010)) due to the unavailability of material evidence that the State reasonably believed it could later obtain. Subsection (c) of Section 103-5 provides, in pertinent part, that “[i]f the court determines that the State has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the State for not more than an additional 60 days.” On appeal, the State argued it could obtain multiple 60-day continuances under subsection (c) of Section 103-5; however, the defendant argued that subsection (c) of Section 103-5 authorized only a one-time, 60-day continuance in the defendant’s speedy trial term. The appellate court ultimately agreed with the defendant and held that the plain language of the statute authorized only one continuance under subsection (c) as a result of the unavailability of material evidence that the State reasonably believed it could later obtain. On January 25, 2012, the Illinois Supreme Court granted the State’s Petition for Leave to Appeal the decision of the Illinois Appellate Court in this case. The Illinois Supreme Court heard oral arguments in this case on November 13, 2012.

CODE OF CRIMINAL PROCEDURE OF 1963 — SPEEDY TRIAL

A continuance granted due to physical incapacity merely suspends the running of a defendant’s speedy trial term.

In *People v. Higgenbotham*, 2012 IL App (1st) 110434, the Illinois Appellate Court was asked to decide whether the Circuit Court of Cook County erred when it decided that a continuance granted under subsection (i) of Section 114-4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114(i) (West 2008)) merely suspended the running of a defendant’s speedy trial term under Section 103-5 of the Code (725 ILCS 5/103-5 (West 2008)), rather than causing it to start anew. The speedy trial statute, Section 103-5 of the Code, provides in pertinent part that “[e]very person on bail or recognizance shall be tried within 160 days . . . unless delay is occasioned by[, among other things,] . . . a continuance allowed pursuant to Section 114-4” Subsection (i) of Section 114-4 of the Code states that the “[p]hysical incapacity of a defendant may be grounds for a continuance” and further provides that if a continuance is granted on those grounds, then it “*shall suspend* the provisions of Section 103-5 of th[e] Act, which periods of time limitation shall *commence anew* when the court . . . has determined that such physical incapacity has been substantially removed [emphasis added].” In this case, the Defendant pointed to the use of the verb “shall suspend” in subsection (i) of Section 114-4 and argued that a continuance granted under that provision merely tolled the running of a defendant’s speedy trial term. The State, however, pointed to the use of the phrase “shall commence anew” in that provision and asserted that an entirely new 160-day speedy trial term commenced once the defendant recuperated from the illness that necessitated the continuance. The appellate court began its analysis by stating that subsection (i) of Section 114-4 was ambiguous on its face and by acknowledging that the parties’ interpretations of that provision were both reasonable. However, the appellate court ultimately concluded that subsection (i) of Section 114-4 had to be construed *in*

pari materia with subsection (f) of the speedy trial statute and that, because subsection (f) provided for a defendant's speedy trial term to "continue at the point it was suspended," it followed that a continuance granted under subsection (i) of Section 114-4 would suspend the running of the defendant's speedy trial term in the same manner.

UNIFIED CODE OF CORRECTIONS — JUVENILE LIFE IMPRISONMENT

In the case of a juvenile, a mandatory life sentence without the possibility of parole is unconstitutional because of the Eighth Amendment's prohibition on cruel and unusual punishment.

In *Miller v. Alabama*, 132 S.Ct. 2455 (2012), the Supreme Court of the United States considered whether, in the case of a juvenile, a mandatory life sentence without the possibility of parole violated the Eighth Amendment's prohibition on cruel and unusual punishment. In the instant case, the two offenders were each 14 years old, convicted of murder, and sentenced to life imprisonment without parole, as mandated by state law. The juvenile defendants argued that sentencing them to mandatory life without parole violated the Eighth Amendment (U.S. Const., Amend. VIII) because it constituted cruel and unusual punishment. The States (Alabama and Arkansas) first argued that the sentence, which was not cruel or unusual on its face, did not become so simply because it was mandatory. The Court agreed with the defendants and held that a mandatory life sentence without the possibility of parole for a juvenile violated the Eighth Amendment. First, the Court reasoned that a mandatory provision in the sentencing guidelines precluded a court from considering an offender's age and other characteristics and circumstances that would warrant a lesser sentence. Moreover, the Court reasoned that, in the case of juveniles, the possibility of rehabilitation is greater than that of an adult because a juvenile's character is not as "well formed." Additionally, as a juvenile grows older, further neurological development occurs, which could reshape his or her moral characteristics, thus making rehabilitation more likely to succeed. The Court further stated that a sentence of life imprisonment without parole would be especially harsh in the case of a juvenile because the juvenile would inevitably serve more time than an adult who committed the same crime. Finally, while stopping short of issuing a categorical bar, the Court mandated that a sentencer consider an offender's youth and accompanying characteristics before sentencing a juvenile to life without the possibility of parole.

UNIFIED CODE OF CORRECTIONS — REIMBURSEMENT OF EXPENSES

Once prison wages have been properly garnished under the Code, the Department of Corrections is not entitled to seek reimbursement from the remainder of those wages.

In *People v. Hawkins*, 2011 IL 110792, a former prison inmate appealed a lower court decision requiring him to turn over earnings from prison employment to satisfy a judgment for reimbursement of the cost of his incarceration under Section 3-7-6 of the

Unified Code of Corrections (730 ILCS 5/3-7-6 (West 2008)). Section 3-7-6 of the Code provides that an inmate's assets include, for the purpose of determining his or her responsibility for the costs of incarceration, "income . . . from any . . . source whatsoever and any and all assets and property of whatever character held in the name of the person." Section 3-7-6 goes on to provide that "[n]o provision of this Section shall be construed in violation of any State or federal limitation on the collection of money judgments." The defendant argued that because 3% of his prison wages had already been applied to the costs of his incarceration under Section 3-12-5 of the Code (730 ILCS 5/3-12-5 (West 2012)), it would be "unjust and unfair" to apply Section 3-7-6 to require him to later turn over the rest of his prison wages. The Department of Corrections, however, argued that because the inmate's prison wages fit under the broad definition of assets found in Section 3-7-6, they could be used to satisfy a reimbursement judgment. The Illinois Supreme Court held that once prison wages have been properly garnished under Section 3-12-5, the Department cannot seek the remainder of those wages under Section 3-7-6. The court reasoned that certain language found in various portions of Section 3-7-6 suggests that some, but not all, assets are subject to the claim of the Department. It also observed, however, that Section 3-7-6 is ambiguous as to which assets are excluded. The court noted that, under Section 3-12-5, the Department is permitted to collect only a portion of prison wages for reimbursement, and all other wages must be deposited in the committed person's account. The court further reasoned that if the Department were permitted to later collect the remainder of the wages under Section 3-7-6, then Section 3-12-5, which permits the garnishment of 3% of a prisoner's wages, would be rendered "an empty and meaningless formality."

UNIFIED CODE OF CORRECTIONS — SUPERVISED RELEASE

The Code requires a sentencing judge to sentence certain sex offenders to an indeterminate term of mandatory supervised release ranging from 3 years to natural life rather than to a determinate term within that range.

In *People v. Rinehart*, 2012 IL 111719, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred when it upheld the decision of a trial court to sentence a defendant convicted of aggravated sexual assault to a determinate term of mandatory supervised release (MSR) under subdivision (d)(4) of Section 5-8-1 of the Unified Code of Corrections (730 ILCS 5/5-8-1 (West 2006)). Subdivision (d)(4) provides that an MSR term for certain sex offenses "shall range from a minimum of 3 years to a maximum of the natural life of the defendant." The State interpreted subdivision (d)(4) to mean that the term of all MSR for certain offenses should be an indeterminate term of 3 years to natural life, but the defendant argued that subdivision (d)(4) required a trial judge to set a determinate MSR term for a period within those parameters. The Illinois Supreme Court agreed with the State, holding that subdivision (d)(4) does not give a sentencing judge the discretion to sentence certain offenders to any term of MSR other than an indeterminate one ranging from 3 years to natural life. The court noted that the plain language of subdivision (d)(4) does not indicate the legislature's intent regarding whether the trial court should choose a term within the

stated range or whether the term is the range itself. The court also looked to other portions of the Code concerning the same subject matter in order to determine which interpretation of subdivision (d)(4) was most harmonious with the rest of the Code. The court reasoned that Section 3-3-2 of the Code requires the Prisoner Review Board to determine the conditions of MSR assigned under subdivision (d)(4), as well as the time of discharge from MSR. The court concluded that if Section 3-3-2 vested the Prisoner Review Board, and not the trial court, with setting the time of discharge from MSR, then subdivision (d)(4) required the trial court to set an indeterminate term of MSR ranging from 3 years to natural life. Subsection (d) of Section 5-8-1 was later amended by Public Act 97-531 to require the MSR term to “be written as part of the sentencing order.”

UNIFIED CODE OF CORRECTIONS — DOMESTIC VIOLENCE FINES

When convicted of multiple counts of domestic battery in a single case, a defendant must pay a \$200 domestic violence fine for each charged offense.

In *People v. Pohl*, 2012 IL App (2d) 100629, the Illinois Appellate Court was asked to decide whether multiple \$200 domestic violence fines could be imposed in a single domestic battery case under Section 5-9-1.5 of the Unified Code of Corrections (730 ILCS 5/5-9-1.5 (West 2008)). Section 5-9-1.5 of the Code provides that “a fine of \$200 shall be imposed upon any person who pleads guilty or no contest to or who is convicted . . . [of] domestic battery . . . “ The defendant, who was charged with three counts of domestic battery in a single case, argued that only one \$200 domestic violence fine could be imposed. The State, however, argued that it was proper to impose a \$200 fine for each domestic battery charge upon which the defendant was convicted. The court found both interpretations to be reasonable. Despite the statutory ambiguity, the court reasoned that there was no language in the statute suggesting that the legislature intended the unjust consequence that would result if a defendant who battered several people was punished no more than a defendant who had battered only one person. For that reason, the court concluded that more than one domestic violence fine could be imposed in a single case under Section 5-9-1.5 of the Unified Code of Corrections.

SEX OFFENDER REGISTRATION ACT — EARLY TERMINATION

The Act applies to juveniles found “not not guilty” following a discharge hearing, and those juveniles may petition for early termination from the registry.

In *In re S.B.*, 2012 IL 112204, the Illinois Supreme Court considered whether a juvenile who was found “not not guilty” of aggravated criminal sexual assault and aggravated criminal sexual abuse following a discharge hearing, or similar “innocence only” hearings, must register as a sex offender and whether the juvenile could petition for early termination from the sex offender registry pursuant to the Sex Offender Registration Act (730 ILCS 150/3-5 (West 2008)). The State argued that because the defendant was a person charged with a sex offense and was found “not not guilty” as the result of a

discharge hearing, the defendant fell within the plain meaning of subdivision (A)(1)(d) of Section 2 of the Act, which provides, in part, that a “sex offender” means any person who “is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to Section 104-25(a) of the Code of Criminal Procedure of 1963.” The State concluded that because the defendant fell within the plain meaning of the statute, registration was required. The defendant maintained that the discharge hearing did not apply to juveniles, but a petition for termination of registration should be available even if the hearing results required registration as a sex offender.

The Illinois Supreme Court first found that in order to protect the due process rights of defendants, subsection (a) of Section 104-25 of the Code of Criminal Procedure (725 ILCS 5/104-25(a) West 2008) was incorporated into the Juvenile Court Act; thus, the circuit court’s finding of “not not guilty” following a discharge hearing was valid. Additionally, the court held that Section 3-5 of the Act should be construed to include juveniles found “not not guilty.” The court reasoned that although Section 3-5 states that only juveniles *adjudicated* delinquent may petition for termination of registration, it would be “absurd” to deny a juvenile who was found to pose no threat to the community the opportunity to petition for removal from the sex offender registry, when juveniles who have been adjudicated delinquent may do so. The court stated that the intent of Section 3-5 was to afford juveniles the opportunity to prove that they do not pose any threat to public safety and should be removed from the sex offender registry. Consequently, to interpret that provision in a way that would deny juveniles found “not not guilty” of the opportunity to petition for termination would defeat the very purpose of the statute. The court noted that Section 121 of the Sex Offender Community Notification Act (730 ILCS 152/121 (West 2008)) contains a similar provision as Section 3-5 and should also be construed to include juveniles found “not not guilty” following a discharge hearing.

SEX OFFENDER REGISTRATION ACT — SEXUAL PREDATOR

A defendant who is found “not not guilty” at a discharge hearing is a sex offender, not a sexual predator, and must register for a period of 10 years, rather than natural life.

In *People v. Olsson*, 2011 IL App (2d) 091351, the Illinois Appellate Court was asked to decide whether a trial court erred when it determined that a defendant who was found “not not guilty” at a discharge hearing was required to register under Section 7 of the Sex Offender Registration Act (730 ILCS 150/7 (West 2008)) for natural life, rather than for a term of 10 years. Section 7 of the Act requires sexual predators to register for life, and it requires sex offenders to register for a term of 10 years. In this case, the defendant was found “not not guilty” of predatory criminal sexual assault of a child and aggravated criminal sexual abuse. The defendant argued that he did not qualify as a sexual predator because he had not been convicted of those offenses and that he could not, as a result, be required to register for life. The State, however, pointed to a provision in Section 2 of the Act, which states that “convicted” has the same meaning as “adjudicated” and asserted that, because the defendant had been adjudicated “not not

guilty” of one of the enumerated offenses, he qualified as a sexual predator and was required to register for life. The court ultimately sided with the defendant, holding that the provision pointed to by the State had been taken out of context and actually applied only to juvenile adjudications. For that reason, the court modified the trial court’s order to require the defendant to register for only 10 years. The Illinois Supreme Court denied the State's petition for leave to appeal in this case on January 25, 2012.

CODE OF CIVIL PROCEDURE — ATTORNEYS’ FEES

If, after the filing of a complaint for the production of medical records, those records are produced before their production is ordered by a court, the party seeking those records may not be awarded any attorney’s fees incurred in conjunction with the production of those records.

In *Larson v. Wexford Health Sources*, 2012 IL App (1st) 112065, the Illinois Appellate Court was asked to decide whether a trial court erred when it denied attorneys’ fees to a plaintiff who successfully sought his medical records under Section 8-2001 of the Code of Civil Procedure (735 ILCS 5/8-2001 (West 2010)). Section 8-2001 provides that requested medical records shall be provided within 30 days and that the failure to comply with the time limit “shall subject the denying party to expenses and reasonable attorneys’ fees incurred in connection with any court ordered enforcement of the provisions of this Section.” When the defendants failed to provide copies of the records within 30 days after his request, the plaintiff filed a complaint seeking the records. After the complaint was filed, but before the court decided the case, a defendant’s attorney provided the records to the plaintiff and sought dismissal of the case. The court dismissed the matter as moot. Plaintiff claimed attorneys’ fees from the defendants pursuant to the statute, but the court denied the claim. The plaintiff argued that because he prevailed when he was furnished with the medical records, he was entitled to attorneys’ fees. The defendants argued that there was no court-ordered enforcement of the statute requiring the defendants to produce the medical records; thus, no attorneys’ fees could be awarded. The appellate court held that no attorneys’ fees were due because the records had been produced before there was a court order requiring the defendants to produce medical records, and because the statute allows for the recoupment of attorneys’ fees only if there is a court-ordered enforcement mandating the production of records. The court noted that, although the plaintiff in this case was the prevailing party, the General Assembly did not use the prevailing party standard; instead, it required there to be court-ordered production of records before attorneys’ fees could be awarded. Thus, the plaintiff’s claim for attorneys’ fees was denied.

CODE OF CIVIL PROCEDURE — SUBSTITUTION OF JUDGE

The Code provides that once a substantive ruling in a case has been made, a party may obtain a substitution of the judge in the case only by meeting the “actual prejudice” standard instead of the “appearance of impropriety” standard.

In re Marriage of O'Brien, 2011 IL 109039, was a dissolution action in which the husband filed a petition seeking the for-cause substitution of the trial judge under subdivision (a)(3) of Section 2-1001 of the Code of Civil Procedure (735 ILCS 5/2-1001 (a)(3)(West 2006)). That statute provides that when, as in this case, a substantial ruling has been made, a substitution of judge may be granted only if the party seeking the substitution establishes actual prejudice. The husband argued that Illinois' actual prejudice standard is unconstitutional because it violates due process. He urged the court to formally recognize an "appearance of impropriety" standard. The contrary argument was that this would lower the standard and would encourage "judge-shopping." The Illinois Supreme Court ruled that the statute as it exists is constitutional and noted that the General Assembly has never seen fit to include the lower "appearance of impropriety" standard in providing for the substitution of a judge once a substantive ruling in a case has been made.

CODE OF CIVIL PROCEDURE — STATUTE OF REPOSE

In a concurring opinion, an appellate court judge recommends that the legislature recognize and address the confusion caused by a particular provision of the Code that concerns statutes of limitations and repose in legal malpractice actions.

In *Pugsley v. Tueth*, 2012 IL App (4th) 110070, the Illinois Appellate Court found that a trial court erred in granting a defendant's motion to dismiss a legal malpractice suit based on Section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2008)) and found that the plaintiff's complaint was timely filed, instead, under subsection (b) of Section 13-214.3 of the Code (735 ILCS 5/13-214.3(b) (West 1994)). In a concurring opinion, however, Justice Cook expressed his concern with subsection (d) of Section 13-214.3 (735 ILCS 5/13-214.3(d) (West 1994)). Justice Cook asserted that a plaintiff who files a malpractice action should have at least 2 years to file his action under Section 13-214.3 of the Code and that subsection (d) of Section 13-214.3 "should not be read to shorten the legal malpractice statute of limitations or statute of repose." Justice Cook further stated that the "legislature should recognize the confusion caused by th[e] statute and make any necessary changes" by "addressing whether Section 13-214.3(d) can ever be used to shorten the statute of limitations or statute of repose." Justice Cook concluded that it is up to the legislature to "decide whether Section 13-214.3(d) applies to all malpractice actions, or only those involving estate-planning concerns, carefully defining which actions are covered."

CODE OF CIVIL PROCEDURE — STATUTE OF REPOSE

A provision of the Code that authorizes the commencement of an action within 2 years after the date of a person's death in certain legal malpractice actions does not apply when the injury complained of occurred at the time of an allegedly negligent act, rather than at the time of the person's death.

In *Snyder v. Heidelberger*, 2011 IL 111052, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred in reversing a circuit court’s decision to dismiss a complaint on the ground that it was barred by the 6-year statute of repose for legal malpractice actions under subsection (c) of Section 13-214.3 of the Code of Civil Procedure (735 ILCS 5/13-214.3(c) (West 1994)). The defendant argued that the statute of repose began running on the date the attorney last worked on the negligently prepared quitclaim deed and that the period of repose had expired well before the complaint was filed. The plaintiff argued that her action was timely filed under subsection (d) of Section 13-214.3 of the Code (735 ILCS 5/13-214.3(d) (West 1994)), which “permits the filing of an action within two years of the death of the person for whom the legal services were rendered.” The Illinois Supreme Court determined that subsection (d) of Section 13-214 was applicable only when “the injury caused by the act or omission does not occur until the death of the person for whom the professional services were rendered.” In this case, the court found that the injury to the plaintiff occurred on the last date the attorney worked on the negligently prepared quitclaim deed and that the Code’s use of the singular term “injury” indicated the legislature’s intent “that only a singular injury . . . trigger application of the limitations period in subsection (d) . . .” Because subsection (d) was found to be inapplicable and because the plaintiff filed her complaint more than 10 years after the quitclaim deed was negligently prepared, the court held that her cause of action was time-barred by the 6-year statute of repose for legal malpractice in subsection (c) of Section 13-214.

CITIZEN PARTICIPATION ACT — DEFAMATION

The Act is not intended to establish a qualified privilege against legitimate defamation claims.

In *Sandholm v. Kuecker*, 2012 IL 111443, the appellant-plaintiff, a high school basketball coach, appealed an Illinois circuit court decision after he brought an action against several defendants for defamation and various other intentional torts based on public statements made by the defendants in an effort to have the plaintiff removed from his position as high school basketball coach and athletic director. The defendants filed motions to dismiss, contending that the suit was a Strategic Lawsuits Against Public Participation (SLAPP) and was, therefore, prohibited by the Citizen Participation Act (735 ILCS 110 (West 2008)). The Citizen Participation Act applies to any motion to dismiss a lawsuit on the grounds that the claim is based on, relates to, or is in response to anything that the moving party has done in furtherance of the moving party’s rights of petition, speech, association, or to otherwise participate in government. The Act also provides for immunity from liability for acts in furtherance of the constitutional rights of petition, speech, association, and participation in government. The plaintiff argued that the suit was not a SLAPP because the defendants’ actions were not “in furtherance of the constitutional right to petition” and were not “genuinely aimed at procuring favorable government action.” He also argued that the Act was unconstitutional because it violates Article I, Section 12 of the Illinois Constitution (ILCON Art. I, Sec. 12), which

guarantees a right to a legal remedy for all injuries, and Article I, Section 6 of the Illinois Constitution (ILCON Art. I, Sec. 6), which grants individuals the right to be free from invasions of privacy. The circuit court agreed with the defendants that the lawsuit was a SLAPP and dismissed it in its entirety. The appellate court affirmed. The Illinois Supreme Court, however, disagreed. The court found that the suit was not a SLAPP because the suit was not based *solely* on the defendants' rights of petition, speech, association, or participation in government. The court reasoned that the legislature intended the Act to apply only to meritless, retaliatory SLAPPs and did not intend to alter the common law by imposing a qualified privilege on defamation for individuals who are petitioning the government. The court also held that the Act is not unconstitutional because the legislature did not intend to establish a privilege against legitimate defamation claims.

LOCAL GOVERNMENTAL AND GOVERNMENTAL EMPLOYEES TORT IMMUNITY ACT — CONDITION OF PROPERTY

The unnatural accumulation of snow and ice constitutes a condition of public property for purposes of establishing immunity under the Act.

In *Moore v. Chicago Park District*, 2012 IL 112788, the Illinois Supreme Court considered whether the unnatural accumulation of snow and ice on public property was a condition of the property for purposes of immunity pursuant to Section 3-106 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-106 (West 2008)). Section 3-106 of the Act provides that a local public entity or public employee is not liable for injury “where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes . . . unless such local entity or public employee is guilty of willful and wanton conduct proximately causing such injury.” The plaintiff alleged that the defendant was negligent because its employee negligently plowed snow into mounds in a parking lot of a recreational area, including a pedestrian walkway, which created an unnatural condition on the property. That condition caused the plaintiff’s decedent to slip and fall, and later die, as a result of complications from injuries sustained during the fall. The defendant argued that Section 3-106 of the Act provided immunity from any negligence claims, as the snow and ice constituted a “condition” of the property. The court agreed, holding that the existence of snow and ice was not an activity conducted upon the public property, but rather was a condition of the property. The court concluded that the Act provided immunity to the defendant because it was not the defendant’s actions of using snow removal equipment that was at issue, but rather the alleged unsafe condition of the property itself. In finding that immunity applied, the court reasoned that although the plain language of the statute does not define the term “condition,” other courts have held that movable conditions of public property are covered under the Act. Further, the court stated that in providing immunity, the legislature intended to prevent the diversion of public funds from their intended purpose to the payment of damage claims, and that public policy would promote the use of those funds to provide greater access to recreational areas.

SNOW AND ICE REMOVAL ACT — IMMUNITY FROM SUIT

A property owner who contracts to have snow and ice removed from one sidewalk on his or her property but who never contracts or attempts to have snow or ice removed from another sidewalk on that property is immune from suit under the Snow and Ice Removal Act for personal injuries caused by the snowy or icy condition of the uncleared sidewalk.

In *Pikovsky v. 8440-8460 North Skokie Boulevard Condominium Ass'n, Inc.*, 2011 IL App (1st) 103742, the Illinois Appellate Court was asked to decide whether the Circuit Court of Cook County erred when it determined that Section 2 of the Snow and Ice Removal Act (745 ILCS 75/2 (West 2008)) barred a negligence action against the owners and operators of a condominium who had entered into contracts to have snow and ice removed from some of the condominium's sidewalks, but not the sidewalk upon which the plaintiff fell and broke her hip. Section 2 of the Snow and Ice Removal Act (745 ILCS 75/2 (West 2008)) provides that "[a]ny owner, lessor, occupant or other person in charge of any residential property, or any agent of or other person engaged by any such party, who removes or attempts to remove snow or ice from sidewalks abutting the property shall not be liable for any personal injuries allegedly caused by the snowy or icy condition of the sidewalk resulting from his or her acts or omissions unless the alleged misconduct was willful or wanton." On appeal, the plaintiff argued that the Act was designed to protect only those owners and operators who actually made an effort to remove snow and ice from a sidewalk and that, in this case, the owners and operators neither attempted to remove snow and ice from the sidewalk upon which the plaintiff fell, nor entered into a contract to have snow and ice removed from that sidewalk. However, the Illinois Appellate Court disagreed with the plaintiff's reading of the statute, reasoning that, by entering into contracts to have some portions of the condominium property shoveled, the owners and operators made a conscious attempt to have snow and ice cleared from the property. For that reason, the court concluded that the failure to have snow and ice removed from the sidewalk upon which the plaintiff fell was an omission in the overall snow removal efforts of the owners and operators. On that basis, the Illinois Appellate Court affirmed the decision of the Circuit Court of Cook County granting the motion for summary judgment of the owners and operators of the condominium.

ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT — CHILD SUPPORT

A circuit court may adjudicate one parent's petition requesting that the other parent pay certain college expenses, even if the petition is filed after the children graduate from college.

In *In re Marriage of Chee*, 2011 IL App (1st) 102797, the Illinois Appellate Court was asked to decide whether, under subdivision (a)(2) of Section 513 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/513(a)(2) (West 2008)), a court has the authority to adjudicate a petition to share a child's undergraduate school

expenses, even if the petition is filed after the child has graduated. Subdivision (a)(2) provides that a court may make provision for the educational expenses of the child or children of the parties, whether of minor or majority age, and an application for educational expenses may be made before or after the child has attained majority, or after the death of either parent. The appellant argued that, when properly construed, the statute allowed the court to order parents and their children, as equity dictates, to share the costs of children's undergraduate education or equivalent occupational training. The respondent argued that the Act should be construed to deprive the trial court of authority to adjudicate educational expenses once each child has graduated from college. The appellate court did not share the respondent's concern that a parent could conceivably wait 50 years to request reimbursement for educational expenses. Instead, the court considered the appellant typical of most litigants in that she contemplated the expenses when she contemplated ending her marriage. The court found that the statute addresses the subject matter of educational expense petitions, as the appellant argued, rather than the timing of their adjudication, as the respondent argued. Accordingly, the court held that the circuit court could adjudicate the petition, even though it was filed after the children graduated from college.

PROBATE ACT OF 1975 — GUARDIAN'S AUTHORITY

The Act authorizes a guardian to proceed to conclusion on a counterpetition for dissolution of marriage after it is converted to the sole petition, if the guardian can prove by clear and convincing evidence that it is in the ward's best interests to pursue the petition.

In *Karbin v. Karbin*, 2012 IL 112815, the plenary guardian of a disabled wife challenged the trial court's dismissal of the wife's counterpetition for dissolution under Section 11a-17 of the Probate Act of 1975 (755 ILCS 5/11a-17 (West 2008)). Section 11a-17 empowers a guardian to make decisions regarding support, care, comfort, health, education and maintenance, and professional services as appropriate. The husband argued that because Section 11a-17 does not grant a guardian the specific authority to maintain a petition for dissolution filed after the ward had been adjudicated disabled, the wife's guardian did not have the statutory authority to seek a dissolution of marriage on behalf of the wife when the counterpetition for dissolution filed on behalf of the wife became the only dissolution petition pending. The guardian, however, argued that the issue of whether to continue with the dissolution of marriage proceeding should be determined based upon what is in the best interests of the disabled wife. The Illinois Supreme Court agreed with the guardian, holding that the dissolution of marriage proceedings should be allowed to continue if the guardian shows by clear and convincing evidence that pursuing the dissolution is in the best interests of the ward. The court reasoned that, although the Probate Act does not grant a guardian the specific authority to seek a divorce on the behalf of a disabled adult, Section 1-9 of the Act (755 ILCS 5/1-9 (West 2008)) provides that the Act is to be "liberally construed to the end that controversies and the rights of the parties may be speedily and finally determined." The court further reasoned that the list of powers granted to a guardian under Section 11a-17 is very broad and has been

construed by case law to grant a guardian the power to take actions that, while not expressly allowed, are permitted because the guardian has been granted the “implied authority” to act. The court noted that the legislature has appeared to express approval with the case law adopting the “implied authority” interpretation of Section 11a-17, as it has declined to pass superseding legislation.

HOME REPAIR FRAUD ACT — REBUTTABLE PRESUMPTION OF INTENT

The Act’s mandatory rebuttable presumption of intent is unconstitutional.

In *People v. Reimer*, 2012 IL App (1st) 101253, the defendant appealed his conviction for home repair fraud under Section 3 of the Home Repair Fraud Act (815 ILCS 515/3 (West 2008)). Subsection (c) of Section 3 provides that certain actions on the part of the defendant create a rebuttable presumption that the defendant intended to commit home repair fraud. The defendant argued that the State had violated his due process rights when it relied on subsection (c) of Section 3 to answer questions from the grand jury concerning the State’s burden to prove the defendant’s intent under the Act. Although the appellate court found that there was sufficient circumstantial evidence to prove the defendant’s intent even without applying subsection (c) of Section 3 of the Act, the court nevertheless reversed the circuit court’s judgment and ordered the circuit court to dismiss the indictment without prejudice. Echoing the defendant’s arguments, the appellate court noted that, under *People v. Watts*, 181 Ill. 2d 133 (1998), the Illinois Supreme Court found subsection (c) of Section 3 of the Act unconstitutional and determined that it “should be severed from the rest of the [Act]” because it creates a mandatory rebuttable presumption of intent which violates due process by shifting the burden of evidence production to the defendant. The appellate court held that a new trial was necessary because, in spite of the holding in *Watts*, the State relied on the unconstitutional provision in order to secure the indictment. However, the court was careful to note that it was only the State’s failure to apply the constitutional provisions of Section 3 during the presentation of its evidence to the grand jury that undermined the legal sufficiency of the indictment. A concurring opinion suggested that Section 3 would pass constitutional scrutiny if the “rebuttable presumption” language were removed and replaced with “it may be inferred,” as such an amendment would convert the mandatory presumption into a constitutionally acceptable permissive inference.

WORKERS’ COMPENSATION ACT — ARBITRATOR TERMINATION

Reforms made to the Act by Public Act 97-18 violate due process principles, as such reforms resulted from an irregular legislative process.

In *Hagan v. Quinn*, 838 F. Supp. 2d 805 (C.D. Ill. 2012), the United States District Court for the Central District of Illinois decided whether the enactment of Public Act 97-18 violated the plaintiffs’ due process rights by depriving them of a property interest in their jobs as arbitrators. The amendments to Section 14 of the Workers’

Compensation Act (820 ILCS 305/14 (West 2011)) by Public Act 97-18 ended, on July 1, 2011, the terms of arbitrators serving on the Illinois Workers' Compensation Commission as of June 28, 2011. Prior to the enactment of Public Act 97-18 and pursuant to the protections provided under the Personnel Code, arbitrators could only be removed from their positions for just cause. The plaintiffs alleged in their complaint that they were removed without "notice of any charges that would constitute legal cause" for termination; that the defendants provided no predetermination hearing prior to termination; and that Public Act 97-18 "did not provide for any notice or opportunity for a hearing prior to termination." The defendants filed a motion to dismiss on the grounds that "the legislature's modification or extinguishment of the right [to serve as arbitrators] gave Plaintiffs all the process that is due." The district court denied the defendants' motion to dismiss, noting that although "a legislature may change the duration of the term of appointments and that the legislative process generally provides all the process that is due . . . [there are exceptions to this general rule when] . . . there is a procedural defect in the legislation or the legislative act is adjudicatory as opposed to legislative." The court observed that Public Act 97-18 effectuated a one-time extinguishment of the plaintiffs' property rights and did so through an irregular legislative process. Because Public Act 97-18 was approved 5 days after it was introduced without the benefit of committee hearings or input from the public, the district court ruled that the case should not be dismissed because the plaintiffs put forth a plausible claim for relief based upon a violation of the plaintiffs' due process rights.

WORKERS' COMPENSATION ACT — JUDICIAL REVIEW; MAILBOX RULE

The Act's 20-day commencement period for judicial review of a decision made by the Illinois Workers' Compensation Commission does not incorporate the mailbox rule.

In *Gruszczka v. Illinois Workers' Compensation Commission*, 2012 IL App (2d) 101049WC, the Illinois Appellate Court was asked to decide whether to apply the mailbox rule for the purposes of determining whether a circuit court has jurisdiction to review a decision of the Illinois Workers' Compensation Commission ("Commission"). The defendant had filed a motion to dismiss the plaintiff's appeal on the grounds that the plaintiff failed to timely file all documents necessary to commence the action in the circuit court under subdivision (f)(1) of Section 19 of the Workers' Compensation Act (820 ILCS 305/19(f)(1) (West 2002)). Subdivision (f)(1) provides that a plaintiff must commence an action for judicial review of a Commission decision by filing all required documents with the appropriate circuit court within 20 days after receiving notice of the Commission's decision. In the instant case, the plaintiff's documents were file stamped by the circuit court 24 days after the plaintiff received notice of the Commission's decision to deny his claim. The circuit court held that the plaintiff had cured the late file stamp date by invoking the mailbox rule and "asserting that the time of the mailing of the documents . . . is the time of filing . . ." The appellate court disagreed, finding there to be no evidence in the language of subdivision (f)(1) of the legislature's intent to incorporate the mailbox rule into the 20-day commencement period required under Section 19. Furthermore, the court noted that under Section 2-201 of the Code of Civil

Procedure (735 ILCS 5/2-201 (West 2002)) “[e]very action, unless otherwise expressly provided by statute, shall be commenced by the filing of a complaint,” not by the mailing of a document. In a dissenting opinion, a judge noted that the Workers’ Compensation Act “provides no definition of what must be done for a proceeding for review to be ‘commenced’ or for a request for summons to be ‘filed’ with the circuit court.” Given that silence, the dissenting judge opined that subdivision (f)(1) of Section 19 should be interpreted, “in light of modern promailing policies and practices,” to recognize the mailbox rule.

WORKERS’ COMPENSATION ACT — DELAY OF AUTHORIZATION

Penalties may not be awarded under the Act for an unreasonable delay in authorization for treatment if payment is otherwise made in a timely manner.

In *Hollywood Casino-Aurora, Inc. v. Illinois Workers’ Compensation Commission*, 2012 IL App (2d) 110426WC, the Illinois Appellate Court was asked to decide whether a trial court erred when it reversed a decision of the Workers’ Compensation Commission (Commission) awarding \$40,750 in penalties to a claimant under subsection (k) of Section 19 of the Workers’ Compensation Act (820 ILCS 305/19(k)(West 2006)). Subsection (k) of Section 19 provides for additional compensation for an “unreasonable or vexatious delay of payment or intentional underpayment of compensation.” The claimant argued suffering an unreasonable delay after having to wait several months for authorization to have batteries in a spinal stimulator replaced. Although authorization for the surgery was delayed for several months after the physician’s initial contact with the employer’s workers’ compensation insurance carrier, the parties agreed that the bills for the procedure were actually paid in a timely manner. The Illinois Appellate Court found that the word “payment” is defined in the dictionary as “the act of paying or giving compensation.” That definition does not include the giving of authorization for services. Therefore, the court reasoned that the insurance carrier’s actions fell outside of the scope of subsection (k) of Section 19 and reversed the decision of the Commission. Although the decision of the Commission was reversed, the court mentioned that many medical providers do decline to render services until they receive authorization; however, the court noted that it is the function of the legislature, not the judiciary, to provide penalties for insurance carriers that delay authorization of procedures.

PUBLIC SAFETY EMPLOYEE BENEFITS ACT — HEALTH BENEFITS

A public safety employee who is catastrophically injured during a workplace training exercise is entitled to health insurance benefits under the Act if the training exercise became an emergency due to the occurrence of an unforeseen circumstance that necessitated an urgent response.

In *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, the plaintiff appealed the denial of his application for health insurance benefits under subsection (b) of Section 10 of the Public Safety Employee Benefits Act (820 ILCS 320/10 (West 2006)). Under subsection (b), a public safety employee is entitled to health insurance benefits if the he or she suffered a catastrophic injury or death that occurred as a result of the his or her “response to what is reasonably believed to be an emergency.” In this case, the plaintiff, a firefighter, “catastrophically injured” his shoulder while participating in a live-fire training exercise. According to the defendant, Section 10 subsection (b) did not apply because the “[plaintiff] knew he was participating in a training exercise” and, therefore, “was not responding to what was reasonably believed to be an emergency.” The Illinois Supreme Court disagreed, finding that subsection (b) “does not exclude a training exercise as an emergency situation.” In reaching that decision, the court noted that the term “emergency” is not defined under the Act. The court, therefore, applied the ordinary meaning of that term and held that, for purposes of that provision, the term “emergency” meant “an unforeseen circumstance involving imminent danger to a person or property requiring an urgent response.” According to the court, had the General Assembly intended to limit the scope of subsection (b) to emergency situations that only posed an actual or real threat to the public, then it “would not have added the modifying language ‘reasonably believed’ to the phrase.” In light of this interpretation, the court found that the live-fire training exercise turned into an emergency when the plaintiff’s line became entangled creating an unforeseen circumstance that necessitated an urgent response to ensure the safety of those participating in the exercise. In contrast, the court held that the plaintiff in a companion case was not entitled to benefits because his injuries arose during “a training exercise that proceeded as planned” and “was conducted under controlled circumstances” with no live fire or smoke. However, a dissenting judge disagreed with the majority’s interpretation of subsection (b), asserting that the court added requirements to subsection (b) that the legislature did not intend when it interpreted the term “emergency” to mean an unforeseen circumstance. In addition, the dissenting judge insisted that subsection (b) provides benefits only to public safety employees who are catastrophically injured in their “professional capacity,” not to public safety employees who are injured at the workplace.

PUBLIC SAFETY EMPLOYEE BENEFITS ACT — HEALTH BENEFITS

A police officer who suffers a catastrophic line-of-duty injury is entitled to have his or her, his or her spouse’s, and his or her minor children’s health insurance premiums paid beginning on the date that he or she is declared permanently disabled and not on the date he or she sustains that injury.

In *Nowak v. City of Country Club Hills*, 2011 IL 111838, the Illinois Supreme Court was asked to decide whether the Illinois Appellate Court erred when it determined that a police officer who suffered a catastrophic line-of-duty injury was entitled to have his, his spouse’s, and his minor children’s health insurance premiums paid for by his employer under Section 10 of the Public Safety Employee Benefits Act (820 ILCS

320/10 (West 2004)) beginning on the date he sustained that injury, rather than on the date he was declared permanently disabled. Section 10 of the Act provides that “[a]n employer who employs a full-time law enforcement . . . officer . . . who . . . suffers a catastrophic injury . . . shall pay the entire premium of the employer’s health insurance plan for the injured employee, the injured employee’s spouse, and for each dependent child of the injured employee until the child reaches the age of majority” The employer argued that its obligation to pay the premiums did not attach until the Board made a determination that the officer was permanently disabled; however, the officer asserted that the obligation attached on the date he sustained the injury. The Illinois Supreme Court began its analysis by noting that the Act “is utterly silent as to when an employer’s obligation under [Section 10] . . . attaches” and that both parties’ interpretations of Section 10 were reasonable. The court then examined the legislative history of the Act and determined that the purpose of the Act was to provide for the continuance of health benefits for persons who, after being awarded a disability pension, were no longer eligible for those benefits. Because, in the absence of the Act, the police officer would have become ineligible for healthcare benefits only after being declared permanently disabled, the court reasoned that it was consistent with the Act’s purpose for the payment of premiums under Section 10 to commence on the date the officer was declared permanently disabled. Moreover, the court reasoned that it would be difficult, if not impossible, to identify a date of injury in cases where the injury results from the accumulation of prior injuries or the aggravation of a preexisting injury. For those reasons, the Illinois Supreme Court ultimately reversed the decision of the Illinois Appellate Court and held that a police officer who suffers a catastrophic line-of-duty injury is entitled to have his, his spouse’s, and his minor children’s health insurance premiums paid beginning on the date he or she is declared permanently disabled and not on the date he or she sustains that injury.

INTRODUCTION TO PART 2

Part 2 of this 2012 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 5/9-2. Election Code. In the Article concerning the disclosure and regulation of campaign contributions and expenses, there is a provision that prohibits individuals and groups from forming more than one political action committee. This provision was held unconstitutional as applied to independent-expenditure-only political action committees. *Personal PAC v. McGuffage*, 858 F.Supp.2d 963 (N.D. Ill. 2012).

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

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

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

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

EXECUTIVE BRANCH

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

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

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

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

LEGISLATURE

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

25 ILCS 120/5.5 (West 2002). **Compensation Review Act.** Section denying the fiscal year 2003 cost-of-living adjustment to the salaries of State officials (previously recommended by the Compensation Review Board and not disapproved by the General Assembly) is unconstitutional with respect to salaries of State judges because it violates the Illinois Constitution's separation of powers clause (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 105/5.661 (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 inseverability 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”.)

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

PROFESSIONS AND OCCUPATIONS

225 ILCS 10/2.05 and 10/2.17 (Ill. Rev. Stat., ch. 23, pars. 2212.05 and 2212.17). **Child Care Act of 1969.** Provisions that deny AFDC-FC (foster care) payments to foster parents who are related to the foster children they care for conflict with the Social Security Act and are unconstitutional as violating that Act and therefore the supremacy clause of the U. S. Constitution. *Youakim v. Miller*, 431 F.Supp. 40

(N.D.Ill. 1976). (This case is also reported in this Part 2 of this Case Report under “Executive Branch”).

225 ILCS 25/32 (Ill. Rev. Stat. 1987, ch. 111, par. 2332). **Illinois Dental Practice Act.** Provision stating that, during review of a suspension under the Administrative Review Law, the suspension shall remain in full force and effect prohibits courts from exercising their inherent equitable powers to issue stays. To this extent, the Section is unconstitutional. (P.A. 88-184 limits the provision to acts or omissions related to direct patient care and states that as a matter of public policy suspension may not be stayed pending final resolution.) *Archt v. Ill. Dept. of Professional Regulation*, 154 Ill.2d 138 (1992).

LIQUOR

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

235 ILCS 5/8-1 (Ill. Rev. Stat. 1985, ch. 43, par. 158). **Liquor Control Act of 1934.** 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).

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 inseparability 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); *People v. Gibson*, 403 Ill.App.3d 942 (2nd Dist. 2010); and *People v. Herron*, 2012 IL App (1st) 090663.

720 ILCS 5/10-5 (Ill. Rev. Stat. 1989, ch. 38, par. 10-5). **Criminal Code of 1961.** Child abduction statute is unconstitutional as applied to the natural father of a child. The parents were not married and there was no paternity action, but the parents had lived together 4½ years and the father had supported the child. Applying the statute to the natural father would deprive him of equal protection of the law. *People v. Morrison*, 223 Ill.App.3d 176 (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 5/11-1.30. 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 5/12A-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 5/16-30. 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) and *People v. Clemons*, 2012 IL 107821.

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, 5/2-1205.1, 5/2-1702, 5/2-2101, 5/2-2102, 5/2-2103, 5/2-2104, 5/2-2105, 5/2-2106, 5/2-2106.5, 5/2-2107, 5/2-2108, 5/2-2109, 5/13-213, 5/13-214.3, and 5/13-217 (P.A. 89-7). **Code of Civil Procedure.**

P.A. 89-7, a comprehensive revision of the law relating to personal injury actions, is unconstitutional in its entirety because (i) provisions limiting compensatory damages for noneconomic injuries, changing contribution by joint tortfeasors, abolishing joint and several liability, and mandating unlimited disclosure of a plaintiff’s medical records during discovery are arbitrary, are special legislation in violation of Section 13 of Article IV of the Illinois Constitution, 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, Bkrcty*, 125 B.R. 981 (S.D.Ill. 1991), and others.

735 ILCS 5/13-202.1 (West 1992). **Code of Civil Procedure.** Limitations provision, added by P.A. 87-941, which purports to revive a damage suit by the murder victim's estate against the murderer after the 2-year statute of limitations had run, violates due process protections afforded to defendants in civil tort cases. *Sepmeyer v. Holman*, 162 Ill.2d 249 (1994).

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

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

735 ILCS 5/21-103 (West 1998). **Code of Civil Procedure.** Subsection (b), which requires notice by publication of a petition to change a minor's name, is

unconstitutional as applied to a noncustodial parent who was not given actual notice of a petition by the custodial parent to change their child's surname. *In re Petition of Sanjuan-Moeller*, 343 Ill.App.3d 202 (2nd Dist. 2003).

CIVIL LIABILITIES

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

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

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

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

CIVIL IMMUNITIES

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

of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

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

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

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

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

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 inseverability of unconstitutional provisions of the Code of Civil Procedure and the Joint Tortfeasor Contribution Act enacted by P.A. 89-7.)

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

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

INTRODUCTION TO PART 3

Part 3 of this 2012 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 105/5.400 (P.A. 88-680). **State Finance Act.** Provision added by P.A. 88-680 is unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill.App.3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill.2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Courts” and “Corrections” and in Part 3 of this Case Report under “Criminal Offenses”.) Section 5.400 was repealed by Public Act 95-331.

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

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

REVENUE

35 ILCS 5/203, 5/502, 5/506.5, 5/917, and 5/1301 (P.A. 88-669). **Illinois Income Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not

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

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

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

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

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

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

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

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

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

35 ILCS 110/2 (Ill. Rev. Stat. 1967, ch. 120, par. 439.32). **Service Use Tax Act.**
35 ILCS 115/2 (Ill. Rev. Stat. 1967, ch. 120, par. 439.102). **Service Occupation Tax Act.**

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

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

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

35 ILCS 120/3 and 120/11 (P.A. 88-669). **Retailers' Occupation Tax Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 94-1074, effective December 26, 2006, re-

enacted the changes made by P.A. 88-669. P.A. 92-790, 93-205, 93-1046, 94-794, 94-961, 94-986, and 94-1017 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (This case is also reported in this Part 3 of this Case Report under “Executive Branch”, “Finance”, “Gaming”, “Liquor”, “Public Health”, “Vehicles”, “Criminal Offenses”, and “Corrections”.)

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

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

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

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

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

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

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

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

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

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

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

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

35 ILCS 635/20 (West 1998). **Telecommunications Municipal Infrastructure Maintenance Fee Act.** Application of the Act’s municipal infrastructure maintenance fee, imposed upon telecommunications providers to compensate a municipality for access to public rights-of-way, equally to wireless telecommunications providers that do not own or operate equipment on public rights-of-way as to landline telecommunications providers that do own or operate equipment on public rights-of-way violates the uniformity clause of Section 2 of Article IX of the Illinois Constitution. *Primeco Personal Communications, L. P. v. Illinois Commerce Commission*, 196 Ill.2d 70 (2001). Section 20 was internally repealed on January 1, 2003.

PENSIONS

40 ILCS 5/1-110.5. Illinois Pension Code. Public Act 94-79, effective January 27, 2006 and known as the “Sudan Act”, which prohibited the investment of State moneys in relation to Sudan, was preempted by federal law and violated the foreign commerce clause of the United States Constitution (U.S. Const., Art. I, 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 5/8-402.1. Public Utilities Act. Requirements that Illinois utilities, in complying with federal Clean Air Act amendments, take into account the need to use Illinois coal, preserve the Illinois coal industry, and install pollution control devices in order to burn Illinois coal are too great a burden on interstate commerce. *Alliance for Clean Coal v. Craig*, 840 F.Supp. 554 (N.D.Ill. 1993). These requirements were repealed by P.A. 90-561.

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

PROFESSIONS AND OCCUPATIONS

225 ILCS 41/. Funeral Directors and Embalmers Licensing Code. Provision of the Funeral Directors and Embalmers Licensing Act of 1935 (Ill. Rev. Stat. 1955, ch. 111 ½, par. 73.4) requiring a funeral director to be a holder of a certificate of registration as a registered embalmer violated the due process clause of the Illinois Constitution 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 5/6-16 (West 2000). **Liquor Control Act of 1934.** Subsection (c), which makes it a Class A misdemeanor if a person knowingly permits the departure of an intoxicated minor from a gathering at the person’s residence of which the person has knowledge and at which the person knows a minor is illegally possessing or consuming liquor, is unconstitutionally vague in violation of the 14th Amendment of the U.S. Constitution because it fails to provide a person with notice as to how to avoid violating the subsection. *People v. Law*, 202 Ill.2d 578 (2002). P.A. 97-1049 added criteria specifying how to violate the provisions in question.

235 ILCS 5/7-9 (Ill. Rev. Stat. 1991, ch. 43, par. 153). **Liquor Control Act of 1934.** In Section concerning appeals from orders of local liquor commissions, provisions denying *de novo* review by the State Commission in the case of appeals from municipalities with a population between 100,000 and 500,000 but requiring *de novo* review in the case of other municipalities violated the Illinois Constitution’s prohibition against special legislation. There was no rational basis for the difference in treatment accorded municipalities with a population between 100,000 and 500,000 (of which there were only 2 in the State) and municipalities with a population less than 100,000. P.A. 77-

674 deleted the provision denying *de novo* review in the case of appeals from municipalities with a population between 100,000 and 500,000 and provided instead that in the case of appeals from home rule municipalities with a population under 500,000 (rather than municipalities with a population between 100,000 and 500,000) the appeal was limited to a review of the official record of the local proceedings. *Shepard v. Illinois Liquor Control Comm'n*, 43 Ill.2d 187 (1969).

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

WAREHOUSES

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

PUBLIC AID

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

graduates from high school, whichever is earlier. *Jacobson v. Department of Public Aid*, 171 Ill.2d 314 (1996).

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

PUBLIC HEALTH

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

410 ILCS 315/2c (P.A. 88-669). **Communicable Diseases Prevention Act.** Provisions amended by P.A. 88-669, effective November 29, 1994, were unconstitutional because P.A. 88-669 violates the single subject rule of Section 8 of Article IV of the Illinois Constitution and is void in its entirety. P.A. 92-790, effective August 6, 2002, repealed the changes made by P.A. 88-669. P.A. 93-205, 93-1046, 94-794, 94-961, 94-986, 94-1017, and 94-1074 also re-enacted, amended, or repealed portions, but not all, of the substance of P.A. 88-669. *People v. Olender*, 222 Ill.2d 123 (2005). (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 405/5-4, 405/5-14, 405/5-19, 405/5-23, 405/5-33, and 405/5-34 (P.A. 88-680). **Juvenile Court Act of 1987.** Provisions amended by P.A. 88-680 are unconstitutional because P.A. 88-680 violates the single-subject rule of Section 8 of Article IV of the Illinois Constitution. P.A.s 91-54, 91-155, 91-404, 91-690, 91-691, 91-692, 91-693, 91-694, 91-695, and 91-696 re-enacted portions, but not all, of the substance of P.A. 88-680. *People v. Dainty*, 299 Ill.App.3d 235 (3rd Dist. 1998), *People v. Williams*, 302 Ill.App.3d 975 (2nd Dist. 1999), *People v. Edwards*, 304 Ill.App.3d 250 (2nd Dist. 1999), and *People v. Cervantes*, 189 Ill.2d 80 (1999). (These cases are also reported in this Part 2 of this Case Report under “Finance” and “Corrections” and in Part 3 of this Case Report under “Criminal Offenses”.) P.A. 90-590 repealed the offending Sections.

CRIMINAL OFFENSES

720 ILCS 5/10-5 (West 1998). **Criminal Code of 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 5/12-6 (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). Public Act 96-

1551, effective July 1, 2011, limited the applicability of this provision to felonies and Class A misdemeanors.

720 ILCS 5/12-18 (Ill. Rev. Stat. 1981, ch. 38, par. 12-18). **Criminal Code of 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 5/12C-5. 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). Public Act 97-1109, effective January 1, 2013, makes the presumption permissive rather than mandatory.

720 ILCS 5/16-1 (Ill. Rev. Stat. 1989, ch. 38, par. 16-1). **Criminal Code of 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 5/16A-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). Public Act 97-597, effective January 1, 2012, made the inference permissive rather than mandatory.

720 ILCS 5/17B-1, 5/17B-5, 5/17B-10, 5/17B-15, 5/17B-20, 5/17B-25, and 5/17B-30 (P.A. 88-680). **Criminal Code of 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 inseverability, 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. 106³/₄, pars. 1, 55, and 56) that contemplated that the decision to submit to a blood test was within a defendant's discretion were an invalid exercise of the legislative power because they conflicted with a court's power under Supreme Court Rules to order discovery and to compel compliance with discovery orders. P.A. 83-1372 repealed the Paternity Act and replaced it with the Illinois Parentage Act of 1984, which provides that if a party refuses to submit to ordered blood tests, the court may resolve the question of paternity against that party or otherwise enforce its order. *People ex rel. Coleman v. Ely*, 71 Ill.App.3d 701 (1st Dist. 1979).

750 ILCS 45/. Illinois Parentage Act of 1984.

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

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

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

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

(1) Violated State and federal constitutional equal protection guarantees (U.S. Const., Amend. XIV and 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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