

EGBL LEGAL REPORT

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New Legislation Issue

Illinois: Budget bills only part of General Assembly's work

by Emily Gehlbach*

Throughout the summer, Illinois Gov. Rod Blagojevich signed into law several bills passed by the Illinois General Assembly during its spring session. These bills cover a wide range of activities and reach into every corner of life in Illinois. Some of the more significant bills are summarized below.

*Emily Gehlbach, a first-year law student at the Norman Adrian Wiggins School of Law at Campbell University in Buies Creek, N.C., clerked at EGBL this summer.



Fee Increases: The budget for the 2005 fiscal year projects spending of \$53 billion. Because of a \$5 billion deficit from fiscal year 2004, the General Assembly agreed to increase certain fees and repeal certain tax exemptions and credits. For example, registration fees for motor vehicles weighing over 8,000 pounds will increase by 36%. Although Illinois-based trucking companies will receive a per employee credit, this fee is estimated to generate \$82 million for the Illinois government.

Illinois legislation continued on page 2

Inside

New federal tax laws	3
New drivers license law	4
Deals and Decisions	4
In Print & At the Podium	4

Federal and Illinois: Do Not Call Registries designed to disconnect telemarketers

by MEGAN G. HEEG

For the moment at least, an Illinois resident can, with a single registration onto the National Do Not Call Registry, register his or her telephone or cell phone number with both the federal and state do not call programs. The federal law will be enforced by the Federal Trade Commission and the Federal Communications Commission; the state law will be enforced by the Illinois Commerce Commission.

Under the federal law, which already is the subject of several lawsuits, telemarketers cannot call telephone or cell phone numbers that were registered by Aug. 31, 2003. For numbers registered after Aug. 31, the prohibition is effective three months after the date of registration. Under state law, solicitors must stop calling 45 days after the solicitor receives the Registry on which the telephone number first appears. Solicitors must obtain an updated Registry at least every three months.

Registration, however, does not stop all unsolicited calls. Under both state and federal law, certain callers are exempt from the prohibition, including:

- charities;
- political candidates and organizations;

Telemarketers continued on page 2

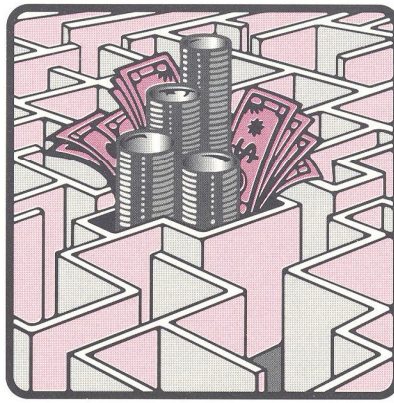
Illinois legislation. . .

Continued from page 1

Estate Tax: The Illinois estate tax now is decoupled from the federal estate tax. Therefore, the estates of Illinois citizens who die on or after Jan. 1, 2003, with net taxable estate values exceeding \$1 million (\$1.5 million in 2004) will be required to pay more estate taxes than under the prior law. The bill is expected to raise an additional \$45 million for Illinois in 2003.

Minimum Wage: One of the most significant items for businesses is the increase in the minimum wage. Although the General Assembly is phasing in the increase, the increase is still dramatic. On Jan. 1, 2004, the minimum wage for employees over 18 years of age will increase from \$5.15 to \$5.50. The wage for employees under 18 will continue to be \$5.15. On Jan. 1, 2005, the minimum wage for employees over 18 will increase from \$5.50 to \$6.50, and the minimum wage for employees under 18 will increase from \$5.15 to \$6.00.

Open Meetings: The Open Meetings Act was amended to require public bod-



ies to keep, along with written records of all meetings, an audio or video recording of all closed meetings. The new law, which is effective Jan. 1, 2004, also amended the period of time for which records must be kept and specified who is allowed to approve the destruction of records.

Free Trial Goods: Those who have paid large amounts of money to receive "free" trial goods or services should be pleased with the passage of House Bill 1632. This bill is designed to protect consumers by requiring anyone who provides free goods or services for a trial period to send the consumer an invoice

at the end of the trial period. The invoice must contain a telephone number and address that the consumer may use to communicate with the seller. Upon receipt of the invoice, the consumer may either pay the bill or cancel the goods or services. This legislation is effective Jan. 1, 2004.

Credit Cards: To help prevent credit card fraud, the General Assembly passed House Bill 2188. Effective Jan. 1, 2004, if a credit card company receives a completed application for a credit card, but for a different address than the company initially presented in its offer, the credit card company must investigate the difference. The credit card company is required to verify the customer's identity and that the person who returned the application is not participating in credit card fraud.

Ephedra: Because of a number of adverse health effects, including death, Illinois has banned the sale of all dietary supplements containing ephedra. This ban applies to anyone in Illinois, regardless of age. The law became effective on May 28, 2003.



Telemarketers. . .

Continued from page 1

- companies calling existing customers;
- companies with a business relationship with the resident;
- companies possessing the resident's express consent; and
- persons calling solely to take a survey.

Notwithstanding these exemptions, a resident can stop multiple calls from an exempt entity by instructing the entity to add the resident's telephone number to the caller's company-specific do not call list.

Residents can register a telephone number in two ways:

- Call 1-888-382-1222 (TTY 1-866-290-4236) from the telephone number to be placed on the Registry; or
- over the Internet, go to www.donotcall.gov and follow the instructions (up to three telephone numbers can be registered online).

Both systems validate the telephone number being registered. If registered by telephone, the system uses a system similar to caller ID to verify that the call came from the telephone number being registered; if registering over the Internet, the consumer must also supply an e-mail address to be used by the system to validate and confirm the registration. (If an e-mail address is supplied, the e-mail address cannot be subsequently disclosed to telemarketers.)

Registered telephone numbers will remain on the Registry for five years, at which time the consumer can renew his or her registration. Some events, such as a move to another residence (even if the resident keeps the same telephone number), can cause a registered number to be automatically dropped from the Registry.

Under the Illinois statute, a knowing and willful violation of the law can result in a fine of up to \$1,000 for the first violation and up to \$2,500 for a second or subsequent violation. Federal law provides for a fine of up to \$11,000. However, both laws protect calls that result from unintentional errors, as long as the offending telemarketer has a system in place to comply with the legislation.





Federal: Tax law changes dominate new national legislation

by Emily GEHLBACH

Probably the most significant piece of recent federal legislation is the Jobs and Growth Tax Relief Reconciliation Act of 2003 ("the Act"), which President Bush signed into law in late May. The Act is designed to stimulate the economy during this time of recession. The majority of the benefits are temporary, and the Act accelerates many of the benefits being phased-in from the Economic Growth and Tax Relief Reconciliation Act of 2001. The highlights of the Act are described below.

Capital Gain Rates: Capital gains and losses result from a sale or exchange of capital assets. These gains are included as income and are taxable. Long-term capital gains (applicable for assets held for more than one year) are netted against short-term capital losses (applicable for assets held for one year or less).

If a taxpayer experiences a net short-term capital loss, he or she can deduct \$3,000 of the loss against ordinary income. The taxpayer then can carry over any excess capital loss to deduct in future periods. If a net long-term capital gain occurs, the taxpayer receives preferential tax rates for the gains. Before the effective date of this provision under the Act, the maximum tax rate for capital gains was 20%.

Under the Act, the adjusted net capital gain tax rates will be lower for tax years ending on or after May 2, 2003, and beginning before Jan. 1, 2009. During this period, the maximum tax rate for capital gain will be 15%, and the lowest rate will be 5%. In addition, beginning after Dec. 31, 2007, the 5% capital gain tax rate will be reduced to zero.

Dividends: Under prior tax law, dividends were taxed at ordinary income rates. Now, however, for tax years beginning after Dec. 31, 2002, and beginning before Jan. 1, 2009, dividends received by shareholders from domestic corporations will be taxed at capital gain rates, namely, 15% and 5%. To receive these preferential rates, shareholders must hold the stock for a specified number of days, which is doubled for preferred stock dividends.

Income Tax Rates: As most taxpayers know, their income tax rates are determined using income brackets. Once the tax liability is determined using tax rates from the brackets, a taxpayer's liability is decreased dollar for dollar by any qualifying tax credits. Under the Act, the individual tax rates are being phased down over six years. Over the six years, the rates will decrease from the prior 28%, 31%, 36% and 39.6% to 25%, 28%, 33% and 35%.

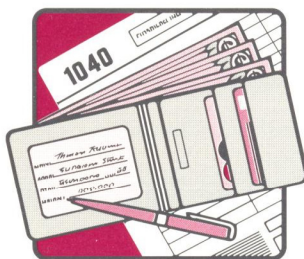
Under the sunset provision of the Act, the regular income tax rates will revert to the 28%, 31%, 36% and 39.6% rates for taxable years beginning after Jan. 1, 2011.

Marriage Penalty: Generally, married couples file joint tax returns, meaning they are treated as a single tax unit. Therefore, married couples pay tax on their combined income. A "marriage penalty" results when a couple's combined tax liability is more than the tax liability combined if each individual had filed separately.

This marriage penalty results from the different tax brackets for different statuses of taxpayers. Taxpayers can deduct itemized deductions from their adjusted gross income or they can deduct the standard deduction that the government pre-determines. The size of the standard deduction depends upon the filing status of the taxpayer. In 2003, the standard deduction for married couples filing jointly would have been approximately 167% of that of a single taxpayer. In other words, single taxpayers were allowed standard deductions of more than what married couples were allowed. Under the Act, the standard deductions for married couples filing jointly are being phased in over five years to equal 200% of the standard deductions of unmarried taxpayers. Thus, an individual's marital status will not change his or her standard deduction.

The Act also will increase the taxable income eligible for the 15% rate. Before the Act was adopted, the income brackets for single individuals were approximately 60% of that of married couples filing jointly. Under the Act, the taxable income eligible for the 15% rate will expand for married couples filing jointly to be twice that of single taxpayers. Again, the increase will have a phase-in effect over four years, beginning in 2005.

Child Care Credit: Under the Act, the qualifying child tax credit in 2003 and 2004 will be increased from \$600 to \$1,000. The \$400 increase for 2003 was paid in advance in July based on information from each taxpayer's 2002 tax return. On Jan. 1, 2005, the credit will return to \$600.



Illinois: New license law restricts teen drivers

by DANA M. NAUMAN*

The Illinois General Assembly has listened to the concerns of worried parents.

One of the state's newest laws enacts the "Graduate to Safety Program." Under this legislation, teenagers who receive their driver's license after Jan. 1, 2004, are prohibited from driving any vehicle that contains more than one passenger under the age of 20. This prohibition lasts for the first six months of the driver's license or until the license holder reaches the age of 18, whichever occurs first. Siblings and step-siblings and children and stepchildren of the driver, how-

ever, are not counted in determining compliance with the new law.

The law also applies to drivers who received their licenses before Jan. 1, 2004. After the effective date, the licensee will be restricted for the remainder of the six months from the date the license was issued. For example, if a driver received his license on Sept. 19, 2003, he would need to comply with this law from Jan. 1, 2004, until March 19, 2004.

This law was passed to reduce the likelihood that a driver will be distracted by a car full of other teenagers. Still in

effect is the prohibition against drivers ages 15 - 17 having more than one passenger in the front seat or more passengers in the back seat than there are safety belts. Further information concerning the graduated licensing system can be found at the Secretary of State's website, www.sos.state.il.us.



*Dana M. Nauman is a graduate of the Drake University School of Law who recently passed the bar exam and who will, upon being sworn into the bar, join EGBL as an attorney.



In Print and At the Podium

Mr. Ehrmann recently was a guest on WMBD-TV, the CBS television station serving Peoria and Bloomington, where he was interviewed by Lee Ross on the death penalty and other issues involving the criminal justice system . . . **Mrs. Heeg**, a member of the board of directors of the Forrester Mutual Insurance Company, traveled to Springfield in May with other farm mutual company representatives to brief Illinois legislators on issues affecting the state's property/casualty insurance industry . . . **Mr. Gehlbach** recently was reappointed to the Illinois State Bar Association's Real Estate Law Section Council and again named editor of its Real Property newsletter . . . **Mr. Lee's** two most recent commentaries for the web site of the First Amendment Center, www.firstamendmentcenter.org, concerned the protec-

tions afforded web site operators under federal law and a new opinion from the Seventh Circuit Court of Appeals that significantly scales back the newsgather's privilege against testifying . . . **Mr. Gehlbach** recently spoke to a group of retirees on the essentials of an estate plan . . . **Mr. Lee** was re-elected president of the board of directors of Open Sesame Child Care Center . . . The Dixon Family YMCA recently completed its annual fundraiser, achieving more than 150% of the board's goal. The local YMCA Treasurer, **Mr. Gehlbach**, chaired one of three teams of board members and other community volunteers . . . **Mr. Gehlbach**, whose chose not to seek another term on the Dixon school board after 14 years, has been appointed to the board's new Finance & Operations Committee.



Deals and Decisions

Mr. Gehlbach represented one of Princeton's major businesses in acquiring land to build a new corporate facility . . . **Mr. Lee** was one of three lawyers who represented the Livingston County Landfill in an appeal before the Illinois Pollution Control Board. The persons objecting to the landfill's expansion withdrew their appeal after agreeing to a settlement negotiated by **Mr. Lee** . . . Having represented a client in selling a large tract of real estate for a considerable profit, **Mr. Gehlbach** structured the sale as part of a tax-deferred exchange and is assisting the client in acquiring approximately a dozen replacement properties . . . **Mrs. Heeg** successfully represented a charitable organization in obtaining a real estate property

tax exemption for the charitable portion of the client's enterprise . . . Although a deceased man's "significant other" was not named as a beneficiary of the man's life insurance policy, **Mr. Lee** assisted the woman in obtaining the vast majority of the insurance proceeds . . . Defending a creditor in law suit brought by a bankruptcy trustee, **Mrs. Heeg** successfully convinced the bankruptcy estate that it was entitled to only less than one-fourth of the amount it sought . . . After **Mrs. Heeg** filed a motion for emergency hearing, an employer agreed to pay temporary compensation and to cover medical bills for a client injured on the job.

